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**FIRST CIRCUIT**  
**1CPC-19-0000564**  
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I

v.

ANDREA L. JUNE,

Defendant.

CASE NO. 1CPC-19-0000564

COUNT 1:

OPERATING A VEHICLE AFTER LICENSE  
 AND PRIVILEGE HAVE BEEN SUSPENDED  
 OR REVOKED FOR OPERATING A VEHICLE  
 UNDER THE INFLUENCE OF AN INTOXICANT

COUNT 2:

CHILD PASSENGER RESTRAINTS

COUNT 3:

CHILD PASSENGER RESTRAINTS

STATE OF HAWAII'S MEMORANDUM IN  
 OPPOSITION TO DEFENDANT'S MOTIONS  
 TO DISMISS FOR LACK OF JURISDICTION

Courtroom:      C5; 18<sup>th</sup> Division

Hearing Date:    June 3, 2019

Hearing Time:    9:00 a.m.

Judge : The Honorable Edward H. Kubo, Jr.,

**STATE OF HAWAII'S MEMORANDUM IN OPPOSITION**  
**TO DEFENDANT'S MOTIONS TO DISMISS FOR LACK OF JURISDICTION**

Comes now the State of Hawaii, by and through Christopher J. Martens, Deputy Prosecuting Attorney, and respectfully asks this Court to deny Defendant's Motions to Dismiss for Lack of

Jurisdiction. The State submits the following memorandum of law in opposition to Defendant's motions.

Dated at Honolulu, Hawai'i: May 31, 2019.

STATE OF HAWAI'I

By DWIGHT K. NADAMOTO  
Acting Prosecuting Attorney

By /s/ CHRISTOPHER MARTENS  
CHRISTOPHER MARTENS  
Deputy Prosecuting Attorney  
City and County of Honolulu

## ARGUMENT

### **I. FACTS**

On or about September 28, 2018, Honolulu Police Officer Robert Spickler observed the Defendant driving a motor vehicle in the area of 85-645 Farrington Highway. Using a speed measurement device, Officer Spickler determined the Defendant was traveling at a speed of 41 MPH in violation of the posted 25 MPH speed limit. Officer Spickler initiated a traffic stop, and contacted the Defendant. Upon contacting the Defendant, Officer Spickler determined that the Defendant's driving privileges had been revoked. During the stop, Officer Spickler observed two children (one under seven years old, and the other under four years old) sitting in the back seat. Although both children were wearing a seatbelt, neither was in an appropriate child safety seat as required by law. The defendant was cited for all offenses.

#### A. JURISDICTION OVER DEFENDANT IS VESTED IN THE CIRCUIT COURT OF THE FIRST CIRCUIT OF THE STATE OF HAWAII

In 1810, thirty-two years after the first expedition of Captain James Cook to the Hawaiian Islands, the several islands were conquered and united under Kamehameha I as the Kingdom of Hawaii. Rice v. Cayetano, 528 U.S. 495, 501, 120 S.Ct. 1044, 1048, 145 L.Ed.2d 1007 (2000).

Throughout the 1800's, the Islands witnessed an increasing involvement of westerners in the economic and political affairs of the Kingdom; which in 1840 became a constitutional monarchy with the advent of the first written constitution. State v. Lee, 90 Haw. 130, 141, 976 P.2d 444, 455 (Haw.App. 1999), certiorari denied by Lee v. Hawaii, 528 U.S. 821, 120 S.Ct. 65, 145 L.Ed.2d 56 (1999). Land rights and a voice in the government through franchise became

principal concerns as foreign businesses grew and foreign businessmen sought to protect their investments. The monarchy thus underwent a series of constitutional changes in 1852, 1864 and 1887 primarily regarding land ownership and voting rights. These changes were fueled in part by the knowledge acquired by the Royal Family in their travels, and in part by westerners, predominantly Americans, who were gaining influence in the undertakings of government. Id.; see, Rice v. Cayetano, 528 U.S. at 501, 120 S.Ct. at 1048.

During this time, the judicial system under the constitutional monarchy was likewise evolving, fashioned in large part on the judicial systems of America and England.

The first comprehensive legislation covering the judicial system with any degree of completeness was the act of 1847, which recognized the existence of the early separate island courts and divided jurisdiction between the courts and judges at chambers. It was however the Judiciary Act of 1892 which reorganized the courts and provided the full pattern, subsequently adopted by the Organic Act, for our judicial system.

O’Daniel v. Inter-Island Resorts, 46 Haw. 197, 208-09, 377 P.2d 609, 615 (1962).

Among other things, the Judiciary Act of 1892<sup>1</sup> vested in five circuit courts jurisdiction over “all offenses and crimes cognizable under the authority of the Hawaiian laws, committed within their respective Circuits or transferred to them for trial by change of venue from some other Circuit Court, or committed on the high seas.” Session Laws (1892), Chap. 52, § 36. The First Circuit comprised the Island of Oahu and all other islands belonging to the Hawaiian Kingdom not included in the Second through Fifth circuits. Id.

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<sup>1</sup> Session Laws (1892), Chapter 52, “An Act to Reorganize the Judiciary Department,” enacted by Queen Lili‘uokalani and the Legislature of the Hawaiian Kingdom.

In 1893, in what has since been the subject of apology by both the United States and Hawaii governments,<sup>2</sup> the Hawaiian monarchy was overthrown and replaced with a provisional government. In 1894, following the failure to annex the Hawaiian Islands to the United States, the provisional government established the Republic of Hawaii. Rice v. Cayetano, at 505, 120 S.Ct. at 1050. The 1894 Constitution of the Republic of Hawaii abrogated all prior constitutions and adopted all consistent statutes and laws in effect prior to the promulgation of the new constitution. See, Constitution of the Republic of Hawaii (1894), Article 91, Article 92, § 1.

In 1898, at the urging of the annexationists, the United States Congress established the Territory of Hawaii, as documented in the “Organic Act.” See, Chap. 339, 31 Stat. 141 (April 30, 1900). The Organic Act adopted the laws of the Republic as the laws of the new Territory, including the Judiciary Act of 1892, “... the laws of Hawaii heretofore in force concerning the several courts and their jurisdiction and procedure shall continue in force except as herein otherwise provided.” Organic Act, § 1, § 81. See, O’Daniel, at 209, 377 P.2d at 615. The Organic Act also bestowed United States and Territorial citizenship upon citizens of the former Republic of Hawaii.<sup>3</sup>

In 1959, the United States Congress admitted Hawaii to the Union as the fiftieth state. See, Pub. L. 86-3, 73 Stat. 4, known thereafter as the “Admission Act.” Like the Organic Act, the Admission Act provided, “And the appropriate State courts shall be the successors of the

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<sup>2</sup> See, P. L. 103-150, 107 Stat. 1510 (1993), the Apology Resolution; Act 359, § 1, 1993 Haw.Sess.Laws 1009, 1010.

<sup>3</sup> “That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.” § 4.

courts of the Territory as to all cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same..." 73 Stat. 4, § 12.

The Admission Act provided further, "All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii..." 73 Stat. 4, § 15.

In summing up the respective constitutions and laws throughout the history of the State of Hawaii, the Supreme Court in Lee stated,

It is elementary that [w]hen ... a[new] Constitution takes effect, it is a new departure in the government of the country, inasmuch as it states anew the principles upon which the government is to be administered, and rearranges the distributions and limitations of sovereign powers. What is not changed is re-affirmed. The new statement of the fundamental law takes the place of the old.

In other words, successive constitutions are consecutive rather than concurrent or cumulative, unless they expressly provide otherwise.

State v. Lee, at 142, 976 P.2d at 456 (brackets and ellipses in original).

Today, and at the time Defendant committed his offenses, the Constitution of the State of Hawaii is the only constitution, succeeding all others, and the Hawaii Revised Statutes (HRS) is the successor body of law replacing all those previously in effect. Id.

With respect to contemporary jurisdiction of the Hawaii courts over criminal proceedings, HRS § 701-106 provides, "... a person may be convicted under the law of this State of an offense committed by the person's own conduct or the conduct of another for

which the person is legally accountable if (a) either the conduct or the result which is an element of the offense occurs within this State...”

With respect to offenses committed on the Island of Oahu, HRS Chapter 603 provides, “The several circuit courts shall have jurisdiction, except as otherwise provided, of criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court” HRS § 603-21.5(a)(1). As in the Judiciary Act of 1892, the Island of Oahu is within the jurisdiction of the First Judicial Circuit. HRS § 603-1 (“The first judicial circuit is the island of Oahu and all other islands belonging to the State not hereinafter mentioned”).

Therefore, under the operative Constitution of the State of Hawaii and the Hawaii Revised Statutes, unless otherwise expressly provided by statute, which it is not, jurisdiction over Defendant is vested in this court by virtue of the commission of the offense in this circuit. State v. Fergerstrom, 106 Haw. 43, 55, 101 P.3d 652, 664 (Haw.App. 2004).

B. THE STATE HAS NO BURDEN TO PROVE THAT THE STATE HAS JURISDICTION OVER THE ISLAND OF OAHU

As already discussed, supra- see discussion of Lee, Fergstrom, and Kaulia- as a matter of law, the Supreme Court of the State of Hawai’i is the lawful government over the territories of the State of Hawai’i, including the island of O’ahu. Therefore, the only thing the State must show for subject matter jurisdiction was the violation of a law of the State of Hawai’i, in this case, violations of HRS §§ 291E-62 and 291-11.5, and that the offense was committed within the jurisdiction of the First Circuit of the State of Hawai’i, meaning the island of O’ahu,

II.

CONCLUSION

Based upon the foregoing facts and authorities, the records and files herein, the State respectfully requests this Honorable Court to deny Defendant's Motion to Dismiss for Lack of Jurisdiction.

Dated at Honolulu, Hawaii: May 31, 2019.

STATE OF HAWAI'I

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