DISSENT BY ACOBA, J., WITH WHOM DUFFY, J., JOINS

I would hold that Respondent/Plaintiff-Appellant State of Hawai i (Respondent) did not meet its heavy burden of demonstrating that the statements of Petitioner/Defendant-Appellee Randal Strong, Jr. (Petitioner) regarding a theft on March 4, 2006, a robbery on March 10, 2006, a robbery on March 16, 2006, and all the fruits therefrom, were the result of a knowing, intelligent, and voluntary waiver of Petitioner s constitutional right against self-incrimination under article I, section 10 of the Hawai i Constitution[1] because (1) unlike the law enforcement officers in Colorado v. Spring, 479 U.S. 564, 576 (1987), the interrogating officer was not mere[ly] silen[t] as to the scope of his interrogation, but expressly stated that he was going to question Petitioner on a robbery occurring on February 26, 2006, and then only after obtaining a waiver of his constitutional rights questioned Petitioner about the three other offenses noted above; (2) the Miranda-type warnings as to one robbery occurring on February 26, 2006 did not provide[] sufficient notice as to potential criminal liability for the three other offense[s] for which Petitioner was interrogated, State v. Ramones, 69 Haw. 398, 405, 744 P.2d 514, 518 (1987); (3) the interrogating officer was required to re-Mirandize the

[1] The protections given in Miranda v. Arizona, 384 U.S. 436 (1966), have an independent source in the Hawaii Constitution. State v. Kaahanui, 69 Haw. 473, 478, 747 P.2d 1276, 1279 (1987); State v. Santiago, 53 Haw. 254, 265-66, 492 P.2d 657, 664 (1971).

Petitioner if he was to be questioned about different offenses from that originally inquired into, State v. Nelson, 69 Haw. 461, 471, 748 P.2d 365, 371-72 (1987), or notify Petitioner about all the offenses for which he was to be questioned prior to Petitioner waiving his right against self-incrimination; (4) the Intermediate Court of Appeals (ICA) erred in concluding that the concurring opinion by Justice Acoba and in which Justice Levinson joined, in State v. Poaipuni, 98 Hawai i 387, 49 P.3d at 353 (2002), is distinguishable from this case inasmuch as the concurrence in Poaipuni required that the interrogating officer advise Petitioner of the other offenses prior to the waiver of his Miranda rights and not prior to the time of questioning as the ICA states; (5) Respondent bears a heavy burden of demonstrating that an accused s right against self-incrimination was voluntarily, intelligently, and knowingly waived, Kaahanui, 69 Haw. at 478, 747 P.2d at 1279; see also State v. Wallace, 105 Hawai i 131, 144, 94 P.3d 1275, 1288 (2004) ([T]he courts must presume that a defendant did not waive his rights and the prosecution s burden is great.); and (6) this court must indulge every reasonable presumption against the waiver of fundamental constitutional rights, State v. Vares, 71 Haw. 617, 621, 801 P.2d 555, 557 (1990), abrogated on other grounds by Nichols v. United States, 511 U.S. 738, 742 n.7 (1994); Territory v. Lantis, 38 Haw. 178, 180 (Haw. Terr. 1948); State v. Hebert, 110 Hawai i 284, 290, 132 P.3d 852, 858 (App.), cert. denied, 110 Hawai i

337, 132 P.3d 1248 (2006).[2] Thus, in my view, the ICA gravely erred[3] in holding that Petitioner was adequately apprised of his

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[2] The instant case presents the issue of whether a police officer must obtain a subsequent waiver of an individual s Miranda rights where the police officer informed an individual he was going to be questioned with regard to one offense, obtained a waiver as to that offense, but proceeded to question the individual as other offenses not included in, or related to, the offense specified in the original waiver. Inasmuch as a majority of this court has never decided this issue, I respectfully believe this disposition should be published.

> It is in the nature of stare decisis that, when this court in effect decides matters of first impression, we in fact establish precedent and, therefore, should publish our opinion. When we fail to publish, we depart from the established procedure which lends legitimacy to our decision-making process and also neglect our responsibility to provide guidance to courts, attorneys, and parties. The import of such an act is to make law for one case only, singling it out from all others, a process that can only be described as arbitrary. When there are fundamental reasons for publishing and we are given the opportunity to do so but fail to, we also compel our trial courts and counsel to rely on and employ the precedent established in other jurisdictions when trying cases in our own state.
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> . . .
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> Unless we publish questions presented to us, they will continue to go unaddressed in any authoritative manner, and error may compound in other, similar cases leaving counsel and the trial courts to guess at the law to apply. Therefore, the fact that a majority of the court votes not to publish should not be determinative of the publication question. It is in the order of case law development that discourse on issues not covered in any existing published opinion should be disseminated and made available for examination, consideration, and citation by those similarly affected or interested. Only in the light of open debate [in a published opinion] can the dialectic process take place, subject to the critique of the parties, the bar, the other branches of government, legal scholars, and future courts. The resulting process of analysis and critique hones legal theory, concept, and rule.

State v. Uyesugi, 100 Hawai i 442, 473-74, 60 P.3d 843, 874-75 (2002), app. A (Acoba, J., concurring, joined by Ramil, J.).

[3] The Supreme Court s recent five-to-four decision in Berghuis v. Thompkins, No. 08-1470, 2010 WL 2160784 (U.S. Jun. 1, 2010), has substantially affected the protections afforded defendants under the United States Constitution and that Court s decision in Miranda v. Arizona, 384 U.S. 436 (1966). However, Berghuis is inapplicable to Hawai i precedent because this court has afforded defendants greater protection under the Hawai i Constitution than available under the U.S. Constitution. See, e.g., State v. Wallace, 105 Hawai i 131, 142, 94 P.3d 1275, 1286 (2004) (stating that we choose to afford our citizens broader protection under article I, section 10 of the Hawai i Constitution than that recognized by the Supreme Court in

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constitutional rights and that Petitioner validly waived them as to the theft on March 4, 2006, the robbery on March 10, 2006, and the robbery on March 16, 2006.[4] The petition for writ of certiorari filed by Petitioner on February 11, 2010 was accepted on March 23, 2010. Oral argument was held on May 6, 2010.

I.

The following essential matters, some verbatim, are from the record and the submissions of the parties.

A.

On March 19, 2006, the Honolulu Police Department (HPD) arrested and detained Petitioner following a robbery at a 7-Eleven store on School Street. On March 20, 2006, at approximately 2:40 a.m., Detective Tazman McKee (McKee) told Petitioner that he was there to interview him about the robbery that occurred at the 7-Eleven store on March 19, 2006. McKee advised Petitioner of his Miranda warnings using the standard

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[3](...continued)
Davis v. United States, 512 U.S. 452 (1994)); State v. Loo, 94 Hawai i 207, 210, 10 P.3d 728, 731 (2000); State v. Hoey, 77 Hawai i 17, 20, 881 P.2d 504, 507 (1994); State v. Santiago, 53 Haw. 254, 266, 492 P.2d 657, 664 (1971) (affording greater protections under the Hawai i constitution by precluding the use of statements made without a Miranda warning for impeachment purposes).

[4] Petitioner seeks review of the judgment of the Intermediate Court of Appeals (ICA) filed on January 25, 2010, pursuant to its November 25, 2009 published opinion vacating the April 7, 2008 Order Granting in Part and Denying in Part [Petitioner s] Motion to Suppress Evidence and Statements, Findings of Fact, and Conclusions of Law (Suppression Order) of the Circuit Court of the First Circuit (the court) and remanding the matter to the court for further proceedings. See State v. Strong, 121 Hawai i 513, 221 P.3d 491 (App. 2009).

HPD-81 waiver form.[5] Petitioner indicated that he understood his rights, declined an attorney, and declined to give a statement.

Later that day, McKee met with Detective Derrick Kiyotoki (Kiyotoki or Officer Kiyotoki), who was the lead investigator of four other crimes in which Petitioner was a suspect - (1) case number 06-081736, a robbery occurring on February 26, 2006, (2) case number 06-090101, a theft occurring on March 4, 2006, (3) case number 06-099953, a robbery occurring on March 10, 2006, and (4) case number 06-107237, a robbery occurring on March 16, 2006. Thereafter, Kiyotoki introduced himself to Petitioner and specifically told Petitioner, I m going to ask you questions about a robbery which occurred on 2-26-06 at 1900 Dillingham, this is the 7-Eleven. But first I want to inform you of certain rights you have under the Constitution.

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[5] The HPD-81 waiver form, entitled Warning Persons Being Interrogated of Their Constitutional Rights, [hereinafter HPD Form-81] sets forth a description of the crime an accused person is to be interviewed about and specifically enumerates the constitutional rights applicable to custodial interrogations:

> You have a right to remain silent.
> You don t have to say anything to me or answer any of my questions.
> Anything you say may be used against you at your trial.
>
> You have the right to have an attorney present while I talk to you. If you cannot afford an attorney, the court will appoint one for you, prior to any questioning.
>
> If you decide to answer my questions without an attorney being present, you still have the right to stop answering at any time.

Further, the form asks the accused person a series of questions, and has the accused person initial in a blank next to the word Yes or No:

> Do you understand what I have told you? ___ Yes ___ No
> Do you want an attorney now? ___ Yes ___ No
> Would you like to tell me what happened? ___ Yes ___ No

Before I ask you any questions you must understand your rights[.] Kiyotoki read Petitioner hisMiranda warnings and Petitioner signed a HPD Form-81 indicating that he understood his rights, did not want an attorney, and wanted to tell Kiyotoki what happened. The HPD Form-81 stated that Officer Kiyotoki was going to ask Petitioner about Robbery which occurred on 2-26-06 at 1900 Dillingham Blvd.

After Petitioner signed the waiver, Kiyotoki told Petitioner that he was going to interrogate Petitioner about the three other crimes.[6] Kiyotaki did not prepare HPD Form-81s for

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[6] There is some conflicting evidence as to the timing of when Kiyotoki informed Petitioner that he wanted to talk to Petitioner about the three other crimes. There is testimony indicating that Petitioner was told of the three other crimes simultaneously with his signing of the HPD Form-81, while there is other testimony indicating that he was told after the form had already been signed. For example, on direct examination, Kiyotoki testified,

> What I have [Petitioner] do is sign the form with his signature as well as with his address and the date and he signs the form. And at the same time when he s doing that I am also telling him that I am going to speak to him about two other robberies and another theft case.

However, on cross-examination Kiyotoki stated that he did not tell Petitioner about his intentions to speak about all four crimes until [Kiyotoki] got him to agree to his constitutional rights about the February 26 robbery. Further, defense counsel asked Kiyotoki, The sequence is that he signs on the HPD 81 form, you have him go through that, he signs on that he s going to cooperate and tell you about his possible involvement in the February 26 incident; right? After he does that it s then after that when you tell him that you re also going to talk to him about the other cases that were pending? Kiyotoki answered, Yes.

