

NO. 29884

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
RICK M. HANNA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(Case No. 1DTA-08-10078)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Defendant-Appellant Rick M. Hanna (Hanna) appeals the judgment, entered on May 19, 2009, in the District Court of the First Circuit, Honolulu Division (district court).<sup>1</sup>

Hanna was convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes § 291E-61(a) and (b) (Supp. 2009)

On appeal, Hanna contends that the district court erred by denying his Motion to Dismiss the charge because the written complaint and oral charge for OVUII failed to state an essential element of the offense, i.e., that Hanna 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 Hanna's point of error as follows:

(1) "[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 failure to allege that Hanna was driving a vehicle

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<sup>1</sup> The Honorable William E. Cardwell presided.

upon a public way, street, road, or highway at the time of the offense rendered the charge deficient. Id. Therefore, the charge must be dismissed for lack of jurisdiction.

Therefore,

IT IS HEREBY ORDERED THAT the judgment, entered on May 19, 2009, in the District Court of the First Circuit, Honolulu Division is vacated. The matter is remanded to the district court with instructions to dismiss the OVUII charge without prejudice.

DATED: Honolulu, Hawai'i, May 17, 2010.

On the briefs:

Timothy I. MacMaster,  
for Defendant-Appellant.

Presiding Judge

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

Associate Judge

Associate Judge