

NO. 28225

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Petitioner-Plaintiff-Appellant

vs.

TIMOTHY L. RIPPE, Respondent-Defendant-Appellee

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CR. NO. 06-1-0223)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI,  
VACATING ORDER DISMISSING APPEAL AND  
REMANDING APPEAL TO THE INTERMEDIATE COURT OF APPEALS  
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner-appellant State of Hawai'i applies for a writ of certiorari to review the Intermediate Court of Appeals' January 19, 2007 order dismissing the State's appeal for lack of appellate jurisdiction. The Intermediate Court of Appeals concluded that the circuit court abused its discretion in granting the State's motion for an extension of time to appeal the circuit court's August 24, 2006 order suppressing evidence. The extension was sought and granted to permit the circuit court to hear the State's motion for reconsideration of the suppression order, but the Intermediate Court of Appeals concluded that the motion for reconsideration was not authorized by the Hawai'i Rules of Penal Procedure and therefore the filing of such motion did not constitute good cause for extending the time to appeal pursuant to HRAP 4(b)(5) and the State's appeal of the suppression order was untimely.

E.M. RINANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

The circuit court had inherent power to reconsider its suppression order (see HRS § 603-21.9(6) (1993); Kawamata Farms v. United Agri Products, 86 Hawai'i 214, 242, 948 P.2d 1055, 1083 (1997)) and such power has been recognized by the Hawai'i appellate courts (see e.g. State v. Brandimart, 68 Haw. 495, 497, 720 P.2d 1009, 1110 (1986); State v. Bohannon, 102 Hawai'i 228, 233-35, 74 P.3d 980, 985-87 (2003); State v. Ortiz, 4 Haw. App. 143, 148-49, 662 P.2d 517, 523-24 (1983), aff'd 67 Haw. 181, 683 P.2d 822 (1984); State v. Matsunaga, 82 Hawai'i 162, 165-66, 920 P.2d 376, 379-80 (App. 1996), cert. denied, 82 Hawai'i 360, 922 P.2d 973 (1996)). Reconsideration of the suppression order was sought by the State for the legitimate reason that suppression was granted on the point of law raised one day before the suppression hearing for which the State had no opportunity to respond. The circuit court's inability to hear the motion for reconsideration before expiration of the time for appealing the suppression order constituted good cause for extending the time for appeal pursuant to HRAP 4(b)(5). Extending the time for appeal was not an abuse of discretion and the State's appeal of the suppression order was timely. Therefore,

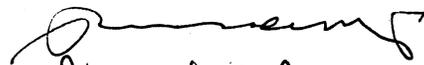
IT IS HEREBY ORDERED that the application for a writ of certiorari is accepted.

IT IS FURTHER ORDERED that: (1) the January 19, 2007 order of the Intermediate Court of Appeals dismissing No. 28225 for lack of appellate jurisdiction is vacated and (2) No. 28225

is remanded to the Intermediate Court of Appeals for disposition on the merits.

DATED: Honolulu, Hawai'i, April 26, 2007.

  
Steve Levinson  
Anna C. Newberry

  
Kama E. Dubois