

CONCURRING OPINION BY NAKAMURA, C.J.

I agree with the majority's analysis and decision in this case.

I write separately to express my views on certain language in State v. Nesmith, 127 Hawai'i 48, 52, 276 P.3d 617, 621 (2012), which is quoted by the majority. Although not integral to its analysis, the majority quotes language from Nesmith indicating that a court's jurisdiction over a case turns on the sufficiency of the charge. In my view, this portion of Nesmith had effectively been overruled by State v. Davis, 133 Hawai'i 102, 104, 120, 324 P.3d 912, 914, 930 (2014), which held that even when the charge is defective, a reviewing court must address a defendant's express claim of insufficiency of the evidence. As stated by Justice Acoba in his concurring opinion in Davis: "If an insufficient charge constituted a jurisdictional defect, then this court could not evaluate whether sufficient evidence existed before the trial court inasmuch as it would not have jurisdiction over the merits of the case." Id. at 123 n.2, 324 P.3d at 933 n.2 (Acoba, J., concurring).

*Craig H. Nakamura*