

\*\*\* NOT FOR PUBLICATION \*\*\*

IV. CONCLUSION

In light of the foregoing analysis, we reverse the ICA's SDO, vacate the April 16, 2004 judgment and sentence of the district court, and remand the matter to the district court for the entry of a judgment of acquittal.

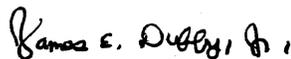
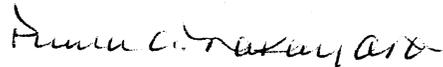
DATED: Honolulu, Hawai'i, October 18, 2005.



DISSENTING OPINION

(By: Nakayama and Duffy, JJ.)

Inasmuch as we agree with the ICA majority that there was substantial evidence to support the conclusion of the trier of fact, we would dismiss the application for writ of certiorari as improvidently granted.



On the writ:

Deborah L. Kim,  
Deputy Public Defender,  
for the defendant-appellant-  
petitioner, Robert Sherez