

NO. 28583

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JENARO TORRES, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 05-1-2556)

ORDER GRANTING MOTION FOR RECONSIDERATION
TO CORRECT FOOTNOTE AND AMENDING OPINION

(By: Nakamura, Chief Judge, Fujise, and Leonard, JJ.)^{1/}

Plaintiff-Appellee State of Hawai'i (State) filed a "Motion for Reconsideration To Correct Inaccuracy in Published Opinion" (Motion for Reconsideration) on December 23, 2009. Specifically, the State requests that we correct a factual inaccuracy in footnote 15 on page 52 of our published opinion which states:

^{15/} We note that the State only argues that the circuit court did not err in admitting the time-frame testimony; it does not contend that any error in admitting such testimony should be viewed as harmless.

The State argues that footnote 15 is factually inaccurate because the State did argue during oral argument that any error in admitting Agent Robbins's time-frame testimony should be viewed as harmless. The State requests that footnote 15 be omitted or edited to accurately reflect the arguments it made at oral argument.

In its brief on appeal, the State only argued that the circuit court did not err in admitting Agent Robbins's time-frame testimony and did not contend that any error in admitting such testimony was harmless. However, upon reviewing a recording of the oral argument, we agree with the State that it did assert

^{1/} Associate Judge Alexa D.M. Fujise, a member of the panel on this appeal, is currently unavailable to sign but agrees to the order.

during oral argument that any error in admitting Agent Robbins's time-frame testimony was harmless. Therefore,

IT IS HEREBY ORDERED that the State's Motion for Reconsideration is granted and that the Opinion of this court, filed on December 15, 2009, is hereby amended so that footnote 15 on page 52 shall be modified read as follows, with the deleted text in brackets and the new material underscored:

^{15/} We note that in its brief on appeal, the State only [argues] argued that the circuit court did not err in admitting the time-frame testimony and [; it does] did not contend that any error in admitting such testimony should be viewed as harmless. During oral argument, the State argued that any error in admitting Agent Robbins's time-frame testimony was harmless.

The clerk of the court is directed to incorporate the foregoing changes in the original opinion and take all necessary steps to notify the publishing agencies of these changes.

DATED: Honolulu, Hawai'i, January 4, 2010.

On the motion:
Deirdre Marie-Iha
Deputy Solicitor General
Department of the Attorney
General
for Plaintiff-Appellee

Chief Judge

Associate Judge