

NO. CAAP-13-0002124

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
BRIAN D. MONROE, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-13-00369)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Brian D. Monroe (Monroe) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment filed on July 5, 2013, in the District Court of the First Circuit, Honolulu Division (district court).¹ The district court found Monroe guilty of one count of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and (3) (Supp. 2014).²

¹ The Honorable David Lo presided.

² HRS § 291E-61(a) provides the following, in relevant part:

§291E-61 Operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(continued...)

On appeal, Monroe argues that the district court erred in denying his motion to dismiss the Complaint on the ground that it was pled in the disjunctive and, therefore, defective.

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 Monroe's point of error as follows and affirm.

The district court did not err in denying the motion to dismiss the Complaint. Monroe highlights six instances in which "or" is used in the Complaint.³ Each of these instances involves either states of mind; synonymous phrases; statutorily defined terms; or similar conduct codified under a single subsection of a statute. These uses of the disjunctive were permissible. See State v. Codiamat, 131 Hawai'i 220, 227, 317 P.3d 664, 671 (2013); State v. Sherman, No. CAAP-12-0000887, 2015 WL 3476381 at *1 (App. May 29, 2015) (SDO).

² (...continued)

[or]

. . . .

(3) With .08 or more grams of alcohol per two hundred ten liters of breath[.]

³ The Complaint stated that:

On or about the 8th day of January, 2013, in the City and County of Honolulu, State of Hawaii, [Monroe] did intentionally, knowingly **or** recklessly operate **or** assume actual physical control of a vehicle upon a public way, street, road, **or** highway while under the influence of alcohol in an amount sufficient to impair his normal mental faculties **or** ability to care for himself and guard against casualty; and/or did operate **or** assume actual physical control of a vehicle upon a public way, street, road, **or** highway with .08 or more grams of alcohol per two hundred ten liters of breath, thereby committing the offense of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Section 291E-61(a)(1) and/or (a)(3) of the [HRS]. [Monroe] is subject to sentencing as a first offender in accordance with Section 291E-61(b)(1) of the [HRS].

(Emphases added.)

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on July 5, 2013, in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, June 25, 2015.

On the briefs:

Samuel P. King, Jr.
for Defendant-Appellant

Presiding Judge

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

Associate Judge

Associate Judge