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Supreme Court  
SCWC-19-0000563  
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII,  
Respondent/Plaintiff-Appellant,

vs.

DANIEL IRVING JAMES MANION,  
Petitioner/Defendant-Appellee.

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SCWC-19-0000563

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-19-0000563; CASE NO. 1DTA-19-00266)

JUNE 3, 2022

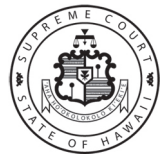
CONCURRING OPINION BY EDDINS, J., IN WHICH McKENNA, J., JOINS

Though I concur with the majority's judgment and reasoning, I dislike its slinking reliance on the State's custody concession. See Majority at 6 n.6. That custody concession is the point of departure for the majority's fruit of the poisonous tree analysis: without custody, there are no illegal medical rule out questions, and without the illegal medical rule out questions, there's no exclusionary rule issue. But it is also -

like the district court's custody conclusion - premised on State v. Ketchum, 97 Hawai'i 107, 34 P.3d 1006 (2001).<sup>1</sup> At the time of the suppression hearing (and for nearly two decades before it), Ketchum safeguarded the right against self-incrimination with a bright-line rule: a person is "in custody" for the purposes of article I, section 10 of the Hawai'i Constitution if "probable cause to arrest has developed." 97 Hawai'i 107, 126, 34 P.3d 1006, 1025 (2001). By treating custody as a given in this case, the court effectively, if indirectly, builds new law on the back of the same bright-line rule it has recently tossed aside. See State v. Sagapolutele-Silva, SCWC-19-0000491 (Haw. June 3, 2022) (McKenna, J., dissenting).

/s/ Todd W. Eddins

/s/ Sabrina S. McKenna



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<sup>1</sup> The district court cited Ketchum in its conclusion of law about what defendants objecting to the admissibility of statements must show. It also concluded - channeling Ketchum - that "legal custody had attached" after Manion's initial encounter with Officer Morgan in part because, by that point, "Officer Morgan had sufficient probable cause to arrest Defendant for [Operating a Vehicle under the Influence of an Intoxicant]." The State's concession that Manion was in custody after his initial exchange with Officer Morgan was likewise apparently informed by Ketchum. See ICA Mem. Op. at 8 (describing State's custody concession as "related[]" to its concession that Officer Morgan had probable cause to arrest Manion).