The court apparently resolved the conflict in Petitioner s favor, stating in the findings of fact that:

> 34. [Petitioner] signed and dated the HPD Form-81 for the February 26, 2006 robbery.
> 35. [Petitioner] was not coerced, threatened, or forced to make a statement to Detective Kiyotoki regarding the February 26, 2006 robbery that occurred at 1900 Dillingham 7-Eleven.
> 36. [Petitioner] was not aware he was about to be questioned about whether he committed theft on March 4, 2006, whether he committed robbery on March 10,

(continued...)

the other three crimes. Nor did Kiyotoki amend the existing HPD Form-81 to reflect the other three crimes. The relevant portion of Kiyotoki s interrogation with regard to these events are as follows:

> Q. Derrick Kiyotoki, Honolulu Police Department, Robbery Detail. The following tape recorded interview with Randal Strong, Junior is taking place at the Alapai Police Station, Cellblock Interview Room Number 1. Today s date is March 20th, 2006, Monday, and the present time is 8:35 a.m. Okay, for the record, state your full and correct name?
> A. Randal Lee Strong, Junior.
> . . . .
> Q. Okay, . . . how old are you?
> A. . . . 20.
> . . . .
> Q. Okay, how much education do you have, [Petitioner]?
> A. I went up to the eighth grade.
> Q. Okay, are you able to write in English?
> A. Yes.
> Q. Okay, are you able to read in English?
> A. Yeah.
> Q. Do you have any difficulty in understanding me?
> A. No.
> Q. Okay, have you consumed any alcohol during the past twenty-four hours?
> A. No.
> Q. Have you taken any medication prescribed by a doctor during the past twenty-four hours?

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[6](...continued)

2006, and whether he committed robbery on March 16, 2006.

37. Immediately after [Petitioner] signed the HPD Form-81 for the February 26, 2006 robbery, Detective Kiyotoki applied his Abbreviated Strategy. The following colloquy occurred between Detective Kiyotoki and [Petitioner] in which Detective Kiyotoki disclosed to [Petitioner] his intent to broaden the interrogation to include three additional cases:

> Q: [Detective Kiyotoki] Okay, [Petitioner], also in conjunction with this investigation, I have three other cases, two of which are robberies, and another one which is theft, yeah. I ll talk to you about those okay.
> A: [Defendant] Yeah.

(Emphasis added.) The [court as] trier of fact may draw all reasonable and legitimate inferences and deductions from the evidence adduced . . . , and findings of the trial court will not be disturbed unless clearly erroneous. State v. Nelson, 69 Haw. 461, 469, 748 P.2d 365, 370 (1987) (citing Lono v. State, 63 Haw. 470, 473-74, 629 P.3d 630, 633 (1981)). Thus, because there is evidence to support the court s finding, this recommendation does not disturb the court s finding on this issue.

A. No.
Q. Have you taken any drugs not prescribed by a doc - not prescribed by a doctor during the past twenty-four hours?
A. No.
Q. Okay, did anyone promise you anything to make a statement?
A. No.
Q. Did I promise you anything to make a statement?
A. No.
Q. Okay, did anyone coerce, threaten or force you to make a statement?
A. No.
Q. Did I coerce, threaten or force you to make a statement?
A. No.
Q. Okay, you are volunteering on your own free will to make a statement and answer questions?
A. Yeah.
Q. Okay, placed before you is your constitutional rights, okay. And the report you re going to be interviewed under, [Petitioner], is 06-081736, okay. And the title of this form is Warning Persons Being Interrogated of Their Constitutional Rights, okay. [Petitioner], do you know that you are in the custody of me, Detective Derrick Kiyotoki, at the Alapai Police Station?
A. Yes.
Q. Can you put your initials in the Yes block, please. Okay, [Petitioner], I m going to ask you questions about a robbery which occurred on 2-26-06 at 1900 Dillingham, this is the 7-Eleven. But first I want to inform you of certain rights you have under the Constitution. Before I ask you any questions, you must understand your rights, okay. Number one, you have the right to remain silent. Two, you don t have to say anything to me or answer any of my questions. Three, anything you say may be used against you at your trial. Number four, you have the right to have an attorney present while I talk to you. If you cannot afford an attorney, the court will appoint one for you prior to any questioning. Number six, if you decide to answer my questions without an attorney being present, you still have the right to stop answering me at any time, okay. Do you understand what I have just told you, [Petitioner]?
A. Yeah.
Q. Okay, initial in the appropriate block. Do you want an attorney now?
A. No.
Q. Okay, and would you like to tell me what happened?
A. Yeah, I going answer your questions.
Q. Okay, can you put your initials. Okay, on the following line, [Petitioner], can you sign your name on the bottom where it says Name. Okay, also your address, okay, and the next one is the date and today s date is 3-20-2006 and the present time you re signing the document is 8:38 a.m. Okay, [Petitioner], also in conjunction with this investigation, I have

three other cases, two which are robberies, and another one which is a theft, yeah. I ll talk to you about that, okay.

A. Yeah.

(Emphases added.) Kiyotoki then questioned Petitioner about the robbery that occurred on February 26, 2006. When Kiyotoki finished interrogating Petitioner about the February 26, 2006 robbery case, Kiyotoki proceeded to interrogate Petitioner about a March 4, 2006 theft case, then a March 10, 2006 robbery case, and then a March 16, 2006 robbery case. When transitioning between each case, Kiyotoki asked Petitioner if he realized that his constitutional rights [were] still in effect, but did not explain what he meant by constitutional rights or in effect. Nor did Kiyotoki ask if Petitioner wanted to waive these rights during these transitions. Each time Petitioner was asked whether he realized his constitutional rights were still in effect, Petitioner agreed that he did so.

After Kiyotoki finished asking Petitioner about all four cases, Kiyotoki advised Petitioner that he would take Petitioner to Kiyotoki s computer so that Petitioner could identify himself in the video surveillance tapes. Kiyotoki again asked Petitioner if Petitioner realized that [his] constitutional rights [were] still in effect, and Petitioner answered, Yeah. Kiyotoki then asked Petitioner, for the first time, if he waive[s his] constitional rights[,] to which Petitioner replied, What you mean? (Emphasis added.) Kiyotoki indicated, [y]ou gave up those rights and you wanted to give me

a statement without a lawyer being here, . . . -- without remaining silent, and asked whether the statement was freely and voluntarily given or coerce[d], threaten[ed] or force[d,] but did not refer to the fact that Petitioner had a right to an attorney and that if he could not afford an attorney one would be appointed, and that even without an attorney present he had the right to stop answering at any time. The relevant portions of Kiyotoki s interrogation are as follows:

> Q. Okay, [Petitioner], first of all, what I want to talk to you about this incident that occurs at the 7-Eleven, Dillingham Boulevard. I believe the closest cross reference is Mokauea Street, yeah. And this incident occurs on Sunday, February 26, about 4:00 in the morning, okay. And this incident involves a beer run, yeah. Subsequently as a result of my investigation, there were some video surveillance tapes recorded in this incident, okay. And this video surveillance clearly depicts you as going into the vault - the beer vault taking beer from this establishment, okay. You recall this incident?
> A. Yeah.
> . . . .
> Q. Okay. All right, you realize your constitutional rights are still in effect?
> A. Yeah.
> Q. Okay, I want to talk about this other case and this is a theft case, yeah. And this occurs at the same 7-Eleven but this is on March 4th, the same time, about 4:00 in the morning, okay. And again the surveillance photograph, okay, of a male, who I believe is you, and another male, who I believe is Maliepo Sitani, going into the 7-Eleven again grabbing beer. This is couple days later, okay. This is a week later, on Saturday, about 4:00. You remember going to the store?
> A. No.
> . . . .
> Q. Okay. All right, you realize your constitutional rights are still in effect, right?
> A. Yes.
> Q. Okay, we ll talk about this other case, okay. And this occurs on March 16th, okay, this is a Robbery in the Second Degree, report number 06-107237, okay, and this occurs on a Thursday. Wait, wait now, hold on. I m sorry, let s go back, backtrack. Sorry. Okay, this occurs on the 10th of March, this is about 10:00 in the evening, this is 7-Eleven on North King by Farrington. And this is a Robbery in the Second Degree, 06-099953, okay, it s a Robbery in the Second Degree, okay. Do you remember going into this 7-Eleven Store on King Street?

A. Yeah.
. . . .
Q. Okay, [Petitioner], the last and final one, okay. You realize your constitutional rights are still in effect?
A. Yes.
Q. Okay, this is a Robbery Second, this occurred approximately ten days after this incident on North King, and this is recorded under report number 06-107237, and this is a Robbery in the - Robbery at the North School Street 7-Eleven, 2404 North School. And this occurs Thursday, 3-16-06, about 2:00 in the morning. Do you remember being involved in an incident over there? And this is the 7-Eleven Store, same store where you guys were picked up recently. You remember being involved in an incident over there?
A. Yeah.
. . . .
Q. What we going have to do [sic], [Petitioner], is go up to my office and play it on a computer, okay. These are all surveillance videos on a disc, okay. You realize that your constitutional rights are in effect?
A. Yeah.
Q. Okay, you waive your constitutional rights?
A. What you mean?
Q. You gave up those rights and you wanted to give me a statement without a lawyer being here, --
A. Yeah.
Q. -- without remaining silent. Was this statement given freely and voluntarily on your own free will?
A. Yes.
Q. Okay, did I coerce, threaten or force you to make a statement?
A. No.
Q. Did all of the events which you spoke about happen within the City and County of Honolulu?
A. What you mean, down here?
Q. Yeah.
A. Yes.
Q. And most important, did you understand your constitutional rights?
A. Yes.

(Emphases added.)

B.

On July 13, 2006, a grand jury returned a multi-count indictment, charging Petitioner with: (1) Robbery in the Second degree in violation of Hawai‘i Revised Statutes (HRS) § 708-841(1)(a) (1993), for an event occurring on February 26, 2006, (2) Theft in the Third Degree in violation of HRS § 708-832(1)(a) (1993), for an event occurring on March 4, 2006, (3) Robbery in

the Second Degree in violation of HRS § 708-841(1)(b) (1993), for an event occurring on March 10, 2006, (4) Robbery in the Second Degree in violation of HRS § 708-841(1)(b), for an event occurring on March 16, 2006, and (5) Robbery in the Second Degree in violation of HRS § 708-841(1)(b), for an event occurring on March 19, 2006. On September 24, 2007, Petitioner filed a Motion to Suppress Evidence and Statements (Motion to Suppress), seeking to suppress any and all statements he made to police and the fruits of those statements. Hearings on the Motion to Suppress were held on November 19 and December 7, 2007.

At the Motion to Suppress hearing on November 19, 2007, Kiyotoki admitted that he knew Petitioner was suspected in the four incidents and intended to question Petitioner about them prior to speaking with Petitioner or preparing HPD Form-81 referencing only a robbery on February 26, 2006. Further, Kiyotoki admitted that he could have put all the other dates on HPD Form-81 but did not. Kiyotoki testified:

> [PROSECUTOR] Q. [Officer Kiyotoki, y]ou knew about these four incidents?
> A. Correct.
> Q. Before you spoke with [Petitioner]?
> A. Correct.
> Q. You were aware of [the] surveillance video that had been obtained by 7-Eleven?
> A. Correct.
> Q. And before you spoke with [Petitioner] that morning on the 20th, was it your intention to speak with him about each of the four incidents?
> A. That is correct.
> Q. Explain to the court then your preparation of the document.
> A. Prior to me meeting with [Petitioner] at the receiving desk, I prepared this HPD Form 81. I typed in the report number, the date, time, his name, my name, etcetera. And - and then I met with him at the interview room and I presented him this form, and once he signed the form and acknowledged his constitutional rights, I also informed him

> that I was going to be speaking to him about the other robberies and thefts.
>
> Q. Okay. Would it be fair to say that I guess you could have put in all the other dates on the HPD 81?
>
> A. I could have, yes.
>
> Q. But in this case you did not?
>
> A. Yeah, I did not, correct.

(Emphases added.) Kiyotoki explained his reasons for not including all the dates on HPD Form-81. Officer Kiyotaki explained, It s through my experience when you put a whole bunch of cases down in the HPD 81 sometime [sic] there s a little psychological edge to the defendant that he s - he s being bombarded by all these cases so I - I - I don t like to use that sometimes[.] The court also questioned Officer Kiyotoki as follows:

> The Court: . . . . Officer Kiyotoki, you had mentioned that you had not placed the other incidents, February 26 incident, the March -- excuse me, the March 4th incident, the March 10th incident, the March 16th incident on the HPD 81 because you find sometimes it makes a defendant feel somewhat bombarded?
>
> The Witness: Correct.
>
> The Court: And then you did mention those incidents, although not by date, you did mention them shortly afterwards in the transcript. Do you remember that?
>
> The Witness: Yes, I did.
>
> The Court: . . . Why did you bring it up at that point?
>
> The Witness: When I ask someone their constitutional rights or warn them of their constitutional rights, I get a kind of a feel, some type of rapport that I m getting from this individual. Some people will just -- some suspects will just clam up to us, to our questioning.
>
> The Court: Uh-hum?
>
> The Witness: Some people will be cooperative.
>
> The Court: Uh-hum?
>
> The Witness: And I kind of feel them out at that point as to how should I gauge this interview. And in this situation [Petitioner] was very cooperative and I felt that at this point I should warn him of, you know, question him about the other cases.

(Emphases added.)

At the December 7, 2007 hearing, Kiyotoki testified that he had initially advised Petitioner that the scope of the

interview would be in regard to a robbery that happened on February 26, 2006 at 1900 Dillingham Boulevard and further explained why he did not mention the theft case and other two robberies earlier. Kiyotoki maintained that establishing a rapport with a suspect is necessary in order to get a statement, any type of statement.

> [PROSECUTOR] Q. And would it be fair to say that you initially advised him that the scope of your questioning would be in regards to the incident that happened, the robbery which happened on February 26, 2006 at 1900 Dillingham Boulevard?
>
> A. That is correct.
>
> . . . .
>
> Q. Now for purposes of explaining what happened next, what are you thinking at this point when [Petitioner] essentially tells you he wants to talk?
>
> A. At that point I m totally -- I m cut [sic] off guard.
>
> Q. Why are you cut [sic] off?
>
> A. I m surprised that, . . . he s going to talk to me. . . .
>
> . . . .
>
> Q. What happens next?
>
> A. What I have him do is sign the form with his signature as well as with his address and the date and he signs the form. And at the same time when he s doing that I am also telling him that I am going to speak to him about two other robberies and another theft case.[7]
>
> Q. Why did you make that statement to him at that point about questioning about two other robberies and the theft case?
>
> A. To let him know that I was going to speak to him about other cases.
>
> Q. And this was because it appeared that he wanted to talk?
>
> A. Exactly.
>
> Q. Why not the other way around? He goes yeah, I like tell you what happened [sic] or I want to answer your questions . . . . So you know he wants to talk; correct?
>
> A. Correct
>
> Q. Why not at that point say well, I d like to ask you about two other robberies and another theft, why - why the sequence this way as opposed to the one I just proposed?
>
> A. Because for one thing I wanted to make sure that he knew what, you know, he was signing at that point, and also that I was going to talk to him about other cases.

(Emphases added.) Kiyotoki explained that he limited HPD Form-81

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[7] See supra note 6.

to a single incident because he did not want to psychologically put that guy on the edge where he s not going to cooperate with me so that was the reason why I only mentioned that one robbery.

On cross-examination, Officer Kiyotoki testified as follows:

> [DEFENSE COUNSEL] Q. And when you were going in there to talk with [Petitioner] you testified earlier I think that you weren t sure how he was going to react to you; right?
> A. Correct.
> . . . .
> Q. . . . . When you went in to go talk with [Petitioner] you were aware of the other robberies you wanted to talk to him about?
> A. Yes.
> Q. Okay. And you wanted to talk to him about those other robberies too, didn t you?
> A. Yes.
> . . . .
> Q. You told [Petitioner] you were going to speak to him about a robbery that occurred on the 26th that he s a possible suspect in; isn t that right?
> A. Robbery, yes.
> Q. Okay. You didn t talk about the other robberies?
> A. No, I didn t.
> Q. Okay. And so you had actually gone in knowing about these other robberies, you didn t prepare an HPD 81 form, did you?
> A. I -- I did.
> Q. Not to the other robberies?
> A. No, I didn t
> Q. Okay. The only robbery you prepared was just this one pertaining to the 26th of February; right?
> A. Correct.
> Q. And this is even though you knew that you wanted to obtain a possible statement from [Petitioner] about those other robberies; right?
> A. Correct.
> . . . .
> Q. Now, you had stated that your key element - your key - one of the key things that you do is try to build a rapport with the person you want to interview; right?
> A. Correct.
> Q. So you didn t want to go in there and talk to him about four robberies - potential robberies he was involved with, did you? He might not have been cooperative with you, would he? It was a concern you had?
> A. Well, like I testified earlier when I do my initial interviews I don t want to psychologically put that guy on the edge where he s not going to cooperate with me so that was the reason why I only mentioned that one robbery.
> Q. So you didn t want to create a psychological edge so he wouldn t be cooperative so that s why you didn t mention the other three robberies even though you wanted him to -

A. I wanted to develop a rapport with him at that point and I didn t want to overwhelm him - overwhelm with the cases that I wanted to speak to him about.

Q. Okay. So basically what you did then you went and worked up a rapport to just say I just want to talk to but [sic] this one thing but you had intend [sic] today talk with him about all the other robberies as well; isn t that right?

A. That s correct.

Q. You didn t tell him about that about the time he gave you his permission to talk to you?

A. At the time he was signing the document I also mentioned to him that I was going to speak to him about two other robberies and a theft.

. . . .

A. My intentions prior to this was to speak to him about all these robberies.

Q. But you didn t tell him that?

A. Not until I got him to agree to his constitutional rights.

Q. As to the February 26th robbery; correct?

A. And as he s - as he s - and then I tell him I m going to speak to him about two other robberies and another theft.

Q. But that was after you had him agree and sign on to the February 26 robbery; isn t that right? The sequence is that he signs the HPD 81 form, you have him go through that, he signs on that he s going to cooperate and tell you about his possible involvement in the February 26 incident; right? After he does that it s then after that when you tell him that you re also talk to him [sic] about other cases that were pending?

A. Yes.

Q. And those were separate cases, weren t they? They didn t happen on the same day right?

A. No, they did not.

Q. They didn t have the same criminal number or they didn t have the same HPD number?

A. No.

Q. And yet you had all that information before you went in there; right?

A. Correct.

Q. Okay. So my question is that if you wanted to go and talk with him and he signed on to this why didn t you prepare three other HPD 81 forms to advise him of his rights to talk to but [sic] those other cases?

A. Because like I testified earlier I didn t want to overwhelm him where he would shut down.

Q. Well, wait a minute. How could he have been overwhelmed at that point if he was going to agree to test - - talk to you about this case, right, and then after he signs on to this he then -- you then tell him that you re going to talk to him about the other cases and he agrees to talk with you, how would he be overwhelmed?

A. Sometimes psychologically when you put it down on paper they become afraid, they clam up, they close on you.

. . . .

A. Well, he was informed, you know --

Q. He was informed that you were going to talk to him about a robbery on February 26, that s what he agreed to do?

A. And two other robberies and a theft.
Q. After you had him agree and sign this form; right?
A. And he agreed that I could talk to him about it.
Q. Did you but you never had him sign an additional form, did you?
A. No.
Q. Okay. And even the form that I have here it has a report number, you could have - you could have addened (sic) -- you could have made an amendment on this form and put the additional criminal numbers you re going to talk to him about, couldn t you?
A. I could have.
Q. You didn t do that though, did you?
A. No. I didn t.

(Emphases added.) On re-direct, Kiyotoki explained his process of transitioning between the four crimes as follows:

[PROSECUTOR] Q. After you concluded your questions of [Petitioner] regarding the February 26, 2006 incident --
A. Correct.
Q. -- what, if anything, did you do to segway to other incidents? How would you indicate that you re moving on to next -- another incident?
A. I would inform -- I informed [Petitioner] then okay, that s all we re going to speak about this case. We re going to move on to this other robbery case which occurred on this date at this time and this location, but before I do I want to inform you that your constitutional rights are still effect [sic].
Q. Why did you do that?
A. To make sure that he understood his rights at that point because he could have stopped me at any time. He could have what I term lawyer up at that time. He could have stopped answering my questions. He didn t have to answer my questions but to make sure that he clearly understood this his -- he understood his constitutional rights.
Q. And did you do this for -- just for your purpose in regards to the clarity of your understanding?
A. As well as for his.

(Emphases added.) Further, Kiyotoki testified that at no time did Petitioner say that he did not want to talk anymore or ask for an attorney. On re-cross examination Officer Kiyotoki also admitted that while he had asked Petitioner if he understood that his constitutional rights were still in effect, he did not ask Petitioner whether he wanted to invoke those rights or not.

On April 7, 2008, the court entered the Suppression Order, suppressing Petitioner s statements regarding the theft on March 4, 2006, the robbery on March 10, 2006, the robbery on March 16, 2006, and all the fruits therefrom. The court denied Petitioner s request to suppress his statements regarding the robbery on February 26, 2006.

C.

Respondent appealed to the ICA challenging the court s suppression order and the court s findings of fact and conclusions of law. On appeal, the ICA, in a published opinion, vacated the suppression order and remanded the case for further proceedings. Strong, 121 Hawai i at 527, 221 P.3d at 505. The ICA concluded that the [court] erred by suppressing [Petitioner s] statements regarding the March 4, 10, and 16, 2006 incidents because Respondent demonstrated that [Petitioner] was advised of his constitutional rights regarding those cases and knowingly, voluntarily, and intelligently waived them. Id.at 521, 221 P.3d at 499. The ICA relied on the Supreme Court s decision in Spring, which held that a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege. Id. at 521, 221 P.3d at 499 (quoting Spring, 479 U.S. at 577).

The ICA also relied on this court s decision in Ramones, which stated, We agree with the United States Supreme Court s recent decision of [Spring], that a suspect s awareness of all the possible subjects of the police questioning is not relevant to determine whether the suspect voluntarily, knowingly, and intelligently waived his Miranda rights[,] Strong, 121 Hawai i at 523, 221 P.3d at 499 (quoting Ramones, 69 Haw. at 403, 744 P.2d at 517), and decided that [o]nce Mirandawarnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate[,] id. at 501, 221 P.3d at 523 (quoting Ramones, 69 Haw. at 406, 744 P.2d at 518). Further, the ICA distinguished the facts of this case from Poaipuni, stating:

> As made clear by Justice Acoba s discussion ofSpring, Ramones, and Nelson, it was the officers failure to advise Poaipuni that the scope of the interrogation would include questioning on a firearms violation, as well as the three burglary and theft offenses - prior to questioning Poaipuni about the firearms - that constituted the constitutional infirmity. [Poaipuni, 98 Hawai i] at 399-401, 49 P.3d at 365-67.
>
> The circumstances of the case before us are distinguishable . . . . Although the HPD-81 form signed by [Petitioner] only referenced a single incident, [Petitioner] was clearly advised that he was going to be questioned about the other three incidents before he was questioned about any of the incidents. Indeed, Officer Kiyotoki repeatedly reminded [Petitioner] that his constitutional rights were still available to him. At the end of the interview, [Petitioner] reiterated that he wanted to give a statement without a lawyer present and without remaining silent, that he gave the statement freely and voluntarily of his own free will, that no coercion, threat or force caused him to make the statement, and that he understood his constitutional rights.

Strong, 121 Hawai i at 525-26, 221 P.3d at 503-04 (emphases added). According to the ICA,

> [a]lthough Officer Kiyotoki s intentional strategy was to not list all of the potential criminal charges on the HPD-81

> form, so as not to overwhelm [Petitioner], the use of that strategy is not per se constitutionally impermissible so long as the Miranda warnings are contemporaneously given and knowingly, voluntarily, and intelligently waived. See Ramones, 69 Haw. at 406, 744 P.2d at 518. There is no precedent for the proposition that the police are required to provide a separate, written, Miranda warning for each specific crime addressed within a single interrogation, particularly when a defendant has been advised of the full scope of interrogation prior to the beginning of the questioning. Such an advisement has not been required under the United States Constitution. Spring, 479 U.S. at 576. We decline to expand the interpretation of the Hawai i Constitution to mandate separate Miranda warnings under the circumstances of this case.

Id. at 526-27, 221 P.3d at 504-05 (footnote omitted).

II.

On February 11, 2010, Petitioner filed his Application for Writ of Certiorari to this court. Petitioner lists the following question in his Application: Did the ICA gravely err in holding that Detective Kiyotoki adequately apprised Petitioner of his constitutional rights and that Petitioner validly waived them? (Capitalization omitted.) On March 1, 2009, Respondent filed a Response to the Application.

III.

A.

1.

In his Application, Petitioner first argues that this case differs from Spring. In Spring, the issue presented was

> whether the suspect s awareness of all the crimes about which he may be questioned is relevant to determining the validity of his decision to waive the Fifth Amendment privilege. Spring, 479 U.S. at 566 (emphasis added).

In Spring, an informant told agents of the Bureau of Alcohol, Tobacco, and Firearms (ATF) that

Defendant Spring was engaged in the interstate transportation of stolen firearms and that Spring had discussed his participation in killing a man in Colorado. Id. Based on this information, ATF agents set up an undercover operation to purchase firearms from Spring and arrested Spring during the undercover purchase. Id. After an ATF agent advised Spring of his Miranda rights, Spring signed a written form . . . stating that he understood and waived his rights, and that he was willing to make a statement and answer questions. Id.at 567.

During the interrogation Spring was asked whether he had shot anyone, to which Spring admitted that he had shot another guy once. Id. When asked if he had ever been to Colorado or whether he had shot a man named Walker in Colorado, Spring answered in the negative. In a subsequent interrogation by Colorado law enforcement officials, Spring was given his Miranda warnings, signed a written form indicating that he understood his rights and was willing to waive them, and confessed to the Colorado murder. Id.At trial, the prosecution introduced Spring s confession and Spring was later convicted of first-degree murder. On appeal, Spring argued that the waiver of his Miranda rights during the first interrogation was invalid because he was not informed that he would be questioned about the Colorado murder[,] and therefore, his confession made during the second interrogation was an illegal fruit of the first interrogation. Idat 569.

The Supreme Court determined that the inquiry of whether a waiver is coerced has two distinct dimensions. Id. at 573 (citing Moran v. Burbine, 475 U.S. 412, 421 (1986)). First, the right must have been voluntary in the sense that it was a the product of a free and deliberate choice rather than intimidation, coercion, or deception and second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Id. (emphasis added). Applying these principles, the Court held that Spring s awareness of all the possible subjects of questioning in advance of interrogation [was] not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege. Id. at 577. The Court determined that (1) Spring s decision to waive his Fifth Amendment privilege was voluntary because there was no coercion of a confession by physical violence or other deliberate means calculated to break [his] will, id. at 573-74 (quoting Oregon v. Elstad, 470 U.S. 298, 312 (1985)), and (2) Spring s waiver . . . was knowingly and intelligently made[,] id. at 574. The Court also stated that

[t]he Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege. Id.

Rejecting Spring s contention that the failure . . . to inform him that he would be questioned about the murder

constituted official trickery[,] the Court stated that [t]his Court has never held that mere silence by law enforcement officials as to the subject matter of an interrogation is trickery sufficient to invalidate a suspect s waiver of *Miranda* rights, and we expressly decline so to hold today. Id.at 576 (emphasis added). Further, it is difficult to see how official silence could cause a suspect to misunderstand the nature of his constitutional right-- his right to refuse to answer any question which might incriminate him. Id. (quoting United States v. Washington, 431 U.S. 181, 188 (1977)). However, the Court specifically noted that it was not confronted with an affirmative misrepresentation by law enforcement officials as to the scope of the interrogation and d[id] not reach the question of whether a waiver of *Miranda* rights would be valid in such a circumstance. Id. at 576 n.8 (emphasis added).

The dissent, written by Justice Marshall and joined by Justice Brennan, disagreed with the majority s assertion that specific crimes and topics of investigation known to the interrogating officers before questioning begins are not relevant to, and in this case could not affect, the validity of the suspect s decision to waive his Fifth Amendment privilege. Id.at 578 (Marshall J., dissenting, joined by Brennan, J.). Instead, the dissent stated that [it] would include among the relevant factors for consideration whether before waiving his Fifth Amendment rights the suspect was aware

. . . of the crime or crimes he was suspected of committing and about which they intended to ask questions. Id. at 579. The dissent maintained that it would appear plain that an accused can knowingly, intelligently, and voluntarily waive the guarantee against self-incrimination only if he or she is informed that the guarantee is afforded with respect to the subject of interrogation:

> It seems to me self-evident that a suspect s decision to waive this privilege will necessarily be influenced by his awareness of the scope and seriousness of the matters under investigation.
>
> To attempt to minimize the relevance of such information by saying that it could affect only the wisdom of the suspect's waiver, as opposed to the validity of that waiver, ventures an inapposite distinction. Ibid. Wisdom and validity in this context are overlapping concepts, as circumstances relevant to assessing the validity of a waiver may also be highly relevant to its wisdom in any given context. Indeed, the admittedly critical piece of advice the Court recognizes today--that the suspect be informed that whatever he says may be used as evidence against him--is certainly relevant to the wisdom of any suspect's decision to submit to custodial interrogation without first consulting his lawyer. Ante, at 857. The Court offers no principled basis for concluding that this is a relevant factor for determining the validity of a waiver but that, under what it calls a totality of the circumstances analysis, a suspect's knowledge of the specific crimes and other topics previously identified for questioning can never be.

Id. at 578-79 (emphases added).

2.

Petitioner states that unlike the facts presented in Spring, the instant case differs because Kiyotoki limited the scope of his interrogation to a single incident. . . . When Kiyotoki moved on to discuss other incidents, he failed to expressly apprise [Petitioner] of his rights and [Petitioner] did not waive his rights for matters beyond the scope of the HPD

waiver form. (Citations omitted.) Respondent, on the other hand, argues that [t]he ICA s reliance on Spring . . is significant because the defendant [in Spring] argued he did not waive his Miranda rights during the first interview because he was not informed that he would be questioned about the Colorado murder. (Internal quotation marks and citations omitted.)

B.

1.

Second, Petitioner argues that this court s decision in Ramones also differs from the instant case. In Ramones, this court decided the issue of whether Miranda warnings also require the police to apprise criminal suspects of the specific offense which they might be charged with. Ramones, 69 Haw. at 404, 744 P.2d at 517. There, a HPD detective initially interviewed defendant Ramones about an auto theft. Id. at 400-01, 744 P.2d at 515. Ramones was given his Miranda warnings and signed a HPD waiver of rights document, which listed the charge as auto theft. However, during the investigation the police determined that Ramones had not stolen the vehicle but had committed the more narrow act of the Unauthorized Control of a Propelled Vehicle [(UCPV).] Id. at 401, 744 P.2d at 515. On appeal, Ramones argued that he had not validly waived his Miranda rights because he did not know the true nature of the charges against him.

Citing Spring, this court recognized that a suspect s awareness of all the possible subjects of the police questioning is not relevant to determine whether the suspect voluntarily, knowingly, and intelligently waived his Miranda rights. Id. at 404, 744 P.2d 517. This court proposed that [o]nce Miranda warnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate. Id. at 405, 744 P.2d at 518 (citing Spring, 479 U.S. at 577). This court reasoned that:

> Ramones was arrested for auto theft but eventually charged with [UCPV]. The two offenses carry the same penalty and are closely related. . . . *Miranda* warnings as to one offense provided sufficient notice as to potential criminal liability for the other offense. Furthermore, *Miranda* warnings specifically provide that any statement Ramones made may be used as evidence against him at trial.

Id. at 405, 744 P.2d 518 (emphasis added) (citation omitted). This court concluded that Ramones was adequately warned of his Miranda rights yet chose to waive them, no constitutional violation took place and, thus, held that the trial court should not have suppressed the statement which Ramones had freely made. Id.

2.

Arguing that Ramones differs from the instant case, Petitioner maintains that Ramones involved a single incident that led to Ramones s UCPV prosecution, and, thus, the State s decision to prosecute for UCPV instead of auto theft had no bearing on the validity of Ramones [s] waiver. (Citing Ramones, 69 Haw. at 405, 744 P.2d at 518.) Petitioner also maintains that

[u]nlike Ramones, [Petitioner] was interrogated about several different robberies, not just the single incident listed in the HPD waiver form. On the other hand, Respondent argues that there is a direct connection between [this court s holding in Ramones] and the United States Supreme Court in Spring. Respondent stated that [t]he ICA observed [that] . . . [s]hortly after the Spring decision, the Hawai i Supreme Court [decided] . . . [Ramones], whichstated, We agree with the United States Supreme Court s recent decision of[Spring] . . . , that a suspect s awareness of all the possible subjects of the police questioning is not relevant to determine whether the suspect voluntarily, knowingly, and intelligently waived his Miranda rights. (QuotingRamones, 69 Haw. at 404, 744 P.2d at 517.)

C.

1.

Third, Petitioner contends that [t]he ICA erroneously concluded that this case is distinguishable from Poaipuni. In Poaipuni, Peter Alvin Poaipuni (Poaipuni) was convicted of unlawfully possessing a firearm. On appeal, Poaipuni argued the following five errors:

> [T]hat the circuit court erred in partially denying his pretrial motion to suppress the firearms because (1) his father's consent to search the toolshed in which the police found the firearms was not voluntary, knowing, and intelligent and (2) his father's consent was the result of exploitation by the police of an unlawful search warrant, thereby rendering the firearms tainted fruit of the poisonous tree. As to his subsequent statement confessing to the police that he had possessed the firearms, Poaipuini asserts that (3) the circuit court erred in ruling in limine that his statement was voluntary and, therefore, admissible at trial. In addition, Poaipuni urges that (4) his trial counsel provided him with ineffective assistance, reflected

> most notably in counsel's failure to seek suppression of his confession on the ground that it was tainted by the execution of the unlawful search warrant. Finally, Poaipuni posits that (5) the circuit court committed plain error when it failed, sua sponte, to suppress the firearms and his statement as fruit of an illegal search.

98 Hawai i at 388, 49 P.3d at 354 (emphases added). The majority opinion, written by Justice Levinson and joined by Chief Justice Moon and Justice Acoba, held that firearms and Poaipuni's statement constituted fruit of the poisonous tree, because the police would not have obtained the firearms or Poaipuni s statement but for the execution of an unlawful search warrant. Id. at 388-89, 49 P.3d at 354-55.

The dissenting opinion disagreed with the majority s opinion stating that it would instead have held that [(1)] the search of the toolshed was independent and distinct from the prior illegal search of the Poaipuni home[] . . . [and (2)] that Poaipuni's custodial statement was knowingly, voluntarily, and intelligently made pursuant to his Miranda rights. Id. at 402, 49 P.3d at 368 (Ramil, J., dissenting, joined by Nakayama, J.) (footnote omitted). Chief Justice Moon wrote a separate concurring opinion, expressing his strong belief that . . . there [was] no reason to address the issue whether [Poaipuni s] Fifth Amendment right against self-incrimination was violated on the alternative ground that the police questioning of him exceeded the scope of his Miranda waiver. Id. at 401, 49 P.3d at 367.

Justice Acoba, with whom Justice Levinson joined, wrote a separate concurring opinion, responding to the dissent s view that Poaipuni . . . knowingly, intelligently, and voluntarily waived his right against self-incrimination when he made statements to the police regarding the possession of the firearms. Id.at 396, 49 P.3d at 362. That concurrence iterated the facts involving the interrogation of Poaipuni as follows:

> On July 7, 1998, the police arrested [Poaipuni] on charges of thefts of automated teller machines (ATMs). While [Poaipuni] was in custody, the police executed a search warrant at his residence. Detective Fletcher found several firearms in the toolshed of the property. Detective Fletcher returned to the Wailuku police station and, at 10:10 PM, about twelve hours after [Poaipuni] was placed into custody, commenced interrogation of [Poaipuni] with Detective Holokai. Detective Holokai informed [Poaipuni] that his investigation involved the theft of an ATM from a grocery store in Ha ik . [Poaipuni] was further told that Detective Ching would later interview [Poaipuni] about an investigation involving the Pu un n Post Office, and Detective Fletcher would thereafter question [Poaipuni] about an investigation involving the theft of an ATM machine in K hei.
>
> When [Poaipuni] agreed to discuss these matters with the police, the police provided [Poaipuni] with a written warning and waiver form informing him of his constitutional rights. Detective Holokai and [Poaipuni] read over the form together and [Poaipuni] initialed and signed the form.

Id. at 396, 49 P.3d 362 (emphasis added). That concurrence examined the interrogating officer s testimony at trial, which stated:

> Q [PROSECUTOR]: What happened after he finished reading the rights?
>
> A [DETECTIVE HOLOKAI]: When he was through reading the waiver of rights, I asked him if he wanted to give a statement regarding the investigation, and [Poaipuni] stated that he would, and then he signed under the waiver of rights section, and also placed the date and time in this section.
>
> . . . .
>
> Q: Detective Holokai, was there just one case that you were questioning [Poaipuni] about?
>
> A: For my case, yes, it was a burglary case.
>
> Q: Okay. And did that involve firearms or what?

A: The firearms case involved a separate case with another detective.

Q: Okay. Would that be Detective Fletcher?

A: Yes, it would.

Q: So during that night, would it be fair to say you and Detective Fletcher were questioning [Poaipuni] regarding more than one case that you were investigating or that the police were investigating?

A: Yes.

. . . .

Q [DEFENSE COUNSEL]: . . . [I]n fact, there were three of you who were interested in interrogating [Poaipuni] and you were telling him basically that that was going to be the subject of this investigation, was not only your investigation, but also Detective Fletcher's and Detective Ching's; correct?

A: Yes, I informed [Poaipuni] of that. That's correct.

. . . .

Q: Now, when you said, are you willing to talk to me about this case that I'm going to talk to you about, did he already know what case you were talking about?

A: I'm not sure if he did know or not. . . .

. . . .

Q: After you said, are you willing to talk to me about this case that I want to talk to you about, and after [Poaipuni] answered, okay, then you told him, if you are, that is, if you are willing to talk to me about this case, just sign, date and time [sic] on the form?

A: Yes, that's the procedure to have the person sign if they are willing to sign.

Q: And then you told him, [Poaipuni], I'm going to talk to you about the case in Haiku that happened. That was your case; right?

A: That's my case, yes sir.

Q: This was a case where an ATM machine was taken from a grocery store in Haiku?

A: That's a burglary case, yes, sir.

Q: And then you said-well, in fact, you described it. A burglary at a Haiku General Store, but then you said later on Detective Ching has another case. Detective Ching has another case that he's working on at the Puunene Post Office. I think it's this morning on the 7th of July; right? You told him about that?

A: Told him Detective Ching wanted to talk to him about his case when I was through with my case.

Q: And then you said later on, also Detective Fletcher has a case that he's working on that occurred, I believe it was July 6th, but in this case, Detective Fletcher's case, there was an ATM machine pulled out from an establishment in Kihei, so he wanted to talk to you about that case. Okay. And [Defendant] said okay.

A: Yes.

Q: Then you said, so you are willing to talk to us about these cases tonight, and he said yeah.

A: I believe so. . . .

. . . .

Q: Were you present when the subject then of asking [Poaipuni] about the guns first came up during this interview?

A: With Detective Fletcher?

Q: Yeah.

A: Yeah, I probably was present, yes.

Q: Okay. Did the guns that are the subject of this case have any connection with the case that Detective Fletcher was investigating?

A: The guns-Detective Fletcher's case was the burglary case in Kihei.

Q: That involved taking of an ATM machine; right?

A: Yes.

Q: This was an ATM machine that was taken and fell out the back of the truck during the course of the culprits trying to get away?

A: Yes.

Q: No indication of any firearms being involved in that case; was there?

A: I don't believe so, no.

Q: In fact, was there any indication of a firearm being involved in the case that you were investigating, that is the Haiku Grocery Store burglary?

A: I did not get any indication from the complainant, no.

Q: To your knowledge the case that Mervin Ching [sic], likewise, did not involve firearms; did it?

A: I don't think so.

Q: Up until the point when Detective Fletcher asked [Poaipuni] about the guns that were found during a search of his house that night, had anybody advised him that he was going to be questioned about that subject?

A: I believe Detective Fletcher probably advised him of the weapons.

Q: When you say you believe he probably did, what does that mean? Does that mean that, yes, you're testifying under oath that he did, or you think he probably did?

A: Well, If I can follow the transcript I would know for certain, but this happened awhile back, so.

. . . .

Q: Could you look through that and tell me whether you see any indication of [Poaipuni] being advised of any investigation involving guns at his house prior to the time he was asked by Detective Fletcher about the guns?

A: There's a portion that Detective Fletcher had asked [Poaipuni] regarding the search at his residence in Pukalani, and Detective Fletcher mentioned something about locating some shotgun shells in one bedroom and that's what he talked to [Poaipuni] about.

Q: To your knowledge were those shotgun shells in any way connected with any of the three investigations that you were discussing with [Poaipuni] that night?

A: Regarding the burglary cases?

Q: Yeah.

A: No, it's not-it's not connected with those burglaries, no.

Q: Okay. And you said there was a place there where Detective Fletcher mentioned the shotgun shells found, and then he proceeds-it's just-that is the beginning of his interrogation when he asked [Poaipuni] about the firearms found in the tool shed?

A: Yeah, it looks like where Detective Fletcher started the interview with [Poaipuni] regarding the items that were found at the house.

> Q: Up until that time that Detective Fletcher started the interview, there was no previous mention of the firearm; correct?
> A: Correct.

Id. at 396-98, 49 P.3d at 362-64 (Acoba, J., concurring, joined by Levinson, J.) (emphases added and emphases omitted) (ellipses in original). As the facts and testimony made clear, while Poaipuni was in custody three detectives interviewed him at the same time about four different cases[,] none of the cases involved firearms, and at the time he was read the Miranda warnings and prior to questioning, [Poaipuni] was informed that he was going to be asked about the three other cases[.] Id.at 398-99, 49 P.3d 364-65. Poaipuni, however, was never warned pursuant to Miranda that he was to be interrogated about the recovery of firearms from his home. Id.at 399, 49 P.3d 365. Thus, that concurrence emphasized that it appears that [Poaipuni] could not have known that he was to be asked about the firearms charge at the time he waived his rights. Id. at 398, 49 P.3d at 364 (emphasis added). That concurrence concluded that

> a defendant cannot be said to having knowingly and intelligently waived his or her Miranda rights when he or she has been led to believe that the police will only ask questions about a specific incident or incidents but, in the course thereof, the defendant is interrogated about a completely different instance.

Id. at 399-400, 49 P.3d at 366-67 (emphasis added).

2.

Petitioner maintains that [t]he material facts in this

case are no different from Poaipuni. According to Petitioner,

> Kiyotoki limited the scope of his questioning to a single incident and apprised [Petitioner] of his Miranda rights. [Petitioner] waived those rights. During the course of his interrogation, however, Kiyotoki strayed from the scope of his HPD waiver form and questioned [Petitioner] about other robberies. Furthermore, Petitioner maintains that Kiyotoki s mere[] ask[ing] of whether [Petitioner] was aware that his constitutional rights were still in effect was patently insufficient.

Respondent argues that Petitioner simply ignores the ICA s thorough discussion that made clear Poaipuni was inapposite, and relies upon his inaccurate characterization of the circumstances of this case[.] Respondent maintains that

> [t]he inquiry is simply whether the warnings reasonably conve[y] to [a suspect] his rights as required by Miranda. (Internal quotation marks and citation omitted.)

Respondent states that

> the ICA had for its consideration . . . Petitioner s stipulation regarding his prior encounter with the criminal justice system[] and excerpts from Kiyotoki s interrogation quoted above.

IV.

A.

The Fifth Amendment of the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against himself[.] This privilege against self-

incrimination is applicable to the States through the Due Process Clause of the Fourteenth Amendment of the Constitution. Murphy v. Waterfront Comm n of New York Harbor, 378 U.S. 52, 77-78 (1964) ([T]he constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.).

The Supreme Court in Miranda, confirmed that the privilege against self-incrimination applies during a period of custodial interrogation. 384 U.S. at 460-61. Mirandaheld that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. Id. at 444. The procedural safeguards require that, [p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used against him, and that he has a right to the presence of an attorney, either retained or appointed. Id. However, a suspect s statement is not compelled within the meaning of the Fifth Amendment if the suspect waives these rights, provided the waiver is made voluntarily, knowingly[,] and intelligently. Id. But, [t]he mere fact that [a suspect] may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further

inquiries until he has consulted with an attorney and thereafter consents to be questioned. Id. at 445.

When a suspect is interrogated without the presence of an attorney, a heavy burden is placed on the State to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Id. at 475 (citing Escobedo v. State of Illinois, 378 U.S. 478, 490, n.14 (1964)) (emphases added). Further, any evidence that the accused was threatened, tricked, or cajoled into a waiver will . . . show that the defendant did not voluntarily waive his privilege. Id.at 476.

B.

Article I, section 10 of the Hawai i Constitution provides in relevant part that [n]o person shall . . . be compelled in any criminal case to be a witness against oneself. This court has chosen to interpret the self-incrimination provisions of the Hawai i Constitution in a manner independent of and broader than found in the federal court s Fifth Amendment jurisprudence.[8] See State v. Hoey, 77 Hawai i 17, 36, 881 P.2d

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[8] The Miranda majority recognized the possibility that a defendant s rights may be expanded by Congress or by the States:

> We have already pointed out that the Constitution does not require any specific code of procedures for protecting the privilege against self-incrimination during custodial interrogation. Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it. In any event, however, the issues presented are of constitutional dimensions and must be determined by the courts.

(continued...)

504, 523 (1994) (choosing to afford our citizens broader protection under article I, section 10 of the Hawai i Constitution than recognized by the [majority of the Supreme Court in Davis v. United States, 512 U.S. 452 (1994),] under the United States Constitution);Santiago, 53 Haw. at 266, 492 P.2d at 664 (holding that the protections given in Miranda have an independent source in the Hawaii Constitution); cf.State v. Grahovac, 52 Haw. 527, 533, 480 P.2d 148, 152 (1971) (We are nonetheless free to go beyond these requisites in protecting one's right of silence under the State Constitution. (Citing Miranda, 384 U.S. at 490.)).

In Santiago, this court was asked to decide whether custodial admissions made by the defendant, who had not been properly apprised of his rights under [Miranda], may be used to impeach the defendant when he takes the stand, even though the admissions could not be introduced as direct evidence in the prosecutor s case in chief. 53 Haw. at 255, 492 P.2d at 658. The Supreme Court had previously held that under the protections provided by the federal constitution, statements inadmissible under Miranda could nevertheless be used to impeach the testimony of a defendant who took the stand. Id.at 263, 492 P.2d at 662 (citing Harris v. New York, 401 U.S. 222 (1971)).

Santiago stated that this court is the final arbiter of the meaning of the provisions of the Hawai i Constitution and

[8](...continued)
384 U.S. at 490 (emphasis added).

[n]othing prevents our constitutional drafters from fashioning greater protections for criminal defendants than those given by the United States Constitution. Id. at 265, 492 P.2d at 664 (citing State v. Texeira, 50 Haw. 138, 142, 433 P.2d 593, 597 (1967)). Thus, Santiago held that the protections which the United States Supreme Court enumerated in Miranda have an independent source in the Hawai i Constitution s privilege against self incrimination. Id.at 266, 492 P.2d at 664.

Determining the scope of the protections guaranteed by the Hawai i Constitution, Santiago held that before reference is made at trial to statements made by the accused during custodial interrogation, the prosecution must demonstrate that certain safeguards were taken before the accused was questioned. Id.

> Unless other equally effective protections are developed, the prosecutor must show that each accused was warned that he had a right to remain silent, that anything said could be used against him, that he had a right to the presence of an attorney, and that if he could not afford an attorney one would be appointed for him.

Id. Furthermore, Santiago h[eld] that unless these protective measures are taken, statements made by the accused may not be used either as direct evidence in the prosecutor's case in chief or to impeach the defendant's credibility during rebuttal or cross-examination. Id. This court based its decision on its beliefs that (1) entirely excluding from [an accused s] trial any admissions or confessions where the accused was not informed of his rights encourage[s] the police to inform persons accused of crimes of their rights, and preserve[s] the integrity of the

judicial process and (2) if the rationale underlying Miranda is sufficient to warrant the exclusion of proper statements from the prosecutor s cases in chief, then that same rationale precludes use of those statements for impeachment. Id. Additionally, Santiago states,

> [o]ur system of government, however, maintains a countervailing value of protecting the accused's privilege to freely choose whether or not to incriminate himself. This value must be maintained, even though it necessitates that a certain number of criminals must go free in order to preserve the rights of all persons accused of crimes. To convict a person on the basis of statements procured in violation of his constitutional rights is intolerable. The prosecutor's argument that he had a right to impeach the defendant with statements made in the absence of Miranda warnings cannot, under the Hawaii Constitution, be sustained.

Id. at 267, 492 P.2d at 665 (emphases added).

In State v. Bowe, 77 Hawai i 51, 52, 881 P.2d 538, 539 (1994), this court was asked to decide whether the coercive conduct of a private person [was] sufficient to render a confession inadmissible. Boweindicated that the Supreme Court had previously held in Colorado v. Connelly, 479 U.S. 157 (1986), that coercive police activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. Bowe, 77 Hawai i at 55, 881 P.2d at 542 (quoting Connelly, 479 U.S. at 167).

However, Bowe reiterated the precept that, [w]hen the United States Supreme Court s interpretation of a provision present in both the United States and Hawai i Constitutions does not adequately preserve the rights and interest sought to be

protected, we will not hesitate to recognize the appropriate protections as a matter of state constitutional law. Id. at 57, 881 P.2d at 544 (quoting State v. Lessary, 75 Haw. 446, 453, 865 P.2d 150, 154 (1994)). This court determined that the right against self incrimination under the Hawai i Constitution was not limited to deterring government coercion but was broader and included the coercive conduct of a private person. Id. In support of this determination, Bowe noted that there is a preference for an accusatorial system of justice, rather than an inquisitorial one, to ensure the reliability of our criminal law enforcement system. Id.at 58, 881 P.2d at 545 (citing State v. Kelekolio, 74 Haw. 479, 502, 849 P.2d 58, 69 (1993)). Because this court can afford its residents more protection under the Hawai i Constitution, this recommendation decides Petitioner s question under the Hawai i Constitution.

V.

This court has held that [a]fter a defendant has been adequately apprised of his Miranda rights, he may waive effectuation of these rights provided the waiver is made voluntarily, knowingly, and intelligently. State v. Kaahanui, 69 Haw. 473, 478, 747 P.2d 1276, 1279 (1987) (quoting State v. Amorin, 61 Haw. 356, 358, 604 P.2d 45, 47 (1979)) (brackets omitted); see also Miranda, 384 U.S. at 444 (noting that [t]he defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, or intelligently); Hoey,

77 Hawai i at 33, 881 P.2d at 520 (stating that [a]ssuming . . . that the minimal safeguards are observed, the accused may waive the right to counsel, provided that such waiver is voluntarily and intelligently undertaken (quoting Nelson, 69 Haw. at 468 n.3, 748 P2d at 369 n.3)). The courts must presume that a defendant did not waive his rights and the prosecution s burden is great[.] Wallace, 105 Hawai i at 144, 94 P.3d at 1288; see also, Miranda, 384 U.S. at 475 (recognizing that the State has the heavy burden of demonstrating that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel).

To determine whether a defendant has validly waived his constitutional rights and has voluntarily given a statement to police, the court must look to the totality of the circumstances. State v. Luton, 83 Hawai i 443, 454, 927 P.2d 844, 855 (1996). Where a defendant refused to sign a waiver of rights form, said nothing when advised of his right to the assistance of a lawyer, and continued to answer questions, a valid waiver occurred. Wallace, 105 Hawai i at 144, 94 P.3d at 1288 (quoting North Carolina v. Butler, 441 U.S. 369, 371 (1979)); see also Nelson, 69 Haw. at 470, 748 P.2d at 370-71 (recognizing that a defendant s failure to sign space on HPD waiver form denoting whether the defendant wished to have an attorney present, constituted evidence of his intent to invoke right to counsel).

VI.

A.

Petitioner is correct in maintaining that the facts in Spring differ from the instant case. In Spring, it was unclear as to whether the ATF agents informed Spring about the topic of interrogation.

> According to the Colorado Supreme Court, [i]t is unclear whether Spring was told by the agents that they wanted to question him specifically about the firearms violations for which he was arrested or whether the agents simply began questioning Spring without making any statement concerning the subject matter of the interrogation. What is clear is that the agents did not tell Spring that they were going to ask him questions about the killing of Walker before Spring made his original decision to waive his Miranda rights.

479 U.S. at 576 n.7. (internal quotation marks and citation omitted) (emphases added). Thus, in that case the government had not established that the ATF agents informed Spring that they were going to question him about either of the crimes for which they questioned him, the firearms charge or the murder. Thus, the Court rejected Spring s assertion that the officer s failure to inform him that he would be questioned about the murder constituted trickery. The Court stated that it expressly declined to hold that mere silence by law enforcement officials as to the subject matter of an interrogation is trickery sufficient to invalidate a suspect s waiver of Mirandarights[.] Id. at 576.

On the other hand, in the instant case, law enforcement officials were not mere[ly] silen[t] as to the subject matter of Petitioner s interrogation. Officer Kiyotoki explicitly

stated to Petitioner that [he was] going to ask [Petitioner] questions about a robbery which occurred on 2-26-06 at 1900 Dillingham[,] but then later questioned Petitioner about three entirely different cases, without any further Miranda warnings. Having made an affirmative statement that [he was] going to ask [Petitioner] questions about a robbery which occurred on 2-26-06 at 1900 Dillingham[,] Officer Kiyotoki inaccurately represented the scope of the interrogation.

Given this key difference between Spring and the instant case and given the fact that the majority in Spring clearly recognized that it d[id] not reach the question of whether a waiver of Miranda rights would be valid in a circumstance where there is an affirmative misrepresentation by law enforcement officials as to the scope of the interrogation[,] the holding in Springis distinguishable from this case. Id. Furthermore, as explained supra, this court, as the final arbiter of the meaning of the provisions of the Hawai i Constitution[,] may and has fashion[ed] greater protections for criminal defendants than those given the United States Constitution[] with respect to the privilege of self-incrimination. Santiago, 53 Haw. at 265, 492 P.2d at 664; see also, Nelson, 69 Haw. at 468, 748 P.2d at 369 (recognizing that the Hawai i rule is broader in scope than the federal rule). Thus, the holding of Spring is not dispositive under the Hawai i Constitution.

B.

1.

