

NO. 22764

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
GEORGE B. SHERMAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NOS. TR81-82; 84-85: 6/25/99)

MEMORANDUM OPINION

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant George B. Sherman (Sherman), who labels himself as a "Kingdom of Hawaii National[,] Loyal Subject of His Majesty Akahi Nui," appeals the district court's June 25, 1999 judgment. We affirm.

BACKGROUND

On November 13, 1998, Sherman was cited for the following traffic-related offenses:

1. No Safety Check, Hawai'i Revised Statutes (HRS) § 286-25 (1993).
2. Fraudulent Use of Vehicle Plates, Tags, or Emblems, HRS § 249-11 (Supp. 1999).
3. Registration Not in Vehicle, HRS § 286-47(3) (Supp. 1999).
4. No Vehicle License Plate, HRS § 249-7 (1993).
5. No No-Fault Insurance, HRS § 431:10C-104 (Supp. 1999).
6. No Card in Vehicle, HRS § 431:10C-107 (Supp. 1999).

After a trial on June 25, 1999, the court decided the above citations as follows:

1. Guilty; fine of \$100.
2. Guilty; fine of \$100.
3. Not guilty.
4. Guilty; fine of \$10.
5. Guilty; fine of \$500, assessment of a \$7 Driver Education fee, and license suspension for three months.
6. Dismissed.

DISCUSSION

A.

The trial was scheduled to occur on February 12, 1999. On January 14, 1999, Plaintiff-Appellee State of Hawai'i (the State) filed a motion for a continuance of trial on the ground that the police officer who issued the citations "will be on vacation from February 1, 1999, through February 20, 1999[.]"

On February 12, 1999, the State's January 14, 1999 motion to continue trial was granted and the trial was continued to April 23, 1999. On April 23, 1999, due to the evacuation of the entire court building, the trial was continued to June 25, 1999.

In his opening brief, Sherman contends that

[s]ince acting officer Mark Vickers was **aware** of the **Trial Case** set for **February 12, 1999** and refused to appear in **Court** on that **day**, but instead decided to go on vacation, then the **Court Trial** of **June 25, 1999** should **never** have happened. Because of officer Mark Vicker's negligence in not coming to the **Traffic Court Trial**

on the date set for him to **appear** as my **accuser**, the case should have been **thrown out**. This **case must** be **dismissed**.

(Emphases in original.)

We disagree. We review the granting of a request for a continuance under the abuse of discretion standard. State v. Ahlo, 79 Hawai'i 385, 395, 903 P.2d 690, 700 (App. 1995). In this case, the district court did not abuse its discretion. In cases involving motor vehicle/traffic offenses and not involving demonstrable prejudice being thereby caused to the defendant's case, it is within the court's discretion to grant a timely request for a postponement of a trial to allow a police officer-witness to take his/her scheduled vacation.

B.

1.

Sherman contends that "THE PROSECUTION FAILED TO PROVE BEYOND A REASONABLE DOUBT FACTS ESTABLISHING JURISDICTION." In support of this contention, he presents the following syllogism: (1) in State v. Lorenzo, 77 Hawai'i 219, 883 P.2d 641 (App. 1994), the court "appears to have left open the question of whether the present Hawaiian Kingdom governance system should be recognized"; (2) "what remained unclear was whose burden it is to establish the legitimacy of the present governance system"; and (3) in Nishitani v. Baker, 82 Hawai'i 281, 921 P.2d 1182 (App. 1996), "the court stated that 'the burden of proving jurisdiction . . . clearly rests with the Prosecution.'"

We conclude that Sherman misinterprets both Lorenzo and Nishitani. In Lorenzo, this court implicitly concluded that the State of Hawai'i is legal. In Nishitani, this court stated that "where immunity claims are raised as a defense to jurisdiction, the burden is on the defendant to establish his or her immunity status." Nishitani, 82 Hawai'i at 289, 921 P.2d at 1190. In Lorenzo, the general question was whether the State of Hawai'i had jurisdiction over Lorenzo. The specific question was whether Lorenzo proved his immunity status. This court explicitly concluded that the State of Hawai'i court had jurisdiction over Lorenzo because "Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." Id. at 221, 883 P.2d at 643.

2.

Alternatively, Sherman contends that he presented "a factual and legal basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of the state's sovereign nature." We disagree. Sherman did not convince the district court as a matter of fact or law, and he similarly does not convince this court.

Moreover, the presentation of a "factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign

nature" would not, by itself, establish a Native Hawaiian's immunity from the jurisdiction of the laws of the State of Hawai'i being applied to Sherman in this case.

3.

In his opening brief, Sherman states:

Also Citing, please see attached Exhibit "F" that illustrates well over one hundred cases that are **exactly the same** as **my** cases and all of them were . . . **DISMISSED AND FOUND NOT GUILTY** by the DISTRICT COURT OF THE SECOND CIRCUIT[,] WAILUKU, MAUI, HAWAII[,] well over two hundred [sic] times? This is obvious a clear case of **RACISM**, **PREJUDICE**, and **DISCRIMINATION** toward I Defendant-Appellant GEORGE B. SHERMAN.

(Emphases in original.)

It does not appear that Sherman alleged these facts or raised this argument in the district court. Clearly, Sherman did not prove the occurrence of the alleged dismissals or findings of not guilty or the reason(s) for them. Therefore, Sherman did not prove his allegation, or an error, much less a plain error in accordance with Hawai'i Rules of Penal Procedure Rule 52(b).

CONCLUSION

Accordingly, we affirm the district court's June 25, 1999 judgment.

DATED: Honolulu, Hawai'i, December 11, 2000.

On the briefs:

George B. Sherman,
Defendant-Appellant, pro se.

Chief Judge

Richard K. Minatoya,
Deputy Prosecuting Attorney,
for Plaintiff-Appellee.

Associate Judge

Associate Judge