

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

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

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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.

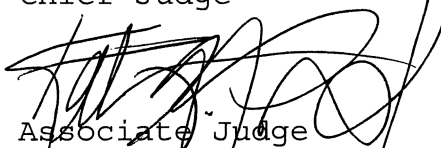
DATED: Honolulu, Hawai'i, February 25, 2010.

On the briefs:

Earle A. Partington
for Defendant-Appellant

Loren J. Thomas
for Plaintiff-Appellee


Chief Judge


Associate Judge


Acting Associate Judge