

NO. 20543

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Petitioner-Appellee,

vs.

WILLIE JONES, also known as "Willis,"  
Respondent-Appellant.

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CR. NO. 95-2042)

ORDER GRANTING IN PART AND DENYING IN PART  
RESPONDENT-APPELLANT'S MOTION FOR RECONSIDERATION  
(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.  
and Circuit Judge Blondin, in place of  
Acoba, J., Recused)

Upon consideration of respondent-appellant Willie Jones's  
motion for reconsideration, filed July 30, 2001,

IT IS HEREBY ORDERED that the motion is granted in part and  
denied in part. Accordingly, an amended opinion is being filed  
concurrently with this order, reflecting changes to the caption  
of the case and pages 53 and 54, including footnote 30, as  
indicated below:

(1) Caption of the Case: The identification of respondent-  
appellant Willie Jones, "also known as 'Willie,'" is corrected to  
"also known as 'Willis.'"

(2) Page 7, last sentence above first paragraph: The sentence, "In light of its disposition, the ICA declined to address Defendant's remaining contentions[,]" has been deleted.

(3) Footnote 30 at pages 53-54 [additions are bolded and deletions are bracketed]:

We note that our disposition in this case does not implicate the double jeopardy clause of article I, section 10 of the Hawai'i Constitution. The double jeopardy clause bars retrial of a defendant once a reviewing court has found the evidence at trial to be legally insufficient to support a conviction. See State v. Malufau, 80 Hawai'i 126, 135, 906 P.2d 612, 621, opinion amended on reconsideration, 80 Hawai'i 126, 134, 906 P.2d 612, 620 (1995). However, retrial is not barred when the reviewing court reverses a case due to trial error, such as erroneous jury instructions. See State v. Hamala, 73 Haw. 289, 293, 834 P.2d 275, 277 (1992), overruled on other grounds, State v. Rogan, 91 Hawai'i 405, 423 n.10, 984 P.2d 1231, 1249 n.10 (1999). Although our holding in this case is based, in part, on our conclusion that the jury instruction regarding ineffective consent raised the possibility that the verdict was based on an alternative means of establishing guilt not supported by legally sufficient evidence, it is undisputed that there was legally sufficient evidence of the other alternative of establishing guilt and, thus, the error in this case is trial error. Accordingly, the double jeopardy clause does not bar retrial **on the means of establishing guilt for which there was sufficient evidence presented at trial** [in this case].

(4) Section IV, Conclusion at pages 53-54 [additions are bolded and deletions are bracketed]:

#### IV. CONCLUSION

Based on the foregoing, we vacate Defendant's convictions on Counts I, II, III, and IV and remand this case to the circuit court for a new trial **on those counts**. {fn 30} [In light of our disposition, we need not address the other points of error raised by Defendant before the ICA.] **Subject to the foregoing clarifications of the ICA's analysis regarding the trial court's ineffective consent instruction and the right to a unanimous verdict, we affirm the ICA's opinion.**

Finally, Associate Justices Levinson and Ramil, having concurred separately, agree with the disposition of respondent-appellant's motion for reconsideration. Although no changes have been made to the original concurring opinion, it shall again be appended to the amended opinion of the court that is being filed concurrently with this order.

DATED: Honolulu, Hawai'i, August 30, 2001.

Edwin Lauder Baker,  
for respondent-appellant,  
on the motion

James M. Anderson,  
Deputy Prosecuting Attorney,  
for petitioner-appellee,  
on the response