

NO. 27433

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,  
v.  
STANFORD A. KAWASAKI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(HPD TRAFFIC NOS. 003320530 AND 03320531)

FILED  
CLERK APPELLATE COURTS  
STATE OF HAWAII  
E.M. RIMANDO

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SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Stanford A. Kawasaki (Kawasaki) appeals from the judgment entered on July 12, 2005,<sup>1</sup> that found him guilty of operating a vehicle, on August 15, 2003 at about 12:40 a.m., while under the influence of an intoxicant (DUI), Hawaii Revised Statutes (HRS) § 291E-61(a)(3) (Supp. 2005)<sup>2</sup>, and found him not guilty of DUI, HRS § 291E-61(a)(1) (Supp. 2005), and unlawful backing of a vehicle, HRS § 291C-122 (1993)<sup>3</sup>.

<sup>1</sup> Judge William Cardwell presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2005) states in part:

**Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

<sup>3</sup> HRS § 291C-122 (1993) states:

**Limitations on backing.** (a) The driver of a vehicle shall not back it unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back it upon any shoulder or roadway of any controlled-access highway.

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Kawasaki admits the evidence supporting the DUI conviction. The record shows that per 210 liters of his breath, Kawasaki had 0.101 grams of alcohol. Kawasaki contends that the police officer who stopped him lacked a lawful basis for doing so. On October 20, 2003, Kawasaki filed a Motion to Suppress Evidence (MTSE) requesting suppression of "all evidence obtained from [Kawasaki] as a result of and after his traffic stop on August 15, 2003." The MTSE was heard on January 14, 2004. On January 27, 2004, the court<sup>4</sup> entered an oral order denying the MTSE. On March 3, 2004, the court filed the Findings of Fact, Conclusions of Law, and Order Denying Defendant's Motion to Sup[p]ress.

"A stop of a vehicle for an investigatory purpose constitutes a seizure within the meaning of the constitutional protection against unreasonable searches and seizures[,]" as guaranteed by the fourth amendment to the United States Constitution and article I, section 7 of the Hawai'i Constitution. *State v. Bolosan*, 78 Hawai'i 86, 92, 890 P.2d 673, 679 (1995).

In determining the reasonableness of wholly discretionary automobile stops, this court has repeatedly applied the standard set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). [Citations omitted.] Guided by *Terry*, we stated in *State v. Barnes* [, 58 Haw. 333, 568 P.2d 1207 (1977)]:

To justify an investigative stop, short of arrest based on probable cause, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, supra [392 U.S.], at 21 [88 S.Ct. 1868]. The ultimate test in these situations must be whether from these facts, measured by an objective standard, a man of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate. 58 Haw. at 338, 568 P.2d at 1211 (citations omitted).

*State v. Powell*, 61 Haw. 316, 321-22, 603 P.2d 143, 147-48 (1979).

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<sup>4</sup> Judge Clarence A. Pacarro presided.

State v. Bohannon, 102 Haw. 228, 237, 74 P.3d 980, 989 (2003) (footnote omitted). (Since some traffic violations are infractions rather than crimes, see HRS Chapter 291D (Supp. 2005), the traffic activity must be traffic violation activity that may or may not be criminal activity. See State v. Rees, 107 Hawai'i 508, 115 P.3d 687 (2005).)

In essence, Kawasaki's first point on appeal is:

EVEN IF THIS COURT CONSIDERS THAT THE CONTRADICTED TESTIMONY OF SGT. WEST AMOUNTS TO SUBSTANTIAL EVIDENCE TO SUPPORT FINDINGS OF FACTS NO. 2-6, THE CIRCUMSTANCES OF HIS TESTIMONY IN LIGHT OF [KAWASAKI'S] TESTIMONY SHOULD NONETHELESS LEAVE THIS COURT WITH A DEFINITE AND FIRM CONVICTION THAT A MISTAKE HAS BEEN MADE.

Kawasaki was driving his vehicle on North Kukui Street, past Aala Street, toward River Street. Police Sergeant Brian West (Sgt. West) was standing at the corner of River Street and North Kukui Street when he observed a vehicle come to a sudden stop.

[SGT. WEST:] The driver looked back at some people that were walking on the sidewalk, the opposite direction. He put the vehicle in reverse, and reversed at a speed, at a fairly high rate of speed for reversing. And as he reversed, because the speed was so high going backwards, he was unable to control the vehicle.

[SGT. WEST]: He was . . . reversing at a relatively high rate of speed for reversing, and due to the speed--apparently due to the speed, he was unable to control the vehicle and move straight, but rather the front end of the vehicle was swerving back and forth as he reversed at this speed.

Q . . . [D]o you remember what was the location of the vehicle in relationship to the pedestrians on the sidewalk?

A . . . Well, basically what happened is, as he reversed and this lack of control was evident, when he got back by the pedestrians where he could make contact with them, he stopped. So he didn't pass them. He . . . drove to them and stopped.

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Q All right. And . . . do you remember how abrupt his stop was?

A . . . [H]e was going in reverse, so the speed's not real high, so it's just a stop.

A The back of his vehicle passed the pedestrians, and he was in a van so it's a little bit of a long vehicle, and he drove passed [sic] them until he could see them.

[DEPUTY PROSECUTING ATTORNEY]: . . . [A]pproximately, in terms of time or distance, could you please describe how long he went---

[SGT. WEST]: Most of the length of the bridge. I would say thirty to fifty feet. Maybe a bit further.

[COUNSEL FOR KAWASAKI]: So that would mean then he would have had to stop on the bridge.

[SGT. WEST]: Correct.

[DEPUTY PROSECUTING ATTORNEY]: . . . .

Would you say from your observation and experience, that [Kawasaki] was operating [the] vehicle in a prudent and safe manner, reversing in the right lane like this?

A No.

Notwithstanding the provisions of HRS § 291-122(a) stated in fn. 3 above, Kawasaki's second point on appeal is that

[t]he officer must still articulate the circumstances supporting his reasonable suspicion and the rational inferences therefrom that criminal activity is afoot. Usually, the easiest way to describe that suspicion in an auto case is to point to the most likely traffic offense the driver is suspected of violating. To say the driving is not "safe and prudent" is not enough[.]

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2006), and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and applying the law relevant to the issues raised and arguments presented,

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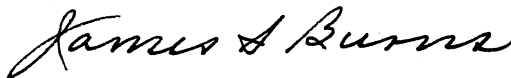
IT IS HEREBY ORDERED that the judgment entered on  
July 12, 2005 is affirmed.

DATED: Honolulu, Hawai'i, October 6, 2006.

On the briefs:

Matthew K. Chung  
for Defendant-Appellant.

Anne K. Clarkin  
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge