

NO. 29731

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
HENRY HUANG, Defendant-Appellant

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-08-10000)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Henry Huang (Huang) 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 Huang 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, Huang contends the district court erred by denying his oral motion to dismiss the charge because the charge failed to state an essential element of the offense, *i.e.*, that Huang 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, as well as the relevant statutory and case law, we resolve Huang'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

¹ The Honorable William Cardwell presided.

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, Huang 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:

Craig W. Jerome,
Deputy Public Defender,
for Defendant-Appellant.


Chief Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Associate Judge


Associate Judge