DISSENTING OPINION BY FUJISE, J.

Hawaii Rules of Evidence (HRE) Rule 103(a)(2) provides that,

> Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:
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> . . . In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

See also, State v. Kelekolio, 74 Haw. 479, 522-23, 849 P.2d 58, 78 (1993).

Because I do not believe the offer of proof was sufficient to support the admission of the complaining witness's testimony and I agree that the evidence was sufficient to support the finding of reasonable grounds for the issuance of the stay-away citation, I would affirm, and therefore I respectfully dissent.

Defendant-Appellant Roben Balanza (Balanza) offered the testimony of his girlfriend and the person who called the police leading to the stay-away citation issued to Balanza in this case, because "[w]ell, she was the one that called. We're going to the validity of the warning citation. She could provide some insight to (inaudible)." Balanza's attorney added, "[t]he validity of the citation whether there was enough reason to -- for the police officer to give that citation to Mr. Balanza. Whether there was no objective -- reasonable grounds to believe that Mr. Balanza was supposed to be issued that 24 hour citation."

> If the trial court's ruling excludes evidence, rule 103(a)(2) contemplates an offer of proof that identifies "the substance of the evidence" as a proper appellate predicate. The offer of proof requirement informs the trial court's evidence ruling and facilitates appellate review. A good offer of proof includes a description of the evidence and a theory of admissibility. The proffer may consist of counsel's precise description of what the evidence would be . . . .

Addison M. Bowman, Hawaii Rules of Evidence Manual, § 103-3 at 1-7 (3d ed. 2006). The proffer made by Balanza did not identify the testimony sought to be elicited except in the most general sense. It certainly did not put the trial court on notice that it would contradict the officer's version of the information he based the stay-away citation upon.

While it is true, as the majority points out, that Balanza was not present for the exchange between the complaining witness and the police, it is equally true that Balanza's counsel had the opportunity to speak with the complaining witness prior to offering her as a witness. It is reasonable to infer that counsel knew enough about the testimony he was offering from this conversation to describe it in more detail. See State v. Dias, 100 Hawai'i 210, 226-27, 58 P.3d 1257, 1273-74 (2002) (compulsory process claim rejected where offer of proof did not include that witness's testimony would have been beneficial).

Moreover, it is clear to me that Balanza did not expect the complaining witness to contradict the officer regarding what she told him on the day in question. The State argued that the proffered testimony "has nothing to do with the officer's reasonable grounds of issuing. It's what the officer had heard, is what he believed at the time to eventually issue the warning citation." When the trial court indicated that it would "not go beyond what the communications were between the officers to determine whether or not . . . the information was, in fact, correct," Balanza's counsel did not contradict either notion, but instead, went on to argue another basis for the testimony.

The rules of evidence and decisional law in this jurisdiction require, in all fairness to the trial court, that the basis for admission be stated by the proponent. Kelekolio, 74 Haw. at 523, 849 P.2d at 78; State v. Rabe, 5 Haw. App. 251, 262 n.8, 687 P.2d 554, 562 n.8 (1984) (rejecting point of error where offer of proof not presented at trial).

Based on this record,[1] I believe Balanza has failed to show the trial court committed error. See State v. Lee, 1 Haw. App. 510, 515, 620 P.2d 1091, 1094-95 (1980) ("We necessarily approach a case with the assumption that no error has been committed upon the trial and until this assumption has been overcome by a positive showing the prevailing party is entitled to an affirmance.") (citations omitted). I would affirm.

Associate Judge

[1] The majority also relies, in reaching its conclusion, upon the proffer of the complaining witness's testimony regarding whether Defendant-Appellant Roben Balanza (Balanza) was allowed to return to his house to retrieve personal items before he left his home. However, as Balanza has abandoned this basis for admissibility on appeal, I would not reach this issue. See, e.g., Okada Trucking Co., Ltd. v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002) ("Findings of Fact . . . not challenged on appeal are binding on the appellate court."); Hawai'i Rules of Appellate Procedure Rule 28(b)(4), (7).