

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27349

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
TIMOTHY C. REES, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(Citation Nos. 1868686MH & 1866209MH)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Defendant-Appellant Timothy C. Rees (Rees) appeals from Judgments entered on May 5, 2005 (citation no. 1868686MH) and May 11, 2005 (citation no. 1866209MH) for operating a vehicle without a valid safety inspection sticker, in violation of Hawaii Revised Statutes (HRS) § 286-25 (1993), in the District Court of the Third Circuit, North and South Hilo Division (district court).^{1/} The district court entered judgments for the State on both charges and imposed an assessment of \$70 on each charge.

On appeal, Rees raises nine specific points of error, most pertaining to the validity of the statutory scheme requiring valid safety inspection stickers on motor vehicles. Rees first argues that, at each of his initial court appearances, the judge did not allow any form of defense to be presented prior to entering judgment for the State and setting the case for trial.

^{1/} The Honorable Barbara T. Takase presided in each case.

Next Rees claims the district court considered "evidence, as written on the Complaint and Summons forms fraudulently provided to the instituting officers by the City and County of Honolulu Department of Information Technology." Rees then claims that the district court failed to determine the "trustworthiness, accuracy and authorization" to present said information "as evidence at a penal proceeding." Rees next argues that the district court's failure to allow him to present rebuttal testimony unduly prejudiced the cases in favor of the State. Rees also claims, without further elaborating, that the district court violated HRS Chapter § 291D (Adjudication of Traffic Infractions) and the Hawai'i Civil Traffic Rules. Rees further argues, again without elaborating, that the district court violated his constitutional rights to due process and equal protection. Rees claims that the district court acted in violation of the United States Constitution when it ordered him "to pay fines and court costs for the anti-privilege of being denied Due Process and Equal Protection of the Laws." Rees next asserts that the district court violated his constitutional protections against being twice "put in jeopardy for loss of life, liberty or property." Finally, Rees contends that the judge violated separation of powers by improperly assuming the posture of an "Executive branch prosecutor" when she ordered him to report back to court for trial. Rees fails, in numerous respects, to comply with the provisions of the Hawai'i Rules of Appellate Procedure (HRAP)

governing the form and content of briefs.^{2/} For these reasons, and those discussed below, all Rees's challenges fail, and the Judgments of the district court are affirmed.

This case arises from two separate traffic citations. Each citation was issued for an expired safety inspection sticker, pursuant to HRS § 286-25. In each instance, Rees appeared at the court dates set forth on the respective summonses. In each instance, the district court immediately entered judgment^{3/} for the State and set the matter down for

^{2/} Rees fails to comply with the provisions of Hawai'i Rules of Appellate Procedure Rule 28(b), including:

Rule 28(b)(1) (no "subject index of the matter in the brief with page references and a table of authorities listing the cases . . . with references to the pages in the brief where they are cited");

Rule 28(b)(4) (no "concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to[.]");

Rule 28(b)(5) (no Standard of Review section "setting forth the standard or standards to be applied in reviewing the respective judgments, decrees, orders or decisions of the court or agency alleged to be erroneous and identifying the point of error to which it complies."); and

Rule 28(b)(7) (no argument section "containing the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."). Rees's brief contains many of the required subject headings, but fails to comply with the rule regarding argument in anything approaching a substantial way. This rule states that "points not argued may be deemed waived."

^{3/} Hawaii Revised Statutes § 291D-8 (Supp. 2005) provides in relevant part:

§291D-8 Hearings. (a) In proceedings to contest the issuance of a notice of traffic infractions:

- (4) After due consideration of the evidence and arguments, if any, the court shall determine whether commission of the traffic infraction has been established. . . .

(continued...)

later trial. Rees, in each case, appeared for trial, and in each case the district court found Rees guilty and imposed fines.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues as raised by the parties, we hold:

(1) Even though Rees fails to comply with HRAP Rule 28(b), this court considers certain of Rees arguments, in the interest of permitting the appellant his day in court. O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 385-86, 885 P.2d 361, 363-64 (1994); see also HRAP Rule 2 (court may address any issue raised by appellant).

(2) The court did not err when it considered "evidence . . . provided to the instituting officers by the City and County of Honolulu Department of Information Technology" because Hawaii Rules of Evidence Rule 803(b)(8) clearly permits the court to consider letters such as those received in evidence by the

²/(...continued)

Where it has been established that the traffic infraction was committed, the court shall enter judgment for the State and may assess a monetary assessment pursuant to section 291D-9. The court also shall inform the person of the right to request, within thirty days, a trial pursuant to section 291D-13. If the person requests a trial at the hearing, the court shall provide the person with trial date forthwith.

district court, in the absence of any indicia of untrustworthiness.^{4/}

(3) The district court did not err by considering the information supplied by the City and County of Honolulu Department of Information Technology because Rees failed to carry his burden in the district court, and in this court, of demonstrating the unreliability of the public records in question. City and County of Honolulu v. Sherman, 110 Hawai'i 39, 75, 129 P.3d 542, 578 (2006).

(4) Any error made by the district court in not allowing Rees to adduce evidence and argument at his initial court appearances on February 17, 2005 and March 3, 2005 was harmless.

(5) Rees "does not present . . . any valid basis for questioning the enforceability of HRS § 286-25." State v. Rees, 107 Hawai'i 508, 518, 115 P.3d 687, 697 (App. 2005).

Therefore,

IT IS HEREBY ORDERED that the Judgments entered on May 5, 2005 (citation no. 1868686MH) and May 11, 2005 (citation

^{4/} Hawaii Rules of Evidence Rule 803(b)(8) excepts from the general rule against hearsay

[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil proceedings and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

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no. 1866209MH) in the District Court of the Third Circuit, North and South Hilo Division, are affirmed.

DATED: Honolulu, Hawai'i, October 9, 2006.

On the briefs:

Timothy C. Rees,
Defendant-Appellant pro se.

Shaunda A.K. Liu,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.

Cornie K. Wataseke

Presiding Judge

Samuel R. Foley
Associate Judge

Craig W. Nakamura
Associate Judge