

CONCURRING OPINION BY GINOZA, J.

I concur with the majority that the charge was sufficient in this case. I write separately because State v. Nesmith, No. CAAP-10-0000072 (Hawai'i App. June 22, 2011) relies on Hawaii Revised Statutes (HRS) § 806-28, which applies to Circuit Courts and in my view is not applicable to District Court proceedings, such as in this case. It is not necessary to rely on HRS § 806-28 to conclude that mens rea need not be included in the charge in this case.

*Frederic M. Ginoza*