CONCURRING OPINION
BY INTERMEDIATE COURT OF APPEALS CHIEF JUDGE BURNS

I agree with the conclusion "that Officer Kashimoto had reasonable suspicion to stop Bohannon and, therefore, that the district court erred in granting Bohannon's motions to suppress and to dismiss."

Although I agree with the conclusion "that this court has jurisdiction to address the merits of the prosecution's appeal," I differ with the analysis stated by Justice Levinson.

Currently, the traffic calendar is a computer printout. Regarding each defendant whose case is being heard on that day, the printout contains all prior entries into the computer regarding past actions in the case. At each hearing, the court clerk writes or types on the traffic calendar, in the section pertaining to the defendant, the court's decision(s) in the defendant's case. This amended traffic calendar is not filed. Subsequently, often days later, this decision information is typed into the computer under the defendant's case number for the record and future retrieval.

The May 26, 2000 traffic calendar and the July 17, 2000 traffic calendar allegedly in the record on appeal are copies of printouts of the relevant pages of the traffic calendar after the information regarding the court's decisions on those days in those cases had been typed into the computer. I say "allegedly in the record on appeal" because, although these printout copies were transmitted by the district court to the appellate courts as

part of the record on appeal, there is no indication they were ever "filed" in the district court. None of these printout copies have been file-stamped. Therefore, according to Hawai‘i Rules of Appellate Procedure (HRAP) Rule 10 (2003)[1], these printout copies are not a part of the record on appeal.

In this case, the only evidence of the alleged facts that "on May 26, 2000, the district court clerk recorded the foregoing dispositions on the traffic calendar[,]" and that, on July 17, 2000, "the district court clerk recorded the foregoing disposition on the traffic calendar" are the printout copies. Nevertheless, for purposes of further discussion in the remainder of this opinion, I will assume that the printout copies are a part of the record on appeal.

In criminal cases, motions for reconsideration are not tolling motions. It follows that the prosecution's June 13, 2000

[1/] Hawai‘i Rules of Appellate Procedure Rule 10(a) (2003) states, in relevant part, as follows:

> The record on appeal shall consist of the following:
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> (1) the original papers filed in the court or agency appealed from;
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> (2) written jury instructions given, or requested and refused or modified over objection;
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> (3) exhibits admitted into evidence or refused;
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> (4) the transcript of any proceedings prepared pursuant to the provisions of Rule 10(b);
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> (5) in a criminal case where the sentence is being appealed, a sealed copy of the presentence investigation report; and
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> (6) the indexes prepared by the clerk of the court appealed from.

motion for reconsideration had no impact on the appealability of the May 26, 2000 order.

Assuming that the May 26, 2000 order was entered in the district court within the meaning of the Hawai‘i Rules of Penal Procedure (HRPP) (2003), the question is whether it was entered within the meaning of HRAP Rule 4(b) so as to trigger the thirty-day time period for the filing of a notice of appeal. In light of the definition of "entered" stated in HRAP Rule 4(b)(3), the answer is no because it was not "filed with the clerk of the court." Therefore, the thirty-day time period to file a notice of appeal did not commence.

The July 17, 2000 order was not appealable when entered within the meaning of HRPP Rule 44(b)(1) (1993) because it was not entered within the meaning of HRAP Rule 4(b)(3).

Both the July 17, 2000 order and the December 11, 2000/January 22, 2001 order were not appealable when entered within the meaning of HRPP Rule 44(b)(1) because they merely denied the prosecution's motions for reconsideration. A denial of a motion for reconsideration is not appealable prior to entry of the order sought to be reconsidered. In the absence of an appealable order granting the motion to dismiss and dismissing the case, neither order was appealable when entered.

The January 31, 2001 order was appealable when filed and was validly appealed by the February 15, 2001 notice of appeal. This valid appeal of the January 31, 2001 order allowed

a challenge of the December 11, 2000/January 22, 2001 order. State v. Hirano, 8 Haw. App. 330, 332 n.3, 802 P.2d 482, 484 n.3 (1990).

The majority's opinion concludes "that, in order to appeal a criminal matter in the district court, the appealing party must appeal from a written judgment or order that has been filed with the clerk of the court pursuant to HRAP Rule 4(b)(3)." Note that the word "written" is not used anywhere in HRAP Rule 4(b)(3). In my view, the "filed" requirement makes the "written" requirement unnecessary. I am unaware of any other kind of judgment or order that can be "filed." Moreover, the "written" requirement is not an issue. The issue is whether either of the following would satisfy HRAP Rule 4(b)(3): (a) the filing of the traffic calendar with the court clerk's written or typed disposition entries on it or (b) the filing of a copy of the relevant computer printout pages of the traffic calendar after the disposition information has been typed into the computer.

In my view, as long as HRAP Rule 4(b)(3) requires a "filed" "judgment or order", we need a document, signed by the judge and file-stamped, that states the relevant information. A copy of this document can be given to the defendant and will be the source of the unofficial information in the computer.