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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I

v.

JUAN TEJEDOR BARON,

Defendant.

CASE NO. 1CPC-22-0000461

COUNT 1:
MURDER IN THE SECOND DEGREE
(§707-701.5 and 706-656 HRS)
COUNT 2:
THEFT IN THE FIRST DEGREE
(§708-830.5(1)(a) HRS)
COUNT 3:
THEFT IN THE FIRST DEGREE
(§708-830.5(1)(f) HRS)
COUNT 4:
IDENTITY THEFT IN THE FIRST DEGREE
(§708-839.6(1)(b) HRS)

STATE'S MOTION TO DETERMINE VOLUNTARINESS OF DEFENDANT'S STATEMENTS TO POLICE

HEARING:
Date: TBD
Time: TBD
Judge: Honorable Catherine Remigio

STATE'S MOTION TO DETERMINE
VOLUNTARINESS OF DEFENDANT'S STATEMENTS TO POLICE

The State of Hawai'i, by and through CATHERINE M. LOWENBERG, ("State") Deputy Prosecuting Attorney for the City and County of Honolulu, State of Hawai'i, hereby moves this honorable Court for an Order finding and concluding that the following statements made by Defendant JUAN TEJEDOR BARON (hereinafter, "Defendant") made to the police were voluntary:

1) The March 7, 2022 statements that Defendant made to, or in the presence of, Honolulu Police Department ("HPD") Officer Richard Song and Officer Kenneth Abraham-Botelho. These statements were captured on body-worn camera ("BWC").
2) The March 7, 2022 statements that Defendant made to, or in the presence of, HPD Detective Michael Garcia. These statements were captured on BWC.
3) Defendant's March 7, 2022 recorded statement to HPD Detective Michael Garcia and Detective Reid Tagomori.
4) Defendant's March 10, 2022 recorded statement to Los Angeles Police Department ("LAPD") Detective Danny Mendez and Detective Patrick Lane.

This motion is made pursuant to Rule 47 of Hawai'i Rules of Penal Procedure ("HRPP"), Section 621-26 of the Hawai'i Revised Statutes ("HRS"), the memorandum of law, any attached exhibits, and the records and files of this court and any additional information adduced at the hearing for this motion.

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Dated at Honolulu, Hawai‘i: December 16, 2022.

STATE OF HAWAI‘I

By STEVEN S. ALM
Prosecuting Attorney

By /s/ CATHERINE M. LOWENBERG
CATHERINE M. LOWENBERG
Deputy Prosecuting Attorney
City and County of Honolulu

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MEMORANDUM OF LAW

ISSUES PRESENTED

- When HPD officers and detectives interacted with Defendant on March 7, 2022 at 357 Lelekepue Place, Defendant was at no time in handcuffs, subjected to booking procedures, nor ordered to comply with officer's orders. HPD did not use force and Defendant was not the focus of the investigation. Was Defendant in custody? No.

- The "fruit of the poisonous tree" doctrine bars the admission of subsequent statements when a prior made statement was illegally obtained. When Defendant was interviewed on March 10, 2022 by LAPD, after voluntarily fleeing the state, it took place three (3) days after his initial statement to HPD, over 2,400 miles apart, and with an entirely different set of interrogators. Is Defendant's March 10, 2022 interview "fruit of the poisonous tree"? No.

- A "totality of the circumstances" approach is used to determine the voluntariness of a defendant's statement. On March 10, 2022, Defendant acknowledged and waived his Miranda rights by continuing to speak without an attorney and answering all of the questions posed. Throughout the entire interview, Defendant never complained about feeling scared, uncomfortable, in pain, or not being able to understand English. Was Defendant's March 10, 2022 statement to LAPD rendered knowingly, intelligently, and voluntarily? Yes.

I. STATEMENT OF FACTS

A. The Warranty Deed

1. On March 11, 2020 at approximately 8:01 a.m., a Warranty Deed was recorded with the Bureau of Conveyances for the State of Hawai'i.[1] The Warranty Deed was executed between Thomas Keith Mangum and Meike Peplow-Mangum as the grantors and Gary L. Ruby ("Ruby"), Trustee, or his successors in trust under the Gary L. Ruby Living Trust dated December 19, 2017, as the grantee for the subject property located at 357 Lelekepue Place, Honolulu, Hawai'i, 96821, under Tax Map Key Number (1) 3-7-016-020. Id.

2. 357 Lelekepue Place is located in the gated community of Hawai'i Loa Ridge and is managed by the Hawai'i Loa Ridge Homeowners Association. There is only one (1) entrance and one (1) exit to the community and there is a security post at the front gate of the community. Residents of the Hawai'i Loa Ridge community have an entrance card that they use at the front gate to gain access into the community.

3. On February 6, 2022 at approximately 10:47 p.m., a payment in the sum amount of $478.53 was made to www.Hawaiideed.com.[2] The payment was made on a MasterCard credit card issued by Synchrony Bank with card number ending in 3781. Id. The purported customer was named 'Gary Ruby' with a billing and shipping address of 357 Lelekepue Place, Honolulu, Hawai'i, 96821. Id.

4. On February 7, 2022 at approximately 9:47 a.m., attorney Porter DeVries, Esq., of DeVries & Associates received an email for a work order confirmation issued by WixStores.[3] The item requested was "Standard Deed Service, Recording System: Regular" in the amount of

[1] See bates 3527 – 3534.
[2] See bate 4036.
[3] See bate 4034.

$478.53 with the billing and shipping information associated with 'Gary Ruby' referenced *supra*. Id.

5. On February 15, 2022 at approximately 12:51 a.m., an email was sent by Team HawaiiDeed to an email associated with Ruby regarding the completion of the second Warranty Deed ("2nd Warranty Deed") documents for review and signature.[4]

6. Under the 2nd Warranty Deed, Gary Ruby, Trustee of the Gary L. Ruby Living Trust dated December 19, 2017 was listed as the grantor and Defendant Juan Tejedor, married, was listed as the grantee as to 100% of grantor's interest for the subject property located at 357 Lelekepue Place, Honolulu, Hawai'i, 96821.[5]

B. Defendant's Interactions with Ruby

7. Defendant was born in 1998 in the city of Bucaramanga, Republic of Columbia.[6] Defendant attended school in Columbia and immigrated to Houston, Texas in 2018. See Exhibit 1, (Transcript of Defendant's LAPD Interview Part One) at pgs. 13-14, lines 16-19, 1-8. While living in Houston, Texas, Defendant worked in automobile sales marketing at Los Parientes Auto Sales. Id. at pg. 13, lines 1-11.

8. On January 1, 2022 Defendant arrived to the island of Oahu, State of Hawai'i aboard a United Airlines flight. Defendant listed 2005 Kalia Road as the address of the hotel at which he would be staying.[7] The 2005 Kalia Road address is associated with the Hilton Hawaiian Village Waikiki Beach Resort hotel. Defendant had a return date of January 6, 2022. Id.

[4] See bate 4033.
[5] See bates 3536 – 3542.
[6] See bate 3859.
[7] See bate 3654.

9. At some point during the vacation, Defendant purportedly met an individual by the screen name of "Lorne" through Grindr[8] for the purposes of facilitating a sexual relationship. See Exhibit 1 at pgs. 29-30, lines 13-16, 5-18. Further investigation later determined that "Lorne," referred to Ruby. See Exhibit 18 at pg. 11, lines 13-17.

10. On January 31, 2022, Defendant returned to the island of Oahu, State of Hawai'i aboard a United Airlines flight.[9] Defendant listed 357 Lelekepue Place, Honolulu, Hawai'i, 96821, as the address at which he would be staying. Id. The 357 Lelekepue Place address is associated with Ruby's primary form of residence. Defendant initially had a return date of February 5, 2022. Id.

11. On February 4, 2022 at approximately 4:22 p.m., Ruby and Defendant were captured on surveillance video at Dole Cannery Theaters.[10] This is the last known sighting of Ruby.

C. Defendant's Financial Ventures

12. On February 6, 2022, at approximately 11:24 a.m., Defendant arrived at Audi Honolulu, located at 888 Kapiolani Blvd., Honolulu, Hawai'i, 96813, and was helped by Audi Brand Specialist Taiana Hale ("Hale"). See Exhibit 2 (Transcript of Hale interview) at pg. 4, lines 1-9. The following is notable regarding Hale's interactions with Defendant on February 6, 2022:

a. Upon arrival, Defendant presented Hale with the vehicle title to the Audi A6 that he was currently driving and inquired about trading in the vehicle for a different or newer model. Id. at pg. 4, lines 15-20.

[8] Grindr is a social online dating platform for homosexual, bisexual, transsexual, and queer individuals.
[9] See bate 3654.
[10] See bates 3757-3758.

b. Defendant explained to Hale that the title was under his uncle's name, "Gary Ruby,"[11] and that his purported uncle had gifted the vehicle to Defendant while he was living in Hawai'i and staying at his uncle's place on Hawai'i Loa. Id. at pgs. 4-5, lines 19-20, 1-2.

c. As Defendant was filling out the credit application in anticipation of purchasing an Audi Q8, Defendant indicated to Hale that he didn't want to enter his social security number as his uncle would be doing a wire transfer. Id. at pg. 5, lines 5-10.

d. Defendant told Hale that his uncle was in Texas and that Defendant would call him in order to get him to electronically sign everything. Id. at pg. 5, lines 13-15.

e. When Hale requested a copy of Defendant's driver's license and vehicle insurance, Defendant replied that he did not have a current driver's license for Hawai'i, but he had his passport and was insured. Id. at pgs. 5-6, lines 17-20, 1.

f. On February 6, 2022 at 1:11 p.m., Hale received an email from an email address associated with Defendant which included a photocopy of his purported uncle's driver's license.[12] The name in the photocopied driver's license was "Gary Ruby." Id.

g. On the same day at 1:19 p.m., Hale received another email from the same email address associated with Defendant which included a photocopy of a GEICO declaration page which listed "Gary L. Ruby" as the "Named Insured" and "Juan Tejedor" under the category of "Additional Drivers."[13]

[11] Law enforcements checks revealed that Ruby is not Defendant's uncle nor related to Defendant in any way.
[12] See bates 3886 – 3889.
[13] See bates 3882 – 3885.

h. After requesting identification and vehicle insurance from Defendant, Hale noticed that Defendant did not have a hard copy of his vehicle insurance and instead, observed Defendant opening the mobile GEICO application on his phone to pull up the vehicle insurance. See Exhibit 2 at pgs. 18-19, lines 6-15, 5-6. Hale related that Defendant was on the same insurance policy as Ruby. Id. at pg. 19, lines 8-16.

i. Defendant told Hale that he would call his uncle in Texas to have him sign the paperwork. Id. at pg. 6, lines 5-8. Hale related that Defendant was speaking on the phone in Spanish. Id.

j. After about five (5) or ten (10) minutes, Hale received the signed auto paperwork back. Id. at pgs. 6-7, lines 16-20, 1-3.

k. However, Defendant was still unable to trade in his vehicle since the title had not been transferred. Id. at pg. 7, lines 4-8. Defendant replied that his uncle would be arriving in Hawai'i on Tuesday and wanted to take the paperwork or have the paperwork delivered by Hale to his uncle for signature. Id. at pg. 8, lines 3-7.

l. At some point, Defendant told Hale that he would be right back. Id. at pgs. 8-9, lines 19-20, 1. After about five (5) minutes of waiting, Hale went outside to check on Defendant and noticed that he was gone. Id. at pg. 9, lines 2-3.

m. Hale related that when she attempted to call Defendant, she received no answer. Id. at pg. 32, lines 8-11. When Hale tried to call Defendant again, Defendant's phone went straight to voicemail. Id.

