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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellant,

vs.

RAVEN S. MORTENSEN-YOUNG, Defendant-Appellee.

(CAAP-22-0000045; CASE NO. 1DTA-21-01297)

STATE OF HAWAII, Plaintiff-Appellant,

vs.

LANCE M. OSHIMA, Defendant-Appellee.

(CAAP-22-0000046; CASE NO. 1DTA-21-01719)

STATE OF HAWAII, Plaintiff-Appellant,

vs.

MARLIN TORNQUIST TUCKER, Defendant-Appellee.

(CAAP-22-0000047; CASE NO. 1DTA-21-01463)

STATE OF HAWAII, Plaintiff-Appellant,

vs.

RYAN D. WOOD, Defendant-Appellee.

(CAAP-22-0000048; CASE NO. 1DTA-21-01472)

SCAP-22-0000045

APPEALS FROM THE DISTRICT COURT OF THE FIRST CIRCUIT

MARCH 15, 2023

DISSENTING OPINION BY WILSON, J.

I. Introduction

In this case, the Majority undermines Appellees' right to ensure the veracity of the allegations set forth in the complaint against them. As correctly concluded by the District Court of the First Circuit ("district court"), Hawai'i Revised Statutes ("HRS") § 805-1 (2014)¹ plainly required that all complaints "be subscribed by the complainant under oath," or "made by declaration in accordance with the rules of court." This requirement mitigates the possibility that the facts which underlie a complaint are unfounded, retaliatory, or harassing. Despite the plain language of the statute, the Majority excludes complaints that initiate criminal charges from the protective requirements of HRS § 805-1 and limits its protections to only complaints supporting a request for an arrest warrant or penal summons. That is, according to the Majority, where a defendant is first arrested without a warrant, and thereafter the State initiates a criminal proceeding by complaint, the complaint need not be accompanied by the protections in HRS § 805-1.

¹ HRS § 805-1 was amended in 2022. H.B. 1541, 31st Leg., Reg. Sess. (2022).

Particularly in light of the need to protect Hawai'i's people from abuse of prosecutorial authority, there is no logical reason to remove this statutory protection from people in Hawai'i who have been arrested without a warrant. Therefore, I respectfully dissent to the Majority's holding limiting the application of HRS § 805-1 to only complaints that seek an arrest warrant or penal summons.

II. Background

Raven S. Mortensen-Young ("Mortensen-Young"), Tornquist Tucker ("Tucker"), Ryan D. Wood ("Wood") and Lance M. Oshima ("Oshima") (collectively, Appellees) were arrested for OVUII without a warrant. Appellees were released after posting bail.

On July 23, 2021, the State charged Mortensen-Young by complaint with the offense of Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") in violation of HRS § 291E-61(a)(1). On August 17, 2021, the State charged Tucker by complaint with the offense of OVUII in violation of HRS § 291E-61(a)(1) and/or (a)(3). On August 19, 2021, the State charged Wood by complaint with the offense of OVUII in violation of HRS § 291E-61(a)(1) and/or (a)(3). On October 11, 2021, the State charged Oshima by complaint with the offense of OVUII in violation of HRS § 291E-61(a)(1) and/or (a)(4).

The complaints, which largely contained the same language, provided:

COMPLAINT

The undersigned Deputy Prosecuting Attorney of the City and County of Honolulu, State of Hawai'i charges:

On or about [date of offense], in the City and County of Honolulu, State of Hawai'i, [defendant's name], did intentionally, knowingly, or recklessly operate or assume actual physical control of a vehicle upon a public way, street, road, or highway while under the influence of alcohol in an amount sufficient to impair his normal mental faculties or ability to care for himself and guard against casualty, thereby committing the offense of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Section 291E-61(a)(1) [and/or (a)(3) or (a)(4)] of the Hawai'i Revised Statutes. [Defendant's name], is subject to sentencing in accordance with [Section 291E-61(b)(1) or (b)(2)] of the Hawai'i Revised Statutes as a [first or second] offender. [Definition of "prior conviction" in Oshima's case].

I [deputy prosecuting attorney], declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated at Honolulu, Hawai'i: [Date of complaint].

Appellees filed Motions to Dismiss on December 28, 2021. Appellees all argued that "the complaint . . . is not supported by:" (1) "The complainant's signature; or" (2) "A declaration submitted in lieu of affidavit," as required by HRS § 805-1 and this court's holding in State v. Thompson, 150 Hawai'i 262, 500 P.3d 447 (2021).

The district court held a hearing on Appellees' Motions to Dismiss on January 12, 2022. The district court orally granted Appellees' Motions to Dismiss without prejudice, finding that "the complaints are defective as they were not made pursuant to [HRS §] 805-1." On January 19, 2022, the district

court issued its Order Granting Motions to Dismiss, and made the following relevant conclusions of law:

1. On December 10, 2021, in State v. Thompson (SCWC-17-0000361), the Hawaii Supreme Court held that the failure of the prosecution to submit and file a complaint or declaration in lieu of affidavit containing the complainant's signature was fatal and required dismissal of the action.

2. In Thompson, the supreme court found that the prosecution violated HRS § 805-1 when it failed to comply with its statutory obligation to perfect its complaint by filing a complaint that was neither signed by a complainant nor supported by declaration signed by the complainant.

3. The Court further stated, "The requirements of HRS § 805-1 therefore apply to all criminal complaints, regardless of whether the State uses the complaint to seek a penal summons or an arrest warrant." "Thus in order to comply with HRS § 805-1, the underlying complaint should have been subscribed under oath by the complainant or made by declaration in lieu of an affidavit in conformity with [Hawaii Rules of Penal Procedure] [] Rule 47(d)."

4. The complaint filed in the instant case does not comport with the mandates of the holding in Thompson and HRS § 805-1.

On February 10, 2022, the State timely appealed the district court's decision granting the Appellees' Motions to Dismiss to the ICA. On April 19, 2022, the State timely filed an application for transfer to this court, which was granted on May 6, 2022.

III. Discussion

A. The statutory language of HRS § 805-1 makes plain that its requirements apply to all complaints.

The plain language of HRS § 805-1 demonstrates that the statute applies to all complaints, including complaints that initiate criminal proceedings by charging a person with a crime, complaints for a penal summons, and complaints for an arrest

warrant. "It is well-established that 'when [a statute's] language is plain and unmistakable[,] the court is bound by the plain, clear and unambiguous language of the statute.'"

Thompson at 267, 500 P.3d at 452 (quoting State v. Sylva, 61 Haw. 385, 387-88, 605 P.2d 496, 498 (1980)) (brackets in original). As applied to Appellees' cases, HRS § 805-1 provided:

Complaint; form of warrant. When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or the complaint shall be made by declaration in accordance with the rules of court. If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 803-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of court. Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law; and in the same warrant the judge may require the officer to summon such witnesses as are named in the warrant to appear and give evidence at trial. The warrant may be in the form established by the usage and practice of the issuing court.

The first sentence of HRS § 805-1 makes clear that the statute applies to "complaints" without qualification:

When a complaint is made to any prosecuting officer of the commission of any offense, the prosecuting officer shall examine the complainant, shall reduce the substance of the complaint to writing, and shall cause the complaint to be subscribed by the complainant under oath, which the prosecuting officer is hereby authorized to administer, or

the complaint shall be made by declaration in accordance with the rules of court.

(emphases added). There is no limitation in this sentence. It does not, for example, state that "[w]hen a complaint [for an arrest warrant or penal summons] is made..." the prosecuting officer must comply with the following requirements. Rather, it states "[w]hen a complaint is made..." the prosecuting officer shall comply with the following requirements. (emphasis added). Black's Law Dictionary defines a "complaint" in the criminal law context as "[a] formal charge accusing a person of an offense." Complaint, Black's Law Dictionary (11th ed. 2019). A complaint that initiates a criminal proceeding by charging a person with an offense is quintessentially "[a] formal charge accusing a person of an offense." Id. The Majority imposes a nonsensical limitation found nowhere in the text of the statute to restrict the application of HRS § 805-1's requirements to complaints for arrest warrants and penal summons only. Complaints for arrest warrants, complaints for penal summons, and complaints that initiate criminal proceedings by bringing a formal charge are all "complaints" within the meaning of HRS § 805-1, and therefore, must comply with the statute's requirements.

The Majority states that "[t]he plain language of HRS § 805-1 demonstrates that the statute applies only to complaints that seek a penal summons or an arrest warrant." However, the text of HRS § 805-1 does not mention a complaint for a penal

summons. The Majority relies on the third sentence of HRS § 805-1 to support its conclusion that HRS § 805-1 only applies to complaints for arrest warrants and penal summons. The third sentence of HRS § 805-1 provides:

Upon presentation of the written complaint to the judge in whose circuit the offense allegedly has been committed, the judge shall issue a warrant, reciting the complaint and requiring the sheriff, or other officer to whom it is directed, except as provided in section 805-3, to arrest the accused and to bring the accused before the judge to be dealt with according to law.

