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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

vs.

VIHN DU CHAU,
also known as VIHN CHAU, also known as ERIC CHAU,
Respondent/Defendant-Appellee.

SCWC-23-0000336

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-23-0000336; CASE NO. 2FFC-22-0000171)

OCTOBER 6, 2026

DEVENS, C.J., McKENNA, EDDINS, AND GINOZA, JJ.,
AND CIRCUIT JUDGE WONG, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY EDDINS, J.

I.

The Family Court of the Second Circuit acquitted a man of violating an order for protection, Hawai'i Revised Statutes (HRS) § 586-11 (2016). It believed the State had to prove personal

service of the order under HRS § 586-6 (2016). That view sets up the two questions we decide.

Is service an element of the crime? It is not. Service is one way to prove the defendant intentionally or knowingly violated the protective order.

Does an acquittal bar retrial when the court got the law wrong? It does. Here, the family court acquitted on an element the statute does not contain. Under Article I, Section 10 of the Hawai'i Constitution, that acquittal stands.

We affirm the Intermediate Court of Appeals' (ICA) dismissal of the State's appeal.

II.

On May 2, 2022, the family court issued a one-year protective order against Vihn Du Chau.

On July 25, 2022, the State charged Chau with two counts of violation of an order for protection under HRS § 586-11. It alleged he approached the petitioner's workplace and contacted her in ways the May 2, 2022, order prohibited.

Trial began on April 10, 2023, before Family Court Judge James Rouse. The petitioner and Chau had dated for two years. She testified that Chau attended the hearing when the court issued the protective order. The order, admitted as an exhibit, showed him present at the hearing.

After the State rested, Chau moved for judgment of acquittal. Defense counsel argued that personal service was required, even though Chau was present when the order issued. The State countered that Chau's presence at the hearing satisfied HRS § 586-6 and proved his knowledge under HRS § 586-11.

The family court sided with Chau. Relying on this court's 1992 decision in State v. Medina, it recited this passage:

[T]he personal service requirement eliminates any chance of misunderstanding or confusion by providing assurance that a defendant prosecuted under the provisions of 586-11 has received a written copy of the order, and therefore, knows the exact content of the order.

See Medina, 72 Haw. 493, 494, 824 P.2d 106, 107 (1992).

The court then concluded, "the public policy would dictate that service is an element of the offense." Because "[t]hat element has not been established to this court's satisfaction," it acquitted Chau. "Case is dismissed," the court said. A written judgment of acquittal followed.

The State appealed. It argued the family court's judgment of acquittal was in substance an order sustaining a motion to dismiss, appealable under HRS § 641-13(1) (2016).

The ICA dismissed for lack of appellate jurisdiction. Although the family court "may not have been fully correct" in interpreting HRS § 586-11, its ruling was "nevertheless grounded in its factual determination that the State failed to prove an

element of the charge." That made the ruling an acquittal, the ICA reasoned, and the appeal unreviewable.

We accepted cert and ordered supplemental briefing on whether service is an element of violation of an order for protection.

III.

A. Service Is Not an Element of HRS § 586-11

We begin with the elements question. We do not reweigh the acquittal.

Whether the family court's ruling was an acquittal depends on whether it resolved the "factual elements of the offense charged." State v. Dow, 72 Haw. 56, 65, 806 P.2d 402, 407 (1991). We cannot apply that test without first knowing what the offense requires.

The question is fully presented, recurs in the family courts, and has been briefed at our request.

The offense statute is pithy. A person commits violation of an order for protection by "knowingly or intentionally" violating a protective order. HRS § 586-11(a). The statute says nothing about service.

Service comes from elsewhere. HRS § 586-6, titled "Notice of order," provides that a protective order "shall either be personally served upon the respondent, or served by certified mail, unless the respondent was present at the hearing in which

case the respondent shall be deemed to have notice of the order." HRS § 586-6(a).

The two statutes do different jobs. HRS § 586-11 tells the State what it must prove at trial - a knowing or intentional violation. HRS § 586-6 is procedural. It ensures the respondent knows the order exists before the State enforces it.

The family court fused the two. It concluded that "public policy" required service as an element of the violation. It read § 586-6 into § 586-11.

Medina does not go as far as the family court took it. It held only that prosecution under HRS § 586-11 required satisfying the notice provisions of HRS § 586-6. 72 Haw. at 494, 824 P.2d at 107. Service, Medina explained, "eliminates any chance of misunderstanding or confusion" by ensuring the defendant "knows the exact content of the order." Id.

Notice supports proof of state of mind. The element is the knowing or intentional violation of the order.

The 1998 amendment to HRS § 586-6 reinforces the point. Before 1998, that statute allowed service by certified mail or personal service on the respondent not present at the hearing. For a respondent at the hearing, it permitted service by handing them a filed copy of the order. Act 172 amended how notice could be accomplished for a present respondent. 1998 Haw. Sess.

Laws Act 172, § 5 at 644. A respondent present when the order issues is now "deemed to have notice of the order."

Read service into HRS § 586-11 as an element, and the 1998 amendment defeats its own purpose. Presence became the substitute for service, a way to give notice without it. Require service anyway, and the Legislature's choice changes nothing.

The pattern jury instruction confirms the point. Hawai'i Standard Jury Instructions Criminal (HAWJIC) 11.09 does not make personal service the only way to give notice. It lists three ways:

4. That the Defendant was given notice of the Order for Protection prior to engaging in such conduct by having [received a copy of the Order by personal delivery] [received a copy of the Order by certified mail] [been present at the hearing at which the Order was issued].

HAWJIC 11.09.

The ICA has made the same observation about the temporary restraining order (TRO) statute. "[P]ersonal service is not an element of the violation of TRO offense under HRS § 586-4"; it is only "evidence that the person to be restrained knows of the TRO." State v. Dilliner, 114 Hawai'i 518, 529 n.8, 164 P.3d 776, 787 n.8 (App. 2007). A family court may issue a TRO orally to a respondent present in the court. HRS § 586-4(c) (2018 & Supp. 2021). The court can bind a respondent who was never served. The same logic extends to HRS § 586-11.

The two offense statutes are framed alike. Each defines the crime as a knowing or intentional violation by a person aware of the order.

The ICA came out the same way in State v. Cichy, No. CAAP-22-0000452, 2025 WL 1025233 (Haw. Ct. App. Apr. 7, 2025) (SDO). Medina, the ICA explained, "recognized a service requirement for enforcing a restraining order; it did not create an element of a violation under HRS § 586-11." Id. at *2. We rejected cert in Cichy.

State v. Sugihara does not undercut our take. The family court there listed notice as an element, and on appeal the defendant called that error. 101 Hawai'i 361, 369, 68 P.3d 635, 643 (App. 2003). The ICA never decided the point. It affirmed on a narrower ground. Adding notice raised the State's burden and could only have helped the defendant. Id. The logic assumes notice is surplus, an extra the State didn't need to prove. Sugihara left the element question open.

Chau relies on HAWJIC 11.09. For twenty years, he notes, the pattern instruction has treated notice as an element. Pattern instructions are drafting aids. They do not bind this court. State v. Gomes, 117 Hawai'i 218, 226 n.14, 177 P.3d 928, 936 n.14 (2008).

Chau also points to the State's proposed jury instructions. The State put notice as element two. A party's litigation position does not define the elements of a crime.

Chau is right about one thing. Notice is central to an HRS § 586-11 prosecution. Without proof that the defendant knew the order existed and knew its terms, the State cannot show a knowing or intentional violation. Medina still stands for that, and we do not disturb its core.

Service is evidence of the defendant's state of mind.

We hold that service is not an element of violation of an order for protection, HRS § 586-11.

B. The Family Court's Ruling Was an Acquittal Under Article I, Section 10

Chau invokes the double jeopardy protections of both the United States and Hawai'i Constitutions. When matching state and federal provisions are both in play, we interpret the Hawai'i Constitution first. State v. Wilson, 154 Hawai'i 8, 13, 543 P.3d 440, 445 (2024). Only if our constitution falls short of the federal floor do we construe the federal analogue. Id.

Article I, Section 10 provides that no person "shall . . . be subject for the same offense to be twice put in jeopardy."

Jeopardy attached here. This was a bench trial, so jeopardy attached when the family court began to hear evidence. State v. Ellway, 158 Hawai'i 190, 196, 590 P.3d 319, 325 (2026).

The State presented its case and rested. Chau then moved for judgment of acquittal. Whatever the family court's ruling was, it came with jeopardy fully attached.

The question is what the ruling did. A judgment of acquittal is not defined by what it's called. It's defined by what it does. "[A] defendant is acquitted only when 'the ruling of the judge, whatever its label, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged.'" State v. Poohina, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (quoting Dow, 72 Haw. at 64, 806 P.2d at 406). What matters is "the intent of the ruling rather than the label." Id.

Three words in that formulation decide this case: "correct or not."

The family court believed the offense required proof of service. It tested the State's evidence against that understanding and found the proof lacking. "That element has not been established to this court's satisfaction." It granted Chau's motion for judgment of acquittal and entered a written judgment saying so.

A factfinder weighed the prosecution's evidence and found it did not prove the charge. The law calls that an acquittal.

The court's premise was wrong. Service is not an element. But the constitutional character of a ruling does not turn on

the quality of the trial court's statutory interpretation. The rule comes from Dow itself. A resolution of the factual elements in the defendant's favor counts, however mistaken. Dow, 72 Haw. at 65, 806 P.2d at 407.

