CAAP-21-0000489

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v PUNOHU NALIMU KEKAUALUA III Defendant-Appellant	5DCW-20-0000852 DEFENDANT-APPELLANT'S OPENING BRIEF Fifth Circuit District Court Honorable S. Silverman

DEFENDANT-APPELLANT'S OPENING BRIEF[1]

Kai Lawrence #9676
74 Kihapai Street
Kailua, HI 96734
Telephone: (808) 346-3239
Email: kailaw.la@gmail.com
Appointed Counsel for Defendant-Appellant

[1] Citations to the Judicial Electronic Filing and Service System ("JEFS") will be to the docket in the instant appeal, referenced by the docket number and abbreviated title, and will be to the pdf page number of the item so referenced, unless otherwise indicated. Furthermore, citations to the lower court case docket in 5DCW-20-0000852 will be identified as such via the following moniker placed just before the citation: "CW".

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INTRODUCTION

> The Hawaiian people are the living descendants of Papa, the earth mother, and Wakea, the sky father. They also trace their origins through Kane of the living waters found in streams and springs; Lono of the winter rains and the life force for agricultural crops; Kanaloa of the deep foundation of the earth, the ocean and its currents and winds; Ku of the thunder, war, fishing and planting; Pele of the volcano; and thousands of deities of the forest, the ocean, the winds, the rains and the various other elements of natures…

-Melody Kapilialoha MacKenzie, *Native Hawaiian Law, a Treatise*, pg. 6, (Melody Kapilialoha MacKenzie, et al. eds., 1st ed., 2015) (citing Daviana Pomaika'i McGregor, *The Cultrural and Political History of Hawaiian Native People, in* OUR HISTORY, OUR WAY; AN ETHNIC STUDIES ANTHOLOGY 335-36 (Gregory Yee Mark, Daviana Pomaika'i McGregor & Linda A. Revilla eds. 1996).

In the case at bar, Appellant, a Native Hawaiian, Kanaka Maoli, was prosecuted for Criminal Trespass in the Second Degree, and he was convicted thereof, by the illegally occupying force of the United States. His conviction should be reversed, and his case dismissed based on the illegality of the United States' continued occupation of the Hawaiian Nation.

Furthermore, Appellant was convicted despite the great weight of evidence to the contrary, despite the facts of the case showing that the alleged violation was *de minimus*, and despite the charge being insufficient to grant the underlying court subject matter jurisdiction. This appeal follows.

POINTS OF ERROR

1) The Lower Court erred where it denied Appellant's motions for dismissal based upon a lack of jurisdiction given the illegal overthrow of the Hawaiian nation by the United States and the lack, therefore, of any legitimate action from the State of Hawaii stemming therefrom.

Appellant moved several times for the case to be dismissed based on a lack of subject matter jurisdiction, but all such motions were denied. See dkt 48, TRANS 9.9.2020 at 6-8 (arguing that Public Law 103-150, the Apology Resolution, and Act 359, State Bill 1028, admits wrongdoing by the State of Hawaii in annexing Hawaii absent a treaty of

annexation), dkt 50, TRANS 10.6.2020 at 7 ("[Appellant:] Well I want to file an oral motion to dismiss my case immediately. THE COURT: It's denied."), and Dkt 56, TRANS 8.12.2021 at 6 ("[Appellant:] I'd like to just go ahead and motion for acquittal. THE COURT: Okay. Well, that's denied."), 39 ("[Appellant:] I'm going to just motion again for acquittal, your Honor. THE COURT: Motion denied.").

2) The Lower Court erred in denying Appellant's request for discovery.

Appellant, acting *pro se*, moved the court for discovery from the State, Appellant specifically seeking evidence from the State showing that the State of Hawaii is lawfully in existence. Dkt 54, TRANS 5.18.2020 at 9. This motion was summarily denied. *Id.* ("THE COURT: Like I said, if you want to file motions to compel the State to do something, you can, but I'm not running your case for you.").

3) The Lower Court erred by failing to find that the alleged violation by Appellant was a *De Minimus* violation.

Appellant moved, several times, for dismissal of the charge. Dkt 56, TRANS 8.12.2021 at 6 ("[Appellant:] I'd like to just go ahead and motion for acquittal. THE COURT: Okay. Well, that's denied."), 39 ("[Appellant:] I'm going to just motion again for acquittal, your Honor. THE COURT: Motion denied."). The Court should have found these motions, made *pro se*, to be motions for acquittal and motions for dismissal based on the alleged violations being *de minimus.* This error is preserved as Appellant made the motions before the lower court, or, alternatively, it is raised for the first time on appeal as plain error.

4) The Lower Court lacked subject matter jurisdiction given that the charging document failed under *Nesmith* and *Wheeler* to adequately notify Appellant of the charges against him.

Appellant was charged via written criminal complaint charging Appellant with Criminal Trespass in the Second Degree. CW dkt 1, CMP. The Complaint was insufficient, however, as it omitted essential information necessary to adequately apprise Appellant of the charges against him. This argument is raised for the first time on appeal. *State v. Tominiko*, 266 P.3d 1122, 1143 (Haw. 2011) ("The requirement that the charge be

sufficient "may not be waived or dispensed with, and the defect is grounds for reversal, even when raised for the first time on appeal.") (citation omitted)).

5) The Lower Court erred by finding Appellant guilty of the charged offense despite insufficient evidence being presented to substantiate the claim.

The court, following trial, found Appellant guilty of the charged offense. Dkt 56, TRANS 8.12.2020 at 63-64; *see also* CW dkt 27, JNEJ. Appellant moved, several times for judgment of acquittal. Dkt 56, TRANS 8.12.2021 at 6 ("[Appellant:] I'd like to just go ahead and motion for acquittal. THE COURT: Okay. Well, that's denied."), 39 ("[Appellant:] I'm going to just motion again for acquittal, your Honor. THE COURT: Motion denied.").

STANDARDS OF REVIEW

Subject Matter Jurisdiction – De Novo – Errors 1 & 4:

"The existence of subject matter jurisdiction is a question of law that is reviewable de novo under the right/wrong standard." *Gustafson Real Estate LLC v. Watkins*, 375 P.3d 1290 (Haw. Ct. App. 2016).

Sufficiency of the Evidence – Substantial Evidence – Error 5:

> "We employ the same standard that a trial court applies to such a motion, namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Sufficient evidence to support a prima facie case requires substantial evidence as to every material element of the offense charged. Substantial evidence as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact.

State v. Timoteo, 87 Haw. 108, 112-113, 952 P.2d 865, 869-70 (1997) (citations omitted).

Discovery Issues – Abuse of Discretion – Error 2:

"The scope of discovery is reviewed for an abuse of discretion." *State v. Fukusaku*, 85 Haw. 462, 477-78 (Haw. 1997) (citation omitted).

Plain Error – All Errors:

The appellate court "will apply the plain error standard of review to correct errors which seriously affect the fairness, integrity, or public reputation of judicial proceedings, to serve the ends of justice, and to prevent the denial of fundamental rights." *State v. Nichols*, 111 Hawai'i 327, 334, 141 P.3d 974, 981 (2006) (citation omitted).

STATEMENT OF FACTS AND OF PRIOR PROCEEDINGS

I. Proceedings Below.

On or about August 19, 2020, Defendant-Appellant ("Appellant"), Punohu Nelimu Kekaualua III, was charged with Criminal Trespass in the Second Degree, in violation of Hawaii Revised Statutes ("HRS") § 708-814(1)(a). CW dkt 1, CMP, at 1. The charge reads as follows:

> On or about the 2nd day of July, 2020, in the County of Kaua'i, State of Hawai'i, PUNOHU NELIMU KEKAUALUA did knowingly enter or remain unlawfully in or upon premises that were enclosed in a manner designed to exclude intruders or were fenced, thereby committing the offense of Criminal Trespass in the Second Degree, in violation of Hawai'i Revised Statutes Section 708-814(1)(a).

Id. After several court hearings, including arraignment, entry of plea, and motion hearings, trial commenced on August 12, 2021. Dkt 56, TRANS 8.12.2021 at 1. Upon conclusion of the trial, the sitting judge found that "the State ha[d] proved their case beyond a reasonable doubt" and the Court thereafter found "the [Appellant] guilty of criminal trespass in the second degree." *Id.* at 64. The Court then sentenced Appellant to credit-for-time-served and $130.00 in fines and fees to be paid within 90 days of the conclusion of trial. *Id.* at 64-65. The appeal was then timely initiated on August 24, 2021. Dkt 1, NA.

II. Statement of Facts.

To understand this case, it is first necessary to understand the origins of Hawaii, the place, and Hawaiians, the people. Kanaka Maoli, or native Hawaiians, "trace their ancestry to the aina (land), to the natural forces of the world, and to kalo (taro), the staple food of the Hawaiian people." Melody Kapilialoha MacKenzie, *Native Hawaiian Law, a Treatise*, pg. 6, (Melody Kapilialoha MacKenzie, et al. eds., 1st ed., 2015). Kanaka Maoli settled and

developed the Hawaiian Islands sometime between 600 A.D. and 1100 A.D. *Id.* (citing Patrick Vinton Kirch, *On the Road of the Winds: An Archeological History of the Pacific Islands Before European Contact* 293 (2000)). During this time period, Hawaiian society developed such that "[t]he social system was communal and organized around [ ] *'ohana*, large extended families", and the "[l]and and natural resources were not privately owned[,]" but rather, "the Hawaiian people maintained a communal stewardship[.]" *Id.* (*citing* Daviana Pomaika'i McGregor, *An Introduction to the Hoa'aina and Their Rights*, 30 Hawaiian J. Hist. 1, 3-4 (1996)).

Prior to European contact in Hawaii in 1778, Kanaka Maoli maintained a land tenure system centered around the *ahupua'a*. *Id.* at 8. The islands, or *moku*, were typically divided into several wedge-like sections called ahupua'a and such sections were then administered by, or run by, an *ali'Ii'ai ahupua'a* or a *konohiki*. *Id.* (citing E.S. Craighill Handy and Elizabeth Green Handy with the Collaboration of Mary Kawena Pukui, Native Plantifers in Old Hawaii: Their Life, Lore, and Environment 45-48 (rev. ed. 1991)). Within each auhupua'a, the *maka'ainana*, or people of the land, "had liberal rights to use ahupua'a resources[,…] includ[ing] the right to hunt, gather wild plants and herbs, fish offshore, and use parcels of land for kalo cultivation together with sufficient water for irrigation[, and] maka'ainana could freely trade and move within the ahupua'a." *Id.* at 9 (citing Marion Kelly, *Changes in Land Tenure in Hawaii,* 1778-1850, at 20-26 (June 1956)).

After European contact, however, the Law of 1825 was adopted by Kamehameha III, age eleven, and the Council of Chiefs, "allowing the chiefs to retain their lands upon the death of the king and permitting hereditary succession." *Id.* at 11 (citing Ralph S. Kuykendall, *The Hawaiian Kingdom 1778-1854: Foundationand Transformation* 119-122 (1938)). The Constitution of 1840 clarified the new land system, noting that the land "belonged to the chiefs and people in common, of whom Kamehamea I was the head, and had the management of the landed property." *Id.* (citing King. Haw. Const. of 1840). Eventually, in 1846, as more foreign investment and enterprise made its way to Hawaii, there was pressure to further change the land tenure system, and this brought about the period known as the Great Mahele. Under this newly-adopted plan, the *Mahele*, or division, "the king would retain his private lands subject only to the rights of tenants[, while t]he remaining land of the kingdom would be divided into thirds: one-third to the Hawaiian

government, one-third to the chiefs and konohiki, and the final third to the native tenants." *Id.* at 12-13 (citing Privy Counsil Minutes, Dec. 14, 1847 and Dec. 21, 1849 (http://punawaiola.org/)). Under this Mahele, "[t]he chiefs and konohiki were entitled to receive full allodial title to their lands in the form of Royal Patents." *Id.* at 14. Further, the maka'ainana, under the Kuleana Act of 1850, were to receive lands as well, but it is estimated that less than one percent of the total land in Hawaii actually made it to the maka'ainana through this claim process. *Id.* at 14-15 (citing Jon J. Chinen, *They Cried for Help: The Hawaiian Land Revolution of the 1840s and 1850s,* 141-42 (2002)). In addition to the lack of land disbursement to Hawaiians, there was also severe population decimation as well. According to the 1890 census in Hawaii, there had been, since European contact, a "severe decimation of the Hawaiian population" with the population dropping from upwards of 800,000 Hawaiians at contact, down to "34,436 pure Hawaiians and 6,186 Hawaiians of mixed race" in 1890. *Id.* at 19 (citing Robert Schmitt, *Historical Statistics of Hawaii* 25 tbl. 1.12 (1977)).

