

NO. CAAP-12-0000159

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
WEBSTER ALULI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(EWA DIVISION)
(CASE NO. 1DTA-11-03226)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Webster Aluli (**Aluli**) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment entered on February 14, 2012 (**Judgment**), by the District Court of the First Circuit, 'Ewa Division.¹ Aluli was charged with and convicted of Operating a Vehicle Under the Influence of an Intoxicant (**OVUII**) in violation of Hawaii Revised Statutes (**HRS**) § 291E-61(a)(1) (Supp. 2012) and Driving Without Motor Vehicle Insurance (**DWMVI**) in violation of HRS § 431:10C-104(a) (2005). On appeal, Aluli raises six points of error.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the issues raised by the parties, we resolve Aluli's points of error as follows:

¹ The Honorable Clarence A. Pacarro presided.

Aluli's sole contention relating to the DWMVI conviction (which he also asserts as to the OVUII conviction), is that the District Court erred as a matter of law by failing to grant judgment in his favor due to the failure of the prosecution to prove facts establishing venue in the 'Ewa Division of the District Court. This argument is without merit. See State v. Stanley, 110 Hawai'i 116, 122, 129 P.3d 1144, 1150 (App. 2005).

With respect to the OVUII charge, Aluli argues, and the State acknowledges, that the District Court erred when it denied Aluli's motion to dismiss the OVUII charge because the charge does not allege the requisite state of mind. We agree. See State v. Nesmith, 127 Hawai'i 48, 276 P.3d 617 (2012).

Therefore, we vacate Aluli's OVUII conviction and remand this case to the District Court with instructions to dismiss the OVUII charge without prejudice. Id. at 54, 276 P.3d at 623; see also State v. Gonzalez, 128 Hawai'i 314, 324, 288 P.3d 788, 798 (2012). Accordingly, we need not address Aluli's remaining arguments.

For these reasons, the District Court's February 14, 2012 Judgment is affirmed in part, with respect to Aluli's conviction for DWMVI, and vacated and remanded for dismissal without prejudice of the OVUII charge against Aluli.

DATED: Honolulu, Hawai'i, May 14, 2013.

On the briefs:

Hayden Aluli
for Defendant-Appellant

Presiding Judge

Brandon H. Ito
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge