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- ☒ Prosecutor 808 241-1758
☒ Defense Attorney
 ☐ Public Defender 808 274-3422
 ☐ Private Attorney _____
☒ Adult Probation 808 482-2652
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☐ 3rd Examiner Dr. _____
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☐ Other _____

**IN THE _____ COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

STATE OF HAWAII,

vs.

_____,
Defendant.

) **CR. No.** _____
) **FC-CR.** _____
) **REP. NO(S):** _____
)
) JUDGMENT OF ACQUITTAL, ORDER
) COMMITTING DEFENDANT TO THE
) CUSTODY OF THE DIRECTOR OF
) HEALTH PENDING EXAMINATION OF
) THE ISSUE OF DEFENDANT'S **RISK OF**
) **DANGER**, SETTING POST-ACQUITTAL
) HEARING, AND ORDER FOR
) TRANSPORT
)
) **[§704-411(1), (2) and (3), HRS]**
)
) Hearing Date: _____
) Time: _____
) JUDGE: _____

**JUDGMENT OF ACQUITTAL, ORDER COMMITTING DEFENDANT
TO THE CUSTODY OF THE DIRECTOR OF HEALTH PENDING
EXAMINATION OF THE ISSUE OF DEFENDANT'S RISK OF DANGER,
SETTING POST-ACQUITTAL HEARING, AND ORDER FOR TRANSPORT**

Defendant's Motion for Judgment of Acquittal by reason of physical or mental disease, disorder, or defect excluding penal responsibility and for an order setting a post-acquittal evidentiary hearing on the issue of Defendant's dangerousness, pursuant to Sections 704-411(1), (2) and (3), Hawaii Revised Statutes, came on for hearing on _____. Defendant's counsel, _____ and Deputy Prosecuting Attorney _____ were present.
Defendant [] was physically present
[] appeared via video-conferencing.

This Court, having reviewed and received the report(s) of the appointed examiner(s), having accepted the parties' stipulation to the facts, and for good cause appearing, finds as follows:

1. **Defendant is fit to proceed** on the above charge(s);
2. By a preponderance of the evidence, at the time of the offense(s) charged, Defendant was affected by a physical or mental disease, disorder or defect that substantially impaired Defendant's capacity to appreciate the wrongfulness of Defendant's conduct and/or substantially impaired Defendant's capacity to conform Defendant's conduct to the requirements of the law, thus excluding penal responsibility;
3. Defendant is still affected by the physical or mental disease, disorder or defect, and presents a risk of danger to Defendant or others; and
4. Pursuant to HRS Section 704-411(1) and (2), Defendant should be committed forthwith to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment ("DOH Facility") for a period not exceeding thirty (30) days, or for a longer period as the Court determines to be necessary, to facilitate the examination of Defendant on the issue of Defendant's risk of danger to self or others.

Therefore, IT IS HEREBY ORDERED that:

A. JUDGMENT OF ACQUITTAL AND ORDER OF COMMITMENT

1. Defendant is ACQUITTED of the charged offense(s) on the grounds of physical or mental disease, disorder or defect excluding responsibility.
2. Pursuant to Section 704-411(3), Hawaii Revised Statutes, Defendant is committed forthwith to the custody of the Director of Health to be placed in an

appropriate DOH Facility for detention, care, and treatment, for a period not exceeding thirty (30) days, or for a longer period as the Court determines to be necessary, to facilitate the examination of Defendant on the issue of Defendant's risk of danger to self or others.

3. **[Check ONE box below]**

☐ From the date and time of the issuance of this Court's oral order of commitment on _____ at _____ .m., until Defendant's transfer to a DOH Facility, Defendant shall remain in the custody of the Department of Corrections and Rehabilitation at the Kauai Community Correctional Center for no more than seventy-two (72) hours pending admission and placement in an appropriate DOH Facility for detention, care, and treatment.

OR

☐ Defendant shall remain in the custody of the Director of Health and shall be placed in an appropriate institution for detention, care and treatment.

4. When Defendant is admitted to an institution deemed appropriate by the Director of Health, representatives of the Department of Law Enforcement, Sheriff's Division shall effect the immediate transfer and transport of Defendant from the Kauai Community Correctional Center to the DOH Facility.

B. EXISTING RECORDS, HRS §§704-404(9); 704-411(3)

The Adult Client Services Branch of the Fifth Judicial Circuit shall obtain and timely make available for inspection by examiner(s) all existing medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes and Rule 16 of the Hawaii Rules of Penal Procedure.

The Court further orders that any substance use disorder patient records within the scope of 42 C.F.R. part 2 that are in the custody of public agencies shall be provided to the Adult Client Services Branch for review by the examiner(s).

