

Ticket Dismissed With Prejudice in Hawaii

A late congrats to Sean in Hawaii for getting traffic tickets dismissed with prejudice, and thanks for sending over the documentary proof.

Sean defended against these false charges on behalf of a minor, one of the charges was not having a valid driver's license:

State of Hawai'i - Citation for Traffic Crime(s) Arrest In the District Court of the Third Circuit			
CITATION NO. 3DTC-16-062830			
COMPLAINT: The undersigned officer, on behalf of Plaintiff State of Hawai'i, declares under penalty of law that he/she has probable cause to believe and does believe that on the date, at the time, and under the conditions indicated, the named defendant did commit the criminal offense(s) noted below and that the same is true and correct to the best of his/her knowledge and belief.			
DEFENDANT ID on Person <input checked="" type="checkbox"/> Y <input type="checkbox"/> N			
LAST NAME		REGISTERED OWNER	
FIRST NAME		MIDDLE INITIAL(S)	
ADDRESS		CITY	
STATE		ZIP CODE	
JUVENILE		PROV. LIC. PARENT'S NAME (if juvenile operator)	
OPERATOR LICENSE NO.		STATE EXP. DATE	
DATE OF BIRTH		HEIGHT WEIGHT ETHNICITY (optional)	
CDL		U.S. CITIZEN	
SEX		SSN-Last 4 digits	
CONTACT PHONE NUMBER(S)		MILITARY SERVICE	
EMPLOYER (if driving company vehicle)		MILITARY ID	
VEHICLE INFORMATION			
LICENSE PLATE/IN.		STATE HAZ MAT	
MAKE		MODEL	
TYPE		COLOR	
YEAR		CMV	
LAW(S) VIOLATED & TRAFFIC CRIMES COMMITTED			
<input checked="" type="checkbox"/> HRS 286-102 Driving Motor Vehicle Without Valid Driver's License			
<input type="checkbox"/> HRS 286-132 Driving Motor Vehicle While License (Suspended / Revoked)			
<input type="checkbox"/> HRS 291-2 Reckless (Driving of Vehicle / Riding of Animal)			
<input type="checkbox"/> HRS 291-11.5(a)(1) No Child Passenger Restraint (under 4 yrs old)			
<input type="checkbox"/> HRS 291-11.5(a)(2) No Child Safety Seat / Booster Seat (4-7 yrs old)			
<input type="checkbox"/> HRS 291-12 Inattention to Driving			
<input type="checkbox"/> HRS 291-31.5(a) (Use / Possess) Blue Light on (MV / Motorcycle / Motor Scooter / Moped / Bicycle)			
<input type="checkbox"/> HRS 291C-103(a)(c) Racing on Highway			
<input type="checkbox"/> HRS 291C-103(a)(d) Exhibit Speed or Acceleration			
<input type="checkbox"/> HRS 291C-105(a)(1) Excessive Speeding - 30+ MPH over speed limit			
<input type="checkbox"/> HRS 291C-105(a)(2) Excessive Speeding - 81+ MPH			
<input type="checkbox"/> HRS 291C-13 Accidents Involving Damage to Vehicle/Property			
<input type="checkbox"/> HRS 291E-62(a) Operate Vehicle After License (Suspended / Revoked)			
<input type="checkbox"/> for Operating a Vehicle Under the Influence of an Intoxicant			
<input type="checkbox"/> HRS 431-10C-104 No Motor Vehicle Insurance Policy			
<input type="checkbox"/> HRS 431-10G-102 No (Motorcycle / Motor Scooter) Insurance Policy			
SECTION		DESCRIPTION	
SECTION		DESCRIPTION	
SECTION		DESCRIPTION	
SECTION		DESCRIPTION	
SECTION		DESCRIPTION	
DEFENDANT			
DETAILS REGARDING THE OFFENSE(S) CHARGED			
DATE (Month / Day / Year)	TIME	DISTRICT	BEAT
11/17/2016	12:41	ST	431
WEATHER	<input checked="" type="checkbox"/> CLEAR	<input type="checkbox"/> OVERCAST	<input type="checkbox"/> DRIZZLE
ROAD	<input type="checkbox"/> DRY	<input type="checkbox"/> WET	<input type="checkbox"/> CONCRETE
TRAFFIC	<input type="checkbox"/> LIGHT	<input type="checkbox"/> MEDIUM	<input type="checkbox"/> HEAVY
LIGHTING	<input type="checkbox"/> DAWN	<input type="checkbox"/> DAYLIGHT	<input type="checkbox"/> DUSK
NO. OF OCCUPANTS: ADULT MALE(S) ADULT FEMALE(S) CHILDREN			
LOCATION OF VIOLATION			
VANTAGE POINT			
LANE OF TRAVEL			
SIGN(S) POSTED			
ACTUAL SPEED	POSTED SPEED	SPEED VIOLATION MEASURED BY	
		<input type="checkbox"/> PACE <input type="checkbox"/> LASER <input type="checkbox"/> RADAR	
<input type="checkbox"/> I WAS CERTIFIED IN THE ABOVE DEVICE <input type="checkbox"/> LASER DISTANCE			
<input type="checkbox"/> DEVICE/SPEEDOMETER WAS ACCURATE, TESTED, & WORKING PROPERLY			
COMPANION CITATION(S)/NOTICE(S)		ACCIDENT INJURY	
3DTC-16-00840		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO	
PROPERTY DAMAGE		REPORT NO.	
<input type="checkbox"/> MAJOR (\$3,000+) <input type="checkbox"/> MINOR			
OFFICER'S STATEMENT OF FACTS			
COMPLAINING OFFICER INFORMATION			
PRINT RANK, FIRST INITIAL, & LAST NAME OF COMPLAINING OFFICER		ID NO.	
OFFICER'S SIGNATURE		DATE OF ISSUANCE	
DEFENDANT'S ACKNOWLEDGMENT: By signing below, I agree to appear before the District Court of the Third Circuit on the date and at the time and location designated below to answer the charge(s). I understand that my signature is not an admission to the charge(s).			
X		<input type="checkbox"/> DEFENDANT REFUSES TO SIGN	
The Defendant is hereby directed to appear before the District Court of the Third Circuit on the date and at the time and location designated below (see reverse side for address) to answer the charge(s). Failure to obey this Citation and Summons may result in a fine, imprisonment, arrest on other charges, and other penalties.			
SUMMONS			
COURT LOCATION (see addresses on reverse side)			
<input type="checkbox"/> HILO <input type="checkbox"/> S KOHALA <input type="checkbox"/> N & S KOHA			
DATE	TIME	COURTROOM	
11/29/2016	8:30 AM	D-5T	
3D-V-046 (10/15)			

