

Transmittal Memorandum

To: The Honorable Della Belatti

From: Representative Sharon E. Har

Date: March 11, 2022

Re: In the Matter of the Special Committee to Consider
Miscellaneous Communications Nos. 1001 and 1002

Dear Chair Belatti,

Please find attached my submission regarding this matter.

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4:05 PM

BEFORE THE HOUSE OF REPRESENTATIVES

STATE OF HAWAI'I

THE THIRTY-FIRST LEGISLATURE

In the Matter of the Special Committee to
Consider Miscellaneous Communication Nos.
1001 and 1002

**RESPONSE TO PETITIONERS'
SUBMITTALS; DECLARATION OF
SHARON E. HAR; EXHIBITS**

RESPONSE TO PETITIONERS' SUBMITTALS

Representative SHARON E. HAR ("Respondent"), hereby submits this written response to the Petitioners' submitted materials. Respondent respectfully requests that the Special Committee exercise its authority the special Rules set forth in Speaker Scott Saiki's Memorandum dated March 18, 2021 (**Exhibit A**) and: (1) adopt the representations herein; (2) issue a recommendation that no further action be taken against Respondent; and (3) discharge the Committee with respect to this matter.

Introductory Remarks

Respondent strongly objects to the purported factual basis and allegations in the above-referenced petition. It is respectfully submitted that the allegations that are material to the petition, and claimed as factual, have been thoroughly discredited at the trial of this case. After the presentation of the prosecution's evidence, Respondent was acquitted of both counts of the Complaint.

With respect to Count 2 of the Complaint (Operating a Vehicle Without Valid No-Fault Insurance), the prosecution dismissed that charge upon being shown proof that Respondent did in fact have a valid No Fault Insurance Policy on February 21, 2021. (**Exhibit D**)

As demonstrated beyond any reasonable doubt in the course of a day and a half trial, the Respondent was clearly not guilty of Operating a Vehicle under the Influence of an Intoxicant (Count 1 of the Complaint). As a result of the lack of credible evidence to support the charge, the Honolulu District Court granted the defense motion for a judgment of acquittal after the prosecution rested its case.

With respect to the citation for driving the wrong way on a one-way street, the

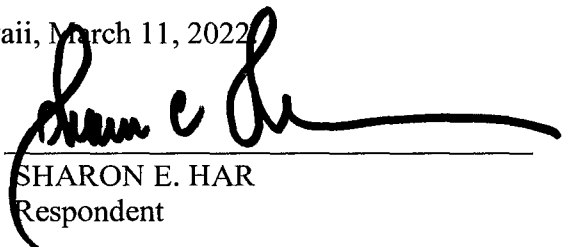
prosecution's citation was determined to be defective in a separate proceeding that took place prior to trial, and for that reason another judge dismissed the citation. (**Exhibit B**)

For these reasons, the petition should be summarily dismissed. To reopen the evidence would not only be a demonstrably futile proceeding and a waste of time, but it would be tantamount to a violation of Respondent's right to be free from double jeopardy.

A few words should be said about the false assertions that were based on selected discredited allegations against the Respondent. These allegations were refuted in a court of law and led to the acquittal. Unfortunately, the Prosecuting Attorney held a highly unusual press conference that completely misrepresented the evidenced adduced at trial. The response to the press conference was made the subject of an OpEd article published by the Honolulu Star-Advertiser, appended to this Response as **Exhibit E**.

It is respectfully submitted that this introduction should suffice in having the petition dismissed. In furtherance of Respondent's argument, a detailed supporting Declaration is added to illustrate where and in what context the true facts of the events regarding the incident that occurred on February 22, 2021.

DATED: Honolulu, Hawaii, March 11, 2022



SHARON E. HAR
Respondent

DECLARATION OF SHARON E. HAR

1. SHARON E. HAR, is authorized to practice law in the State of Hawaii, a member of the Hawaii State Bar Association in good standing, and an officer of the court. All factual matters, to include all written transcriptions herein of previously testified and printed words are true and correct to the best of my belief.

