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IN THE SUPREME COURT OF THE STATE OF HAWAII

SHAYLENE ISERI-CARVALHO,)	PETITION FOR WRIT OF MANDAMUS
PROSECUTING ATTORNEY, COUNTY)	TO THE FIFTH JUDICIAL CIRCUIT,
OF KAUAI, STATE OF HAWAII)	COUNTY OF KAUAI, STATE OF
)	HAWAII
Petitioner,)	
)	
vs.)	
)	
THE HONORABLE KATHLEEN N.A.)	
WATANABE, CIRCUIT JUDGE, FIFTH)	
JUDICIAL CIRCUIT)	

Respondent.

PETITION FOR WRIT OF MANDAMUS TO THE FIFTH JUDICIAL CIRCUIT, COUNTY
OF KAUAI, STATE OF HAWAII

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PETITION FOR WRIT OF MANDAMUS TO THE FIFTH JUDICIAL CIRCUIT, COUNTY OF KAUAI, STATE OF HAWAII

Petitioner Shaylene Iseri-Carvalho, respectfully petitions the Court to issue a writ of mandamus directing the Honorable Kathleen N.A. Watanabe of the Circuit Court of the Fifth Judicial Circuit to immediately convene an open session of the Fifth Circuit Court in order to receive the return from the Grand Jury Session held on Friday October 26, 2012.

This motion is made pursuant to Hawai‘i Rules of Appellate Procedure Rules 21 and 27.

I. STATEMENT OF FACTS:

1. On October 25, 2012, the Grand Jury for the Fifth Judicial Circuit convened to hear cases presented by the County of Kauai Office of the Prosecuting Attorney.
2. The last scheduled case, because of time constraints that would not allow the case, in its entirety, to be fully presented before the close of the business day, was scheduled by the Court’s clerk and Grand Jury Counsel to be carried over to the following day, Friday October 26, 2012 at 8am.

3. On October 26, 2012 at 8:00am the Grand Jury convened and heard testimony on the case cited in #2 above.
4. At approximately 1:00pm, the Court's clerk informed Prosecuting Attorney Shaylene Iseri-Carvalho that the presentation of evidence needed to conclude as soon as possible.
5. Prosecuting Attorney Shaylene Iseri-Carvalho concluded the presentation of evidence shortly after 1:00pm.
6. The Court's clerk then contacted Judge Kathleen Watanabe's chambers, and was informed that Judge Watanabe would not be available to take the return from the Grand Jury.
7. Judge Kathleen Watanabe's Law Clerk confirmed that the Judge was in the building, but had meetings scheduled for the remainder of the afternoon.
8. Prosecuting Attorney Shaylene Iseri-Carvalho requested that, if Judge Watanabe was unavailable to take the return on Friday October 26, 2012, that the Judge take the return on Monday October 29, 2012.
9. The Court's clerk then informed Prosecuting Attorney Shaylene Iseri-Carvalho that the Court would not take the return until the next scheduled Grand Jury date.
10. The next Grand Jury is scheduled to convene on December 27, 2012.
11. The reason cited by the Court's clerk of Judge Watanabe's refusal to take the return on Monday October 29, 2012 was the cost of bringing back three individuals: the Grand Jury foreperson, The Grand Jury Secretary, and Grand Jury Counsel.
12. Grand Jury returns before a judge typically take less than 5 minutes to complete.