The State resists on two fronts, Dow, on its side now, and State v. Markowski, 88 Hawai'i 477, 967 P.2d 674 (App. 1998). Neither gets there.

Start with Dow. There, the State tried the defendant for driving under the influence before a jury. The statute gave it two ways to prove the offense: impairment or alcohol concentration. 72 Haw. at 58, 806 P.2d at 403. After the State rested, the trial court acquitted on the impairment count and sent the alcohol-concentration count to the jury, which deadlocked. Id. The court declared a mistrial and set a second trial. Id. This court held it an acquittal in form only. Id. at 59, 806 P.2d at 404. The impairment ruling resolved just one theory. The other remained alive. The State could still win. See also State v. Spearman, 129 Hawai'i 146, 150, 296 P.3d 359, 363 (2013).

Chau's case differs. First, HRS § 586-11 does not create alternative statutory methods of committing the offense. It defines one crime. A knowing or intentional violation of a protective order. Service and presence at the hearing are evidentiary routes to notice under HRS § 586-6, a procedural

statute. They are not freestanding theories of criminal liability.

Second, and this matters more, the family court left nothing hanging. It did not decide one theory and reserve another. It identified what it believed to be the dispositive element, found the State's proof thin, and ended the case. No theory survived.

Dow covers rulings that leave part of the charge undecided. A complete resolution is an acquittal even when the court misread the charge.

Markowski fares no better. There, the ICA read a judgment of acquittal as an order granting a motion to dismiss, appealable under HRS § 641-13(1). 88 Hawai'i at 486, 967 P.2d at 683. But the ruling went to the legal question about how the State charged the offense. The court never weighed the State's proof of guilt.

That is the Markowski divide. On one side, whether the charge is legally valid. On the other, whether the State proved it. The first is a question of law. The second is a finding of fact. The family court made the second.

The court sat as factfinder, heard the State's case, and measured the evidence. It used the wrong yardstick. Yet it measured. "To this court's satisfaction" is factfinder-speak.

The State also points to the family court's words: "Case is dismissed." Poohina's substance-over-label rule cuts against the State here. The ruling came on a motion for judgment of acquittal, after the State rested, after the court had taken the evidence. The written judgment was captioned as an acquittal. The oral phrase described the effect of the ruling. The case was over.

Our reading aligns with federal law, which we may consult as persuasive authority. Wilson, 154 Hawai'i at 15, 543 P.3d at 447.

Evans v. Michigan mirrors this case. 568 U.S. 313 (2013). There, a Michigan trial court entered a directed verdict of acquittal because the State had not proved the burned building was not a dwelling – a "[f]ourth element" taken from the pattern jury instructions. Id. at 316-17. But the charge, burning other real property, required no proof of a dwelling. The instruction had invented it.

The Supreme Court held the erroneous ruling an acquittal for double jeopardy purposes and barred retrial. Id. at 318. An acquittal premised on a "misconstruction" of the statute prevents retrial. Arizona v. Rumsey, 467 U.S. 203, 211 (1984).

Evans drew no constitutional distinction between misconstruing a statute and adding an element it does not

contain. 568 U.S. at 318. Even the most mistaken acquittal endures. Fong Foo v. United States, 369 U.S. 141, 143 (1962).

We find Evans' reasoning sound. It aligns with Dow. A trial court that misreads the statute and finds the State's proof insufficient has resolved the question of guilt.

Nor could Article I, Section 10 tolerate a narrower reading. When we have parted from the Fifth Amendment, we have gone broader. See State v. Lessary, 75 Haw. 446, 453-54, 865 P.2d 150, 154 (1994); State v. Rogan, 91 Hawai'i 405, 423, 984 P.2d 1231, 1249 (1999). To hold that this judgment of acquittal was no acquittal at all, we would have to read Article I, Section 10 below the federal floor.

The animating principle confirms the result. The double jeopardy clause denies the State "repeated attempts to convict." Green v. United States, 355 U.S. 184, 187 (1957).

The State tried its case once. It chose its theory, presented its witnesses, and finished. The family court acquitted on an incorrect view of the required elements. Article I, Section 10 forbids a second trial.

The family court misread the law. The safeguard against that error is careful trial rulings and appellate correction. This opinion settles it.

The State cannot appeal an acquittal. HRS § 641-13. The ICA correctly dismissed for lack of appellate jurisdiction.

IV.

We hold that service is not an element of violation of an order for protection.

The family court's judgment, though grounded in legal error, is an acquittal under Article I, Section 10 of the Hawai'i Constitution. Retrial is barred. We affirm the ICA.

Richard B. Rost
for petitioner

Henry P. Ting
for respondent

/s/ Vladimir P. Devens

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Paul B.K. Wong

