

*** NOT FOR PUBLICATION ***

NO. 25296

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

SHANNON M. CLANCEY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NOS. 001474470, 001474483, and 001474485)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-appellant Shannon M. Clancey appeals from the August 21, 2002 judgment of the district court of the first circuit, the Honorable Fa'auuga To'oto'o presiding, convicting Clancey of (1) driving under the influence of intoxicating liquor (DUI), in violation of Hawai'i Revised Statutes (HRS) § 291-4(a)(1) (Supp. 2000),¹ (2) making an unsafe lane change, in violation of HRS § 291C-49(1) (1993),² and (3) violating the

¹ HRS § 291-4(a)(1) provides in relevant part:

- (a) A person commits the offense of driving under the influence of intoxicating liquor if:
- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty[.]

² HRS § 291C-49(1) provides in relevant part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

- (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

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basic speed rule, in violation of HRS § 291C-101 (1993).³ On appeal, Clancey challenges only her DUI conviction, arguing that the district court erred by (1) denying her motion to dismiss because the arresting officer did not have reasonable suspicion to order her out of her vehicle, and (2) failing to obtain an on-the-record waiver of her right to testify, as required by Tachibana v. State, 79 Hawai'i 226, 900 P.2d 1293 (1995). The State of Hawai'i [hereinafter, "the prosecution"] concedes that the district court failed to engage in an on-the-record waiver of Clancey's right to testify, but contests that the arresting officer had reasonable suspicion to order Clancey out of her vehicle.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) the district court did not err by denying Clancey's motion to dismiss, as Clancey's (a) going 75-85 miles per hour in a 45 mile per hour zone, (b) drifting into another lane on four occasions, (c) straddling two lanes of traffic, (d) almost hitting the median, (e) slurred speech, (f) bloodshot and glassy eyes, and (g) flushed face provided the arresting officer with specific articulable facts to support a reasonable suspicion that Clancey was driving under the influence of intoxicating liquor; and (2) the district court erred by failing to obtain an on-the-record waiver of Clancey's right to testify, as required by Tachibana. Therefore,

³ HRS § 291C-101 provides in relevant part that "[n]o person shall drive a vehicle at a speed greater than is reasonable and prudent and having regard to the actual and potential hazards and conditions then existing. . . ."

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IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and this case remanded for a new trial.

DATED: Honolulu, Hawai'i, August 29, 2003.

On the briefs:

R. Patrick McPherson
for defendant-appellant
Shannon M. Clancey

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for plaintiff-appellee
the State of Hawai'i