13. On February 7, 2022 at approximately 10:52 a.m., Defendant completed a transaction for vehicle transfer of title for the 2020 Audi A6 from 'Gary Ruby' to 'Juan Tejedor' at the Department of Motor Vehicles for the City and County of Honolulu ("DMV").[14]

14. On the same day, Defendant returned to Audi Honolulu in an attempt to complete his transaction from the previous day and spoke with Audi General Sales Manager Vincent Leong ("Leong"). See Exhibit 3 (Transcript of Leong interview). The following is notable regarding Leong's interactions with Defendant on February 7, 2022:

a. Upon arrival, Defendant initially spoke to another Audi Brand Specialist Salesperson and stated that he was ready to complete his transaction. Id. at pgs. 31-2, lines 18-19, 1.

b. After Leong realized that Defendant was the same person from the previous day who was helped by Hale, he approached Defendant and inquired as to how he obtained the vehicle title without his purported uncle being in town. Id. at pg. 32, lines 8-13. Defendant replied that the DMV took the vehicle title without a signature and turned it over to his name. Id. at lines 13-17.

c. Leong replied back to Defendant that it was a huge red flag because the DMV wouldn't do that. Id. at pg. 33, lines 1-3. Leong subsequently told Defendant that he declined doing business with him. Id.

d. Leong related that Defendant became upset, stormed out, then returned and asked for his name before finally leaving. Id. at lines 6-13.

[14] See bates 3738-3739.

15. On the same day at approximately 5:40 p.m., Defendant is seen on surveillance cameras pulling into the parking lot of Lowe's Home Improvement store, located on 411 Pacific Street, Honolulu, Hawai'i, 96817, in an Audi vehicle bearing license plate "WBP884."[15]

16. Approximately ten (10) minutes later, Defendant completed his purchase of six (6) Quikrete concrete bags, two (2) of which were sixty (60) pound bags and four (4) of which were eighty (80) pound bags.[16] These purchases were made on an American Express credit card ending in 1018. Id.

17. On February 8, 2022 at approximately 8:55 a.m., User "glrhawaii" logged into "Milestone," the online portal vendor for the Board of Water Supply for the City and County of Honolulu, State of Hawai'i ("BWS").[17] Two (2) service order requests were placed during this online session. Id.

a. The first request was to stop service for "Gary L. Ruby" at 357 Lelekepue Place, effective February 8, 2022, with the customer comment of "Change name in account." Id.

b. The second request was to start service for "Juan Tejedor" at 357 Lelekepue Place, effective February 8, 2022. Id. The second request indicated that "Juan Tejedor" was the "Property Owner." Id.

18. On February 17, 2022, at approximately 5:00 p.m., two (2) males seated in a gold Audi with cream interior parked in row one of the parking lot at the BMW of Honolulu auto dealership located at 777 Kapiolani Blvd., Honolulu, Hawai'i, 96813 and were assisted by BMW Client Advisor Jose Castillo ("Castillo"). See Exhibit 4 (Transcript of Castillo interview) at pg.

[15] See bates 3717 – 3718.
[16] See bate 3716.
[17] See bate 3845.

4, lines 9-12. One of the males identified himself to Castillo as "Juan Tejedor." Id. at pg. 5, lines 12-20. Per Castillo, the other male was named "Bruno." Id. at pg. 6, line 5. The following is notable regarding Castillo's interaction with Defendant on February 17, 2022:

a. Castillo observed Defendant and Bruno circling around the lot looking at two (2) vehicles specifically, a white BMW X6 and a blue BMW X4. Id. at pg. 4, lines 13-17. It appeared to Castillo that they were gravitating more towards the blue X4. Id.

b. When Castillo asked Defendant if he provide any more information for him, Defendant replied that he liked the X4 because it reminded him of the one he had back in Texas. Id. at lines 17-20.

c. When Castillo asked Defendant if he had a trade in vehicle, Defendant replied that he did have a trade in and that it was the Audi A6 that they pulled up in. Id. at pg. 5, lines 3-6.

d. When Castillo inquired with Defendant about driver's license and vehicle insurance, Defendant replied he forgot his license at home and instead, supplied Castillo with his passport along with the vehicle insurance for the Audi A6. Id. at pg. 6, lines 12-17. The vehicle insurance was provided by Defendant through his email address with what appeared to be a GEICO declaration page. Id. at pg. 7, lines 10-19.

e. At some point, Defendant mentioned to Castillo that he was also a car salesperson in Houston, Texas. Id. at pg. 10, lines 1-3. Defendant also mentioned that he was not happy with the color of his Audi A6. Id. at pg. 14, lines 2-3.

f. When Castillo asked Defendant what had brought him here to Hawai'i, Defendant replied that he was here to do marketing, and that he comes here often because he has a job in marketing in Hawai'i. Id. at pgs. 15-16, lines 19-20, 1-4.

g. After appraising the Audi A6 and getting some numbers for Defendant, Castillo inquired with Defendant as to how he would make a payment. Id. at pgs. 16-17, lines 18-20, 1-4. Castillo related that Defendant did not have a driver's license or any physical credit cards. Id. Defendant then asked Castillo if they accepted Apple Pay. Id. at pg. 17, line 6.

h. When Defendant opened up his Apple Pay account, Castillo observed what appeared to be three (3) American Express Platinum cards. Id. at lines 6-11.

i. Since the BMW X4 still needed to go through a service inspection, Defendant could not drive home with the BMW X4 on that same day. Id. at pg. 19, lines 7-13. Castillo also related that they did not accept Apple Pay for a deposit. Id. at pg. 21, lines 3-9.

j. At some point, Defendant agreed to meet with Castillo on the following morning at 10:00 a.m. to pick up the vehicle. Id. at pg. 22, lines 5-17.

k. The next day, on February 18, 2022, Castillo called Defendant in the morning on his BMW phone number in which Defendant replied, 'this Juan.' Id. at pg. 24, lines 11-14. When Castillo announced himself, Defendant hung up. Id. When Castillo tried to call Defendant back, he realized that he was now blocked. Id. at line 16.

D. Defendant's Social Ventures

19. On February 23, 2022, Mohammad Daudie ("Daudie") arrived to the island of Oahu, State of Hawai'i. See Exhibit 5 (Transcript of Daudie's interview) at pg. 5, lines 7-11. Daudie invited his friend, Scott Hannon ("Hannon") to accompany him on his vacation. Id. at pgs. 4-5, lines 13-20, 1-3. However, Hannon did not arrive until three (3) days later due to his flight being cancelled from a snow storm. Id. at pgs. 5-6, lines 18-19, 1. The following is notable regarding Daudie's interactions with Defendant:

a. On Friday, February 25th, Defendant approached Daudie while he was dancing and drinking at Scarlet Honolulu.[18] See Exhibit 5 at pg. 6, lines 14-20.
b. The following night, on February 26th, Defendant messaged Daudie and asked if he would like to meet up in the evening to have dinner and drink. Id. at pg. 8, lines 2-6. Daudie remembers Defendant picking up himself, Hannon, and Daudie's friend, Ronald Wu ("Wu") in an Audi. Id. at pg. 41, lines 6-8.
c. After dinner, Defendant, Hannon, Daudie, and Wu returned back to Scarlet Honolulu. Id. at pg. 10, lines 14-15. When the night ended, Daudie related that Hannon did not return back to their hotel to sleep. Id. at pg. 11, lines 1-5.
d. The next morning, Daudie related that Hannon arrived with Defendant to eat brunch with them at the Hilton Hawaiian Hotel. Id. at lines 11-12.
e. After brunch, Daudie, Hannon, and Wu returned back to their hotel. Id. at lines 14-15. Daudie related that Hannon had a flight scheduled the same day at 4:00 p.m. for San Francisco. Id. Hannon then asked Daudie if Defendant could come with them, in which Daudie said, "no" but suggested to Hannon to stay longer

[18] Scarlet Honolulu is a nightclub featuring electronic dance music, pop music, and regular drag shows.

since he and Defendant became really good friends. Id. at pgs. 11-12, lines 16-20, 1-3.

f. At some point, Defendant told Daudie that his family owns a car dealership in Texas and also in Hawai'i. Id. at pg. 19, lines 1-5.

g. Daudie related that he did not think that Defendant was actually rich because Defendant did not voluntarily offer to pay for his own ticket to a tour bus trip. Id. at pg. 19, lines 2-14.

h. At some point, Defendant invited Daudie, Hannon, and Wu, over to his purported property at Hawaii Loa. Id. at pg. 17, lines 17-20. Upon arrival, Daudie observed a small steel knee-high bar with an opening like a door that blocked a hallway. Id. at pgs. 25-26, lines 4-19, 1-9.

i. Daudie related that Defendant did not invite them to see his room and that they were only invited to see the kitchen, balcony, and living room. Id. at pg. 24, lines 7-16.

j. Daudie related that after bar hopping one night, he observed Defendant becoming moody and saying that he wanted to leave. Id. at pg. 50, lines 6-13.

20. On February 26, 2022, Hannon arrived to the island of Oahu, State of Hawai'i aboard a Hawaiian Airlines flight.[19] Hannon listed 2552 Kalakaua Avenue, Honolulu, Hawai'i 96815 as the address at which he would be staying. Id. The 2552 Kalakaua Avenue address is associated with the Waikiki Beach Marriott Resort & Spa hotel. Hannon's return date was listed as February 28, 2022. Id.

[19] See bate 3655.

21. On March 9, 2022 Hannon was interviewed by LAPD Detective Kevin Currie. See Exhibit 6 (Transcript of Hannon's LAPD interview). The following is notable regarding Hannon's interactions with Defendant:

a. Hannon explained that he was invited by his Daudie to come to Hawai'i for a weekend. While he was in Hawai'i, Hannon met Defendant at a club. Id. at pg. 6, lines 7-15.

b. Hannon spent a Sunday evening at Defendant's house and decided to extend his stay for the rest of the week because he enjoyed Defendant's company. Id. at pg. 7, lines 2-14.

c. Hannon did not think anything suspicious of Defendant but noted that Defendant had more money than expected for somebody his age. Id. at pg. 8, lines 1-3.

d. On a Monday morning, Hannon remembers two (2) Hawai'i cops who came to Defendant's house for a missing persons report. Id. at pg. 8, lines 4-9.

e. After Hannon and Defendant's interaction with the cops from Hawai'i, Defendant told Hannon that he was afraid of drug charges because he was involved in drug activity with "the missing person's brother." Id. at pgs. 9-10, lines 10-17, 1-6.

f. Shortly thereafter, Hannon and Defendant both booked a flight to Los Angeles to get off the island. Id. at pg. 11, lines 6-12.

g. Earlier in the day of March 9, 2022, Hannon found out through someone that lives on the island that he was on the news relating to a murder investigation. Id. at pg. 11, lines 14-19.

h. Hannon explained that he never went inside the master bathroom of Defendant's house because the door to the room was never opened and that the only room he stayed in was the bedroom at the end of the hall. Id. at pg. 13, lines 3-13.

i. Defendant told Hannon that he had a car dealership in Texas and that when Defendant's father passed away, everything was left for him. Id. at lines 16-19.

j. After Hannon found out that it was a murder and not a drug investigation, Hannon immediately separated from Defendant. Id. at pg. 27, lines 18-19.

k. Defendant told Hannon that he had nothing to do with a murder and that his involvement was drug-related. Id. at pg. 29, lines 4-8.

l. Defendant explained to Hannon that the drug operation involved transporting cocaine from Columbia to Kansas. Id. at pg. 30, lines 15-19.

m. When asked if Defendant ever told Hannon how long Defendant had been staying at the house, Hannon replied that Defendant initially told him five (5) years, but then followed up with only a year and a half because he moved to Hawai'i from Texas after a relationship that ended badly. Id. at pg. 31, lines 1-9.

E. The Welfare Check

22. On March 7, 2022 at approximately 10:50 a.m., HPD Officers Richard Song ("Officer Song") and Officer Kenneth Abraham-Botelho ("Officer Abraham-Botelho") responded to 357 Lelekepue Place to assist on a welfare check type case. See Exhibit 7 (Officer Song's Body Worn Camera Footage)[20]; See also Exhibit 8 (Officer Abraham-Botelho's HPD Report).

