

NO. 29761

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MARISA MIEKO NAKANISHI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CASE NO. 1DTA-08-10371)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Leonard, J.,
and Circuit Court Judge Chan, in place of
Foley and Fujise, JJ., all recused)

Defendant-Appellant Marisa Mieko Nakanishi (**Nakanishi**) appeals from the Judgment entered on March 11, 2009, in the District Court of the First Circuit, Honolulu Division (**District Court**).¹ Nakanishi was convicted of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61(a) and (b) (Supp. 2009) (**OVUII**).

On appeal, Nakanishi contends the District Court erred by denying her motion to dismiss the charge because the written complaint failed to state an essential element of the offense, *i.e.*, that Nakanishi 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 Nakanishi'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

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The Honorable William A. Cardwell presided.

failure to allege that Nakanishi was driving a vehicle upon a public way, street, road, or highway at the time of the offense rendered the charge deficient. Id.

Therefore, the District Court's March 11, 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, February 25, 2010.

On the briefs:

Earle A. Partington
for Defendant-Appellant

Chief Judge

Loren J. Thomas
for Plaintiff-Appellee

Associate Judge

Acting Associate Judge