

NO. 28225

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

STATE OF HAWAI'I, Plaintiff-Appellant,  
v.  
TIMOTHY L. RIPPE, Defendant-Appellee

EMERSON  
DITENGO, APPELLATE COURTS  
STATE OF HAWAII

2008 AUG 29 PM 1:49

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 06-1-0223)

ORDER DENYING MOTION FOR CLARIFICATION  
(By: Recktenwald, C.J., Foley and Fujise, JJ.)

Upon consideration of the August 11, 2008 Motion for Clarification filed by Defendant-Appellee Timothy L. Rippe, which this court deems to be a motion for reconsideration, the papers in support, and the records and files herein,

IT IS HEREBY ORDERED that the motion is denied. Since this court's July 31, 2008 opinion did not specify whether the circuit court should take additional evidence on remand, the decision whether or not to do so is committed to the sound discretion of the circuit court. See Interiors Contracting, Inc. v. Smith, Halander & Smith Associates, 881 P.2d 929 (Utah App. 1994) ("In the absence of specific instructions, the decision whether to take additional evidence on remand is within the sound discretion of the trial court."). We note that other appellate courts have afforded trial courts with such discretion in cases involving issues similar to those here. See, e.g., United States v. Thompson, 700 F.2d 944, 949 (5th Cir. 1983) (stating that, on remand, the trial court had discretion to receive further testimony regarding the existence of exigent circumstances);

People v. Mendoza-Balderama, 981 P.2d 150, 161 (Colo. 1999) (providing the trial court discretion to have "further proceedings" on remand to address the issue of probable cause and exigent circumstances). Even assuming arguendo that there could be circumstances in which we would limit the circuit court's discretion to take new evidence, see Southern v. State, 807 A.2d 13 (Md. 2007) (finding that the intermediate appellate court erred in allowing the State to present evidence on remand when the state failed to present any evidence on the issue during the prior proceedings in the trial court), such circumstances are not present here.

DATED: Honolulu, Hawai'i, August 29, 2008.

On the motion:  
Deborah L. Kim,  
Deputy Public Defender  
for Defendant-Appellee

*Man Hechtman*

Chief Judge

*Chaniel R. Foley*

Associate Judge

*Alice A. M. Frijm*

Associate Judge