DISSENTING OPINION BY ACOBA, J.

Because I disagree with the majority's holding that the lānai in the instant case did not constitute part of the dwelling allegedly burglarized, I respectfully dissent.[1]

I.

Briefly, the facts surrounding the burglary charges follow. On January 14, 2000, Defendant-Appellant Samuel Harper (Defendant) went to the apartment of Amber Sifferman, ostensibly to find his girlfriend, Joahn Ogawa. Defendant walked onto Sifferman's lānai and entered the apartment through the screen door and curtains. Sifferman demanded that Defendant leave. Defendant eventually head-butted Sifferman and the two engaged in a fist-fight. Sifferman's boyfriend escorted Defendant out of the door and back onto the lānai. Ogawa walked across the apartment living room to the lānai doorway to tell Defendant that she would speak with him later. Defendant then took a step into the apartment, from the lānai, and head-butted Ogawa.

Defendant was charged in an amended complaint with, inter alia, burglary in the first degree, Hawai'i Revised Statutes (HRS) § 708-810(1)(c) (1993) (Count I), for the entry

[1] I believe this decision should be published because it presents a question of first impression with respect to whether a lanai is part of a "dwelling" and lanais are common to many residences within our state. See State v. Uyesugi, 100 Hawai'i 442, 473-74, 60 P.3d 843, 874-75 (2002) (explaining that "[i]t is in the nature of stare decisis that, when this court . . . decides matters of first impression we in fact establish precedent and, therefore, should publish our opinion) (Acoba, J., concurring, joined by Ramil, J.).

into the apartment through the screen door when he first arrived on the lānai, and with another count of burglary in the first degree (Count V), for his passing through the screen door to head-butt Ogawa.[2] Prior to his jury trial, Defendant moved to dismiss Count I, and/or Count V of the complaint based on the theory that the burglaries constituted a single course of conduct with a single intent, and that, therefore, the district court's preliminary hearing finding of probable cause on both counts was erroneous. The circuit court of the second circuit (the court) denied Defendant's motion.

At the close of the evidence of Plaintiff-Appellee State of Hawai'i (the prosecution) at trial, the defense orally moved for acquittal "as to Count 1 and/or Count 5." In the course of his oral motion, Defendant argued that the lānai "was part of the unit, and there is no testimony whatsoever that [Defendant] ever left that perimeter, so there is an argument to be made that the unit itself was never exited to be re-entered." The court denied this motion.

The court instructed the jury, without objection, that "[d]welling means a building which is used or usually used by persons for lodging. Building includes any structure used for lodging of persons therein." The jury found Defendant guilty of

[2] Defendant was also charged with Assault in the Third Degree, HRS § 707-712(1)(a) (Count II), for his altercation with Sifferman; Abuse of a Family or Household Member, HRS § 709-906 (Count III), for his attack upon Ogawa; and Criminal Property Damage in the Fourth Degree, HRS § 708-823(1) (Count IV), for damaging Ogawa's property at her home that Defendant and Ogawa shared. The jury found Defendant guilty as charged on these counts.

the lesser-included offense of trespassing for the first burglary count (Count I) and guilty as charged for the second burglary count (Count V).

Defendant filed a post-trial motion to set aside the jury's verdict as to Count V. This motion was based, in part, on the theory that Defendant did not re-enter Sifferman's residence in order to head-butt Ogawa because he was already in Sifferman's residence when he was on the lānai. Defendant also filed a reply in answer to the prosecution's responsive memorandum, asserting, once again, that the lānai was part of Sifferman's dwelling. The court denied the motion to set aside the verdict.

In his points on appeal, Defendant maintains that (1) there was insufficient evidence to sustain the conviction for Count V because Sifferman's lānai constituted a dwelling unit; (2) as a matter of plain error, the words "building" and "structure" were not properly defined in the jury instructions; (3) the court's instructions permitted inconsistent findings of fact because Defendant was involved in only one unlawful entry, and therefore "it would be inconsistent to permit a jury to consider two charges of burglary"; and (4) the court should not have instructed the jury that it could return verdicts on both burglary counts.

In its answering brief, the prosecution maintains that (1) the lānai was not a dwelling and thus, there was sufficient evidence to convict under Count V; (2) even if Sifferman's lānai

is part of her dwelling, Defendant committed two separate burglaries because Defendant had implicit authority to be on the lānai when he was escorted out of the apartment and his second entry into the apartment constituted a second unauthorized entry;[3] (3) the court did not need to instruct the jury on the word "structure"; (4) because the lānai is not part of the dwelling, the jury instructions did not result in inconsistent results; and (5) the court properly instructed the jury that it could convict Defendant of both burglary counts.

Because, for the reasons stated herein, Sifferman's lānai constituted part of a "dwelling" for the purposes of the burglary statute, Defendant cannot be viewed as having entered the premises twice, as alleged in the amended complaint, but only once. The latter being the case, Defendant should have been acquitted of the second burglary count. Thus, with respect to Count V, the court erred in denying Defendant's motion for judgment of acquittal and subsequent motion to set aside the verdict.

II.

A.

The question of whether a particular structure or area is part of a dwelling is initially a question of law, because the answer requires us to interpret the burglary statute. State v.

[3] This argument, of course, still assumes that the lānai was not part of the dwelling, inasmuch as the prosecution argues that the step into the living area was a second entry.

Putnam, 93 Hawai‘i 362, 366, 3 P.3d 1239, 1243 (2000) (stating that the interpretation of a statute is a question of law reviewable de novo); see also State v. Wang, 91 Hawai‘i 140, 141, 981 P.2d 230, 231, reconsideration denied, 90 Hawai‘i 441, 978 P.2d 879 (1999); Gray v. Admin. Dir. of the Court, 84 Hawai‘i 138, 144, 931 P.2d 580, 586 (1997). Other jurisdictions considering whether various structures fell within their respective burglary statutes have also concluded that this issue is one of statutory interpretation and, thus, is a question of law. See Johnson v. Commonwealth, 875 S.W.2d 105, 107 (Ky. Ct. App. 1994) ("The question of whether the porch constituted part of the 'dwelling' . . . was a question of law[.]"); Commonwealth v. Ott, 649 A.2d 716, 718 (Pa. Super. Ct. 1994) (labeling the question of "whether burglary of an attached garage" constitutes burglary of a "building or occupied structure" or burglary of a structure "not adapted for overnight accommodation" an "interesting question of law"); State v. Ranieri, 560 A.2d 350, 353 (R.I. 1989) ("The status of the particular common hallway [as a possible part of the dwelling house] . . . was and is a question of law[.]" (Citation omitted.)).

B.

HRS § 708-810, the first degree burglary statute, reads, in pertinent part as follows:

> (1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:
> . . . .

> (c) The person recklessly disregards the risk that the building is the dwelling of another, and the building is such a dwelling.

(Emphases added). "Building" is defined as "includ[ing] any structure[;] . . . each unit of a building consisting of two or more units separately secured or occupied is a separate building." HRS § 708-800 (1993) (emphasis added). "'Dwelling' means a building which is used or usually used by a person for lodging." Id. Lodging is not defined in the statutes. However, "[r]esort to legal or other well accepted dictionaries is one way to determine the ordinary meanings of certain terms[]" in a statute. State v. Chen, 77 Hawai'i 329, 377, 884 P.2d 399, 400 (App. 1994) (internal quotation marks and citation omitted). In that regard, among its meanings, "lodging" is defined as "a place to live[.]" Webster's Third New Int'l Dictionary 1329 (1961).

III.

