

DISSENTING OPINION BY NAKAMURA, C.J.

I do not believe that the trial court abused its discretion in ruling that the prosecution had established a sufficient chain of custody regarding the challenged evidence. I therefore respectfully dissent.

On appeal, "unless the decision to admit evidence over a chain-of-custody objection constitutes a clear abuse of discretion, it will not be overturned." State v. Nakamura, 65 Haw. 74, 81, 648 P.2d 183, 188 (1982) (internal quotation marks and parentheses omitted) (quoting State v. DeSilva, 64 Haw. 40, 42, 636 P.2d 728, 730 (1981)); see State v. Loa, 83 Hawai'i 335, 348, 926 P.2d 1258, 1271 (1996) (stating that a trial court's determination of whether a proper foundation has been established "will not be overturned absent a showing of clear abuse").

The Hawai'i Supreme Court has adopted the following standard for evaluating whether a sufficient chain of custody for drug evidence has been established:

In the past, we have recognized that where the exhibit sought to be introduced is a chemical or drug in liquid or powder form which is readily susceptible of alteration or substitution, courts have been strict to require a showing of a chain of custody that minimizes the possibility that tampering has occurred. State v. Vance, 61 Haw. 291, 303, 602 P.2d 933, 942, reh. den., 61 Haw. 661, 602 P.2d 933 (1979); State v. Olivera, 57 Haw. 339, 344, 555 P.2d 1199, 1202 (1976). This Court, however, has not been so strict as to require that all possibilities of tampering be negated. We require only that it be established "that it is reasonably certain that no tampering took place, with any doubt going to the weight of the evidence." State v. Vance, supra at 304, 602 P.2d at 942; State v. Olivera, supra at 345, 555 P.2d at 1203. See State v. DeSilva, supra; State v. Antone, 62 Haw. 346, 615 P.2d 101 (1980).

Nakamura, 65 Haw. at 82, 648 P.2d at 188-89 (emphasis added).

In my view, under the circumstances of this case, the trial court did not abuse its discretion in determining that a sufficient chain of custody had been established. See People v. Porter, 362 N.Y.S.2d 249, 253-55 (N.Y. App. Div. 1974) (holding that "chain of possession" on sample was adequate despite death of chemist who analyzed the sample); People v. Hooks, 685 N.Y.S.2d 563, 564 (N.Y. App. Div. 1999) (holding that chain of custody was sufficient although chemist who analyzed the sample did not

**NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER**

testify); Sutton v. State, 478 S.E.2d 910, 914-15 (Ga. Ct. App. 1997) (holding that chain of custody was sufficient even though chemist who opened the evidence bag before the bag's contents were analyzed did not testify); Brooks v. State, 761 So. 2d 944, 948-49 (Miss. Ct. App. 2000) (holding that gaps in chain of custody were not sufficient to raise a reasonable inference of tampering or substitution of evidence.)

*Craig H. Nakamura*