CONCURRING OPINION OF ACOBA, J.,
WITH WHOM RAMIL, J., JOINS

Again the majority has decided not to publish, this time in a case in which a rule of law is applied to a new situation. An opinion should be published if an existing rule of law is applied to a factual situation significantly different from those in previously published opinions. See 5th Cir. R. 47.5.1 (stating that an opinion is published if it "applies an established rule of law to facts significantly different from those in previous published opinions applying the rule"); 6th Cir. R. 206(a) (stating that whether a decision "applies an established rule to a novel fact situation" is considered in determining whether it is published); Cal. R. Ct. 976(b) (setting forth that in order for a Court of Appeals or other appellate department [other than the California Supreme Court] opinion to be published, it must "appl[y] an existing rule to a set of facts significantly different from those stated in published opinions," or fulfill other criteria); Mich. Ct. R. 7.215(B) (explaining that a court opinion must be published if it "alters or modifies an existing rule of law, or extends it to a new factual context"); Tenn. Ct. App. R. 11 (describing that an opinion shall be published when it "applies an existing rule to a set of facts significantly different from those stated in other published opinions").

This case involves the application of our law regarding a warrant check of a complaining witness during investigative detentions by the police. In State v. Barros, 98 Hawai'i 337, 48 P.3d 584 (2002), which we recently decided, we considered a warrant inquiry at the time of a traffic stop, during which there was no prolongation of the detention. In State v. Silva, 91 Hawai'i 111, 979 P.2d 1137 (App. 1999) [hereinafter Silva I], the defendant gave the police reasonable grounds to detain him beyond the period of their investigation and to conduct a warrant check because he volunteered that he had outstanding warrants. See id. at 118, 979 P.2d at 1144.

In this case, the police detained Defendant-Appellant Vanessa R. Lopes (Defendant) during an investigation of her complaint. As stated herein, unlike Silva or Barros, this case (1) squarely presents the question of whether, as a matter of standard procedure, the police may prolong a criminal investigatory stop in order to conduct a warrant check of the persons detained and (2) calls for application of the law to a set of facts significantly different from those stated in the aforesaid cases.

Thus, as distinguished from the defendant in Silva, where the defendant was detained on reasonable suspicion that he was engaged in criminal activity,[1] or in Barros, where the

[1] As mentioned, in Silva I, the issue was not squarely presented, since the defendant there gave the police probable cause to detain him and run a warrant check by volunteering that he had warrants outstanding.

defendant was observed violating a non-criminal traffic violation, Defendant here was neither the focus of reasonable suspicion nor an observed law violator,[2] but merely a witness, indeed a complaining witness to an alleged crime. Because this case presents the entirely separate question of first impression as to whether the police may prolong the detention of a witness, while engaged in a criminal investigation for the purpose of running an arrest warrant check without factual grounds to believe such a warrant was outstanding, this case should be published.

The decision not to publish ill-serves parties, attorneys, and courts. Once more, we leave them without authoritative guidance in same or similar cases, see Zanakis-Pico v. Cutter Dodge, Inc., 98 Hawai‘i 309, 326 n.1, 47 P.3d 1222, 1239 n.1 (2002) (Acoba, J., concurring), require the appellate courts to duplicate work in future cases, see Poe v. Hawai‘i Labor Relations Bd., 98 Hawai‘i 416, 419 n.1, 49 P.3d 382, 385 n.1 (2002) (Acoba, J., concurring), and stunt the development of laws in this area, cf. id. With all due respect, such a decision is an arbitrary one.

I.

I would hold that the police may not extend an investigatory stop to conduct a warrant check of a witness to an

[2] At the time of the arrest, Defendant had not committed, to Officer Tai Nguyen's knowledge, any misdemeanor, petty misdemeanor, or violation.

alleged crime, in the absence of facts indicating that the person detained is the subject of an outstanding warrant. That part of the detention utilized for the purpose of such a check exceeds the degree of intrusion otherwise permitted by the prohibition against unreasonable seizures in article I, section 7 of the Hawai‘i Constitution. In this case, Defendant was charged with promoting a dangerous drug in the third degree, Hawai‘i Revised Statutes (HRS) § 712-1243 (1993 & Supp. 2001) (Count I) and unlawful use of drug paraphernalia, HRS § 329-43.5(a) (1993) (Count II). Defendant, who was a complaining witness, was subjected to such a violative detention. Therefore, the alleged drug and paraphernalia which were the fruits thereof were correctly suppressed by the March 8, 2001 order of the first circuit court (the court).

Plaintiff-Appellee State of Hawai‘i (the prosecution) appeals from the aforesaid order of the court granting Defendant's Motion to Suppress Evidence. Because the court did not reversibly err in suppressing the evidence, I would affirm the court's March 8, 2001 order.

II.

A.

At the hearing on the Motion to Suppress Evidence, Defendant and two police officers testified. The following

recitation of facts that are undisputed is from the testimony of Officer David Thornton.

Officer Thornton was working alone at the front desk in the lobby of the Honolulu Police Department's Chinatown substation on November 4, 2000 at 3:30 p.m., when Defendant ran into the station. A sign at the entrance to the station states "Honolulu Police." Defendant appeared agitated, "was yelling that someone was after her[,]" and "seemed like she was either in an argument or a fight."

The officer attempted to determine what was happening and Defendant informed him "that the guy was outside." Instructing Defendant to remain in the station, Officer Thornton found a man (Dante Baguinon, hereinafter "Dante") outside, yelling at a woman (Mary Baguinon, hereinafter "Mary") seated in a gold-colored Honda. It appeared to the officer that Dante was "the more aggressive person between the two [he] saw[.]" Defendant had joined Officer Thornton outside but he "asked her to go back inside."

As the officer approached Dante to investigate, Defendant again walked out of the station and started arguing with Dante. Officer Thornton told Defendant a total of three times to remain in the station. Each time, Defendant would enter the station, "and then a second later she would come back out, [and] there was more yelling."

Contacting police dispatch, the officer reported that "[he] had an argument" and needed "backup." Assistance was sought "[t]o better control the situation there [and t]o find out exactly what was going on." Officer Tai Nguyen was the first officer to respond.

Officer Thornton requested that Officer Nguyen take Defendant inside the station and "just talk to her, interview her, find out what was happening." Officer Thornton had hoped to separate the parties and ascertain "what was going on or who these people were[.]" Officer Thornton did not relay any other information to Officer Nguyen. Once Officer Nguyen took Defendant indoors, Officer Thornton remained outside to speak to the other two persons. Later, when Officer Thornton took Dante into the station, he was informed by Officer Nguyen that Defendant had an outstanding parole retake warrant.

It is the point at which Officer Nguyen arrived at the scene that his and Defendant's versions of subsequent events differ.

B.

Officer Nguyen, called by the prosecution at the suppression hearing, testified to the following. On November 1, 2000,[3] at 3:30 p.m., he was on patrol in the Chinatown area of

[3] Officer Nguyen testified that the incident took place on November 1, while Officer Thornton testified it took place on November 4. The complaint alleges the crime occurred on November 4. None of the parties raise any challenge based on the date discrepancy.

downtown Honolulu. Officer Thornton, who was managing the station, requested assistance because "he had an argument" there. Officer Nguyen arrived at the station within a few minutes.

He noticed a gold-colored Honda model vehicle parked in front of the station, and Officer Thornton, Dante, and Defendant standing nearby. Officer Nguyen exited his car and Officer Thornton informed him that there had been an argument among several people. It appeared to Officer Nguyen that Officer Thornton already had the matter "sort of under control." Officer Thornton pointed out the people involved as Defendant, who was standing by the door to the station, Mary, seated in the vehicle, and Dante, who was speaking to Officer Thornton.

Upon learning from Officer Thornton that Defendant was involved in the dispute, Officer Nguyen sought to segregate Defendant from the others "to diffuse the situation." He asked Defendant, "Can I talk to you?" Defendant walked with him into the station. Once in the lobby of the station, Officer Nguyen asked Defendant her name, date of birth, social security number, and "what was going on."

Officer Nguyen never told Defendant that she did not have to answer his questions. He could not recall whether there were other officers in the station at the time. Defendant explained that "they was fighting over the car" and that Mary, the woman sitting in the car, was her girlfriend, and Dante was

her girlfriend's husband. Defendant reported that Dante "bothers them all the time."

Officer Nguyen explained he requested Defendant's name and date of birth "to ascertain who was involved." Within two minutes of asking Defendant questions about her name, and before he was "able to figure out exactly what was going on[,]" Officer Nguyen ran a warrant check on Defendant through dispatch, using his portable radio. At that point in time he had learned only that Defendant was Mary's girlfriend, that Dante was Mary's husband, and that Dante and Mary were "fighting over the car."

Officer Nguyen requested dispatch to run a warrant check using the words "warrant check" or "rap warrant." He stood close enough to Defendant for her to hear him. He called for the warrant check "[j]ust to check 'cause at that time [he] didn't know if she was a suspect, aggressor, a witness, or a victim."

Officer Thornton had not asked Officer Nguyen to request a warrant check.[4] Dispatch informed Officer Nguyen that "[D]efendant had a parole retake warrant."[5] Officer Nguyen asked dispatch to confirm the warrant and, in the meantime, continued "investigating the argument." The warrant was confirmed.[6]

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[4] Officer Thornton testified that he does not typically run warrant checks on all parties to an argument.

[5] The record does not reflect what a "parole retake warrant" is.

[6] The parties stipulated to include in the record, among other documents, Officer Nguyen's police report and the complaint history (or dispatch log) of the incident, which reflect the time at which the warrant check was conducted.

Officer Nguyen's report indicates that he requested a warrant check at "1542 hours" and that "Dispatch immediately related . . . that

(continued...)

Officer Nguyen then informed Officer Adams "that [Officer Adams] needed to search . . . [D]efendant" and told Defendant "that she's going in for that retake warrant." Defendant stood up from the chair where she had been sitting and reached into her jacket pocket, pulled out a velvet drawstring pouch, and handed it to Officer Nguyen. Officer Nguyen could see a glass pipe, which appeared to contain crystal methamphetamine residue, protruding from the bag. Officer Nguyen then arrested Defendant "[f]or dangerous drugs third and drug paraphernalia."

Between the time dispatch had informed him that Defendant might have a warrant and the time he received confirmation of the warrant and arrested Defendant, Officer Nguyen and Defendant "spoke more about what was going on." Specifically, he learned that Dante "was harassing" Defendant and Mary, and that Dante was "trying to get the car," but Officer Nguyen did not find out how Dante was harassing the women because he "didn't get that far." Despite Defendant's allegation of

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[6](...continued)
[Defendant] had a Parole Retake Warrant. At about 1548 hours Dispatch related that the Sheriff's Dept. confirmed the above warrant for [Defendant]." Officer Nguyen's report does not reflect any police communication between the time he learned of the warrant and the time the warrant was confirmed.

However, the complaint history reveals that, at "15:39:41," Officer Nguyen requested a warrant check for Defendant, and that at "15:40:03" he provided dispatch with Defendant's social security number. At "15:40:52" he and dispatch communicated about Defendant's alias of "Kanoi Souza," and dispatch informed Officer Nguyen that Defendant had a possible warrant. Within a minute, he asked police dispatch to confirm the warrant. At "15:45:05" Officer Nguyen learned from dispatch that Defendant may have a warrant under the name "Marlene P. Insillo." He immediately informed dispatch not to confirm that warrant. At "15:48:51," the warrant under the name "Vanessa Lopes" was confirmed. The record thus reflects that approximately nine minutes passed between Officer Nguyen's initial warrant request and the warrant confirmation.

harassment, Officer Nguyen neither told Defendant she could make a complaint about the harassment, nor requested that Defendant provide a report about it because he believed the parties were fighting that night over the car and "she said that that harassment was in the past."

"Usually," Officer Nguyen runs warrant checks on parties involved in arguments "when [he] do[esn't] know who's the suspect or not." He testified that Defendant was never a suspect in any fight and conceded that arguing is not a crime. He arrested Defendant "for dangerous drugs third and drug paraphernalia."

C.

Defendant testified that, before her arrest, she and Mary were driving around the Dillingham area in the Honda. Dante began to follow them in his van, then jumped out of his van, ran up to them, and hit Defendant in the neck. Defendant drove to the police station, pursued by Dante. Defendant related that Dante had called her the night before and threatened to shoot her. Parking in front of the station, Defendant ran into the station and informed Officer Thornton that she "was being chased and harassed by [her] girlfriend's husband." Officer Thornton then went outside to talk to Dante and told Defendant "to go inside . . . to separate the situation[.]" Defendant reentered

the station but later exited because she believed Dante was going to hit Mary.

Officer Nguyen then arrived and was told by Officer Thornton to "make sure that [she] stay[s] inside." Officer Nguyen, "with one attitude," asked Defendant to enter the station. Once inside, Officer Nguyen told Defendant to sit in a chair. Defendant did not "feel like [she] had any choice about following his instructions." "He said he had seen [her] downtown and that . . . [she] was there to buy drugs." Defendant twice stood up from the chair because she "was antsy already." Both times, Officer Nguyen told her to "[s]it down."

After two minutes of "[asking Defendant] about why [she] was down there[,]" Officer Nguyen asked Defendant if she was on probation, learned that she was, and asked for her identification because "[h]e said he was gonna call [her] P[robation] O[fficer] first and tell him that [she] was down there" and that Officer Nguyen "was going to call in a warrant check." Defendant did not feel free to leave.

While waiting for the completion of the warrant check, Officer Nguyen asked her if she knew that Dante was Mary's husband. Defendant said that she was there to make a complaint and told Officer Nguyen that Dante had chased her and hit her in the neck. Officer Nguyen responded, "[W]ell, you had his wife in the car." Defendant interpreted the statement as "biased . . . 'cause [she] was gay[.]"

Once the warrant check returned, Defendant told Officer

Nguyen, "I'm here to make a complaint[,]" to which he responded that "it didn't make a difference, [Defendant] was going to go to jail anyway." Defendant then gave him the pouch from her pocket.

Officer Nguyen was not asked whether Defendant's version of events was accurate, but denied making any derogatory comments in response to Defendant's statement that Mary was her girlfriend.

Beyond investigation, no report was made by the police nor action taken on the incident involving Defendant and the Baguinons.

III.

At the end of the suppression hearing, the court took the matter under advisement. On March 8, 2001, it filed its Findings of Fact, Conclusions of Law and Order Granting Defendant's Motion to Suppress Evidence for Illegal Seizure, which stated in part:

> FINDINGS OF FACT
>
> . . . .
>
> 8. Officer Thornton requested Officer Nguyen to take Defendant inside the substation and interview her, to find out what was happening.
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> 9. Officer Nguyen took Defendant inside the Substation, requested Defendant to provide her name, date of birth and social security number; and Officer Nguyen requested dispatch to conduct a warrant check with the information which Defendant provided.
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> 10. When Officer Nguyen requested the warrant check, Officer Nguyen had not observed Defendant engaging in any illegal activity, and Defendant was not a "suspect" in any crime at that point.
>
> 11. Dispatch confirmed a parole retake warrant for

Defendant, and Officer Nguyen informed Defendant that she would be arrested for the warrant.

12. Defendant then stood up, removed her jacket, and handed Officer Nguyen a pouch.

13. Through the opening of the pouch, Officer Nguyen could see a glass pipe with white residue resembling crystal methamphetamine.

14. Defendant was then arrested for Promoting a Dangerous Drug in the Third Degree and Unlawful Use of Drug Paraphernalia.

CONCLUSIONS OF LAW

1. Defendant was "seized" in the constitutional sense when Officer Nguyen requested her information to conduct the warrant check. State v. Trainor, 83 Hawaii 250, 925 P.2d 818 (1996); State v. Kearns, 75 Haw. 558, 867 P.2d 903 (1994).

2. Defendant's "acquiescence" in providing her name, date of birth, and social security number to Officer Nguyen did not constitute consent to questioning and is insufficient to establish consent to the seizure. See Kearns, 75 Haw. 558, 867 P.2d 903.

3. Because there were no specific and articulable facts presented, by either Officer Thornton or Officer Nguyen, on which to base a reasonable suspicion that Defendant had engaged in any criminal activity, there was consequently no constitutionally valid basis for conducting the warrant check. See Kearns, 75 Haw. 558, 867 P.2d 903; see also State v. Ramos, 93 Hawaii 502, 6 P.3d 374 (Haw. App. 2000).

4. The glass pipe containing methamphetamine residue which was recovered from Defendant is inadmissible as "fruit of the poisonous tree." State v. Lopez, 78 Hawaii 433, 896 P.2d 889 (1995); State v. Kim, 68 Haw. 386, 711 P.2d 1291 (1985).

(Emphases added.) The court concluded that there was "no constitutionally valid basis for conducting the warrant check," inasmuch as, at the time, Defendant was seized without "specific or articulable facts" that she "had engaged in . . . criminal activity." While we agree with the result reached by the court, our analysis differs. We may affirm the court's conclusion on any ground, even one not relied upon by the court. See State v.

Ross, 89 Hawai‘i 371, 378 n.4, 974 P.2d 11, 18 n.4 (1998) ("An appellate court may affirm a judgment of the lower court on any ground in the record that supports affirmance."); State v. Pattioay, 78 Hawai‘i 455, 469, 896 P.2d 911, 925 (1995) ("[W]e uphold the circuit court's order suppressing the evidence . . . because the court was right for the wrong reasons[.]" (Citations omitted.)).

IV.

On appeal, the prosecution maintains in its opening brief that (1) the court's Finding 9 "is erroneous in that it omits the critical facts evincing Defendant's willingness to go into the station with Officer Nguyen and that she voluntarily provided the officer with her identification" (citation omitted), and (2) the court's "conclusions of law are wrong because . . . Defendant was not unlawfully 'seized' at all[.]"[7] Defendant responds that (1) she was unlawfully seized and (2) "even if the encounter is deemed to be consensual, Officer Nguyen had no cause to detain [Defendant] to conduct a warrant check."

V.

In reviewing a trial court's ruling on a motion to suppress evidence, we consider whether the court's findings of

[7] The prosecution argues by extension that, "because Defendant was not unlawfully seized, the warrant check was constitutionally permissible, and[,] therefore[,] . . . the contraband that Defendant voluntarily removed from her pocket and gave to the officer was admissible against her."

fact were clearly erroneous. See State v. Edwards, 96 Hawai‘i 224, 231, 30 P.3d 238, 245 (2001) (citation omitted). "A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is nonetheless left with a definite and firm conviction that a mistake has been made." Id. (quoting State v. Eleneki, 92 Hawai‘i 562, 564, 993 P.2d 1191, 1193 (2000)). We also consider de novo whether the court's conclusions were right or wrong. See id. at 231, 232, 30 P.3d at 245, 246 (citing State v. Jenkins, 93 Hawai‘i 87, 100, 997 P.2d 13, 26 (2000); Eleneki, 92 Hawai‘i at 564, 993 P.2d at 1193).

VI.

The court did not clearly err in rendering its Finding 9, which stated, "Officer Nguyen took Defendant inside the Substation, requested Defendant to provide her name, date of birth and social security number; and Officer Nguyen requested dispatch to conduct a warrant check with the information which Defendant provided." The finding comports with the undisputed testimony given at trial. The prosecution's argument is not that there is no substantial evidence to support Finding 9, or that, despite substantial evidence to support the finding, the court made a mistake in the finding. Finding 9 is therefore not clearly erroneous.

The prosecution's sole argument regarding Finding 9 is

that the court should have found that Defendant voluntarily entered "the station with Officer Nguyen [and] provided the officer with her identification" and, thus, presumably was not seized. Hence, the contention that Finding 9 is incomplete amounts to an argument that the court should have determined that Defendant was not seized, an assertion subsumed in the prosecution's second argument.

VII.

With respect to the prosecution's second argument, the court's conclusion that Defendant was seized at the time Officer Nguyen asked her for information to perform a warrant check is not reversible error.

In Terry v. Ohio, 392 U.S. 1, 30 (1967), the United States Supreme Court held that police may stop and detain a person when they believe criminal activity is afoot without violating the fourth amendment. The Court established an objective standard, explaining that the test is whether "the facts[,] available to the officer at the moment of the seizure or the search[,] warrant a man of reasonable caution in the belief that the action taken was appropriate[.]" Id. at 21-22 (internal quotation marks and citations omitted). We have adopted the same standard and test under the Hawai‘i Constitution, with respect to article I, section 7. See Trainor, 83 Hawai‘i at 255-56, 925 P.2d at 823-24 ("This court has recognized a few exceptions to the warrant requirement of article I, section 7 . . . in the

context of seizures, including . . . [that] the police may temporarily detain an individual if they have a reasonable suspicion based on specific and articulable facts that criminal activity is afoot." (Internal quotation marks and citations omitted.)); Kearns, 75 Haw. at 568-69, 867 P.2d at 908 ("We have recognized a few exceptions to the warrant requirement of article I, section 7 of the Hawai‘i Constitution in the context of seizures: . . . the police may temporarily detain an individual if they have a reasonable suspicion based on specific and articulable facts that criminal activity is afoot." (Citing State v. Melear, 63 Haw. 488, 493, 630 P.2d 619, 624 (1981).)).

VIII.

But an initially legal detention may devolve into an illegal one where its scope or duration exceeds its purpose. In Silva I, police approached the defendant, who was sleeping in his car, to investigate a report that the defendant had stolen a person's rubbish can. Upon awaking the defendant, the officer asked him for his identification. The defendant told the police that he did not have any, but that his name was Brandon Silva. After seeing a variety of items in the car, the police officer asked the defendant to exit his car. The defendant complied, and freely informed the officer that he had warrants for his arrest. The officer conducted a warrant check, discovering that the defendant had several warrants for his arrest.

A majority of the Intermediate Court of Appeals (ICA)

held that the warrant check was permissible because the police had a reasonable suspicion that a crime had been committed, and, in any event, warrant checks are permitted in other jurisdictions during "valid investigatory stops." Silva I, 91 Hawai'i at 117, 118, 979 P.2d at 1143, 1144. The concurring opinion expressed its view of the majority's position "as generally [not] allowing detention for purposes of a warrant check once the purpose for which a seizure is made has been satisfied." Id. at 121, 979 P.2d at 1147 (Acoba, J. concurring). It explained "that the prerequisite for a warrant check under [HRS] § 803-6 (1993) is a 'lawful' arrest[,]" and that the defendant there was not arrested prior to the warrant check. Id. The concurrence, however, found no error in Silva I, because the defendant voluntarily informed the police that he had warrants for his arrest, and he "invited his further detention for a warrant check," and, thus, the check was not an unlawful extension of a legal detention. Id. at 121-22, 979 P.2d at 1147.

By order, this court adopted the view of the concurring opinion. See State v. Silva, 91 Hawai'i 80, 81, 979 P.2d 1106, 1107 (1999) [hereinafter Silva II]. In Silva II, this court also construed the ICA majority opinion as not "generally allowing the police to prolong the detention of individuals subjected to brief, temporary investigative stops -- once such stops have failed to substantiate the reasonable suspicion that initially justified them -- solely for the purpose of performing a check for outstanding warrants." Id. (citations omitted). In support

of this proposition, Silva II relied on cases which supported two principles: (1) that "the test for the constitutional validity of an investigative stop is[, inter alia,] . . . 'whether it was reasonably related in scope to the circumstances which justified the interference in the first place,'" id. (quoting United States v. Sharpe, 470 U.S. 675, 682 (1985); and (2) that "'the right to be free of "unreasonable" searches and seizures under article I, section [7] of the Hawai'i Constitution is enforceable by a rule of reason which requires that governmental intrusions into the personal privacy of citizens of this State be no greater in intensity than absolutely necessary under the circumstances.'" Id. (quoting State v. Kaluna, 55 Haw. 361, 369, 520 P.2d 51, 58-59 (1974) (brackets in original)).

IX.

Silva, then, involved a case in which the extension of the investigatory stop could be justified on the basis that the police had facts justifying a prolongation of the stop for the purpose of conducting a warrant inquiry, in Silva's case, his extemporaneous statement that he had warrants outstanding.

Recently, in Barros, it was held that "an officer is not prohibited from requesting a warrant check in a traffic violation stop when the check does not prolong the length of time needed to issue the citation." 98 Hawai'i at 338, 48 P.3d at 585. Unlike Silva, there were no facts indicating Barros was the subject of any outstanding warrants. The officer there observed

Barros's jaywalking violation, see id., and while citing the defendant, "used his shoulder-mounted police radio to request a warrant check." See id. at 339, 48 P.3d at 586. It was "[a]t that time, [the officer] began to write down the salient information to issue a citation." Id. As a result, "[t]he warrant check was completed entirely within the time required for [the officer] to issue the citation." Id. at 343, 48 P.3d at 590. It was held that "[the officer]'s detention of Barros to run the warrant check did not constitute an unreasonable intrusion[]" under our constitution. Id.

Consequently, a warrant check which does not extend a prolongation of a valid stop or detention, absent facts indicating the person involved is the subject of an outstanding warrant, is not prohibited. For example, then, a warrant check of a person conducted by one officer during a valid stop by a companion officer, that does not prolong the detention which gave rise to the stop, is not prohibited.

Barros did not involve detention beyond that required by the investigation. While an investigative detention was involved in Silva I, this court did not hold in Silva II that a prolongation of a valid investigatory stop was invalid, but, in agreeing with the concurring opinion, construed the ICA majority opinion as not allowing the prolongation of investigatory detentions to conduct warrant checks. See Silva II, 91 Hawai'i at 81, 979 P.2d at 1107.

X.

Thus, unlike Silva or Barros, this case (1) squarely presents the question of whether, as a matter of standard procedure, the police may prolong a criminal investigatory stop in order to conduct a warrant check of the persons detained and (2) calls for application of the law to a set of facts significantly different from those stated in the aforesaid cases. As distinguished from the defendant in Silva, where the defendant was detained on reasonable suspicion that he was engaged in criminal activity,[8] or in Barros, where the defendant was observed violating a non-criminal traffic violation, Defendant here was neither the focus of reasonable suspicion nor an observed law violator,[9] but merely a witness, indeed a complaining witness to an alleged crime. Accordingly, this case presents the entirely separate question of first impression, as to whether the police may prolong the detention of a witness while engaged in a criminal investigation, for the purpose of running an arrest warrant check without factual grounds to believe such a warrant was outstanding. I conclude that the warrant check in the instant case unnecessarily exceeded the purpose and scope of Officer Nguyen's contact with Defendant.

[8] As mentioned, in Silva I and Silva II, the issue was not squarely presented, since the defendant there gave the police probable cause to detain him and to run a warrant check by volunteering that he had warrants outstanding.

[9] See supra note 2.

XI.

A.

The purpose of Officer Nguyen's detention of Defendant was to conduct an investigation, i.e., to ascertain what was occurring, and, in conjunction therewith, to separate Defendant from contact with Mary and Dante. The warrant check he conducted was unnecessary to fulfilling the purpose of his investigation. When Officer Nguyen asked police radio to ascertain if Defendant had any warrants, he in effect suspended his investigation for a purpose unconnected with the inquiry at hand. At the time he made the request, Office Nguyen knew only that Defendant and Mary were girlfriends, that Mary and Dante were married, and that Mary and Dante were arguing over a car. No other facts indicated a warrant check was called for.

Defendant did not volunteer that she had an outstanding warrant. Cf. Silva I, 91 Hawai'i at 114, 979 P.2d at 1140 (defendant testified that he informed the police he had traffic warrants before the police requested a warrant check). Running a check of Defendant's warrant status did nothing to verify Defendant's role in the incident. Although Officer Nguyen explained that he requested the warrant check "'cause at that time [he] didn't know if [Defendant] was a suspect, aggressor, a witness, or a victim[,]" it is difficult to discern how establishing whether Defendant had any outstanding warrants would make it more or less likely that she was involved in the argument or what her role was.

The time necessary for Officer Nguyen to call in the warrant check and to receive the information following the check extended Defendant's detention. According to the complaint history of the incident, Officer Nguyen learned that Defendant had a warrant approximately a minute after requesting the warrant check and, within another minute, asked police dispatch to confirm the warrant. Approximately seven minutes later, the warrant was confirmed. While awaiting the warrant confirmation, Officer Nguyen and police dispatch spent some time addressing Defendant's aliases.

Although some of the time between the initial report of the warrant and the confirmation was spent discussing the incident with Defendant, based on Officer Nguyen's own testimony, the only information he learned during those seven minutes was that Defendant and Mary had been harassed by Dante and that Dante was "trying to get the car." Officer Nguyen conceded that he did not find out the details of how Dante was harassing Defendant and Mary because he "didn't get that far."

Officer Nguyen ran the warrant check before finishing his investigation of the case and, in fact, never completed a report on Defendant's allegation of Dante's harassment. The time it took to obtain the information for the warrant check was therefore an unreasonable extension of the duration of Defendant's detention, while the request for warrant review itself unnecessarily broadened the scope of the detention.

B.

Absent facts indicating a reasonable belief that Defendant was the subject of outstanding warrants as in Silva, a warrant check conducted during an investigatory detention is unrelated in scope to the circumstances which justified the interference in the first place. Office Nguyen never testified to facts justifying a warrant check. He testified, rather, to a blanket approach in which he "usually" runs such inquiries "when [he] do[esn't] know who's the suspect or not." Defendant testified that Officer Nguyen accused her of having been in the area "to buy drugs," inquired as to whether she was on probation, and, learning that she was, decided to "call in a warrant check." Such evidence amounted, at most, to a general suspicion of past wrongdoing and did not constitute facts indicating that Defendant was the subject of outstanding warrants.

An investigatory stop or detention is an intrusion upon the personal privacy and liberty of the people in our state. Its intensity, and, hence, duration, should be no greater than absolutely necessary under the circumstances. See Silva II, 91 Hawai'i at 81, 979 P.2d a 1107 ("'[T]he right to be free of "unreasonable" searches and seizures under article I, section [7] of the Hawai'i Constitution is enforceable by a rule . . . which requires that governmental intrusions into the personal privacy of citizens of this State be no greater in intensity than absolutely necessary under the circumstances.'" (quoting Kaluna, 55 Haw. at 369, 520 P.2d at 58-59 (brackets in original)); State

v. Goudy, 52 Haw. 497, 503, 479 P.2d 800, 802 (1971) ("[A]n investigative action which is reasonable at its inception may violate the constitutional protection against unreasonable searches and seizures by virtue of its intolerable intensity and scope." (Reference omitted.)).

Detaining Defendant beyond the objective of investigating the incident for the purpose of doing a warrant check exceeded that degree of intrusion absolutely necessary under the circumstances of this case. Accordingly, that part of the detention related to the warrant check procedure constituted an unreasonable seizure under article I, section 7 of the Hawai'i Constitution. Inasmuch as the alleged drug and paraphernalia were fruits of the illegal detention, they were rightfully suppressed.[10] See State v. Aguinaldo, 71 Haw. 57, 61, 782 P.2d

[10] The fact that Defendant produced the velvet bag containing alleged paraphernalia that was in plain view, without being asked to do so, was not an act independent of the illegally-extended detention and, therefore, the paraphernalia was a fruit of the poisonous tree. This court explained the fruit of the poisonous tree doctrine in State v. Fukusaku, 85 Hawai'i 462, 946 P.2d 32 (1997):

> [T]he "fruit of the poisonous tree" doctrine "prohibits the use of evidence at trial which comes to light as a result of the exploitation of a previous illegal act of the police." State v. Medeiros, 4 Haw. App. 248, 251 n.4, 665 P.2d 181, 184 n.4 (1983) (citing Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920)). However, not all derivative evidence is inadmissible:
>
> > Admissibility is determined by ascertaining whether the evidence objected to as being the "fruit" was discovered or became known by the exploitation of the prior illegality or by other means sufficiently distinguished as to purge the later evidence of the initial taint. Wong Sun v. United States, 371 U.S. 471 (1963). Where the government proves that the evidence was discovered through information from an independent source or where the connection between the illegal acts and the discovery of the evidence is so
>
> (continued...)

1225, 1228 (1989) (explaining that "'fruits of an unlawful "seizure"'" are "'the proper subjects of a suppression order'" (quoting State v. Powell, 61 Haw. 316, 320, 603 P.2d 143, 147 (1979)).

XII.

For the foregoing reasons, I would affirm the court's March 8, 2001 order suppressing the evidence recovered as a result of the illegal detention of Defendant, but on the grounds set forth herein.

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[10](...continued)

> attenuated that the taint has been dissipated, the evidence is not a "fruit" and, therefore, is admissible. Wong Sun, supra.
>
> Id. See also State v. Lopez, 78 Hawai'i 433, 447, 896 P.2d 889, 903 (1995); State v. Pau'u, 72 Haw. 505, 509-10, 824 P.2d 833, 836 (1992).

Id. at 475, 946 P.2d at 45 (emphasis added). The production of the bag was not "so attenuated" from the illegal part of the detention "that the taint ha[d] been dissipated," and the prosecution does not contend so. Id. (quoting Medeiros, 4 Haw. App. at 251 n.4, 665 P.2d at 184 n.4) (other citation omitted).