Sean filed the motion to dismiss and discovery/Brady request. Instead of providing the evidence their claims were based, the prosecution filed a motion for nolle prosequi, to dismiss with prejudice. The prosecutor wrote, "[I am] unable to prove this matter beyond a reasonable doubt."

MITCHELL D. ROTH 6012
Prosecuting Attorney

E. BRITT BAILEY 9814
Deputy Prosecuting Attorney
County of Hawai'i
64-1067 Mamalahoe Highway, C-3
Kamuela, Hawai'i 96743
Attorneys for State of Hawai'i

Electronically Filed
THIRD CIRCUIT
3DTC-16-062830
09-DEC-2016
10:01 AM

IN THE DISTRICT COURT OF THE THIRD CIRCUIT
SOUTH KOHALA DIVISION
STATE OF HAWAII

STATE OF HAWAII
vs.
[REDACTED] (MINOR),
Defendant.

CASE NO. 3DTC-16-[REDACTED]
STATE'S MOTION FOR NOLLE PROSEQUI;
CERTIFICATE OF SERVICE
☒ WITH PREJUDICE
☐ WITHOUT PREJUDICE
COURT DATE: 1-5-17 @ 8:30 A.M.

STATE'S MOTION FOR NOLLE PROSEQUI
COMES NOW the STATE OF HAWAII, by and through E. Britt Bailey, Deputy
Prosecuting Attorney for the County and State of Hawaii, and hereby moves this Honorable
Court for Nolle Prosequi ☒ with Prejudice ☐ without Prejudice. The State is unable to prove
this matter beyond a reasonable doubt.

DATED: Kamuela, Hawaii December 8, 2016

STATE OF HAWAII
By: [Signature]
E. BRITT BAILEY
Deputy Prosecuting Attorney

APPROVED AND SO ORDERED:
[Signature] M. KANANI LAUBACH
JUDGE OF THE ABOVE-ENTITLED COURT

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The judge granted the motion, dismissing with prejudice. With prejudice means the prosecution may not refile the charges for any reason, even if they somehow conjured up evidence to prove the charges beyond a reasonable doubt.

Sean made the same challenges as we always do, asked for the same evidence and competent witnesses. We challenge the opinion political rules, so-called "laws", apply to

us just because we're physically in Hawaii. This is the basis of jurisdiction and is an essential element of the charge. We also want the names of the witnesses with personal knowledge of this evidence. If the prosecution's witness does not have personal knowledge, then the prosecution is required to make that disclosure, it's Brady material.

There is no such evidence, so the prosecution cannot meet their burden. While critics will claim the dismissal had nothing to do with Sean's defense, claiming there are many reasons why the prosecution would seek dismissal; I think they all lack merit.

Critics will claim it's "too much trouble." That there is obviously evidence proving the constitution applies, Sean just caused "too much trouble" filing a motion and discovery/Brady request. No, there is no evidence, that's why some claim no evidence is needed.

The prosecution did not seek dismissal without prejudice, instead with prejudice, on a code violation, an almost guaranteed conviction. This is an alleged code violation, non-compliance with the driver's license statute. There is no disputing the minor given the ticket has no license. This is a strict liability prosecution, all the prosecution has to do to get a conviction (if there is proof the code applies) is to show the DMV record showing the defendant does not have a driver's license.

Too much trouble to have the DMV send over documentary proof the defendant doesn't have a license? Too much trouble for the police officer to get paid to testify for a few minutes the defendant doesn't have a license?

The defendant still doesn't have a license, and never disputed that. All they did was dispute the prosecution's claims the constitution and laws applied to him because he was physically in Hawaii. Because if the prosecution cannot prove the code applies, then they cannot "prove this matter beyond a reasonable doubt."

When the foundation of your case is the laws apply to the defendant because he is physically in Hawaii, then your witness, who made the initial claim, has to have personal knowledge of that in order to testify.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses. Rule 602, Hawaii Rules of Evidence.

You can claim you don't have to prove that, but that contradicts the rules, as well as being unfair. The cop has to testify he saw the defendant violate the law. If he is testifying the laws apply, then he is required to have personal knowledge of the matter. There are no exceptions for the prosecutors who feel they don't need to prove their claims are true. It is prosecutorial misconduct:

By going outside the evidence, the prosecutor "violated a fundamental rule, known to every lawyer, that argument is limited to the facts in evidence." United States ex rel. Shaw v. De Robertis, 755 F.2d 1279, 1281 (7th Cir.1985).

Not only does it contradict the above rules, but is evidence of a double standard. Not that I expect it, but there is no way I would be permitted to argue without evidence and a logic basis.

What couldn't the prosecution admittedly not prove beyond a reasonable doubt here? If they could prove the code applied, then it would be easy to prove the defendant drove without a license. So proving the defendant drove without a license is easy, but not possible to prove the license was required in the first place. When confronted with their lack of evidence, they moved for dismissal.

So did they want dismissal because it was "just too much trouble"? Yeah, prosecuting people without evidence, and just using logical fallacies is probably real tough.

Are there other explanations for the dismissal, yes of course. We have to go based on the evidence though. The evidence, without assumptions, points strongly to the prosecution's lack of evidence proving the constitution/laws applies.

If you disagree, then please present your evidence and logic basis.