

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellant

vs.

ALICIA ANNE BOHANNON, Defendant-Appellee.

NO. 24095

MOTION FOR CLARIFICATION AND ORDER OF AMENDMENT
(TRAFFIC NO. 99-417579)

SEPTEMBER 2, 2003

ACOPA, J.

Upon consideration of the motion for clarification of the dissenting opinion filed by Plaintiff-Appellant State of Hawai'i, the attachments thereto, and the record,

IT IS HEREBY ORDERED that the motion is granted and footnote 11 on page 15 of the dissenting opinion is amended as follows (deleted material is bracketed and new material is double underscored):

The prosecution [argues that its filing of the motion for reconsideration tolled the time for appeal.] states that "[t]he motion for reconsideration was the continuing proceeding of the motion to suppress. Inasmuch as the State has the right to appeal from the order granting the motion to suppress under H.R.S. [s]ection 641-13(7) [1993], that right encompasses a right to appeal from the subsequent order denying the State's motion to reconsider said order granting the motion to suppress." (Emphasis omitted.) (Emphasis added.) The prosecution is mistaken. It must appeal from the order granting the motion to suppress. In State v. Brandimart, 68 Haw. 495, 720 P.2d 1009 (1986), this court held that a motion to reconsider filed by the prosecution under HRPP Rule 47 following the granting of a

motion to suppress does not toll the time for appeal of the suppression order. The Brandimart court reasoned:

Rule 47 of HRPP is silent as to any tolling of time for filing a notice of appeal. Under Rule 4(b) of HRAP, only a timely motion in arrest of judgment or for a new trial is a tolling motion.

. . . .
HRAP and HRPP are silent as to whether [a] motion [for reconsideration] tolls the thirty (30) day period for filing a notice of appeal. In the absence of an express statement to the contrary, we hold that the motion for reconsideration is not a tolling motion.

Id. at 497, 720 P.2d at 1010 (emphases added). Under Brandimart, the prosecution's motion for reconsideration is not a tolling motion. Therefore, the motion for reconsideration on June 13, 2000 did not toll the time for appeal of the trial court's oral order.

An amended dissenting opinion, incorporating the foregoing amendments, is being filed concurrently with this order. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended dissenting opinion to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed opinion.

Mangmang Qiu Brown,
Deputy Prosecuting Attorney,
City & County of Honolulu,
on the motion for plaintiff-
appellant.