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No. SCPW-12-0000911

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SHAYLENE ISERI-CARVALHO,
PROSECUTING ATTORNEY,
COUNTY OF KAUAI, STATE OF
HAWAII

Petitioner,

vs.

KATHLEEN N. A. WATANABE,
CIRCUIT COURT JUDGE, FIFTH
JUDICIAL CIRCUIT,

Respondent.

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

DECLARATION OF GRAND JURY COUNSEL JONATHAN J. CHUN IN SUPPORT OF
THE HONORABLE KATHLEEN N. A. WATANABE’S ANSWER TO PETITIONER
SHAYLENE ISERI-CARVALHO’S PETITION FOR WRIT OF MANDAMUS

CERTIFICATE OF SERVICE

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Attorneys for Respondent
The Honorable Kathleen N.A. Watanabe

IN THE SUPREME COURT OF THE STATE OF HAWAII

SHAYLENE ISERI-CARVALHO,)	DECLARATION OF JONATHAN J. CHUN
PROSECUTING ATTORNEY, COUNTY)	
OF KAUAI, STATE OF HAWAII,)	
)	
Petitioner,)	
)	
vs.)	
)	
THE HONORABLE KATHLEEN N.A.)	
WATANABE, CIRCUIT JUDGE, FIFTH)	
JUDICIAL CIRCUIT,)	
)	
Respondent.)	
_____)	

DECLARATION OF JONATHAN J. CHUN

Pursuant to Rule 52, Rules of Appellate Procedure, I, JONATHAN J. CHUN,
declare:

1. I am an attorney licensed to practice in the State of Hawaii.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. I was appointed by the Hawaii Supreme Court to serve as grand jury counsel for the Fifth Circuit Court, State of Hawaii from December 2011 to November 2012.
4. In such capacity I was advising the grand jury on October 25, 2012.
5. On October 25, 2012, the grand jury was given a calendar listing five cases for the grand jury's consideration.

6. On the calendar there was a sixth space that was left blank that merely stated "State v. Defendant."

7. At the start of the morning session the Prosecutor's Office informed the grand jury that the sixth "State v. Defendant" would involve a "high profile" case and that was the reason it was not listed on the calendar.

8. The Prosecutor's Office informed the grand jury that this sixth case would be the sole case that would be presented to the grand jury for the afternoon session.

9. The Prosecutor's Office presented the first three cases on the calendar to the grand jury.

10. At the end of the third case the Prosecutor's Office informed the grand jury that they would not present the last two listed case.

11. After a break the Prosecutor's Office asked if the grand jury was available to convene on the next day, Friday, October 26, 2012. I was informed at that time the Prosecutor's Office was intending to call a witness from Oahu who was not available on Thursday, October 25, 2012, but would be available on Friday, October 26, 2012.

12. I polled the grand jury and at first, only 9 of the jurors indicated they would be available. A tenth grand juror indicated that the juror needed to get hold of the juror's employer to confirm.

13. I informed the Prosecutor's Office that if a session is held we would only have 9 and possibly 10 jurors.

14. I did not contact either the Chief Judge or Judge Watanabe to confirm whether the grand jury would be authorized to reconvene on Friday, October 26, 2012.

15. At approximately 12:30 p.m. on Thursday, October 25, 2012, the Prosecutor's Office informed the grand jury it would not present its last case for the afternoon session, but instead requested the grand jury to reconvene at 7:45 a.m. on Friday, October 26, 2012. At that time the Prosecutor's Office stated to the grand jury that if we started on time on Friday, October 26, 2012, we would be finished by 12:00 noon.

16. The grand jury indicated that all of the 9 and possibly 10 jurors would report by 7:45 a.m. on October 26, 2012.

17. The Prosecutor's Office informed me it did not want to start its case on Thursday, October 25, 2012, because of its concern that information regarding the case could leak out before the grand jury finished its deliberation.

18. On the afternoon of October 25, 2012, the grand jury submitted its report to the Court regarding the three cases that were on the morning's agenda. The Court acted on all three cases that were presented by the Prosecutor's Office on October 25, 2012.

19. On Friday, October 26, 2012, ten grand jurors reported to the grand jury court room at 7:45 a.m. as requested by the Prosecutor's Office.

20. I informed the Prosecutor's Office that we needed to finish by 12:00 noon since one and possibly two jurors might have to leave by 12:00 noon and report to work.

21. At 11:30 a.m. I informed the Prosecutor's Office and the court clerk that it appears we would not be able to finish by 12:00 noon and I was concerned we would lose one maybe two grand jurors.

22. At that time the court clerk informed the Prosecutor's Office and the grand jury that the Court would be available until 1:00 p.m. and no later.

23. I again polled the jurors and all ten said they could remain until 1:00 p.m. One juror informed me that the juror's employer had not yet called back to confirm, but the juror would stay until the employer returned the juror's call.

24. At or about 12:30 p.m., I and the court clerk raised a concern to the Prosecutor's Office whether the case would be finished by 1:00 p.m. The Prosecutor's Office stated they would be finished by 1:00 p.m.

25. I believe the Prosecutor's Office rested its case at approximately 1:00 p.m.

26. The grand jury convened and reached a decision in the case after 1:00 p.m.

27. After the grand jury informed me that they had reached a decision in the case, the court clerk informed the grand jury foreperson that the Court was not available. I informed the grand jury foreperson that the foreperson should be available to present the report to the Court, when called. The jurors left after I informed them not to discuss the case with anyone and that the proceedings of the grand jury were confidential.

I, JONATHAN J. CHUN, declare under penalty of law that the foregoing is true and correct.

DATED: Lihue, Kauai, October 30, 2012.

/s/ Jonathan J. Chun
JONATHAN J. CHUN

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Petitioner,

vs.

THE HONORABLE KATHLEEN N. A.
WATANABE, Circuit Judge, Fifth
Judicial Circuit,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following by electronic service (JEFS) as indicated on the date noted below:

Jacob Delaplane
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Shaylene Iseri-Carvalho

DATED: Honolulu, Hawaii, October 30, 2012.

/s/Robyn B. Chun
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ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Respondent
The Honorable Kathleen N. A. Watanabe