

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29848

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

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
SCOTT A. LIESEMEYER, Defendant-Appellant

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2010 MAR 19 AM 8:35

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
Honolulu Division
(HPD Traffic No. 1DTA-09-00391)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Scott A. Liesemeyer (Liesemeyer) appeals from the Judgment filed on April 28, 2009, in the District Court of the First Circuit, Honolulu Division (district court).^{1/}

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

^{1/} The Honorable William A. Cardwell presided.

^{2/} Liesemeyer moved pretrial to dismiss the charge as insufficient and the district court denied Liesemeyer's motion before trial.

Upon careful review of the record and the briefs submitted by the parties, we resolve Liesemeyer'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 Liesemeyer was insufficient because it failed to allege that Liesemeyer 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 April 28, 2009, Judgment of the district court is vacated, and this case is remanded to the district court with instructions to dismiss the OVUII charge without prejudice.

DATED: Honolulu, Hawai'i, March 19, 2010.

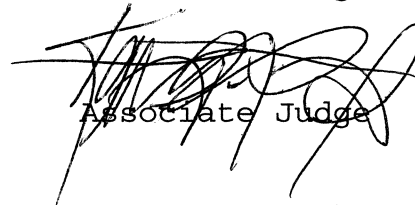
On the briefs:

Timothy I. Mac Master
for Defendant-Appellant

Donn Fudo
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge