

NO. 22888

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
REHAN KHALIL, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. TR29-30:8/6/99)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Rehan Khalil (Khalil) appeals the district court's August 6, 1999 judgment convicting him of Count I, Driving under the Influence of Intoxicating Liquor (DUI), Hawai'i Revised Statutes (HRS) § 291-4 (Supp. 1999), and Count II, Speeding, HRS § 291C-102(b) (1993). For the DUI offense, Khalil was sentenced to a 14-hour minimum alcohol abuse program, a substance abuse assessment, a 90-day license suspension concurrent with administrative revocation (30 days absolute and 60 days for work/court-related driving only), and a fine of \$150, plus a \$107 driver education assessment. For the speeding offense, Khalil was fined \$100, plus a \$7 driver education assessment.

Police Officer Eric Correa (Officer Correa) testified that Khalil's "mental coordination, his physical coordination and judgment were all impaired to the point where it was unsafe for

him to operate a motor vehicle." Khalil did not object to this testimony.

In this appeal, Khalil contends as follows:

A. THE LOWER COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED OFF. CORREA TO TESTIFY TO THE LEGAL CONCLUSION THAT KHALIL COULD NOT SAFELY OPERATE HIS VEHICLE.

B. THE STATE'S EVIDENCE WAS INSUFFICIENT TO LEAD THE COURT TO CONCLUDE THAT REHAN KHALIL WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR SUCH THAT HIS NORMAL MENTAL FACULTIES WERE IMPAIRED OR THAT HE WAS UNABLE TO CARE FOR HIMSELF AND GUARD AGAINST CASUALTY PURSUANT TO HRS § 291-4(A).

Khalil's syllogism appears to be as follows: (1) an expert's opinion on matters within the competence of the jurors is inadmissible; (2) Officer Correa was an expert because he had been certified by the National Highway Traffic Safety Administration to administer the field sobriety tests and to be an instructor; (3) Officer Correa's testimony that Khalil's faculties were impaired to the point where he was unable to operate his vehicle safely was an expert's opinion; (4) although it is presumed that a judge in a bench trial is not influenced by incompetent evidence, there is more than a reasonable possibility that the improper legal conclusion rendered by Officer Correa contributed to Khalil's conviction.

We disagree that Officer Correa's testimony quoted above was a "legal conclusion." It was a statement of ultimate fact. Even assuming Officer Correa's testimony quoted above was incompetent evidence because it was a fact within the competence of the finder of fact, we conclude that the presumption that a

judge in a bench trial is not influenced by incompetent evidence mandates our decision that the error in admitting the incompetent evidence was not plain error.

We further conclude that evidence of the following was sufficient evidence to convict him of the charged offense:

(1) Khalil "thought the speed limit was 45 . . . and that he was going about 40 miles an hour" when in fact the speed limit was 35 and he was going more than 50 mph; (2) Khalil had consumed alcoholic beverages that night and had the odor of alcohol on his breath; and (3) Khalil's performance of the three field sobriety tests.

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 judgment filed on August 6, 1999, is affirmed.

DATED: Honolulu, Hawai'i, March 2, 2001.

On the briefs:

Linda C. R. Jameson,
Deputy Public Defender,
City and County of Honolulu,
for Defendant-Appellant.

Chief Judge

Associate Judge

Richard K. Minatoya,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.

Associate Judge