

NO. CAAP-14-0000553

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

STATE OF HAWAI'I, Plaintiff-Appellant/Cross-Appellee, v.  
DUSTIN J. BARTON, Defendant-Appellee/Cross-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CASE NO. 2DTA-13-00782)

ORDER DISMISSING THE CROSS-APPEAL  
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record in CAAP-14-0000553, it appears that this court lacks appellate jurisdiction over the cross-appeal by Defendant-Appellee-Cross Appellant Dustin Barton (Barton). On February 18, 2014, the district court issued its Findings of Fact and Conclusions of Law; Order [Granting] Motion to Suppress which granted Barton's Motion to Suppress Evidence. On March 17, 2014, Plaintiff-Appellant-Cross Appellee the State of Hawai'i (State) filed a Notice of Appeal from the Findings of Fact and Conclusions of Law; Order [Granting] Motion to Suppress. On March 25, 2014, Barton filed a Notice of Cross-Appeal from the same Findings of Fact and Conclusions of Law; Order [Granting]

Motion to Suppress. "If a timely notice of appeal is filed by a party, any other party may, if allowed by law, file a cross-appeal." HRAP Rule 4.1(a)(1). "The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision." State v. Poohina, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (citation and internal quotation marks omitted). Barton contends that the district court granted the motion in part and denied it in part.

There is no statutory authority that allows Barton to file an appeal from an order granting his Motion to Suppress. The denial of a motion to suppress is an interlocutory order that requires certification by the trial court in order to immediately appeal the decision. HRS § 641-17; State v. Irvine, 88 Hawai'i 404, 406-07, 967 P.2d 236, 238-39 (1998). Even the district court denied the Motion to Suppress Evidence in part, Barton did not request, and the district court did not grant, permission to take an interlocutory appeal. Thus, this court lacks appellate jurisdiction over the cross-appeal. Irvine, 88 Hawai'i at 407, 967 P.2d at 239.

Therefore, IT IS HEREBY ORDERED that the cross-appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 3, 2014.

Presiding Judge

Associate Judge

Associate Judge