

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 23544

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

JO ANNE ANN WALTERS, Defendant-Appellee

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(TRAFFIC NO. 99-131697, CR. NO. 99-131698)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.  
and Acoba, J., dissenting)

Plaintiff-appellant the State of Hawai'i [hereinafter, "the prosecution"] appeals from the May 18, 2000 order of the district court of the first circuit, the Honorable George Y. Kimura presiding, dismissing with prejudice the charges against defendant-appellee Jo Anne Ann Walters (Walters) of driving under the influence of intoxicating liquor (DUI), in violation of Hawai'i Revised Statutes (HRS) § 291-4 (repealed 2000)<sup>1</sup> and criminal property damage (CPD) in the fourth degree [hereinafter,

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<sup>1</sup> HRS § 291-4 provided, in relevant part, as follows:

- (a) A person commits the offense of driving under the influence of intoxicating liquor if:
- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or
  - (2) The person operates or assumes actual physical control of the operation of any vehicle with .10 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .10 or more grams of alcohol per two hundred ten liters of breath.

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"CPD 4<sup>th</sup>"], in violation of HRS § 708-823 (1993).<sup>2</sup> On appeal, the prosecution argues that the district court abused its discretion in dismissing the charges against Walters. The prosecution specifically argues that the district court erred in finding (1) that the prosecution violated HRS § 701-109(2) (1993),<sup>3</sup> (2) that the prosecution attempted to add a "new" CPD 4<sup>th</sup> charge in violation of HRPP Rule 7(f) (2000),<sup>4</sup> and (3) that it had inherent authority to dismiss the case.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the arguments advanced and the issues raised, we hold that the district court erred in granting Walters's motion to dismiss per HRS § 701-109. Specifically: (1) the district court erred in finding that the prosecution violated HRS § 701-109(2), inasmuch as the prosecution consolidated the DUI and CPD 4<sup>th</sup> charges prior to commencement of the first trial, see HRS § 701-109(2); State v. Servantes, 72 Haw. 35, 804 P.2d 1347 (1991); State v. Carroll, 63 Haw. 345, 627 P.2d 776 (1981); State v. Solomon, 61 Haw. 127, 596 P.2d 779 (1979); State v. Aiu, 59 Haw. 92, 576 P.2d 1044 (1978); (2) the district court erred in finding that the prosecution violated HRPP Rule 7(f) by adding a new charge of CPD 4<sup>th</sup> at the

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<sup>2</sup> HRS § 708-823 provides, in relevant part, that "[a] person commits the offense of criminal property damage in the fourth degree if the person intentionally damages the property of another without the other's consent."

<sup>3</sup> HRS § 701-109(2) provides that, "[e]xcept as provided in subsection (3) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court."

<sup>4</sup> HRPP Rule 7(f) provides that "[t]he court may permit a charge other than an indictment to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced."

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trial on the DUI charge, inasmuch as the CPD 4<sup>th</sup> charge was already consolidated with the DUI charge prior to commencement of trial on the DUI charge, see HRPP Rule 7(f); and (3) notwithstanding the district court's inherent authority to dismiss a case for failure to prosecute with due diligence, dismissal was not warranted in the instant case, inasmuch as the prosecution did not (a) interfere with the orderly proceedings of the district court, (b) violate HRS § 701-109(2) and HRPP Rule 7(f), and (c) prejudice Walters, see State v. Letuli, 99 Hawai'i 360, 55 P.3d 853 (App. 2002); State v. Mageo, 78 Hawai'i 33, 889 P.2d 1092 (App. 1995).<sup>5</sup> Therefore,

IT IS HEREBY ORDERED that the district court's May 18, 2000 order granting Walters's "motion to dismiss per HRS § 701-109," from which the appeal is taken, is vacated, and the case is remanded for further proceedings.

DATED: Honolulu, Hawai'i, May 28, 2004.

On the briefs:

Caroline M. Mee,  
Deputy Prosecuting Attorney,  
for the plaintiff-appellant  
State of Hawai'i

Steven T. Barta  
for the defendant-appellee  
Jo Anne Ann Walters

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Unlike the dissent argues, the "district court's determination that the 'multiple continuances and delays' prejudiced [Walters] and 'congested the court's calendar,' was well supported," is misplaced. In the instant case, the prosecution consolidated the CPD 4<sup>th</sup> and DUI charges on June 22, 1999, prior to commencement of the first trial. Furthermore, multiple continuances occurred after the charges were already consolidated, based on, inter alia, court congestion. Accordingly, (1) the prosecution did not violate HRS § 701-109(2) and HRPP Rule 7(f), and (2) Walters was not prejudiced. Thus, the district court erred in dismissing the charges against Walters.