In State v. Duldulao, 86 Hawai'i 143, 948 P.2d 564 (1997), the Intermediate Court of Appeals (ICA) addressed the question of how to determine whether a structure is part of a dwelling. In that case, a man was seen rummaging through a storage shed within a garage, which "shared a common roof and a common wall" with a house. Id. at 144, 948 P.2d at 565. The defendant was charged with burglary in the first degree.[4] The ICA relied primarily on People v. Ingram, 40 Cal. App. 4th 1397, 48 Cal. Rptr. 2d 256 (1996), overruled on other grounds by People

[4] At trial, the prosecution could not prove whether it was the defendant or his co-defendant who was seen in the garage.

v. Dotson, 16 Cal. 4th 547, 560 n.8, 941 P.2d 56, 64 n.8 (1997). In Ingram, the California Court of Appeals was faced with the question of whether the defendant's admitted burglary of a garage constituted burglary of a "dwelling house"[5] for the purposes of first degree burglary. Id. at 1402. In Duldulao, the ICA adopted what amounted to a legal "test" from Ingram to determine whether a structure is a part of a dwelling:

> Ingram stated, and we agree, that
>
> > the close proximity of an attached structure is precisely what increases the potential for confrontation and threatens the safety of residents. The proper focus is whether the attached structure is an integral part of the dwelling; that is, functionally interconnected with and immediately contiguous to other portions of the house.
>
> Ingram[, 40 Cal. App. 4th] at 1404, 48 Cal. Rptr. 2d at 261.[6]

Duldulao, 86 Hawai'i at 147, 948 P.2d at 568 (brackets and ellipsis points omitted) (emphasis added). Applying the foregoing rationale, the ICA determined that the garage was part of the dwelling. See id.

The Ingram test was more fully explicated in California case law as follows:

> "Functionally interconnected" means used in related or complementary ways. "Contiguous" means adjacent, adjoining, nearby or close. (See Webster's New Internat. Dict. (3d ed. 1986) p. 492 ["Adjacent . . . next or adjoining with nothing similar intervening . . . not distant . . . touching or connected throughout"]; see also Black's Law Dict. (6th

[5] In California, "[e]very burglary of an inhabited dwelling house . . . is burglary in the first degree." California Penal Code (CPC) § 460(a) (West Supp. 1996). With a few exceptions, "[a]ll other kinds of burglary are of the second degree." CPC § 460(b).

[6] Ingram was subsequently reversed on other grounds. See People v. Dotson, 16 Cal. 4th 547, 559 (1997); see also People v. Ochoa, 57 Cal. Rptr. 2d 112, 118 (1996) (involving Ingram's analysis regarding sentencing enhancements).

> ed. 1990) p. 320, col.2 ["[i]n close proximity; neighboring; adjoining; . . . in actual close contact"].)

People v. Rodriguez, 77 Cal. App. 4th 1101, 1107 (2000) (brackets and ellipsis points in original); see also Gaunt v. State, 457 N.E.2d 211, 214 (Ind. 1983) (using the "functionally interconnected with and immediately contiguous to" factors to determine that an attached garage served "a purpose connected with family living" and thus, "the [fact that] breaking into the garage did not afford [d]efendant immediate access to the actual living quarters is immaterial" (internal quotation marks and citation omitted)), overruled in part and on other grounds by Modesitt v. State, 578 N.E.2d 649, 652 (Ind. 1991).

The view expressed in Ingram as to the purpose of the burglary statute is the same as that underlying our burglary statutes, that is, to protect residents from threats resulting from an intrusion into premises considered a part of their dwelling. "It has been said that the essence of the offense of burglary is the 'invasion of premises under circumstances specially likely to terrorize occupants.' . . . [This] view implies that the offense is conceived of, in part, although not necessarily defined in terms of harm to personal dignity and sense of safety." Commentary to HRS §§ 708-810 and -811 (quoting Model Penal Code Tentative Draft No. 11, comments at 57 (1960)). Accordingly, the "immediately contiguous to" and "functionally interconnected with" legal test is appropriately employed to assess whether a structure or an area constitutes part of a

dwelling. As Ingram said, and the Gaunt court confirmed, "[t]he close physical proximity of an attached structure is precisely what increases the potential for confrontation and threatens the safety of residents." 40 Cal. App. 4th at 1404.

IV.

A.

Lānais are an integral part of residential living in our year-round tropical climate.[7] A lānai is "a living room open in part to the outdoors[;] an outdoor space used as a living room[;] a lounging terrace[.]" Webster's Third New Int'l Dictionary at 126 (emphasis added). Indeed, the word lānai is of Hawaiian language origin. See M.K. Pukui and S.H. Elbert, Hawaiian Dictionary 193 (1986) (defining "lānai" as a "[p]orch, veranda, balcony, booth, shed; temporary roofed construction with open sides near a house"). Lānais are common to many residences in our state and typically adjoin and are adjacent to the primary living area. In our shared experience, lānais are used in Hawai'i for everything from storage, to barbeque cooking, to

[7] This case occurred on Maui. The average annual precipitation in inches and average warmest month temperatures, in Fahrenheit, for several of our major cities are as follows: on the island of Hawai'i at Hilo (as measured at the Hilo Airport) -- 129 inches, 83.6 degrees and at Kailua, Kona -- 25 inches, 77.3 degrees; on Maui at Lahaina -- 15 inches, 78 degrees; on Moloka'i at Kaunakakai -- 14 inches, 77.6 degrees (temperature average as measured at the Molokai airport); on Lāna'i, Lāna'i City -- 37 inches, 72.8 degrees; on O'ahu at Honolulu (as measured at the Honolulu International Airport) -- 22 inches, 88 degrees; and on Kaua'i at Kekaha -- 21 inches, 78.5 degrees. The Department of Business, Economic Development & Tourism, State of Hawai'i. See The State of Hawai'i Data Book 2000: A Statistical Abstract 175-76 (2001). We may take judicial notice of facts "not subject to reasonable dispute that [are] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Hawai'i Rules of Evidence Rule 201(b) (1993).

entertaining or, as in this case, sunbathing. See infra. It is evident that, because of our temperate environment, indoor activities often extend to outdoor living areas. Inasmuch as a lānai is such an outdoor area that complements indoor activities, it is "functionally interconnected with" a dwelling. Rodriguez, 77 Cal. App. 4th at 1107.

Given the use of lānais in our island community, an unauthorized intrusion into a lānai increases the potential for widespread confrontation and threat to the safety of the occupants of dwellings--risks against which the burglary statute was intended to protect. See supra Part III. Considering the residential purposes of lānais, a contrary view would nullify the protected interest against "invasion of premises under circumstances likely to terrorize occupants[.]" Model Penal Code Tentative Draft No. 11, comments at 57. Unauthorized entries into lānais to commit crimes, then, would be unrebuffed by the deterrence afforded by a potential burglary charge.

B.

Many jurisdictions have concluded that a person commits burglary when entering premises similar to a lānai with the intent to commit a crime. See Weber v. State, 776 So.2d 1001, 1002-03 (Fla. Dist. Ct. App. 2001) (holding that defendant, who "stole a ceiling fan lying on a cement slab abutting the rear of the victim's first floor apartment" that was "not enclosed by walls but had a cover over it supported by posts," was properly

found guilty of burglary; Florida definition of "dwelling" includes "attached porch" (citation omitted)); Winters v. State, 848 S.W.2d 441, 445 (Ark. Ct. App. 1993) ("We conclude that the attached supply room is an occupiable structure in that it is functionally interconnected with, and immediately contiguous to the main structure[.]"); People v. Thompson, 319 N.W.2d 568, 569 (Mich. Ct. App. 1982) (determining that an unenclosed porch was part of a "dwelling" for purposes of burglary, inasmuch as statute, although not including porches, was "intended to protect persons' property rights in their dwellings"); State v. Scott, 178 P.2d 182, 183-84 (Kan. 1947) (holding that large, unscreened and unglassed porch, "which, except for a few feet, ran the entire length of the east side of the dwelling[,]" was considered part of the dwelling for purposes of the burglary statute because "our porches ordinarily constitute an integral part of the dwelling house"); Downer v. State, 74 S.E. 301, 302 (Ga. Ct. App. 1912) (explaining that porch covered by roof, with no lateral enclosure, was part of the "dwelling house" for purposes of "larceny from the house").

V.

Applying the Duldulao analysis, the undisputed evidence at trial demonstrated that Sifferman's lānai is an "attached structure" that "is an integral part of the dwelling" and "functionally interconnected with and immediately contiguous to" her apartment. Duldulao, 86 Hawai'i at 147, 948 P.2d at 568.

State's Exhibit 1, a diagram of Sifferman's apartment, reveals that the "lanai/patio" abuts the living room area. The lānai is located at the back of the apartment and is separated from the living room by what appears from State's Exhibit 12, a photograph, to be sliding glass doors, and is thus "adjacent" to other living areas. Rodriquez, 77 Cal. App. 4th at 1107. Two brick walls extend from each side of the apartment, apparently along the sides of the lānai, and rise in height to the second story above.

Sifferman identified "squares or rectangles" on the diagram, in the area marked as the lānai, as chairs used for sunbathing and as a table. According to Sifferman, the lānai is outlined by "fake green . . . like . . . on [golf] putting greens . . . like astroturf" and "extends all the way out even with . . . the brick walls." Sifferman confirmed that "all the way from the ends of the brick walls was "still [her] unit," what she was "paying for," and for which she had "sign[ed] a lease." She stated that Defendant "was already in my apartment technically by being on the lanai."[8] (Emphasis added.)

Sifferman's lānai was plainly part of her dwelling; her lānai was an extension of the living space of her apartment,

[8] Several California cases following Ingram explain that, in California, one approach taken to the adjoining structure criterion is the "reasonable expectation" test, wherein "the proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions." People v. Brown, 6 Cal. App. 4th 1489, 1496, 8 Cal. Rptr. 2d 513, 517 (1992). Even under the "reasonable expectation" test, Sifferman's lānai was plainly part of her dwelling because she obviously had a reasonable expectation of some protection from unauthorized intrusions into her lānai.

and, as is further evidenced by the furniture on her lānai, she apparently used it as a living area. See State v. Pace, 602 N.W.2d 764, 771 (Iowa 1999) ("[O]utdoor furniture located on a deck or patio, or a bench located on a porch or stoop, would be indicia of the type of occupancy that could bring an appurtenance into the definition of an occupied structure." (Citation omitted.)). Under the foregoing circumstances, her sense of security would have been violated by a person making an unauthorized entry into her lānai. Sifferman's lānai was "contiguous to other portions of the house" and an "integral part of the dwelling," being functionally interconnected with her living room. Duldulao, 86 Hawai'i at 147, 948 P.2d at 568. Hence, there can be no reasonable doubt, under the facts in this case, that the lānai is part of Sifferman's dwelling under the provisions of HRS § 708-810.

VI.

We review jury instructions to determine whether, "when read and considered as a whole, the instruction[] given [was] prejudicially insufficient, erroneous, inconsistent, or misleading." State v. Aganon, 97 Hawai'i 299, 302, 36 P.3d 1269, 1272 (2001) (quoting State v. Balanza, 93 Hawai'i 279, 283, 1 P.3d 281, 285 (2000) (citation and internal quotation marks omitted)). In light of Duldulao, the court's instruction defining dwelling was insufficient. See In re Estate of Herbert, 90 Hawai'i 443, 467, 979 P.2d 39, 63 (1993) (explaining that the

purpose of jury instructions "is to inform the jury of the law applicable" and that judges are "oblig[ed] to give sufficient instructions" (quoting Tittle v. Hurlbutt, 53 Haw. 526, 530-31, 497 P.2d 1354, 1357 (1972)); see also State v. Timoteo, 87 Hawai'i 108, 124-25, 952 P.2d 865, 881-82 (1997) ("[I]t is the duty of the circuit judge to see to it that the case goes to the jury in a clear and intelligent manner, so that they may have a clear and correct understanding of what it is they are to decide, and he or she shall state to them fully the law applicable to the facts." (Internal quotation marks, emphasis, and citations omitted.)).

Accordingly, in the event a disputed question at trial arises as to whether a structure is part of a dwelling, trial courts should instruct juries that a structure or area is part of a dwelling if it is (1) functionally interconnected with the dwelling and (2) immediately contiguous to it. See Duldulao, 86 Hawai'i at 147, 948 P.2d at 568 and Part III., supra. Similarly, if there is a disputed question at trial as to whether an area claimed to be a lānai is part of a dwelling, trial courts should instruct juries that the premises purported to be a lānai is a part of the dwelling if it is (1) functionally interconnected with the dwelling, and (2) immediately contiguous to it. See id. Finally, if there is no disputed question at trial that the area at issue is a lānai and, thus, part of the dwelling, or that no reasonable juror could conclude otherwise, see id. at 146, 948

P.2d 567 (appellate courts review rulings on motions for judgments of acquittal to determine whether "a reasonable mind might fairly conclude guilt beyond a reasonable doubt" (internal quotation marks and citation omitted)), trial courts should instruct the jury that, as a matter of law, the lānai is a part of the dwelling.[9]

In this case, while the court's instruction defining a dwelling was insufficient and, thus, error, under the uncontroverted evidence, Defendant could not have been convicted under Count V, see infra Part VII., even assuming the correct instruction had been given.

VII.

Generally the question of whether a structure is part of a dwelling under HRS § 708-810 would ordinarily be one of fact for the jury, applying an appropriate instruction by the court as set forth in part VI., supra. However, it is plain here, based on the unchallenged evidence, that no reasonable juror could

[9] Of course, as in any other case, a wayward verdict may be remedied by the granting of a motion for judgment of acquittal. See State v. Gabrillo, 10 Haw. App. 448, 453, 877 P.2d 891, 894 (1994) (explaining that a judgment of acquittal is appropriate where the evidence presented did not "'enable a reasonable mind fairly to conclude guilt beyond a reasonable doubt'" (quoting State v. Smith, 59 Haw. 456, 460, 583 P.2d 337, 341 (1978) (quoting State v. Rocker, 52 Haw. 336, 245-46, 475 P.2d 684, 690 (1970)))); State v. Miyashiro, 3 Haw. App. 229, 232-33, 647 P.2d 302, 305 (1982) (explaining that court was required to acquit defendant under Hawai'i Rules of Penal Procedure (HRPP) Rule 29 regarding motions for judgment of acquittal, where "the government failed to meet its burden . . . [e]ven if [d]efendant had not made any [such] motion"); see also HRPP Rule 29(c) (allowing for motions for judgment of acquittal post-verdict.)

determine the lānai was not a part of Sifferman's dwelling.[10] See Duldulao, 86 Hawai'i at 146, 948 P.2d at 567 (appellate courts review rulings on motions for judgment of acquittal by considering "the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact" in order to determine whether "a reasonable mind might fairly conclude guilt beyond a reasonable doubt" (quoting State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995)). In sum, under the evidence, the lānai in this case is part of Sifferman's dwelling. See supra Part V. Defendant made but one entry into the lānai, therefore he could not be convicted of making two entries into a "dwelling." See infra Part VIII. The trial court thus erred in denying Defendant's motion for a judgment of acquittal and subsequent motion to set aside the verdict. See State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996) ("[Defendant]'s motion for 'judgment notwithstanding the verdict' was, in effect, a post-verdict motion for judgment of acquittal[,]" thus, the standard to be applied to such motion is "whether, upon the evidence viewed in the light most favorable

[10] Applying the Duldulao test, it would appear that the normal and expected use of a lānai would make it part of a dwelling in most cases, but there may be a particular case in which some unusual circumstance would make this matter one of disputed fact under a reasonable juror standard. See Duldulao, 86 Hawai'i at 146, 948 P.2d at 567; State v. Crail, 97 Hawai'i 170, 183, 35 P.3d 197, 210 (2001) ("view[ing the evidence] in the light most favorable to the prosecution . . . , the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt" (quoting State v. Vliet, 91 Hawai'i 288, 292, 983 P.2d 189, 193 (1999)).

to the prosecution and in full recognition of the province of the trier of fact, the evidence was sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt." (Citations omitted.)).

VIII.

A.

"[T]he [burglary] statute requires both an entry and an intent to commit [a crime]." State v. Kahinu, 53 Haw. 646, 647, 500 P.2d 747, 749 (1972) (emphasis added). Consequently, a person commits but one burglary if there is only one entry, despite what may be viewed as an intent to commit more than one crime therein or appurtenant intents with respect to two or more crimes committed.[11] See Walker v. State, 394 N.W.2d 192, 198 (Minn. Ct. App. 1986) ("the burglarious entry of one dwelling should justify only one burglary conviction" (citation omitted)); Commonwealth v. Gordon, 678 N.E.2d 1341, 1344 (Mass. App. Ct. 1997) ("[T]here can be only one conviction . . . for armed burglary, regardless of how many people the perpetrator assaults once inside the dwelling."); Green v. State, 694 So. 2d 876, 877 (Fla. Dist. Ct. App. 1997) ("Because the evidence showed only one illegal entry by Green, one of his two burglary convictions must

[11] The majority holds that "the jury impliedly found that there were two separate entries into Sifferman's apartment, and . . . there was no single course of conduct because the evidence establishes the formation of separate and distinct intents in connection with each entry into Sifferman's apartment." Summary Disposition Order at 3. Because I believe the lānai was part of the dwelling, I must respectfully disagree.

be reversed." (Citation omitted.)); Bowman v. United States, 652 A.2d 64, 70 (D.C. 1994) ("A burglary with intent to commit two assaults . . . is still a single, unitary burglary."); People v. Griswold, 572 N.Y.S.2d 202, 203 (4th Dept. 1991) ("Where, as here, there is but one unlawful entry and the indictment charges two counts of burglary in the first degree under the same subdivision of the statute, defendant may be convicted of only one count of burglary." (Citation omitted.)); Warrick v. United States, 528 A.2d 438, 439 (D.C. 1987) (reversing one count of burglary where defendant charged with two counts of burglary "for one entry into [a] home" -- one count for an intent to steal, and another for an intent to assault; and explaining that "societal interest served by burglary statute was offended only once" (citation omitted)); Cf. People v. Newbern, 659 N.E.2d 6, 11 (Ill. App. Ct. 1995) ("[T]he home invasion count and the residential burglary count were predicated on the same unlawful entry into a person's dwelling. . . . [O]nly the home invasion conviction will be upheld since there was one physical act of entry." (Citation omitted.)). This is in consonance with HRS § 708-810(1)(c). Because the burglary statute is intended, in part, to prohibit an "invasion of premises," see Commentary to HRS §§ 708-810 and -811, HRS § 708-810 does not, by its terms, permit several burglary convictions for a single invasion of a premises, even if the accused intended several crimes

contemporaneous with the entry.[12]

B.

Hence, Defendant's second conviction for the burglary charge based on his step into the apartment doorway under Count V must be reversed. See State v. Shamp, 86 Hawai'i 331, 332, 949 P.2d 171, 172 (App. 1997) (reversing the defendant's conviction "on the ground that the court committed plain error because the State of Hawai'i . . . did not prove all of the elements necessary for conviction"), overruled in part on other grounds in State v. Lee, 90 Hawai'i 130, 976 P.2d 444 (1999); Walker, 394 N.W.2d at 197 (vacating two of three convictions for burglary where there was only one entry); Green, 694 So.2d at 877 (reversing one of two burglary convictions where defendant committed only one entry); Warrick, 528 A.2d at 439 (reversing one count of burglary where defendant charged with two counts for single entry into a home). After having made an unauthorized entry into the lānai, Defendant never left the lānai or its contiguous indoor living area before committing the two related

[12] A contrary rule could lead to unjust results. For example, a person could unlawfully enter an apartment, assault two of its occupants, leave, and be charged with two burglaries for the single crime of entering with an intent to commit other crimes. The same rationale applies to a person who enters a home without authorization and commits several acts of sexual assault therein. Each act of sexual assault constitutes a separate crime. See State v. Arceo, 84 Hawai'i 1, 20, 928 P.2d 843, 862 (1996) ("[T]here is little wonder that the appellate courts of this state have consistently recognized that each act constituting a sexual assault is punishable as a separate and distinct offense."); HRS § 707-700 (1993) ("For purposes of this chapter, each act of sexual penetration shall constitute a separate offense."). The defendant in such a case could be found guilty not only of each act of sexual assault, but be convicted of separate burglaries for each sexual act, despite a single illegal entry into the residence.

underlying crimes for which he was convicted. Having made only one entry into the dwelling, Defendant could not be charged with two counts of burglary.