

CONCURRENCE AND DISSENT BY ACOBA, J.  
AND ORDER AMENDING DISSENTING OPINION

Having dissented to the published opinion, I would grant reconsideration on the basis of my dissent herein, and the Order of Amendment filed by even date herewith. In that regard, I would reverse the May 31, 2005 published opinion of the Intermediate Court of Appeals, and reverse the October 11, 2002 judgment of the family court of the fifth circuit.

Additionally, the dissenting opinion of Acoba, J., filed with the majority opinion on August 30, 2007, is amended as follows (deletions are bracketed and additions are double underscored):

**Page 1, lines 3 and 4 from the bottom:** Petitioner of abuse of a family or household member, [should] must be reversed [vacated, and Petitioner afforded a new trial]. Assuming arguendo

**Page 2 lines 1-2 from the top:** faulty [and that the violation of Petitioner's rights thereunder must also result in a new trial].

**Page 13, end of the first paragraph:** added) (citation omitted). Accordingly, as to Petitioner's issue (3), neither Staggs' nor Richard's hearsay statements, see supra note 8, were properly admitted at trial and, thus, the evidence was insufficient to convict. State v. Wallace, 80 Hawai'i 382, 910 P.2d 695 (1996). Thus, the court's judgment must be reversed.

**Page 13, line 3 from the bottom of the text:** application as plain error [requiring a new trial] implicating his

**Page 35, line 6-7 from the top:** Certainly, the ICA's and majority's [postponement of a new trial is] positions are particularly egregious in this case. The record

**Page 37, line 2 from the top:** inevitable" [necessity for a new trial] and would "result in a

**Page 37, line 12-14 from the top:** at 56, 760 P.2d at 676. [In line with Respondent's observation, t] This case [should] must be [remanded for trial] reversed because of plain error in the admission of Staggs' and Richard's hearsay statements and I would so hold.

**Page 86, lines 9-10 from the top:** May 31, 2005 published opinion[, vacate] and the court's October 11, 2002 judgment[, and remand the case for a new trial].

An amended dissenting opinion, incorporating the foregoing amendments, is being filed along with the amended opinion. The Clerk of the Court is directed to provide a copy of this concurrence and dissent and a copy of the amended dissenting 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 concurrence and dissent to those who received the previously filed opinion.

A handwritten signature in black ink, appearing to read "Sawyer", with a stylized flourish at the end.