

NO. 23074

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
WING CHIU NG, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(D C COMPLAINT NOS. 47085020MO & 4708503MO)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Foley, JJ.)

On November 24, 1998, Defendant-Appellant Dr. Wing Chiu Ng (Ng) received citations for reckless driving, in violation of Hawai'i Revised Statutes (HRS) § 291-2 (Supp. 2000),¹ and for failing to yield to pedestrians in a crosswalk (failure to yield), in violation of HRS § 291C-72 (1993).²

¹HRS § 291-2 read as follows:

§291-2 Reckless driving of vehicle or riding of animals; penalty. Whoever operates any vehicle or rides any animal recklessly in disregard of the safety of persons or property is guilty of reckless driving of vehicle or reckless riding of an animal, as appropriate, and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both.

²HRS § 291-72 reads in relevant part as follows:

§291C-72 Pedestrians' right of way in crosswalks. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

Following a bench trial,³ the District Court of the First Circuit (district court) found Ng guilty of both counts. The district court sentenced Ng as follows: (1) failure to yield -- a \$35.00 fine and a \$7.00 payment to the Driver's Education Fund; and (2) reckless driving -- a \$100.00 fine, a \$7.00 payment to the Driver's Education Fund, and a \$25.00 Criminal Injuries Compensation Fund assessment.

Ng appeals the June 8, 1999, Judgment of the district court. On appeal, Ng contends the district court erred because (1) his convictions for reckless driving and failure to yield are unsupported by substantial evidence; (2) destruction of evidence requires a new trial; and (3) the district court denied his motion for reconsideration. We disagree with Ng's contentions and affirm the June 8, 1999, Judgment of the district court.

I. BACKGROUND

Officer Craig Miki (Officer Miki) testified he was a police officer for the City and County of Honolulu and was on "traffic post duty" on November 24, 1998, at approximately 12:00 a.m., at the intersection of Nuuanu Avenue and Kukui Street (the intersection) in the City and County of Honolulu, State of Hawai'i. Officer Miki was directing traffic at the intersection because there had been a power outage in the area and the traffic lights were not operating at the intersection. Following an

³ The Honorable Leslie A. Hayashi, presided.

incident that occurred at the intersection, Officer Miki cited Ng for "Reckless Driving and Failure to Yield Right of Way to Pedestrians."

Officer Miki testified he began his shift at the intersection at about 10:45 p.m. on November 23, 1998. Officer Miki had prepared a diagram for court, which diagram depicted the four-way intersection. The diagram represented that flares marked each lane of traffic in both directions on Nuuanu and Kukui. On the diagram, Officer Miki had designated the lanes marked with flares with an "F." Officer Miki testified that there were "three or four" flares on each lane "basically going back maybe ten to fifteen feet from the crosswalk." Two "C's" marked the location of two police department cushman vehicles, which had their flashing blue lights and headlights illuminated "[t]o basically light the area and to send some warning for the people traveling into the intersection . . . that something is going on, the lights were out and . . . to use caution." Circles of flares illuminated Officer Miki and another police officer in the middle of the intersection. Flares also marked the crosswalk. Officer Miki wore a uniform, a white helmet, an orange and yellow fluorescent traffic vest, and white traffic gloves. He held a flashlight for added illumination.

Officer Miki testified he first observed Ng's vehicle at about 12:00 a.m. when he saw it turn right from Beretania

Street and travel north on Nuuanu. Officer Miki's attention was drawn to Ng's vehicle because Officer Miki needed to stop traffic so several pedestrians could cross the intersection. Standing in the center-most lane of the north-bound traffic, Officer Miki flickered his flashlight and held out his hand to stop oncoming vehicles.

Officer Miki testified that as vehicles traveling in the center lane began to slow down, he observed Ng's vehicle speed up a little and pull forward of the other vehicles. When Ng was about 250 feet from the intersection, Officer Miki stepped a little into Ng's lane, thinking Ng did not see the first signal. Officer Miki faced Ng's car as it approached, flickered his flashlight, and hand signaled an order to stop, but Ng's car continued approaching at an accelerated speed. Officer Miki yelled to the two pedestrians who had stepped off the curb on the southern crosswalk to step back because it appeared that Ng's vehicle was not slowing down. The pedestrians jumped back onto the sidewalk, and Officer Miki jumped out of Ng's way. As Ng traveled through the intersection, Officer Miki yelled at him to stop. The other officer at the scene also yelled an order to Ng to stop as two pedestrians who were in the northern crosswalk had to "quickly dart across." Ng stopped his car, and Officer Miki yelled at him to pull over. Ng pulled his car over to the right curb. After Officer Miki explained to Ng why he had been pulled

over, Ng said something to the effect of, "I didn't see any lights so I went through" and that the police "should have closed the road."

Officer Miki testified he cited Ng for failure to yield and reckless driving. Officer Miki cited Ng because, despite the area being well lit with flashing blue lights and flares indicating a need for caution in an intersection without operational traffic lights, Ng almost hit Officer Miki and pedestrians in the area.

Under cross-examination, Officer Miki testified he did not question the pedestrians that night. Officer Miki stated that the diagram he made the night he cited Ng was different than the one he made in court because "the prosecutor asked me to show where the flares were situated." The diagram on the citation depicted no flares. The pedestrians on the southern crosswalk were not included in the diagram on the citation. Although Officer Miki did not "pace" Ng's vehicle or have a laser gun directed at Ng, based on Officer Miki's training and experience, Ng was traveling at a high rate of speed. Ng stopped after Officer Miki yelled at him "several times" to pull over. Officer Miki stated that there were no flares next to the curb or in the path of any vehicles. Officer Miki testified that while Ng was argumentative with him after being pulled over, this was not upsetting to Officer Miki.

Following Officer Miki's testimony, the State rested and Ng moved for a judgment of acquittal, which the district court denied.

On the second day of trial, June 1, 1999, the parties entered into the following stipulation:

[Deputy Public Defender (DPD)]: Before trial this morning, Officer Miki--well, first of all, the diagram that Officer Miki drew on the first trial date was erased in the interim. When he came into court today, I believe we're stipulating to the fact that he drew the diagram that is now on the board.

The diagram shows three lanes north bound on Nuuanu and cushion vehicles in the center of the third lane by the right hand, right-most lane.

The Court: Okay. Well actually we have, we have the main diagram which reflects his testimony as the Court and at least one counsel recalls. And then we have the detail which is reflecting the three lanes.

[DPD]: Actually, no, it's the opposite way. The officer came in and the main diagram he drew is what he remembered that he drew last week, but it actually shows three lanes.

[Deputy Prosecuting Attorney (DPA)]: This is, I guess, I believe this one right here is what the defense I believe is objecting to.

[DPD]: Yes.

[DPA]: He says he remembers drawing that last time.

The Court: I'm sorry. I still see that only as two lanes so--

[DPD]: Well, it's confusing, Your Honor, because this line is really the path of the vehicle and he drew the lanes as one, two so there's really the three lanes. It looks there's two lanes because of this one line showing the path.

The Court: Oh, I see.

[DPD]: He's drawn three lanes.

The Court: Okay.

[DPD]: The cushion's in the center of the third lane.

The Court: All right.

[DPD]: And the detailed diagram that we have both stipulated to and drew together shows what really was drawn at the prior court date, which was two lanes, theushman vehicles to the right-most side of the right lane and the path of the vehicle and the furthest--

The Court: So for clarity's sake, the only issue is whether there were three lanes or two lanes.

[DPA]: Actually not whether there were not three lanes or two lanes, whether he had drawn next to his--the officer said that he--that these--basically he maintains that these cushmans were taking up the third lane. So the issue is whether he drew the line indicating that on the first time or not.

The Court: Okay.

[DPD]: And whether he drew there are two lanes or three lanes--

The Court: Right. It's really the issue of whether there are two or three lanes.

[DPD]: Yeah, right.

The Court: Okay.

[DPD]: Thank you, Your Honor.

The Court: Okay. Anything else?

[DPA]: No, Your Honor.

[DPD]: That would be the only stipulation.

The Court: Okay. All right. Then we all note that stipulation for the record. Now it is defense's case and I don't know if the defendant intends to testify, but he does not have an obligation to testify; but he can of course choose to testify if he wishes to do so.

Ng testified that he was stopped by a police officer on November 24, 1998, right after midnight. Ng had left his office in downtown Honolulu and was on his way home. After turning right from Beretania Street onto Nuuanu Avenue, Ng noticed there were a lot of police vehicles and policemen at the intersection and the ground was lit up with red lights. About midway through

the block (between Beretania and Kukui), Ng noticed there were no traffic control signals at the intersection. Ng approximated his speed at about twenty (20) mph. Realizing that the traffic lights were out, Ng slowed down. Ng perceived that some kind of accident had occurred or road repairs were underway, and "[t]he normal way to do it in such situations is to slow down and see what's going on and generally proceed because it is just an obstruction on one part of the road."

Ng testified he noticed policemen standing on both sides of the street at the first (southern) crosswalk. Ng was approximately ten yards from the first crosswalk when he first noticed Officer Miki. Ng indicated that Officer Miki was standing in the bottom (southern) crosswalk in the left-most north-bound lane. Ng approximated that there were two cushion vehicles located "probably on the right." Ng recalled that all the lights were shining on "all the police vehicles, police cars and cushion." The cushion lights were blue. Ng did not recall seeing a flashlight as he proceeded north on Nuuanu Avenue. Ng did not recall seeing any pedestrians in either crosswalk. Ng did see several police officers, "at least two on the left and at least two on the right."

Ng introduced into evidence Exhibit "A," a photograph he took of the intersection showing three lanes on Nuuanu Avenue. The judge allowed Exhibit A to be admitted for the limited

purpose of depicting the three lanes. Ng also introduced into evidence Exhibit "E," which showed all four crosswalks at the intersection and two funeral homes located on the northeast and northwest corners of Nuuanu and Kukui. The judge allowed Exhibit "E" to be admitted for the limited purpose of depicting the intersection and crosswalks.

Ng testified he recalled seeing only one circle of flares, which was around the center median and the southern crosswalk on Nuuanu Avenue. As Ng proceeded through the crosswalk with his window down, Ng recalled Officer Miki yelling at him, "What? What you doing?" Ng responded, "Oh, gee, you wish to close this street, you should put lights on all three lanes." Ng testified there were no flares in his lane of travel nor to the right of his lane. Ng approximated his speed through the intersection at about five to ten miles per hour. Ng pulled his car over immediately and stopped in the northern crosswalk, on the right (east) corner. Officer Miki approached Ng's car and asked for Ng's license, registration, and proof of insurance. Ng approximated that there were about ten police officers in the crosswalk and about five or six police vehicles in the area.

Ng testified that he had drawn a diagram of the intersection as he "recalled it on that evening"; the diagram was admitted into evidence as Exhibit "G." Ng's diagram depicted three red boxes and one green box. The red boxes represented two

police officers on Ng's left, the location where Officer Miki talked to Ng, and the location where Ng pulled over. The green box depicted a repair vehicle. Ng had also drawn a "P-O-P-O" and red dots around the "P-O-P-O." The "P-O-P-O" represented two policemen, and the red dots were the red lights (flares) Ng saw lying on the ground circling the two policemen. Ng described the lights from these flares as dim. Ng did not stop before the southern crosswalk because he was under the impression that there was a road obstruction or road repair going on, and since the two right lanes were not marked with red lights, he assumed the two right lanes were open.

Under cross-examination, Ng testified that as he approached the intersection, he knew something was going on. It is an intersection with which Ng is very familiar because he drives home along this street probably every other day. Ng knows the intersection is normally controlled by a traffic light, but that on this particular evening the traffic light was not working. Ng did not think he was required to stop because "when they wanted you to stop, they would put blinking red lights. That's what we learn from when we get our driver's license. When you just see red lights on the ground, it indicates an accident." Ng stated there were no police officers directing traffic. Ng noticed that the traffic light was not working and saw a lot of police officers at the scene. Ng acknowledged that there were

more police officers at the scene than he put in his diagram. Ng testified that he proceeded slowly through the intersection, looking at the police officer who stood there "doing nothing." Ng was not angry, but he believed the government had made a mistake in not closing the road.

The district court took the matter under advisement and scheduled the parties to return on June 8, 1999, when the district court would render its decision. Before adjourning, the court instructed the bailiff "to mark a 'Save' on that, on that diagram, please."

On June 8, 1999, prior to the district court's decision, Ng made a motion to dismiss based on the destruction of the diagram drawn by Officer Miki and used at trial. Ng argued:

Yes, Your Honor. I've spoken with my client in the interim and he would like me to make a motion before you give your verdict today. The motion is simply a Motion to Dismiss based on the destruction of the diagram that was used in trial.

Although we were allowed to correct it and we were allowed to draw what we believe the officer had drafted the trial date prior and I was allowed to argue with respect to his credibility and memory, the destruction of the diagram really meant that we were not able to effectively impeach the officer or show the real difference between the photographs, which were defense exhibits, and the officer's memory of the intersection, how the flares were placed, et cetera. So we would make a Motion to Dismiss this case based on the destruction of that demonstrative diagram and that it prejudiced the defense, Your Honor.

The district court denied the motion to dismiss and issued an oral ruling finding Ng guilty as charged. On June 21, 1999, Ng filed a Motion to Reconsider Verdict. On July, 19, 1999, Ng filed a Motion for a New Trial. On November 2, 1999,

the Motion for New Trial was denied because the motion itself and the request to file it occurred after the ten day period (as required by Hawai'i Rules of Penal Procedure (HRPP) Rule 33). On December 3, 1999, the district court denied Ng's Motion to Reconsider and stayed his sentence pending appeal.

The district court filed its Findings of Fact and Conclusions of Law (FOF and COL) on June 9, 1999. Ng challenges the following FOF and COL as clearly erroneous:

[FINDINGS OF FACT]

1. On or about November 24, 1998, at 10:45 p.m. Honolulu Police Officer Craig Miki directed traffic at the intersection of Nuuanu and Kukui Streets which is located in the City and County of Honolulu. The traffic lights weren't operational due to a power outage. Officer Miki along with Officer Mahi had been sent to this location at the start of their shifts to relieve the previous shift.

. . . .

3. Both officers parked their cushion vehicles along the right side curb of Nuuanu and left their flashing blue lights, hazard lights and headlights on. Lights from adjacent buildings provided additional lighting.

4. Over his police uniform, Officer Miki wore an orange and yellow fluorescent traffic vest. He also wore white traffic gloves and held a flashlight in his hand.

. . . .

6. Officer Miki had just waved pedestrians to cross in the cross-walk in front of him. In addition, pedestrians were crossing in a second crosswalk behind Officer Miki. Officer Miki signaled the approaching vehicles to stop with his flashlight in order to allow the pedestrians to cross in safety.

. . . .

8. Officer Miki flashed his flashlight and held out his hand, signaling the oncoming vehicles to stop. At this time he was standing near the center of the intersection; the vehicles in the left hand lane proceeded to slow down. However, Defendant's vehicle continued approaching the intersection, pulling ahead of other vehicles which were slowing down to stop.

9. By now Defendant's vehicle was approximately 250 feet from the intersection. Officer Miki stepped into Defendant's lane. Flickering his flashlight and using his hand, he signaled the Defendant to stop. Defendant's vehicle kept approaching.

10. Officer Miki then yelled at the pedestrians in the first crosswalk to jump back onto the sidewalk and the officer also jumped out of the Defendant's path.

11. Pedestrians crossing in the second crosswalk quickly darted across to avoid being struck by the Defendant.

. . . .

14. Defendant was argumentative and replied that he didn't see any flares and decided to proceed through. He also informed Officer Miki that they should have closed the road.

. . . .

16. As he approached the intersection, Defendant observed a number of police vehicles and police officers. He also noted that the traffic lights were not operational. Seeing the flares, Defendant assumed that either roadwork was occurring or that an accident had occurred. Despite these assumptions, Defendant presumed it was safe to proceed through the intersection.

17. The court finds Officer Miki's testimony to be more credible as to the events which occurred on November 24, 1998, with respect to the number and location of the flares, the fact that the vehicles in the lane next to Defendant proceeded to slow down and stop pursuant to Officer Miki's signals and that Defendant failed to slow down as he proceeded through the intersection endangering the pedestrians crossing in the second crosswalk as well as Officer Miki.

CONCLUSIONS OF LAW

Accordingly the court finds that the State has proven beyond a reasonable doubt that Defendant Wing Chiu Ng operated his vehicle recklessly in disregard of the safety of persons or property and that Defendant Ng failed to yield to the pedestrians in the crosswalk on November 24, 1998 in the City and County of Honolulu.

Even if the court had found Defendant's own testimony to be more credible, the court would also have to convict. Defendant testified he was familiar with this intersection as he travels this way home from his office every other evening. On November 24, 1998 Defendant approached the intersection and observed that the traffic lights weren't operational. He also saw a number of police officers and police vehicles including at least one cushman vehicle with its blue lights parked to the right side of the street. Defendant's argument that the area was dimly lit and that it was confusing as to what he should have done, only serve to

underscore Defendant's reckless disregard in this instant situation. Despite the dim lighting conditions, Defendant proceeded through the intersection assuming that there was an accident or road repair. Although Defendant prefers to blame the government for not closing the street, it's apparent from Defendant's own testimony that he operated his vehicle recklessly in disregard of the safety of persons or property.

II. STANDARDS OF REVIEW

A. Sufficiency of the Evidence

When reviewing sufficiency of evidence claims on appeal, this court

employ[s] the same standard that a trial court applies . . . namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Sufficient evidence to support a prima facie case requires substantial evidence as to every material element of the offense charged. Substantial evidence as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. Under such a review, we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact.

State v. Jhun, 83 Hawai'i 472, 481, 927 P.2d 1355, 1364 (1996) [.]

State v. Jenkins, 93 Hawai'i 87, 99, 997 P.2d 13, 25 (2000) (quoting State v. Timoteo, 87 Hawai'i 108, 112-13, 952 P.2d 865, 869-70 (1997)).

B. Findings of Fact/Conclusions of Law

Findings of fact are reviewed under a clearly erroneous standard. State v. Soto, 84 Hawai'i 229, 236, 933 P.2d 66, 73 (1997).

A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the

appellate court is nonetheless left with a definite and firm conviction that a mistake has been made.

State v. Okumura, 78 Hawai'i 383, 392, 894 P.2d 80, 89 (1995)

(internal quotation marks omitted).

Conclusions of law are freely reviewed under a right/wrong standard, where "we examine the facts and answer the question without being required to give any weight to the trial court's answer to it." State v. Naeole, 80 Hawai'i 419, 422, 910 P.2d 732, 735 (1996) (internal quotation marks omitted).

C. Motion for Reconsideration

We review the district court's denial of the motion for reconsideration under the abuse of discretion standard. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26 (1992). "Generally, to constitute an abuse of discretion a court must have clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Id.

III. DISCUSSION

In addition to contending that the foregoing FOF/COL were clearly erroneous, Ng contends his convictions were unsupported by substantial evidence. We conclude that substantial evidence supported the district court's findings and conclusions. In each of his challenges to the FOF, Ng erroneously argues that "[s]ince the trial court did find as an alternative basis for convicting Dr. Ng, that Dr. Ng's testimony

was the more credible, this distinction must be made clear in any finding of fact, which was not done here." The district court's conclusion of law, in relevant part, reads:

Even if the court had found Defendant's own testimony to be more credible, the court would also have to convict. Defendant testified he was familiar with this intersection as he travels this way home from his office every other evening. On November 24, 1998 Defendant approached the intersection and observed that the traffic lights weren't operational. He also saw a number of police officers and police vehicles including at least one cushman vehicle with its blue lights parked to the right side of the street. Defendant's argument that the area was dimly lit and that it was confusing as to what he should have done, only serve to underscore Defendant's reckless disregard in this instant situation. Despite the dim lighting conditions, Defendant proceeded through the intersection assuming that there was an accident or road repair. Although Defendant prefers to blame the government for not closing the street, it's apparent from Defendant's own testimony that he operated his vehicle recklessly in disregard of the safety of persons or property.

(Emphasis added.)

The district court did not find Ng's testimony more credible; rather, it stated that even if Ng were more credible as to the facts, the State still met its burden of proving guilt beyond a reasonable doubt. "[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the [trier of fact]." State v. Buch, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996) (internal quotation marks omitted).

Regarding whether substantial evidence supported a conviction, the Hawai'i Supreme Court has stated, "[w]e have long held that evidence adduced in the trial court must be considered

in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction." State v. Batson, 73 Haw. 236, 248, 831 P.2d 924, 931, reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992).

The State elicited credible evidence from Officer Miki that the northbound lanes of Nuuanu Avenue were illuminated with flares and cushion vehicles. Officer Miki provided credible evidence that he wore an orange and yellow fluorescent vest and white traffic gloves and he held a flashlight in his hand. After pedestrians were directed to cross both the southern and northern crosswalks, Officer Miki noticed vehicles approaching the intersection. Ng's vehicle was among the vehicles approaching the crosswalks when Officer Miki motioned for the vehicles to stop. Ng's vehicle pulled ahead of the other vehicles and continued traveling through the intersection. Pedestrians in the southern crosswalk had to jump back to the sidewalk to avoid being hit, while pedestrians in the northern crosswalk had to quickly dart across to avoid Ng's vehicle.

Accordingly, substantial evidence was adduced that Ng operated his vehicle recklessly in disregard of the safety of persons or property in violation of HRS § 291-2 and, after seeing that the traffic control signals were inoperable, failed to yield to pedestrians crossing the roadway within a crosswalk in violation of HRS § 291C-72.

Ng contends that destruction of evidence requires a new trial. Specifically, Ng argues that erasure of the chalkboard diagram made by Officer Miki during trial prevents the making of a complete record for review, thus constituting an abuse of the district court's discretion in denying his motion to dismiss. The chalkboard diagram was never entered into evidence and thus never became a part of the record of appeal. Furthermore, while there was conflicting evidence elicited at trial regarding whether there were two or three lanes in the northbound direction of Nuuanu Avenue, Ng was allowed to cross-examine Officer Miki regarding the intersection. Furthermore, Officer Miki completed his testimony on May 20, 1999, when the chalkboard diagram was intact. The chalkboard was erased sometime before June 1, 1999, the second day of trial. Therefore, we conclude that Ng's ability to cross-examine and possibly impeach Officer Miki was not prejudiced by the erasure of the chalkboard diagram.

Ng contends the district court abused its discretion in denying his Motion for Reconsideration. "Generally, to constitute an abuse of discretion a court must have clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." Amfac, 74 Haw. at 114, 839 P.2d at 26. Ng appears to rely on his contention that his conviction was unsupported by substantial evidence, thus warranting the district court's

reconsideration. As previously discussed, Ng's conviction for reckless driving and failure to yield was supported by substantial evidence.

IV. CONCLUSION

The district court's June 8, 1999, Judgment in this case is affirmed.

DATED: Honolulu, Hawai'i, November 8, 2001.

On the briefs:

Jack Schweigert
for defendant-appellant.

Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge