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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,
Respondent/Plaintiff-Appellant,

vs.

BRONSON SARDINHA,
Petitioner/Defendant-Appellee.

SCWC-16-0000798

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000798; CR. NO. 1PC161000359)

MARCH 9, 2023

DISSENTING OPINION BY WILSON, J.

I. Introduction

When offenses arise from a single criminal episode, the State must bring those charges together in one trial. State v. Carroll, 63 Haw. 345, 627 P.2d 776 (1981). The "single-episode test," which determines when offenses arise from a

single criminal episode, is derived from Hawai'i Revised Statutes ("HRS") § 701-109(2) (2014):

> [A] defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

A defendant's conduct arises "from the same episode" when the conduct is "so closely related in time, place and circumstances that a complete account of one charge cannot be related without referring to details of the other charge." Carroll, 63 Haw. at 351, 627 P.2d at 780 ("single-episode test"). Thus, the three elements in the single-episode test are whether the offenses are closely related in (1) time, (2) place, and (3) circumstances.

The issue in this case is whether Sardinha's conduct was so closely related in time, place and circumstances such that the State was required to charge Sardinha with the "Traffic Offenses" and the "Assault Offense" together pursuant to HRS § 701-109(2).

The events which give rise to the Traffic Offenses are as follows:[1] on November 28, 2015 at 10:50 P.M., the Honolulu Police Department ("HPD") dispatched Officer Crystal D. Roe ("Officer Roe") to a "Motor Vehicle Collision Fled Scene"

[1] The factual background is substantially the same as the Majority's summary of the factual background of the "Traffic Offenses" and the "Assault Offense" on pages 2-7.

incident at the intersection of Farrington Highway and Waipi'o Point Access Road in Waipahu. The fleeing vehicle was reported by dispatch to have struck another vehicle and bore Hawai'i license plate "GRA-505." On December 28, 2015, the State charged Sardinha by complaint with four offenses.[2] In exchange for the State dismissing three of the charges, Sardinha entered a no-contest plea on the inattention to driving charge in violation of HRS § 291-12.

The facts which give rise to the Assault Offense are as follows: at around 11:50 P.M. on November 28, 2015, HPD Officers Jon M. Nguyen ("Officer Nguyen") and Shayne Sesoko ("Officer Sesoko") were dispatched to a reported argument at Nancy's Kitchen in the Waipi'o Shopping Center. The officers determined that the argument was between a man (later identified as Sardinha) and a woman.

While the officers were at the scene, Sardinha remained outside of Nancy's Kitchen and began swearing at the officers. Sardinha eventually walked to and got into the driver's seat of a white SUV with Hawai'i license plate "GRA-

[2] The complaint charged Sardinha with: (1) Inattention to driving in violation of HRS § 291-12; (2) Leaving the scene of an accident involving damage to a vehicle or other property in violation of HRS § 291C-13; (3) Operating a vehicle after his license was revoked for operating a vehicle under the influence of an intoxicant in violation of HRS § 291E-62(a); and (4) Driving without motor vehicle insurance in violation of HRS § 431:10C-104(a).

505." The officers noticed that the vehicle had front-end damage and had the same license plate as the vehicle involved in the Traffic Offenses around 1.5 hours earlier. Upon recognizing the vehicle, Officer Sesoko informed Sardinha that the vehicle had been involved in a hit-and-run. Sardinha continued to swear at the officers.

Around 12:30 A.M. on November 29, 2015, Officer Roe also arrived at Nancy's Kitchen, and Sardinha briefly complied with Officer Roe's request for his personal identification. After receiving Sardinha's personal identification, the officers ran a warrant check on Sardinha and discovered that Sardinha had a possible contempt warrant. The officers detained Sardinha because of the possible warrant and attempted to place him in a police car. Sardinha refused to cooperate and headbutted the right side of Officer Sesoko's face. The officers subsequently arrested Sardinha for assaulting a law enforcement officer.

On March 8, 2016, a grand jury indicted Sardinha for Assault Against a Law Enforcement Officer in the First Degree, in violation of HRS § 707-712.5(1)(a).[3] On August 29, 2016,

[3] HRS § 707-712.5(1)(a) (2014) provides:

> Assault against a law enforcement officer in the first degree. (1) A person commits the offense of assault against a law enforcement officer in the first degree if the person:

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Sardinha filed a Motion for Dismissal with Prejudice, arguing that HRS § 701-109(2) required the State to try the Traffic Offenses and the Assault Offense together because the offenses arose from a single criminal episode. The circuit court heard the motion to dismiss on September 28, 2016. The circuit court concluded that a complete account of the Assault Offense could not be given without referring to the details of the Traffic Offenses, and therefore, the single-episode test had been met. Accordingly, the circuit court granted Sardinha's motion to dismiss.

The State appealed the circuit court's order granting Sardinha's motion to dismiss to the Intermediate Court of Appeals ("ICA"). On January 15, 2021, the ICA ruled in a memorandum opinion that the Traffic Offenses and the Assault Offense were not so closely related in time, place, or circumstances to require a joinder of the two proceedings pursuant to HRS § 701-109(2).

Sardinha filed an application for writ of certiorari to this court on April 19, 2021. Sardinha contended that the

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> (a) Intentionally or knowingly causes bodily injury to a law enforcement officer who is engaged in the performance of duty[.]

ICA erred in finding that the Traffic Offenses and the Assault Offense did not arise from a single criminal episode.

The Majority Opinion holds that the Traffic Offenses and the Assault Offense are not "so closely related in time, place and circumstances that a complete account of one charge cannot be related without referring to details of the other charge." Carroll, 63 Haw. at 351, 627 P.2d at 780.

I respectfully disagree and would hold that the Traffic Offenses and the Assault Offense arose from the same criminal episode, and thus, that the State was required to bring the charges together.

II. Discussion

A. Applying the single-episode test to the facts of this case, the Assault Offense and the Traffic Offenses are so closely related in time, place and circumstances that a complete account of one charge cannot be related without referring to the details of the other charge.

As stated, the test to determine whether charges must be brought together is whether the defendant's conduct is "so closely related in [1] time, [2] place and [3] circumstances that a complete account of one charge cannot be related without referring to details of the other charge." Carroll, 63 Haw. at 351, 627 P.2d at 780.

1. The Assault Offense and the Traffic Offenses are Closely Related in "Time"

In concluding that the single-episode test is not met and the State properly charged Sardinha with the Assault Offense and the Traffic Offenses separately, the Majority fails to acknowledge that the Assault Offense and the Traffic Offenses are closely related in time. The Traffic Offenses occurred around 10:50 P.M. on November 28, 2015. The events surrounding the Assault Offense occurred between 11:50 P.M. and 12:30 A.M. on November 28-29, 2015. Accordingly, the two incidents occurred only 1.5 hours apart, and the "time" factor weighs in favor of concluding that the Traffic Offenses and the Assault Offense arose from a single criminal episode. See State v. Akau, 118 Hawai'i 44, 56, 185 P.3d 229, 241 (2008) (holding that the time factor is met where the facts leading up to one offense occurred between five and forty-nine days prior to the facts leading up to the second offense); see also, State v. Servantes, 72 Haw. 35, 37, 804 P.2d 1347, 1348 (1991) (holding that the lapse of four days between the discovery of the first criminal offense and the second offense was not fatal to the defendant's argument that the two offenses arose from the same episode).

2. The Assault Offense and the Traffic Offenses are Closely Related in "Place"

The Majority's conclusion that the single episode test is not met also fails to consider that the Traffic Offenses and

the Assault Offense occurred in close proximity. The Traffic Offenses occurred at the intersection of Farrington Highway and Waipi'o Point Access Road in Waipahu. The Assault Offense occurred at Nancy's Kitchen in the Waipi'o Shopping Center, approximately 2.1 miles away from where the Traffic Offenses occurred, placing the location of the two offenses near each other. See Akau, 118 Hawai'i at 56, 185 P.3d at 241 (finding that the "place" factor is met where the first two drug buys occurred at the same location and the third drug buy occurred approximately 0.25 miles away); compare State v. Keliiheleua, 105 Hawai'i 174, 181, 95 P.3d 605, 612 (2004) ("defining "place" as broadly as the entire City and County of Honolulu would unduly hamper the administration and application of HRS § 701-109(2).").

3. The Assault Offense and the Traffic Offenses are Closely Related in Circumstance

The third measure of the single episode test is also met because the "circumstances" of both the Assault Offense and the Traffic Offenses are closely related. The "circumstances" element of the single-episode test considers first whether "the facts and circumstances of the first discovered offense provided sufficient probable cause to suspect that the defendant had committed or would commit the second discovered offense." See, e.g., Akau, 118 Hawai'i at 53-58, 185 P.3d at 238-43 ("the

probable cause analysis"). Second, the test considers whether there is factual/evidentiary overlap between the two offenses. See, e.g., Carroll 63 Haw. at 351, 627 P.2d at 780. And third, whether the statutory requirements of the two offenses are similar. See, e.g., Keliiheleua, 105 Hawai'i at 182, 95 P.3d at 613.

i. Probable Cause Analysis

While acknowledging that the probable cause analysis "may be relevant" in certain circumstances, the Majority fails to consider that the first discovered offense in the instant case provided probable cause to suspect that Sardinha committed the second discovered offense.[4] The first discovered offense was the Assault Offense; Sardinha was identified as the driver in the Traffic Offenses after he was arrested for the Assault Offense. The facts which gave rise to probable cause to believe that Sardinha committed the Traffic Offenses all became known to

[4] The Majority does not reach a conclusion as to whether the Assault Offense gave rise to probable cause to suspect that Sardinha committed the Traffic Offenses. The Majority notes that the State argued in its Opening Brief to the ICA that "the underlying facts of the Traffic Offenses did not provide the officers with probable cause to suspect Sardinha of committing the Assault Offense." This argument is irrelevant. The proper consideration is whether "the facts and circumstances of the first discovered offense provided sufficient probable cause to suspect that the defendant had committed or would commit the second discovered offense." Akau, 118 Hawai'i at 57, 185 P.3d at 242 (emphases added). Here, the first discovered offense is the Assault Offense, not the Traffic Offenses, because Sardinha was not identified as the driver in the Traffic Offenses until after the Assault Offense. Thus, the relevant question is whether the Assault Offense gave rise to probable cause to suspect that Sardinha committed the Traffic Offenses.

the police officers in the course of the Assault Offense: (1) that Sardinha was sitting in the driver's seat of a vehicle with the same license plate as the vehicle that fled the scene of the Traffic Offenses, (2) that Sardinha's vehicle had front-end damage, consistent with being in a collision, (3) that Sardinha appeared intoxicated, consistent with an individual who fled the scene of an accident, and (4) that Sardinha was aggressive and hostile with the police officers, and such aggression increased after he was informed that his vehicle was involved in the Traffic Offenses and he was asked for his motor vehicle paperwork and license. Thus, the probable cause analysis establishes that the circumstances element of the single-episode test is met. See Servantes, 72 Haw. at 39, 804 P.2d at 1349 (holding that the circumstances element of the single-episode test is met because "[m]ost importantly, police had probable cause at the time of [the defendant's] arrest on the [first offense] to suspect" that the defendant committed the second offense.); see also, Carroll, 63 Haw. at 352, 627 P.2d at 781 (holding that the single-episode test is not met "based primarily on the fact that the arresting officer [in the first offense] failed to recognize the illegal nature of the cannister

[the second offense] at the time" of arrest for the first offense.) (emphasis added).[5]

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[5] In failing to analyze whether the Assault Offense provided probable cause to suspect that Sardinha committed the Traffic Offenses, the Majority departs from this court's settled definition of the single-episode test. Specifically, the Majority rejects application of the probable cause analysis in favor of a different single-episode test adopted by the Supreme Court of Oregon in State v. Boyd, 533 P.2d 795, 799 (Or. 1975). Boyd, rather than looking to the probable cause analysis, held that the State must join indictments in a single proceeding when "the charge[s] [are] cross-related" such that "a complete account of one charge necessarily includes details of the other charge." Id. at 799. Based on Boyd, the Majority adopts a new rule: "we clarify that multiple offenses must be legally and/or factually interrelated in order to be 'so closely related in . . . circumstances that a complete account of one charge cannot be related without referring to details of the other charge.'"

The Majority's decision rejecting the probable cause analysis incorrectly concludes that the circumstances element of Hawai'i's single-episode test, announced in Carroll, 63 Haw. 345, 627 P.2d 776 (1981) incorporated Boyd's "interrelated requirement." However, Carroll made no mention of Boyd's interrelated requirement. Rather than adopt Boyd's "interrelated" requirement, Carroll, like Akau, 118 Hawai'i 44, 185 P.3d 229, Keliiheleua, 105 Hawai'i 174, 95 P.3d 605 and Servantes, 72 Haw. 35, 804 P.2d 1347, based its determination of whether the circumstances element of the single-episode test was met primarily on whether the first discovered offense gave rise to probable cause to believe that the defendant committed the second discovered offense. Carroll, 63 Haw. at 352, 627 P.3d at 781.

The Majority asserts that Akau's reliance on the probable cause analysis was erroneous. However, the Majority's failure to engage in the probable cause analysis disregards forty years of precedent, beginning with Carroll. This court has consistently relied upon the probable cause analysis in determining whether two offenses are so closely related in circumstance such that "a complete account of one charge cannot be related without referring to the details of the other charge." Carroll, at 351, 627 P.2d at 780. In Carroll, police officers arrested the defendant after receiving a report that he started a fire on school property. Id. at 346, 627 P.2d at 777. The arresting officer searched the defendant, noted that he was carrying a cannister, but mistakenly identified the cannister as nasal spray rather than Mace, and returned it to the defendant. Id. Later, at the police station, a different officer searched Carroll and identified the cannister as Mace. Id. Carroll was ultimately charged with both attempted criminal property damage in the second degree and possession of an obnoxious substance. Id. The Carroll court explicitly based its holding that the two offenses were not one single-episode on the fact that "the arresting officer's knowledge did not afford probable cause to believe that [another] offense…had been committed[.]" Id. at 352, 627 P.3d at 781. The Carroll court further stated that its "rationale is based primarily on the fact that the arresting officer failed to recognize the illegal nature of the cannister at the time of the search for weapons," and thus did not have probable cause

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ii. Factual/Evidentiary Overlap

The second factor in the circumstances element of the single-episode test evaluates whether there is factual and/or evidentiary overlap between the two offenses. See, e.g., Carroll 63 Haw. at 351, 627 P.2d at 780. The Majority rejects the analysis of the circuit court to conclude that "there is no substantive overlap between the material facts" of the two offenses. The circuit court noted that it would be impossible to give a complete account of the facts of the Assault Offense without mentioning the Traffic Offenses. Indeed, Sardinha's

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to believe the defendant had possession of an obnoxious substance. Id. (emphasis added).

Subsequent cases also apply the probable cause analysis as the primary factor in the circumstances element of the single-episode test. Servantes held that the two charged offenses were closely related in circumstance because "[m]ost importantly, police had probable cause at the time of [the defendant's] arrest on the marijuana offense to suspect [the defendant] of possession of additional illegal drugs." Servantes, 72 Haw. at 39, 804 P.2d at 1349. While the Majority in the instant case acknowledges that probable cause was a factor in the Servantes court analysis, the Majority omits the fact that it was the "most important[]" factor. Id. (emphasis added). The probable cause analysis was also central to this court's determination of whether the circumstances element of the single-episode test was met in both Keliiheleua, 105 Hawai'i at 182, 95 P.3d at 613 ("there was no reason to suspect that subsequent to causing the motor vehicle accident [the first offense], [the] [d]efendant would obtain an insurance policy and then file a fraudulent insurance claim [the second offense]") and Akau, 118 Hawai'i at 57, 185 P.3d at 242 (finding that the defendant's act of selling drugs to undercover police officers three times "provided sufficient probable cause to suspect that Akau would commit additional drug offenses.").

Thus, the Akau court did not "deviate[] from our history by focusing on 'whether the facts and circumstances of the first discovered offense provided sufficient probable cause to suspect that the defendant had committed or would commit the second discovered offense[,]'" as the Majority asserts. Rather, Akau simply followed Carroll, Servantes and Keliiheleua, in focusing primarily, but not exclusively, on the probable cause analysis.

defense to the assault charge would likely have necessitated cross-examination of the officers at the assault scene regarding the officers' knowledge and involvement in the Traffic Offenses. What is more, the police reports of officers Roe, Nguyen, Sesoko and Deponte in the Assault Offense all reference the Traffic Offenses. For example, Officer Roe noted in her report that she "responded to an argument type call that was related to a Motor Vehicle Fled Scene type case that had occurred earlier in the evening and that she "responded to the above scene to follow-up on the [Motor Vehicle] Fled scene[.]" Additionally, while at the scene of the Assault Offense, Officer Sesoko specifically informed Sardinha that his vehicle had been involved in a hit-and-run. Finally, Officer Deponte's report in the Traffic Offenses case stated that Sardinha's vehicle had been found at Nancy's Kitchen when the officers had responded to the argument call.

Overlap of the two charges is also evinced by Officer Nguyen's recognition of the vehicle that Sardinha was sitting in during the course of the Assault Offense as the same one from the Traffic Offenses, which led Officer Nguyen to request Sardinha's driver's license, registration and proof of insurance. And it was Officer Nguyen's request for this information from Sardinha that precipitated the behavior upon

which the assault charge is based.[6] The Majority dismisses Sardinha's argument that the offenses are related because Officer Nguyen's request for Sardinha's vehicle information (based on recognizing the vehicle from the Traffic Offenses) precipitated the Assault Offense, simply by stating that "[t]he record establishes that Sardinha acted belligerently towards the officers before the officers even noticed the vehicle." Sardinha did act belligerently towards the officers before the officers recognized his vehicle as the one from the Traffic Offenses 1.5 hours earlier. However, acting "belligerently" toward the officers is not the same as committing a violation of HRS § 707-712.5(1)(a), which requires that a person intentionally or knowingly cause bodily injury to a law enforcement officer in the performance of duty. Sardinha did not commit a potential violation of HRS § 707-712.5(1)(a) until after Officer Sesoko explicitly informed Sardinha that his vehicle had been involved in a hit-and-run. Thus, it is irrelevant that Sardinha acted belligerently before the officers recognized the vehicle, because Sardinha did not assault a law enforcement officer until after Sardinha knew that the officers viewed him as a suspect in the Traffic Offenses. The record

[6] Officer Sesoko's report also provided that after Officer Sesoko informed Sardinha that his car was involved in a motor-vehicle accident, Sardinha "then got even more irritated."

thus supports the conclusion of the circuit court that there is substantial overlap between the factual scenarios and evidence in the Assault Offense and the Traffic Offenses.[7]

iii. Statutory Elements

The third factor that the circumstances element of the single-episode test considers is whether there is statutory overlap between the two offenses. See, e.g., Keliiheleua 105

[7] In applying the factual/evidentiary overlap factor of the circumstances element of the single-episode test, the Majority incorrectly analyzes only the prosecution's case, rather than determining whether "a complete account of one charge cannot be related without referring to details of the other charge." Carroll, 63 Haw. at 351, 627 P.2d at 780 (emphasis added). That is, the Majority holds "that the relevant inquiry is not whether a defendant could elicit facts about the other offense, but whether the prosecution can fairly put on a complete case without reference to the other offense." However, none of Hawai'i's prior cases have evaluated only whether the prosecution can fairly put on a complete case without reference to the other offense. For example, Akau explicitly states that "[w]here the proof or defense of one charge necessarily involves the proof or defense of another charge, sequential prosecutions of the two charges burden both the defendant and the state with repetitive presentation of evidence." Akau, 118 Hawai'i at 63, 185 P.3d at 248 (quoting People v. Miranda, 754 P.2d 377, 38-81 (Colo. 1988) (emphases added)). Additionally, Servantes looked to the fact that in response to the defendant's motion to suppress, the prosecution "would have to refer to a factual account of the misdemeanor offense in order to support probable cause for the search [related to the other offense.]" Servantes, 72 Haw. at 39, 804 P.2d at 1249. Consideration of evidence presented by the State in response to a motion to suppress goes beyond looking at "whether the prosecution can fairly put on a complete case without reference to the other offense."

The Majority's admonition to only look to the prosecution's case in determining whether there is factual/evidentiary overlap is contrary to the intent of HRS § 701-109(2). The single-episode test is designed to prevent defendants from facing the expense and uncertainty of multiple trials based on the same criminal episode. Commentary to HRS § 701-109(2). The consequences of a defendant facing expenses for multiple trials are most acute where the evidence the defense intends to present, or cross-examine about, overlaps across the two charges. See infra p. 16-19. In the instant case, Sardinha would be required to present repetitive evidence if the Assault Offense and the Traffic Offenses were tried separately, such as cross-examining the officers at the scene of the Assault Offense about their knowledge of the Traffic Offenses, and cross-examining the officers at the scene of the Traffic Offenses about how Sardinha was identified as the driver.

Hawai'i at 182, 95 P.3d at 613. The Majority is correct to conclude that the statutory requirements of the Assault Offense and the Traffic Offenses are dissimilar. However, because the Assault Offense gave rise to probable cause to believe Sardinha committed the Traffic Offenses, and because there is significant factual and evidentiary overlap between the two offenses, the circumstances factor, like the "time" and "place" factors, of the single-episode test is met.[8] Therefore, the State was required to bring the charges for the Traffic Offenses and the Assault Offense together.

B. The Majority's holding that the single-episode test is not met thwarts the intent of HRS § 701-109(2) to protect defendants from facing the uncertainties of multiple prosecution arising from the same criminal episode.

The purpose of HRS § 701-102(2)'s requirement that the State bring charges that arise from a single criminal episode together is to protect defendants from facing the "expense and uncertainties of two trials based on essentially the same episode." Commentary on HRS § 701-109(2); see, also, Carroll,

[8] The other prerequisites in HRS § 701-109(2) are also met. First, the Assault Offense was known to the prosecuting officer at the time that the State charged Sardinha by complaint for the Traffic Offenses. The officers who reported to the scene of the Assault Offense recognized that Sardinha's vehicle had been involved in the Traffic Offenses, and the police reports of both offenses cross reference each other. Moreover, Sardinha entered a plea on the Traffic Offenses on the same day that the indictment was filed in the Assault Offense.

Additionally, the Assault Offense and the Traffic Offenses are within the jurisdiction of a single court. Both the Assault Offense and the inattention to driving charge in the Traffic Offenses are criminal offenses within the jurisdiction of the circuit court.

63 Haw. at 350-51, 627 P.2d at 779-780. It is also "designed to prevent the State from harassing a defendant with successive prosecutions where the State is dissatisfied with the punishment previously ordered or where the State has previously failed to convict the defendant." Carroll, 63 Haw. at 351, 627 P.2d at 780 (citing State v. Solomon, 61 Haw. 127, 134, 596 P.2d 779, 784 (1979)). Thus, the policy justifications for the single-episode test in HRS § 701-109(2) are largely to protect defendants from undue multiple prosecution by the government, as well as to promote "society's interest in efficient law enforcement[.]" Carroll, 63 Haw. at 351, 627 P.2d at 780.

The Majority's holding that the single-episode test is not met in the instant case is contrary to the purpose of HRS § 701-109(2) to protect defendants from facing the uncertainties of multiple prosecution. Sardinha's decision to plead no contest to the Traffic Offense was likely affected by the fact that the State did not bring the charges for the Traffic Offenses and the Assault Offense together. Sardinha entered a plea to the Traffic Offenses on the morning of March 8, 2016. Later that same day, the indictment was filed in the Assault Offense. As a consequence of the two charges being brought separately, Sardinha was unaware that the State was seeking the indictment in the Assault Offense at the time he entered his plea. If Sardinha was aware of the impending assault

indictment, it presumably could have affected his decision to plead to the traffic offense in the first place. See Akau, 118 Hawai'i at 59, 185 P.2d at 244; see also, Commentary on HRS § 701-109(2). This is particularly true where, in exchange for entering the no-contest plea, the State dropped the remaining charges against Sardinha arising from the Traffic Offenses. Had Sardinha known the State was seeking additional charges against him, he may have chosen to go to trial on the Traffic Offenses or included the Assault charge in the plea negotiations.

Entering a no-contest plea requires the waiver of constitutional rights due the defendant entering the plea, including the right to a jury trial, the right against self-incrimination, and the right to confront witnesses. Consistent with the purpose of HRS § 701-109(2) to protect defendants from uncertainties, Sardinha was entitled to know—when facing the gravity of entering a no contest plea to the Traffic Offense—that the State intended to charge him with the related Assault Offense.

III. Conclusion

For the foregoing reasons, I respectfully dissent to the Majority's decision to affirm the ICA's Judgment on Appeal, which vacated the circuit court's Order Granting Sardinha's Motion to Dismiss with Prejudice.

/s/ Michael D. Wilson