

NOT FOR PUBLICATION

NO. 24912

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DIANE LISA STANLEY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT,
NORTH AND SOUTH HILO DIVISION
(REPORT NO. G38249H)

MEMORANDUM OPINION

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

Defendant-Appellant Diane L. Stanley (Stanley) appeals the Judgment filed on October 14, 2003 in the District Court of the Third Circuit, North and South Hilo Division (district court).¹

On appeal, Stanley argues that the district court erred by: (1) not dismissing the charge alleging her violation of Hawaii Revised Statutes (HRS) § 291C-172(a) (Supp. 2003); (2) denying her Motion to Disqualify the Office of the Prosecuting Attorney, filed September 27, 2000 (Motion to Disqualify); (3) denying her Motion to Suppress, filed October 9, 2000; and (4) denying her "Motion for Mistrial Due to Prosecutors Failure to Call a Witness during 10/20/00 Motion to Suppress and for Sanctions Against Judge that Allowed It," filed January 31, 2001 (Motion for Mistrial).

¹The Honorable Jeffrey Choi presided.

We conclude that the district court erred by not dismissing the charge against Stanley alleging her violation of HRS § 291C-172(a), and the district court did not err by denying Stanley's Motion to Disqualify, Motion to Suppress, and Motion for Mistrial.

The State's Answering Brief does not contain required record references in the statement of the case as required by Hawai'i Rules of Appellate Procedure (HRAP) 28(b)(3) and 28(c). Deputy Prosecuting Attorney Mary Ann J. Holzl-Davis is warned that future instances of noncompliance with HRAP Rule 28 may result in sanctions against her.

I. FACTS

On August 13, 2000, Police Officer E. Namohala (Officer Namohala) observed a blue Chevrolet four-door sedan with a dirty license plate on Kino'ole Street. Officer Namohala moved closer and observed that the safety sticker on the vehicle was unusual because it was colored red and had a green symbol on it. He also observed that the top part of the safety sticker appeared to be folded out and peeling off. Officer Namohala requested a registered owner's check with Central Dispatch. Central Dispatch responded that the safety sticker had expired in January 1999 and the weight tax had expired in February 1999.

Officer Namohala stopped the vehicle and explained the reason for the stop to the driver. Officer Namohala asked the

driver to produce her driver's license, registration, and insurance card. The driver refused to give her identity to Officer Namohala. Officer Namohala arrested the driver.

The driver was identified as Stanley at the police station by Officers Fiesta, Melemai, and Waipa. Stanley was arrested for refusing to provide identification in violation of Hawai'i Revised Statutes (HRS) § 291C-172(a); expired safety inspection in violation of HRS § 286-25 (1993); expired weight tax in violation of HRS § 249-10 (1993); providing a false vehicle certification in violation of HRS § 286-30 (Supp. 2003); unclean license plates in violation of HRS § 249-7 (1993); no vehicle registration in violation of HRS § 249-2 (1993); no no-fault insurance in violation of HRS § 431:10C-104 (Supp. 2003); and no driver's license on person in violation of HRS § 286-116 (Supp. 2003).

On September 27, 2000, Stanley filed a "Motion to Disqualify Deputy Prosecuting Attorney Harry Freitas and the Office of the Prosecuting Attorney." On October 9, 2000, Stanley filed the Motion to Suppress "her arrest" because she "was not detained for a violation of Chapter 291, Hawaii Revised Statutes, which is a pre-requisite for violation of HRS §291C-172(a)." On October 20, 2000, the district court held a hearing on the two motions. The district court granted the motion to disqualify Harry Freitas, but denied the motion to disqualify the

Prosecutor's Office. The district court denied Stanley's Motion to Suppress, and on January 16, 2001, the district court filed its "Findings of Fact; Conclusions of Law; Order Denying Motion to Dismiss [sic]" (the body of the order correctly denied the Motion to Suppress).

On November 13, 2000, Stanley filed a "Motion to Dismiss Complaint for Lack of Jurisdiction," in which she argued that the district court had no jurisdiction over her because she was a citizen of the "Sovereign Nation of the Hawaiian Kingdom." At the January 4, 2001 hearing on the motion, Stanley did not argue the grounds stated in her written motion. Instead, she argued that the HRS § 291C-172(a) charge should be dismissed because she had not been detained for a violation under Chapter 291C and therefore could not be charged under Chapter 291C with violating § 291C-172(a). The district court did not rule on the motion to dismiss, stating "[w]ell, we'll wait and see. That's why we're gonna have a trial."

On January 31, 2001, Stanley filed the Motion for Mistrial. At a hearing on December 5, 2001, the district court denied the Motion for Mistrial and the November 13, 2000 Motion to Dismiss.

On January 17, 2002, Stanley pled no contest to violating HRS §§ 291C-172(a), 286-25, 286-30, and 431:10C-104. On February 11, 2002, Stanley filed a Notice of Appeal.

II. DISCUSSION

A. The district court erred by not dismissing the HRS § 291-172(a) charge against Stanley.

Stanley contends that the district court erred by not dismissing the charge against her alleging her violation of HRS § 291C-172(a) because she had not been detained for a violation of Chapter 291C.

Hawaii Revised Statutes § 291C-172(a) states:

§291C-172 Refusal to provide identification. (a) Except as provided in subsection (b), any person detained for a violation of this chapter shall provide the person's name and address, or any proof thereof, or both, upon the lawful order or direction of any police officer in the course and scope of the officer's duties pursuant to this chapter.

