

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28252

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIMICHAEL RAGSDALE, Petitioner-Appellant, v. ADMINISTRATIVE  
DIRECTOR OF THE COURTS, STATE OF HAWAII,  
Respondent-AppelleeK. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
HONOLULU DIVISION  
(JR No. 1DAA-06-0016)  
(Original Case No. 06-03017)SUMMARY DISPOSITION ORDER(By: Watanabe, Presiding J., Nakamura, J.;  
Circuit Judge Hirai, in place of Recktenwald, C.J.,  
Foley and Fujise, JJ., all recused)

Petitioner-Appellant Michael Ragsdale (Ragsdale) appeals the Decision and Order Affirming Administrative Revocation (the Decision) and the Judgment on Appeal (the Judgment), both entered by the District Court of the First Circuit<sup>1</sup> (the district court) on October 30, 2006. The Decision and the Judgment affirmed the administrative revocation of Ragsdale's driver's license by Respondent-Appellee Administrative Director of the Courts, State of Hawaii (the Director), acting through a hearing officer of the Administrative Driver's License Revocation Office (ADLRO).<sup>2</sup>

Ragsdale contends that the district court erred in upholding the Director's (1) "denial of a subpoena for police

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<sup>1</sup> The Honorable William A. Cardwell presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 291E-1 (Supp. 2006) provides, as it did when Petitioner-Appellant Michael Ragsdale (Ragsdale) was charged, that the term "Director[,]" as used in HRS chapter 291E, means "the administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions relating to administrative revocation under part III."

officer [A.] Sagucio [(Officer Sagucio)], a percipient witness[;]" (2) "refusal to take the testimony of police officer [J.] Eagle [(Officer Eagle)] in person in the hearing room and, in the alternative, upholding the hearing officer's denial of Ragsdale's motion to rescind his revocation because Officer Eagle failed to properly appear at the [administrative revocation] hearings on three separate occasions[;]" and (3) "denial of a subpoena for the Chief Adjudicator [Ronald Sakata (Sakata).]"

Upon careful review of the record and the briefs submitted by the parties, and having duly considered the arguments advanced and issues raised by the parties in light of the statutory standards for affirmance of an administrative driver's license revocation set forth in Hawaii Revised Statutes (HRS) § 291E-38(e) (Supp. 2006),<sup>3</sup> we resolve Ragsdale's points of

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<sup>3</sup> HRS § 291E-38(e) (Supp. 2006) states, as it did when Ragsdale was charged:

**Administrative hearing; procedure; decision. . . .**

- (e) The director shall affirm the administrative revocation only if the director determines that:
- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
  - (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
  - (3) The evidence proves by a preponderance that:
    - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
    - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:
      - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
      - (ii) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test in compliance with the requirements of section

(continued...)

error as follows:

(1) The district court did not err in upholding the hearing officer's denial of a subpoena for Officer Sagucio. The record indicates that Officer Sagucio (a) did not arrest or issue the notice of administrative revocation to Ragsdale; (b) did not submit a sworn statement for administrative review pursuant to HRS § 291E-36 (Supp. 2006); and (c) was not an active participant in Ragsdale's arrest. In light of these circumstances, we agree with the district court that the hearing officer did not abuse her discretion when she determined that Officer Sagucio's testimony would not provide "any relevant information or evidence that was not already contained within the testimonies and written sworn statements of" other witnesses subpoenaed by Ragsdale.

(2) The district court did not err in upholding the hearing officer's refusal to allow Officer Eagle to testify in person in the hearing room at the August 25, 2006 hearing. At an administrative revocation hearing, the hearing officer is authorized to "[r]egulate the course and conduct of the hearing[.]" HRS § 291E-38(d)(5) (Supp. 2006). Additionally, "[i]f the officer or other person cannot appear [at the hearing], the officer or other person at the discretion of the director, may testify by telephone." HRS § 291E-38(h) (Supp. 2006) (emphases added).

When Officer Eagle appeared at the August 25, 2006 hearing pursuant to subpoena, he lacked any identification and was denied entry to the hearing room due to a security policy at the ADLRO building. Although the hearing officer gave Ragsdale the option of having Officer Eagle testify by telephone or in person within the public reception area of the ADLRO building, Ragsdale rejected both options. Since the hearing officer was

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<sup>3</sup>(...continued)

authorized to offer these options by statute, she did not abuse her discretion by refusing to take the officer's testimony in person in the hearing room.

(3) The district court did not err in failing to rescind Ragsdale's license revocation for Officer Eagle's failure to appear at three separate hearings. Ragsdale relies on Robison v. Administrative Director, 93 Hawai'i 337, 3 P.3d 503 (App. 2000), to support his position that rescission of his license revocation was warranted. However, pursuant to Act 113, 2002 Haw. Sess. Laws 312, the Hawai'i legislature essentially overruled Robison by amending HRS § 291E-38(k) to provide that "[t]he absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance." According to the legislative history of Act 113,

[t]he absence of police officer witnesses may be due to any number of legitimate reasons which may not be known to the hearing officer at time of hearing. Currently, the absence of a subpoenaed and served police officer at the hearing would cause a reversal upon judicial review, merely on the basis of the officer's unexplained non-appearance at time of hearing. This measure remedies that deficiency in the proceedings.

Sen. Stand. Comm. Rep. No. 2766, in 2002 Senate Journal, at 1340.

When Officer Eagle failed to appear at the third hearing pursuant to Ragsdale's subpoena, the hearing officer offered to continue the hearing for good cause and thereby extend the validity of Ragsdale's temporary driver's license until the continued hearing. By declining the offer, Ragsdale waived any right to cross-examine Officer Eagle or complain about the officer's failure to appear at the hearings.

(4) The district court did not err in upholding the hearing officer's denial of a subpoena for Sakata. Ragsdale contends that he had a right to subpoena Sakata to establish that the Notice of Administrative Decision was not timely mailed

within eight days after the Notice of Revocation was issued, as required by HRS § 291E-34(c)(5) (Supp. 2006). Ragsdale argues that he should have been allowed to establish through Sakata that the Certificate of Mailing attached to the Notice of Administrative Review Decision "was a computer generated form with a computer generated signature which, in turn, is generated by an unknown employee of the ADLRO and that [Sakata] had no personal knowledge whatsoever of the date of mailing of the administrative review decision."

HRS § 291E-37 (Supp. 2006), which governs administrative review procedures and decisions, states, as it did when Ragsdale was charged, in relevant part:

**Administrative review; procedures; decision.** (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle, and motor vehicle registration if applicable, or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

- (1) Eight days after the date the notice was issued in a case involving an alcohol related offense[.]

HRS § 291E-37(a) (Supp. 2006). While the statute requires timely mailing of the written administrative review decision, there is no specific requirement for a certificate of mailing or that a particular individual sign the certificate. From an operational standpoint, however, the certificate of mailing does provide persuasive evidence of the date that an administrative review decision was mailed.

Moreover, the record of the ADLRO proceedings indicates that the Notice of Administrative Review Decision was timely mailed. Ragsdale received his Notice of Administrative Revocation when he was arrested on June 30, 2006. The Administrative Review Decision was signed, dated, and certified

as mailed on July 7, 2006, seven days after the issuance of the Notice of Administrative Revocation and within the eight-day limit mandated in HRS § 291E-37(a)(1) (Supp. 2006). On July 11, 2006, Ragsdale appeared personally at the ADLRO and filed a Request for Administrative Hearing that he had signed on July 10, 2006, along with a \$30.00 check for his filing fee that Ragsdale had signed and dated on July 10, 2006. Since Ragsdale offered no evidence (such as the post-marked date on the envelope in which the Administrative Review Decision was mailed) to rebut the presumption of timely mailing, Sakata's testimony was unnecessary. Therefore, the hearing officer did not abuse her discretion in denying Ragsdale's request to subpoena Sakata.

Based on the foregoing discussion, we affirm.

DATED: Honolulu, Hawai'i, July 30, 2007.

On the briefs:

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for petitioner-appellant.

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