CONCURRING AND DISSENTING OPINION BY NAKAMURA, C.J.

I agree with the majority that the Circuit Court did not err in refusing Defendant-Appellant Ryan-Seth Kiaha's requests for instructions on a mistake-of-fact defense under Hawaii Revised Statutes (HRS) § 702-218 (2014) and on a defense based on exemptions under HRS § 134-11 (2011). In addition, I do not believe that Kiaha presented evidence of "[k]nowingly made false representations" by a law enforcement officer that would support an entrapment instruction based on HRS § 702-237(1)(a) (2014). That leaves the Circuit Court's refusal, over Kiaha's objection, to instruct the jury on the affirmative defense of entrapment under HRS § 702-237(1)(b).[1/]

In my view, given the jury's rejection of Kiaha's execution-of-public-duty defense, any error in failing to give an entrapment instruction based on HRS § 702-237(1)(b) was harmless error. I therefore respectfully dissent from the majority's decision to vacate Kiaha's convictions.

I.

In this case, Kiaha, a convicted felon, claimed that he possessed the firearm and ammunition found in his car pursuant to his work as a confidential informant for the police. Kiaha's theory of defense was that he believed the police officers for whom he worked as a confidential informant had authorized him to obtain and temporarily possess evidence of criminal activity (such as firearms and ammunition) for the purpose of turning such evidence over to the officers, and thereby assist the officers in performing their official duties. The Circuit Court gave the

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[1/] HRS § 702-237(1)(b) provides:

> (1) In any prosecution, it is an affirmative defense that the defendant engaged in the prohibited conduct or caused the prohibited result because the defendant was induced or encouraged to do so by a law enforcement officer, or by a person acting in cooperation with a law enforcement officer, who, for the purpose of obtaining evidence of the commission of an offense, . . . :
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> . . .
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> (b) Employed methods of persuasion or inducement which created a substantial risk that the offense would be committed by persons other than those who are ready to commit it.

jury an instruction that captured this theory of defense -- an instruction on the execution-of-public-duty defense -- which provided that "[c]onduct is justifiable when the person reasonably believes his conduct to be required or authorized to assist a public officer in the performance of the officer's duties." In rejecting this defense, the jury must have found that Kiaha did not reasonably believe he was authorized to possess the gun and ammunition found in his car to assist the police officers he was working with to perform their official duties.

II.

Given the jury's rejection of Kiaha's execution-of-public-duty defense, I believe that any error in failing to give an instruction on entrapment based on HRS § 702-237(1)(b) was harmless. In enacting the Model Penal Code's formulation of the entrapment defense, Hawaiʻi adopted the "objective view" of entrapment. State v. Anderson, 58 Haw. 479, 483, 572 P.2d 159, 162 (1977). In discussing the objective view of entrapment adopted under HRS § 702-237, the Hawaiʻi Supreme Court stated:

> The language of the section allows for a strictly objective inquiry into the entrapment issue. The main concern is whether the conduct of the police or other law enforcement officials was so extreme that it created a substantial risk that persons not ready to commit the offense alleged would be persuaded or induced to commit it. The focus is on the police conduct and its probable effect on a "reasonable person." No attention is directed toward the state of mind of the particular defendant in determining the entrapment issue. The language of [HRS §] 702-237 fully comports with the objective view of entrapment.

Id. at 484, 572 P.2d at 162.

Under the objective view of entrapment, a law enforcement officer's conduct would only "create[] a substantial risk that the offense would be committed by persons other than those who are ready to commit it[,]" within the meaning of HRS § 702-237(1)(b), if the officer's conduct "had the probable effect on a 'reasonable person' of inducing [the person]" to commit an offense the person was not ready to commit. See State v. Tookes, 67 Haw. 608, 614, 699 P.2d 983, 987 (1985); Anderson, 58 Haw. 484, 572 P.2d at 162.

Here, the jury found that Kiaha did not reasonably believe he was authorized by police officers for whom he worked as a confidential informant to possess the gun and ammunition found in his car. Given this finding, there is no reasonable possibility that the jury would have found that the officers' conduct created a substantial risk of inducing a reasonable person to commit the charged crimes the person was not ready to commit. Accordingly, the Circuit Court's failure to give an instruction on entrapment based on HRS § 702-237(1)(b) was harmless beyond a reasonable doubt.

III.

Based on the foregoing, I would affirm Kiaha's convictions.