

NO. 29956

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,  
vs.  
JULIA M. LOOK, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(Case No. 1DTA-09-00166)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Foley, and Leonard, JJ.)

Defendant-Appellant Julia M. Look (Look) appeals from the Judgment filed on June 29, 2009,<sup>1/</sup> in the District Court of the First Circuit (district court).<sup>2/</sup>

Look was convicted of operating a vehicle under the influence of an intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) §§ 291E-61(a)(1) and (b)(1) (Supp. 2008).

On appeal, Look argues 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 Look operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.<sup>3/</sup>

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<sup>1/</sup> The bar code affixed to the Judgment bears the date June 26, 2009, but the Judgment is file-stamped June 29, 2009.

<sup>2/</sup> The Honorable William A. Cardwell presided.

<sup>3/</sup> Look moved pretrial to dismiss the OVUII charge as insufficient and the district court denied Look's motion before trial.

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

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

Therefore,

IT IS HEREBY ORDERED that the district court's Judgment filed on June 29, 2009, is vacated, and this case is remanded to the district court with instructions to dismiss the OVUII charge without prejudice.

DATED: Honolulu, Hawai'i, June 23, 2010.

On the briefs:

James S. Tabe  
Deputy Public Defender  
for Defendant-Appellant

Chief Judge

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

Associate Judge

Associate Judge