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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII,  
Respondent/Plaintiff-Appellee,

vs.

DAVIS YEN HOY CHANG,  
Petitioner/Defendant-Appellant.

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SCWC-17-0000674

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-17-0000674; CASE NO. 1DTA-16-04150)

JUNE 28, 2019

McKENNA, POLLACK, AND WILSON, JJ., WITH RECKTENWALD, C.J.,  
DISSENTING, WITH WHOM NAKAYAMA, J., JOINS

OPINION OF THE COURT BY POLLACK, J.

The outcome of a criminal case may turn on the ruling on a pretrial motion to suppress. Such a decision may determine, for example, whether there was reasonable suspicion for an investigatory stop, probable cause to effect a search or seizure, or proper warnings given before eliciting an inculpatory statement. Key evidence may be suppressed as a

result of these evaluations, effectively making the ruling determinative of whether the defendant is convicted of the charged offense at trial. Because of the importance of rulings on suppression motions in the prosecution of a case, they are often the subject of appeals. The State, however, is statutorily authorized to appeal only a pretrial order granting a suppression motion.

Needless to say, a court cannot issue a pretrial order on a motion to suppress if it waits until trial to hold a hearing on the motion. The Hawai'i Rules of Penal Procedure (HRPP) thus require that a trial court rule on motions to suppress before the trial begins in order to ensure that the State does not lose its right to appeal suppression rulings. Despite this clear imperative, our existing precedent permits a trial court to hold a hearing for a motion to suppress simultaneously with a trial as long as the defendant and the State agree to the arrangement.

While we do not overturn our precedents lightly, the consolidation procedure is contrary to the express language of the HRPP and infringes on the State's right to appeal an adverse ruling on a suppression motion. Additionally, our precedents upholding consolidation have been rendered procedurally problematic by subsequent developments in our caselaw, and the process now creates significant administrative complications.

We thus hold, prospectively, that trial courts may not consolidate a motion to suppress hearing with a trial.

### I. BACKGROUND

Defendant Davis Yen Hoy Chang was charged in the District Court of the First Circuit (district court) on November 28, 2016, with operating a vehicle under the influence of an intoxicant (OVUII) pursuant to Hawai'i Revised Statutes (HRS) § 291E-61(a)(1).<sup>1</sup> Before trial, Chang filed a motion to suppress seeking to exclude "all evidence obtained after the traffic stop" including "the Standardized Field Sobriety Test," and "any statements made while in custody" because his detention was unlawful under article I, sections 7 and 10 of the Hawai'i Constitution.<sup>2</sup>

On the trial date, and with the agreement of the State and Chang, the district court allowed Chang's motion to suppress

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<sup>1</sup> HRS § 291E-61(a)(1) (2007) provides the following:

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty[.]

<sup>2</sup> Although Chang's motion was entitled "Defendant's Motion to Suppress for Violating Article I, Section 7 and 10 of the Hawaii Constitution," the body of the motion made arguments only with respect to article I, section 7, which protects "[t]he right of the people to be secure . . . against unreasonable searches, seizures, and invasions of privacy."

to be heard simultaneously with his bench trial. After the State rested its case-in-chief, Chang's counsel indicated that Chang intended to testify "[o]nly for the purpose of" the motion to suppress. The court responded, "This is going to get a little confusing since we're doing the motion combined with the trial. . . . [T]he problem is [that] if he's going to testify it's also . . . part of the trial as well." The court explained that "whatever [Chang] gets up on the stand to [say], I'm going to actually have to decide on it for the trial. . . . [T]he court's going to listen to all of that and use all of that in determining for the trial his guilt or innocence." The court stated that it wanted to respect Chang's right not to testify, but it ruled that "if he testifie[d] for purposes of the motion," he would be "kind of stuck at that point" because they were "consolidating the motion and the trial" and the court could not "unhear what [it] heard."

After a recess, the court reconvened and stated, "So just so that we're clear, if [Chang] wants to testify for the motion to suppress, he has that right, okay, but I'd have to like bifurcate, instead of consolidating it still, it has to be separate, okay." The court added that "any testimony that [Chang] made for purposes of the motion . . . the court [would] then decide . . . whether or not . . . what he testified to earlier in the motion would be consolidated or not or if he

wanted to add to it or things like that." The court then spoke to Chang and the following interaction occurred:

THE COURT: So, Mr. Chang, like I said, I know it was a little confusing, and I might have been confusing to you, so I want to make sure that it's absolutely clear to you. Although we agreed to consolidate everything and have the motion and the trial together, you have a right to testify at the motion as well as a right to testify at trial. Okay.

THE DEFENDANT: Okay.

THE COURT: That whole right to remain silent, that goes for the trial portion of it. I don't necessarily have to do that portion of it for the--for the motion, okay. But if you wanted to testify for the motion, it's your right. We can figure out how to work the logistics of it in our own way. And if you testify at the motion, it doesn't necessarily mean that what you testify in the motion I'm automatically going to use for the trial.

THE DEFENDANT: Okay.

THE COURT: If you didn't want to, you know, whatever you said in the motion, if you didn't want it for the trial, I would just have to take it out of my mind and put it on the side. Okay?

THE DEFENDANT: Okay.

Chang decided not to testify.