This sentence merely elaborates on the proper procedure in the context of complaints for arrest warrants; it does not change the unambiguous language in the first sentence of HRS § 805-1 applying the statute to all complaints, nor does it mention complaints for penal summons.²

The Majority also asserts that Thompson, 150 Hawai'i 262, 500 P.3d 447 limits the application of HRS § 805-1's

² The second sentence of HRS § 805-1 also supports the conclusion that the statute applies to all criminal complaints. The second sentence provides:

If the original complaint results from the issuance of a traffic summons or a citation in lieu of an arrest pursuant to section 804-6, by a police officer, the oath may be administered by any police officer whose name has been submitted to the prosecuting officer and who has been designated by the chief of police to administer the oath, or the complaint may be submitted by declaration in accordance with the rules of the court.

(emphasis added). This sentence contemplates that there is an "original complaint" resulting from the issuance of a traffic summons or a citation[,]" and then a later complaint (one that brings charges and initiates the criminal proceedings) which must comply with the requirements of HRS § 805-1. Thus, the legislature intended that HRS § 805-1's requirements apply to complaints that initiate criminal proceedings by bringing formal charges.

requirements to only complaints for a penal summons or arrest warrants.³ The Majority's analysis fails for three reasons.

First, Thompson does not change the plain language of the first sentence of HRS § 805-1 applying the statute to all complaints. See supra pp. 6-8.

Second, Thompson makes clear that all complaints must comply with HRS § 805-1. Thompson states that "HRS § 805-1 unambiguously obligates the State to either have a complaint subscribed under oath by a complainant or make the complaint by declaration in accordance with the rules of the court[.]" 150 Hawai'i at 267, 500 P.3d at 452 (emphases added). Thompson does not specify that the State is obligated to follow the requirements of HRS § 805-1 only when the State is seeking an arrest warrant or penal summons.

Third, Thompson unambiguously states that there is a single type of criminal complaint in Hawai'i, and that all complaints must comply with HRS § 805-1. Specifically, Thompson states that "Hawai'i law provides for only a single type of criminal complaint regardless of whether the complaint is used

³ After stating that the plain text of HRS § 805-1 makes clear that the statute only applies to complaints for arrest warrants or penal summons, the Majority confusingly states that the text of HRS § 805-1 makes clear only that it applies to complaints for arrest warrants, "and Thompson [not the text of HRS § 805-1] makes clear that the statute also applies to complaints for a penal summons."

to initiate proceedings through an arrest warrant or a penal summons." Id. (emphasis added). Contrary to the Majority's contention, this language is supportive of the fact that HRS § 805-1 applies to all complaints. Thompson specifically describes complaints as "used to initiate proceedings[.]" Id. Complaints for an arrest warrant, complaints for a penal summons, and complaints that bring formal charges all are "used to initiate proceedings[.]" Id. Thompson further provides that "[t]he requirements of HRS § 805-1 therefore apply to all criminal complaints, regardless of whether the State uses the complaint to seek a penal summons or an arrest warrant." Id. Thompson singles out complaints for "an arrest warrant or a penal summons" only because of the specific facts of the case at issue. Id. In Thompson, the ICA held that although the complaint did not comply with the requirements of HRS § 805-1, because it was a complaint that initiated proceedings by a penal summons, as opposed to an arrest warrant, the prosecution could proceed. Id. at 268-69, 500 P.3d at 453-54. Thus, this court in Thompson was correcting the ICA in explaining that HRS § 805-1 applies to complaints for arrest warrants (as specifically mentioned in the text of the statute) as well as complaints for penal summons (not specifically mentioned in the text of the statute). Thompson, however, contains no language limiting HRS § 805-1 to only those two forms of complaints.

By interpreting Thompson to limit HRS § 805-1 to only complaints for penal summons and arrest warrants, the Majority ignores the context in which Thompson's reference to complaints for penal summons and arrest warrants was made. The Majority further ignores the plain language of the first sentence of HRS § 805-1, as well as Thompson's plain statements that "Hawai'i law provides for only a single type of criminal complaint" and that "[t]he requirements of HRS § 805-1 [] apply to all criminal complaints[.]" Id.

B. The Majority singles out defendants that have been arrested without a warrant and strips them of their right to challenge the veracity of their accuser.

The Majority's holding thwarts the intent of HRS § 805-1 to preserve a defendant's right to challenge the veracity of their accuser. The Hawai'i State legislature recognized that the subscription or declaration requirement in HRS § 805-1 serves to protect "the offender's right to challenge the veracity of the [accuser.]" S. Stand. Comm. Rep. No. 1194, in 2007 Senate Journal, at 1557-58. The Majority baselessly concludes that HRS § 805-1 is not intended to protect a defendant's right to challenge the veracity of the complainant because this court stated in Thompson only that "HRS § 805-1's requirements would not harm a defendant's right to challenge the veracity of the complainant." Assuming arguendo that the primary purpose of HRS § 805-1 may not be to protect a

defendant's right to challenge the veracity of the accuser, it is indisputable that it is a purpose of HRS § 805-1. It is unclear why the Senate Standing Committee would state that "allowing the use of declarations in lieu of affidavits for arrest...would not harm the offender's right to challenge the veracity of the [accuser][,]" if that was not a purpose of the statute. S. Stand. Comm. Rep. No. 1194, in 2007 Senate Journal, at 1557-58. Indeed, what would be the purpose of requiring complaints to be "subscribed by the complainant under oath" or "made in declaration[,]" if not to protect the rights of defendants to contest the truth of the allegations in the complaint against them?⁴ HRS § 805-1. As the Office of the Public Defender noted in testimony in opposition to a recent amendment to HRS § 805-1, the subscription or declaration requirement mitigates the possibility of falsehoods in a complaint:

The filing of a criminal complaint against an individual carries with it public stigma, personal and financial hardship and psychological and emotional stress. To mitigate the possibility that the complaint is unfounded, retaliatory, or harassing, HRS § 805-1 requires that the complainant vouch for the veracity of his or her allegations and that the accused have the opportunity to challenge the veracity of his or her accuser.

⁴ Although the Majority states that the purpose of HRS § 805-1 is not to protect a defendant's right to challenge the veracity of the complainant, the Majority fails to proffer an alternative purpose for the requirement that complaints be "subscribed by the complainant under oath," or "made by declaration in accordance with the rules of court." HRS § 805-1.

Office of the Public Defender, Testimony to the House Committee on Judiciary and Hawaiian Affairs on H.B. 1541, 31st Leg., Reg. Sess., at 4 (Feb. 1, 2022).

The Majority's holding that a complaint that initiates a criminal proceeding by charging a defendant with a crime need not comply with the requirements of HRS § 805-1 strips defendants who are arrested without a warrant of their right to challenge the veracity of their accuser. Under the Majority's holding, where the State utilizes a complaint to seek an arrest warrant or penal summons, the complaint must be subscribed by the complainant under oath or accompanied by a declaration in accordance with Hawai'i Rules of Penal Procedure ("HRPP") Rule 47(d) (2000).⁵ HRS § 805-1; Thompson, 150 Hawai'i at 268, 500 P.3d at 453. The only circumstance where the defendant is not protected by the subscription or declaration requirement in HRS § 805-1 is when a defendant is first arrested without a warrant,

⁵ HRPP Rule 47(d) provides:

(d) Declaration in lieu of affidavit. In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

"I, _____, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated:

(Signature)"

and the State later initiates a criminal proceeding by charging the defendant via complaint.

Per the Majority's analysis, if a defendant is arrested without a warrant and the State later uses a complaint to initiate a criminal proceeding and formally charge the defendant, the State is never required to comply with HRS § 805-1. As a result, there is no subscription by the complainant under oath or declaration in accordance with HRPP Rule 47(d) which attests to the truth of the allegations in the complaint. The importance of the complainant subscribing to the complaint under oath, or a declaration of the truth of the facts in the complaint, as required by HRS § 805-1, cannot be understated: it protects the integrity of the information that underlies the accusation that the defendant must face. Without it, there is no one to be held accountable for the truth or falsity of the contents of the complaint. The protection afforded by HRS § 805-1 is not merely of theoretical value. The mitigation of the danger that allegations amount to false assertions is the genesis for many a protection from government overreaching and oppression, including the right to be presumed not guilty, and the government's bearing of the burden to prove guilt beyond a reasonable doubt. See, e.g., State v. Stone, 147 Hawai'i 255, 465 P.3d 702 (2020) (holding that the defendant was entitled to a new trial because a police officer provided false testimony);

Anne Bowen Poulin, Convictions Based on Lies: Defining Due Process Protection, 116 PENN ST. L. REV. 331 (2011) ("the law does not provide adequate protection from conviction based on lies."). The removal of the protective requirements in HRS § 805-1 from defendants who have been arrested without a warrant serves no laudable purpose. This requirement takes the State little time, effort and expense to comply with, but provides defendants with the ability to challenge the veracity of their accuser before trial. It is illogical to deprive only defendants who have been arrested without a warrant of this protection. All defendants are entitled to the opportunity to challenge the veracity of their accuser.

C. The complaints were fatally defective because they did not comply with HRS § 805-1.

The complaints were "fatally defective" because they did not comply with HRS § 805-1. Thompson, 150 Hawai'i at 268, 500 P.3d at 453. In order to meet the requirements of HRS § 805-1 and preserve a defendant's right to challenge the veracity of the accuser, the State must "either have a complaint subscribed under oath by a complainant or make the complaint by declaration in accordance with the rules of court[.]" Id. at 267, 500 P.3d at 452. In Thompson, this court found HRPP Rule 47(d) to be the "applicable rule of [the] court." Id. "Thus, in order to comply with HRS § 805-1, the underlying complaint

should [] be[] subscribed under oath by the complainant or made by declaration in lieu of an affidavit in conformity with HRPP Rule 47(d).” Id. The complaints in these cases were neither subscribed under oath by the complainant, nor made by declaration in lieu of an affidavit as prescribed by HRPP Rule 47(d).

The signature of the prosecuting attorney on the complaints is insufficient. The Majority asserts that because the complaints in these cases did not seek a penal summons or arrest warrant, the general rule for charges in HRPP Rule 7(d) (2012)⁶ applies, and the signature of the prosecuting attorney was sufficient to properly initiate the criminal proceedings against Appellees. However, as explained in Thompson, HRPP Rule

⁶ HRPP Rule 7(d) provides:

(d) Nature and contents. The charge shall be a plain, concise and definite statement of the essential facts constituting the offense charged. An indictment shall be signed by the prosecutor and the foreperson of the grand jury. An information shall be signed by the prosecutor. A complaint shall be signed by the prosecutor. The charge need not contain a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The charge shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Formal defects, including erroneous reference to the statute, rule, regulation or other provision of law, or the omission of such reference, shall not be ground for dismissal of the charge or for reversal of a conviction if the defect did not prejudice the defendant.

47(d) - not HRPP Rule 7(d) - is the applicable rule of the court that must be complied with in order to satisfy the requirements of HRS § 805-1 and properly initiate a criminal proceeding against a defendant via complaint. 150 Hawai'i at 268, 500 P.3d at 453.

The 2022 amendment to HRS § 805-1 supports the conclusion that the complaints in these cases were fatally defective. In House Bill No. 1541, the legislature amended HRS § 805-1 to allow complaints to be "(1) [s]ubscribed by the complainant under oath . . . , (2) [m]ade by declaration in accordance with the rules of the court, or (3) [s]igned by the prosecuting officer." H.B. 1541, 31st Leg., Reg. Sess. (2022). Thus, through this amendment, the legislature explicitly permitted complaints to be signed by the prosecuting officer. As Appellees explain, House Bill No. 1541 "was part of the package submitted for the 2022 Legislative Session by the Honolulu Prosecutor's officer." If the prosecuting officer was already empowered to execute a complaint by a mere signature, this amendment would not have been necessary. Accordingly, pursuant to HRS § 805-1's requirements as of the time that the complaints in the instant cases were filed, the signature of the prosecuting officer was insufficient.

In conclusion, the complaints were fatally defective for failure to comply with HRS § 805-1. The Appellees are

correct that "a complaint which is 'fatally defective' is not fatally defective only because the State uses such a complaint to seek an arrest warrant or penal summons." Rather, a complaint which is fatally defective does not properly initiate a criminal proceeding against a defendant. Under the pre-2022 amendment version of HRS § 801-5, a complaint was sufficient only if it was: (1) subscribed to by the complainant under oath; or (2) supported by declaration in accordance with HRPP Rule 47(d). Thompson, 150 Hawai'i at 267, 500 P.3d at 452. Because the complaints in these cases were neither subscribed to by the complainant under oath nor supported by a declaration in lieu of affidavit, the district court properly granted the Appellees' Motions to Dismiss without prejudice.

IV. Conclusion

For the foregoing reasons, I respectfully dissent to the Majority's decision to reverse the district court's January 12, 2022 Notice of Entry of Judgment pursuant to its order granting Appellees' Motions to Dismiss.

/s/ Michael D. Wilson

