

CONCURRING OPINION BY LEVINSON, J.

I generally concur in the majority's analysis. In particular, I agree: (1) that the circuit court did not err in denying Crail's motion to dismiss the charges against him; (2) that Jury Instruction Nos. 18 and 20 erroneously contained improper comment on the evidence; (3) that Crail's motion for a judgment of acquittal was untimely filed; and (4) that Crail's convictions were supported by substantial evidence.

However, in light of the fact that Crail has not raised the circuit court's denial of his motion to suppress the statement that he made to the police on October 1, 1997 as a point of error on appeal, I believe that the majority's reliance on the opinion of the court in State v. Kekona, 77 Hawai'i 403, 886 P.2d 740 (1994), is both misplaced and gratuitous. As the majority recognizes, "this case does not arise in the same context as Kekona," majority opinion at 21 & n.14, inasmuch as the material issue in Kekona was whether the circuit court erred in denying his "motion to suppress his confession on the grounds that . . . because there was no tape recording of the session, no record existed to indicate a voluntary statement or waiver[.]" 77 Hawai'i at 405, 886 P.2d at 742 (emphasis added). Thus, the question on appeal was whether Kekona's confession should have been suppressed and not whether the charges against him should have been dismissed, hardly a surprise in light of the fact that suppression -- rather than dismissal -- is the remedy for the unlawful extraction by the police of an inadmissible statement. Crail has appealed only the denial of his motion to dismiss for alleged preindictment delay, and the Kekona analysis, as such, is inapposite to this case.

Nevertheless, the majority having invoked Kekona, I wish to reaffirm my adherence to the views expressed in my concurring opinion in that decision. See Kekona, 77 Hawai'i at 410-17, 886 P.2d at 747-54.