added subsection (1) to HRS § 702-230 to prohibit "self-induced intoxication" as a defense to penal responsibility, except in limited circumstances. 93 Hawaiʻi at 232, 999 P.2d at 238. Thus, HRS § 702-230 now provides as follows, with relevant portions underlined:

> (1) Self-induced intoxication is prohibited as a defense to any offense, except as specifically provided in this section.
> (2) Evidence of the nonself-induced or pathological intoxication of the defendant shall be admissible to prove or negative . . . the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to . . . prove state of mind sufficient to establish an element of an offense. Evidence of self-induced intoxication of the defendant is not admissible to negative the state of mind sufficient to establish an element of the offense.
> (3) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of section 704-400.
> (4) Intoxication that is:
> (a) Not self-induced; or
> (b) Pathological,
> is a defense if by reason of the intoxication the defendant at the time of the defendant's conduct lacks substantial capacity either to appreciate its wrongfulness or to conform the defendant's conduct to the requirements of law.
> (5) In this section:
> "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.
> "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and which results from a physical abnormality of the defendant.
> "Self-induced intoxication" means intoxication caused by substances which the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of a penal offense.

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148 Hawaiʻi at 116, 468 P.3d at 130. Glenn's prospective holding does not apply to Abion's case. In any event, the jury in Abion's case was given a

According to the State, Young held that permanent mental illness attributable to substance use precludes an HRS § 704-400 defense due to the self-induced intoxication exception of HRS § 702-230. Abion contends that such an "expansive reading of the self-induced intoxication exception in Young should be abandoned" and the "intoxication exception to the insanity defense should be limited to temporary conditions that arise while a person is under the influence of an intoxicant." The circuit court and the ICA agreed with the State.

The circuit court and the ICA misinterpreted Young. In Young, we did reject the assertion that "a drug-induced or exacerbated mental illness, in and of itself, constitutes a criminal defense as a matter of law[,]" and we stated:

> In 1986, the legislature added subsection (1) to HRS § 702-230, specifically prohibiting self-induced intoxication as a defense except in limited circumstances. 1986 Haw. Sess. L. Act 325, § 2 at 687-88. The conference committee stated that it "believes that when a person chooses to drink, that person should remain ultimately responsible for [their] actions." Conf. Comm. Rep. No. 36, in 1986 House Journal, at 928. HRS § 702-230(3) provides that intoxication alone cannot negate penal responsibility under HRS § 704-400. To adopt the rule suggested by Young would be contrary to this statutory scheme. If an intoxicated person cannot escape ultimate responsibility for his actions, neither should a defendant who chronically engages in substance abuse. Only in the instance when the intoxication causes the person to lack the ability to form the requisite state of mind is intoxication a defense. The same is also true of someone with a drug-induced mental illness.

93 Hawai'i at 232, 999 P.2d at 238.

Young must, however, be construed in light of its circumstances and factual findings. In Young, the defendant was

convicted of second-degree murder after repeatedly striking a Burger King employee in the head with a hammer after another employee had declined his request for some money. 93 Hawai'i at 227, 230, 999 P.2d at 233, 236. Unlike this case, all three mental health doctors appointed to examine Young actually testified at the bench trial. Although the trial court found that psychosis caused by drugs can last for months after drug use has stopped, it also specifically found that Young drank twelve beers and smoked up to three marijuana joints daily, and also used other illegal drugs in the weeks leading up to the offense. 93 Hawai'i at 230, 999 P.2d at 236.[13]

Also, Young argued that he suffered brain damage during a 1997 fight and that this brain damage constituted a physical (not mental) disease entitling him to a § 704-400(1) defense. Young, 93 Hawai'i at 232, 999 P.2d at 238. The trial court found that Young did not suffer brain damage and his neurological functioning was not impaired as a result of the 1997 fight. Id. We also stated, "[t]he issue of a preexisting mental illness that is aggravated by drug abuse is not presented in this case." 99 Hawaii at 232, 999 P.2d at 238. In addition, Young also did not address whether a defendant suffering from a permanent mental impairment caused by substance abuse but not under the

[13] The trial court also found that Young was not schizophrenic. 93 Hawai'i at 230, 999 P.2d at 236.

temporary influence of a voluntarily ingested substance at the time of an offense is subject to the self-induced intoxication exception of HRS § 702-230.

Thus, in Young, whether a permanent mental illness caused by substance use was precluded by the self-induced intoxication exception was not at issue. Rather, Young applied the self-induced intoxication exception to an offense committed by a defendant who, at the time of the offense, was temporarily under the influence of voluntarily ingested substances. Young therefore involved a temporary impairment resulting from voluntary intoxication. Young did not address whether a defendant suffering from a permanent mental impairment caused by substance abuse is subject to the self-induced intoxication exception of HRS § 702-230.[14]

Also, it is the language of HRS § 702-230 that controls. The statute indicates that the self-induced intoxication exception applies only when a defendant is under the temporary influence of voluntarily ingested substances at the time of an act. HRS § 702-230(5) defines "intoxication" as "a disturbance of mental or physical capacities resulting from the introduction of substances into the body." (Emphasis added.) It further defines "self-induced intoxication" as "intoxication caused by

[14] Thus, contrary to Abion's contention, Eager, 140 Hawai'i 167, 398 P.3d 756, did not implicitly overrule Young.

substances which the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know."[15] Also, the references to "the amount of the substance" in the definition of "pathological intoxication," as "intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and which results from a physical abnormality of the defendant[]" further evinces that "intoxication" and "self-induced intoxication" mean a defendant's temporary intoxicated state after voluntary ingestion.

Thus, as we stated in Eager, "the purpose of HRS § 702-230 'is to prevent defendants who willingly become intoxicated and then commit crimes from using self-induced intoxication as a defense.'" 140 Hawai'i at 175, 398 P.3d at 764 (citing State v. Souza, 72 Haw. 246, 248, 813 P.2d 1384, 1386 (1991)). The self-induced intoxication exception only applies when a defendant is under the temporary influence of voluntarily ingested substances at the time of an act.

[15] If "self-induced intoxication" includes permanent mental impairment caused by ingestion of substances, then whether Abion knew or ought to have known that his methamphetamine use could cause permanent psychosis would also become an issue. But, as explained, "self-induced intoxication" does not include permanent mental impairment caused by ingestion of substances.

If HRS § 702-230(1) is ambiguous, its legislative history establishes that the self-induced intoxication exception was intended to apply only when a defendant, at the time of an offense, is temporarily under the influence of voluntarily ingested substances. Through enacting the self-induced intoxication exception, the legislature intended to make it clear that "when a person chooses to drink, that person should remain ultimately responsible for [their] actions." Young, 93 Hawaiʻi at 232, 999 P.2d at 238 (quoting Conf. Comm. Rep. No. 36, in 1986 House Journal, at 928). The legislative history also explicitly states that "criminal acts committed while a person is voluntarily intoxicated should not be excused by the application of a defense which would negate the offender's state of mind." Conf. Com. Rep. No. 30-86, in 1986 Senate Journal, at 736 (emphasis added).

Hence, we now hold that the self-induced intoxication exception of HRS § 702-230(1) only applies to acts committed while a person is temporarily under the influence of voluntarily ingested substances.

Our holding is consistent with the approach of other states. A majority of jurisdictions hold that a lack of penal responsibility defense may be available to defendants suffering from permanent or "settled insanity" as a result of voluntary intoxication. See 21 Am. Jur. 2d. Criminal Law § 48 (2020)

(describing common law "settled insanity" exception to general prohibition against voluntary intoxication as a defense); R. W. Gascoyne, Annotation, Modern Status of the Rules as to Voluntary Intoxication as Defense to Criminal Charge, 8 A.L.R.3d 1238 (originally published 1966). Among those jurisdictions, some have also clearly held, as we do today, that while permanent mental impairment resulting from voluntary intoxication may be a defense, temporary impairment resulting from voluntary intoxication is not. See Morgan v. Commonwealth, 464 S.E.2d 899, 903 (Va. Ct. App. 2007) (holding that voluntary intoxication is not a defense unless it produces "permanent insanity"); McNeil v. United States, 933 A.2d 354, 369 (App. D.C. 2007).

Thus, the circuit court and the ICA erred in precluding Dr. Blinder's testimony based on the self-induced intoxication exception of HRS § 702-230.

B. Abion's constitutional right to present a complete defense was violated

Under the Hawaiʻi Constitution, "[c]entral to the protections of due process is the right to be accorded 'a meaningful opportunity to present a complete defense.'" Matafeo, 71 Haw. at 185, 787 P.2d at 672 (quoting Trombetta, 467 U.S. at 485). "Thus, 'a defendant has the constitutional right to present any and all competent evidence in [their] defense.'"

Acker, 133 Hawaiʻi at 301, 327 P.3d at 979 (quoting Kassebeer, 118 Hawaiʻi at 514, 193 P.3d at 430). "[W]here the accused asserts a defense sanctioned by law to justify or to excuse the criminal conduct charged, and there is some credible evidence to support it, the issue is one of fact that must be submitted to the jury." Horn, 58 Haw. at 255, 566 P.2d at 1380.

The right to present a complete defense is also a federal constitutional right. As stated by the Tenth Circuit Court of Appeals in Ellis v. Mullin, 326 F.3d 1122, 1128 (10th Cir. 2002) (holding that exclusion of pretrial psychiatric report diagnosing defendant as chronic schizophrenic violated petitioner's due process right to present evidence critical to his defense):

> "[S]tate evidentiary determinations ordinarily do not present federal constitutional issues . . . . However, the Supreme Court, in, e.g., Chambers v. Mississippi, 410 U.S. 284, 302, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), and Green v. Georgia, 442 U.S. 95, 97, 99 S.Ct. 2150, 60 L.Ed.2d 738 (1979) (capital sentencing proceeding), has provided an exception, under some circumstances, if a state court applies the State's evidentiary rules unfairly to prevent a defendant from presenting evidence that is critical to his defense." Romano, 239 F.3d at 1166. "[T]o determine whether a defendant was unconstitutionally denied his or her right to present relevant evidence, we must balance the importance of the evidence to the defense against the interests the state has in excluding the evidence." Richmond v. Embry, 122 F.3d 866, 872 (10th Cir. 1997). Further:
>
> > [T]o establish a violation of . . . due process, a defendant must show a denial of fundamental fairness . . . . It is the materiality of the excluded evidence to the presentation of the defense that determines whether a petitioner has been deprived of a fundamentally fair trial. Evidence is material if its suppression might have affected the

> outcome. In other words, material evidence is that which is exculpatory-evidence that if admitted would create reasonable doubt that did not exist without the evidence.
>
> Richmond, 122 F.3d at 872 (citations and internal quotation marks omitted). See also Romano, 239 F.3d at 1168 ("[W]e need ask no more than whether the trial court's application of this state evidentiary rule excluded critical exculpatory evidence.").

This court has also recently recognized that defendants have a right under the Hawai'i Constitution to assert a lack of penal responsibility defense. Glenn, 148 Hawai'i at 116, 468 P.3d at 130:

> Lack of penal responsibility is not merely a statutory affirmative defense; it reflects a precept that is fundamental to due process under the Hawai'i Constitution: "A defendant who, due to mental illness, lacks sufficient mental capacity to be held morally responsible for his actions cannot be found guilty of a crime." Kahler v. Kansas, --- U.S. ----, 140 S. Ct. 1021, 1039, 206 L.Ed.2d 312 (2020) (Breyer, J., dissenting).

Abion asserts his right to present a complete defense was violated when the circuit court precluded any testimony from Dr. Blinder. We agree.

Whether Abion acted during a period of temporary self-induced intoxication, is, at minimum, disputed. Officer Taua's report and testimony did not indicate that Abion was intoxicated at the time of the offense. Dr. Blinder opined that Abion's psychosis was activated by methamphetamine use, and that he was suffering from the "permanent of long-term effects" of methamphetamine at the time of the offense. Dr. Blinder's psychiatric report noted, however, that Abion "was not using

methamphetamines on the day of his offense or several days preceding," and at the pre-trial hearing he testified that Abion was not under the influence at the time of the offense "as far as [he] could tell" based on the reports available to him and his interview with Abion.

Also, in his psychiatric evaluation of Abion, Dr. Blinder opined that Abion may be entitled to a mental defense because his "commerce with reality was hugely impaired at the time of his assaultive conduct[.]" At the pre-trial hearing, Dr. Blinder also testified that "to a reasonable degree of medical probability, [Abion] would not have had [] psychoses absent his use of methamphetamine," and that he may have had a genetic predisposition for psychosis that caused him to develop symptoms that would not otherwise have manifested. In Dr. Blinder's opinion, Abion was not under the influence of methamphetamines at the time of the offense, but "rather was suffering from its permanent or long-term effects."

Although the circuit court instructed the jury on the HRS § 704-400 defense, it precluded Dr. Blinder from testifying at trial on the grounds that his opinion was irrelevant under Young, which it construed as holding that a drug-induced mental

illness is not a defense pursuant to HRS § 702-230.[16] However, as we have held, the self-induced intoxication exception of HRS § 702-230(1) only applies to acts committed while a person is temporarily under the influence of voluntarily ingested substances.

Hence, Dr. Blinder would have presented "competent evidence" on an "essential factual issue" regarding "a defense sanctioned by law . . . to excuse [Abion's] criminal conduct." Horn, 58 Haw. at 255, 566 P.2d at 1380. Thus, the circuit court "reject[ed] evidence which, if admitted, would [have] present[ed] an essential factual issue for the trier of fact" and violated Abion's due process right to present a complete defense by precluding Dr. Blinder from testifying at trial. Id.

Dr. Blinder's testimony would have aided the jury in determining whether Abion suffered from a physical or mental disease, disorder, or defect that caused him to lack the substantial capacity to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of law at the time of the offense under HRS § 704-400. His testimony would have also aided the jury in determining whether Abion was under the influence at the time of the offense. Therefore, by

[16] As discussed in the previous section, Young did not determine whether a lack of penal responsibility defense is available to a defendant suffering from a permanent drug-induced mental illness and who was not under the influence of drugs or alcohol at the time of the offense.

precluding Dr. Blinder's testimony at trial, the circuit court violated Abion's due process right to present a complete defense by precluding Dr. Blinder from testifying at trial.

V. Conclusion

We therefore vacate the ICA's April 14, 2020 judgment on appeal, which affirmed the circuit court's June 13, 2018 judgment of conviction and sentence and July 26, 2018 stipulation and order to amend judgment of conviction, and remand this case to the circuit court for further proceedings consistent with this opinion.

Benjamin E. Lowenthal, for Abion

Gerald K. Enriques, for the State

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Jeannette H. Castagnetti