

NO. 28584

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,  
Respondent/Plaintiff-Appellee

vs.

ZACHARIAH I. FITZWATER,  
Petitioner/Defendant-Appellant

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(HPD TRAFFIC NO. 1DTC-07-020562)

ORDER OF AMENDMENT  
(By: Acoba, J.)

The concurring and dissenting opinion by Acoba, J., appended to the opinion of the court filed on March 3, 2010, is amended as follows (deletions are bracketed and additions are double underscored):

**Lines 16-20 from the top of page 25:** at [353-54] 412, 910 P.2d at [346-47] 725 [(stating that "an expert's assumption regarding the correct calibration of his measuring device" constitutes inadmissible hearsay and prosecution did not call the "manufacturer's service representative to testify to calibration of the balance" )] (holding that "prosecution failed to lay a sound factual foundation that the . . . 'balance was accurate'" because there was "no reliable evidence showing [it] was in proper working order" where "[t]he service representative did not

testify at trial regarding his calibration of the balance").

The Clerk of the Court is directed to incorporate the foregoing changes in the original concurring and dissenting opinion by removing page 25 and replacing it with the page attached hereto and take all necessary steps to notify the publishing agencies of these changes.

DATED: Honolulu, Hawai'i, April 5, 2010.

Associate Justice