

NO. 30157

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
JAMES D. MORAVEC, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NOS. 1DTA-09-03257 & 1DTI-09-104998)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant James D. Moravec (Moravec) appeals from two Notices of Entry of Judgment and/or Order and Plea/Judgment, entered on October 26, 2009, in the District Court of the First Circuit, Honolulu Division (District Court).¹ Moravec was found guilty, in Case No. 1DTA-09-03257, of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and/or (a)(3) (Supp. 2009), and in Case No. 1DTI-09-104998, for disregarding a stop sign in violation of HRS § 291C-63(b) (2007).

On appeal, Moravec contends that the District Court erred by (1) refusing to dismiss the OVUII charge because it did not contain an essential element that the offense was committed on a public street, (2) ruling that the State's failure to comply with Rule 7(d) of the Hawaii Rules of Penal Procedure was a mere formality and not prejudicial, and that such error deprived the District Court of jurisdiction, and (3) admitting sworn statements by the intoxilyzer supervisor which violated Moravec's right to confrontation under the Sixth Amendment of the United

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The Honorable William Cardwell presided.

States Constitution.

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,² we resolve Moravec's points 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 Moravec was driving a vehicle upon a public way, street, road, or highway at the time of the offense rendered the charge deficient. *Id.* As a result, we do not reach the issues addressed in Moravec's second and third points of error.

Therefore,

IT IS HEREBY ORDERED THAT the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered on October 26, 2009, in the District Court of the First Circuit, Honolulu Division, in Case No. 1DTA-09-03257 is vacated and the matter is remanded to the District Court with instructions to dismiss the charge without prejudice.

DATED: Honolulu, Hawai'i, October 29, 2010.

On the briefs:

Samuel P. King, Jr.
for Defendant-Appellant.

Presiding Judge

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

Associate Judge

Associate Judge

² Although Moravec appeals from the judgment finding him guilty of disregarding a stop sign, he does not state any points of error or make any argument in this regard. Therefore, this court will disregard the appeal in Case No. 1DTI-09-104998. Haw. R. App. P. 28(b)(4).