

DISSENT BY NAKAYAMA, J.

I dissent. In the case before this court, the State of Hawai'i seeks mandamus relief because the trial court has precluded the prosecution from presenting evidence to prove an element of its case. The Defendant has expressed to the trial court his intention to rely on the mitigating defense of extreme emotional disturbance. We have stated repeatedly that, in a murder prosecution, the State of Hawai'i has the burden of proving that the Defendant was not acting under the influence of extreme emotional disturbance at the time of the offense. In order to fulfil this court-imposed burden, the State of Hawai'i intended to call an expert witness to assist the jury in understanding the evidence. The trial court, while acknowledging that the proffered witness has specialized knowledge, and not excluding the witness on the basis that the evidence is irrelevant, more prejudicial than probative or that the evidence would be cumulative, has refused to allow evidence probative of the Defendant's state of mind, a critical issue in this case. I am cognizant of the discretion held by the trial court to conduct the trial as it deems fit, but this decision to prevent the introduction of relevant, probative, non-cumulative evidence is not well-founded and is a clear abuse of discretion. That in so doing, the trial court illustrated a woeful misunderstanding of the law of extreme emotional disturbance, in my view, rises to the level that necessitates the intervention of the supreme

court. The prosecution has no remedy by way of appeal of this egregious, erroneous ruling by the trial court. I would deem the order of the trial court prohibiting the introduction of the evidence a flagrant and manifest abuse of its discretion, grant the writ and direct the trial court to allow the introduction of evidence in order for the State of Hawai'i to have the opportunity to sustain its burden and prove its case.