

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MURPHY TAU'A, Defendant-Appellee

NO. 23992

APPEAL FROM THE SECOND CIRCUIT
(CR. NO. 00-1-0050(2))

JUNE 28, 2002

DISSENTING OPINION BY RAMIL, J.,
WITH WHOM ACOBA, J., JOINS

I join Justice Acoba's forthcoming dissenting opinion. I write separately to direct attention to the majority's inconsistent approach to the issue of standing.

In this court's recent opinion in State v. Poaipuni, No. 22756, 2002 WL 987839 (Hawai'i May 14, 2002), this court addressed the merits of the case, thereby in effect applying the "automatic standing" rule to Defendant Poaipuni. On May 24, 2002, the Department of the Prosecuting Attorney filed a Motion for Reconsideration. In its Motion, the prosecution argued that the court should reject the "automatic standing" rule and reconsider the matter. On June 21, 2002, the court denied the

prosecution's Motion for Reconsideration on the issue of automatic standing.

In an unexpected turn of events, the majority files the present case, in which it rejects the "automatic standing" rule that it applied up until just one week prior. Majority at 18-28. The majority makes a specious attempt to distinguish the present case from Poaipuni by claiming that Poaipuni "clearly held a reasonable expectation of privacy," Majority at 28 n.24, where Tau'a did not. Majority at 27-28.¹ Defendant Poaipuni denied ownership of and physically relinquished control over the firearms. Furthermore, Poaipuni testified that: (1) the weapons were not his; (2) he did not touch the weapons (they were allegedly carried and deposited into the toolshed by a third party); (3) he never possessed the weapons; and (4) he had no access to the weapons ("The whole purpose of putting 'em in [the toolshed] is because it's going to be locked and nobody can get in there except my Dad."). In comparing the two cases, it is incomprehensible that Tau'a, who was present in the vehicle, did not have an expectation of privacy, but Poaipuni, who essentially admitted that he had no expectation of privacy, somehow did.

¹ The majority states that "the record in the present matter lacks any indication, express or implied, that Tau'a, at any point, exhibited an actual, subjective expectation of privacy in the cab of the truck, into which Ben intruded when he leapt into the vehicle. Upon such a barren record, we cannot say that Tau'a, a mere passenger (perhaps even an unauthorized passenger), exhibited an actual, subjective expectation of privacy in the vehicle, much less an expectation that society would recognize as objectively reasonable." Majority at 27-28 (emphasis in original).

It is disturbing to me that the majority could issue two diametrically contradictory rules within a one-week span. The correct rule is that the automatic standing that we applied to Poaipuni should also be applied to Tau'a in the present case. Accordingly, I respectfully dissent.