2. I have reviewed all relevant investigation reports, pleadings, transcripts, news media reports, and court dispositions pertaining to the criminal case brought by the Prosecuting Attorney and the documentation submitted by the Petitioners in this matter.

3. On February 23, 2021, I issued an explanation to the public, which was released through various news media outlets.

4. On February 24, 2021, I addressed the House to explain the incident. This statement is preserved in the Hawaii House of Representatives YouTube archive of hearings.

5. On March 1, 2021, in Case No. 1DTA-21-00387, the Prosecuting Attorney filed its Complaint against me alleging Operating a Motor Vehicle under the Influence of an Intoxicant (“OVUII”) in violation of § 291E-61(a)(1), (b)(1), Hawaii Revised Statutes (“HRS”) in Count 1 and Driving Without Motor Vehicle Insurance in violation of § 431:10C-104(a) and/or 431:10C-117(a), HRS in Count 2.

6. On March 29, 2021, in Case No. 1DTI-21-043783, the Court granted my attorney's request to dismiss with prejudice the One-Way Street violation. A true and accurate copy of the State of Hawaii Judiciary's Ecourt Kōkua minutes memorializing this dismissal is attached as **Exhibit B**.

7. On December 6, 2021, at trial, I produced proof of insurance for my vehicle that was active on February 22, 2021. As a result, the Prosecuting Attorney requested the Court to dismiss the insurance charge. The Court granted the Prosecuting Attorney's request. A redacted copy of my insurance policy is attached at **Exhibit C**.

8. I am in possession of the official transcripts of the pretrial proceeding and trial on December 6, 2021 and the further trial on January 10, 2022 prepared by a Certified Shorthand Reporter employed by the Court Reporters Branch of the Judiciary of the State of Hawaii. In order to maintain substantial compliance with HRS § 606.13 (an authority generally cited to prohibit the copying and distribution of transcripts without written permission), the text of the testimony is reproduced herein, but the original document will not be provided. All quotes from the transcripts of the court hearings made herein are true and accurate quotes and originate from an audio recording of witnesses that were duly sworn in by the clerk of court before testifying. All summaries of testimony are accurate summaries of the transcript of the testimony at trial.

9. At the pretrial hearing on December 6, 2021, the Court heard testimony from the HPD officer that conducted the initial traffic stop (Sgt. Lipka). When asked where I was coming from, I answered "Anyplace" and further explained, when asked, that "Anyplace" was a "restaurant."

10. At trial on December 6, 2021, the Prosecuting Attorney called the owner of the establishment that I had named to HPD. The owner explained that the name of the business is "Anyplace Cocktail Lounge" but further explained that, during the pandemic, they operated as a restaurant which served beverages and cocktails.

11. At trial on December 6, 2021, the Prosecuting Attorney called the server employed at Anyplace on February 22, 2021. She testified that I ordered one (1) beer,

specifically a 12-ounce Miller Light in a glass bottle, and that another person sitting at the table, would ask for additional rounds. The server also testified that I did not fully consume the alcohol in any bottle served to me and that I would take a couple of sips and then tell the server to throw the bottle away.

12. During trial on December 6, 2021, my attorney provided as a demonstrative aid two (2) glass bottles of 12-ounce Miller Light, one empty and the other sealed and unopened, which the server identified as the same kind of Miller Light that she served to me on February 22, 2021. The server testified that I would drink only the amount of alcohol contained in the “narrow” part of the bottle to the “end” of the neck of the glass bottle. The server also affirmed an earlier statement to the Prosecuting Attorney that I was not consuming entire beers but rather would “take a couple sips then push it on the side.” The server further testified that “she didn’t even touch her last beer” and that “honestly, I do remember the fact that she wasn’t even drinking.”

13. At the further trial on January 10, 2022, the Prosecuting Attorney called two (2) HPD officers (Sgt. Lipka and Ofc. Ting).