The State, in its October 17, 2000 Memorandum in Opposition to Defendant's Motion to Suppress, stated that "[i]n the instant case Officer Namohala stopped the Defendant's vehicle for the *observed* violation of unreadable license plates (section 249(7)(b) HRS), expired safety sticker (section 286-25 HRS) and expired weight tax (section 249-10 HRS)." (Emphasis in original.) Stanley was charged with violating HRS §§ 249-2, 249-7, 249-10, 286-25, 286-30, 286-116, 291C-172(a), and 431:10C-104. None of the violations with which Stanley was charged occurred under Chapter 291C (other than the § 291C-172(a) charge itself).

The following exchange took place on January 4, 2001, between Stanley and the district court:

[Stanley]: Could I just read that, uh, 291C-172 into the record?

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COURT: Not necessary.

[Stanley]: Well, it doesn't apply to me, Your Honor, because I did not violate this chapter.

COURT: Well, that's what -- that's what remains to be seen. That's why we're having a trial.

[Stanley]: No, Your Honor, because Chapter 291, traffic violations, I'm not charged with anything under that section which I have plainly just Xeroxed here for your information. I'm not charged with anything under Chapter 291.

COURT: Well, it says if you're detained for a violation of that chapter.

[Stanley]: Of that chapter, which is 291, and I was not.

The following exchange took place on January 17, 2001, between Stanley and the district court:

COURT: What [charges are] you suggesting they ought to drop?

[Stanley]: All of them but we'll start with the first one [HRS § 291C-172(a)].

The district court should have granted Stanley's oral motion to dismiss the HRS § 291C-172(a) charge because the State had previously acknowledged that Officer Namohala had detained Stanley for violations of Chapters 249 and 286, but not Chapter 291C. The district court erred by not dismissing the HRS § 291C-172(a) charge against Stanley.

B. The appellate court need not consider Stanley's request to review alleged errors of the district court's rulings on her Motion to Disqualify, Motion to Suppress, and Motion for Mistrial because she failed to provide any argument or reason for reversal.

Stanley requests that this court review the district court's denial of her Motion to Disqualify, Motion to Suppress,

and Motion for Mistrial. Stanley makes no arguments addressing these alleged errors anywhere in her opening brief. This court need not consider these points of error; however, because Stanley has filed this appeal pro se, we will address her points despite her noncompliance with HRAP Rule 28(7).

C. The district court did not err by denying Stanley's Motion to Disqualify.

Stanley contends that the Office of the Prosecuting Attorney should have been disqualified because Stanley had a pending civil lawsuit against the wife of the prosecutor (Harry Freitas) assigned to her case.

The district court ordered Harry Freitas disqualified, but did not disqualify the Office of the Prosecuting Attorney. "The prosecuting attorney is mandated by law to conduct all prosecutions for offenses against the laws of the State and ordinances and rules and regulations of the City and County of Honolulu. Sapienza v. Hayashi, 57 Haw. 289, 293, 554 P.2d 1131, 1135 (1976). An order disqualifying any and all attorneys presently employed by the Office of the Prosecuting Attorney is too sweeping. Id. The disqualification of all attorneys presently employed by the Office of the Prosecuting Attorney would be overly broad because the prosecuting attorney is mandated to conduct the prosecution in this case. The district

court did not err by denying Stanley's Motion to Disqualify the Office of the Prosecuting Attorney.

D. The district court did not err by denying Stanley's Motion to Suppress.

Stanley contends that Officer Namohala had no probable cause to initiate an investigative stop of the vehicle she was driving and thus all violations found resulting from the stop should be suppressed.

Officer Namohala had observed a dirty license plate and an unusually colored safety sticker on the vehicle Stanley was driving. The sticker was unusual because it was colored red and had a green symbol and the top part of the sticker appeared to be peeling off. Officer Namohala then requested a registered owner check with Central Dispatch and was told by Central Dispatch that the safety sticker had expired on January 1999.

In State v. Barrickman, 95 Hawai'i 270, 21 P.3d 475 (App. 2001), this court held that

[t]o justify an investigative stop, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The ultimate test in these situations must be whether from these facts, measured by an objective standard, a man of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.

Id. at 272, 21 P.3d at 477 (internal quotation marks, citation, and ellipses omitted).

Officer Namohala had specific and articulable facts from which, when measured by an objective standard, a man of

reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate. Operating a vehicle without a current official certificate of inspection is a violation of HRS § 286-25. Officer Namohala had probable cause to conduct an investigative stop because a vehicle was being operated in violation of HRS § 286-25. The district court did not err by denying Stanley's Motion to Suppress.

E. The district court did not err in denying Stanley's Motion for a Mistrial.

Stanley contends that she should be granted a mistrial because the State failed to call a witness during the October 20, 2000 hearing on Stanley's Motion to Suppress.

Stanley did not have a trial because she pled no contest to the charges against her. Stanley's Motion for Mistrial was not properly before the district court because she did not have a trial. Issues not properly raised in the district court will not be considered on appeal. Kawamata Farms, Inc. v. United Agri Prods., 86 Hawai'i 214, 248, 948 P.2d 1055, 1089 (1997).

III. CONCLUSION

The Judgment filed on October 14, 2003 is reversed as to Stanley's conviction for violating HRS § 291C-172(a), and the

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Judgment is affirmed as to Stanley's conviction for violating
HRS §§ 286-25, 286-30, and 431:10C-104.

DATED: Honolulu, Hawai'i, January 21, 2004.

On the briefs:

Diane Lisa Stanley
defendant-appellant pro se.

Chief Judge

Mary Ann Holzl-Davis,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.

Associate Judge

Associate Judge