C. APPOINTMENT OF EXAMINER(S), HRS §704-411(3)

Defendant shall be examined by:

☐ State Designate
Adult Mental Health Division
Court Evaluation Branch
1700 Lanakila Street
Honolulu, Hawaii 96817

☐

Psychiatrist's or Psychologist's name

☐

Psychiatrist's or Psychologist's name

D. PLACE OF EXAMINATION

Defendant shall be examined at:

☐

The Kauai Community Correctional Center, or other correctional facility as deemed appropriate by the Department of Corrections and Rehabilitation.

☐

A hospital or other suitable facility designated by the Director of Health ["DOH Facility"] to which the Defendant is ordered committed until _____ **a period not exceeding 30 days**, unless the Court determines that a longer period is necessary.

E. CONTENTS OF REPORT, HRS §§704-411(3); 704-404(3), (5), (6), (8), and (9)

The examiner(s)' report(s) shall include the following:

1. A description of the nature of the examination.
2. A diagnosis of the physical or mental condition of Defendant at the present time.
3. An opinion as to whether Defendant poses a risk of danger to Defendant or others, and if the opinion of the examiner is that Defendant does pose a risk of danger to self or others:
 - a. Whether the Defendant should be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment pursuant to HRS §704-411(1)(a) because Defendant is not a proper subject for conditional release pursuant to HRS §704-411(1)(b); or
 - b. Whether the Defendant can be controlled adequately and provided with proper care, supervision, and treatment if granted conditional release pursuant to HRS §704-411(1)(b), and if so, what those conditions should be.

4. A statement that the diagnosis and opinion rendered were arrived at independently of other examiners, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report.
5. Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

F. OTHER

G. DUE DATE OF EXAMINER'S REPORT

The examiner(s) shall file a written report with the Court no later than _____. The **original** of the report(s) of the examination(s), including any supporting documents, shall be submitted to the Clerk of the Court by either of the following methods: (1) mailing via U.S. Postal Service to 3970 Ka'ana Street, Lihue, Hawaii 96766; or (2) emailing to LegalDocs.5CC@Courts.Hawaii.Gov. As a courtesy, the examiner is encouraged to fax/email an unfiled copy of the report to the appropriate judge's chamber. FAX numbers for judges' chambers are:

District Court Chambers #2 – (808) 482-2535
Family Court Chambers #1 – (808) 482-2541
Family Court Chambers #3 – (808) 482-2655
Circuit Court Chambers #4 – (808) 482-2662
Circuit Court Chambers #6 – (808) 482-2561

The Clerk of the Court shall distribute the report, and any supporting documents, to the prosecuting attorney, Defendant's counsel, and the Adult Client Services Branch.

Any request for an extension of the due date of an examiner's report shall be made in writing and filed with the Court prior to the due date.

H. EVIDENTIARY HEARING DATE; BURDEN OF PROOF

Defendant is ordered to appear at a post-acquittal hearing to determine whether Defendant presents a danger to self or others on _____ at _____ .m.

Pursuant to HRS Sections 704-411(4) and (5), at the post-acquittal hearing on Defendant's dangerousness, the Defendant's fitness shall not be an issue, and the burden shall be on the State to prove, by a preponderance of the evidence, that the Defendant is

affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the Defendant should either be committed or granted conditional release.

I. ORDER FOR TRANSPORT TO DEPARTMENT OF HEALTH FACILITY

IT IS FURTHER ORDERED that:

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from this Court to _____ (name of DOH Facility). The transportation of Defendant shall occur within the following time period:

☐ (In-custody): Within seventy-two (72) hours following the Court's order on _____ at _____ .m. committing Defendant to the care and custody of the Director of Health pursuant to HRS Section 704-411(1).

☐ (Out-of-Custody): Defendant shall be taken into custody forthwith by representatives of the Department of Law Enforcement, Sheriff's Division and transport of Defendant shall occur within seventy-two (72) hours following the Court's order on _____ at _____ .m. committing Defendant to the care and custody of the Director of Health pursuant to HRS Section 704-411(1).

J. ORDER FOR TRANSPORT TO COURT

IT IS FURTHER ORDERED that:

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from _____ to this Court for a further hearing on _____ at _____ .m., and shall remain with the Defendant until the conclusion of the hearing, at which time Defendant may or may not be transported back to the facility deemed appropriate by the Director of Health ("DOH Facility").

In the event that Defendant's treating physician determines that transport to the next hearing would present a risk of danger to Defendant or to others, or if the Defendant chooses to waive their physical presence at the hearing, Defendant's presence at the hearing may be by way of Video-Conferencing.

Representatives of the Department of Law Enforcement, Sheriff's Division shall transport the Defendant from the DOH Facility to this Court and back to said Facility for any further hearings, as ordered by this Court.

DATED: Lihue, Hawaii, _____.

Judge

APPROVED AS TO FORM on _____:

Deputy Prosecuting Attorney

Defense Counsel