14. As to the alleged odor of alcohol, the Court found that it recognized “inconsistencies” in the testimony of the two HPD officers called by the Prosecuting Attorney that caused it to grant the request to acquit of the offense of Operating a Motor Vehicle under the Influence of an Intoxicant. This decision by the Court is supported by the evidence presented at trial. For example, both officers had previously noted, both in their written reports and in their BWC footage, that they smelled a “slight” odor of alcohol that they associated with me. Yet, contrary to their police reports written immediately after the incident, they testified at trial that the odor of alcohol was either “strong” or “very strong.” Although the Court did not expressly

state that it found their testimony to be not credible, it is strongly implied that the “inconsistencies” contained in the testimony of the officers caused the Court to reject their testimony.

15. Also received into evidence by stipulation was the report of a female HPD officer who did not testify at trial but appeared to have the most “hands on” interactions with me, to include conducting a standard-procedure full-body “pat down,” adjusting the handcuffs and securing my seatbelt in the transporting HPD vehicle. Significantly, her report did not indicate that she smelled the odor of alcohol on me. Although the Court did not specifically cite this in its order of acquittal, it is required to consider all of the evidence before it when ruling on a motion for a judgment of acquittal. Therefore, it is reasonable to assume that this was a key “inconsistency” relied-upon by the Court in its decision.

16. One of the HPD officers testified at trial that my speech was slurred. However, the other officer testified that my speech was not slurred and that if it was, he would have noted it in his written report (it was not noted). Moreover, when the first officer that alleged slurring was shown in his BWC footage, he was unable to identify any specific slurred words and instead testified that my speech “sounded like possibly a slight slur.”

17. Neither of the two HPD officers who testified at trial testified that I was unsteady on her feet or otherwise demonstrated any indications of impairment based on the way that she walked. In fact, one of the officers, when questioned on this issue responded that if he did observe anything, he would have noted it in his report and that he did not recall anything on his BWC showing this.

18. At trial, the entirety of the BWC footage was introduced into evidence by stipulation of both the Prosecuting Attorney and me. The Court reviewed all the BWC footage and referenced it in its ultimate ruling granting a motion for judgment of acquittal.

19. On January 10, 2022, following the trial testimony of the owner of Anyplace, the server at Anyplace, and the two HPD officers, the Prosecuting Attorney rested its case. My attorney then made a motion for a judgment of acquittal. The legal standard that a trial court must apply in ruling on such a motion is stated in the Supreme Court of Hawaii's opinion State v. Jhun, which reads:

When reviewing a motion for judgment of acquittal, we employ the same standard that a trial court applies to such a motion, namely, whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, the evidence is sufficient to support a prima facie case so that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. State v. Pone, 78 Haw. 262, 265, 892 P.2d 455, 458 (1995); State v. Alston, 75 Haw. 517, 528, 865 P.2d 157, 164 (1994); State v. Rucker, 52 Haw. 336, 346, 475 P.2d 684, 690 (1970). Sufficient evidence to support a prima facie case requires "substantial evidence" as to every material element of the offense charged. State v. Eastman, 81 Haw. 131, 135, 913 P.2d 57, 61 (1996). "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. Id. Under such a review, we give "full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact." State v. Yabusaki, 58 Haw. 404, 411, 570 P.2d 844, 848 (1977).

State v. Jhun, 83 Haw 472, 481, 927 P.2d 1355, 1364 (1996).

20. On January 10, 2022, following the Prosecuting Attorney's submission of the entirety of the evidence of its case and after hearing arguments presented by both parties as to whether the Court should grant a judgment of acquittal, the Court made the following ruling:

[T]he Court will also right now -- in looking at the record, will note that in looking at a motion for judgment of acquittal, as counsel both know, the Court has to view everything in the light most favorable to the State, to the non-moving party. And so in viewing the evidence presented by the State before resting -- in viewing that in a light most favorable to the State, what the Court does also find, that at this point in time, while there was testimony from several witnesses, being the HPD officer Sergeant Lipka specifically, and also by Officer Ting regarding what transpired during the traffic stop -- and while the Court clearly finds that there was traffic -- at the very least a traffic infraction committed by the defendant in this case, viewing the testimony presented by the State's witnesses thus far, including and recognizing the inconsistencies between some of the officers' testimony and their own police reports, and specifically the biggest inconsistency that the Court notes is that the video recordings of the incident, the stop, that were played in evidence as -- as stipulated exhibits, it was clear that the officers used the term -- both Sergeant Lipka and Officer Ting used the term as -- that the defendant had a slight smell of alcohol odor.

Now, on the stand, of course, the officer -- Officer Ting explained that he meant strong and he just said slight because he was being polite. To the Court, that creates an inconsistency. Okay? So the Court recognizes those inconsistencies.

In addition, the Court recognizes the inconsistency in Exhibit 34, which was Sergeant Lipka's actual prepared outline showing the scene, the diagram of the scene in question at the time of the stop. And again, it creates another inconsistency because the diagram, unlike the video diagram that Sergeant Lipka testified to, this -- the diagram that he actually prepared as part of his report in real time on the date in question is not the same as the description of where the vehicles were and what transpired as this Court saw on the video picture diagram. And so that's another inconsistency. . .

At this point, given all of those findings, given a review of the evidence that was presented at trial, specifically the video evidence, the Court just does not have enough on -- on the prima facie side to go forward. So the Court will be granting Mr. Luke's motion for judgment of acquittal based on those grounds as well.

Based on the Court's factual findings at trial, it entered a judgment of acquittal and found that I was not guilty of the offense of OVUII.

21. At both the pretrial hearing, trial, and further trial on December 6, 2021 and January 10, 2022, there was no testimony by any HPD officer or any witness that I was uncooperative with the police. In fact, when specifically questioned as to my behavior in the context of whether I was uncooperative, each HPD officer answered as follows:

- On December 6, 2021, Ofc. Morgado testified:

Q: Okay. So she kept apologizing, ["I'm so sorry, I'm so embarrassed,["] throughout the early part of the investigation, including the questions that were asked of her regarding COVID; right? The COVID precautions?

Morgado: Yes.

Q: And once she responded to you, Officer Morgado, she was cooperative?

A: Yes.

Q: She wasn't resisting or arguing; right?

A: Not at all.

Q: She just simply declined?

A: Yeah.

Q: All right. So – and she kept apologizing, as you said?

A: Yes.

- On January 10, 2022, Ofc. Ting testified:

Q: All right. So when you were talking to her, you indicated that she was compliant; right?

Ting: Yes, sir.

Q: She didn't give you a hard time, did she?

A: No.

Q: In fact, if anything, she was apologetic and kept repeating that she was sorry and she was embarrassed; right?

A: She apologized and she repeated that she was embarrassed.

Q: Right. And so when she was -- when she was told that she was going the wrong way on a one-way street, she said, ["I know, I know, I'm so -- I'm sorry"]; correct?

A: She acknowledged. Yes, sir.

Q: Okay. And ["I'm so embarrassed?"] I think that's what she said; right?

A: Yes, sir.

- On January 10, 2022, Sgt. Lipka testified:

Q: Okay. Now, at any time, Officer, at any time during this investigation, did she protest to you? Did she give you any problem? Was she belligerent, or did she cooperate with you fully to the best of her ability to do so?

Lipka: With me directly? No, she was -- she was cooperative with me directly.

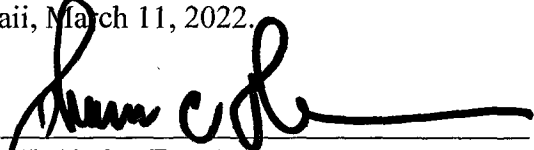
22. The Petitioners have highlighted my inability to produce insurance in the OVUII case. As previously noted, the insurance infraction and Count 2 of the Prosecuting Attorney's Complaint were both dismissed based on proof of valid insurance shown. (**Exhibit D**)

23. Attached at **Exhibit E** is a true and accurate copy of the text of an OpEd article authored by my attorney and published in the Honolulu Star-Advertiser on January 19, 2022.

24. For the reasons set forth in this response to the Petitioners submittals, Declarant respectfully requests that the Special Committee adopt this declaration as its factual findings and make a recommendation that no further action be taken on this matter.

25. I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, March 11, 2022.



SHARON E. HAR
Respondent




HOUSE OF REPRESENTATIVES
STATE OF HAWAII
STATE CAPITOL, ROOM 431
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

March 18, 2021

MEMORANDUM

TO: All House Members

FROM: Speaker Scott K. Saiki 

SUBJECT: **Establishment of a Special Committee to Consider Miscellaneous Communication Nos. 1001 and 1002**

The purpose of this memorandum is to establish a Special Committee to Consider Miscellaneous Communication Nos. 1001 and 1002 pursuant to Rule 14 of the Rules of the House of Representatives, State of Hawaii, 31st Legislature, 2021 – 2022.

The establishment of this Special Committee is in response to two petitions ("Petitions") received by the House:

1. Miscellaneous Communication No. 1001 from Mike Golojuch, Sr. on behalf of Concerned Democrats of House District 42 dated March 6, 2021; and
2. Miscellaneous Communication No. 1002 from Carolyn Martinez Golojuch dated March 8, 2021.

The Petitions indicate concerns regarding Representative Sharon Har's conduct and request that the House investigate whether Representative Har's conduct violates the House Code of Legislative Conduct (Rule 62).

Rule 14 authorizes the Speaker to appoint special committees for special or temporary purposes to consider and report on special or temporary matters referred to it. Rule 14 states:

Rule 14. Special Committee

- 14.1 The Speaker may appoint special committees for special or temporary purposes to consider and report on such special or temporary matters referred to it.

- 14.2 Special committees shall consist of not less than three members each, unless otherwise ordered by the House, to serve until discharged or until finally reporting on such matters referred to them.
- 14.3 Meetings of special committees shall be conducted in the same manner as provided for standing committees.
- 14.4 Special committees shall report upon matters referred to them within the time prescribed under the appointment of the special committees, unless further time is given by vote of the House.

Pursuant to Rule 14, I hereby appoint the following members to the Special Committee:

Representative Della Au Belatti, Chair
Representative Mark M. Nakashima, Vice Chair
Representative Linda Ichiyama
Representative Scot Z. Matayoshi
Representative Lauren Matsumoto
Representative Amy A. Perruso

In carrying out its duties, the House and the Special Committee shall follow these procedures to address the aforementioned matter unless the House otherwise determines:

- Rule 1. The Speaker shall carry out the requirements of Rule 46.2 in a timely manner.
- Rule 2. When a petition or communication is filed, the Chief Clerk shall report it to the Speaker who shall then, provided the petition or communication sets forth facts sufficient to warrant review, appoint a special committee to consider the matter, and refer it to the special committee.
- Rule 3. The member who is the subject of the matter (hereinafter "affected member") may continue to exercise the member's legislative functions while the matter is pending.
- Rule 4. The Special Committee shall convene as soon as practicable after a matter has been referred to it and, after notifying the affected member, shall investigate the matter. The Special Committee shall review relevant written documentation and other evidence submitted by the petitioner and affected member. At the discretion of the Chair of the Special Committee, the Special Committee may conduct hearings where the petitioner and the affected member, or their respective attorneys, shall each be provided an opportunity to make statements and answer

questions from the Special Committee. Any hearings shall be open to the public, for which notice of at least forty-eight hours shall be provided.

Rule 5. The Special Committee shall consider evidence that is clear and convincing.

Rule 6. Upon conclusion of its investigation, the Special Committee shall submit a report of its findings and recommendations to the House, at which time the House shall affirm or reject the report or take such other action as it determines.

If you have any questions, please contact my office.



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Case Search • Filing Date Search

Case Search

Search Criteria

Please enter as much information as possible (*denotes required field)

Case ID or Citation Number:	<input type="text" value="1DTI-21-04378"/>	Application Number:	<input type="text"/>	Beginning Case Filing Date:	<input type="text"/>
Arrest Number:	<input type="text"/>	TCT Number:	<input type="text"/>	Ending Case Filing Date:	<input type="text"/>
OTN:	<input type="text"/>				
SID:	<input type="text"/>				

Search results for criteria: Case ID or Citation Number: 1DTI-21-043783

[Printable Calendar View](#)

Case Description

Case ID: 1DTI-21-043783 - State v. Sharon E Har -NON JURY-
Type: TI - Traffic Infraction
Status: CLOSED - Closed Case-Judgment Satisfied
Last Updated: 29-Mar-2021
ID: @411775 JUV: N
Party Status: Not Specified
CDL: N CMV: N HAZ: N

Filing Date: WEDNESDAY, FEBRUARY 24, 2021
Court: FIRST CIRCUIT
Location: HONOLULU DIVISION

Balance Due: \$0.00

Citation / Arrest:

Alleged Speed: ~ / ~

Violations

No.	Violation			Spi Crts Eligibility	Disposition			Sentence		
	Code	Description	Date		Code	Description	Date	Code	Description	Length
1	UNKNOWN ROH 15-10.01		02/22/2021		DPJ	Dismissed With Prejudice	03/29/2021			

Related Cases No related cases were found.

Case Event Schedule

Event	Date	Time	Room	Location	Judge
Hearing	03/29/2021	08:30:00	Honolulu Courtroom 4A	HONOLULU DIVISION	

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name / Aliases
1			Defendant	@411775	Har, Sharon Ellie Har, SharonE Har, Sharon
2			Law Enforcement Officer	101100811	Lipka, Adam R

**Hawaii Motor Vehicle
Insurance Identification Card**

Allstate
You're in good hands.

Allstate Insurance Company

Sharon E Har [REDACTED]

Kapolei HI 96707-2910

POLICY NUMBER

[REDACTED]

EFFECTIVE DATE

10/08/20

EXPIRATION DATE

04/08/21

YEAR / MAKE / MODEL

2019 Mercedes-B Glc300

VEHICLE ID NUMBER

[REDACTED]

Keep this card in your vehicle at all times as evidence of insurance.

DISTRICT COURT OF THE FIRST CIRCUIT

DIVISION: HONOLULU DIVISION Monday, 6 December, 2021

STATE OF HAWAII

08:45 TRAFFIC COURT Room: 10C

NOTICE OF ENTRY OF JUDGMENT AND/OR ORDER AND PLEA/JUDGMENT PRINT:08:45

Case No. 1DTA-21-00387 Date 12/06/2021 Name State v. Sharon Ellie Bar #411775 Citation/Report No. 1DTC-21-043002

Also Case No. 2 (Count 2) Violation Section HRS 431:10C-104(a) Amended to Driver's License No. Veh. Plate No.

Traffic Infraction: [] Mitigation/Admit [] Contested Hearing/Denied [] Written Statement Traffic Crime Plea: [] GUILTY [] NO CONTEST [] NOT GUILTY

The Court has: [] Entered default judgment. [] Entered judgment in favor of the State. (See below) [] Entered judgment in your favor. (See below) [] Vacated the judgment & set for Trial de Novo. TRIAL HAD: [] FOUND GUILTY [] FOUND NOT GUILTY

JAIL Hours/Days Months Suspended Months Year License Days [] Absolute [] SUSPENDED Months [] 30 days absolute; may drive 60 days to and from work; [] REVOKED Year [] Concurrent with Administrative Revocation

Restitution \$ CICF \$ PFA \$ DE \$ DUI DE \$ CPRC \$ NTF \$ CTC \$ SFE \$ ADF \$ R20 \$ SGF \$ Other Fees \$

[] DAGP (Deferred Acceptance of Guilty Plea) Days [] DANCP (Deferred Acceptance of Nolo Contendere) Months [] PROBATION (See attached form) Year

[] Demanded Jury Trial [] Waived Jury Trial [] Signed & Filed [] Waived Presence of Defendant [] Waived Reading of the Charge [] Waived Right to Counsel [] Waived Speedy Trial & Rule 48 [] Retained Own Counsel [] Requested Interpreter, Language: CONDITIONS: FISCAL USE: FILED DISTRICT COURT FIRST CIRCUIT LEGAL DOCUMENTS BRANCH CLERK M. YOSHIKANE DATE/TIME DEC 06 2021

