

NO. 23756

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
SAMSON L. BROWN, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT  
(CR. NO. 99-0327)

MEMORANDUM OPINION

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

Defendant-Appellant Samson L. Brown (Brown or Defendant) appeals from the circuit court's August 30, 2000 Judgment,<sup>1</sup> upon a jury verdict, convicting him of Resisting Arrest, Hawaii Revised Statutes (HRS) § 710-1026(1)(a) (1993). We affirm.

DISCUSSION

The October 21, 1999 Indictment charged Brown with having committed the following offenses on November 4, 1997:

1. Terroristic Threatening in the First Degree, HRS §§ 707-715(1) and 707-716(1)(c), of a public servant, when he "did threaten by word or conduct, to cause bodily injury to FARREL PEAK."

2. Resisting Arrest, HRS § 710-1026(1)(a), when he "prevented Officer KAHIKI HODSON, a peace officer acting under

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<sup>1</sup> Acting Circuit Court Judge Greg K. Nakamura presided in this case.

color of his official authority, from effecting an arrest by using or threatening to use physical force against Officer Kahiki Hodson or another[.]"

On November 26, 1999, Brown filed a Motion to Dismiss for Lack of Jurisdiction. On December 22, 1999, after a hearing on December 1, 1999, the court entered an order denying Brown's November 26, 1999 motion.

In a Notice of Removal filed on January 24, 2000, Brown sought removal of the case "to the United States District Court for the District of Hawaii, in accordance with the provisions of 28 U.S.C. §1443(1) (2) [,]" and Brown wrote, in relevant part, as follows:

2. This criminal action occurred upon Hawaiian Home Lands, those lands are restricted pursuant to United States 67th Congress Law . . . .

3. Defendant filed a Motion To Dismiss For Lack Of Jurisdiction, basis on the prosecutor acknowledged the violation of the Admission Act . . . that the prosecutor "never received" the consent to managing Hawaiian Home lands. . . . But the prosecutor continued to prosecute the Defendant as a native Hawaiian race and acknowledge no consent from the United States to managing Hawaiian Home Lands. Those acts violated "Congress Law" result of intentional discrimination based upon an unjustifiable standard such as native Hawaiian race classification and violated compact with United State.

(Sics omitted.)

In an order entered on June 14, 2000, the United States District Court decided that it "lacks subject matter jurisdiction" and denied this motion. This order stated, in relevant part, as follows:

Defendant argues that the State of Hawaii has violated the Hawaiian Homes Commission Act of 1920 ("HHCA") and the Hawaii Admission Act of 1959 ("Admission Act") by prosecuting him, a native Hawaiian, without the consent of Congress. This argument does not address how the HHCA or the Admission Act explicitly affords native Hawaiians a defense from prosecution for terroristic threatening or resisting arrest.

On March 1, 2000, Plaintiff-Appellee State of Hawai'i (the State) filed a "Motion in Limine to Prohibit Defendant From Raising Issue of Jurisdiction Based on Sovereign Immunity As a Defense at Trial." During pre-trial, on March 6, 2000, the court noted that the question of jurisdiction is a question for the court, not the jury, to decide, State v. Alagao, 77 Hawai'i 260, 883 P.2d 682 (1994), and granted the motion.

In "Defendant's Motion to Disqualify Judge Greg K. Nakamura From This Proceeding," filed on March 13, 2000, Brown complained of Judge "Nakamura's silence of the Prosecutor's non-authority over Hawaiian Homes Land[.]" Judge Nakamura denied the motion.

On March 15, 2000, a jury acquitted Brown of Terroristic Threatening in the First Degree and found him guilty of Resisting Arrest. On August 30, 2000, Judge Nakamura entered a judgment sentencing Brown to incarceration for seven days.

On September 22, 2000, Brown filed the notice of appeal. The record on appeal does not contain any transcripts.

In his opening brief, Brown states, in relevant part, as follows:

On November 4, 1997, BROWN is protesting against the Department of Water Supply (DWS) performing government operations on BROWN's property interest of land patent holder, in patent pre-empted county law (DWS), rooted in federal law within the provision of the HHCA. BROWN was arrested and charged . . . .

. . . .

The express covenants in §4 (Hawaiian Homes Commission) and the implied covenant recognized to exist in §5(f) (ceded lands trust) impose federally justifiable limitations upon the powers of the State. Intended beneficiary, of the compact, BROWN, qualified native Hawaiian, properly pleaded violations of the covenants in his motion, lack of jurisdiction to dismiss. Thus, by the state court's approval of state law enforcement upon lands of the HHCA provisions, to ignore the clear prohibition, violated BROWN's statutory and constitutional rights, based on "absent of consent" from Congress, required by §4 of the Admission Act.

(Sics omitted.)

The State describes Brown's appeal as follows:

In the instant appeal, [Brown] contends that the trial court committed an error by denying the Motion to Dismiss Indictment for Lack of Jurisdiction. [Brown] argues that the denial of the Motion amounted to a tacit approval by the "state court" of "state law enforcement upon lands of the HHCA provisions" in violation of "statutory and constitutional rights" afforded under Section 4 of the Admissions Act. [Brown] also posits the theory that absent "consent of Congress" the laws of the State of Hawai'i are unenforceable upon Hawaiian home lands.

The jurisdictional point raised by Brown in his appeal was rejected by the Hawai'i Supreme Court in State v. Jim, 80 Hawai'i 168, 207 P.2d 754 (1995). Brown responds as follows:

[T]he [circuit] court chose to follow Hawaii Supreme Court in State v. Jim, 80 Hawaii 168, 907 P.2d 754 (1995), rather than principles of judicial federalism which recognizes a role for state courts in enforcing and interpreting federal law in Price v. State of Hawaii, 764 F.2d 623, 628 and 629 (9th Cir. 1985), cert den 474 U.S. 1055, 106 S.Ct. 793, 88 L.Ed.2d 771 (1986).

. . . .

An excuse of using Hawaii Supreme Court State v. Jim, 80 Hawaii 168, 907 P.2d 754 (1995), that is inconsistent with or violates federal law (judicial federalism contract in the 67th Congress' pre-emption law) is not a valid excuse. See 496 U.S. 356 Howlett by and through Howlett v. Rose, 110 S.Ct. 2430 (1990).

(Sics omitted).

Brown is wrong when he says that the circuit "court chose to follow [the] Hawaii Supreme Court in State v. Jim[.]" The circuit court had no choice. The circuit court, and this court, are required to do so. Under the doctrine of *stare decisis*,

"where a [legal] principle has been passed upon by the court of last resort, it is the duty of all inferior tribunals to adhere to the decision, without regard to their views as to its propriety, until the decision has been reversed or overruled by the court of last resort or altered by legislative enactment."

Robinson v. Ariyoshi, 65 Haw. 641, 653, 658 P.2d 287, 297 (1982) (citations omitted), *recon. denied*, 66 Haw. 528, 726 P.2d 1133 (1983). *Stare decisis* relates to "the effect of legal propositions announced in prior adjudications upon *subsequent* actions which involve similar questions between strangers to the proceedings in which the adjudications were made." State v. Hawaiian Dredging Co., 48 Haw. 152, 397 P.2d 593 (1964) (emphasis added).

State v. Magoon, 75 Haw. 164, 186, 858 P.2d 712, 723 (1993), *reconsideration denied*, 75 Haw. 580, 861 P.2d 735 (1993).

#### CONCLUSION

Accordingly, we affirm the circuit court's August 30, 2000 Judgment, upon a jury verdict, convicting Defendant-Appellant Samson L. Brown of Resisting Arrest, HRS § 710-1026(1) (a) (1993).

DATED: Honolulu, Hawai'i, March 12, 2002.

On the briefs:

Samson L. Brown,  
Defendant-Appellant, *pro se*.

Chief Judge

Kevin Hashizaki,  
Deputy Prosecuting Attorney,  
County of Hawaii,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge