

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee-Respondent,

vs.

REGINALD FIELDS, Defendant-Appellant-Petitioner.

NO. 25455

MOTION FOR RECONSIDERATION  
AND ORDER OF AMENDMENT  
(FC-CR. NO. 02-1-0083)

OCTOBER 10, 2007

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ  
AND ACOBA, J., CONCURRING AND DISSENTING

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2007 OCT 10 AM 9:07

FILED

The motion for reconsideration filed September 10, 2007 by defendant-appellant-petitioner, Reginald Fields, requesting that this court review its published opinion, filed on August 30, 2007, is hereby granted in part and the majority opinion of the court is amended as follows: (deleted material is bracketed and new material is double underscored):

1. **Footnote 18 on page 57 is amended to read:**

[We reiterate that, per Wallace, "sufficiency of the evidence is reviewed based only on the evidence that was properly admitted at trial." Wallace, 80 Hawai'i at 414 n.30, 910 P.2d at 727 n.30 (some emphasis omitted). Accordingly, we do not consider Richards' statement, "Reggie, get off her," when evaluating the sufficiency of the evidence in the record on appeal, insofar as (1) we have expressed no opinion as to its admissibility, and (2) other evidence in the record is sufficient to sustain Fields' conviction.] We note that Wallace requires that each "material element of the offense [be] supported by substantial and admissible evidence . . . ." 80 Hawai'i at 413, 910 P.2d at 726 (emphasis in original). However, Wallace does not preclude consideration of Staggs' and Richards' statements in the present case inasmuch as Wallace makes clear that unobjected to evidence is deemed admissible and may be considered when analyzing whether the record contains sufficient evidence to affirm a conviction. See id. at 410-13, 910 P.2d at 723-26. Wallace only restricts a sufficiency of the evidence analysis to "properly admitted" evidence "for purposes of determining whether the double jeopardy

clause of article I, section 10 precludes retrial of a defendant whose conviction has been set aside because of insufficient evidence . . . ." Id. at 414 n.30, 910 P.2d at 727 n.30 (emphasis added). Fields' right against double jeopardy is not at issue here.

2. The last paragraph at the bottom of page 57 and ending at the top of page 58 is amended to read:

Here, the admissible evidence indicates that (1) Staggs, Fields, and Richards were present, (2) Lhamo heard slapping noises and a "hard thug," (3) Lhamo admitted that she did not know who was being slapped and whose body she heard hitting the ground, (4) Lhamo testified that she heard someone, presumably Richards, yell, "Reggie, get off her," (5[4]) after Fields and Richards left the premises, Lhamo found Staggs "shook up, kind of scared and . . . half beaten or something," (6[5]) the responding police officers, Officers Kapua and Ke, observed that Staggs had sustained injuries to her face and right shoulder, and (7[6]) despite exhibiting some degree of memory loss at trial, Staggs had earlier reported to Officer Ke that Fields approached her from behind, held her neck against the couch, and punched her on the left side of her face.

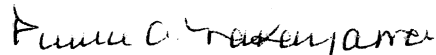
An amended opinion is being filed concurrently with this order. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended opinion to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order to those who received the previously filed opinion.

The motion for reconsideration is denied in all other respects.

Karen T. Nakasone,  
Deputy Public Defender,  
for defendant-appellant-  
petitioner on the motion



Steven H. Levinson



Fumua A. Taku

Ramon E. Dully, Jr.