

NO. 29885

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ARIC P. LARSEN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-08-09599)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Aric P. Larsen (**Larsen**) appeals from the Judgment entered against him on May 21, 2009, in the District Court of the First Circuit, Honolulu Division (**District Court**).¹ Larsen was convicted of Operating a Vehicle Under the Influence of an Intoxicant (**OVUII**), in violation of Hawaii Revised Statutes § 291E-61(a) and (b) (Supp. 2009).

On appeal, Larsen contends, *inter alia*, that the District Court erred by denying his motion to dismiss the charge because the written complaint and oral charge for OVUII failed to state an essential element of the offense, *i.e.*, that Larsen operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.

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, we resolve Larsen'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.

¹

The Honorable Lenore H. Lee presided.

Wheeler, 121 Hawai'i 383, 393, 219 P.3d 1170, 1180 (2009). The failure to allege that Larsen was driving a vehicle upon a public way, street, road, or highway at the time of the offense rendered the charge deficient. Id. Accordingly, the charge must be dismissed for lack of jurisdiction. We need not address Larsen's other points of error.

Therefore, the District Court's May 21, 2009 Judgment is vacated and this case is remanded to the District Court for dismissal of the OVUII charge without prejudice.

DATED: Honolulu, Hawai'i, April 28, 2010.

On the briefs:

Timothy I. Mac Master
for Defendant-Appellant

Presiding Judge

Anne K. Clarkin
Deputy Prosecuting Attorney
for Plaintiff-Appellee

Associate Judge

Associate Judge