

NO. 29708

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
GREGORY SKOCHKO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1DTA-08-07834)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Gregory Skochko (Skochko) appeals from the Judgment filed on February 26, 2009 in the District Court of the First Circuit, Honolulu Division (district court).¹ The district court convicted Skochko of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and (3) and (b)(1) (Supp. 2008).

On appeal, Skochko contends the district court erred by denying his oral motion to dismiss the charge because the written complaint and oral charge failed to state an essential element of the offense, i.e. that Skochko operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.²

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 raised by the parties, as

¹ The Honorable William A. Cardwell presided.

² In Skochko's second point of error, he contends the district court erred by convicting him, but he presents no argument to support his claim. Therefore, the point of error is waived. Hawaii Rules of Appellate Procedure Rule 28(b)(7).

well as the relevant statutory and case law, we resolve Skochko's point of error as follows:

"[T]he operation of a vehicle on a public way, street, road, or highway is an attendant circumstance of the offense of OVUII, and is therefore an element of the offense." State v. Wheeler, 121 Hawai'i 383, 393, 219 P.3d 1170, 1180 (2009). The failure to allege that at the time of the offense, Skochko was driving a vehicle upon a public way, street, road, or highway rendered the charge deficient. Id.

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on February 26, 2009 in the District Court of the First Circuit, Honolulu Division, is vacated and this case is remanded to the district court with instructions to dismiss the charge without prejudice.

DATED: Honolulu, Hawai'i, February 24, 2010.

On the briefs:

Timothy I. MacMaster
for Defendant-Appellant.

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Chief Judge

Associate Judge

Associate Judge