

Concurring Opinion by Ginoza, J.

I agree with the majority opinion that, given the circumstances in this case, Statements 2 and 3 should not have been suppressed. However, in relation to the circumstances surrounding Statement 2, I take a somewhat different view than the majority in regard to Officer Richard Rosa's (Officer Rosa) statements to Defendant-Appellee Rick Trinqué (Trinqué).

Officer Rosa was assigned to watch Trinqué after Trinqué had been escorted out of the pasture and was being held in a residential area. The relevant and uncontested findings by the circuit court related to Statement 2 are as follows:

14. Once [Trinqué] and the Officers arrived at the rear of the residence[,] . . . [Trinqué] was ordered to sit on a bench, and Officer Silva immediately directed Officer Rosa to watch over [Trinqué].
15. Prior to that date and time, Officer Rosa had never met or seen [Trinqué].
16. Officer Rosa was dressed in plain clothes, with his police badge visibly hung around his neck.
17. Officer Rosa identified himself to [Trinqué], telling [Trinqué] that he was Sergeant Rosa from the Narcotics Unit of the Kauai Police Department.
18. Officer Rosa then went on to tell [Trinqué] that he wasn't sure if Mr. Trinqué knew who he was, but that he was the Officer who worked on [Trinqué's] daughter's case, that if [Trinqué] did not believe him, [Trinqué] could talk to [Trinqué's] daughter about it, that he would not lie to [Trinqué], he would not "jerk [Trinqué's] chain", and that he would be completely honest with [Trinqué].<sup>1</sup>
19. Officer Rosa then told [Trinqué] not to make a statement until [Trinqué] was advised of his constitutional rights.
20. [Trinqué] then said, "What for? You caught us red handed, there's nothing left to say, times are hard and we needed the money[.]"

In determining whether Officer Rosa's interaction with Trinqué constituted interrogation, we consider the "totality of the circumstances" and, ultimately, whether Officer Rosa should

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<sup>1</sup> Based on Officer Rosa's testimony at the suppression hearing, he had assisted Trinqué's daughter in a case where she was having problems with certain individuals and she was concerned for Trinqué because she was under the impression that the individuals were going to assault Trinqué.

have known that his "words or actions were reasonably likely to elicit an incriminating response" from Trinqué. State v. Eli, 126 Hawai'i 510, 522, 273 P.3d 1196, 1208 (2012) (citation and internal quotation mark omitted); State v. Naititi, 104 Hawai'i 224, 236, 87 P.3d 893, 905 (2004); State v. Ketchum, 97 Hawai'i 107, 119, 34 P.3d 1006, 1018 (2001). Because Officer Rosa specifically told Trinqué not to make a statement until Trinqué was advised of his rights, I agree with the majority that Officer Rosa's interaction with Trinqué did not constitute interrogation. However, I would not suggest, as the majority opinion apparently does, that Officer Rosa's other statements to Trinqué, made prior to Miranda warnings,<sup>2</sup> were not potentially problematic.<sup>3</sup>

Although the "totality of the circumstances" in this case bear out that there was no interrogation, it seems foreseeable that in other circumstances, regardless of the intent of the officer, words or actions such as those by Officer Rosa could start to approach the line of interrogation. In other words, such statements, along with other surrounding circumstances, could become "words or actions [that are] reasonably likely to elicit an incriminating response." Eli, 126 Hawai'i at 522, 273 P.3d at 1208; see also, State v. Juranek, 844 N.W.2d 791, 802 (Neb. 2014) (noting that "questions intended to build rapport with a defendant can easily cross the line into interrogation").

I respectfully concur.

*Tim M. King*

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>3</sup> In particular, with respect to Officer Rosa's statements that he had worked on the case involving Trinqué's daughter, that Officer Rosa would not lie to Trinqué, would not jerk Trinqué's chain, and that Officer Rosa would be completely honest with Trinqué, the majority states: "It is not clear why it would be improper for Officer Rosa to provide this information to Trinqué or why Officer Rosa's apparent attempt to develop rapport with Trinqué should be viewed as illegitimate."