

NO. 22292

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

v.

RICK TAYLOR, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CITATION NO. 1417517MH)

MEMORANDUM OPINION

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

Defendant-Appellant Rick Taylor (Defendant) appeals from the Judgment entered by the District Court of the Third Circuit (the district court) on December 10, 1998 (the December 10, 1998 Judgment), determining that Defendant had committed the traffic infraction of "noncompliance with speed limit prohibited" in violation of Hawai'i Revised Statutes (HRS) § 291C-102 (1993).

Defendant claims that the December 10, 1998 Judgment must be reversed because there was no posted speed limit sign before or in the area he was cited and it was unfair to cite him for exceeding the speed limit on a sign that he had not yet passed and had no actual notice of. We need not address Defendant's contention, however, because our review of the record indicates that Plaintiff-Appellee State of Hawai'i (the State)

failed to satisfy its burden of establishing that Defendant violated either subsection (a) or (b) of HRS § 291C-102. Accordingly, the December 10, 1998 Judgment must be reversed.

BACKGROUND

On June 25, 1998 at approximately 11:45 a.m., Officer Kevin Howe (Officer Howe) observed Defendant driving his vehicle on Queen Ka'ahumanu Highway, just north of Hinalani Street, in North Kona in the County and State of Hawai'i. Using a KR10 SP radar, which he had been trained and certified to operate, Officer Howe clocked Defendant's vehicle traveling at sixty miles an hour. Officer Howe stated that he had tested the radar device for accuracy both before and after taking it out on the road and that the device was "working properly" at both times.

Officer Howe testified that he was driving his vehicle when he "locked the radar" on Defendant's vehicle, and there were "no other cars in the area coming north at that time past Hinalani[.]" After activating the dome light on his police car and pulling Defendant's vehicle to the side of the road, Officer Howe approached Defendant and explained that Defendant had been clocked driving at sixty miles an hour. According to Officer Howe, Defendant then looked down and responded that Officer Howe "was exactly right."

Officer Howe related that there was a forty-five-mile-per-hour speed limit sign on Queen Ka'ahumanu Highway to the

south of the highway's intersection with Hinalani Street, and the sign was "an officially posted state or county sign showing the speed limit in that area." Officer Howe also testified that a driver turning right from Hinalani Street onto Queen Ka'ahumanu Highway would not be able to see this sign. According to Officer Howe, another forty-five-mile-per-hour speed limit sign was posted on Queen Ka'ahumanu Highway to the north of the highway's intersection with Hinalani Street.

Defendant testified that on the date in question, he passed a forty-five-mile-per-hour speed limit sign posted on Hinalani Street. After passing this sign, he turned in to a Texaco station, "got gas, got a sandwich[,] and then returned to Hinalani Street. Defendant stated that from Hinalani Street, he turned right onto Queen Ka'ahumanu Highway in a northbound direction.

The evidence appears to be undisputed that when Defendant's vehicle was stopped by Officer Howe about 0.3 miles past the Hinalani Street intersection, Defendant had not yet driven past the speed limit sign north of the Hinalani intersection. Defendant testified that after he had been stopped for speeding on the afternoon in question, he looked ahead and saw a speed limit sign "about a half a mile further along the highway." Defendant also introduced into evidence photographs of 1/10 mile segments of Queen Ka'ahumanu Highway from Hinalani

Street which demonstrated that no speed limit sign was posted on the highway until about .8 miles from Hinalani Street.

Defendant admitted that he had lived in the Kona area for twenty-one years and had traveled many times on the same highway. He also admitted that he had "scanned [his] eyes down on across [his] speedometer as [Officer Howe] passed [Defendant] and put on his dome light," and Defendant "saw that [his] speedometer was just about at sixty. [Defendant approximated that] it was at fifty-eight." When asked if he were aware that "[i]f there were no posted speed applicable, that's [sic] it illegal to drive faster than fifty-five^{1/} in the [s]tate," Defendant answered that he was "aware of that" and "[s]o if [he were] charged with going fifty-eight in a fifty-five, [he] will plead guilty to that."

Ultimately, the district court concluded that the State has proven beyond a reasonable doubt that [Defendant] did exceed the posted speed limit. There was evidence that the speed limit in the area is forty-five miles per hour. There's a posted speed limit sign. There's no evidence that the sign was not faced [sic] there by official -- the official requirements of law. And, and there's no evidence that the sign was not an official sign, so, I find [Defendant] guilty and imposes [sic] a fine of \$60.00 plus \$7.00 for the driver's ed.

^{1/} We have been unable to locate any federal or state statute that sets a maximum speed limit for driving on the roads and highways in the State of Hawai'i. There also appears to be no ordinance enacted by the County of Hawai'i that sets a maximum speed limit for driving on roads and highways in the County of Hawai'i.

This appeal followed.

DISCUSSION

HRS § 291C-102, the statute which the district court determined that Defendant violated, provides as follows:

Noncompliance with speed limit prohibited. (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.

In State v. Lane, 57 Haw. 277, 554 P.2d 767 (1976), the defendant was convicted of violating HRS § 291C-102 for operating a motor vehicle on a segment of Pali Highway at sixty-five miles per hour. A police officer testified at trial that there were speed signs along the highway which stated a thirty-mile-per-hour speed limit. In reversing the conviction, the Hawai'i Supreme Court stated:

There was no evidence, and the record is devoid of information, on the question whether a maximum speed limit had been established by county ordinance or the designated stretch of Pali Highway was subject to the jurisdiction of the director of transportation and the speed signs had been placed by that officer. [The defendant]

moved for judgment of acquittal for failure to show that the speed signs were authorized. In denying the motion, the court stated no reasons. The judgment of conviction adjudges only that [the defendant] "has been convicted of and is guilty of the violation of speeding, to wit, 65 mph in a 35 mph zone."

We are unable to determine from the record before us whether the conviction was for violation of § 291C-102(a) or (b). If the conviction was for violation of § 291C-102(a), proof of judicial notice of the applicable ordinance was required, for which alternative procedures are prescribed by HRS § 622-13.^{2/} The defendant had moved

^{2/} At the time of the supreme court's decision in State v. Lane, 57 Haw. 277, 544 P.2d 767 (1976), Hawai'i Revised Statutes § 622-13 (1976), which has since been repealed, provided:

Proof of ordinances, rules, regulations, and other official acts. (a) Whenever, in any proceedings before a court or person having authority to hear, receive and examine evidence, it is necessary to prove any ordinance of any county of the State, or any law, rule, regulation, or other official act or thing promulgated or enacted by or under authority of the Constitution and laws of the United States or the State, a copy of such ordinance, bearing the certificate, as to its correctness, of the county clerk and under the seal of the county, or a copy of the law, rule, regulation, or other official act or thing, printed by authority, or bearing the certificate, as to its correctness, of the official in whose custody the original is kept, shall be admitted in evidence as prima facie proof of the contents thereof.

(b) A certified copy or copies of an ordinance or ordinances of any county may be filed by the clerk of the county with any court and thereafter the court may take judicial notice of the ordinance or ordinances and the contents thereof in any cause, without requiring a certified copy or copies to be filed or introduced as exhibits in such cause.

(c) Judicial notice shall be taken of an ordinance or ordinances of any county if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request, and (2) has given each adverse party such notice as the court may require to enable the adverse

(continued...)

for judgment of acquittal "on the grounds that the State has not shown that the speed signs that [the defendant] had passed were authorized speed signs." The speed at which an automobile may be driven on any highway is governed by ordinance or by statute, and speed signs are erected pursuant thereto. Accordingly, we construe the defendant's motion as a demand for proof of the ordinance. The record does not disclose any offer of, or reference to, any ordinance or the taking of judicial notice of any ordinance by the court. Cf. State v. Shak, 51 Haw. 626, 466 P.2d 420 (1970). If the conviction was for violation of § 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. The record does not disclose any offer of evidence on these questions or the taking of judicial notice of any relevant facts. . . .

HRS § 291C-102 imposed upon the prosecution the burden of proving that a maximum speed limit has been established in one of the two ways specified by the statute. Conviction in the total absence of proof in this respect requires reversal under Rule 52(b), [Hawai'i] Rules of Criminal Procedure.

57 Haw. at 277-79, 554 P.2d at 768-69.

In this case, similarly, the record is devoid of any evidence as to whether Defendant was determined to have violated HRS § 291C-102(a) or (b). Indeed, it was never established

²(...continued)

party to meet the request. The court shall afford the adverse party reasonable opportunity to present information relevant to the tenor of the ordinance to be noticed. If the court has insufficient information to enable it to notice the matter judicially, it shall decline to take judicial notice thereof.

whether the segment of Queen Ka'ahumanu Highway on which Defendant was stopped for speeding was a county or state highway. There is also no evidence establishing that the maximum speed limit for that segment of highway had been established by county ordinance, or that the segment of the highway in question was subject to the jurisdiction of the state director of transportation and that the speed limit signs on the highway had been placed there by the director.

In the absence of the requisite proof in this case, we conclude that Lane mandates that the December 10, 1998 Judgment be reversed.

So ordered.

DATED: Honolulu, Hawai'i, September 22, 2000.

On the briefs:

Rick Taylor,
defendant-appellant pro se.

Carol s. W. Kitaoka,
Deputy Prosecuting Attorney,
County of Kauai, for
plaintiff-appellee.