Along with the land and population decimation occurring in Hawaii after European contact and colonization, the political structure of the Hawaiian nation also went through a decimation. The islands, which had traditionally been ruled by a king who appointed chiefs and konohiki to manage the land, in 1887, under elected king David Kalakaua, yielded to Western business interests when Kalakaua was urged to appoint a new cabinet with the task of writing a new constitution. *Id.* (citing Ralph S. Kuykendall, *Constitutions of the Hawaiian Kingdom: a Brief History and Analysis* 45-48 (Krause Reprint Co. 1978) (1940). Kalakaua was forced to sign this constitution which reduced the king to a figurehead only and extended voting to non-Hawaiians and instituted property ownership requirements for voting, essentially disenfranchising Hawaiians from the vote. *Id.* In 1891, Queen Lili'uokalani succeeded to the throne, and, in 1893, she very nearly instituted a new constitution which would reenfranchise Hawaiians and which would limit voting to Hawaiians and naturalized citizens only. *Id.* at 20 (citing generally Draft Haw. Const. of Jan. 14, 1893, H. Ex. Doc. No. 47, 53d Cong., 2d Sess. (1893), reprinted in H.R. Exec. Doc. No. 1, pt. 1, 53d Cong., 3d Sess., app. II, Foreign Relations of the United States 1894). "As rumors of the new constitution spread, members of the business community, primarily Americans and Europeans, met and formed a 'committee of safety'" and this committee then took over

the government in Hawaii. *Id.* at 20-21 (citing Lorrin A. Thurston, *Memoirs of the Hawaiian Revolution* 249-50 (Andrew Farrell ed., 1936). U.S. minister to Hawaii, John L. Stevens, an advocate for annexation of Hawaii to the United States, aided the overthrow as he "ordered U.S. marines to land in Honolulu" under the guise of "protect[ing] American lives and property." *Id.* (citation omitted). Stevens recognized the insurrectionist overthrow as a new "Provisional Government", later the name would be changed to the Republic of Hawaii, in charge until the question of annexation could be heard and acted on by the United States government. *Id.* Meanwhile, this Provisional Government maintained power instead of the rightful queen, Queen Lili'uokalani, and, eventually, in 1898, after a treaty of annexation had been already once defeated (requiring a two-thirds majority) in the United States Congress, a Joint Resolution of Annexation was passed by Congress (requiring only a simple majority pass) and signed by the U.S. President. *Id.* at 27 (citing J. Res. 55, 55th Cong., 30 Stat. 750 (1898)). Hawaii then existed as a Republic and a Territory, not a State, until 1959 when Hawaii was formally admitted as a State. *Id.* at 28 (citing Hawaii Admission Act, Pub. L. No. 86-3, §§ 4, 5(f), 73 Stat. 4, 5-6 (1959)). This admission to statehood, "[a]according to the United States, […] meant that Hawaii was no longer a non-self-governing territory and that the United States no longer had to submit annual reports to the international community regarding Hawaii's progress toward self-government, an international obligation of the United States since it first placed Hawaii on the [United Nation's] list of non-self-governing territories in 1946." Melody Kapilialoha MacKenzie, *Native Hawaiian Law, a Treatise*, pg. 356, "*Native Hawaiians and International Law*," Julian Aguon (Melody Kapilialoha MacKenzie, et al. eds., 1st ed., 2015) (citing Transmissionf of Information Under Article 73e of the Charter, G.A. Res. 66 (I), §2, U.N. Doc. A/RES/66 (Dec. 14, 1946).

It is within the above backdrop that the case before us unfolds. Appellant, Punohu Nalimu Kekaualua III, is Kanaka Maoli, native Hawaiian. Dkt 48, TRANS 9.9.2020 at 4 ("Kanaka Maoli, Hawaiian National . Punohu Nalimi Kekaualua III present."). On or about August 19, 2020, the State of Hawaii, acting as if it had authority and sovereignty over the illegally overthrown Hawaiian Islands and Hawaiian Government, filed a complaint against Appellant, charging Appellant with Criminal Trespass in the Second Degree, the complaint reading as follows:

> On or about the 2nd day of July, 2020, in the County of Kaua'i, State of Hawai'i, PUNOHU NELIMU KEKAUALUA did knowingly enter or remain unlawfully in or upon premises that were enclosed in a manner designed to exclude intruders or were fenced, thereby committing the offense of Criminal Trespass in the Second Degree, in violation of Hawai'i Revised Statutes Section 708-814(1)(a).

CW dkt 1, CMP.

September 9, 2020, Appellant was arraigned on said charges by the illegal government of the State of Hawaii. Dkt 48, TRANS 9.9.2020 at 5. At arraignment, Appellant made a motion to dismiss the charge, arguing the illegality of the State of Hawaii's existence as recognized by the United State's Public Law 103-150 (1993), also known as the Apology Resolution, and as recognized in Act 359 , § 1, 1993 Haw. Sess. Laws 1009, 1010. *Id.* at 6-8. This motion was denied without prejudice, the Court stating that Appellant could file a written motion to that effect. *Id.*

