

NOT FOR PUBLICATION

NO. 26047

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MANNY ROMO HERNANDEZ, Defendant-Appellant

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD Traffic No. 5523313MO)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Foley, JJ.)

Defendant-Appellant Manny Romo Hernandez (Hernandez) appeals, *pro se*, from the Judgment entered by the District Court of the First Circuit (the district court)^{1/} on July 30, 2003, finding him "guilty" of unsafe changing of lanes, in violation of Hawaii Revised Statutes (HRS) § 291C-49 (1993).^{2/} The appeal was

^{1/} The Honorable T. David Woo presided.

^{2/} Hawaii Revised Statutes § 291C-49 (1993) provides as follows:

Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

- (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.
- (2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(continued...)

assigned to this court on March 25, 2004.

Hernandez argues that his rights were denied because the district court based its ruling on lies, as well as the misleading and false testimony, of a police officer. In his opening brief, Hernandez specifically denies eight of the "[o]fficer's allegation[s] as to the truth herein."

It is well-established, however, that "an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trial judge." State v. Buch, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996) (quoting Domingo v. State, 76 Hawai'i 237, 242, 873 P.2d 775, 780 (1994)).

Moreover, Hawai'i Rules of Appellate Procedure Rule 10(b)(3) requires that "[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." Because Hernandez failed to order a transcript of the proceedings before the district court for inclusion in the record on appeal, we are unable to determine the

^{2/}(...continued)

- (3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.
- (4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

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merits of his argument and thus leave the district court's findings and conclusions undisturbed. State v. Goers, 61 Haw. 198, 202-03, 600 P.2d 1142, 1144-45 (1979).

We note, however, that the penalty for committing the offense of unsafe changing of lanes, in violation of HRS § 291C-49, does not include imprisonment. See HRS § 291C-161 (Supp. 2004). Therefore, the offense is not criminal in nature, and the district court improperly found Hernandez "guilty" of the offense. See State v. Rees, slip op. (App. No. 26470, May 27, 2005) at 18. Accordingly, we vacate the Judgment below and remand for entry of a replacement judgment in favor of Plaintiff-Appellee State of Hawai'i that complies with the applicable statutes governing traffic infractions.

DATED: Honolulu, Hawai'i, June 20, 2005.

On the briefs:

Manny Romo Hernandez,
defendant-appellant, *pro se*.

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