

**NOT FOR PUBLICATION**

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NO. 24208

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
MARGARET LEE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF FIRST CIRCUIT  
(TRAFFIC NO. 5051779MO)

MEMORANDUM OPINION

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

In this traffic infraction case, Margaret A. Lee (Lee) appeals, *pro se*, the March 22, 2001 judgment entered by the district court of the first circuit. The court assessed Lee a total of \$127.00 for exceeding the posted speed limit by 20 miles per hour (mph), in violation of Hawaii Revised Statutes (HRS) § 291C-102 (1993). On appeal, Lee attacks the sufficiency of the evidence; specifically, Lee argues that the State failed to establish (1) that the site of the violation was a highway under the jurisdiction of the State director of transportation, and (2) that the speed limit signs were official State signs.

Although the State charged Lee with violating HRS § 291C-102(b), it is apparent the court instead found that Lee had violated HRS § 291C-102(a) -- in effect amending the oral charge at the last moment, to the prejudice of Lee's substantial rights.

Further, the State failed to produce sufficient evidence at trial to support the subsection (b) violation it had charged. We therefore reverse the March 22, 2001 judgment.

HRS § 291C-102 provides:

(a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under the director's jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.

"HRS § 291C-102 imposes upon the [State] the burden of proving that a maximum speed limit has been established in one of the two ways specified by the statute." State v. Lane, 57 Haw. 277, 278-79, 554 P.2d 767, 769 (1976) (per curiam).

Just before the start of her March 22, 2001 trial, Lee was orally charged, as follows:

[DEPUTY PROSECUTING ATTORNEY (DPA)]: Ms. Lee[,] on or about November 24, 2000, in the City and County of Honolulu, State of Hawaii, you did drive a vehicle at a speed greater than the maximum speed limit as stated on signs placed by the director of transportation with respect to highways under the director's jurisdiction by traveling at a speed of 45 miles in a 25 mile per hour zone, thereby violating Section 291C-102(b) of Hawaii Revised Statutes. Do you understand this charge?

[Lee]: I understand it.

[DPA]: And how do you plead?

[Lee]: Not guilty.

(Emphases supplied.)

Hence, Lee was charged with violating HRS § 291C-102(b), pertaining to State highways. Cf. State v. Vallejo, 9 Haw. App. 73, 77-78, 823 P.2d 154, 157 (1992) (where the oral charge referred to an offense "in violation of [HRS § 291C-102(a),] which pertains to a county road[,]" the driver "was

clearly charged with violating HRS § 291C-102(a) and was informed that the charge 'pertain[ed] to a county road[]'" (some brackets in the original; internal block quote format omitted)); State v. West, 95 Hawai'i 61, 70, 18 P.3d 923, 932 (App. 2000) ("At the outset of the trial, West was orally 'arraigned' and charged with 'violating [HRS § 291C-102, subsection (a)].' Therefore, West was specifically notified that she was being accused of speeding on a county, not state, road or highway." (Brackets in the original.)), overruled on other grounds, 95 Hawai'i 22, 18 P.3d 884 (2001).

Accordingly, the State was required to prove that the site of the violation was a "highway[]" under the [State director of transportation's] jurisdiction[,]" and that the speed signs were "official signs[.]" HRS § 291C-102(b). See also Lane, 57 Haw. at 278, 554 P.2d at 769 ("If the conviction was for violation of [HRS] § 291C-102(b), proof was required that the designated stretch of Pali Highway was under the jurisdiction of the director of transportation and that the speed signs had been placed by that officer.").

Testifying for the State at trial, police officer Richard Kim (Officer Kim) remembered that on November 24, 2000, he cited Lee for speeding. Officer Kim identified the intersection of Bingham and Farrington streets as the location of the violation. He had "shot" the front grill of Lee's car with a certified and tested laser gun, while Lee was driving on Bingham

Street after getting off the H-1 freeway at the Bingham Street off ramp. The laser gun indicated that Lee was going 45 mph in a 25 mph zone. Further on direct, Officer Kim recalled:

Q Were there any speed limit signs posted in the area?  
A Yes, there were.  
Q And where were they located?  
A There were two as you got off the off ramp and there was one before you got off the off ramp which said exit 25 miles per hour.  
Q Would [Lee] have passed these signs?  
A Yes.  
Q And were these signs clearly visible and legible?  
A Yes.  
Q Are you familiar with City and County of Honolulu or State of Hawaii traffic control devices?  
A Yes.  
Q And how did you become familiar with that?  
A Through my training and experience.  
Q Have you seen some of their traffic control signs before?  
A Yes, I have.  
Q And were these signs that you mentioned official City and County of Honolulu or State of Hawaii traffic control signs?  
A Yes.  
Q What speed was indicated on these signs?  
A 25 miles per hour.

(Emphasis supplied.)

At the end of his closing argument, the DPA stated: "The officer did testify there were official City and County signs so for these reasons, the State ask [(sic)] the Court to find [Lee] guilty." (Emphasis supplied.) Lee responded by moving for a judgment of acquittal, "on the ground that the State has not shown that the speed sign that I had passed was authorized speed signs or sign. The State had not provided requisite evidence that these were State signs." (Emphasis supplied.) In denying Lee's motion, the court<sup>1</sup> ruled as follows:

The Court finds Ms. Lee first of all that on November 24[], 2000, City

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<sup>1</sup> The Honorable Russel S. Nagata, judge presiding.

and County of Honolulu, at H1 Freeway, Bingham Street exit that you did exit that freeway in driving your motor vehicle. That on Bingham Street exit that you did pass official either City and County or State of Hawaii signs which at that time did give notice of speed limit of 25 miles per hour on Bingham Street; that upon passing these signs, nearing Farrington Street, intersection of Bingham Street that Officer [Kim] did conduct a laser reading of your vehicle at which time a laser reading did show a speed of 45 miles per hour. And [Officer Kim] was certified to operate that laser; that he did do the requisite checks and this laser was in proper working order.

As to your first contention, Ms. Lee, as to the proper, if I can get the proper safety speed to come off Bingham onto, come off H-1 Freeway to Bingham would be a certain kind of speed that would mean assisting you not exiting freeway exactly 25 miles per hour I can understand your contention but at this time it was shown that it was not exactly at the exit to Bingham Street that you were marked. It was really at the Farrington Street intersection a distance from the exit of the freeway.

Also, the Court finds at this time [Officer Kim] credible as to him net [(sic)] lasering your car as opposed to any other car. Therefore, as to all these cases, the Court finds you guilty. . . . And [the] State did prove that these were official signs, speed signs, through the testimony of [Officer Kim] through his training and experience.

(Emphasis supplied.) At this point, Lee interjected:

[Lee]: These signs are they State or City?

THE COURT: The signs did say that they were official City and County of Honolulu signs, that's the testimony. So in this case, there is 20 miles over so the penalty here is \$100 plus \$7 DE plus \$20 admin [(sic)] cost, total \$127.

(Emphases supplied.)

Clearly, the State argued, and the court found, a violation that had not been charged. Given Lee's direct and unequivocal question to the court, we cannot surmise that the court's response was a mere misstatement. In effect, the court permitted the State to amend the oral charge to a subsection (a) violation, rather than the subsection (b) violation originally charged. This effectively occurred as the court was rendering its verdict or, at the earliest, at the end of the State's closing argument -- at the last minute, or worst, at the last

second. This was reversible error because it obviously prejudiced Lee's substantial rights. Hawai'i Rules of Penal Procedure (HRPP)<sup>2</sup> Rule 7(f) (West 2001) ("The court may permit a charge other than an indictment to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced."). Cf. State v. Matautia, 81 Hawai'i 76, 84, 912 P.2d 573, 581 (App. 1996) (vacating and remanding pursuant to HRPP Rule 7(f): "In this case, the written complaint against Defendant accused him of committing the offense of driving while license suspended. However, just minutes before trial was to commence, the complaint was amended to instead accuse Defendant of committing the offense of driving without a license. Since the elements of the amended charge offense are different from the elements of the charged offense, Defendant clearly did not have time to prepare an adequate defense to the new charge and was

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<sup>2</sup> Hawaii Revised Statutes § 291D-13(a) (Supp. 2002) provides that a trial *de novo* on an alleged traffic infraction may be requested "pursuant to the rules of penal procedure and rules of the district court, provided that arraignment and plea for such trial shall be held at the time of trial." Hawai'i Civil Traffic Rules (HCTR) Rule 19(a) (West 2001) provides: "Trial shall be held pursuant to the Hawaii Rules of Penal Procedure [(HRPP)], Rules of the District Court, and Hawaii Rules of Evidence. The arraignment and plea shall be held at the time of trial. The prosecutor will be present at the trial and must prove the charge beyond a reasonable doubt." See also State v. West, 95 Hawai'i 61, 70-71, 18 P.3d 923, 932-33 (App. 2000) ("HCTR Rule 19 expressly provides that a trial requested after a contested hearing in a traffic infractions case 'shall be held pursuant to the [HRPP], Rules of the District Court, and Hawai'i Rules of Evidence'" (brackets in the original)), overruled on other grounds, 95 Hawai'i 22, 18 P.3d 884 (2001).

substantially prejudiced by the last-minute amendment." ). Hence, the court's March 22, 2001 judgment cannot stand.

Although the evidence may have been sufficient<sup>3</sup> to support a determination that the speed signs were "placed by the official act or direction of lawful authority," either County or State, HRS § 291C-31(c) (1993) ("Whenever official traffic-control devices are placed in position approximately conforming to law, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent

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We have long held that evidence adduced in the trial court must be considered in the strongest light for the [State] when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.

"Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable [a person] of reasonable caution to support a conclusion. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996) (citations, internal block quote format and some internal quotation marks omitted; some brackets in the original).

It is for the trial judge as fact-finder to assess the credibility of witnesses and to resolve all questions of fact; the judge may accept or reject any witness's testimony in whole or in part. As the trier of fact, the judge may draw all reasonable and legitimate inferences and deductions from the evidence, and the findings of the trial court will not be disturbed unless clearly erroneous. An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence, because this is the province of the trial judge.

Id. at 139, 913 P.2d at 65 (citations omitted).

evidence."); Vallejo, 9 Haw. App. at 80, 83, 823 P.2d at 158, 160 (concluding that, "[t]he Officer's training and observations were sufficient, in our view, to allow him to state his opinion that the sign was official[,] and that, "the legislative intent expressed in [HRS § 291C-31(c)] is that, if the State has proved the official nature of the traffic control device and its position approximately conforming to law, it has established *prima facie* that the device was placed under authority of law. The State need not produce evidence of the authority but may rely on the presumption."), there was absolutely no evidence adduced at trial that Bingham Street is a "highway[] under the [State director of transportation's] jurisdiction[.]" HRS § 291C-102(b); Lane, 57 Haw. at 278, 554 P.2d at 769. There was thus insufficient evidence to establish the subsection (b) violation that the State had charged.

We therefore reverse the March 22, 2001 judgment of the court.

On the Briefs:

Margaret Lee,  
defendant-appellant, *pro se*.

Chief Judge

Donn Fudo,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for plaintiff-appellee.

Associate Judge

Associate Judge