Ramones recognized that [o]nceMiranda warnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate. 69 Haw. at 406, 744 P.2d at 518 (internal quotation marks and citation omitted). However, in deciding that there had been an effective waiver, this court reasoned that [t]he two offenses carry the same penalty and are closely related[,] thus the Miranda warnings as to one offense provided sufficient notice as to potential criminal liability for the other offense. Id.at 405, 744 P.2d at 518. The facts in Ramones manifestly differ from the facts here. The police officers in Ramones did not interview Ramones about several different events but, rather, interviewed him about the same single act relating to an auto theft. The case makes clear that (1) Ramones was explained his Miranda warnings, (2) at the time Ramones waived his Miranda rights, the officers did not know what specific crime Ramones would be charged with and therefore listed the general offense of auto theft, (3) Ramones knew at the time he signed the HPD waiver that he was going to be questioned about a specific event involving an auto theft, and (4) it was only after questioning Ramones that the officers became aware that Ramones should be charged with UCPV, which carried the same penalty and [was]

closely related[,] and involved the same incident previously described as auto theft. Id.

2.

As noted supra, in contrast, Officer Kiyotoki knew at the time Petitioner signed HPD Form-81 that he would be interrogating Petitioner about four separate and distinct criminal investigations in which Petitioner was a suspect. However, Officer Kiyotoki limited the subject matter of the interview, telling Petitioner that [he was] going to ask [Petitioner] questions about a robbery which occurred on 2-26-06 at 1900 Dillingham and listing only that single event on HPD Form-81 that Petitioner signed. Officer Kiyotoki admitted at the hearing on the Motion to Suppress that he knew about all four incidents and intended to question Petitioner about them.

Furthermore, Officer Kiyotaki admitted that he did not tell Petitioner of his intention to speak to him about all these crimes until [Officer Kiyotoki] got [Petitioner] to agree to his constitutional rights. Officer Kiyotoki explained that he only prepared one HPD Form-81 even though he knew that he wanted to obtain a possible statement from Petitioner about the other crimes because he [did not] want to psychologically put the guy on the edge where [he was] not going to cooperate with [him] so that was the reason why [Officer Kiyotoki] only mentioned that one robbery.

Officer Kiyotoki also testified that [s]ometimes, psychologically, when you put it down on paper, they become afraid, they clam up, they -they close on you. As the record and transcripts make clear, unlike Ramones, in the instant case additional or different charges were part of the intended interrogation. Petitioner was questioned about separate offenses different from the February 26, 2006 robbery about which Petitioner was warned. Thus, unlike Ramones, the Miranda warnings as to the robbery occurring on February 26, 2006 did not

> provide[] sufficient notice as to potential criminal liability for the other offense[s] for which Petitioner was interrogated.

See 69 Haw. at 405, 744 P.2d at 518.

C.

Respectfully, the ICA incorrectly reasoned that the concurring opinion in Poaipuni was distinguishable from the circumstances in this case because [Petitioner] was clearly advised that he was going to be questioned about the other three incidents before he was questioned about any of the incidents. Strong, 121 Hawai i at 526, 221 P.3d at 504 (emphasis in original). The ICA stated that

> [a]s made clear by Justice Acoba s discussion ofSpring, Ramones, and Nelson, it was the officer s failure to advise Poaipuni that the scope of the interrogation would include questioning on a firearms violation, as well as the three burglary and theft offenses--prior to questioning Poaipuni about the firearms--that constituted the constitutional infirmity.

Id. at 525-26, 221 P.3d at 503-04 (citing Poaipuni, 98 Hawai i at 399-401, 49 P.3d at 365-67) (emphasis added). However, a review

of Justice Acoba s concurrence in Poaipuni indicates that the ICA s reading was wrong.

First, in reciting the facts of the case, the concurrence in Poaipuni focused on whether Poaipuni had known about the firearms charge at the time he waived his Miranda rights and not at the time of questioning. That concurrence states, it appears that [Poaipuni] could not have known that he was to be asked about the firearms charge at the time he waived his rights. 98 Hawai i at 398, 49 P.3d at 364 (Acoba, J., concurring, joined by Levinson, J.) (emphasis added). Further, the concurrence states:

> It is plain from the foregoing that, while Defendant was in custody: (1) three detectives interviewed him at the same time about four different cases--the two burglaries, Detective Ching's case, and the instant case; (2) none of the three other cases involved firearms; (3) at the time he was read the *Miranda* warnings and prior to questioning, Defendant was informed that he was going to be asked about the three other cases; and (4) Defendant was never warned pursuant to *Miranda* that he was to be interrogated about the recovery of firearms from his home.

Id. at 398-99, 49 P.3d at 364-65 (emphases added).

Second, in differentiating the facts of Poaipuni from Spring, the concurrence emphasized that in Spring, the ATF agents did not limit the scope of interrogation by informing Spring of either crime at the time of the *Miranda* warning, not at the time of questioning. The concurrence stated:

> [I]n Spring, it was not established whether the ATF agents informed the defendant of either crime about which they would question him.
>
> However, in the instant case, Detective Holokai informed [Poaipuni] that he and the other detectives were going to interview [Poaipuni] about three other cases, but then, during the interrogation, Detective Fletcher questioned him about an entirely different matter--the

> firearms violation--without further Miranda warnings. By only advising him that they intended to ask questions about the other cases at the time of the *Miranda* warning, the police did not accurately inform [Poaipuni] of the ultimate scope of their interrogation.

Id. at 399, 49 P.3d at 365 (emphasis added). Thus the concurrence maintained that Poaipuni differed because while the HPD officers apprised Poaipuni about the other cases at the time of the Miranda warning, Poaipuni was not informed about the firearms violation, and thus was not accurately informed of the scope of the interrogation. Id.

Third, in distinguishing Ramones from the facts in Poaipuni, the concurrence s analysis centered on what the police were required to apprise criminal suspects of at the time of the Miranda warnings. The concurrence stated, As opposed to Spring, the question decided was whetherMiranda warnings also require the police to apprise criminal suspects of the specific offense which they might be charged with. Id.at 400, 49 P.3d at 366 (quoting Ramones, 69 Haw. at 404, 744 P.2d at 517) (emphasis omitted). The concurrence stated that, [m]anifestly, the Miranda warnings provided sufficient notice inRamones, because the interrogation related to only one incident[,] but in Poaipuni, on the other hand, [Poaipuni] was specifically warned as to the burglary incidents and the [theft case], but not as to the firearms charge. Id. (emphasis added). Thus, it was because Poaipuni was not informed of the firearms charge at the time that Poaipuni was warned of his Miranda rights that distinguished that case from Ramones.

Fourth, in analogizing Nelson to Poaipuni, the concurrence s analysis concentrated on whether Nelson was interrogated about an offense different from the offenses about which he was initially warned. Id. In Nelson, Nelson was suspected of making harassing phone calls to ministers. 69 Haw. at 461, 748 P.2d at 366. On December 25, 1985, after the police read Nelson his rights, Nelson indicated on the HPD Form-81 that he did not want the assistance of an attorney. Two days later, on December 27, 1985, the police returned to Nelson s home to question him about another harassing call made from his home the day before. Nelson was again read his rights and given HPD Form-81 to sign but Nelson did not fill in the space after the question, Do you want an attorney? Id. at 469, 748 P.2d at 370. The police, however, continued to ask Nelson questions and Nelson made incriminating statements to the police. The circuit court determined that, on December 27, 1985, the defendant had in fact invoked his right to counsel and did not waive it.

On appeal, the State argued that the December 27, 1985 statement should not have been suppressed because the questioning was a continuation of the earlier investigation for which there was an unequivocal waiver and therefore the police did not have to re-Mirandize Nelson at any time after December 25, 1985. Id. at 471, 748 P.2d at 371. Distinguishing and clarifying Ramones in light of the facts in Nelson, this court disagreed:

> To be sure, we recently said [o]nce Miranda warnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate. But we were speaking of a situation totally unlike the one at bar.
>
> The HPD-81 presented to [Ramones] for signature before he was questioned without counsel on October 18, 1984 stated he was under investigation for Auto Theft. On the basis of information gathered in the investigation Ramones was formally charged with a different offense, [UCPV]. The trial court suppressed the statement despite the waiver of counsel in the HPD-81. The court reasoned there had been no effective waiver because the defendant was not informed about the true charges against him. We vacated the order of suppression. The two offenses carry the same penalty and are closely related[,] we said, and the Miranda warnings as to one offense provided sufficient notice as to potential criminal liability for the other offense.
>
> Unlike [Ramones], [Nelson] was subjected to questioning more than once. He was initially questioned by Officer Mariboho on Christmas Day about harassing calls received by two ministers. Armed with information about threatening calls received by other persons uncovered by the telephone company in the interim, Mariboho returned two days later with another officer, and they subjected the defendant to further interrogation. This was hardly the same interrogation conducted on Christmas Day. The officers had new information regarding different offenses, and it was incumbent upon them to Mirandize the defendant again

Id. at 471-74, 748 P.2d at 371-72 (internal quotation marks and citations omitted) (emphases added).

The concurrence in Poaipuni emphasized that Nelson needed to be re-Mirandized because [t]he officers had new information regarding different offenses, and it was incumbent upon them to Mirandize the defendant again. Poaipuni, 98 Hawai i at 400, 49 P.3d at 366. Further, the concurrence stated:

> As in Nelson, [Poaipuni] in the instant case was interrogated about an offense different from the offenses about which he was initially warned. These different crimes did not materialize as or become more appropriate charges as a result of the warning and interrogation. [Nelson, 69 Haw. at 471-72, 148 P.2d at 371-72]. Here, the police did not interview [Poaipuni] at two separate times. Nevertheless, in my view, they were required to render *Miranda* warnings to Defendant again, and inform him of the new topic of investigation, once they themselves introduced different offenses from those about which they had originally informed Defendant in obtaining his *Miranda* waiver.

Id. at 401, 49 P.3d at 367 (Acoba, J., concurring, joined by Levinson, J.) (emphasis omitted and emphases added) (brackets omitted). Thus, Nelson supported the concurrence s conclusion that the police are required to render new Miranda warnings and inform defendants of any new topic of investigation if they introduce different offenses from those they originally informed the defendant about at the time the police obtained the defendant s Mirandawaiver.

For the above stated reasons and contrary to the ICA s assertion, the concurring opinion did not determine that it was the officer s failure to advise Poaipuni [of] the scope of the interrogation . . . prior to questioning . . . that constituted the constitutional infirmity. Strong, 121 Hawai i at 525-26, 22 P.3d 503-04 (emphasis added). Instead, the concurrence s analysis in Poaipuni indicates that it was the officer s failure to advise Poaipuni of the full scope of the investigation at the time Poaipuni waived his rights that constituted the infirmity. Poaipuni, 98 Hawai i at 398, 49 P.3d at 364. Thus, the ICA s distinction is incorrect.

However, the ICA was correct in stating that Poaipuni is advisory on the issue before [this court]. Strong, 121 Hawai i at 523, 221 P.3d at 501. As discussed supra, the majority opinion in Poaipuni did not address the issue of whether Poaipuni s statement was knowingly, voluntarily, and intelligently made.

VII.

