

NO. 29709

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
JESSICA E. ROBERTS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-08-08840)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Jessica E. Roberts (Roberts) appeals from the Judgment entered on February 18, 2009, in the District Court of the First Circuit (district court).^{1/}

Roberts was convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes § 291E-61(a)(1) and (b)(1) (Supp. 2008).

On appeal, Roberts contends that the district court erred by denying her motion to dismiss the OVUII charge because the written complaint and oral charge failed to state an essential element of the offense, namely, that Roberts operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.^{2/}

Upon review of the record and the briefs submitted by the parties, we resolve Roberts's point of error as follows:

"[T]he operation [or assumption of actual physical control] 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 OVUII charge brought against Roberts was insufficient because it failed to allege that Roberts operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway. Id.

¹ The Honorable Willam Cardwell presided.

² Roberts moved to dismiss the charge as insufficient and the district court denied Roberts's motion before trial.

Therefore,

IT IS HEREBY ORDERED that the February 18, 2009, Judgment of the district court is vacated and the matter 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.

Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge