

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee

vs.

PETER ALVIN POAIPUNI, JR., Defendant-Appellant.

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NO. 22756

APPEAL FROM THE SECOND CIRCUIT COURT  
(CR. NO. 98-0386(1))

MAY 14, 2002

MOON, C.J., LEVINSON, AND ACOBA, JJ.;  
WITH ACOBA, J., CONCURRING SEPARATELY,  
AND WITH WHOM LEVINSON, J. JOINS;  
MOON, C.J., CONCURRING SEPARATELY; AND  
RAMIL, J., DISSENTING, WITH WHOM NAKAYAMA, J., JOINS

OPINION OF THE COURT BY LEVINSON, J.

The defendant-appellant Peter Alvin Poaipuni, Jr., appeals the judgment of the second circuit court, the Honorable Artemio C. Baxa presiding, convicting him of and sentencing him for unlawful possession of a firearm, in violation of Hawaii Revised Statutes (HRS) § 134-7(b) (1993 and Supp. 1998). On appeal, Poaipuni advances five points of error, all of which implicate the circuit court's receipt of the firearms predicated the charge against him and his statement to police officers

confessing that he had possessed them into evidence at trial.<sup>1</sup> Specifically, Poaipuni contends that the circuit court erred in partially denying his pretrial motion to suppress the firearms because (1) his father's consent to search the toolshed in which the police found the firearms was not voluntary, knowing, and intelligent and (2) his father's consent was the result of exploitation by the police of an unlawfully obtained search warrant, thereby rendering the firearms "tainted fruit of the poisonous tree." As to his subsequent statement confessing to the police that he had possessed the firearms, Poaipuni asserts that (3) the circuit court erred in ruling in limine that his statement was voluntary and, therefore, admissible at trial. In addition, Poaipuni urges that (4) his trial counsel provided him with ineffective assistance, reflected most notably in counsel's failure to seek suppression of his confession on the ground that it was tainted by the execution of the unlawfully obtained search warrant. Finally, Poaipuni posits that (5) the circuit court "committed plain error when it failed, sua sponte, to suppress" the firearms and his statement "as fruit of an illegal search."

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<sup>1</sup> Poaipuni advances his points of error on appeal under both the Hawai'i Constitution and the United States Constitution; as to the former, he specifically invokes article I, sections 7 (1978), 10 (1982), and 14 (1978). Article I, section 7 provides 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.

Article I, section 10 provides in relevant part that "[n]o person shall . . . be compelled in any criminal case to be a witness against oneself," and article I, section 14 provides in relevant part that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for the accused's defense." We base our holdings upon these provisions, and, consequently, we do not address Poaipuni's federal constitutional claims.

We hold that the firearms and Poaipuni's statement constituted "fruit of the poisonous tree," because, but for the exploitation by the police of a prior illegality -- i.e., the execution of an unlawfully obtained search warrant -- the police would not have learned of the firearms, obtained the father's consent to search the toolshed, discovered the firearms, questioned Poaipuni about the firearms, and obtained Poaipuni's statement confessing that he had possessed the firearms.

#### I. BACKGROUND

On the morning of July 7, 1998, Maui County Police Department (MPD) officers arrested Poaipuni in connection with several burglary offenses and retained him in police custody. Later that day, MPD Detective James Fletcher obtained a warrant to search Poaipuni's family home, which Poaipuni's father owned and in which Poaipuni resided with his father and other family members.

Detective Fletcher's affidavit in support of the search warrant asserted that he had been assigned to investigate second degree burglary offenses, involving the thefts of two automated teller machines located within commercial establishments, in connection with which he was investigating (1) three different "premises," one of which he believed that Poaipuni "occupied," and (2) a "Toyota pick up truck, maroon in color" that had been "found" in Poaipuni's possession. Detective Fletcher sought warrants to search the three premises and the truck for items related to the thefts.<sup>2</sup>

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<sup>2</sup> Detective Fletcher's affidavit specifically requested warrants to search for "[a]n unascertainable amount of United States currency in \$20.00 denominations," as well as any "[a]rticles of identification" and "[a]ny part of an automated teller machine."

As the factual basis for issuing the search warrants, Detective Fletcher related that the first theft occurred during the night of June 30, 1998, when "unknown person(s) drove a forklift into" a grocery store and "stole" an automated teller machine. According to Detective Fletcher, "[in] this incident[,] a white Jeep pickup truck with no license plates [was] reported in the area just prior to the break-in" and "[t]he thief" absconded with the automated teller machine. Detective Fletcher's affidavit did not reflect the source of the foregoing information. As to the second theft, Detective Fletcher related that, approximately a week later, "unknown person(s) drove a white Jeep pickup truck into" a sundries store and stole another automated teller machine. Detective Fletcher averred that, "[a]ccording to witnesses, two males loaded the ATM into the back of a pickup truck." However, the machine fell from the bed of the truck while police were pursuing it, and, consequently, the police recovered the ATM. "In both instances," averred Detective Fletcher, "a white Jeep pickup was observed to be involved in the theft[s]." The truck was eventually recovered by police officers, apparently abandoned in a sugar cane field.

Detective Fletcher averred that, during the interval between the two thefts, a police officer had observed the "same white Jeep pickup truck" outside the residence of Jeffrey Gray (which was one of the premises for which Detective Fletcher sought a search warrant) while the officer was speaking with Harry "Bobo" Pahukoa, III. Detective Fletcher's affidavit, however, did not explain the basis for concluding that the truck was, in fact, the "same" as that used during the two thefts. Subsequently, when "speak[ing] with" Pahukoa and Poaipuni on July 7, 1998 -- the day after the second theft occurred -- "regarding

a separate matter," Poaipuni informed police officers that he and Pahukoa had spent the previous night at Poaipuni's family home. Detective Fletcher "believe[d]" that it was "odd" for Pahukoa to have done so, inasmuch as he "had his own residence" elsewhere.

Because the Criminal Investigation Division of the MPD had "received information from the Crime Stoppers bulletin" that Pahukoa "was responsible for the theft of" the first automated teller machine, Detective Fletcher averred that he "believe[d] that" Poaipuni, Pahukoa, and Gray were all involved in both thefts. Hence, he "desire[d] to conduct a search" of their respective homes and Poaipuni's maroon pickup truck. On the basis of Detective Fletcher's affidavit, the district court of the second circuit issued the requested search warrants.<sup>3</sup>

Thereafter, Detective Fletcher, together with several other police officers, executed the search warrant on Poaipuni's family home at approximately 7:00 p.m. on July 7, 1998, while Poaipuni remained in police custody elsewhere. Detective Fletcher introduced himself, "gave [Poaipuni's father] a copy of the search warrant[,] and explained what [he and the other officers] were about to do." The officers entered the home, "secured" it by locating all of the occupants, and directed the occupants into the family room, where they remained, under the supervision of a police officer, throughout the remainder of the search, which appears to have consumed several hours.

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<sup>3</sup> The warrant issued to search Poaipuni's home authorized the police to search for and seize, as Detective Fletcher had requested, see supra note 2, "[a]n unascertainable amount of United State currency in \$20.00 denominations," any "[a]rticles of identification," and "[a]ny part of an automated teller machine." Furthermore, the warrant identified the address of Poaipuni's home and described the premises to be searched as "a single story wooden structure resembling a dwelling with a wood finish with a wood shingle roof with the numbers '22' in black facing the roadway," which was "believed to be occupied by" Poaipuni.

According to Detective Fletcher, while the search was underway, Poaipuni's father asked to speak with him, informed him that his son had placed a case containing firearms in a tool shed, which was located on the property but not attached to the house, and consented to a search of the tool shed.<sup>4</sup> Within the tool shed, Detective Fletcher found the case, which, he testified, he opened at Poaipuni's father's request. Inside the case, Detective Fletcher found numerous firearms. In addition to the firearms, some ammunition was eventually discovered within Poaipuni's bedroom. The search, however, unearthed no evidence relating to the burglaries or automated teller machine thefts, and Poaipuni was apparently never charged with their commission.

Subsequently, Detective Fletcher returned to the police station at which Poaipuni was being held in police custody. Shortly thereafter, Detective Mervin Holokai, joined by Detective Fletcher, commenced interrogating Poaipuni. Detective Holokai informed Poaipuni that he wished to discuss the first automated teller machine theft with him, that another detective desired to speak to him about an unrelated matter, and that Detective Fletcher wanted to question him in connection with the second automated teller machine theft. Detective Holokai provided Poaipuni with a written warning and waiver form informing him of his constitutional rights, which Poaipuni initialed and signed. During the interrogation, Detective Fletcher questioned Poaipuni regarding the firearms that he had found in the tool shed. As a result, Poaipuni confessed that he had possessed them -- explaining that a friend had given them to him to hold until the friend was released from incarceration -- and that he had been

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<sup>4</sup> The record also contains a copy of a "consent-to-search" form that bears Poaipuni's father's signature.

aware that it was illegal for him, a convicted felon, to do so.

In a pretrial motion to suppress, Poaipuni sought to exclude at trial "all evidence recovered as a result of the execution of [the] search warrant." Although his motion to suppress spoke generally of "all evidence," it and the arguments advanced by the parties at the suppression hearing clearly reflect that Poaipuni's motion to suppress encompassed only the firearms and ammunition. Poaipuni asserted (1) that Detective Fletcher's affidavit failed to establish probable cause to justify the search and (2) that, in executing the warrant, the police exceeded its scope, insofar as the warrant authorized only a search of the house and did not authorize a search of the tool shed.<sup>5</sup> In its memorandum in opposition to the motion, the prosecution argued that the search warrant was issued upon probable cause and that Poaipuni's father's consent justified the officers in searching the tool shed.

After Detective Fletcher and Poaipuni's father testified at the hearing on Poaipuni's motion to suppress, the circuit court invited argument addressing the validity of Poaipuni's father's consent, after which the circuit court orally ruled (1) that Detective Fletcher's affidavit was insufficient to establish probable cause to search the residence but (2) that the toolshed "was separate and apart from what was going to be searched under the . . . defective warrant." The circuit court found that Poaipuni's father had voluntarily consented to the search of the tool shed and therefore ruled "that the evidence obtained from the tool shed was not a fruit of the defective warrant." Because neither party had yet orally argued the extent

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<sup>5</sup> Appended to Poaipuni's motion to suppress was a "declaration" of his trial counsel but not a memorandum of law in support of the motion.

of the taint resulting from the defective warrant, Poaipuni urged the circuit court to reconsider its ruling. The circuit court believed, however, that it had "made the right decision[.]" Nowhere in his motion to suppress or at any point during the hearing on it did Poaipuni identify his statement to the police as derivative evidence that should be suppressed as tainted fruit of the defective warrant; rather, Poaipuni sought only the exclusion of the physical evidence -- i.e., the firearms and ammunition -- that the police found while executing the defective warrant.

In its written findings of fact, conclusions of law, and order denying Poaipuni's motion in part and granting it in part, the circuit court concluded that Detective Fletcher's affidavit "did not [contain] sufficient probable cause for the issuance of the warrant executed on [Poaipuni's] residence." Accordingly, the circuit court ruled that "[a]ll evidence recovered by the police as a result of the search" upon the residence -- which included ammunition found in Poaipuni's bedroom -- was "suppressed" and that the prosecution was "precluded from the use [of it] at trial." However, as to the firearms found in the tool shed, the circuit court observed that "[a] search based on consent is a recognized exception" to the warrant requirement, so long as the prosecution establishes that the consent was voluntarily given. Having found that Poaipuni's father had "freely, voluntarily, knowingly, and intelligently" consented to the search of the tool shed, the circuit court concluded that his consent was "independent [of] and distinct from the search warrant executed on [the] residence." As such, the circuit court concluded that Detective Fletcher had discovered the firearms as the result of an "independent source"



and, therefore, that the firearms did not constitute tainted "fruit of the poisonous tree." Thus, although the circuit court granted Poaipuni's motion to the extent of suppressing "all evidence recovered from the residence," it denied the motion with respect to "all the evidence recovered from the toolshed."

After a jury was empaneled, but before trial commenced, the circuit court, apparently upon Poaipuni's oral motion, conducted a voluntariness hearing in connection with Poaipuni's statement to the police regarding the firearms. Poaipuni argued that, when Detectives Fletcher and Holokai had interrogated him, he had expressly waived his constitutional rights only as to the specific criminal matters to which Detective Holokai had referred (i.e., the two automated teller machine thefts and a third criminal matter), which were unrelated to the present prosecution regarding his possession of the firearms. As such, Poaipuni urged that his waiver was not knowing, intelligent, and voluntary as to the firearms offense. The prosecution contended that Poaipuni's waiver extended to any and all questions that the interrogating officers posed to him and, thus, was valid. The circuit court agreed with the prosecution, ruling that Poaipuni had knowingly, intelligently, and voluntarily given his statement to the police and that it was therefore admissible at trial. Once again, Poaipuni failed to assert that his statement, even if knowingly, intelligently, and voluntarily given, was inadmissible as tainted fruit of the defective warrant.

The prosecution introduced the firearms into evidence at trial, as well as photographs of the firearms, and, during Detective Fletcher's testimony, introduced an audio tape of the relevant portions of Poaipuni's statement into evidence, which it played for the jury. In conjunction with playing the audio tape,

the prosecution provided the jury with copies of a typewritten transcription, which was marked as an exhibit for identification but not received into evidence. Except on grounds immaterial for present purposes, Poaipuni did not object to the prosecution's introduction of the foregoing evidence.

The jury convicted Poaipuni as charged. Poaipuni has timely appealed his conviction and sentence. The prosecution has not appealed the circuit court's ruling that the search warrant was defective by virtue of the insufficiency of Detective Fletcher's affidavit to support a finding of probable cause to search Poaipuni's residence.

## II. STANDARDS OF REVIEW

### A. Circuit Court's Ruling On A Motion To Suppress

"We answer questions of constitutional law by exercising our own independent judgment based on the facts of the case. . . . Thus, we review questions of constitutional law under the 'right/wrong' standard." State v. Jenkins, 93 Hawai'i 87, 100, 997 P.2d 13, 26 (2000) (citations, some quotation signals, and some ellipsis points omitted). Accordingly, "[w]e review the circuit court's ruling on a motion to suppress de novo to determine whether the ruling was 'right' or 'wrong.'" Id. (citations and some quotation signals omitted).

### B. Ineffective Assistance Of Counsel

In assessing claims of ineffective assistance of counsel, the applicable standard is whether, viewed as a whole, the assistance provided was within the range of competence demanded of attorneys in criminal cases. . . . General claims of ineffectiveness are insufficient and every action or omission is not subject to inquiry. Specific actions or omissions alleged to be error but which had an obvious tactical basis for benefitting the defendants case will not be subject to further scrutiny. If, however, the action or omission had no obvious basis for benefitting the defendant's case and it resulted in the withdrawal or substantial impairment of a potentially meritorious defense, then

it will be evaluated as information that an ordinary competent criminal attorney should have had. Briones v. State, 74 Haw. 442, 462-63, 848 P.2d 966, 976 (1993) (emphasis in original) (internal citations omitted). The burden of establishing ineffective assistance of counsel rests with the defendant and can only be met by demonstrating specific errors or omissions resulted in the withdrawal or substantial impairment of a meritorious defense.

"Determining whether a defense is 'potentially meritorious' requires an evaluation of the possible, rather than the probable, effect of the defense on the decision maker. . . . Accordingly, no showing of actual prejudice is required to prove ineffective assistance of counsel." Briones, 74 Haw. at 464, 848 P.2d at 977 (citing State v. Aplaca, 74 Haw. 54, 73, 837 P.2d 1298, 1308 (1992)).

State v. Pacheco, 96 Hawai'i 83, 93-94, 26 P.3d 572, 582-83 (2001) (quoting Dan v. State, 76 Hawai'i 423, 427, 879 P.2d 528, 533 (1994)) (original brackets and some quotation signals, ellipses points, and citations omitted) (some ellipses points added and some in original).

### III. DISCUSSION

On appeal, Poaipuni contends, inter alia, that the firearms that Detective Fletcher found in the tool shed and his subsequent inculpatory statement, given in response to Detective Fletcher's questions regarding the firearms, were inadmissible at trial because they constituted tainted fruit of the poisonous tree -- i.e., derivative evidence obtained as a result of the execution by the police of an unlawful search warrant. For the reasons discussed below, we agree and, therefore, do not reach Poaipuni's remaining points of error on appeal.

"[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. Fukusaku, 85 Hawai'i 462, 946 P.2d 32 (1997) (quoting State v. Medeiros, 4 Haw. App. 248, 251 n.4, 665 P.2d 181, 184 n.4 (1983)). Under the fruit of the poisonous tree

doctrine,

[a]dmissibility is determined by ascertaining whether the evidence objected to as being '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. . . . 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 attenuated that the taint has been dissipated, the evidence is not a 'fruit' and, therefore, is admissible. . . .

Id. (quoting Medeiros and citing State v. Lopez, 78 Hawai'i 433, 447, 896 P.2d 889, 903 (1995), and State v. Pau'u, 72 Haw. 505, 509-10, 824 P.2d 833, 836 (1992)) (internal citations omitted). In other words, the ultimate question that the fruit of the poisonous tree doctrine poses is as follows: Disregarding the prior illegality, would the police nevertheless have discovered the evidence? In the context of the present matter, the question is whether the police would have discovered the firearms and obtained Poaipuni's confession that he possessed them had the search warrant never been issued.<sup>6</sup> On the record before us, the answer is clearly that, absent the search warrant, the police would not have discovered the firearms and, a fortiori, would not have questioned Poaipuni about them.

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<sup>6</sup> In answering the question, we are mindful that this court has held that the "'exclusionary rule' does not preclude the use of evidence derived from knowledge of incriminating facts 'gained from an independent source.'" Lopez, 78 Hawai'i at 447, 896 P.2d at 903 (quoting State v. Brighter, 63 Haw. 95, 100, 621 P.2d 374, 379 (1980)). Thus, "where the independent information is gained prior to the illegal[ity], the resulting evidence is not suppress[ible]." Id. (quoting Brighter) (brackets and quotation signals omitted). Addressing circumstances under which a search warrant was issued in part on unlawfully obtained information, the Lopez court observed that "[u]nder the independent source exception, a 'search warrant is not constitutionally defective because it is based, in part, on illegally seized evidence where sufficient probable cause exists to issue the warrant without relying on the suppressed evidence.'" Id. at 447-48, 896 P.2d at 903-04 (quoting Brighter). Although we have characterized the independent source doctrine as an "exception" to the exclusionary rule, it is, in essence, simply a corollary of the fruit of the poisonous tree doctrine, as our quotation of Fukusaku reflects.

A. The Firearms

The prosecution does not contest the circuit court's conclusion that Detective Fletcher's affidavit in support of the search warrant lacked probable cause and that the warrant was therefore unlawfully obtained. Nor does the prosecution contest the circuit court's suppression of the ammunition that the police found while searching the house.

Once the circuit court determined that the search warrant was unlawfully obtained, it was incumbent upon the prosecution to establish that the firearms were "discovered or became known" to the police by "means sufficiently distinguished" from the prior illegality so "as to purge the [firearms] of the initial taint" caused by the Detective Fletcher's insufficient affidavit. Fukusaku, 85 Hawai'i at 475, 946 P.2d at 45. The circuit court concluded that the prosecution had proved that the firearms had become known and were discovered as the result of an "independent source" -- to wit, Poaipuni's father -- and, as such, were not tainted by the issuance and execution of the defective search warrant.

The circuit court was wrong. Assuming, arguendo, that Poaipuni's father voluntarily informed the police that the firearms were located in the tool shed and, moreover, voluntarily consented to the search of the tool shed, the police still would not have been in a position to learn of the firearms or to discover them in the tool shed had not they executed the defective search warrant. Detective Fletcher asserted that he was unaware of the firearms prior to being advised of their presence in the tool shed by Poaipuni's father. Moreover, the record clearly reflects that the police were present at the house for the sole purpose of executing the warrant and not for any

"independent" reason, such as being summoned at the request of Poaipuni's father. Thus, the firearms came to light only as a result of the exploitation of the previous illegality, i.e., the execution of the defective search warrant. Likewise, the consent of Poaipuni's father to the search of the tool shed cannot purge the taint resulting from the insufficiency of Detective Fletcher's affidavit for the simple reason that the police would not have been in a position to obtain the consent had they not executed the defective warrant. Thus, the consent was also tainted by the police's exploitation of the prior illegality.

Accordingly, we hold that the firearms were inadmissible fruit of the poisonous tree and the circuit court erred in denying Poaipuni's motion to suppress them.

B. Poaipuni's Statement

"[A] waiver of one's constitutional rights or a confession, even if uncoerced and intelligently given, will be inadmissible if induced by a prior illegality." Lopez, 78 Hawai'i at 453, 896 P.2d at 909 (citing Pau'u, 72 Haw. at 509, 824 P.2d at 835-56 (citing State v. Knight, 63 Haw. 90, 94, 621 P.2d 370, 374 (1980), and State v. Kitashiro, 48 Haw. 204, 216, 397 P.2d 558, 565 (1964))). Therefore, Poaipuni's purported Miranda waiver, which preceded Detective Fletcher's interrogation regarding the firearms could not, per se, purge the taint of the prior execution of the unlawful search warrant. Rather, the admissibility of Poaipuni's confession turned on the prosecution proving that it was not induced by the prior illegality, or, more precisely, upon the prosecution proving that it was not obtained as the result of the police exploiting unlawfully obtained evidence or information. See, e.g., Lopez, 78 Hawai'i at 453-54, 896 P.2d at 909-10 (holding that defendants, who gave inculpatory

statements after being arrested on the basis of, and confronted with evidence obtained as a result of, an unlawful search had been "induced to make [the] inculpatory statements," which were, consequently, inadmissibly tainted fruits of the poisonous tree); Pau'u, 72 Haw. at 509-12, 824 P.2d at 835-37 (same).

In the present matter, the record is devoid of any basis for concluding that, but for the discovery of the firearms, which was tainted by the unlawful search warrant, Detective Fletcher would have questioned Poaipuni regarding them. Detective Fletcher's own testimony that, prior to executing the search warrant, he had been unaware that Poaipuni had possessed the firearms, taken together with the prosecution's failure to adduce any evidence from which a reasonable inference could be drawn that the firearms would have come to light through some alternative and entirely lawful means, is fatal to the prosecution's introduction of Poaipuni's statement into evidence. As such, Poaipuni's confession that he possessed the firearms constituted tainted fruit of the poisonous tree and was inadmissible at trial. See Lopez, 78 Hawai'i at 452-54, 896 P.2d at 908-10; Pau'u, 72 Haw. at 509-12, 824 P.2d at 835-37.

However, Poaipuni did not, at any point during the proceedings in the circuit court, seek to exclude his inculpatory statement as tainted fruit of the unlawfully obtained search warrant. Thus, we cannot hold that the circuit court erred, plainly or otherwise, in failing to suppress Poaipuni's statement. See, e.g., Fukusaku, 85 Hawai'i at 475, 946 P.2d at 45 (holding that trial court committed no error where defendant "failed to specify what items of derivative evidence he sought to suppress," and, as such, "failed to describe the 'fruit' to which the 'fruit of the poisonous tree' doctrine would be applied").

Recognizing as much, Poaipuni asserts on appeal that his trial counsel was ineffective in not identifying Poaipuni's confession as evidence that derived from the unlawfully obtained search warrant and in not arguing that it was inadmissibly tainted fruit of the poisonous tree.

To prevail on his ineffective assistance of counsel claim, Poaipuni must establish that his "trial counsel's performance was not objectively reasonable -- i.e., [that it was not] 'within the range of competence demanded of attorneys in criminal cases.'" Briones, 74 Haw. at 462, 848 P.2d at 976 (quoting State v. Kahalewai, 54 Haw. 28, 30, 501 P.2d 977, 979 (1972)). Thus, Poaipuni must, as he does in pointing to his trial counsel's failure to seek suppression of his statement on the ground that it was tainted, point to a specific error or omission that "resulted in either the withdrawal or substantial impairment of a potentially meritorious defense," which includes "the assertion of [the defendant's] constitutional rights." Id. (quoting State v. Antone, 62 Haw. 346, 349 & n.1, 615 P.2d 101, 104 & n.1 (1980)). The defendant raising ineffective assistance of counsel need not, however, prove that the alleged error or omission redounded to his or her "'actual' prejudice." Id. at 464, 848 P.2d at 977 (citations omitted). Rather, the determination "whether a defense is 'potentially meritorious' requires an evaluation of the possible, rather than the probable, effect of the defense on the decision maker." Id.

As our foregoing discussion reflects, there is no doubt that Poaipuni's confession was, on the record before the circuit court and before us on appeal, inadmissible at trial. Defense counsel's failure to identify and seek to exclude the confession as inadmissibly tainted evidence that was derived from the



unlawfully obtained search warrant did not and could not have been calculated to benefit Poaipuni's case. See, e.g., Pacheco, 96 Hawai'i at 102, 26 P.3d at 591 (quoting Dan, 76 Hawai'i at 427, 879 P.2d at 533, for the proposition that "omissions that have an obvious tactical basis for benefitting the defendant's case will not be subject to further scrutiny") (brackets in the original omitted). Because failing to seek the suppression of Poaipuni's statement on the basis that it was tainted derivative evidence served no purpose that could possibly benefit Poaipuni's case, the record on appeal is sufficiently developed to establish that "there were no legitimate 'tactical' bases upon which defense counsel's omissions could conceivably have been predicated." Id. at 102, 26 P.3d at 591. Thus, this is not a case in which Poaipuni's ineffective assistance of counsel claim cannot be decided until the record is further developed in a subsequent post-conviction proceeding. See id.; cf. Briones, 74 Haw. at 463, 848 P.2d at 977 (observing that "[i]f the record is unclear or void as to the basis for counsel's actions, counsel shall be given the opportunity to explain his or her actions in an appropriate proceeding").

Furthermore, it is clear on the record before us that, in failing to seek suppression of Poaipuni's confession, Poaipuni's trial counsel deprived him of a potentially meritorious assertion of his constitutional rights, insofar as the circuit court was bound by our precedent to suppress the confession and, if it did not, would have committed reversible error. As such, we agree with Poaipuni that his trial counsel's competence fell outside the range demanded of criminal attorneys. See Pacheco, 96 Hawai'i at 101-02, 26 P.3d at 590-91 (holding that, where evidence of defendant's prior conviction was

inadmissible, defense counsel's failure to object to the prosecution's elicitation of testimony concerning defendant's prior conviction and to the prosecution's subsequent prejudicial remarks with respect thereto constituted ineffective assistance of counsel); Jones v. State, 79 Hawai'i 330, 902 P.2d 965 (1995) (observing that the requisite "lack of skill" to establish ineffective assistance of counsel could be satisfied by evidence that trial counsel provided the defendant with erroneous legal advice, for example, by misinforming the defendant as to the types of evidence admissible to impeach him or her).

Accordingly, we hold that Poaipuni's trial counsel provided him with ineffective assistance in failing to seek suppression of Poaipuni's confession on the ground that his inculpatory statement was induced by Detective Fletcher's use of evidence that the latter had obtained as a result of executing the unlawful search warrant, a failure that resulted in the admission of tainted evidence derived from Detective Fletcher's exploitation of a prior illegality.

In sum, we hold that neither the firearms nor Poaipuni's confession were admissible into evidence at trial because both constituted evidence that derived from the exploitation of an unlawful search warrant and, therefore, were tainted by that prior illegality. Accordingly, we hold that the circuit court erred in failing to suppress the firearms and that Poaipuni's trial counsel provided him with ineffective assistance of counsel in failing properly to move to suppress Poaipuni's confession.

IV. CONCLUSION

In light of the foregoing, we vacate the circuit court's judgment of conviction and sentence and remand this matter to the circuit court for further proceedings consistent with this opinion.

On the briefs:

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defendant-appellant,  
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