At Appellant's next few hearings, said hearings being scheduling or status hearings for the most part, he reasserted his status as a Hawaiian National, not an American citizen, and as a Kanaka Maoli. *See* dkt 50, TRANS 10.6.2020 at 3-4, dkt 52, TRANS 11.17.2020 at 3-4, Dkt 54, TRANS 5.18.2020 at 6-7. Appellant also advanced further motions seeking either a dismissal of the charge against him based on the illegality of the overthrow of the Hawaiian government, or seeking discovery from the State showing that the overthrow of the Hawaiian government was not illegal. Dkt 54, TRANS 5.18.2020 at 7-9. Specifically, Appellant stated, "[w]ell, I want to file an oral motion to dismiss my case immediately." *Id.* at 7. The Court simply responded with, "[i]t's denied." *Id.* Regarding the discovery motion, Appellant asked the court to "have the State [of Hawaii] also bring those documents for me, the treaty of annexation, the land transfer title, and let me see the[m.]" *Id.* at 9. This motion was denied as well as the Court stated, essentially, that such motion needed to be in writing. *Id.* Furthermore, at the May 18, 2020 hearing, the Court was advised that a civil title dispute re the land in question was currently still pending. *Id.* at 5 ("[Stand-by Counsel for Appellant]: Okay. See, he says that there was a civil proceeding. It's on appeal right now. So I'm not sure how he wants to proceed. Again, I'm only standby counsel, your Honor."); *see also* dkt 56, TRANS 8.12.2020 at 55-56 ("[Prosecutor:] And isn't it true that there was a civil lawsuit involving you and the bank? [Appellant:] Absolutely. Q. And isn't it true that

the Circuit Court of this circuit concluded that your warranty deed is invalid as a matter of law? A. At that particular time, not yet.").

Trial for the above noted charge began on August 12, 2021. Dkt 56, TRANS 8.12.2021 at 1. Appellant moved the court for a judgment of acquittal – essentially a motion to dismiss – at the start of trial, stating, "I'd like to just go ahead and motion for acquittal." *Id* at 6. Again, this motion was curtly denied by the Court. *Id.*

The first witness to testify for the illegal State was Julie Black, a property manager on the island of Kauai. *Id.* at 12-14. More specifically, she said she is the broker for "a property located at 4587 Kala Road, Kekaha, Hawaii[.]" *Id.* She was retained as the broker for that property by a company called AMIP Management, which is "an REO or bank-owned property servicer[that] help[s] banks get the – sell the inventory and get it off of their books." *Id.* AMIP was servicing the 4587 Kala Road property at the time for Wilmington Savings, the bank who allegedly owned the property in question. *Id.* The Court then admitted the illegal State's Exhibit 1 which was styled on the State's exhibit list, CW dkt 32, EXH at 1, as an "Agency Agreement", but the actual title of the document, CW dkt 32, EXH at 2, styled the document as an "Assignment of Property" ("Assignment"). Dkt 56, TRANS 8.12.2021 at 16. This Assignment says nothing of Ms. Black's ability to exclude persons from the property. Instead, the document only states the following in relevant part:

> AMIP Management has been assigned to <u>manage</u> the above-referenced property and wishes to protect its interest therein. This property has been assigned to you for <u>marketing and listing.</u>

CW dkt 32, EXH at 2 (emphasis added). The Assignment goes on to state that said letter serves "as authorization for Julie Black of Kauai Dreams Realty, as agent for AMIP Management, to inspect the property and to act on behalf of AMIP to protect its interest in the property." *Id.* Thereafter, the Assignment gives guidelines to Ms. Black for her duties in managing the property, but none of the duties include the right or ability to exclude persons from the property. *Id.* at 2-6. Despite this failing in the authorization document, Ms. Black nevertheless testified that the Assignment gave her "authority to regulate access to the property[.]" Dkt 56, TRANS 8.12.2021 at 17. She then testified that she had knowledge, unsubstantiated at trial however, that Appellant did not hold title to the property. *Id.* at 18. She then testified that on the date in question she saw Appellant

standing just outside of the driveway, and that he kept "like putting his foot over [onto the driveway] and then brining it back, putting it over and brining it back." *Id.* at 19-20. She said that although the fence was not closed, his foot was past the "fenced area[.]" *Id.* She specifically said she "observed [Appellant's] foot on the property." *Id.* at 21. Ms. Black then iterated that she never gave Appellant permission to put his foot on the property. *Id.*

During cross examination, Appellant, acting pro se as a Hawaiian national, asked Ms. Black what her understanding was of the Great Mahele of the 1800's. *Id.* at 24. The interaction went as follows:

> [Appellant:] Do you know anything about the Great Mahele?
> [Ms. Black:] I'm aware of its existence.
> Q. So you know that these are titles written out to Hawaiians?
> A. Yes.

Id. Appellant then began questions about the continued illegal occupation of the United States in Hawaii, but the Court, responding to an objection from the illegal State of Hawaii, would not allow questions in this vein, stating "[t]hat line of questioning I'm not going to allow[, t]here's not -- the state of war, whether there is one or not, is not -- is beyond the scope of what was asked on direct[….]" *Id.* at 27-28. Appellant then began questions about the legitimacy, or lack thereof, of the State of Hawaii, asking whether America has a treaty of annexation with Hawaii, to which Ms. Black stated she was unaware. *Id.* at 28. Appellant then asked Ms. Black if she had seen his deed to the property, to which she responded, "I believe there was some paperwork[but] I didn't like read it or understand it, really." *Id.* at 33.

Following this witness, the State rested, and Appellant renewed his motion for judgment of acquittal. *Id.* at 39. The Court summarily denied said motion without taking argument thereon. *Id.* The full exchange went as follows:

> [Appellant]: I'm going to just motion again for acquittal, your Honor.
> THE COURT: Motion denied.

Id.

Following this brief exchange, Appellant was advised of his testimonial rights and then he opted to waive his rights to silence and opted to provide testimony. *Id.* at 39-41. While testifying, Appellant attempted to admit his exhibits which dealt primarily with the

illegal overthrow of the Hawaiian government in 1893 and which dealt with the illegality of the State of Hawaii's continued occupation of Hawaii, but these exhibits were objected to by the State on relevancy, authentication, and hearsay grounds and such objections were upheld by the Court. *Id.* at 46-51. The Court stated:

> THE COURT: Relevance. Let me look at these. Based on the objections presented by the case -- the State as to the relevance of these -- the documents as well as their authenticity and hearsay that's presented, I would have to exclude these documents from evidence. They will not be admitted. Okay. But you can testify. You can talk. You can say without these documents –

Id. at 51. Appellant then noted that he legitimately believed he had the right to be on the property in question given the superior title his family holds stemming from the mid-1800's when his family, as Konohiki, were deeded the land in question. *Id.* at 52-54. He noted that a civil title dispute was currently in question re the property, and, therefore, given that the ultimate decision had yet to be made in title court, he legitimately still believed he had the right to be on the property. *Id.* ("[Appellant:] And I got pretty frustrated because [Ms. Black] continued to move forward, even after I told her to just wait for the judge to make a decision. But she didn't want to wait and she kept pushing her weight around and her authority with the help of the sheriffs.").

Following Appellant's testimony, closing argument was held with Appellant arguing that if the bank had a writ of ejectment, it was not addressed to himself thereby ejecting him from the property, and he disputed Ms. Black's authority to remove Appellant from the property. *Id.* at 58-59.

The Court, thereafter, issued its ruling finding Appellant guilty of the charge of trespass, stating:

> So based on the ownership, the title of the property, which was lawfully gotten by the bank through a foreclosure proceeding, and Ms. Black, the State's witness, is a lawful agent of the bank through -- who was hired through their management company, she had the right to exclude anybody from that property. There was a fence up there. And in fact, even though there was an eviction notice, she -- she didn't need an eviction notice to exclude people under this section of the law. It says a person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced. And that's what we have here. And there was evidence presented that you were asked many times to -- on different occasions over a period of time to leave the property.

Id. at 63-64. She then went on:

> I'm applying the laws of the State of Hawaii. I'm finding the State has proved their case beyond a reasonable doubt and, therefore, finds the defendant guilty of criminal trespass in the second degree.

Id. This appeal follows.

ARGUMENT

I. The Lower Court erred where it denied Appellant's motions for dismissal based upon a lack of jurisdiction given the illegal overthrow of the Hawaiian nation by the United States and the lack, therefore, of any legitimate action from State of Hawaii.

a. Hawaii was an internationally recognized state prior to the illegal overthrow by the United States and the subsequent, and equally illegal, joint resolution seeking to unilaterally annex Hawaii to the United States.

"The Hawaiian Kingdom was already an internationally recognized state by the time foreigners from the United States began wielding significant power and influence in the Hawaiian Islands in the mid- to late 1800s."[2] Indeed, even as early as 1843, France and Great Britain had joint declarations "recognizing Hawaii's independence, and by the mid-1800s, Hawaii had entered into treaties with numerous other states, including Belgium, Portugal, Spain, Switzerland, and Japan."[3]

b. The Law of Occupation supports Hawaii's continued sovereign status as a sovereign state, thereby making the United States' continued occupation of Hawaii illegal and thereby making the complaint against Appellant by said illegally occupying government null and void.

The Law of Occupation, also referred to as the Law of War, has its roots in the Hague Regulations, codified first in 1899 and again in 1908, and in the 1949 Fourth Geneva Convention.[4] "Occupation" under these conventions and regulations, is "the effective

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[2] Melody Kapilialoha MacKenzie, *Native Hawaiian Law, a Treatise*, pg. 356, "*Native Hawaiians and International Law*," Julian Aguon (Melody Kapilialoha MacKenzie, et al. eds., 1st ed., 2015) (citing Jonathan Kay Kamakawiwo'ole Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (2002).

[3] *Id.* (citing Jennifer M.L. Chock, *One Hundred Years of Illegitimacy: International Legal Analysis of the Illegal Overthros of the Hawaiian Monarchy, Hawaii's Annexation, and Possible Reparations,* 17 u. Haw. L. Rev. 113, 115 n.24 (2008)).

[4] *Id.* at 361 (citing Convention with Respect to Laws and Customs of War on Land and its annex, Regulations Concerning the Laws and Customs of War on Land, July 29, 1899, 32

control of a power [...] over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory."[5] "The entire law of occupation is based on the foundational principle of the inalienability of sovereignty through the actual or threatened use of force: effective control by foreign military force can never bring about by itself a valid transfer of sovereignty."[6] Indeed, Article 43 of the 1907 Hague Regulations notes that:

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in [its] power to restore and ensure, as far as possible, public order and [civil life], while respecting, unless absolutely prevented, the laws in force in the country.[7]

Article 47 further notes that "an occupied territory shall remain characterized as an occupied territory despite any purported change in its status."[8] In like manner, Article 64 of the Fourth Geneva Convention notes that "[t]he penal laws of the occupied territory shall remain in force[.]"[9] These principles were reaffirmed recently, as well, during the Iraq/Afghan War when, in 2003, the U.N. Security Counsel, "recognized the presence of the U.S. and U.K. forces in Iraq as occupying powers subject to the law of the Hague Regulations and the Fourth Geneva Convention."[10]

Based upon the above principles of international law, the United States, is and always has been, an illegally occupying force here in Hawaii. Because of this, the sovereign nation of Hawaii is still intact and still exists as it cannot be extinguished by force. As such, the complaint brought by such illegal State is invalid and holds no force or effect. Therefore, Appellant's multiple requests for dismissal of the charges against him should

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Stat. 1803, and Convention (IV) Respecting the Laws and Customs of war on Land and its annex, Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539 [hereinafter Hague Regulations]) (also citing Foruth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]).

[5] *Id.* (citing Eyal Benevenisti, The International Law of Occupation 4 (2004)).

[6] *Id.* at 362 (quotations and brackets omitted) (citing the Fourth Geneva Convention at 5 and 95).

[7] *Id.* (citation omitted).

[8] *Id.* at 366 (quotation marks omitted) (citing Eyal Benevenisti, The International Law of Occupation 99 (2004)).

[9] *Id.* at 367 (citing Fourth Geneva Convention at 64).

[10] *Id.* at 368 (citing S.C. Res. 1483, U.N. Doc. S/RES/1483 (May 22, 2003).

have been granted. Failure by the lower court to do so was error requiring reversal by this Appellate Court.

What is more, this court should consider the actions of the United States – in 1893 of illegally overthrowing the Hawaiian government, and the later action of the United States in unilaterally annexing Hawaii in 1897 via a joint resolution rather than a treaty – in the context of the current Ukraine war.[11] Indeed, the actions of the United States government are uncannily similar to Russia's actions in taking, or attempting to take, Kyiv, the capital of Ukraine.[12] The only difference between the two acts of war are that Ukraine has the benefit of social media and the internet to shed light on the illegality in real time, thereby resulting in widespread condemnation of Russia's attempt at an illegal overthrow, whereas the United State's nearly identical actions at overthrow im 1893 were done mostly in secret. Is this the nation this Court supports? Are these the values our Constitution espouses? This case will be the test and this Court will be the judge.

Appellee may argue that even if the U.S. is an illegally occupying force in Hawaii, there is no sovereign Hawaiian government that could administer law and order in the islands and therefore the penal laws and codes enacted by the United States are valid unless and until they are replaced by a continuing sovereign of the nation of Hawaii. Wrong. The above-noted 2003 U.N. Security Counsel resolution further found that

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[11] See Appendix Item 2 at pdf 73 – 53d Congress 3d. Session, House of Representatives, Ex. Doc. 1, Part 1., 1984 (letter from President Cleveland to Congress noting specifically, at pdf 8, the following:

> This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the de facto and the de jure government. In point of fact, the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property.

At pdf 8 (emphasis added).

[12] See https://www.cnn.com/europe/live-news/russia-ukraine-war-news-04-25-22/index.html (last accessed 4/26/2022).

"because sovereignty inheres in the people and not in the ousted sovereign, regime collapse does not extinguish sovereignty."[13] Therefore, because the people are sovereign, the question of whether the ousted regime still has a presence is of no consequence. The people hold the power, not the government, and the Hawaiian people, the Kanaka Maoli, are still here and therefore they have the right to govern themselves without the continued and longstanding oversight and oppression of the United States.

c. The Law of Colonization/Decolonization supports Hawaii's continued sovereign status as a sovereign state, thereby making the United States' continued occupation of Hawaii illegal and thereby making the complaint against Appellant by said illegally occupying government null and void.

"Upon the founding of the United Nations and continuing thereafter, the international community recognized that the exploitation of colonized people should be terminated and their self-determination assured."[14] The U.N. Charter recognizes that occupying countries have a sacred trust to move occupied territories towards self-determination and self-governance.[15] To this end, in 1946, following World War II, "the United Nations, through a General Assembly resolution, placed Hawaii on its list of non-self-governing territories eligible under international law for self-government from 1946 to 1960, and thereafter for full independence."[16]

Following passage of the above resolution, the U.S. should have moved towards ensuring self-governance for Hawaii the nation, but, instead, the U.S. instead attempted repeatedly to incorporate Hawaii into the U.S. as a state.[17] The question, ostensibly, was put to the people of Hawaii in the 1959 ballot, but, rather than offering the plebiscite the option of electing Statehood versus Sovereignty, only one question was placed on the

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[13] Melody Kapilialoha MacKenzie, *Native Hawaiian Law, a Treatise*, pg. 368, "*Native Hawaiians and International Law*," Julian Aguon (Melody Kapilialoha MacKenzie, et al. eds., 1st ed., 2015) *(*citing Eyal Benevenisti, The International Law of Occupation 4 (2004)).
[14] *Id.* at 383.
[15] *Id.* (citing U.N. Charter art. 73); *see also* International Convenant on Civil and Political Rights, art. 1 ("All peoples hve the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.").
[16] *Id.* at 385 (citing Transmission of Information Under Article 73e of the Charter, paragraph 2).
[17] *Id.* at 386.

ballot: "Shall Hawaii immediately be admitted into the Union as a State?"[18] "It is telling that while the settler and immigrant majority voted yes for statehood, the only electoral precinct that did not vote for statehood was the Native Hawaiian majority precinct of Ni'ihau."[19] This method of "decolonization" was not consistent with the manner prescribed in the U.N. General Assembly's 1953 Resolution 742 (VIII), and therefore Hawaii actually still remains a non-self-governing territory under U.S. illegal colonization.[20] What is more, American settlors and immigrants participated in the 1959 vote, again in direct contravention of the U.N. requirements.[21]

Appellee will argue that Hawaii is now a State, within the country of the United States, and that the lower court therefore has power to enforce the complaint against Appellant. Wrong. As demonstrated above, the United States' attempt to skirt international law requiring Hawaii to be reinstated as a sovereign negates any continued "governmental" action by the United States in Hawaii. Therefore, once again, the lower court erred by failing to grant Appellant's motions to dismiss the claims against him based upon the principles enumerated above.

d. The 2007 U.N. Declaration on the Rights of Indigenous Peoples supports Hawaii's continued sovereign status as a sovereign state, thereby making the United States' continued occupation of Hawaii illegal and thereby making the complaint against Appellant by said illegally occupying government null and void.

In 2007, the U.N. passed the Declaration on the Rights of Indigenous Peoples.[22] This document "recognizes [the right of indigenous peoples] to comprehensive control over their traditional lands, territories, and resources, and it includes, most importantly, a mandate that states obtain the informed consent of the relevant indigenous peoples prior to undertaking any project affecting that right."[23]

First, it is indisputable that Kanaka Maoli are the indigenous peoples of these Hawaiian Islands. Second, it is unrefuted that Appellant is Kanaka Maoli. Finally, third,

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[18] *Id.* (citing Hawaii Admission Act, Pub. L. No. 86-3 73 Stat. 4 (1959)).
[19] *Id.* (citing Gavin Daws, Shoal of Time: A History of the Hawaiian Islands 391).
[20] *Id.* at 387 (citing G.A. Res. 742 (VIII), para. 10)
[21] *Id.*at 387 (citing G.A. Res 2625 IIXXV), pmbl., para. 6).
[22] *Id.* at 395.
[23] *Id.* at 396 (citing United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res 61/295, art. 26, & art. 32.

because the United States' continued exercise of authority and control over the lands of Hawaii directly contravenes the above-noted Declaration on the Rights of Indigenous Peoples, the lower court, once again, should have granted Appellant's several motions seeking dismissal of the complaint against him. Failure of the lower court to do so was clear and reversable error.

II. The Lower Court erred by denying Appellant's discovery requests and his requests for dismissal of the charge for failure to state a claim.

Hawaii Rules of Penal Procedure ("HRPP") Rule 16 requires disclosure, by the prosecution, of "any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor." HRPP Rule 16(b)(1)(vii). Granted, in non-felony cases, as was the case here, such discovery/disclosure is discretionary, meaning it is up to the court's discretion.

