IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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STATE OF HAWAIʻI, Plaintiff-Appellee

vs.

DARRELL T. SPRATTLING, Defendant-Appellant

NO. 22501

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. CAP 26 OF APRIL 14, 1999)

SEPTEMBER 17, 2002

MOON, C.J., NAKAYAMA, AND CIRCUIT JUDGE TOWN,
ASSIGNED BY REASON OF VACANCY, AND
LEVINSON, J. DISSENTING, WITH WHOM RAMIL, J. JOINS

OPINION OF THE COURT BY NAKAYAMA, J.

Darrell T. Sprattling appeals from the April 14, 1999 judgment of the district court of the first circuit, the Honorable George Y. Kimura presiding, convicting him of assault in the third degree, in violation of Hawaiʻi Revised Statutes (HRS) § 707-712(1) (1993).[1] On appeal, Sprattling argues that: (1) the oral charge failed to allege "bodily injury," an essential element of the offense; (2) the trial court failed to obtain a valid waiver of his right to a jury trial; (3) the trial

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[1] HRS § 707-712(1) provides:

> (1) A person commits the offense of assault in the third degree if the person:
>
> (a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or
> (b) Negligently causes bodily injury to another person with a dangerous instrument.

court plainly erred when it questioned witnesses during trial; and (4) there was insufficient evidence to support his conviction.

We hold that: (1) pursuant to the post-conviction liberal construction rule adopted by this court in State v. Motta, 66 Haw. 89, 657 P.2d 1019 (1983), Sprattling failed to show that the omission of the word "bodily" preceding the word "injury" prejudiced him or show that the oral charge could not be reasonably construed to charge a crime because of this omission; (2) the district court obtained a valid waiver of Sprattling's constitutional right to a jury trial; (3) the trial judge did not violate his duty to remain a neutral arbiter by questioning witnesses during the jury-waived trial; and (4) there was sufficient evidence to support the district court's finding that Sprattling possessed the requisite mens rea necessary for a conviction of assault in the third degree, and that he was not justified in pushing Calistro Cuson. Accordingly, we reject Sprattling's contentions and affirm his conviction.

I. BACKGROUND

On January 13, 1999, Sprattling made a pretrial appearance in which his attorney waived an oral reading of the charge. Defense counsel also requested a bench trial, "I've spoken to my client . . . and he understands what a jury trial is. And he has informed me that he wishes to waive his right to a jury trial." The district court conducted the following colloquy:

> THE COURT: Okay. Mr. Sprattling, you understand that you would have the right to a trial in circuit court with a jury where you would have an opportunity, through your attorney, to select 12 people from the community to sit as the jurors to make the

decision on guilt or innocence in the case?
MR. SPRATTLING: Yes. I understand.
THE COURT: Okay. You understand that. But, by your attorney saying, though, that he's spoken to you that you're -- that you would like to waive that right and remain in district court.
MR. SPRATTLING: Yes.
THE COURT: Is that correct? So, you -- if you go ahead and waive that, then everything will be held here. You will not have a jury trial. It'll be a judge that will make the decision as to guilt or innocence if your matter goes to trial. You understand that?
MR. SPRATTLING: I understand that, sir.
THE COURT: And, that's what you wish to do? Remain in district court?
MR. SPRATTLING: Yes, sir.
THE COURT: All right. All right, Mr. Sprattling. . . .
. . . .

A two-day bench trial commenced on February 22, 1999 and concluded on March 16, 1999. At the outset of trial, defense counsel requested "that the prosecution arraign the defendant." The prosecutor orally charged Sprattling as follows:

> On or about December 20th (twentieth), 1998, in the City and County of Honolulu, <u>you did intentionally, knowingly, or recklessly cause injury to another person</u>, to-wit, Calistro Cuson III, thereby committing the offense of Assault in the Third Degree in violation of Section 707-712(1) of the Hawaii Revised Statutes.

(Emphasis added.) Sprattling pled not guilty, and the bench trial commenced.

At trial, Calistro Cuson, III, (Calistro) testified that on December 20, 1998, at around 2:30 p.m., he moved a shopping cart from a parking stall as his wife, Melinda Cuson (Ms. Cuson), waited to park their car. Just as he cleared the stall, a white truck drove from behind Ms. Cuson and parked in the stall. He approached the driver, and said, "What are you doing? We're gonna' park here." Sprattling stepped out of his vehicle, and walked toward Calistro. While Calistro did not remember if Sprattling's hands met his body, he fell and noticed

that both of Sprattling's hands were outstretched with his palms open. The trial court found that "a confrontation of some sort," ensued, and subsequently, "[Calistro] was pushed and . . . fell backwards over the curb and sustained injuries," which included embarrassment, chest pains, and breathing problems.

During and following the testimony of each witness, the trial judge posed a multitude of questions regarding the events that led up to and occurred during the confrontation. In addition to the information elicited from the attorneys, the court asked Calistro whether he was angry when he saw Sprattling drive into the stall that he was clearing for his wife. The court also queried Calistro as to the position he found himself after Sprattling "pushed" him.

Ms. Cuson testified that a confrontation occurred between Calistro and Sprattling. During the course of their heated discussion, Sprattling "rushed and . . . pushed [her] husband." Ms. Cuson stepped out of her car, and noticed a "big guy," Sprattling's brother-in-law Elmer Wright, taunt Calistro. The trial court asked Ms. Cuson, among other things, whether she and Calistro were drinking or felt tired on the night of the incident, the direction in which Calistro fell after he was pushed, and Wright's and Calistro's size.

Sprattling presented a justification defense by offering testimony from his wife, Carla Sprattling, and himself in support of his claim of self-defense. Carla testified that she did not witness Sprattling push Calistro. During the course of and following Carla's testimony, the court questioned Carla as to the events that led to the confrontation. Augmenting the information elicited during direct examination, the court asked

Carla whether there was “a fear that some confrontation might occur” when she saw Calistro confront Sprattling. The court also inquired whether she was afraid of ensuing events when Elmer exited the truck:

> Q: Did Elmer get out of the car before you or did you get out before Elmer?
> A: He got out before me.
> Q: First?
> A: Yes.
> Q: So, when Elmer got out, you [sic] know that there was gonna’ be some problems?
> A: Yes.
> Q: And, so, you got out?
> A: Yes.

Sprattling testified that he pushed Calistro, but did so to defend himself. He claimed that Calistro was the aggressor, and “brushed his chest up against [him].” After exchanging words, Sprattling told Calistro “to get outta’ my face and pushed him [away.]” The court also queried Sprattling as to the events that transpired on December 10, 1998. It determined that Sprattling was a soldier stationed in Hawaiʻi who went to basic training at Fort Jackson and fought in combat while stationed in Bosnia. The court also inquired whether Sprattling, Carla, and Elmer heard Calistro confront Sprattling.

The court found Sprattling guilty as charged. The instant appeal was timely filed.

II. STANDARD OF REVIEW

A. Oral Charge

> “It is well settled that an accusation must sufficiently allege all of the essential elements of the offense charged[.]” State v. Merino, 81 Hawaiʻi 198, 212, 915 P.2d 672, 686 (1996) (citation and internal quotation marks omitted).
>
> Put differently, the sufficiency of the charging instrument is measured, inter alia, by whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he [or she] must be prepared to meet[.] A charge

> defective in this regard amounts to a failure to state an offense, and a conviction based upon it cannot be sustained, for that would constitute a denial of due process. Whether an indictment . . . sets forth all the essential elements of [a charged] offense . . . is a question of law, which we review under the de novo, or "right/wrong," standard.
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> Id. (citations and some internal quotation marks omitted.)

State v. Kaakimaka, 84 Hawai'i 280, 293-94, 933 P.2d 617, 630-31, reconsideration denied, 84 Hawai'i 496, 936 P.2d 191 (1997) (alterations in original).

B. Constitutional Question

> The validity of a criminal defendant's waiver of his or her right to a jury trial presents a question of state and federal constitutional law. Likewise, the validity of a statute based upon equal protection and due process of law is a question of constitutional law. "We answer questions of constitutional law by exercising our own independent constitutional judgment based on the facts of the case. Thus, we review questions of constitutional law under the right/wrong standard." State v. Hanapi, 89 Hawai'i 177, 182, 970 P.2d 485, 490 (1998) (quoting State v. Mallan, 86 Hawai'i 440, 443, 950 P.2d 178, 181 (1998)) (citations omitted).

State v. Friedman, 93 Hawai'i 63, 67, 996 P.2d 268, 272 (2000).

C. Harmless Error

> [E]rror is not to be viewed in isolation and considered purely in the abstract. It must be examined in the light of the entire proceedings and given the effect which the whole record shows it to be entitled. In that context, the real question becomes whether there is a reasonable possibility that error may have contributed to conviction. State v. Heard, 64 Haw. 193, 194, 638 P.2d 307, 308 (1981) (citations omitted). If there is such a reasonable possibility in a criminal case, then the error is not harmless beyond a reasonable doubt, and the judgment of conviction on which it may have been based must be set aside. See Yates v. Evatt, 500 U.S. 391, 402-03 (1991)[.]
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> State v. Jenkins, 93 Hawai'i 87, 99-100, 997 P.2d 13, 25-26 (2000) (some citations omitted).

State v. Lagat, 97 Hawai'i 492, 40 P.3d 894, 898 (2002) (internal quotation marks omitted).

D. Plain Error

> "We may recognize plain error when the error committed affects substantial rights of the defendant." State v. Cullen, 86 Hawai'i 1, 8, 946 P.2d 955, 962 (1997) (citations and internal quotation signals omitted). See also Hawai'i Rules of Penal Procedure (HRPP) Rule 52(b) (1993) ("Plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

Jenkins, 93 Hawai'i at 101, 997 P.2d at 27 (2000) (citation omitted).

E. Neutral Arbiter

"A trial judge's questioning of a witness is reviewed on appeal for abuse of discretion." State v. Hutch, 75 Haw. 307, 327, 861 P.2d 11, 21 (1993) (citing State v. Schutter, 60 Haw. 221, 222, 588 P.2d 428, 429 (1978), reh'g denied, 60 Haw. 677, 588 P.2d 428 (1979)).

F. Sufficiency of the Evidence

> [E]vidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact.

State v. Young, 93 Hawai'i 224, 230, 999 P.2d 230, 236 (2000) (quoting State v. Birdsall, 88 Hawai'i 1, 8, 960 P.2d 729, 736 (1998) (quoting State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997))) (alteration in original). "[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the [trier of fact]." State v. Sua, 92 Hawai'i 61, 69, 987 P.2d 959, 967 (1999) (quoting State v. Buch, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996) (citation omitted)) (alteration in original).

III. DISCUSSION

A. The oral reading of the charge was sufficient.

Sprattling contends that the oral charge was fatally defective because it failed to allege "bodily injury" and, instead, simply alleged injury. He contends that the word "injury" is insufficient to state an essential element of the offense because the definition of "bodily injury" specifies a particular type of injury, whereas "injury" has a broader definition. Sprattling argues this deficiency warrants a reversal of his conviction because the omission of the qualifying word "bodily" "cannot be reasonably construed to charge the offense for which [he] was convicted." We disagree. Inasmuch as Sprattling fails to provide a clear showing of substantial prejudice or that the charge could not be reasonably interpreted to assert a criminal offense, this court holds that the charge was sufficient.

The criminal process begins when the accused is charged with a criminal offense, if it is not a felony, by complaint or oral charge. Hawaiʻi Rules of Penal Procedure (HRPP) Rule 5(b)(1).[2] The purpose of this process is to "'sufficiently

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[2] HRPP Rule 5(b)(1) provides:

> (b) Offenses other than felony.
> (1) Arraignment. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed or the oral charge stated, a copy of such charge and any affidavits in support thereof and a copy of the appropriate order, if any, shall be furnished to the defendant, and proceedings shall be had in accordance with this section (b). Arraignment shall be in open court and shall consist of the reading of the complaint or the statement of the oral charge to the defendant, or stating the substance of the charge and calling on the defendant to plead thereto. The defendant may waive the reading of the complaint or the statement of the oral charge at arraignment

(continued...)

apprise[] the defendant of what he [or she] must be prepared to meet[.]'" Merino, 81 Hawai'i at 212, 915 P.2d at 686 (quoting State v. Wells, 78 Hawai'i 373, 379-80, 894 P.2d 70, 76-77 (1995)) (some alterations in original). As such, an oral charge or complaint must "sufficiently allege all of the essential elements of the offense[,]" regardless of "whether an accusation is in the nature of an oral charge, information, indictment, or complaint[.]" See State v. Jendrusch, 58 Haw. 279, 281, 567 P.2d 1242, 1244 (1977); see also HRPP Rule 7(d) (requiring that the charge state the "plain, concise and definite . . . essential facts constituting the offense charged.").

