

NO. CAAP-17-0000036

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
CARDELL CHARLES, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
WAI'ANAE DIVISION  
(1DTA-14-05659)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Cardell Charles (Charles) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered on December 2, 2016 in the District Court of the First Circuit, Wai'anae Division (District Court).<sup>1</sup>

Charles was convicted of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) (Supp. 2016).<sup>2</sup>

On appeal, Charles contends there was insufficient evidence to convict him of OVUII.

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<sup>1</sup> The Honorable James C. McWhinnie presided.

<sup>2</sup> HRS § 291E-61(a) states:

**§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[.]

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 Charles's point of error as follows and affirm:

When the evidence is considered in the strongest light for the prosecution, State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007), there was substantial evidence to support Charles's conviction. Prior to being stopped on Farrington Highway by Corporal John Dorsey (Corporal Dorsey), Charles was observed drifting to the left and driving on a broken white line with his left two tires for approximately 100 feet. Corporal Dorsey was traveling to the left and slightly behind Charles's vehicle, and Corporal Dorsey backed off because he was afraid that Charles's vehicle might collide with him. Corporal Dorsey testified that Charles "got within a couple feet of me[.]" After stopping Charles's vehicle, Corporal Dorsey observed that Charles had red and glassy eyes, a strong odor of an alcoholic beverage, and Charles slurred his speech. Charles initially stated that he had not been drinking but then stated that "he had been drinking a long time ago but he hadn't in a while." Although Charles stated that he understood the instructions for the walk-and-turn test, Charles twice stepped with his heel at least five inches apart from his toe while walking nine steps down and then at least five inches apart twice again while walking back, which was not in accordance with the instructions. During the turn on the walk-and-turn test, Charles performed it backwards from what Corporal Dorsey told him to do and repositioned his right foot in front of his left foot and then proceeded to walk back. During the one-leg stand test Charles started losing his balance, raised his arms, and started hopping and swaying, all of which were signs that Charles did not perform the test as instructed. The credible evidence was of sufficient quality and probative value to enable a person of reasonable caution to support the conclusion that Charles was guilty of OVUII from all reasonable and rational inferences under the facts

in evidence, including circumstantial evidence. State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992).

Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered on December 2, 2016 in the District Court of the First Circuit, Wai'anae Division is affirmed.

DATED: Honolulu, Hawai'i, December 12, 2017.

On the briefs:

Shem H. Kim,  
Deputy Public Defender,  
for Defendant-Appellant.

Presiding Judge

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

Associate Judge

Associate Judge