

CONCURRING OPINION BY ACOBA, J.

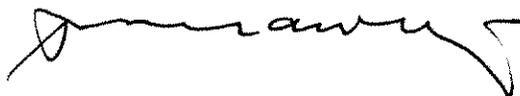
I concur in the result and agree that Hawai'i Revised Statutes (HRS) §§ 803-1 to 803-5 (1993) indicate a preference for an arrest warrant. But I also believe that our constitution's prohibition against an "unreasonable seizure," Haw. Const. art. 1, § 7 (2004),¹ ultimately defines the circumstances in which warrantless arrests may be made. Insofar as the statutes referred to and other related statutes may not pass constitutional scrutiny in certain circumstances, they would not be controlling. See State v. Barros, 98 Hawai'i 337, 346-47, 48 P.3d 584, 593-94 (2002) (Acoba, J., concurring and dissenting) (explaining that "an arrest for jaywalking, as purportedly permitted under HRS § 803-6, would violate our state constitution's prohibition against unreasonable governmental seizures"); cf. State v. Garcia, 77 Hawai'i 461, 467, 887 P.2d 671, 677 (App. 1995) (holding "that HRS § 803-37 violates the Hawai'i Constitution to the extent that it permits the police to break into the place to be searched if 'bars' to their entrance are not immediately opened").

¹ Article I, § 7 of the Hawai'i Constitution states that

[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

(Emphases added.)

As to this case, Defendant-Appellant Mary Ann Keawe correctly argues that "[Plaintiff-Appellee State of Hawai'i] had ample time to obtain a judicial arrest warrant prior to the arrest in this matter[,]" thus making the warrantless arrest "unreasonable." Because the police plainly had sufficient time to obtain an arrest warrant, I am reluctant to subscribe to specific limitations upon their obligation to do so, see majority opinion at 11, in the absence of facts in this case that necessitate such considerations, cf. State v. Harada, 98 Hawai'i 18, 42 n.1, 41 P.3d 174, 198 n.1 (2002) (Acoba, J., concurring and dissenting) (stating that construction of HRS § 803-37 as to execution of a search warrant must be determined in the context of a specific case), or believe it is necessary in this case to venture, see majority opinion at 14-15 n.9, beyond the general established proposition that an illegal arrest will not result in exclusion of the defendant from trial, but only in preclusion of evidence which is the fruit of such an arrest.

A handwritten signature in black ink, appearing to read "Mary Ann Keawe", written in a cursive style.