

NOT FOR PUBLICATION

NO. 26344

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
LARRY V. IKEI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 5643693MO)

SUMMARY DISPOSITION ORDER

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

On November 16, 2003, at "0454" hours, Defendant-Appellant Larry Vincent Ikei (Ikei) was given a traffic citation for violating Hawaii Revised Statutes (HRS) § 291C-84 (1993)¹ by

¹ The Hawaii Revised Statutes (HRS) (1993) state, in relevant part, as follows:

§ 291C-81 Required position and method of turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

- (1)
- (2) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
- (3)

. . . .

§ 291C-84 Turning movements and required signals. (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 291C-81, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

NOT FOR PUBLICATION

turning left from Kalākaua Avenue onto Lewers Street from a lane other than the extreme left-hand lane and without signaling.

On January 14, 2004, Judge Hilary Benson Gangnes presided over a bench trial, found Ikei guilty, and sentenced him to pay a \$50 fine, a \$20 administrative fee, and a \$7 driver's education fee.

Ikei filed a notice of appeal on January 14, 2004. This appeal was assigned to this court on August 24, 2004.

In his handwritten opening brief, Ikei states, in relevant part, as follows:

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning;

(c)

(d) The signals provided for in section 291C-85(b) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

[§ 291C-85] Signals by hand and arm or signal lamps. (a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

[§ 291C-86] Method of giving hand-and-arm signals. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) Left turn--hand and arm extended horizontally.
- (2) Right turn--hand and arm extended upward.
- (3) Stop or decrease speed--hand and arm extended downward.

NOT FOR PUBLICATION

the citing officer was not present in Court to prove the case beyond a reasonable doubt. . . . The Officer testifying cannot or couldn't prove to the Court that he was there on the night of the violation. He couldn't adequately identify me to the lower court, and therefore I feel Judge Gangnes shouldn't allow testimony from this officer (Khari). How could she allow the officer's statement of "I signed the back of the citation[?]" Anyone in the Honolulu Police department could have signed the back of the citation. He did not sign the back of my citation, and therefore the lower court made a clear error. District court abused its discretion in admitting police officer's opinion testimony regarding defendant making a left turn from the second lane without a signal.

Where Officer's opinion was not based solely on Officer's personal knowledge but in significant part upon hearsay report of another officer, it was not admissable [sic] as lay opinion.

Ikei's handwritten reply brief includes copies of what appear to be the following two copies of the relevant traffic citation entitled "COMPLAINT & SUMMONS" and numbered "5643693 MO": (1) the "DISTRICT COURT COPY" and (2) the "PAYMENT COPY". Both copies have the signature of "MPO I V. Legaspi" on the "Complainant's Signature" line. Only the "DISTRICT COURT COPY" has, on the "Date of Issue" line, what appears to be the hand-printed name "T Khari".

In his reply brief, Ikei states, in relevant part, as follows:

Supple[me]ntal evidence clearly shows Officer Kharii as a possible witness and not the citing Officer. The question to the Supreme Court would be is [sic] can the State of Hawaii prove the case beyond a reasonable doubt using testimony from a witness who cannot prove he was there on the night of the violation.

Defendant's copy doesn't show any indication of Officer Kharii being at the scene on the night of the violation. Testimony by a witness is deemed as being hearsay and the lower made [sic] an error of using an Officer's testimony who may not have been on the scene. This is a violation of the defendant's Constitutional right to due process.

(Emphasis in original.)

NOT FOR PUBLICATION

As noted in the answering brief, Ikei did not cause a transcript of the trial to be made a part of the record on appeal. In the absence of such transcript, we are unable to discern what happened at trial. Consequently, Ikei has failed to sustain his burden on appeal.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the January 14, 2004 judgment appealed from in this case is affirmed.

DATED: Honolulu, Hawai'i, February 17, 2005.

On the briefs:

Larry V. Ikei
Pro Se Defendant-Appellant

Chief Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee

Associate Judge

Associate Judge