

Electronically Filed
Supreme Court
SCWC-12-0001114
04-MAY-2016
09:08 AM

IN THE SUPREME COURT OF THE STATE OF HAWAII

---o0o---

STATE OF HAWAII,
Respondent/Plaintiff-Appellee,

vs.

LAST KONY,
Petitioner/Defendant-Appellant.

SCWC-12-0001114

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-12-0001114; CR. NO. 11-1-1294)

MAY 4, 2016

CONCURRING OPINION BY RECKTENWALD, C.J.,
IN WHICH NAKAYAMA, J., JOINS

Respectfully, I write separately to concur in part with the Majority's opinion and concur in the judgment. I agree with the opinion with the exception of Part III.B.2, which addresses the merits of Last Kony's arguments regarding statistical evidence. For the reasons stated in Part III.B.1, Kony did not preserve his right to challenge the introduction of the statistical evidence at trial. Accordingly, although the

Intermediate Court of Appeals correctly affirmed Kony's judgment of conviction, it erred in reaching the merits of his arguments regarding the statistical evidence. That portion of its opinion should be vacated, and we need not "provide guidance" on that issue.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