Of course, this court is the final arbiter of the meaning of the provisions of the Hawai i Constitution. Santiago, 53 Haw. at 265, 492 P.2d at 664; see also, State v. Arceo, 84 Hawai i 1, 28, 928 P.2d 843, 870 (1996) (recognizing that as the ultimate judicial tribunal with final, unreviewable authority to interpret and enforce the Hawai i Constitution, we are free to give broader protection under the Hawai i Constitution than that given by the federal constitution (quotingState v. Wallace, 80 Hawai i 382, 398 n.14, 91 P.2d 695, 711 n.14 (1996))). Further, this court has previously concluded that, when the United States Supreme Court s interpretation of a provision present in both the United States and Hawai i Constitutions does not adequately preserve the rights and interests sought to be protected, we will not hesitate to recognize the appropriate protections as a matter of state constitutional law. Bowe, 77 Hawai i at 57, 881 P.2d at 544 (internal quotation marks, citation, and brackets omitted) (determining that [b]ecause the Supreme Court s decision in Connelly limit[ed] the interests protected by federal constitutional confession law, we find a compelling reasons for rejecting Connelly as a model for interpreting our own state constitution). Moreover, this court provided greater protection with respect to the privilege against self incrimination under the Hawai i Constitution than that provided by the federal Constitution. See, e.g., Hoey, 77 Hawai i at 36, 881 P.2d at 523

(choosing to afford our citizens broader protection under article I, section 10 of the Hawai i Constitution than that recognized by the [Supreme Court in Davis] under the United States Constitution); Santiago, 53 Haw. at 265-66, 492 P.2d at 665 (recognizing that while the Supreme Court has determined that using statements inadmissible under Miranda are admissible to impeach under the federal Constitution, this cannot be sustained under the Hawai i Constitution).

As discussed supra, the majority in Spring held that a suspect s awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege. 479 U.S. at 577. However, Justice Marshall, in a dissent joined by Justice Brennan, stated that, [a]dditional questioning about entirely separate and more serious suspicions of criminal activity can take unfair advantage of the suspect's psychological state, as the unexpected questions cause the compulsive pressures suddenly to reappear. Id. at 581.

VIII.

A.

As stated supra, in this case, Kiyotoki testified that [i]t s through my experience when you put a whole bunch of cases down in the HPD 81 sometime there s a little psychological edge to the defendant that he s - he s being bombarded by all these

cases so I - I - I don t like to use that sometimes. He admitted that the reason for not including all the offenses on the HPD Form-81 and for not mentioning the other offenses until after Petitioner waived his constitutional rights was to reduce putting Petitioner on the edge so that Petitioner would agree to be questioned. Kiyotoki testified, [W]hen I do my initial interviews I don t want to psychologically put that guy on the edge where he s not going to cooperate with me so that was the reason why I only mentioned that one robbery. This type of psychological ploy cannot be justified in light of Miranda s strict requirements that the suspect s waiver be voluntary, knowing, and intelligent[.] Spring, 479 U.S. at 580-81 (Marshall, J., dissenting, joined by Brennan, J.).

In a similar vein, this court has indicated that it will not presume acquiescence in the loss of fundamental rights. See Tachibana v. State, 79 Hawai i 226, 234, 900 P.2d 1293, 1301 (1995) (citing Johnson v. Zerbst, 305 U.S. 458, 464 (1938)); State v. Dicks, 57 Haw. 46, 48, 549 P.2d 727, 729 (1976)). This court has stated that it must indulge every reasonable presumption against waiver of fundamental constitutional rights. See Vares, 71 Haw. 617, 801 P.2d 555, abrogated on other grounds by Nichols, 511 U.S. at 742 n.7; Lantis, 38 Haw. at 180; Hebert, 110 Hawai i 284, 132 P.3d 852 (citing Johnson, 305 U.S. at 464). The State also bears a heavy burden of demonstrating that an accused s right against self-

incrimination was voluntarily, intelligently, knowingly waived. Kaahanui, 69 Haw. at 478, 747 P.2d at 1279 (stating that Miranda imposes a heavy burden . . . on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel" and recognizing that [this court] follow[s] the same high standards in enforcing the Miranda rights that have an independent source in the Hawaii Constitution's privilege against self-incrimination) (internal quotation marks and citation omitted).

B.

As discussed supra, this court s prior holdings in Ramones, Nelson, and the concurrence in Poaipuni are instructive. The ICA cites Ramones as adopting the Spring position that

[o]nce Mirandawarnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate. Strong, 121 Hawai i at 522, 221 P.3d at 500 (quoting Ramones, 69 Haw. at 406, 744 P.2d at 518). However, unlike in Spring and the instant case, Ramones was not questioned about several crimes, but only with respect to the same single criminal act. Thus, this court s conclusion inRamones that Mirandawarnings as to one offense provided sufficient notice as to potential criminal liability for the other offense[,] 69 Haw. at 405, 744 P.3d at 518, is limited to those situations in which a defendant is interviewed about the same incident identified at

the beginning of the interrogation and the offense carr[ies] the same penalty and [is] closely related[,] id, to the ultimate charge. Hence, the ICA erred in relying on Ramones.

The foregoing reading of Ramones was confirmed in the subsequent decision in Nelson. Nelson acknowledged that Ramones had said, Once Miranda warnings are given, they need not be given again in the same interrogation even if other offenses materialize or become more appropriate. 69 Haw. at 471, 748 P.2d at 371 (quoting Ramones, 69 Haw. at 406, 744 P.2d at 518). However, according to Nelson, Ramones did not apply where the officers had new information regarding different offenses[.] Id. at 472, 748 P.2d at 372. In that situation, it was incumbent upon them to Mirandize the defendant again. Id. While the ICA acknowledged this difference between Ramones and Nelson, the ICA simply stated that Nelson nevertheless repeated the holding in Ramones that once a defendant is given his Miranda rights, he need not be given his rights again in the same interrogation and reinforced the requirement that a defendant must be advised of his Miranda rights before each separate interrogation. Strong, 121 Hawai i at 523 n.3, 221 P.3d at 501 n.3. The ICA stated this despite the fact that in Nelson the State maintained that the original warnings extended to the second questioning of Nelson. While Petitioner in this case was not interviewed on two separate occasions as in Nelson, Nelson supports the conclusion that the police were required to render

Miranda warnings if they decide to interrogate a suspect on different offenses from those offenses about which the defendant had been originally warned. Nelson, 69 Haw. at 472, 740 P.2d at 372. Thus the ICA erred in determining that Nelson simply reiterated the holding in Ramones in light of this court s express statement that Miranda warnings are to be given when different offenses from that originally identified are inquired into.

Finally, as noted before, the ICA erred in interpreting the concurrence in Poaipuni as meaning that the officers were required to advise Poaipuni that the scope of the interrogation would include questioning on a firearms violation, . . . - prior to questioning Poaipuni about the firearms - that constituted the constitutional infirmity. Strong, 121 Hawai i at 525-26, 221 P.3d at 503-04 (citing Poaipuni, 98 Hawai i at 399-401, 49 P.3d at 365-67). Contrasting the instant case, the ICA stated Petitioner was clearly advised that he was going to be questioned about the other three incidents before he was questioned about any of the incidents. Id.at 526, 221 P.3d at 504 (emphasis in original). However, as indicated before, that concurrence rested on the requirement that a defendant be advised at the time of the warning and before waiver of his Miranda warnings, not prior to the interrogation itself. Poaipuni, 98 Hawai i at 398-99, 49 P.3d at 364-65 (recognizing that [Poipuni] could not have known that he was to be asked about the firearms charge at the time he

waived his rights and that [Poaipuni] was never warned pursuant to Miranda that he was to be interrogated about the recovery of the firearms).

For the above reasons, the holding in Spring does not adequately protect a defendant s privilege against self incrimination under article I, section 10 of the Hawai i constitution. Rather, among the relevant factors for consideration before [waiver of] his [right against self incrimination is whether] the suspect is aware, either through the circumstances surrounding his arrest or through a specific advisement from the arresting or interrogating officers, of the crime or crimes he was suspected of committing and about which they intended to ask questions. Spring, 479 U.S. at 579 (Marshall, J., dissenting, joined by Brennan, J.).

To reiterate, in this case, Kiyotoki sought to interrogate Petitioner about four felonies but made a calculated decision to provide Petitioner with specific oral and written notification of his constitutional rights for only one case. Kiyotoki testified that he knew Petitioner was a suspect in all four cases and intended to question Petitioner about all four cases prior to interrogating Petitioner. Initially, Kiyotoki affirmatively limited the scope of the interrogation, when he told Petitioner that [he was] going to ask [Petitioner] questions about a robbery which occurred on 2-26-06 at 1900 Dillingham, this is the 7-Eleven. Petitioner agreed that he

understood his rights and signed HPD Form-81, which expressly stated the questions would be about [a] Robbery which occurred on 02-26-06 at 1900 Dillingham[.] Kiyotoki also testified that he did not inform Petitioner that he wanted to speak to Petitioner about three other crimes until [Kiyotoki] got [Petitioner] to agree to his constitutional rights as to the February 26th robbery.

These facts indicate that at the time Petitioner was given and waived his Miranda rights, Petitioner was told that he would be questioned regarding only the February 26, 2006 robbery and was unaware that Kiyotoki intended to question him about three other separate incidents. Cf. Nelson, 69 Haw. at 470, 748 P.2d at 371 (The officers had new information regarding different offenses, and it was incumbent upon them to Mirandize the defendant again.). Kiyotoki chose not to give the same explanation of rights to Petitioner prior to, or for, these other offenses. Petitioner was not presented with HPD Form-81 or forms for the other three felony cases and Kiyotoki did not amend the existing HPD Form-81 that Petitioner had signed. Furthermore, unlike his apprisal of Petitioner s rights to the February 26 robbery, Kiyotoki did not inform Petitioner of any specifics, such as locations or dates, regarding those crimes when he indicated that he wanted to talk to Petitioner about these three other incidents. Instead he stated, Okay, [Petitioner], also in conjunction with this investigation, I have three other cases,

two which are robberies, and another one which is a theft, yeah. I ll talk to you about that, okay. Further, Kiyotoki s subsequent constitutional reminders that Petitioner s constitutional rights [were] still in effect did not establish that Petitioner waived his constitutional rights as to those incidents. In response to Petitioner s question, What you mean? Kiyotoki failed to reiterate what rights Petitioner had waived. The government must overcome a heavy burden to establish that Defendant has engaged in a meaningful choice to waive each of his constitutional rights with respect to those three other incidents. See Bowe, 77 Hawai i at 59, 881 P.2d at 546 (recognizing that the right to make ameaningful choice between confessing and remaining silent is implicit in a fundamentally fair trial Kaahanui, 69 Haw. at 478, 747 P.2d at 1279 (recognizing that [this court] follow[s] the same high standards inMiranda which imposes a heavy burden . . . on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination).

Based on the totality of the circumstances, and applying the presumptions required, Respondent did not meet its heavy burden of demonstrating that the statements made by Petitioner concerning the March 4, March 10, and March 16, 2006 crimes were the result of a knowing, intelligent, and voluntary waiver of Petitioner s constitutional right against self-

incrimination. Accordingly, the ICA s November 25, 2009 opinion should be reversed, and the court s April 7, 2005 order affirmed.