The court then considered the parties' arguments on Chang's motion to suppress. The court granted the motion to suppress with regard to Chang's oral statements to the arresting officer and denied the motion as to the officer's observations of Chang's physical actions during the field sobriety test. Chang then rested without presenting any evidence, and the court found Chang guilty of the charge.

## II. STANDARD OF REVIEW

Interpretation of rules promulgated by this court “involves principles of statutory construction” and therefore “is a question of law reviewable de novo.” State v. Bohannon, 102 Hawai‘i 228, 240, 74 P.3d 980, 992 (2003). Similarly, “[w]e interpret statutes de novo.” State v. Brantley, 99 Hawai‘i 463, 464, 56 P.3d 1252, 1253 (2002) (citing State v. Cornelio, 84 Hawai‘i 476, 483, 935 P.2d 1021, 1028 (1997)).

## III. DISCUSSION

The district court in this case consolidated a hearing on Chang’s motion to suppress with his trial, deciding both matters in the same proceeding. We first consider whether this practice comports with the Hawai‘i Revised Statutes and the rules of penal procedure promulgated by this court before turning to the administrative implications of combining a hearing on a suppression motion with the ultimate determination of the case.<sup>3</sup>

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<sup>3</sup> Although Chang has not challenged the consolidation of the hearing on his suppression motion with his trial, we have held that “where this court resolves a properly preserved issue by answering a threshold or dispositive question of law, even though the argument is not advanced by the parties, the plain error doctrine simply has no application.” Cox v. Cox, 138 Hawai‘i 476, 488, 382 P.3d 288, 300 (2016) (citing Waldecker v. O’Scanlon, 137 Hawai‘i 460, 375 P.3d 239, 245-46 (2016), and Akamine & Sons, Ltd. v. Hawaii National Bank, 54 Haw. 107, 114-15, 503 P.2d 424, 429 (1972)). To determine whether the district court’s advisements to Chang about the mechanics and implications of consolidation were proper, we must necessarily consider whether the consolidation was itself proper, and the issue is thus squarely before this court.

**A. HRPP Rule 12(e) and the Hawai'i Revised Statutes Do Not Permit Consolidation of a Motion to Suppress Hearing with a Trial**

**1. Consolidation Violates the Plain Text and Purpose of HRPP Rule 12(e)**

Rule 12 of the HRPP dictates when pretrial motions must be filed in criminal cases and, significantly, when trial courts must rule on these motions. Relevant to this case, HRPP Rule 12(e) provides that "[a] motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict; provided that a motion to suppress made before trial shall be determined before trial."<sup>4</sup> We interpret statutes "foremost in light of the plain meaning accorded their operative terms." Kinkaid v. Bd. of Review of City and Cty. of Honolulu, 106 Hawai'i 318, 323, 104 P.3d 905, 910 (2004). And "[a]bsent an absurd or unjust result . . . this court is bound to give effect to the plain meaning of unambiguous statutory language." State v. Mainaupo, 117 Hawai'i 235, 247, 178 P.3d 1, 13 (2008) (quoting Thompson v. Kyo-Ya Co., 112 Hawai'i 472, 475,

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<sup>4</sup> HRPP Rule 12(e) provides, in full, the following:

A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict; provided that a motion to suppress made before trial shall be determined before trial. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

146 P.3d 1049, 1052 (2006)). The plain text of this rule is clear: trial courts must rule on a motion to suppress before trial. It is self-evident that, if a motion to suppress is consolidated with a trial, the court cannot rule on such a motion "before trial."

Additionally, as we stated in Association of Condominium Homeowners of Tropics at Waikele v. Sakuma, it is a fundamental tenet of statutory interpretation that "[c]ourts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." 131 Hawai'i 254, 256, 318 P.3d 94, 96 (2013) (quoting Keliipuleole v. Wilson, 85 Hawai'i 217, 221, 941 P.2d 300, 304 (1997)). This principle of construction applies equally to rules of procedure. Indeed, Sakuma itself applied this canon to the interpretation of Rule 4 of the Hawai'i Rules of Appellate Procedure. Id. at 255-56, 318 P.3d at 95-96.

Consolidating a suppression hearing with a trial ignores the text of HRPP Rule 12(e) by rendering "superfluous, void, or insignificant" the mandate that "a motion to suppress made before trial shall be determined before trial." An alternative "construction can be legitimately found which will



give force to and preserve all words of the [rule]." Id. at 256, 318 P.3d at 96. Namely, a court can simply not allow consolidation of a suppression hearing and trial. Thus, the plain reading of the text of HRPP Rule 12(e) provides that a motion to suppress made before trial must be heard and determined before the commencement of trial.

Further, when interpreting rules and statutes, we cannot ignore the drafters intent; "we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose." United Pub. Workers, AFMSCME, Local 464, AFL-CIO v. Hanneman, 106 Hawaii 359, 363, 105 P.3d 236, 240 (2005) (quoting Guth v. Freeland, 96 Hawai'i 147, 149-50, 28 P.3d 982, 984-85 (2001)). The 1975 commentary to the HRPP makes clear that HRPP Rule 12(e)'s mandate that courts decide suppression motions before trial has a specific purpose in the course of criminal proceedings: to preserve the State's right to appeal if the court grants the defendant's suppression motion. The commentary provides the following explanation of HRPP Rule 12:

Section (e) provides that the court shall rule on a pretrial motion before trial unless the court orders that it be decided upon at the trial of the general issue or until after verdict. It is the same as Proposed Federal Rule 12(e), but with the additional proviso that pretrial motions to suppress must be decided before trial in order to give the prosecution an opportunity to appeal an adverse ruling prior to trial.

Comm. For Penal Rules Revision of the Judicial Council of Haw., Proposed Hawai'i Rules of Penal Procedure at 80 (June 1975) (emphasis added). Thus, HRPP Rule 12(e), which has remained unchanged since its adoption, requires that pretrial motions to suppress must be decided before trial "in order to give the prosecution an opportunity to appeal an adverse ruling prior to trial." Id.

This protection is necessary because, in a criminal case, the State can "only appeal in those limited instances established by HRS § 641-13." State v. Oshiro, 69 Haw. 438, 441, 746 P.2d 568, 570 (1987); accord State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) ("The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision. . . . The Prosecution's right of appeal in criminal cases is limited to those instances set forth in HRS § 641-13[.]" (quoting State v. Wells, 78 Hawai'i 373, 376, 894 P.2d 70, 73 (1995) (internal quotation marks omitted))).

One of the "limited instances" in which the State may appeal is, "in all criminal matters, . . . [f]rom a pretrial order granting a motion for the suppression of evidence, including a confession or admission, . . . in which case the appellate court shall give priority to the appeal and the order

shall be stayed pending the outcome of the appeal." HRS § 641-13(7) (2016) (emphasis added). This provision plays a crucial role in preserving the State's right to appeal the suppression of evidence in a criminal trial because, under the Hawai'i Constitution, defendants in criminal cases may not be "subject [to] the same offense" by being "twice put in jeopardy."<sup>5</sup> Haw. Const. art. I, § 10. The federal constitution also provides this protection.<sup>6</sup> See U.S. Const. amend. V.

Without the interlocutory right to appeal provided to the State by HRS § 641-13(7), the State would be required to proceed to trial without the evidence suppressed by an adverse pretrial ruling. And, if the defendant was acquitted or found guilty of a lesser charge without the suppressed evidence, the

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<sup>5</sup> The double jeopardy clause "forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." State v. Quitog, 85 Hawai'i 128, 140, 938 P.2d 559, 571 (1997) (quoting Burks v. United States, 437 U.S. 1, 11 (1978)). Accordingly, "the Double Jeopardy Clause bars appeal[s] from an acquittal." United States v. Martin Linen Supply Co., 430 U.S. 564, 575 (1977); accord Smith v. Massachusetts, 543 U.S. 462, 467 (2005) ("[W]e have long held that the Double Jeopardy Clause of the Fifth Amendment prohibits reexamination of a court-decreed acquittal to the same extent it prohibits reexamination of an acquittal by jury verdict."); see also HRS § 701-110(1) ("When a prosecution is for an offense under the same statutory provision and is based on the same facts as a former prosecution, it is barred by the former prosecution [when] . . . [t]he former prosecution resulted in an acquittal which has not subsequently been set aside.").

<sup>6</sup> The United States Supreme Court has recognized one exception to the federal double jeopardy rule: "When a jury returns a verdict of guilty and a trial judge (or an appellate court) sets aside that verdict and enters a judgment of acquittal, the Double Jeopardy Clause does not preclude a prosecution appeal to reinstate the jury verdict of guilty." Smith, 543 U.S. at 467; see also HRS § 641-13(9).

State would be precluded from challenging the suppression ruling and retrying the defendant by the double jeopardy clause. State v. Kalaola, 124 Hawai'i 43, 52, 237 P.3d 1109, 1118 (2010) ("[D]ouble jeopardy presents an absolute bar to retrial where, inter alia, the defendant 'has been acquitted[.]'" (quoting State v. Feliciano, 62 Haw. 637, 644, 618 P.2d 306, 311 (1980))).

In enacting the language of HRS § 641-13(7),<sup>7</sup> the House of Representatives explained the following:

The purpose of this bill is to amend H.R.S. Section 641-12 to enlarge the right of the State to appeal in criminal proceedings, particularly with respect to pre-trial orders.

The Hawaii law of search and seizure and of confessions is uncertain and lacks uniformity of construction by the trial courts. The issue of admissibility of such evidence is of vital significance to prosecution, defense, and the fair administration of justice. Your Committee concurs with the intent of this bill that a pre-trial order granting a motion for the suppression of evidence should be subject to a conclusive appellate ruling.

Your Committee amended such provision to provide in that case the Supreme Court shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal. . . .

H. Stand Comm. Rep. No. 515-72, in 1972 House Journal, at 876 (emphases added); see also State v. Naititi, 104 Hawai'i 224, 235, 87 P.3d 893, 904 (2004) (holding that "the intent of" HRS § 641-13(7) is "to facilitate the administration of justice in

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<sup>7</sup> The current language of section 641-13(7) was adopted in 1972. See Haw. Sess. Laws Act 148, § 1 at 497.

criminal cases by allowing the prosecution to obtain a conclusive ruling on" suppression issues through a direct appeal). Consistent with this purpose, HRPP Rule 12(e) may not be interpreted to infringe upon the State's right to appeal a trial court's pretrial order granting a defendant's motion to suppress.

That the statute only allows appeals from a suppression motion granted before trial was addressed by this court in State v. Wells, 78 Hawai'i 373, 894 P.2d 70 (1995). In Wells, after the trial began, the trial court dismissed four counts of a twenty-nine-count indictment for the State's failure to include essential elements in these charged offenses. Id. at 375-76, 894 P.2d at 72-73. One of the issues on appeal was whether subsections (1) and (2) of HRS § 641-13 (Supp. 1992), which respectively authorized the State to appeal from the dismissal of "any indictment or complaint or any count thereof" and the dismissal of "the entire case where the defendant has not been put in jeopardy," were mutually exclusive; that is, whether "subsection (1) applie[d] only to pretrial orders and subsection (2) applie[d] only to after-commencement-of-trial orders." Id. at 376-78, 894 P.2d at 73-75 (emphases omitted).

The Wells court concluded that subsection (1) was "not necessarily limited to pretrial situations" because "if the legislature intended such a result, it could have made this

clear in the language of the statute." Id. at 378-79, 894 P.2d at 75-76. In support of its reasoning, the court cited to subsection (7) of HRS § 641-13 and emphasized that the language "pretrial order" in this subsection is an example of a situation where the legislature expressly provided for an appeal of an order made before trial. Id. Thus, Wells squarely indicates that the language "pretrial order" in HRS § 641-13(7) means orders issued before trial.

This construction of the statute is further supported by the practical implications of the State's appeal of an order suppressing evidence. Under HRS § 641-13(7), if the State appeals the order suppressing evidence, "the order shall be stayed pending the outcome of the appeal." If the trial court were to rule on the motion during trial, then the State would likely lose its statutory right to an automatic stay. As a practical matter, a court would be unable to grant a stay during a jury trial, and it is highly questionable whether it could do so during a bench trial as the court would have to suspend the trial indefinitely in the middle of the presentation of evidence.

In other jurisdictions with rules of criminal procedure similar to Hawai'i, courts require motions to suppress to be determined before trial. In State v. Litten, for instance, the defendant filed two motions to suppress evidence

"[o]ver a month prior to trial," and the trial court "filed an entry stating that the motions to suppress would be heard during trial." 884 N.E.2d 654, 658 (Ohio Ct. App. 2008). The trial court denied both motions "[a]t the conclusion of the presentation of evidence" and convicted the defendant. Id. at 655, 658. On appeal, the Litten court explained that Rule 12(C)(3) of the Ohio Rules of Criminal Procedure (Crim.R.) "provides that a motion to suppress evidence must be filed prior to trial" and under Crim.R. 12(F) "such [] motion[s] 'shall be determined before trial.'" Id. at 658. The court explained that "the plain language of Crim.R. 12[F] does not vest the trial court with any discretion as to when such motions are to be determined." Id. (quoting State v. Weirich, No. WMS-84-8, 1984 WL 14382, at \*1 (Ohio Ct. App. Oct. 5, 1984)). Therefore, the Litten court concluded that "[t]he method employed by the trial court" constituted error, and it accordingly reversed the trial court. Id. at 659; see also State v. Tolbert, 591 N.E.2d 325, 336 (Ohio Ct. App. 1990) ("The failure to rule upon a pretrial motion prior to trial constitutes error.").

Other jurisdictions have also recognized the practical issue of the State losing its right to appeal. Tennessee, for example, has interpreted its equivalent rule so that "motions to suppress evidence must be . . . determined before trial" because "when jeopardy has attached, . . . the [S]tate has no means to

appeal an adverse ruling." State v. Bruins, 1987 WL 7315, at \*1 (Tenn. Crim. App. Mar. 4, 1987). Courts in Pennsylvania<sup>8</sup> have also interpreted their criminal procedure rules as requiring a trial court to rule on motions to suppress before trial even though its counterpart rule is less explicit than our own regarding the required timing of the court's ruling. See In re L.J., 79 A.3d 1073, 1084 (Pa. 2013) ("[T]he suppression court's decision is 'final, conclusive, and binding at trial[.]' . . . This language strongly suggests that the record of the suppression hearing is intended to be the complete record for suppression issues, and those issues are to be finally determined before trial, not during trial or after trial."). And California too has interpreted its equivalent rule strictly. See Moreno v. Superior Court, 146 Cal.Rptr. 35, 36 (App. 1978) ("The statute makes it clear that a criminal defendant has a right to a hearing before trial to determine the validity of a search and seizure; it is not a matter of judicial discretion." ).<sup>9</sup>

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<sup>8</sup> Rule 581(J) of the Pennsylvania Rules of Criminal Procedure provides that "If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its suppressibility." (Emphasis added.)

<sup>9</sup> At the time Moreno was decided, California Penal Code § 1538.5(i) provided the following in relevant part:

(continued . . .)



Similar to Ohio's rule, HRPP Rule 12(e) "does not vest the trial court with any discretion as to when [motions to suppress] are to be determined." Litten, 884 N.E.2d at 658. There are no exceptions in the HRPP Rule 12(e)'s mandate regarding motions to suppress as there are for other "motion[s] made before trial." See HRPP Rule 12(e) ("A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict; provided that a motion to suppress made before trial shall be determined before trial." (emphasis added)) Rather, HRPP Rule 12(e) commands trial courts to determine motions to suppress before trial.<sup>10</sup>

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If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people unless the people are willing to waive a portion of this time. The defendant shall have the right to litigate the validity of a search or seizure de novo on the basis of the evidence presented at a special hearing.

(Emphasis added.)

<sup>10</sup> The dissent contends that the State and defendant should be permitted to waive the requirement of HRPP Rule 12(e) by stipulation. Dissent at 3. But we have long held "that the parties' stipulation as to a question of law is not binding on the court." Hawaiian Ass'n of Seventh-Day Adventists v. Wong, 130 Hawai'i 36, 46, 305 P.3d 452, 462 (2013). The parties are not permitted to stipulate to a procedure that is fundamentally

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## **2. Our Precedents Regarding Consolidation Have Been Wrongly Decided**

Notwithstanding the clear language of HRPP Rule 12(e) and HRS § 641-13(7), our existing precedent indicates that it is permissible to consolidate a suppression motion hearing with a trial. In State v. Texeira, the trial court consolidated the defendants' motion to suppress with the trial pursuant to the parties' stipulation to such a procedure. 62 Haw. 44, 45, 609 P.2d 131, 133 (1980). At the conclusion of the consolidated hearing and trial, the trial court granted the defendant's motion to suppress and the defendant's motion for judgment of acquittal. Id. at 45-46, 609 P.2d at 133. Before this court, the defendants argued that the State could not appeal because of the acquittal, but this argument was rejected. Id. at 46, 609 P.2d at 133.

In a per curiam opinion, the Texeira court determined that "[t]he stipulation for the joint hearing on the motion to suppress and the trial on the merits did not constitute a waiver by the State of its statutory right to appeal from the adverse ruling of the trial court on the motion to suppress." Id. The court held that "[t]he trial court may not in this manner

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incompatible with the text and purpose of our court rules governing the subject.

deprive the State of its statutory right, under HRS § 641-13(7), to appeal from the order of suppression.” Id. Therefore, the State was allowed to appeal the order granting the motion to suppress. Id.

The Texeira court did not reference HRPP Rule 12(e). Nor did it analyze the text of HRS § 641-13(7). Rather, the court merely stated that the State could not be deprived of its right to appeal by granting a motion to suppress and then acquitting the defendant. Id. To preserve the State’s right to appeal, the Texeira court disregarded the effect of the trial court’s acquittal of the defendants and that section 641-13(7) limits the State’s appeal to a “pretrial order.”<sup>11</sup> Accordingly, Texeira rests on an incomplete analysis and directly contradicts the plain language of HRS § 641-13(7).

In State v. Doyle, also a per curiam opinion, the defendant was convicted at a bench trial of promoting a detrimental drug in the third degree, and the defendant appealed, arguing that “the trial court erred in directing that the defendant’s motion to suppress and the trial on the merits be heard contemporaneously.” 64 Haw. 229, 230, 638 P.2d 332, 333-34 (1981). The court in Doyle noted that “federal courts

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<sup>11</sup> This result is contrary to United States Supreme Court precedent holding that “the Double Jeopardy Clause bars appeal[s] from an acquittal.” United States v. Martin Linen Supply Co., 430 U.S. 564, 575 (1977).

have taken the position that pursuant to Rule 12(e) of the Federal Rules of Criminal Procedure, . . . the trial court has the discretionary authority to defer hearing and determination of a motion to suppress made before trial until the trial itself." Id. at 230-31, 638 P.2d at 334 (citing United States v. Thompson, 558 F.2d 522 (9th Cir. 1977)).

The Doyle court acknowledged that HRPP Rule 12(e) contains a clause that is not in the federal rule that provides that "a motion to suppress made before trial shall be determined before trial."<sup>12</sup> Id. The court also recognized that this clause was included in HRPP Rule 12(e) "to provide the prosecution with the opportunity, prior to trial (and pursuant to HRS § 641-13(7)), to appeal a ruling on the defendant's motion to suppress which is adverse to the State."<sup>13</sup> Id. But despite these textual differences between the Hawai'i and federal rule, Doyle relied on

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<sup>12</sup> At the time, Federal Rules of Criminal Procedure 12(e) provided, "A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected." Doyle, 64 Haw. at 231, 638 P.2d at 334.

<sup>13</sup> This court subsequently stated that absent stipulation by the parties to consolidate the suppression hearing and the trial, "[i]t is obvious" that "lump[ing] together the hearing on the motion to suppress and the trial" violates HRPP Rule 12(e). State v. Rodgers, 70 Haw. 156, 157, 766 P.3d 675, 675 (1988). In State v. Thomas, the holding in Doyle was reaffirmed, and the court stated that "[t]he only occasion where a court need not decide a motion to suppress prior to trial is where the parties agree to consolidate the hearing on the motion with trial pursuant to our holding in State v. Doyle." 72 Haw. 48, 53, 805 P.2d 1212, 1214 (1991). Thomas, like Doyle, did not explain why a court could violate the plain text of HRPP Rule 12(e) by agreement of the parties.

the Ninth Circuit's interpretation of the federal rule in United States v. Thompson to uphold the procedure. 64 Haw. at 230-31, 638 P.2d at 334 (citing 558 F.2d 522).

In Thompson, the defendants contended on appeal that "postponing the hearing on their motions to suppress until after the jury had begun deliberations" was error. 558 F.2d at 523-24. Based on Federal Rule of Criminal Procedure (Fed. R. Crim. P.) 12(e),<sup>14</sup> the Thompson court stated that "while it is preferable that [suppression] motions be decided before trial . . . that procedure is not mandatory." Id. at 525 (citing Fed. R. Crim. P. 12(e) (providing that a court could defer a hearing on a motion to suppress made before trial as long as no "party's right to appeal is adversely affected")). The discretionary language included in the federal rule is, however, precisely the opposite of the plain text of Hawai'i's rule, which requires that "a motion to suppress made before trial [] be determined before trial."<sup>15</sup> HRPP Rule 12(e).

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<sup>14</sup> The rule at issue was contained in Fed. R. Crim. P. 12(e) at the time that Thompson was decided, but the provision is now codified as Fed. R. Crim. P. 12(d). See Fed. R. Crim. P. 12(d).

<sup>15</sup> Additionally, the Ninth Circuit noted that under Fed. R. Crim. P. 12(e) a trial court may not defer a suppression hearing if a "party's right to appeal is adversely affected." Thompson, 558 F.2d at 525. But the court found that this provision did not apply because "[o]bviously, [the defendants'] rights to appeal were not 'adversely affected' by the trial court's decision to postpone the hearing." Id. This reasoning is plainly shortsighted, however, because while it is true a defendant's right to appeal an adverse suppression rule is not affected by a stipulated proceeding, it

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Because the federal rule analyzed in Thompson is contrary to the text of HRPP Rule 12(e), it did not provide a sound foundation for the court's ruling in Doyle.<sup>16</sup>

Like Texeira, Doyle did not analyze the text or purpose of HRPP Rule 12(e) or HRS § 641-13(7). Rather, the court simply cited to the holding in Texeira without addressing how the consolidated procedure was consistent with the penal rule. 64 Haw. at 230-31, 638 P.2d at 333-34. Thus, both decisions summarily concluded that trial courts could hear a motion to suppress contemporaneously with a trial if both the State and the defendant agree to the procedure--a position contrary to the plain text and purpose of HRPP Rule 12(e).

"[A] court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require

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may affect the State's appellate right. And determining whether a party's right to appeal has been affected by a suppression ruling is necessarily an ex post evaluation. While appellate courts have the benefit of hindsight, trial courts do not. Thus, when a trial court consolidates a motion to suppress with a trial, it does not know whether its pending ruling will affect a party's right to appeal. The only way to ensure that no party's right to appeal is affected is to preclude consolidation of a motion to suppress hearing with a trial.

<sup>16</sup> We note that neither Thompson's reasoning nor its conclusion has been ubiquitously adopted by federal courts. The First Circuit, for example, has held that motions to suppress "must be made by a defendant prior to trial" and federal trial courts "may not defer a ruling on a defendant's motion to suppress" because "such rulings and the government's ability to appeal them are at the core of [Fed. R. Evid. P.] 12(e)." United States v. Barletta, 644 F.2d 50, 54-55 (1st Cir. 1981).

it." Dairy Rd. Partners v. Island Ins. Co., 92 Hawai'i 398, 421, 992 P.2d 93, 116 (2000) (quoting State v. Stocker, 90 Hawai'i 85, 95, 976 P.2d 399, 409 (1999)). Nevertheless, "there is no necessity or sound legal reason to perpetuate an error under the doctrine of stare decisis." State v. Garcia, 96 Hawai'i 200, 206, 29 P.3d 919, 925 (2001) (quoting Robinson v. Ariyoshi, 65 Haw. 641, 653 n.10, 658 P.2d 287, 297 n.10 (1982)). The doctrine is "subordinate to legal reasons and justice and we should not be unduly hesitant to overrule a former decision when to do so would bring about what is considered manifest justice." Ariyoshi, 65 Haw. at 653 n.10, 658 P.2d at 297 n. 10 (quoting McBryde Sugar Co. v. Robinson, 54 Haw. 174, 180, 504 P.2d 1330, 1335 (1973)).

It is clear that Texeira disregarded HRPP Rule 12(e) in reaching a conclusion that is fundamentally inconsistent with the rule's language and intent, and that Doyle and its progeny have served to perpetuate this error.<sup>17</sup> Further, many new

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<sup>17</sup> The dissent's contention that the matter should be presented to the penal rules committee in order that they might consider amending HRPP Rule 12 is thus unfounded. Dissent at 5. The rules committee and the interested parties it represents have spoken on the issue in the plain language of HRPP Rule 12(e). There is no sound reason to continue disregarding the text of the rule while the rules committee considers whether to amend its clear language, and it is this court's responsibility to enforce the rule as it was written and intended. See also Brutsch v. Brutsch, 139 Hawai'i 373, 385, 390 P.3d 1260, 1272 (2017) ("[W]e note that pending cases are governed by existing rules, even if rule amendments applicable to future cases can be made.").

developments in procedural justice have been introduced since Doyle was decided, and they have collectively made consolidation extremely problematic in terms of trial management.

**B. Consolidation Results in Substantial Procedural Complications**

Even if the consolidation of a suppression hearing with a trial was not contrary to the text and purpose of our HRPP Rule 12(e) and HRS § 641-13(7), the procedure would result in significant administrative complications. In keeping with a host of post-Doyle precedents setting forth the circumstances in which a court must advise a defendant of fundamental rights, the court would need to inform the defendant in any consolidated proceeding of the separate right to testify at the suppression hearing and the right to testify at trial, and that the suppression hearing testimony may not be used to prove the defendant's guilt. See, e.g., Tachibana v. State, 79 Hawai'i 226, 236, 900 P.2d 1293, 1303 (1995) (requiring the court to engage a defendant in a colloquy regarding the right to testify); State v. Lewis, 94 Hawai'i 292, 297, 12 P.3d 1233, 1238 (2000) (requiring a pretrial advisement regarding the right to testify and the right not to testify); State v. Monteil, 134 Hawai'i 361, 373, 341 P.3d 567, 579 (2014) (requiring that the Lewis advisement include that the decision not to testify cannot be used against the defendant); State v. Torres, 144 Hawai'i 282,



294, 439 P.3d 234, 246 (2019) (extending Tachibana to also encompass the right not to testify).

As the facts of this case demonstrate, this presents a plethora of difficulties related to explaining these rights to the defendant and ensuring that they are honored, as a court would have to apply the defendant's testimony for one purpose and disregard it for another--all within the same proceeding. Here, the consolidation procedure led to the district court's failure to properly inform Chang of his separate and distinct rights to testify, rendering Chang's subsequent waiver of these rights invalid. Similar problems would likely arise in future cases if courts continued to consolidate trials and suppression hearings.

The procedure of consolidation negatively impacts the rights of defendants in other ways as well. For example, the defendant's right to have a suppression motion heard and decided before trial enables that defendant to better calculate whether it is in the defendant's best interest to proceed to trial or to plead guilty or no contest, with or without a plea agreement. That is, consolidation disadvantages defendants by limiting their knowledge of the evidence against them before the start of trial. If a suppression hearing is held before trial, a defendant is able to generally assess portions of the State's case through the testimony of its witnesses and other evidence

adduced, as well as by knowing the admissibility of the evidence that the defendant seeks to suppress. This may be a substantial factor in the defendant's pleading decision. But a defendant loses this opportunity if the court consolidates a suppression hearing with a trial. If a court does not rule on a suppression motion prior to trial, the defendant is forced to decide whether to plead guilty or no contest on the basis of incomplete information.

The consolidated proceeding also forecloses the defendant's ability to obtain deferred acceptance of a guilty or no contest plea. When entering a deferred plea, a defendant "voluntarily pleads guilty or nolo contender, prior to the commencement of trial." HRS § 853-1(a)(1). The trial court may then "defer further proceedings" without "entering a judgment of guilt" and impose certain "conditions" that the defendant must follow. HRS § 853-1(a), (b). Upon the defendant complying with the "conditions," "the court shall discharge the defendant and dismiss the charge." HRS § 853-1(c). This dismissal is "without adjudication of guilt, [it] eliminate[s] any civil admission of guilt, and [it] is not a conviction." HRS § 853-1(d). However, because the guilty or no contest plea must be entered "prior to commencement of trial," a consolidated proceeding prevents the defendant from knowing the disposition of the suppression motion when a decision regarding whether to

pursue a deferred plea must be made. Thus, the trial court would need to inform the defendant that the right to seek a deferred plea would be lost if a consolidated trial and suppression hearing commences.

Additionally, consolidation effectively eliminates a defendant's ability to enter a conditional plea under HRPP Rule 11(a)(2). Under HRPP Rule 11(a)(2), with the approval of the court and the consent of the State, "a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specific pretrial motion. If the defendant "prevails on appeal," the defendant is "allowed to withdraw the plea," and the case is resumed in conformance with the appellate ruling. Id. Thus, a conditional plea provides the defendant the ability to plead guilty or no contest, take advantage of any plea agreement or other inducement that pleading offers, and then challenge a pretrial motion on appeal. See HRPP Rule 11(a)(2). If consolidation occurs, however, a defendant essentially forfeits the opportunity to enter a conditional plea as the resolution of the motion would occur within the trial proceeding.<sup>18</sup> Accordingly, a defendant would

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<sup>18</sup> Although a defendant could theoretically enter a conditional plea in the middle of trial--assuming the State and the court agreed--such a procedure defeats the primary purpose of a conditional plea, which is to

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also need to be informed that commencing the trial prior to resolution of the suppression motion would result in the defendant relinquishing the right to potentially enter a conditional guilty or no contest plea that would preserve the defendant's ability to appeal the court's eventual ruling on the suppression motion.

It is also noted that under our current precedent, the State can, apparently, appeal an order granting a "pretrial" motion after a trial begins. Texeira, 62 Haw. at 46, 609 P.2d at 133. To comply with the prohibition against double jeopardy, the State would need to obtain a stay prior to the court reaching a verdict, requiring a trial court to stop proceedings in the middle of trial pending the resolution of the appeal. See United States v. Martin Linen Supply Co., 430 U.S. 564, 575 (1977). Prior to obtaining a defendant's consent to consolidation, a court would need to inform the defendant that the trial could be stayed midtrial and that the trial would not resume until the appeal was resolved, which would likely entail a delay of a year or longer.<sup>19</sup>

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avoid "pressing forward with an unnecessary trial." 1A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, § 174 (4th ed. 2019 supp.).

<sup>19</sup> Not only is this pragmatically problematic, but a protracted delay in the presentation or consideration of evidence could raise questions regarding the defendant's due process rights.

The facts of this case also demonstrate the complications of consolidation for the State and the threat of the elimination of its right to appeal when a suppression motion is not decided before trial. Here, the district court granted Chang's motion to suppress statements after the presentation of the State's evidence. Under the plain language of HRS § 641-13(7), the State lost its right to appeal when it agreed to consolidation because the suppression of evidence (1) was merely an oral ruling and not an appealable "order" and (2) was not a "pretrial order." As explained, Texeira suggests that the State can appeal regardless of the timing of the order notwithstanding the plain text of the statute. But the State's ability to obtain a stay to appeal the ruling is unclear because HRS § 641-13(7) grants an automatic stay only for the appeal of "a pretrial order granting a motion for the suppression of evidence." (Emphasis added.) Thus, the State's right to appeal an adverse suppression ruling that is rendered during a consolidation procedure is at best questionable.<sup>20</sup>

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<sup>20</sup> The dissent argues that the State should be permitted to prospectively waive its right to appeal if it so chooses. Dissent at 3. However, "it is well established that matters affecting the public interest cannot be made the subject of stipulation so as to control the court's action with respect thereto" and "[c]riminal cases are per se matters affecting public interest." State v. Tangalin, 66 Haw. 100, 101, 657 P.2d 1025, 1026 (1983) (holding invalid a stipulation as to a witness's credibility). A prosecutor should not be allowed to wager the outcome of a criminal case prior to knowing a ruling on a suppression motion in the hope that a trial court will correctly decide the motion--particularly when the payoff is at

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As these examples demonstrate, even if the consolidation procedure were not contrary to the language and purpose of HRPP Rule 12(e) and HRS § 641-13(7), numerous protections would need to be implemented to protect the rights of defendants and the State. These added procedural measures would make the criminal process less efficient and may be insufficient to correct the negative impact of the consolidation process on the fair administration of justice.<sup>21</sup> Indeed, the case before us indicates, at minimum, the likelihood of appeals challenging a court's advisements regarding the effects of the consolidation procedure on fundamental rights of the defendant. Thus, the efficiency of the criminal process and protection of

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most a marginal increase in trial efficiency. "Our courts are not gambling halls but forums for the discovery of truth." State v. Flores, 131 Hawai'i 43, 56, 314 P.3d 120, 133 (2013) (quoting State v. Haanio, 94 Hawai'i 405, 415, 16 P.3d 246, 256 (2001)). Further, the dissent's position would render the prosecution powerless to seek redress for a court's mistake of law or erroneous factual finding that forms the basis of an adverse ruling on a consolidated suppression motion, potentially resulting in a wrongful acquittal or other flawed verdict. Thus, in addition to being incompatible with the language and purpose of HRPP Rule 12(e) and HRS § 641-13(7), a stipulation by the State to forego the right to appeal a trial court's ruling on a suppression motion before the nature of that ruling is known is contrary to sound public policy. See Naititi, 104 Hawai'i at 235, 87 P.3d at 904 ("[W]e hold that HRS § 641-13(7) authorizes the prosecution to appeal orders suppressing evidence as illegally obtained, the intent of the statute being to facilitate the administration of justice in criminal cases by allowing the prosecution to obtain a conclusive ruling on issues involving searches, seizures, and confessions via direct appeal." (emphasis added)).

<sup>21</sup> The parties of course remain free to stipulate to the incorporation of testimony and evidence introduced at the suppression hearing into the subsequent trial should they wish to do so.

the parties' rights also supports our conclusion that a trial court must rule on motions to suppress prior to the start of trial.

#### IV. CONCLUSION

The Florida Supreme Court has succinctly summarized the significant benefits of holding a suppression hearing before the start of trial:

If the motion is heard some time prior to trial and ruled upon, the State and defense have more time to decide upon their tactics, such as a decision by the defense as to whether to plead guilty, waive jury, or go to jury trial, and a decision by the State, if the ruling on the motion is adverse to the State, whether to appeal the ruling of the court.

Bailey v. State, 319 So.2d 22, 29 (Fla. 1975). To avoid the procedural complications caused by consolidation and to honor the plain language and purpose of HRPP Rule 12(e) and HRS § 641-13(7), we now hold that trial courts may not consolidate a motion to suppress hearing with a trial. We further conclude that our prior precedents that held to the contrary were incorrectly decided, and they are therefore overruled.<sup>22</sup> In sum, if a defendant in a criminal case files a motion to suppress before trial, the trial court must hold a hearing and rule on

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<sup>22</sup> Specifically, we overrule State v. Teixeira, 62 Haw. 44, 45, 609 P.2d 131, 133 (1980), State v. Doyle, 64 Haw. 229, 230, 638 P.2d 332, 333-34 (1981), and State v. Thomas, 72 Haw. 48, 53, 805 P.2d 1212, 1214 (1991). To the extent that it allows trial courts to consolidate a hearing on a motion to suppress with a trial, we also overrule In re Doe, 107 Hawai'i 439, 114 P.3d 945 (App. 2005).

the motion before the commencement of trial. This requirement will be effective in trials beginning after the filing date of this opinion.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

