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CONCURRING OPINION BY MOON, C.J.

Although I join in the decision of the majority, I write separately because of the concerns expressed by the dissent. Simply put, the dissent does not agree with the majority's plain error review of Frisbee's contention that the circuit court erred in failing to give a merger instruction. Dissenting Op. at 1-2. The dissent characterizes the majority's recognition of plain error as having been done "sua sponte" and reiterates its concurring and dissenting opinion in State v. Nichols, 111 Hawai'i 327, 141 P.3d 974 (2006), in which I had joined. Dissenting Op. at 1, 5. I share many of the concerns raised in the Nichols concurrence and dissent, particularly regarding the obligation placed upon the appellate courts to seek out erroneous jury instructions, regardless whether the error was alleged in the circuit court or on appeal. See id. at 342-48, 141 P.2d at 989-95 (Nakayama, J., concurring and dissenting). In this case, however, I do not believe the majority went "out of its way to notice plain error." Dissenting Op. at 2. Although Frisbee did not explicitly phrase the circuit court's alleged failure to instruct the jury on the question of merger in terms of plain error, he did raise the issue and argued it as error. I, therefore, do not believe the concerns expressed in the Nichols concurrence and dissent are implicated in the context of this case; accordingly, I agree with the majority.

