

*** NOT FOR PUBLICATION ***

NO. 25986

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

LORNA ALVAREZ, Defendant-Appellee

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 02-1-419)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal by Plaintiff-Appellant State of Hawai'i (Appellant State) from the Honorable Terrence T. Yoshioka's July 1, 2003, findings of fact, conclusions of law, and order denying Appellant State's motion for reconsideration of an order granting Defendant-Appellee Lorna Alvarez's (Appellee Alvarez) motion to suppress statements from evidence. "The Prosecution's right of appeal in criminal cases is limited to those instances set forth in HRS § 641-13 [(1993)]." State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) (citations, internal quotation marks, and brackets omitted). HRS § 641-13(7) (1993) authorizes Appellant State to appeal "[f]rom a pretrial order granting a motion for the suppression of evidence[.]" However, Rule 4(b)(3) of the Hawai'i Rules of Appellate Procedure "requires that a final and appealable judgment or order in criminal cases be in written form." State v. Bohannon, 102 Hawai'i 228, 235, 74 P.3d 980, 987 (2003) (citation omitted). Consequently, Appellant State "can only appeal from a written order or judgment filed with the clerk." Id. at 236, 74 P.3d at 988 (citation and internal quotation marks omitted). The record on appeal does not contain a written order granting Appellee

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Alvarez's motion to suppress statements from evidence. No order in the record contains operative language that suppresses Appellee Alvarez's statements from evidence. "Absent a written order of suppression," Appellant State's "notice of appeal in this case did not give rise to appellate jurisdiction." Id. (citation and internal quotation marks omitted).

Granted, Appellant State appealed from a written order, namely the July 1, 2003, findings of fact, conclusions of law, and order denying Appellant State's motion for reconsideration of the order granting Appellee Alvarez's motion to suppress statements from evidence. Nevertheless, "we strictly construe HRS § 641-13 [(1993).]" State v. Timoteo, 87 Hawai'i 108, 112, 952 P.2d 865, 869 (1997). HRS § 641-13(7) (1993) does not authorize an appeal from an order denying a motion for reconsideration. The July 1, 2003 order is not the functional equivalent of a suppression order because it does not contain operative language that suppresses specific statements from evidence. Therefore, the July 1, 2003 order is not independently appealable, and Appellant State's appeal is premature. Accordingly,

IT IS HEREBY ORDERED that Appellant State's appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 17, 2003.