

NO. 27467

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

STATE OF HAWAI'I, Plaintiff-Appellant, v.
DANIEL STEPHEN CROWELL, Defendant-Appellee

FILED
STATE OF HAWAI'I
COURTS
E. J. RICHMOND

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,
WAILUKU DIVISION
(CASE NOS. TR6-11: 6/2/05)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Plaintiff-Appellant the State of Hawai'i (the State) appeals from the Findings of Fact and Conclusions of Law and Order filed on June 27, 2005 in the District Court of the Second Circuit, Wailuku Division (district court).^{1/}

On February 25, 2005 the State charged Defendant-Appellee Daniel Stephen Crowell (Crowell) via Complaint with one count of Operating a Vehicle Under the Influence of an Intoxicant (DUI) (Count 1), in violation of Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2004); one count of Disregarding Longitudinal Traffic Lane Markings (Count 2), in violation of HRS § 291C-38 (1993); one count of Failure to Drive on Right Side of Roadway

^{1/} Per diem District Court Judge Jan K. Apo presided.

(Count 3), in violation of HRS § 291C-41 (1993); two counts of Turning Movements and Required Signals (Counts 4 & 5), in violation of HRS § 291C-84(d) (1993); and one count of Noncompliance with Speed Limit (Count 6), in violation of HRS § 291C-102(b) (Supp. 2005).

On March 11, 2005, Crowell filed a Motion to Suppress. In his motion, Crowell alleged that Police Officer Krau (Officer Krau), the arresting officer, possessed neither reasonable suspicion nor probable cause to stop Crowell's vehicle or to subsequently arrest him. In the Memorandum in Support of Motion, Crowell accused Officer Krau of being a DUI zealot, habitually in the practice of making pretextual stops. The State filed its opposition memorandum on May 5, 2005.

On May 20 and 24, 2005, the district court held hearings on Crowell's motion. On June 27, 2005 the district court issued its Findings of Fact and Conclusions of Law and Order granting Crowell's Motion to Suppress. In its Order, the district court found the testimonies of Crowell, Sy Peters, and Jeral Fukuda to be more credible than that of Officer Krau. Additionally, the district court concluded that Officer Krau possessed neither reasonable suspicion to stop Crowell's vehicle nor probable cause to arrest Crowell. The State timely appealed.

On appeal, the State argues the following points of error: (1) the district court erred in granting Crowell's Motion to Suppress when the court wrongly admitted and considered irrelevant evidence of Officer Krau's subsequent traffic stop of the same vehicle, and (2) alternatively, even if evidence of the subsequent traffic stop was relevant, the district court abused its discretion when it admitted and considered such highly prejudicial propensity evidence in granting the Motion to Suppress.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we conclude that it is the province of the district court, not the appellate court, to determine the credibility of witnesses. In addressing the issue of witness credibility, this court has steadfastly held:

It is for the trial judge as fact-finder to assess the credibility of witnesses and to resolve all questions of fact; the judge may accept or reject any witness's testimony in whole or in part. Further, an appellate court will not pass upon the trial judge's decisions with respect to credibility of witnesses and the weight of the evidence, because this is the province of the trial judge.

State v. Balberdi, 90 Hawai'i 16, 21, 975 P.2d 773, 778 (App. 1999) (internal quotation marks, citations, and brackets omitted); accord State v. Topasna, 94 Hawai'i 444, 461, 16 P.3d

849, 866 (App. 2000) ("To the extent the findings were the court's judgment as to the credibility of [defendant's] testimony about his state of mind, we cannot disturb them."); State v. Lioen, 106 Hawai'i 123, 130, 102 P.3d 367, 374 (App. 2004) ("We also give full play to the province of the trier of fact to determine credibility, weigh the evidence, and draw rational inferences from the facts."); State v. Barros, 105 Hawai'i 160, 170, 95 P.3d 14, 24 (App. 2004) ("An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge."); see also Tachibana v. State, 79 Hawai'i 226, 239, 900 P.2d 1293, 1306 (1995); State v. Dow, 96 Hawai'i 320, 323, 30 P.3d 926, 929 (2001).

A trial court, as fact finder, may accept or reject any of the witnesses' testimonies in whole or in part, and "may draw all reasonable and legitimate inferences and deductions from the evidence[.]" Barros, 105 Hawai'i at 170, 95 P.3d at 24. Here, the district court weighed the demeanor and presentation of all the witnesses and determined the testimonies of Crowell and the witnesses to be more credible than the testimony of Officer Krau. This determination is entirely in the district court's province, and this court will not disturb it.

Therefore,

The Findings of Fact and Conclusions of Law and Order filed on June 27, 2005 in the District Court of the Second Circuit, Wailuku Division, is affirmed.

DATED: Honolulu, Hawai'i, October 6, 2006.

On the briefs:

Peter A. Hanano,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellant.

Richard L. Rost
for Defendant-Appellee.


Presiding Judge


Associate Judge


Associate Judge