[20] Exhibit 7 will be conventionally filed in accordance with Rule 2.3 of the Hawai'i Electronic Filing & Service Rules ("HEFSR") and provided in a supplemental submission.

23. Upon arrival, Officer Abraham-Botelho observed HPD Officer Song and Hawai'i Loa Ridge Security Guard Michael Wells ("Wells") appearing to have a conversation with a Hispanic male, later identified as Defendant, and a Caucasian male, who initially identified himself as "Yenisel Guerra."[21] It was later revealed that "Yenisel Guerra," in actuality, was Hannon. The following is notable regarding Officers Abraham-Botelho and Song's interaction with Defendant and Hannon:

a. As Officer Song approached the front entrance, he asked Hannon, "Are you… Dr. … Are you, do you know a Ruby from Kansas?" Hannon responded, "Not that I think so." See Exhibit 7 at Axon "T20:56:43Z"-"T20:56:55Z."

b. As Defendant approached the front entrance, Officer Song again asked, "Do you know anybody named Dr. Ruby from Kansas?" Defendant replied, "Lorne?" Id. at Axon "T20:57:06Z"-"T20:57:09Z."

c. Shortly thereafter, Officer Song approached Officer Abraham-Botelho to confirm that they were responding to the proper address. Id. at Axon "T20:57:41Z"-"T20:57:51Z."

d. After receiving confirmation that they were at the correct address, Officer Song asked Defendant and Hannon if they knew a "Gary Ruby." Defendant replied, "I know Lorne Ruby." Id. at Axon "T20:58:41Z"-"T20:58:48Z."

e. When Officer Abraham-Botelho asked Defendant, "Do you know who that is?" Defendant replied, "Lorne Ruby? Yes. Gary Ruby? No." Id. at Axon "T20:58:52Z"-"T20:58:56Z."

[21] See bates 3544 – 3550.

f. Officer Song explained to Defendant that they were called for a welfare check on a "Gary Ruby." Defendant then uttered, "He doesn't live here anymore. He lives in California." Id. at Axon "T20:59:13Z"-"T20:59:17Z."

g. When Officer Abraham-Botelho asked Defendant how he knows that Ruby doesn't live here anymore, Defendant replied, "He used to be the owners here." Id. at "T20:59:29Z"-"T20:59:34Z."

h. When asked if he had bought the property from the previous owner, Defendant responded in the affirmative and replied that he had purchased it "over four (4) years ago." Id. at "T20:59:34Z"-"T20:59:41Z."

i. Regarding the "Lorne Ruby" that Defendant purportedly knew, Defendant stated, "I mean he's a psychiatrist, I know he's a psychiatrist, Lorne, but I don't know Gary." Id. at Axon "T20:59:41Z"-"T20:59:52Z."

j. After this, Officer Abraham-Botelho appeared to make unrelated small talk with Defendant and Hannon, and at one point, thanked them for their time and apologized for bothering them. Id. at Axon "T21:00:10Z"-"T21:01:23Z."

24. Following Officer Abraham-Botelho and Officer Song's interaction with Defendant and Hannon, Wells asked Defendant to register as the new property owner at the Hawai'i Loa Ridge Main Office located at 669 Puuikena Drive, Honolulu, Hawai'i 96821. Defendant indicated that he would do so.[22]

25. Subsequently, Officer Abraham-Botelho observed Defendant and Hannon leaving the property in a gold Audi vehicle bearing Hawai'i license plates "WBP884." See Exhibit 8.

[22] See bates 3518 – 3526.

26. Shortly thereafter, Officer Abraham-Botelho contacted the reporting person who had initiated the welfare check, Dr. Lorne Ruby ("Lorne"). Id. Lorne related to Officer Abraham-Botelho that he is Ruby's brother who lives in Topeka, Kansas. Id. Lorne also related that he had not heard from Ruby since January 25, 2022 and that it was very unlike Ruby to not respond to any of his phone calls, text messages, or emails. Id. Lorne noted that in his last contact with Ruby via email on January 25, 2022, Ruby related that he had met a love interest by the name of "Juan" and that "Juan" was significantly younger than him. Id.

27. Following Defendant and Hannon's interactions with HPD Officer Abraham-Botelho and Officer Song, Defendant and Hannon went to the Hawai'i Loa Ridge Main Office. Per Hawai'i Loa Ridge Operations Manager Walter Chung ("Chung"), Defendant filled out and submitted a registration form, indicating that Defendant was the new property owner.[23]

a. The registration form was titled "Hawai'i Loa Ridge Owners Association New Resident and Vehicle Registration Form" and contained Defendant's signature. It was dated March 7, 2022. Id.

b. On the registration form, the owner's name was listed as "Juan Tejedor" and "Yenisel Guerra" with a property address of 357 Lelekepue Pl. and telephone number of 808-396-2424.[24] The email address listed was associated with Ruby. Id.

c. Under vehicles to be registered, Defendant listed a 2020 Audi A6, gold in color, bearing license plates "WBP884." Id.

[23] See bate 3543.

[24] Law enforcement checks later revealed that this telephone number is associated with 24-hour Fitness located in Hawaii Kai. Per the Hawaii Kai 24-hour Fitness Management, Defendant and Hannon were neither employees nor members of their establishment. See bate 3619.

28. On March 7, 2022 at approximately 11:28 a.m., Hawai'i Loa Ridge Management received an email from an email address associated with Ruby with the 2nd Warranty Deed as an attachment.[25] The attached 2nd Warranty Deed did not contain any signatures or notarizations. Id.

F. The Missing Persons Investigation

29. On March 7, 2022 at approximately 7:33 p.m., HPD Officer Zachary Ah Nee ("Officer Ah Nee") arrived at 357 Lelekepue Place to follow up on a missing persons type case.[26] Upon arrival, Officer Ah Nee conducted a perimeter check of the property and observed an illuminated light in the living room/kitchen. Id. At some point, a determination was made to not make entry into the property. As Officer Ah Nee was leaving Hawai'i Loa Ridge, he was flagged down by security, who related that a gold Audi bearing license plates "WBP884" had been stopped by the entry gate. Id.

30. On the same night, Defendant and Hannon arrived at the front gate of Hawai'i Loa Ridge and were stopped by the Hawai'i Loa Ridge Security. HPD Officers arrived to the front gate shortly thereafter. See Exhibit 9 (BWC Footage from Officer Brian Smith).[27] The following is notable regarding Defendant's interactions with HPD Officers on the evening of March 7, 2022:

a. Detective Michael Garcia ("Detective Garcia") explained to Defendant that he was "looking for Gary" and investigating a missing person report. Id. at Axon "T07:24:50Z" – "T07:25:00Z."

[25] See bates 3535 – 3542.
[26] See bates 3555 – 3556.
[27] Exhibit 9 will be conventionally filed in accordance with Rule 2.3 of HEFSR and provided in a supplemental submission.

b. When asked by Detective Garcia if he knew Ruby, Defendant replied that he did not know Ruby but he knew his brother, Lorne, who was Defendant's "psychiatrist." Id. at Axon "T07:25:20Z" – "T07:25:36Z."

c. When asked by Detective Garcia how long he had been in Hawai'i, Defendant replied that he had been here for "five (5) years." Id. at Axon "T07:26:23Z" – "T07:26:35Z."

d. Detective Garcia explained to Defendant that they were looking for Ruby, who is the owner of the house. In response, Defendant asserted that he "is the owner of the house." Id. at Axon "T07:26:38Z" – "T07:26:46Z."

e. When asked by Detective Garcia how long he'd been residing at the 357 Lelekepue Place address, Defendant replied that he'd been living there for "over three (3) years." Id. at Axon "T07:28:49Z" – "T07:28:56Z."

f. When asked by Detective Garcia if Defendant would give permission for HPD to look inside the home, Defendant asked, "do you have a warrant for that?" Detective Garcia explained that he did not need a warrant for a missing persons case. Defendant then replied, "I don't have an issue." Id. at Axon "T07:35:44Z" – "T07:36:00Z."

31. On March 7, 2022 at approximately 10:05 p.m., HPD Corporal Mark Kutsy ("Corporal Kutsy"), along with four (4) other HPD officers, made entry into the 357 Lelekepue Place residence.[28] Upon clearing the residence, Corporal Kutsy observed a stand-alone white deep soaker tub located in the master bathroom, filled with what appeared to be coffee grinds up

[28] See bate 3557.

to just below the top of the tub. Id. He also observed three (3) gnats/flies hovering above the coffee grounds. Id. Ruby was not located within the property. Id.

32. On March 7, 2022 at approximately 10:26 p.m., HPD Detective Garcia and Detective Reid Tagomori ("Detective Tagomori") (collectively, "HPD Detectives") conducted a recorded interview with Defendant fronting 357 Lelekepue Place. See Exhibit 10 (Transcript of Defendant's interview with Detective Garcia, Part One). The following is notable regarding Defendant's statement to Detective Garcia and Detective Tagomori:

a. Detective Garcia began the interview by stating, "Ok, so you're in the **presence** not in custody of Detective Mike Garcia and Detective Reid Tagomori." Id. at pg. 1, lines 1-2 (emphasis added).

b. Defendant told Detective Garcia that he did not know "Gary Ruby", but he knew of his name through Ruby's brother, Lorne. Id. at pgs. 2-3, lines 14-20, 1-8.

c. When asked by Detective Garcia when Defendant had bought the property, Defendant replied that he had purchased the property in August 2020 from a "Lorne Ruby" through "Nan Properties."[29] Id. at pgs. 3-4, lines 9-15, 3-10.

d. When questioned regarding the Audi A6, Defendant replied that he purchased the vehicle in 2020 from Audi North Carolina because he wanted that specific color. Id. at pg. 6, lines 3-18.

e. Regarding HPD's discovery of a bathtub filled with coffee grounds with a hard solid layer underneath, Defendant explained that it was, "juju for jealousy to be safe from jealousy of other people" since he is from Columbia. Id. at pgs. 8-9, lines 8-20, 1-2.

[29] Investigation later revealed that "Nan Properties" does not have a license to sell real estate in Hawaii and there were no records for any transactions for the 357 Lelekepue Place property made by Defendant. See bate 4528.

f. When asked by Detective Garcia of when the purported ritual was conducted, Defendant replied that it was done in 2020 by a "witch" named "Maria." Id. at pgs. 9-10, lines 9-20, 1-5.

g. When asked by Detective Garcia of how he found a witch named Maria and how the tub was crafted, Defendant replied that he just googled her name and that she had bought everything and put the tub together in the house with coffee on the top. Id. at pg. 10, lines 6-16.

h. When asked by Detective Garcia if anybody older than fifty (50) years old has been on the property, Defendant replied, "just my sugar daddy" whose name was "Tommy." Id. at pg. 15, lines 12-19.

i. In regards to how Defendant met "Tommy," Defendant replied that he met him through an app called "what's your price" and that the last time Tommy came over was three (3) months ago and that nobody else around that age has been to the property. Id. at pg. 16, lines, 7-16.

j. Regarding Defendant's purported email address, Defendant stated that he's had his email address account for over five (5) years and the 'glr' stands for "Gay Lesbians Ramones." See Exhibit 11 (Transcript of Defendant's interview with Detective Garcia, Part Two) at pg. 2, lines 1-8.

k. When questioned by Detective Garcia as to why the Audi A6 was previously registered to Ruby, Defendant replied that it was brand new and answered in the affirmative that he was the first and only owner of that vehicle. See Exhibit 12 (Transcript of Defendant's interview with Detective Garcia, Part Three) at pg. 2-3, lines 18-20, 1-3.

l. When asked if HPD could search the Audi A6, Defendant responded that he gave consent to search the vehicle. Id. at pg. 3, lines 4-10.

33. Following his interview, Defendant and Hannon were provided a courtesy transport to a hotel in Waikiki, as the residence would be secured until the following day.[30]

34. On the same night, at approximately 11:45 p.m., HPD Officer Nicholas Meredith ("Officer Meredith") received orders from Detective Tagomori to respond to 91-1058 Kekuilani Loop, Unit T-1808, Kapolei, Hawai'i, 96707 which was one of the properties that Ruby owned.[31] Upon making checks of the property, Officer Meredith determined that Ruby was not at the address. Id.

G. The Murder Investigation

35. On March 8, 2022, Defendant fled the State of Hawai'i aboard a United Airlines flight headed for Los Angeles International Airport.[32]

36. On March 8, 2022 at approximately 2:42 p.m., the body of an unidentified male, later identified as Ruby, was found encased within cement in a standalone bathtub within the 357 Lelekepue Place residence.[33] This discovery prompted the case to be reclassified as a murder investigation. Id.

37. On March 9, 2022 at approximately 3:50 p.m., Defendant was arrested by U.S. Marshalls and LAPD at 2626 E. Katella Avenue in Anaheim, California, for 1551.1 PC (Out of State Fugitive) on an extradition warrant issued by the State of Hawai'i. Defendant was aboard a Greyhound bus out of Los Angeles that was bound for San Ysidro, California before he was apprehended in Anaheim. See Exhibit 13 (LAPD Booking Report).

[30] See bate 3637.
[31] See bates 3570 – 3571.
[32] See bate 3764.
[33] See bate 4059.

38. On March 10, 2022, at approximately 4:35 p.m., Defendant was verbally apprised of his Miranda rights by LAPD Detective Danny Mendez ("Detective Mendez") with the LAPD Investigative Action/Statement Form ("LAPD Statement Form"). See Exhibit 14 (LAPD Statement Form); See also Exhibit 15 (Supplemental LAPD Statement Form).

39. Following the verbal reading of Defendant's Miranda rights, Defendant proceeded to provide a statement to LAPD Detectives Mendez and Patrick Lane ("Detective Lane") (collectively, "LAPD Detectives"). See Exhibit 1 (Transcript Part One); Exhibit 16 (Transcript Part Two); Exhibit 17 (Transcript Part Three); and Exhibit 18 (Transcript Part Four), collectively. See also Exhibit 19 (Video of LAPD Interview Part One), Exhibit 20 (Video of LAPD Interview Part Two), Exhibit 21 (Video of LAPD Interview Part Three) and Exhibit 22 (Video of LAPD Interview Part Four).[34] The following is notable regarding Defendant's statement with the LAPD Detectives:

a. Defendant visited Hawai'i twice; the first time was two (2) and a half months ago for recreation purposes with his mom. See Exhibit 1 at pg. 17, lines 8-19. During the first trip, Defendant met someone who invited him back again to Hawai'i. Id. at pg. 18, lines 5-6. When Defendant arrived to Hawai'i the second time, he was picked up at the airport by a chauffeur who drove in a gold Audi A4. Defendant was then transported to a house.[35] Id. at pgs. 33-35, lines 2-10, 1-19. 1-4. Once at the house, Defendant realized that the person who invited him was not there and the only thing there was a phone with passcodes and instructions. Id. at pg. 35,

[34] Exhibits 19 – 22 will be conventionally filed in accordance with Rule 2.3 of HEFSR and provided in a supplemental submission.
[35] The house that Defendant stayed at and was referring to is the 357 Lelekepue Place property.

lines 6-10. Defendant explained that the person he met was an individual named "Lorne," whom he met on "Grindr." Id. at pg. 30, lines 1-9.

b. When Defendant stayed in Hawai'i the second time, he was with his boyfriend that he met in Hawai'i. Id. at pg. 19, line 5. Defendant clarified that his boyfriend's name is Scott. Id. at pg. 23, lines 3-5. Defendant dated Hannon for nine (9) days. Id. at pg. 24, lines 6-7.

c. One day, Defendant came back to the house late at night and was stopped at the security gate due to the gate not opening. Id. at pgs. 19-20, lines 12-14, 15-18. Defendant explained, "So the security guy came, and he asked my ID. So I give him my ID. At that moment, a police officer was coming." Id.

d. During this exchange with the police officers, Defendant stated that a detective with a "little badge plastic badge" "started asking questions and we just started answering the questions. So they were like, okay. So if it's cool with you, can I go and check the house? I was like, well, yeah. I mean, I wasn't hiding anything." Id. at pg. 68, lines 6-15.

e. When asked when Defendant started staying at the house, Defendant replied since "August 2020" "Because that was when I ended my last relationship." See Exhibit 16, pg. 16, lines 1-14.

f. When told by the detective that police would drop him off at a hotel in Waikiki, Defendant described being seated in an "undercover car" with police lights on top. Id. at pgs. 21-22, lines 14-19, 1-17.

g. At one point, Defendant stated that he, "got a driver's license from Hawai'i because in Texas if you don't have a Social Security Number, you can['t] get a

driver license. But in Hawai'i you just need two proof of residence, and that's what you need." See Exhibit 1 at pg. 58, lines 13-17.

h. When asked again about Defendant's Hawai'i driver's license, Defendant acknowledged that he took a written test and that "they make it pretty easy—to change stuff" like the vehicle title. See Exhibit 16 at pgs. 32-4, lines 16-19, 17-19, 1-5.

i. When asked by the LAPD Detectives why Defendant believed he was questioned by HPD, Defendant explained that he didn't take them seriously because they came in cars "made out like police" with not even red and blue lights, but only blue lights. Id. at pgs. 67-69, lines 12-19, 14-19, 1-2.

j. When asked if Defendant had done anything to "Lorne's car," Defendant replied that he "transferred the title over my name" because the vehicle title was already signed in the glove box and it was a "nice car." See Exhibit 17 at pgs. 20-21, lines 1-19, 1-7.

k. When asked by the LAPD Detectives why Defendant tried to put the title of the house under his name, Defendant replied that "it was a nice house." Id. at pg. 29, lines 1-6.

l. When asked about a bathtub with coffee, Defendant replied that he never saw it because he "never had a key to that room." Id. at pg. 56, lines 2-7.

m. When asked if he knew a Maria, Defendant replied "yes" and explained that she was a "witch" for "protections." Id. at pg. 56, lines 8-15.

n. Defendant subsequently admitted to the LAPD Detectives that he lied to the police in Honolulu because of their badges. Id. at pg. 59, lines 1-12.

o. When pressed about his answers relating to the bathtub, Defendant explained that he would be able to speak, "like 100%" in Spanish. Id. at pg. 67, lines 7-10.

p. Defendant stated to LAPD Detectives that he was told by "Edgar" to "never go inside of that room, because there is some… cocaine in the bathtub" See Exhibit 18, pg. 2, lines 3-7.

q. Finally, Defendant stated that he killed Ruby "because he gave me HIV" by placing a belt around his throat. Id. at pg. 29, lines 11-17. After Ruby fell to the floor, Defendant placed him in the bathtub and "put some concrete on it" followed by coffee. Id. at pg. 13, lines 1-16.

r. Defendant clarified that the concrete didn't cover the whole body so he went to Lowe's to purchase four (4) additional boxes of concrete. Id. at pg. 16, lines 1-14.

s. Before Defendant poured the concrete, Defendant cut Ruby with a blade in an attempt to show that it was suicide. Id. at pgs. 22-23, lines 11-19, 1-16.

t. When asked why Defendant killed Ruby, Defendant explained, "because he gave me HIV." Id. at pg. 29 at lines 11-12. However, Defendant was not certain if he himself, is HIV positive. Id. at pg. 33, lines 8-12.

u. Defendant admitted that he took the Warranty Deed for the 357 Lelekepue Place property and tried to transfer it to his name. Id. at pgs. 34-35, lines 4-19, 1-3. Furthermore, Defendant transferred Ruby's vehicle to his name and tried take his identity. Id.

II. THE LAW

HRS § 621-26 states:

> Confessions when admissible. No confession shall be received in evidence unless it is first made to appear to the judge before whom the case is being tried that the confession was in fact voluntarily made.

A voluntariness hearing may be held at any time before the admission of a confession into evidence. State v. Goers, 61 Haw. 198, 201, (1979). "In order for a statement to be voluntarily given, the decision to give the statement must have been a free and unconstrained choice. A decision to give a statement is free and unconstrained if it is not coerced." State v. Baker, 147 Haw. 413, 423 (2020). "Generally, determining whether a defendant's confession during a custodial interrogation was coerced requires case-by-case consideration of the totality of the circumstances surrounding the defendant's statement." Id. (citing State v. Kelekolio, 74 Haw. 479, 501 (1993)). 'Totality of the circumstances' takes into account all facts relevant to the elicitation of the confession, including the mental and physical condition of the defendant and the police conduct involved in eliciting that confession. Kelekolio 74 Haw. at 503. "Crucially, a court must not analyze the individual circumstances in isolation, but must weigh those circumstances in their totality." Baker 147 Haw. at 424 (citing Wilson v. Lawrence Cty., 260 F.3d 946, 953 (8th Cir. 2001)).

A. Factors

"The burden is on the prosecution to show that [a] defendant's statement was voluntarily made and not the product of coercion." Kelekolio 74 Haw. at 480 (brackets added). In Kelekolio, the Hawai'i Supreme Court explained the test for probing the voluntariness of a defendant's confession or inculpatory statement:

> Under the fifth amendment to the United States Constitution and article 1, section 10 of the Hawai'i Constitution, "[n]o person shall ... be compelled in any criminal case to be a witness against" himself or herself. State v.

> Pau‘u, 72 Haw. 505, 509, 824 P.2d 833, 835 (1992). When a confession or inculpatory statement is obtained in violation of either of these provisions, the prosecution will not be permitted to use it to secure a defendant’s criminal conviction.

Id. (citing State v. Russo, 67 Haw. 126 (1984)).

> The constitutional right against self-incrimination prevents the prosecution’s use of a defendant’s extrajudicial admissions of guilt where such admissions are the product of coercion. State v. Wakinekona, 53 Haw. 574, 576, 499 P.2d 678, 680 (1972) (footnote and citations omitted). The basic considerations that require exclusion of confessions obtained through coercion "are the inherent untrustworthiness of involuntary confessions, a desire that criminal proceedings be accusatorial rather than inquisitorial and a desire that the police not become law breakers in the process of achieving society's valid law enforcement objectives." Id. The burden is on the prosecution to show that the statement was voluntarily given and not the product of coercion. Pau‘u, 72 Haw. at 509, 824 P.2d at 835 (citations omitted). The burden "is particularly heavy in cases where [the defendant] is under arrest." Id. (citations omitted).

Kelekolio, 74 Haw. at 501-02, (footnotes omitted).

“To render a confession involuntary as being ‘inherently coercive,’ facts or circumstances establishing physical or psychological coercion must be shown.” Territory v. Joaquin, 39 Haw. 221 (1952).

B. Effect of finding voluntariness of confession

The essential inquiry is whether the police conduct used to elicit the statement was “reasonably likely to produce an untrue or involuntary confession.” Kelekolio 74 Haw. at 513; Baker at 424. Statements that are unsolicited, spontaneous and voluntary are admissible into evidence. State v. Medeiros, 4 Haw. App. 248, 253, (1983). “No one has a constitutional right to erase unsolicited, spontaneous, and voluntary incriminating statements.” State v. Lincoln, 3 Haw. App. 107, 116, (1982) (citation omitted). As the trier of fact, the trial court “may draw all reasonable and legitimate inferences and deductions from the evidence adduced, and findings of

the trial court will not be disturbed unless clearly erroneous." State v. Batson, 73 Haw. 236, 245-6 (1992).

C. Miranda

The admissibility of a defendant's un-mirandized inculpatory statements triggers a different analysis. Miranda warnings are only required when a defendant is both in custody and being interrogated. State v. Blanding, 69 Haw. 583, 586 (1988). "Custodial interrogation was defined by the Supreme Court in Miranda v. Arizona, 384 U.S. 436, 444 (1996), as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" State v. Melemai, 64 Haw. 479, 481 (1982).

D. Interrogation

"In determining whether an officer's questions constitute interrogation, the test is whether the officer should have known that his words and actions were reasonably likely to elicit an incriminating response from the defendant." State v. Paahana, 66 Haw. 499, 503 (1983). Miranda does have limits. "Generally, determining whether a defendant's confession during a custodial interrogation was coerced requires case-by-case consideration of the totality of the circumstances surrounding the defendant's statement." Baker, 147 Haw. at 422.

E. Custody

The Hawai'i Constitution requires that Miranda warnings be given prior to questioning in a custodial setting. State v. Eli, 126 Haw. 510 (2012). A 'totality of the circumstances' test is used to determine whether the questioning is custodial, using factors such as 'time, place, and length of interrogation, the nature of the questions asked, the conduct of the police at the time of the interrogation, and any other pertinent factors.'" Blanding, 69 Haw. at 586. (quoting Russo, 67 Haw. at 134 (citations omitted).

> Among the relevant circumstances to be considered are whether the investigation has focused on the suspect and whether the police have probable cause to arrest him prior to questioning. While focus of the investigation upon the defendant, standing alone, will not trigger the application of the Miranda rule, it is an important factor in determining whether the defendant was subjected to custodial interrogation.

Melemai, 64 Haw. at 481.

The requirement of Miranda warnings shall not be imposed simply because the questioned person is the one whom police suspect. State v. Patterson, 59 Haw. 357, 360 (1978).

III. ARGUMENT

A. DEFENDANT WAS NOT IN CUSTODY ON MARCH 7, 2022

i. When Officers Song and Abraham-Botelho spoke to Defendant during the Welfare Check, their investigation was not focused on Defendant

"The threshold question for a Miranda analysis is whether the defendant was subjected to 'custodial interrogation,' defined as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" State v. Sagapolutele-Silva, 151 Haw. 283, 291 (2022) (citing Melemai, 64 Haw. at 481) (quoting Miranda 384 U.S. at 444). However, "it does not preclude the police, in the exercise of their investigatory duties or functions, from making general on-the-scene inquires as to facts surrounding a crime…" Melemai 64 Haw. at 481-82.

In State v. Ah Loo, the Hawai'i Supreme Court noted the following two factors in determining if a person is in 'custody': 1) whether the investigation focused on the suspect, and 2) whether the police had probable cause to arrest prior to questioning. 94 Haw. 207, 209 (2000) (See Melemai 64 Haw. at 481). In Sagapolutele-Silva, the Hawai'i Supreme Court later evaluated whether probable cause, standing alone, would suffice in establishing whether a suspect was in 'custody'. Sagapolutele-Silva clarified that, "the existence of probable cause,

while relevant, is not dispositive, and the proper inquiry in determining whether a defendant is in custody for Miranda purposes remains the totality of the circumstances." 151 Haw. 283, 295 (2022).

Here, when HPD Officers Song and Abraham-Botelho arrived at 357 Lelekepue Place on March 7, 2022 at approximately 10:50 a.m. to conduct a welfare check, they had no reason to suspect that a crime had occurred. Upon arrival, Officer Song merely questioned Defendant as to his knowledge of "a 'Ruby' from Kansas" and the officers went on to have a brief and casual conversation with Defendant. See Exhibit 7 at Axon "T20:56:43Z"-"T20:56:55Z." In no way did the questions posed rise to a level where an investigation could be initiated. This is evinced through the officers' confusion when Defendant claimed to be the owner of the 357 Lelekepue Place residence: at one point, Officers Song and Abraham-Botelho suggested that the caller may have dementia, and at another point, the officers thanked Defendant for his time and apologized for bothering them. Id. at Axon "T20:59:41Z"-"T21:01:23Z." Simply put, Officers Song and Abraham-Botelho were not required to give Defendant Miranda warnings because they did not have reasonable suspicion to believe that a crime had occurred.

When comparing the instant case with factors considered in the "totality of the circumstances" test explained in Blanding, the record reflects that HPD had a brief seven (7) minute interaction with Defendant at the front entrance area of 357 Lelekepue Place. The actual length of their questioning of Defendant was even shorter and was conducted in a casual, non-investigative manner. The nature of the questions asked were normal and typical of what any officer would ask in a welfare-check type case. HPD Officers Song and Abraham-Botelho were understanding, friendly, and non-coercive. Under the totality of the

circumstances, Defendant was not in custody and therefore answered Officers Song and Abrahram-Botelho's questions freely and voluntarily.

Furthermore, the officers' respective body-worn camera footage reveals that Defendant was never detained during their brief interaction. Hence, there was no indication that Defendant was not free to leave. Indeed, both officers' reports note that after the end of their interaction with Defendant, they observed Defendant leaving in a vehicle bearing license plates "WBP884." See Exhibit 8. Surely, this is a clear indication that Defendant was never in "custody." Therefore, Defendant's statements to HPD Officers Song and Abraham-Botelho on the morning of March 7, 2022 were given freely and rendered knowingly, intelligently, and voluntarily.

ii. Defendant's Statements to Detective Garcia and Detective Tagomori on the evening of March 7, 2022 were not the product of custodial interrogation

Within the meaning of Article 1, Section 7, of the Hawai'i Constitution, "[A] person is 'seized' in the constitutional sense if, from an objective standpoint and given the totality of the circumstances, a reasonable person would have believed that he or she was not free to leave." Ah Loo, 94 Haw. at 209 (quoting State v. Trainor, 83 Haw. 250, 256 (1996)). The Ah Loo Court distinguished between a person "seized" and a person in "custody", acknowledging that, "[P]ersons temporarily detained for brief questioning by police officers who lack probable cause to make an arrest to bring an accusation need not be warned about incrimination and their right to counsel, until such time as the point of arrest or accusation has been reached or the questioning has ceased to be brief and casual and [has] become sustained and coercive (footnote omitted)." Id. at 210 (brackets added) (quoting State v. Hoffman, 73 Haw. 41, 54 (1992)) (citations omitted). The Sagapolutele-Silva Court expounded upon this very issue as follows:

> "In considering whether a temporary detention has 'morphed into an arrest,' this court looks for factors traditionally associated with arrest, such as handcuffing, leading the detainee to a different location, subjecting him or her to booking procedures, ordering his or her compliance with an officer's directives, using force, or displaying a show of authority beyond that inherent in the mere presence of a police officer."

151 Haw. at 299 (citing State v. Ketchum, 97 Haw. 107, 125 (2001)) (quoting Kraus v. County of Pierce, 793 F.2d 1105, 1109 (9th Cir. 1986)).

When Defendant was temporarily detained by HPD Detective Garcia and Detective Tagomori on March 7, 2022 at 10:26 p.m., he was not in custody, and therefore not subject to custodial interrogation. At this point, the investigation was still classified as a Missing Persons investigation—not a Homicide Investigation. Nonetheless, HPD continued to investigate the 357 Lelekepue Place address, as it was Ruby's last known primary address. Upon arrival to the property on the night of March 7, 2022, HPD officers were again unable to confirm Ruby's presence within the property. However, a determination was made to not force entry into the residence.[36] However, as HPD Officer Ah Nee was leaving, Hawai'i Loa Ridge Security flagged him down and related that a gold Audi vehicle bearing license plates "WBP884" was stopped by the entry gate.[37] Records at the management office for Hawai'i Loa Ridge revealed that the residence and Audi A6 were still listed under Ruby's name.[38] This discrepancy, coupled with law enforcement checks that revealed Defendant to be the current registered owner but Ruby to be the previous registered owner, prompted HPD to initiate an investigatory stop of the Audi vehicle, where Defendant was found in the driver's seat. During this stop, Detective Garcia obtained verbal permission from Defendant, who had the residence keys and security alarm code, to enter and search the 357 Lelekepue Place property for Ruby. See Exhibit 9 at Axon

[36] See bate 4497.
[37] See bates 3555 – 3556.
[38] See bate 4497; See also bate 4197.

"T07:24:50Z" – "T07:25:00Z." An HPD entry team cleared the residence and Ruby was not located within the residence.[39] While the entry team were making their checks, they observed what appeared to be a bathtub in the master bathroom filled to the brim with coffee grounds. Id. Defendant was subsequently interviewed by Detective Garcia fronting the property to gain more insight as to Ruby's whereabouts. At the beginning of the interview, Detective Garcia clearly states that Defendant, "is in the *presence*, not *custody*, of Detective Mike Garcia and Detective Reid Tagomori." See Exhibit 10 at pg. 1, lines 1-2. Further, Detective Garcia explains that, "this is in regards to a Missing Person's case." Id. at lines 5-6. Concluding their interview, HPD Officer Meredith was instructed to investigate possible addresses associated with 'Gary Ruby' after the previously mentioned welfare-check did not produce any leads. One of the addresses listed as being associated with Ruby was 91-1058 Kekuilani Loop, Unit T-1808, in Kapolei.[40] Upon arrival, Officer Meredith was not able to locate Ruby's presence within the property. Id.

Here, an examination of the Ah Loo factors reveals that Defendant was not in custody at this time. As to the first Ah Loo factor, whether the investigation was focused on a suspect, it is clear that Defendant could not have been focused as a suspect as the investigation was conducted from a missing persons perspective. Simply put, the goal of the investigation was to find Ruby, not find a suspect. At this point, HPD officers were still gathering information that could help them to locate Ruby, hence, explaining the urgency to make entry into Ruby's primary address. What HPD did not expect, was Defendant claiming to be the true owner of the 357 Lelekepue Place residence and similarly claiming ownership to the Audi vehicle that was previously owned by Ruby just a month before his reported disappearance. See Exhibit 10 at pgs. 3, 5, lines 9-11,

[39] See bate 3557.
[40] See bates 3570 – 3571.

6-9. Nevertheless, because the investigation was not focused on a suspect at this point, Defendant was not in custody.

Assuming *arguendo* that Defendant was considered a 'suspect,' the Hawai'i Supreme Court has emphasized that, while it is an important factor to be considered, the "focus of the investigation upon the defendant, standing alone, will not trigger application of the Miranda rule." Patterson, 59 Haw. at 361 (holding that Miranda warnings were not required where the police, responding to a burglary report, briefly questioned defendant outside the instant home).

As to the second Ah Loo factor, Defendant was not in 'custody' because police lacked probable cause to arrest Defendant prior to questioning him on the evening of March 7, 2022. Notably, even *after* questioning Defendant that evening, the police still didn't have probable cause to arrest him. In a Missing Persons investigation, police are typically not looking for probable cause to arrest unless the investigation yields certain evidence which would prompt it to be re-classified. Here, Defendant was merely identified as a person of interest due to his earlier statements to Officers Song and Abraham-Botelho claiming to be the owner of the 357 Lelekepue Place property. Moreover, Defendant was not in any way physically restrained, handcuffed, or subjected to force by police at any point of the night. As evinced by the courtesy police transport following the conclusion of Defendant's interview, it is apparent that Defendant was not in 'custody' for purposes that would trigger an individual's Miranda rights. Rather, Defendant was merely 'seized' for purposes of general questioning as to the current ownership of the 357 Lelekepue Place property and his knowledge of Ruby and his whereabouts.

Similarly, under the "totality of the circumstances" approach discussed in Sagapolutele-Silva, Defendant was not in custody prior to being questioned by Detective Garcia. The "totality of the circumstances" approach looks for events or conditions that betoken a significant

deprivation of freedom such that an innocent person would've reasonably believed that they were not free to go or that they would be taken into custody indefinitely. Sagapolutele-Silva, 151 Haw. at 299 (citing Ketchum, 97 Haw. at 125). Here, it is highly implausible that a person in Defendant's position would believe that he was not free to leave or that he would be detained indefinitely. Not only was Defendant told that he was free to leave at the end of the questioning; he was even given a courtesy transport to Waikiki. Further, the record is void of any mention by HPD that Defendant would not have been free to leave had he chosen to not answer Detective Garcia's questions or subject himself to questioning. Thus, Defendant was not in custody nor arrested for purposes that trigger Miranda.

Further, HPD's interactions with Defendant are devoid of the factors traditionally associated with arrest, as described in Sagapolutele-Silva. At no point throughout the night was Defendant ever handcuffed, subjected to booking procedures, ordered to comply with officer directives, or subjected to force by law enforcement. While the State acknowledges that Defendant was indeed transported from the front gate guard shack of Hawai'i Loa Ridge to the 357 Lelekepue Place property,[41] the transport was brief, non-coercive, and given with Defendant's consent. Furthermore, Detective Garcia did not display a showing of authority beyond that of the mere presence of a police officer, as the purpose of the questions posed were to locate Ruby, not to establish probable cause to arrest Defendant.

Finally, Miranda warnings are only required if Defendant was in 'custody' and subjected to 'custodial interrogation.' For the reasons set forth above, Defendant was not in 'custody' on the night of March 7, 2022. Therefore, this Court need not turn to the question whether

[41] See bate 4499.

Defendant was 'interrogated.' Defendant's statements made during this pre-arrest period did not trigger Miranda and thus, were rendered knowingly, intelligently, and voluntarily.

B. DEFENDANT'S MARCH 10, 2022 LAPD INTERVIEW IS NOT "FRUIT OF THE POISONOUS TREE"

Because Defendant's statements to HPD detectives on March 7, 2022 were obtained properly, his latter statements made to LAPD detectives on March 10, 2022 are not "fruit of the poisonous tree." In State v. Medeiros, the Intermediate Court of Appeals ("ICA") found that, "As applied to confessions, the 'fruit of the poisonous tree' doctrine holds that where one confession or admission is illegally obtained … the second confession is inadmissible in evidence as a 'fruit of the poisonous tree' if it results from an exploitation of the prior illegality." 4 Haw. App. 248, 252 (1983) (citing Killough v. United States, 315 F.2d 241 (D.C.Cir.1962)). However, the latter confession is not automatically inadmissible if, "[I]t first demonstrates that … [it] was not obtained by exploiting the initial illegality or that any connection between the two had become so attenuated that the taint was dissipated." Id. (citations omitted).

The ICA applied similar criteria in its assessment of State v. Pebria, where the defendant made statements to law enforcement while he was detained at Queen's Medical Center relating to an assault. 85 Haw. 171, 173 (1997). In Pebria, one of the officers approached the defendant and asked if he knew why he was being detained; the defendant replied, "I went grab the girl." Id. Later on, the defendant was informed by the same officer that, "he was now a suspect in a kidnapping case." Id. The following day, the defendant was informed of his Miranda rights and made similar incriminating statements. Id. The Pebria Court found that the defendant's statements were inadmissible because he was subjected to custodial interrogation, and the latter incriminating statements resulted from exploitation of the former. Id. Likewise, in State v. Joseph, the Hawai'i Supreme Court held that the defendant's latter statement was inadmissible as

fruit of the first statement and agreed with trial court's finding of fact that, "*The post-Miranda interview of Joseph immediately followed the pre-Miranda portion with no lapse in time, no change in location, and no change of interrogators. The detectives' post-Miranda questioning sought a repetition and expansion of information provided during the pre-Miranda session.*" 109 Haw. 482, 490 (2006).

Here, Defendant's post-Miranda statement to LAPD is distinguishable from his pre-Miranda statement to HPD due to the significant lapse in time, location, and the persons who obtained each statement. Contrary to the facts in Joseph, Defendant's post-Miranda interview was administered three (3) days after his former interview and occurred more than 2,400 miles away. Moreover, Defendant's pre-Miranda interview was conducted by HPD Detectives, while Defendant's post-Miranda interview was conducted by LAPD Detectives. Both of the interviews were conducted independently of one another and LAPD Detectives did not actively seek any repetition of information provided by Defendant during his pre-Miranda interview.

However, assuming *arguendo* that Defendant's post-Mirandized statements resulted from his pre-Mirandized statements, the latter statement is still admissible, as the connection between the two interviews was so distant that any existing taint would've dissipated, especially when taking into consideration the fact that Defendant voluntarily chose to flee this jurisdiction. Thus, there is no reasonable inference to support the contention that the interviews were so closely related in context or proximity that Defendant's former statement would've tainted his latter statement.

To determine whether or not the former statement tainted the latter statement, the Medeiros Court considered the following criteria:

> "[t]he time and place of the subsequent confession, the manner of interrogation, whether there was representation by counsel, the defendant's mental condition,

> conduct of the police, whether the defendant has had an opportunity to speak with family and friends, whether the defendant is in a position where he believes that his first confession has made his present position hopeless, and whether the subsequent confessions were a product of interrogation or voluntarily made."

4 Haw. App at 252-3. See also Westover v. United States, 384 U.S. 436 (1966).

Here, Defendant's lack of representation by counsel need not be considered in this evaluation as he validly waived his right to counsel during the reading and acknowledgment of his Miranda rights. Furthermore, Defendant's post-Miranda statement is void of any mention that he would like to invoke his right to counsel. As to Defendant's mental condition at the time of his post-Miranda statement and the conduct of LAPD, Defendant was mentally capable, and not susceptible to any form of improper suggestion. As to the conduct of LAPD, it is clear that Defendant was not coerced by any misconduct on the part of the LAPD detectives. These contentions are discussed and expounded upon, *infra* in Section III(C)(iv). Regarding whether Defendant was given the opportunity to speak with his family and friends, LAPD Detective Mendez will attest to the normal booking protocols and procedures followed by LAPD upon arrest of a suspect.

Finally, given Defendant's ability to fabricate excuses and multiple versions of the same event, it is unlikely that Defendant would have believed that his prior statements to HPD would render his present LAPD interview hopeless. For example, at one point, Defendant told the LAPD Detectives that he had never seen the master bathtub covered with coffee grinds because he never had a key to that room. See Exhibit 17 at pg. 56, lines 2-7. However, when caught in his own admission that Defendant knows a person named 'Maria,'[42] he then changed his story and stated that he lied to HPD Detective Garcia and "told him some stuff to just leave." Id. at pgs. 58-9, lines 14-8, 1-4. Later on, Defendant changed his story again and stated that he believed that

[42] Id. at lines 8-15.

there were drugs in the bathtub[43] before ultimately confessing that he had put Ruby in the bathtub along with some concrete and coffee grounds. Id. at pg. 13, lines 1-16. Surely, these continuing fabrications are indicative of Defendant's intent to deceive LAPD Detectives whilst remaining hopeful that they would side with him as opposed to HPD. In short, Defendant would not have engaged in this type of wishful thinking unless he believed that he would still have a 'way out'.

Defendant's LAPD interview was not a product of sustained and coercive interrogation and was rendered freely and voluntarily. Because Defendant's statements were not obtained illegally, the instant case is clearly distinguishable from Pebria and Joseph. Thus, they cannot be "fruit of the poisonous tree."

C. UNDER THE 'TOTALITY OF THE CIRCUMSTANCES' DEFENDANT'S MARCH 10, 2022 LAPD INTERVIEW WAS RENDERED VOLUNTARILY

i. Defendant chose to waive his Miranda rights

Defendant was advised of his Miranda rights and chose to waive them. The U.S. Supreme Court in Berghuis v. Thompkins explained that, "The waiver inquiry 'has two distinct dimensions': waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,' and 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" 560 U.S. 370, 382-3 (2010) (quoting Moran v. Burbine, 475 U.S. 412, 421, (1986)). However, the Thompkins Court recognized that an implicit waiver is sufficient and can be implied through, "the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver." See Id. at 384 (quoting North Carolina v. Butler, 441 U.S. 369, 373 (1979)). On the contrary, the rights protected under Miranda, "do […] not impose a

[43] See Exhibit 18 at pg. 2, lines 3-7.

formalistic waiver procedure that a suspect must follow to relinquish those rights" and can be waived, "through means less formal than a typical waiver on the record in a courtroom." Id. at 385 (citation omitted).

Similarly, the Hawai'i Supreme Court has also observed that, "[A]n explicit statement of waiver is not invariably necessary to support a finding that the defendant waived the right to remain silent or the right to counsel guaranteed by the Miranda case." State v. Wallace, 105 Haw. 131, 144 (2004) (citing State v. Henderson, 80 Haw. 439, 442 (1996)) (quoting Butler, 441 U.S. at 375-76) (internal quotation marks omitted). In Wallace, the Court was asked to address the issue of whether defendant's refusal to execute a written waiver precludes a valid waiver, contending that, "courts in other jurisdictions have construed a refusal to sign a police waiver form as an ambiguous assertion of the suspect's right to counsel and to silence[,]" Id. (citing United States v. Heldt, 745 F.2d, 1275, 1278 (1984)) (United States v. Van Dusen, 431 F.2d 1278 (1970)) (citations omitted). However, the Wallace Court found these cases distinguishable on their facts and ultimately held that, "[r]efusal to sign a waiver form or a written statement, although some evidence of the absence of waiver, may be outweighed by affirmative conduct indicative of a knowingly and intelligently made decision not to remain silent" and "[c]ircumstances … evince that Wallace's undisputed willingness to speak constituted an explicit, affirmative act evidencing a knowing, intelligent, and voluntary waiver." Id. at 145. Moreover, the Court in Wallace noted that, were it to come to the opposite conclusion, "a suspect could, by refusing to sign and subsequently talking freely, enjoy the luxury of an immunity bath at no price at all." Id. (citing Van Dusen, 431 F.2d at 1280).

To prove a valid Miranda waiver, "[t]he prosecutor must show that each accused was warned that he had a right to remain silent, that anything said could be used against him, that he

had a right to the presence of an attorney, and that if he could no[t] afford an attorney one would be appointed for him." State v. Santiago, 53 Haw. 254, 266 (1971). After administering a defendant's Miranda warnings, "he 'may waive [effectuation of] those rights provided the waiver is made voluntarily, knowingly and intelligently." State v. Kaahanui, 69 Haw. 473, 478 (1987) (quoting State v. Amorin, 61 Haw. 356, 358 (1976)) (citing Miranda, 384 U.S. at 444).

Here, Defendant was asked simple and generalized questions regarding his name, home address, length of time living at home address, phone number, employment status, national descent, height, birthdate, and existence of driver's license during the pre-Miranda portion of the interview. In response, Defendant stated that he lived in an apartment in Houston, Texas for a couple years and was currently not employed but used to do marketing for a car dealership. Defendant also related that he is Colombian. See Exhibit 1 at pgs. 3-5, lines 7-18, 5-12, 1-16. Subsequently, Defendant's Miranda admonitions were verbally read to him and he acknowledged them as follows:

> Q: So, you have the right to remain silent. Do you understand that?
> A: Yes.
> Q: Okay, and anything you say may be used against you in court. Do you understand that?
> A: Yes.
> Q: Okay. You have the right to the presence of an attorney before, and during any questioning if you want. Do you understand that?
> A: Yes.
> Q: Okay. So if you can't afford an attorney, one will be appointed for you free of charge before any questioning if you want. Do you understand that?
> A: Yes.

See Exhibit 1 at pgs. 6-7, lines 17-19, 1-12.

Defendant's acknowledgment of his Miranda rights and verbal responses of "Yes" were recorded by Detective Mendez in the LAPD Statement Form. See Exhibit 14. Defendant's post-

Miranda interview began after he verbally waived his Miranda rights and willingly continued to speak without ever invoking his Miranda rights.

In applying the waiver inquiry expounded upon in Thompkins, the facts of the instant case show nothing that would render it involuntarily made due to intimidation, coercion, or deception. See Thompkins 560 U.S. at 382-3. Here, Defendant's interview is void of any mention of feeling intimidated, scared, or coerced by the LAPD detectives. At one point, Defendant even states that he was not lying to the LAPD Detectives because they have detective badges. See Exhibit 17 at pg. 59, lines 6-12. However slight, this is still indicative that Defendant trusted the LAPD Detectives. Discussion regarding alleged police misconduct is referenced *infra*, in Section III(C)(iv).

With respect to Defendant's awareness regarding waiving his Miranda rights and the consequences of doing so, the instant case reveals that Defendant explicitly chose to not invoke his rights by both verbally waiving his rights and by continuing to speak to the LAPD detectives after being instructed that he has a right to remain silent and that anything he says can be used against him in court. Furthermore, Defendant was told that he had a right to an attorney before, and during questioning and that if he could not afford one, one would be appointed to him. Thus, Defendant was made fully aware that he could've invoked any of his rights and that these rights would not be taken away simply because the questioning had already commenced. Despite this, at no point did Defendant ever state that he wanted to remain silent, that he did not want to talk with the LAPD detectives, or that he wanted an attorney. Similar to the findings in Wallace, Defendant's undisputed willingness to speak constitutes an explicit and affirmative act, which shows a knowing, intelligent, and voluntary waiver. Wallace 105 Haw. at 145.

Even assuming that Defendant's verbal Miranda waiver and willingness to speak post-Miranda does not constitute an explicit waiver, Defendant's implicit waiver is sufficient. With regards to the contention that an unsigned waiver form is an ambiguous assertion of Defendant's right to counsel and silence, the instant case is clearly distinguishable on its facts. The Court in Wallace noted the following cases with this contention as Heldt, 745 F.2d at 1278, Van Dusen, 431 F.2d 1278, United States v. Nielsen, 392 F.2d 849 (1968), Millican v. State, 300 N.E.2d 359 (1973), and People v. Coleman, 401 N.Y.S.2d 57 (1977). Id. at 144-45. The Wallace Court explained that in Nielsen and Millican, the respective defendants explicitly indicated that they would not sign a written waiver form until they had talked to an attorney. Id. at 145 (citing Nielsen, 392 F.2d at 852; Millican, 300 N.E.2d at 360). In Heldt, the defendant "told [the FBI agent] he understood his rights but did not wish to waive them, that he refused to sign the waiver form, and that […] he did not wish to answer questions." Id. (quoting Heldt, 745 F.2d at 1276). In Coleman, the defendant invoked his right to counsel in a lineup by refusing to execute the waiver of being informed of the right to counsel. Id. (See Coleman 401 N.Y.S.2d 57). In Van Dusen, the "[d]efendant was given an 'advice of rights' form to read prior to questioning but was not orally advised of his rights" which resulted in defendant refusing to execute the waiver portion. Id. (quoting Van Dusen, 431 F.2d at 1279-80).

The instant case is clearly distinguishable in that Defendant's interview is void of any explicit indication that he wanted to speak to an attorney, that he did not waive his Miranda rights, or that he did not want to answer any questions. While the State acknowledges the absence of an explicit written waiver of Defendant's Miranda rights, the question of form is immaterial and irrelevant, as it was outweighed by Defendant's verbal waiver of his Miranda rights, as well as his affirmative actions and conduct following the verbal waiver. While there are

differences between the LAPD Statement Form and HPD's Warning of Persons Being Interrogated of their Constitutional Rights Form, the differences between the forms are minor, as the material contained in the LAPD Statement Form fully advised Defendant of his constitutional rights. Thus, the record reflects that Defendant understood his rights and knowingly, intelligently, and voluntarily waived them.

ii. Defendant speaks and understands English proficiently

When there are facts indicating that a defendant is unable to understand English, the relevant inquiry is whether the defendant knew enough English to understand his rights and make a "voluntary, knowing, and intelligent" waiver. See Tachibana v. State, 79 Haw. 226, (1995) (citing United States v. Duarte-Higareda, 113 F.3d 1000, 1002 (9th Cir.1997)). A defendant's English proficiency is reviewed under the totality of the circumstances and takes into account "the defendant's background, experience, and conduct." State v. Gomez-Lobato, 130 Haw. 465, 471 (2013). Defendants are not entitled to a translator merely because they are "not completely familiar with English." State v. Faafiti, 54 Haw. 637, 638 (1973). Rather, Hawai'i courts believe that the "fair and correct rule is that where a defendant has some knowledge of English and he is reasonably able to converse in English, it is within the discretionary power of the trial court whether to appoint or not to appoint an interpreter." Id. at 639.

Applied to the instant case and considering the totality of the circumstances, the overwhelming weight of the evidence supports a finding that Defendant had no difficulties understanding English or his Miranda rights. On the contrary, Defendant not only demonstrated a sophisticated level of English proficiency, but also a rudimentary understanding of the law, as evidenced by his social interactions, interactions with law enforcement, and by the various complex financial and/or legal transactions he engaged in. Defendant's ability to fabricate

numerous tales required a high level of English proficiency in that it required Defendant to 1) understand the question; 2) appreciate how that question relates to his situation; 3) create an explanation; and 4) articulate that explanation to its intended audience – all within a manner of seconds. These acts demonstrate a level of English proficiency and legal understanding consistent with what Hawai'i courts have typically held as sufficient to give a voluntary statement.

To start off, Defendant's understanding of the English language is sophisticated to the point of effectively negotiating with not just one, but two salespeople from two different auto dealerships. When Defendant visited the Audi dealership the first time around, he was able to construe a story of a purported uncle that had gifted him the Audi A6 while he was living in Hawai'i and staying at the Uncle's place in Hawai'i Loa. See Exhibit 2 at pgs. 4-5, lines 19-20, 1-2. When Audi brand specialist Hale requested a copy of the driver's license and vehicle insurance, Defendant continued his story and stated that his "Uncle" in Texas would electronically sign everything after a phone call was made. Id. at pg. 5, lines 5-10. As promised, Hale received a photocopy of Ruby's driver's license and a GEICO declaration page within minutes.[44] This level of sophistication demonstrates not only Defendant's ability to articulate answers to the questions posed, but also his ability to construe a falsified tale within seconds. However, Defendant made a grave mistake during this encounter by not having a signature on the title. Fear not, Defendant learned from this mistake and adapted accordingly.

Following Defendant's initial encounter with the Audi dealership, Defendant went to the Kapalama DMV the next day and successfully transferred the title of the Audi A6. Afterwards, he went back to Audi Honolulu to finish what he started. Defendant's mistake on this day,

[44] See bates 3886 – 3889.

however, was that he couldn't out-word the Audi sales manager, Leong, who remembered Defendant stating previously that his "Uncle" would not be back until a few days later. Even after being told that Audi declined doing business with him, Defendant had the audacity to ask for Leong's name before he stormed off, as if it were Leong who stood in his way of trading in the Audi A6, and not his fraudulently attained documents.

Defendant is no weak-willed quitter. Even after being denied by Audi to attain a new car, Defendant tries again next week, but this time, at BMW of Honolulu with client advisor Castillo. In this instance, Defendant claimed the Audi A6 was his and he wanted to trade it in because he didn't like the color. See Exhibit 4 at pg. 14, lines 2-3. However, the purchase was not completed because Defendant did not have his driver's license and lacked physical forms of payment. Id. at pgs. 16-7, lines 18-20, 1-4. Despite this, Defendant was determined to complete the deal that day and insisted to Castillo that he wanted to pay through ApplePay. Simply put, Defendant's strong-willed and deceitful interactions demonstrate his confidence in his ability to get what he wanted while communicating in the English language.

Throughout Defendant's stay in Hawai'i, he assumed an extravagant and lavish persona and was obsessed with showing off his presumed newfound wealth to others. One witness to Defendant's English capability in a social setting was Daudie, who was approached first by Defendant who wanted to strike up a conversation with him while out at a bar. After this initial conversation, Defendant continued to hang out and converse with Daudie and his friends, one of which was Hannon. Not only was Defendant's English capability sophisticated enough to the point of freely conversing in a variety of social contexts, but he was also able to start a romantic relationship, all in English. This is indicative of Defendant's ability to maintain a conversation and facilitate social gatherings using only the English language. As a witness, Hannon will attest

that he does not speak Spanish, that he only spoke to Defendant in English, and that at no time did Defendant ever express to him that he did not understand English. Furthermore, Hannon will attest to Defendant's deeply manipulative tactics to which he, himself, fell victim after believing Defendant's façade. Undoubtedly, Defendant's ability to speak English comfortably in a variety of social and professional contexts is indicative of a fairly high level of English language proficiency.

As to Defendant's LAPD interview, there is also no evidence to suggest that the LAPD Detectives could not understand Defendant's English, as the LAPD Detectives stated that Defendant spoke "very good English" and that his English was "proper." See Exhibit 17 at pg. 67, lines 11-17. At times, Defendant would even correct the LAPD Detectives' understanding of legal procedures by, for example, explaining how the written driver's license test is very easy and how Hawai'i makes it easy to change things, such as a vehicle title. See Exhibit 16 at pgs. 33-34, lines 17-19, 1-9. Defendant also explained that you can't get a driver's license in Texas without a social security number but in Hawai'i, you only need two (2) documents proving residence. See Exhibit 1 at pg. 58, lines 13-17. Not only did Defendant understand the fundamentals of legal procedures, but he was also able to compare the procedures in Texas to the procedures in Hawai'i.

Although Defendant mentions that if they were speaking in Spanish, he would "be able to speak […] 100%", Defendant brings this up for the first time approximately **151 minutes, or two (2) hours and thirty-one (31) minutes,** after the initial commencement of his interview with LAPD. The following shows Defendant's exchange with the LAPD Detectives:

> A: If you (unintelligible) be like in Spanish or something, I'll be like, I'll be able to speak like 100% and like, not just good words and all this, but like …
> Q: You speak very good English.

A: I try to.
Q: No, you do.
Q1: Very proper. Better than most of the people that we deal with all the time.
Q: You speak very good English. So I don't understand what you're talking about. Look, you're basically filling out transfer cards and deeds and pink slips over to your name in a state that the vast majority of people don't speak Spanish. You're in Hawai'i, in Honolulu. So I think that you're getting by just fine with English. Right? So, I don't think the cops were manipulating you in any type of way. Right?
A: Mm-hmm (Affirmative).
Q: You knew that … hey, you asked them, do you have a search warrant to come in? And then you gave them consent to go inside, So, you speak very good English and you know the law very well too. Right? You know the law very well that you knew how to do the deed stuff for the house, turn it over because you know how the system works. In English, not in Spanish. So the thing is, I don't want you to go into that direction because that's far from the truth. You know what I mean? That's very far from the truth.
A: Sometimes when people ask me something in English, I just answer whatever so we can keep a conversation. That's what I do sometimes.

See Exhibit 17 at pgs. 67-69, lines 7-19, 1-17, 1-3.

For contextual purposes, prior to this exchange, the LAPD Detectives were questioning Defendant as to his belief about why HPD would ask if they could break and search the bathtub. Id. at pgs. 66-67, lines 1-18. 1-6. Defendant only mentions that if they were speaking in Spanish, he would "be able to speak […] 100%", after he is extensively questioned about the existence of a 'Maria the witch from Hawai'i' in relation to HPD's discovery of a bathtub filled with coffee grounds. However, following the exchange, Defendant continues to speak in English without difficulty and does not make any further mention of speaking in Spanish for the remainder of the interview. Despite Defendant claiming that he just "answer[s] whatever" in order to keep up the conversation, the State points out that 'answering whatever' is not synonymous with a lack of understanding of the English language. Accordingly, Defendant clearly demonstrates that he is able to speak English proficiently without a Spanish interpreter.

Lastly, Hawai'i courts do not require that a defendant be capable of absolute ("100%") fluency in English to render a knowing, intelligent, and voluntary statement. See State v. Liuafi, 1 Haw. App. 625, 639-40 (1981) (holding that, despite defendant's claim that he did not understand enough English to voluntarily and intelligently waive his rights, defendant's statement was still admissible because he passed the test for a driver's license which was in English, had taken English courses in high school, and had worked as a dishwasher at Sizzler Steak House). See also, Faafiti 54 Haw. at 638 (holding that, although defendant did not speak grammatically correct English, the trial judge did not abuse his discretion when he denied defendant an interpreter because defendant had "sufficient command of the English language to understand questions posed during the proceeding and to convey his thoughts").

Likewise, similar to Liuafi, Defendant's statement should be found admissible, as he applied for several credit cards in English and has a background in auto sales marketing from his employment at Los Parientes Auto Sales in Houston, Texas. While the State will not speculate as to whether Defendant is more fluent in Spanish than he is in English, his mere preference for speaking in Spanish does not suddenly change his English language proficiency, nor affect his ability to understand the questions posed by the LAPD Detectives and his ability to convey his thoughts in his responses. Contrary to what Defendant may believe of his English proficiency, his bilingual nature should not enable him to retroactively argue as to the involuntariness of his previous actions or statements merely because it serves to benefit him now.

iii. Defendant is not mentally or physically incapable

Defendant was mentally and physically capable during his March 10, 2022 interview to the LAPD Detectives. "A defendant's mental and physical condition can be part of the 'totality of the circumstances' relevant to the issue of the voluntariness of his or her custodial

statements." Kelekolio 74 Haw. at 503. A confession may be rendered involuntary if the defendant's mental or physical condition impairs their ability to render a voluntary statement or makes the defendant susceptible to improper suggestion. Id. at 504. The Hawai'i Supreme Court's position is that, for a defendant's mental or physical condition to render their statement involuntary, the defendant typically needs to indicate, either expressly or implicitly through conduct, that he was unable to render a voluntary statement or susceptible to improper suggestion. See State v. Gella, 92 Haw. 135, 138 (1999) (holding that, even though the defendant was dizzy and in constant pain due to lack of sleep and being injured during the arrest, defendant's statement was not involuntary because the detective asked him multiple times if he was well enough to continue the interview and he said "yes"). See also State v. Kekona, 77 Haw. 403 (1994) (holding that defendant was able to render a knowing and intelligent waiver of his Miranda rights despite reading at a fourth-grade level and suffering from a learning disability). See also State v. Villeza, 72 Haw. 327, 332-33 (1991) (holding that, even when defendant was interrogated in a windowless, air conditioned room in only his underwear and a blanket, his statement was not involuntary because he "showed no indication that he was reluctant to give a statement" and "did not complain of being cold or mistreated, but appeared calm and relaxed, showing no signs of duress"). Hawai'i courts have typically held that the absence of complaint, stress, discomfort, or pain from a defendant is evidence leaning in favor of a voluntary confession. See Villeza 72 Haw. at 329.

In the instant case, Defendant was arrested on March 9, 2022, at 3:50 p.m., and was not interviewed until a full day later, on March 10, 2022, at 4:35 p.m. See Exhibits 13 & 14. During this time, Defendant was able to eat and rest prior to being interviewed. On top of this, Defendant's interview is void of any mention, either expressly or impliedly, that he was in any

way tired, cold, hungry, in pain, or uncomfortable. Moreover, Defendant was not susceptible to any form of improper suggestion nor unable to render a voluntary statement. Rather, like the defendant in Kelekolio, Defendant was calm and lucid throughout the interview, as exemplified through his responsive tone of voice, ability to construct various versions of the incident in response to questioning, and ability to recognize and correct any misstatements by the LAPD Detectives. See Kelekolio at 504. Defendant's overall coherence in his statements indicates that he was nothing but capable in his mental faculties. Furthermore, LAPD Detective Mendez will attest to the normal booking protocols and procedures once a suspect is in custody and to their feeding and sleeping schedule. Thus, it is apparent from the 'totality of the circumstances' that Defendant's mental and physical condition at the time of the interrogation did not in any way make him incapable of rendering a voluntary statement or susceptible to improper suggestion.

iv. LAPD Detectives did not engage in improper or coercive police conduct

A confession may be rendered involuntary if, under the totality of the circumstances, the police employ interrogation techniques that were "improperly coercive." State v. Baker, 147 Haw. 413, 424 (2020). "Improperly coercive" means techniques that are "reasonably likely to procure an untrue statement or influence an accused to make an involuntary confession" regardless of guilt." Id. Improperly coercive techniques include direct or implied promises of better treatment in the event of confession and direct or implied threats of detriment in the event of a failure to confess. Id. at 433. "For example, if the police induce a confession by promising that the accused will be released on bail if the defendant admits to the underlying conduct, such a promise would be improperly coercive even if the accused was released on bail after making the confession." Id. at 423. The essential inquiry is whether, under the totality of the circumstances, the police's conduct prior to and during the interrogation were reasonably likely to procure an

untrue or involuntary confession. Id. at 434. "Mere advice from the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or promise does not render a subsequent confession involuntary." Kelekolio, 74 Haw. at 505.

To evaluate the legitimacy of the use of "deception" by the police in eliciting confessions or inculpatory statements, the Hawaii Supreme Court in Kelekolio adopted the following rule:

> [E]mployment by the police of deliberate falsehoods *intrinsic* to the facts of the alleged offense in question will be treated as one of the totality of circumstances surrounding the confession or statement to be considered in assessing its voluntariness; on the other hand, deliberate falsehoods *extrinsic* to the facts of the alleged offense, which are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt, will be regarded as coercive *per se,* thus obviating the need for a "totality of circumstances" analysis of voluntariness.

Id. at 511.

Examples of *intrinsic* falsehoods include misrepresentations regarding the existence of incriminating evidence, such as: physical evidence linking to the victim found in the defendant's car, discovery of the murder weapon, and positive identification of the defendant by reliable witnesses. Id. (See e.g. People v. Thompson, 50 Cal.3d 134 (1990); Moore v. Hopper, 389 F.Supp. 931 (M.D.Ga. 1974); United States ex rel. Galloway v. Fogg, 403 F.Supp.248 (S.D.N.Y. 1975)). The rationale behind judicial acceptance of the use of intrinsic falsehoods is that "an innocent person would not be induced to confess by such police deception." *Id.* (quoting 3 Ringel *Searches and Seizures, Arrests and Confessions* § 25.2(d)(2), at 25-21 (1991 and Supp.1992).

Examples of "*extrinsic* falsehoods—of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt—would include[:]" assurances of treatment in a "nice hospital" in exchange for a confession, promises of more favorable treatment in the event of a confession, and misrepresentations of legal principles, such

as (a) suggesting that the defendant would have the burden of convincing a judge and jury at trial that he was "perfectly innocent" and had nothing to do with the offense. Id. at 512-13. (See e.g. People v. Sunset Bay, 76 A.D.2d 592 (1980); People v. Hogan, 31 Cal.3d 815 (1982); Young v. State, 670 P.2d 591 (Okl.Cr.App.1983)).

Here, the LAPD Detectives did not engage in improperly coercive techniques that would coerce Defendant into providing an untrue statement or influence him to make an involuntary confession. Throughout the entire interview, Defendant's transcript is void of any mention by the LAPD Detectives of any direct or implied promises of better treatment or threats in the event of a failure to confess. At one point in the interview, Defendant attempts to bargain with the LAPD Detectives as to the possibility of a "deal", showcased through the following:

A: I don't want to go to jail.
Q: We don't want you to go to jail. Okay. We want to fix this and we want the truth.
A: I want to talk with someone from the DA and -
Q: Okay.
A: -- I'm just trying to make a deal.
Q: Okay. Well, unfortunately the DA isn't involved in this. Okay. I'm asking you what happened in that house. Okay. And Juan, like I told you, you can't change what happened in the past.

See Exhibit 17 at pg. 73, lines 4-13.

A: Can we make a deal?
Q: What kind of deal are you talking about? Because …
A: If I got to go to jail, can I be in Texas? In Houston?
Q: I have no control over there. Okay? Let's just talk about one thing at a time. Okay? I can't promise you anything. I can't promise you this. I don't know it's going to work out. But I can tell you this, that the truth …
A: I don't want to go back to Hawai'i.
Q: Okay. Okay, I can understand that. Let's start talking about the truth and what really happened there. Okay.
A: But if I'm going to tell you what happened, then you will have everything, and I won't have anything to offer.
Q: Well, what we have right now, look … If you understand how the whole process works, I can tell you right now that the truth will

completely help you out. If you lie, which we already know when you lie to us, it just screws you when you go to court. Because the way it works is we present for the case, or Honolulu presents the case. A judge already said, go get him. They basically sic the dogs on you. You know what that means?

A: (No audible response.)

Q: They basically said, the judge said … I'm the judge. The detective brings this up to me.

See Exhibit 18 at pgs. 7-9, lines 18, 1-19, 1-9.

Even assuming *arguendo* that LAPD Detectives Mendez and Lane employed the use of "deception" in eliciting a confession or an inculpatory statement, the transcript is void of any *extrinsic* falsehoods. Instead, Defendant attempts to plead with the LAPD Detectives, inquiring as to whether he can go to jail in Houston as opposed to in Honolulu and stating that he will not have anything to offer if he tells the truth. In response, LAPD Detectives repeatedly state that they are unable to make him any promises as to anything that happens with his case and instead, encourage him to tell the truth. This stands in stark contrast to the Baker detective, who deliberately represented that he knew with certainty that defendant would gain a benefit from confessing and suffer a detriment if he did not. See Baker 147 Haw. at 426.

LAPD Detectives Mendez and Lane also never commanded Defendant to stop lying or pressured him into confessing to a particular series of events like the Baker detective. See Id. Rather, like the Kelekolio detective, the LAPD Detectives merely challenged the inconsistencies in Defendant's account of events and advised him to "tell the truth", which is not only accepted behavior in Hawai'i courts, but also encouraged, as it increases the reliability and accurateness of defendant statements. See Kelekolio at 504.

Furthermore, Hawai'i courts reject the argument that "a police interrogator's unwillingness to accept a defendant's initial version of events at face value amounts to 'coercion' *per se*" because such arguments would undercut "the legitimate right of law enforcement

agencies to seek voluntary confessions." Id. at 505. Accordingly, the LAPD detectives were not obligated to accept Defendant's conflicting and inconsistent version of events at face value, and their unwillingness to accept Defendant's account and advisements to "tell the truth" were proper. See Id. Additionally, there is no evidence to suggest Defendant was in any way intimidated or frightened by the physical presence of the detectives. See In re Doe, 90 Haw. 246, (1999) (holding that, despite being interrogated by a large, physically imposing detective, juvenile defendant's statement was not involuntary because there was no evidence to show defendant was in any way frightened by the detective). Because there is no evidence of intimidation, coercion, or deception during Defendant's March 10, 2022 statement, Defendant's statement was knowingly, intelligently, and voluntarily made.

IV. CONCLUSION

Based on the foregoing memorandum of law, the exhibits attached hereto, any arguments and/or evidence adduced at the time of hearing on State's Motion, the State respectfully requests that this Honorable Court grant the Motion and issue an Order declaring Defendant's statements to HPD and LAPD to have been rendered knowingly, intelligently, and voluntarily.

Dated at Honolulu, Hawai'i: December 16, 2022.

STATE OF HAWAI'I

By STEVEN S. ALM
Prosecuting Attorney

By /s/ CATHERINE M. LOWENBERG
CATHERINE M. LOWENBERG
Deputy Prosecuting Attorney
City and County of Honolulu

STATEMENT OF PROPOSED WITNESSES AND/OR EXHIBITS

The State of Hawaiʻi intends to call the following witnesses and/or introduce the following exhibits at the hearing.

Witnesses	Subject Matter of Testimony
HPD Officer Richard Song	Voluntariness of Defendant's Statement
HPD Officer Kenneth Abraham-Botelho	Voluntariness of Defendant's Statement
HPD Officer Brian Smith	Voluntariness of Defendant's Statement
HPD Detective Michael Garcia	Voluntariness of Defendant's Statement
HPD Detective Reid Tagomori	Voluntariness of Defendant's Statement
LAPD Detective Danny Mendez	Voluntariness of Defendant's Statement
LAPD Detective Patrick Lane	Voluntariness of Defendant's Statement
Mohammad Daudie	Defendant's English proficiency
Scott Hannon	Defendant's English proficiency
Taiana Hale	Defendant's English proficiency
Vincent Leong	Defendant's English proficiency
Jose Castillo	Defendant's English proficiency

Exhibits	Offered to Prove
1 – 22	Voluntariness of Defendant's Statement & Defendant's English proficiency