Here, on May 18, 2021, months ahead of trial, Appellant sought disclosure by the prosecution of any treaty showing the United State's lawful presence in Hawaii, and further sought disclosure by the prosecution of any documents showing ownership of the parcel of land in question. Dkt 54, TRANS 5.18.2021 at 9. The exchange went as follows:

> THE DEFENDANT: And then if you could have the State also bring those documents for me, the treaty of annexation, the land transfer titles, and let me see the –
> THE COURT: Like I said, if you want to file motions to compel the State to do something, you can, but I'm not running your case for you.

Id. The Court abused its discretion by not ordering such discovery/disclosure by the prosecution. Had such been ordered, the prosecution would have been forced to examine the validity of the charge it asserted against Appellant and, given that a prosecutor's mandate is to seek justice, rather than most attorney mandates to zealously advocate for the client, the prosecution would have been forced to dismiss the charge against Appellant given the illegality of such based on the lack of any treaty documents granting the United States lawful right to assert governmental authority in Hawaii. Furthermore, by not granting Appellant's request for the land titles showing who owned the land in question, Appellant was unable to dispute the property boundary in question, thereby again hamstringing Appellant's defense at trial. Both of the above items that were sought by Appellant via his motion are items that would have tended to negate Appellant's alleged

guilt for criminal trespass. Therefore, the Court abused its discretion in denying Appellant's motion.

III. The Lower Court lacked jurisdiction over the charged offense where the charging document failed to adequately provide notice of the charge as required by *Nesmith* and *Wheeler*:

Under Article 1, Section 14, of the Hawaii Constitution, "the accused shall enjoy the right […] to be informed of the nature and cause of the accusation[.]" Haw. Const. Art. 1 § 14. Article 1, Section 10 of the Hawaii Constitution notes that a criminal charge must be sufficiently specific to protect a person from being charged twice for the same offense where said Section reads: "nor shall any person be subject for the same offense to be twice put in jeopardy[.]" Haw. Const. Art. 1 § 10. One of the purposes of a charging document in a criminal case is to "establish the court's jurisdiction over [the] case." *State v. Nesmith*, 127 Haw. 48, 52, 276 P.3d 617, 621, (2012) (citing *State v. Cummings*, 101 Hawai'i 139, 142, 63 P.3d 1109, 1112 (2003)).

In *State. v. Wheeler*, 121 Haw. 383, 219 P.3d 1170 (2009), defense counsel had argued that the drunk driving charge was insufficient because, although it tracked the statutory language for the offense at the time in question, it failed to allege that operating a vehicle under the statute required such operation to be on a "public way, street, road, or highway." *Wheeler*, at 386, 219 P.3d at 1173. The reviewing court agreed, finding that "operate", as used in the statute, had a definition that was different from common usage, and, as such, the "deficient charge would not provide fair notice." *Id.* at 394, 219 P.3d at 1181. Similarly, in *State v. Nesmith*, 127 Haw. 48, 276 P.3d 617 (2012), in looking at the drunk driving charge in that case, "operating a vehicle under the influence of an intoxicant" had a meaning that was "narrower than what is commonly understood[.]" *Nesmith*, at 54-55, 276 P.3d at 623-24. The Court therefore found this portion of the charge "deficient for failing to provide fair notice to the accused." *Id.* (conviction affirmed on other grounds).

Our case is similar to both *Wheeler* and *Nesmith.* The charge in our case reads:

> On or about the 2nd day of July, 2020, in the County of Kaua'i, State of Hawai'i, PUNOHU NELIMU KEKAUALUA did knowingly enter or remain unlawfully in or upon premises that were enclosed in a manner designed to exclude intruders or were fenced, thereby committing the offense of Criminal Trespass in the Second Degree, in violation of Hawai'i Revised Statutes Section 708-814(1)(a).

CW dkt 1, CMP, at 1. Indeed, this charging language, as was the case in both *Wheeler* and *Nesmith* noted above, tracked the language of the statute, which reads:

> (1) A person commits the offense of criminal trespass in the second degree if:
> (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;"

HRS § 708-814(1)(a). Moreover, "enters or remains unlawfully" is further defined by statute as:

> …to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

HRS § 708-800.

Here, as in *Wheeler* and *Nesmith* above, the definition of "enter or remains unlawfully" is not the ordinary definition that a prudent person would ascribe to the phrase. Indeed, an ordinary prudent person would construe the phrase as simply meaning that the person was not allowed to enter the premises, while the specific definition above notes that a person "enters or remains unlawfully" only when the person "is not licensed, invited, or otherwise privileged." Because this definition is not specifically included in the charging document so as to give full notice to the accused of the charge against him, this Reviewing Court should find, as was the case in *Wheeler* and *Nesmith*, that the charge was deficient and the lower court thereby lacked jurisdiction to hear the case, let alone to pronounce a judgment of conviction and sentence on Appellant.

What is more, aside from the *Wheeler* and *Nesmith* issue, there is also an issue with the fact that Appellant was never provided notice via the charging document as to what specific property or premises Appellant was accused of having knowingly entered and remained unlawfully thereon. He was charged with the offense as occurring on the island of Kauai, but that is all. This failed to provide adequate notice as it essentially required Appellant to defend against every property on the island of Kauai as a possible place upon which Appellant was accused of entering and remaining unlawfully. As such, this Court

should find again that the charge was deficient, thereby rendering the lower court's judgment and conviction null given the lack of jurisdiction of said lower court.

IV. The Lower Court erred by failing to dismiss Appellant's alleged actions as *de minimus.*

HRS § 702-236(1)(b) provides:

> **(1)** The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:
>
> **[...]**
>
> **(b)** Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction[...]

HRS § 702-236(1)(b).

