CONCURRING OPINION BY GINOZA, J.

I agree with the analysis and holding of the majority that the alleged violation of Rule 9(b)(2) of the Hawaiʻi Rules of Penal Procedure was harmless error in this case.

With regard to Appellant Thrasher's challenge to the sufficiency of the charge, I concur in the result. I write separately because in section I(B) of the Summary Disposition Order, the majority relies on State v. Nesmith, No. CAAP-10-0000072 (Hawaiʻi App. June 22, 2011). In holding that a charge for violating Hawaii Revised Statutes (HRS) § 291E-61(a)(1) was sufficient without alleging mens rea, Nesmith relied on HRS § 806-28 (1993).[1] HRS § 806-28 applies to Circuit Courts and in my view is not applicable to District Court proceedings, such as in this case. It is not necessary to rely on HRS § 806-28 to conclude that mens rea need not be included in the charge herein.

HRS § 291E-61(a)(1) does not contain a state of mind provision and, under Hawaiʻi case law that does not rely on HRS § 806-28, the charge for violating HRS § 291E-61(a)(1) is sufficient without alleging mens rea. See State v. Wheeler, 121 Hawaiʻi 383, 219 P.3d 1170 (2009); State v. Mita, 124 Hawaiʻi 385, 392, 245 P.3d 458, 465 (2010)("In general, where the statute sets forth with reasonable clarity all essential elements of the crime intended to be punished, and fully defines the offense in

[1] For the charge under HRS § 291E-61(a)(3), I agree with Nesmith that a violation of that provision is an absolute liability offense and therefore no mens rea allegation is required in the charge for that reason.

unmistakable terms readily comprehensible to persons of common understanding, a charge drawn in the language of the statute is sufficient")(quoting Wheeler, 121 Hawai'i at 393, 219 P.3d at 1180)(internal quotation marks and brackets omitted); State v. Yonaha, 68 Haw. 586, 723 P.2d 185 (1986); State v. Faulkner, 61 Haw. 177, 599 P.2d 285 (1979); State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977).[2] See also Territory v. Tacuban, 40 Haw. 208, 212 (1953)(holding a charge was sufficient and stating that an allegation of participating in gambling inferentially alleges scienter).

Because in my view HRS § 806-28 does not apply to this District Court case, I would not reach the question of whether the statute is constitutional.

[2] In Yonaha, Faulkner and Jendrusch, the Hawai'i Supreme Court held that charges were insufficient for failing to allege intent because intent was included in the applicable criminal statutes and the charges therefore did not track the language of the statute. Unlike those cases, HRS § 291E-61(a)(1) does not include a state of mind. Further, although Yonaha, Faulkner and Jendrusch reference intent as an "element," these cases preceded State v. Klinge, 92 Hawai'i 577, 584 n.3, 994 P.2d 509, 516 n.3 (2000), which clarified that state of mind is not an element of an offense.