Referred to: [] Adult Community Service and Restitution Unit Hours [] District Court Probation Driver Education: [] Alcohol Assessment [] 10 hours AARP Minimum [] 14 hours AARP Minimum [] Driver Improvement Course [] CPRC Course [] Need Not Return if Complied [] Public Defender (See Back)

[] Discharged [x] Dismissed [x] With Prejudice [] Without Prejudice [] No Further Action Taken [] Nolle Prosequi [] Stricken pmt shown

[] Penal Summons by [] Judicial Services [] TVB Bail Forfeiture \$ & No Further Action Bail Forfeiture \$ & Bench Warrant \$ Bond Forfeiture \$ & Bench Warrant \$ Bail Forfeiture \$ of Set Aside

BAIL [] Custody [] Aggregate SET [] No Bail Set [] Cash Only AT \$ [] Release to Appear [] Refund Bail

BAIL/BOND POSTED 1DHP270154 RECEIPT NO. /BONDSMAN Har, Sharon Ellie

OFFICER/BADGE/ID# ATTORNEY H. Luke and D. Luke

Har, Sharon Ellie Def's Signature Address: S L Hartley / A Sanada

Phone No.: (home) (work) Judge/Clerk: Reprographics (05/12) COURT COPY 10-V-103

Column: Judge made correct decision in Har case

By Howard K.K. Luke • December 11, 2013



Howard K.K. Luke is a Honolulu attorney, representing state Rep. Sharon Har.

An informal poll was published by the Honolulu Star-Advertiser after the press conference held by the City and County of Honolulu's prosecutor following state Rep. Sharon Har's acquittal. It showed that only 9% of those polled agreed that the case should have been dismissed, 77% of respondents believed that the "judge erred," and 14% agreed "somewhat, but could've let the charge be refiled."

The purpose of this commentary is not to defend my client. That has already been accomplished in court. In our justice system, this is the only place where the evidence — and the truth — matters.

Rather, it is to explain why the presiding judge in the trial came to the correct decision in granting the defense motion for a judgment of acquittal.

Only the judge presiding over the trial, the court staff, the deputy prosecutor representing the state, and the attorneys defending Rep. Har were present throughout the trial. Only we heard and viewed all the evidence.

I never had a trial before the presiding judge. I didn't know him personally. I had heard that he had integrity and judicial ability. Further, if the evidence showed my client was guilty, he definitely would convict her.

After the conclusion of the press conference presentation, a reporter asked the question, "how can a judge get it so wrong?" The response began with "your guess is as good as mine." If the prosecutor had sat through the trial, there would be no need for guessing.

The prosecutor said that granting a judgment of acquittal meant that the case "shouldn't have been brought in the first place." This is a misleading statement of the law. The judge must consider the evidence in the light most favorable to the prosecution after it rests its case. If the judge is convinced that the prosecution has failed to prove guilt beyond a reasonable doubt, the motion must be granted.

There were numerous grounds for reasonable doubt. Here are a few:

The claim was made that Rep. Har ordered four bottles of beer. The server called by the prosecution testified that another individual kept ordering rounds for the table. Rep. Har consumed only a few sips, not below the neck of each of three bottles. She didn't drink any from the fourth. The amount she consumed was less than half a bottle.

The claim was made that she had attempted to turn the wrong way on Piikoi Street. She only started to move toward that direction after observing a police officer's hand gesture to do so. When verbal clarification to enter the parking lot to her right was made, she backed up and turned into the parking lot.

There were major inconsistencies in the testimony of prosecution witnesses. For example, the odor of alcohol was not said to have been detected by the officer who was in closest physical proximity to Rep. Har. The testimony of other officers was significantly contradicted by their police reports.

The judge found that the most important evidence consisted of the body-camera videos. They showed Rep. Har's ability to walk without any problem the considerable distance to the awaiting police vehicle, despite

wearing very high heels. She entered and exited the police vehicle, while handcuffed behind her back, without any problem.

She was very cooperative with the police throughout the arrest.

Because of the misleading narrative provided in the press conference, two questions should be asked and answered:

Is it OK to disagree with the decision of a judge? Absolutely.

Is it fair to explain that disagreement on a flawed, misleading representation of the evidence? Absolutely not.