Because "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation[,]" and "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," an indictment or oral charge that fails in a material respect would encroach upon a defendant's constitutional rights. U.S. Const. amends. V and VI; Haw. Const. art. I, § 14. The onus is on the prosecution to inform the accused fully of the accusations presented against him or her because "[t]he principle of fundamental fairness, essential to the concept of due process of law, dictates that the defendant in a criminal action should not be relegated to a position from which he [or she] must speculate as to what crime

[2](...continued)

> provided that an oral charge shall be stated at the commencement of trial or prior to entry of a guilty or no contest plea. In addition to the requirements of Rule 10.1, the court shall in appropriate cases inform the defendant of the right to jury trial in the circuit court or that the defendant may elect to be tried without a jury in the district court.

he [or she] will have to meet in defense." See State v. Israel, 78 Hawaiʻi 66, 71, 890 P.2d 303, 308 (quoting Kreck v. Spalding, 721 P.2d 1229, 1233 (9th Cir. 1983)), reconsideration denied, 78 Hawaiʻi 474, 896 P.2d 930 (1995). In other words, the oral charge must be worded in a manner such "that the nature and cause of the accusation [could] be understood by a person of common understanding[.]" Id. at 70, 890 P.2d at 307.

Due to the significant consequences associated with omitting an essential and material element in an oral charge, an objection to this deficiency may be raised "at any time during the pendency of the proceeding[.]" Motta, 66 Haw. at 90, 657 P.2d at 1020. However, in Motta this court adopted a rule (hereinafter the "Motta/Wells post-conviction liberal construction standard"), which essentially prescribes a presumption of validity on indictments that are challenged subsequent to a conviction. Id. at 91, 657 P.2d at 1020. "Elaborating on this standard, this court [will] 'not reverse a conviction based upon a defective indictment [or complaint] unless the defendant can show prejudice or that the indictment [or complaint] cannot within reason be construed to charge a crime." Merino, 81 Hawaiʻi at 212, 915 P.2d at 686 (quoting Wells, 78 Hawaiʻi at 381, 894 P.2d at 78 (quoting Motta, 66 Haw. at 90, 657 P.2d at 1019-20)) (alterations in original). In other words, the well-established rule in this state is that convictions based upon a defective charge will be deemed valid unless the defendant proves that either the complaint cannot be reasonably interpreted to charge a crime or he or she was prejudiced by the omission. This analysis extends to oral charges. State v. Elliott, 77 Hawaiʻi 309, 311, 884 P.2d 372,

374 (1994) (holding that because Elliott did not raise the issue whether his oral charge was sufficient in the lower court, review of the "'[charges] which are tardily challenged [after conviction] are liberally construed in favor of validity.'") (quoting Motta, 66 Haw. at 91, 657 P.2d at 1020 (quoting United States v. Pheaster, 544 F.2d 353, 361 (9th Cir. 1976), cert. denied, 429 U.S. 1099 (1977))).

In determining whether an offense has been sufficiently pleaded, this court has departed from strict technical rules construing the validity of an oral charge. Motta, 66 Haw. at 91, 657 P.2d at 1020 ("[T]he courts of the United States long ago withdrew their hospitality toward technical claims of invalidity of an indictment first raised after trial, absent a clear showing of substantial prejudice to the accused[.]") (quoting United States v. Thompson, 356 F.2d 216, 226 (2d Cir.), cert. denied 384 U.S. 964 (1965)). Rather, we now interpret a charge as a whole, employing practical considerations and common sense. State v. Daly, 4 Haw. App. 52, 55, 659 P.2d 83, 85-86 (1983) (holding that common sense must be employed when interpreting an indictment and that an "essential element need not be expressed with the magic words[.]"); See also United States v. Mouton, 657 F.2d 736, 739 (5th Cir. 1981) (noting that the indictment is to be construed by practical and not technical considerations); Christian v. Alaska, 513 P.2d 664, 667 (Alaska 1973); State v. Minnick, 168 A.2d 93, 96 (Del. 1960) (noting that common sense must be employed when construing the words of an indictment); State v. Kjorsvik, 812 P.2d 86, 94 (Wash. 1991) (same). Moreover, in construing the validity of an oral charge, we are not restricted to an examination solely of the charge, Israel, 78 Hawai‘i at 70, 890

P.2d at 307, but will interpret it in light of all of the information provided to the accused. Elliott, 77 Hawai‘i at 312, 884 P.2d at 375 ("One way in which an otherwise deficient count can be reasonably construed to charge a crime is by examination of the charge as a whole."); State v. Treat, 67 Haw. 119, 120, 680 P.2d 250, 251 (1984) ("We think that in determining whether the accused's right to be informed of the nature and cause of the accusation against him has been violated, we must look to all of the information supplied to him by the State to the point where the court passes upon the contention that his right has been violated.") (quoting State v. Robins, 66 Haw. 312, 317, 660 P.2d 39, 42-43 (1983)).

Sprattling's assertion that the oral charge was invalid because it failed to include an essential element of his offense is not persuasive. While the charge failed to include the modifying word "bodily," the omission did not alter the nature and cause of the accusation such that a person of common understanding would fail to comprehend it. HRS § 707-712 requires that a person intentionally, knowingly, or recklessly cause "bodily injury." The word "bodily" alone is not an essential element of the offense; it modifies "injury." The word "assault" by definition implies bodily injury; it is defined as "any intentional display of force such as would give the victim reason to fear or expect bodily harm[] constitutes an assault." Black's Law Dictionary 114-15 (6th ed. 1990) (emphasis added). While "injury" is not synonymous with "bodily injury," assault

necessitates "bodily injury" by its very definition.[3] Therefore, when the oral charge is viewed as a whole, the oral charge clearly indicates that the reference to "assault" anchors "injury" within the context of criminal assault, which necessarily involves bodily injury. See HRS §§ 707-710 to -712 (1993).[4] Contrary to Sprattling's contentions, the prosecution's omission of the word "bodily" in reciting his oral charge was not "so obviously defective that by no reasonable construction can it

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[3] Thus, the Hawai'i Penal Code does not include an offense of "property assault" but criminal property damage. See HRS §§ 708-820 to -823.

[4] HRS § 707-710 provides:

> (1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes serious bodily injury to another person.
> (2) Assault in the first degree is a class B felony.

HRS § 707-711 provides:

> (1) A person commits the offense of assault in the second degree if:
> (a) The person intentionally or knowingly causes substantial bodily injury to another;
> (b) The person recklessly causes serious bodily injury to another person;
> (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
> (d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
> (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this section, "educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education, or a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.
> (2) Assault in the second degree is a class C felony.

For HRS § 707-712, see supra note 1.

be said to charge the offense for which conviction was had," to wit, assault in the third degree. Motta, 66 Haw. at 94, 657 P.2d at 1022. Essentially, Sprattling asks this court to declare invalid his arraignment by invoking the strict technical rules rejected in Motta. Sprattling fails to demonstrate that the omission of the modifying word "bodily" made the oral charge fatally defective such that it failed to charge an offense.

Unlike the present case, convictions have been reversed for omitting an entire element of an offense, see, e.g., State v. Yonaha, 68 Haw. 586, 723 P.2d 185 (1986) (reversing conviction because omitted element of intent in reciting the charge); State v. Faulkner, 61 Haw. 177, 599 P.2d 285 (1979) (same), failed to specify the alleged victim, see Elliott, 77 Hawai'i 309, 884 P.2d 372, or left out language that was essential for identifying the particular offense charged, see, e.g., Israel, 78 Hawai'i 66, 890 P.2d 303 (affirming dismissal of charge because it did not specify elements of the underlying felony, where offense required the actual commission of the underlying felony); Wells, 78 Hawai'i 373, 894 P.2d 70 ("triggering language" designating grade of offense according to level of misconduct). While the prosecution, in this case, omitted the qualifying term "bodily," the deletion did not alter the charge such that it could not be reasonably construed to charge assault in the third degree.

Further, Sprattling was not alleged that he was prejudiced by the omission of the word "bodily" in the oral charge. This court recognizes that where an error or defect does not affect the substantial rights of the defendant, it will be

disregarded. HRPP Rule 52(a).[5] Such error, however, should "not [] be viewed in isolation and considered purely in the abstract. It must be examined in light of the entire proceedings and given the effect to which the whole record shows it is entitled." State v. Gano, 92 Hawai'i 161, 176, 988 P.2d 1153, 1163 (1999) (quoting Heard, 64 Haw. at 194, 638 P.2d at 308 (citations omitted)). When constitutional errors "deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for a determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair," the harmless error doctrine may not be employed. See Neder v. United States, 527 U.S. 1 (1999); see also Du Bo, 186 F.3d 1177, 1180 & n.2 (9th Cir. 1999) (affirming the premise that the harmless error review could be applied to cases in which "challenges to minor or technical deficiencies" were raised even though the holding in Neder, supra was not applied to cases in which an essential element of an indictment was lacking). Therefore, when constitutional rights are implicated, this doctrine may be invoked so long as the error "is so unimportant and insignificant that it may be deemed harmless." State v. Ford, 84 Hawai'i 65, 74, 929 P.2d 78, 87 (1996) (quoting State v. Ganal, 81 Hawai'i 358, 376, 917 P.2d 370, 388 (1996)) (citing HRPP Rule 52) (internal quotation marks omitted). The issue, in making this determination is, therefore, whether there is a reasonable possibility that the error might have contributed to conviction. Gano, 92 Hawai'i at 176, 988 P.2d at 1163

[5] HRPP Rule 52(a) provides: "(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

(citations omitted). The harmless error doctrine also applies to defects in indictments. Du Bo, 186 F.3d at 1180 ("[C]hallenges to minor or technical deficiencies, even where the errors are related to an element of the offense charged and even where the challenges are timely, are amenable to harmless error review.").

Because the omission of the word "bodily" did not constitute an essential element of the offense, the harmless error doctrine is applicable. The record here shows Sprattling had actual knowledge of the charges against him. Before trial commenced, Sprattling indicated to the district court, in two separate proceedings and through competent counsel, that he understood the charge. More importantly, he also freely admitted to pushing Calistro; he did not deny having physical contact with Calistro but asserted self-defense as his justification. During closing arguments, Sprattling clearly articulated his understanding of the offense for which he was charged. He restated the elements of assault in the third degree when he informed the court: "Your Honor, . . . the State has to prove beyond a reasonable doubt that [Sprattling] intentionally, knowingly, or recklessly cause[d] bodily injury." (Emphasis added.) Inasmuch as Sprattling fails to prove he was substantially prejudiced by the oral charge, he fails to overcome the presumption of validity prescribed by the Motta/Wells post-conviction liberal construction standard. Accordingly, we hold the oral charge was sufficient to put Sprattling on notice of the charges against him.

B. The colloquy was sufficient.

In Sprattling's second point of error, he alleges that

he was not fully informed of his right to a jury trial. Consequently, he contends that his waiver was not valid inasmuch as he did not knowingly, intelligently, and voluntarily surrender his constitutional right. Because Sprattling failed to prove by a preponderance of the evidence that his waiver was involuntary, we hold that the district court did not err in this regard.

A defendant is entitled to a trial by jury. See U.S. Const. amend. VI.; Haw. Const. art. I, § 14. This right attaches when the potential penalty for the charged crime is imprisonment for six months or more. See HRS § 806-60 (1993) ("Any defendant charged with a serious crime shall have the right to trial by a jury of twelve members. 'Serious crime' means any crime for which the defendant may be imprisoned for six months or more.").

A defendant is also entitled to waive this right, but must voluntarily do so "orally or in writing[.]" Friedman, 93 Hawaiʻi at 68, 996 P.2d at 273 (citing State v. Ibuos, 75 Haw. 118, 121, 857 P.2d 576, 578 (1993) (citing HRPP Rule 5(b)(3) ("In appropriate cases, the defendant shall be tried by jury in the circuit court unless the defendant waives in writing or orally in open court his right to trial by jury."))). If the accused opts for a bench trial, the court must inform the defendant of this constitutional right. Id. at 69, 996 P.2d at 274. HRPP Rule 5(b)(1) provides that "the court shall in appropriate cases inform the defendant of the right to jury trial in the circuit court or that the defendant may elect to be tried without a jury in the district court." Therefore, if the record shows that the trial court conducted a colloquy with the defendant, which would presume the waiver was voluntary, the defendant has the burden of proving, by a preponderance of the evidence, that the waiver was

not voluntary. Id. at 69, 996 P.2d at 274. Failure to obtain a valid waiver constitutes reversible error. Id. at 68, 996 P.2d at 273.

In Friedman, this court held that an analysis into whether a jury trial waiver was valid must be made in light of the totality of the circumstances. Id. at 69-70, 996 P.2d at 274-75. Friedman argued that his constitutional right to a jury trial was effectively violated by the circuit court because it failed to inform him that "a jury is comprised of twelve members, that he could take part in jury selection, or that a jury verdict must be unanimous." Id. at 69, 996 P.2d at 274. This court rejected Friedman's suggestion to adhere to a "rigid pattern of factual determinations." Id. ("Friedman appears to urge this court to adopt a 'bright line rule[.]'"). Rather, because a waiver "is the knowing, intelligent, and voluntary relinquishment of a known right," this court looks to the totality of the circumstances to determine whether the defendant's waiver was validly surrendered. Id. at 68, 996 P.2d at 273.

In the case at hand, Sprattling was entitled to a trial by a jury because he was charged with assault in the third degree, an offense that carries a maximum one-year term of imprisonment. See HRS § 707-712(1)(b) (1993), see supra note 1; HRS § 706-663 (1993).[6] Moreover, inasmuch as the record

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[6] HRS § 706-663 provides:

> After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

indicates that the district court conducted a colloquy with Sprattling regarding his right to a trial by jury and that he orally waived this right, Sprattling bears the burden of proving that the wavier was not voluntary by a preponderance of the evidence. However, Sprattling's proof that the trial court failed to determine whether he understood the consequences of his decision was that the trial court did not inform him that: (1) he had a right to a "fair" and "impartial" jury of his "peers"; (2) he could challenge jurors for cause; (3) he had a right to exercise three peremptory challenges; (4) he had a right to select and question twelve jurors; and (5) he was entitled to have all twelve jurors unanimously find him guilty beyond a reasonable doubt. Sprattling adds that at the time he waived his right to a jury trial, the district court failed to determine whether: (1) he was under the influence of drugs or alcohol; (2) his educational and life experience background was sufficient for a finding that he understood his rights; and (3) he freely and independently decided to waive his rights. In light of these oversights, Sprattling asserts, it is evident that the district court failed to obtain a knowing, voluntary, and intelligent waiver of his right to a jury trial. However, like Friedman, the record in the present case indicates that, under the totality of the circumstances, Sprattling understood his right and validly waived it. At his pretrial appearance, Sprattling was assisted by capable counsel, who informed the court that Sprattling understood the concept of a jury trial and wished to waive his right to such a trial. The district court confirmed this information by explaining to Sprattling that he would have an opportunity, through his attorney, to select twelve members in

the community as jurors who would determine his guilt or innocence. The court added that if Sprattling chose to waive this right, trial would be held at district court where a judge would determine his guilt or innocence. Sprattling indicated that he understood the consequences of his choice. Nonetheless, Sprattling orally expressed his desire to waive his constitutional right. Therefore, under the totality of the circumstances, Sprattling knowingly, voluntarily, and intelligently waived his right. Accordingly, this court holds that Sprattling validly waived his right to a trial by jury.

C. The trial court did not abuse its discretion by asking witnesses questions.

The trial judge, Sprattling contends, failed to act as a neutral arbiter by subjecting each witness to "unduly extended examination." He objects to the quantity of questions asked of each witness and asserts that, because of the sheer number of interrogatories and new information elicited, the court's inquiry was unduly extensive and effectively supported the prosecution's case against him. Inasmuch as the trial judge's questions did not usurp the function of either counsel or pose inquiries into nonmaterial and impertinent information, the trial court did not abuse its discretion.

Sprattling failed to object or otherwise raise this issue prior to the present appeal. However, because a trial conducted by an impartial arbiter implicates a defendant's constitutional right to due process, see State v. Silva, 78 Hawai‘i 115, 121, 890 P.2d 702, 708 (App. 1995), overruled on other grounds, Tachibana v. State, 79 Hawai‘i 226, 900 P.2d 1293 (1993), this court may recognize this point on appeal as one

raised under a plain error analysis.

We recognize that a trial judge may question witnesses to adduce material and relevant testimony not elicited by either party and for clarification purposes. State v. Hutch, 75 Haw. at 328, 861 P.2d at 21 ("this power to interrogate must be judiciously exercised, and the examination ought not to be extended beyond that which is reasonably necessary to elicit needed material facts or to clarify testimony."); Hawaiʻi Rules of Evidence (HRE) Rule 614(b). However, when conducting such questioning, the trial court must not exhibit bias or advocate for either party. Silva, 78 Hawaiʻi at 118, 890 P.2d at 705. As noted by this court in Hutch:

> [T]he judge is accorded considerably greater discretion in the questioning of witnesses in jury waived trials and during the hearing of evidentiary motions. In such cases, it is the judge who is the trier of fact, and, accordingly, there is no possibility of jury bias; under the circumstances, the judge's duty to clarify testimony and fully develop the truth in the case becomes particularly heightened.

Hutch, at 326 n.8, 861 P.2d at 21 n.8. In this regard, a judge may not "conduct an unduly extended examination of any witness." Id. at 326, 867 P.2d at 21 (quoting Schutter, 60 Haw. at 222-23, 588 P.2d at 429). A trial judge "takes on the role of the prosecutor when he or she conducts a 'rigorous, persistent and extensive interrogation' of a witness, eliciting testimony which 'tends to discredit the theory of the defense . . . with questions normally identified with a prosecutor[.]'" Silva, 78 Hawaiʻi at 118, 890 P.2d at 705.

In the present case, the trial judge asked progressively fewer questions of each witness in the order in which they appeared. An examination of the questions reveals

that a majority of the inquiries to which Sprattling now objects clarified testimony already adduced by the interrogating attorneys or brought forth new information germane to the issues raised in the case. The court's questions did not take on a prosecutorial aspect and he questioned both prosecution and defense witnesses. While the court's questions spanned the course of the incident, the questions favored neither the prosecution nor Sprattling. Contrary to Sprattling's contentions, there is no evidence that the trial judge assisted the prosecution by asking questions that established the elements necessary to convict Sprattling. For example, the trial judge elicited new facts from Ms. Cuson that established the make, color, and size of their car, that she and Calistro had not consumed alcohol that night but were tired from working all week, that Calistro was no longer in the parking stall when Sprattling parked his car and the physical size of Elmer and Calistro. In addition to the testimony elicited from Calistro by counsel, the judge also questioned Calistro regarding whether he was tired, knew the mall would be crowded and parking was scarce, was frustrated and angry when Sprattling parked in the stall, and the position of his body after he fell. As the prosecution correctly noted, the evidence necessary to establish the requisite elements had already been brought forth by the attorneys. As such, the trial court neither usurped the role of the prosecutor nor favored either party. Therefore, the trial court did not abuse its discretion when it questioned each witness in this case.

D. The evidence elicited was sufficient to sustain Sprattling's conviction.

Sprattling argues that the trial court erroneously

found him guilty because the evidence adduced at trial was insufficient to prove, beyond a reasonable doubt, that he had the requisite mens rea for committing assault in the third degree, and that the evidence presented by the prosecution was insufficient to prove that Sprattling was not justified in pushing Calistro. We disagree. The evidence supports the verdict that Sprattling knowingly pushed Calistro without a reasonable belief that Calistro would use unlawful force.

Sprattling cursorily contends the evidence failed to support a finding that he had the requisite mens rea because there was neither direct nor circumstantial evidence to prove that he intentionally, knowingly, or recklessly pushed Calistro. In proving the state of mind of a particular defendant, this court has held that:

> "[P]roof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the [defendant's conduct] is sufficient. . . . Thus, the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances." State v. Sadino, 64 Haw. 427, 430, 642 P.2d 534, 536-37 (1982) (citations omitted); see also State v. Simpson, 64 Haw. 363, 373 n.7, 641 P.2d 320, 326 n.7 (1982).
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> State v. Mitsuda, 86 Hawai'i 37, 44, 947 P.2d 349, 356, reconsideration denied (1997) (quoting State v. Batson, 73 Haw. 236, 254, 831 P.2d 924, 934 (1992)) (emphasis added).

Jenkins, 93 Hawai'i at 106, 997 P.2d at 32.

In the present case, Sprattling was convicted of assault in the third degree, which required that the prosecution prove, beyond a reasonable doubt, that Sprattling "[i]ntentionally, knowingly, or recklessly caused bodily injury to another person." HRS § 707-712(b) (1993), see supra note 1. The evidence, when viewed in a light most favorable to the prosecution, supports Sprattling's conviction. The evidence

adduced confirmed that while Calistro cleared a parking stall of a shopping cart for his wife at Pearlridge Shopping Center, Sprattling drove around her car and parked his vehicle in the stall. An intense exchange ensued. Carla testified that she was afraid a confrontation would occur, and when Elmer Wright, Carla's brother, exited the car she knew "there [was] going to be some problems." Ms. Cuson testified that Sprattling rushed Calistro and pushed him to the ground. Sprattling testified that he pushed Calistro out of self-defense. However, the trial court did not find Sprattling's claim to be credible, and ruled that his version of the event "[did]n't make any sense."

From the foregoing, the evidence adduced at trial was sufficient to lead a reasonable trier of fact to conclude that Sprattling acted either knowingly or recklessly when he pushed Calistro, and that he was not justified in doing so. Therefore, the evidence adduced, when viewed in a light most favorable to the prosecution as this court is compelled to do, was sufficient to support Sprattling's conviction.

IV. CONCLUSION

Based on the foregoing, this court holds that Sprattling's conviction is affirmed.

On the briefs:

Clayton K.F. Zane
for defendant-appellant

Donn Fudo, Deputy
Prosecuting Attorney,
for plaintiff-appellee