13. At approximately 2:00pm on October 26, 2012, First Deputy Prosecuting Attorney Jake Delaplane received a call from the media informing him that someone in the courthouse had informed the media that a murder case had been presented to the Grand Jury that day.
14. The caller from the media inquired as to whether the Grand Jury had returned an indictment on the murder case.
15. First Deputy Delaplane did not provide a comment as matters occurring before the Grand Jury are confidential under Rule 6 (e)(1) of the Hawaii Rules of Penal Procedure.
16. Because the media appeared to have access to confidential information regarding the Grand Jury proceeding and it was unknown as to the extent that this information was available members of the public, or even the defendant in the case that was presented, it became a critical matter of public safety that the defendant be apprehended immediately.
17. First Deputy Delaplane contacted Judge Watanabe's chambers to request to speak with the Judge regarding the matter of critical public safety.
18. Judge Watanabe's Legal Clerk informed First Deputy Delaplane that the Judge was in the courthouse, but was busy with meetings.
19. Judge Watanabe's Law Clerk informed First Deputy Delaplane that she would pass Delaplane's message along to Judge Watanabe.
20. First Deputy Delaplane informed the Kauai Police Department of the media call and the Judge's refusal to take the return from the October 26, 2012 Grand Jury Session.

21. In order to protect the public and the family of the defendant, the Kauai Police Department worked with the Office of the Prosecuting Attorney to immediately draft an arrest warrant for the defendant.
22. A District Court Judge signed the arrest warrant shortly after 4:00pm on October 26, 2012, setting bail at \$1,000,000.00.
23. The Defendant was taken into custody shortly thereafter and is currently in custody awaiting arraignment.
24. At approximately 5:15pm on Friday October 26, 2012, Judge Watanabe called First Deputy Delaplane regarding the message left with Court's Law Clerk earlier that day.
25. First Deputy Delaplane informed Judge Watanabe of the circumstances surrounding the Grand Jury proceeding and requested that the return on the Grand Jury session be convened as soon as possible on Monday October 29, 2012.
26. First Deputy Delaplane explained that it would be an unnecessary waste of State and Judicial resources to delay the return on the October 26, 2012 Grand Jury session because in doing so, the State would be now required to go through a lengthy preliminary hearing process in District Court in relation to the arrest warrant.
27. Judge Watanabe stated that she would not schedule the return on the Grand Jury Session except upon a motion by the State.

II. ISSUES PRESENTED AND RELIEF SOUGHT

A. Issues Presented

1. Judge Watanabe's refusal to schedule the return on the Grand Jury Session coupled with the public release of confidential information regarding the Grand

Jury proceeding created a critical issue of public safety. An individual accused of murder, especially a domestic-related murder, poses a significant risk to the community and their own family if the individual becomes aware that they may soon be taken into custody. This critical issue of public safety necessitated the need for an immediate arrest warrant on the individual. Because an arrest warrant was obtained, an arraignment on charges in District Court will be scheduled, followed by a preliminary hearing. This preliminary hearing will be quite lengthy, as the State would potentially call over 20 witnesses. When weighed against the cost of bringing back three individuals (the Grand Jury foreperson, Grand Jury Secretary, and Grand Jury Counsel) for a return that would likely take less than five minutes to complete; requiring the State to proceed with the preliminary hearing process would be a gross waste of County, State, and Judicial resources. *See, e.g., Hawaii Hous. Auth. v. Lyman*, 68 Haw. 55, 78, 704 P.2d 888, 902 (1985) (trial court has discretion to weigh the potential of waste of judicial resources); *Kauhane V. Acutron Co.*, 71 Haw. 458, 463, 795 P.2d 276, 278 (1990) (doctrine of res judicata serves to conserve judicial resources).

2. Since no case was initiated because of Judge Watanabe's refusal to take the return on the October 26, 2012 session, there appears to be no valid motion that can be filed by the State that the Judge could act upon as she requested.

B. RELIEF SOUGHT

1. The Petitioner requests that this Honorable Court grant it's request for a Writ of Mandamus directing Judge Kathleen N.A. Watanabe to immediately convene an

open session of the Fifth Circuit Court in order to receive the return from the
Grand Jury Session held on Friday October 26, 2012

DATED: Līhu‘e, Hawai‘i, October 26, 2012.

/s/ Jacob Delaplane
JACOB DELAPLANE
DEPUTY PROSECUTING ATTORNEY
Attorney for Petitioner