Here, Appellant made several motions before the Lower Court seeking dismissal of the complaint, or acquittal, following presentation of evidence. The Lower Court, given Appellant's *pro se* status, should have construed these motions as motions to dismiss the charge as *de minimus* under the above-noted HRS section. See *Villaver v. Sylva*, 445 P.3d 701 (Haw. 2019) (citing *Waltrip v. TS Enters., Inc.*, 140 Hawai'i 226, 239, 398 P.3d 815, 828 (2016)." *(*"Courts should exercise this discretion liberally in cases involving *pro se* litigants, which invoke the judicial system's interest in "promotion of equal access to justice[.]"). Indeed, the alleged acts of wrongdoing in this case are ripe for a *de minimus* dismissal given that they are "too trivial" where the only alleged wrongdoing, as described by the State's witness, was: "like putting his foot over [the alleged property line] and then bringing it back, putting it over and bringing it back." Dkt 56, TRANS 8.12.2021 at 19.

The charge of Criminal Trespass is a criminal charge, carrying with it all the stigma and circumstance of any other criminal charge. It results in a record being created against the defendant, such record being available to future employers, etc., via a simple background check on the accused. In the case at bar, putting one's foot over the alleged property line hardly warrants such extreme treatment. Furthermore, arguably putting one foot over an alleged and invisible property line is hardly the "harm or evil sought to be prevented by the law" in question. The purpose of a criminal trespass charge is to keep a person's property rights from being seriously infringed upon. One foot over the line is

anything but a serious infringement of said rights. Therefore, based on the above, this Court should find that the Lower Court erred by not dismissing the charge as *de minimus* following Appellant's several motions for dismissal/acquittal.

V. The Lower Court erred by finding Appellant guilty despite insufficient evidence supporting the conviction.

a. There was no evidence presented showing the requisite *mens rea* necessary to sustain the conviction.

As noted above, Appellant was charged with "knowingly enter[ing] or remain[ing] unlawfully" on the subject premises, although the actual premises in question were left out of the charging document, as noted above. HRS § 702-206 defines the *mens rea* of "knowingly" as:

> (a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.
> (b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.
> (c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

HRS § 702-206. Furthermore, HRS § 702-218 notes that "mistake of fact" is a defense that can negate the *mens rea* and states the following re the defense:

> In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:
>
> > (1) The ignorance or mistake negatives the state of mind required to establish an element of the offense[…]

HRS § 702-218(1) (emphasis added); *see also State v. Cavness*, 80 Haw. 460, 464 (Haw. Ct. App. 1996) ("The reason ignorance or mistake of fact is a defense is that it negatives the existence of a mental state essential to the commission of the crime."). If, therefore, Appellant had a legitimate belief that he rightfully could be on the property in question, then this belief, even if mistaken, would negate the *mens rea* of the charge.

Indeed, in *Cavness;* the court dealt with a criminal trespass charge wherein the defendant there asserted that he believed that he had a legitimate right to be on the property in question, but the court would not allow the defendant to present such evidence

at trial, even though the court still found that "Cavness actually, but unreasonably, believed that he had a right to be on the premises." *Cavness*, at 465-66. The reviewing court stated that such a finding from the lower court was an "implicit finding that Cavness did not intentionally or knowingly act[.]" *Id.* The reviewing court then remanded for a new trial based upon this, stating the "court's denial of Cavness' right to establish that he did not act intentionally, knowingly, or recklessly [… and] its failure to decide whether Cavness acted recklessly […] cause us to vacate the judgment and remand for a new trial." *Id.*

The same holds true here. Appellant asserted that he legitimately believed that he and his family, as konohiki receiving the land in question during the above-noted Great Mahele, were the rightful title holders to said land. Indeed, he even noted during trial that there was, at all times relevant to the case at bar, a title dispute case pending in circuit court re the parcel in question that had yet to be ruled upon by the court. *See* 5CCV-20-000010 dkt 1, CMPS at pdf 2-6, and 26-41 (attached as Appendix Item 1). These assertions were a mistake of fact defense, or at least, given Appellant's *pro se* status, they should have been so construed by the lower court. The failure of the lower court to consider this defense, or even to specifically address it, was error requiring reversal and remand for a new trial.

Appellee may argue that said defense is unavailable to Appellant, or was negated at trial, given the testimony of Julie Black 1) that she was the agent authorized to restrict access to the property in question, 2) that she told this to Appellant and told him he was not allowed on the property, and 3) that the agency contract admitted at trial gave her such authority to restrict access to the property. Although these points are well-taken, they are incomplete. Although the second point may be without dispute, regarding the first and third points there was never any testimony that on the date in question Ms. Black showed the agency agreement to Appellant. Furthermore, there is nothing in said agency agreement specifically noting that Ms. Black could restrict access to the property. She essentially was a selling agent and nothing more. Therefore, to Appellant on the date in question, Ms. Black was nothing more than just another agent of the illegally occupying nation of the United States again asserting rights that were false and unsubstantiated.

b. The fence line in question was a necessary element of the charge that was never proven.

Finally, in the case at bar, Appellee was required to prove that Appellant entered or remained unlawfully on the premises in question. Said premises were described by Ms. Black as: "a small CPR lot with a small older house and a fenced yard." Dkt 56, TRANS 8.12.2021 at 17. When asked if the property was fenced, she replied yes, and she noted that there are gates as part of the fence but that the gates were open at the time in question. *Id.*; *see also id.* at 21. Although she testified that Appellant's foot entered the property at the open gate but "[p]ast the fence line", *id.* at 35, there was never any testimony that the "fence line" was an accurate marker of the property boundaries, nor was there any evidence presented showing a survey or plot map marking out the boundaries. Because of this, there was insufficient evidence presented showing that the foot actually entered or remained on the subject property. The Court, therefore, erred in finding Appellant guilty absent substantial evidence of this necessary element.

CONCLUSION

Based on the above, this Court should vacate the judgment of conviction and sentence and remand the case with instructions that it should be dismissed with prejudice based on a lack of subject matter jurisdiction, and/or based upon insufficient evidence being presented at trial to sustain the conviction, and/or based on the charge being *de minimus*. Alternatively, this Court should find that Appellant's substantial rights were violated, and this Court should vacate the conviction and remand with instructions to grant Appellant a new trial.

DATED: Kailua, Hawaii, May 9, 2022

KAI LAWRENCE
Court-Appointed Counsel
for Defendant-Appellant

APPENDIX

Attached, if any.

STATEMENT OF RELATED CASES

The above-noted title dispute case, 5CCV-20-000010, is currently on appeal in CAAP-21-0000186. Counsel is unaware of any other related cases.