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NO. CAAP-17-0000037

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JOSEPH S. CURCIO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-15-04791)

SUMMARY DISPOSITION ORDER

(By: Ginoza, C.J., and Reifurth and Chan, JJ.)

Defendant-Appellant Joseph S. Curcio appeals from the Notices of Entry of Judgment and/or Order and Plea/Judgment, filed on December 12, 2016^{1/} and May 15, 2018,^{2/} in the District Court of the First Circuit, Honolulu Division ("District Court"). Curcio was convicted of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes ("HRS") section 291E-61(a)(1) (Supp. 2014).^{3/} On appeal, Curcio contends that there was insufficient evidence to convict him.

^{1/} The Honorable James H. Ashford presided.

^{2/} The Honorable Rebecca A. Copeland presided.

^{3/} HRS section 291E-61(a) states:

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 Curcio's point of error as follows, and affirm.

In reviewing a challenge to the sufficiency of the evidence at trial, appellate courts are obliged to consider the evidence in the strongest light for the prosecution. *State v. Matavale*, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007). Here, there was substantial evidence to support Curcio's conviction.

Honolulu Police Department ("HPD") Sergeant James Rahe testified that on October 21, 2015, at approximately 12:45 a.m., Curcio was stopped because he was driving the wrong way on a one-way section of Monsarrat Avenue, which is a public street in the City and County of Honolulu, State of Hawai'i. Sergeant Rahe observed that Curcio had red, watery, and droopy eyes and an odor of alcohol on his breath. Curcio stated to Sergeant Rahe that he had some drinks earlier in the night. Sergeant Rahe also observed that Curcio was a "little bit wobbly on his feet[,] and swayed back and forth when exiting his vehicle.

HPD Officer Jesse Takushi testified that he administered the standardized field sobriety tests to Curcio. Before Officer Takushi requested that Curcio take any test, Curcio stated to him "I've been drinking, I'll be honest with you, I'm drunk, I don't even need to take any tests, I will admit to you I'm drunk." Nonetheless, Curcio agreed to participate in the standardized field sobriety tests.

During the Horizontal Gaze Nystagmus test, Curcio swayed a few inches back and forth. Curcio lost his balance six times while in the instructional position of the walk-and-turn test and twice started early. In the first half of the test, Curcio missed all heel-to-toe steps, stepped off the line, raised his arms about 45 degree from his leg, turned right and lifted both feet during a turn, stumbled two steps back and almost fell. In the second half, he missed the heel-to-toe steps, stepped off the line, and raised his arms. Curcio's actions were contrary to Officer Takushi's instructions on the walk-and-turn test.

During the one-leg stand test, Curcio swayed throughout the entire 30 second test. Contrary to Officer Takushi's instructions, Curcio raised his arms and put his foot down twice and hopped once. Based on his observations, Officer Takushi believed that Curcio was not fit to operate a vehicle safely.

Based on the aforementioned observations of Sergeant Rahe and Officer Takushi, the District Court did not err in concluding that there was sufficient evidence that Curcio was under the influence of alcohol, pursuant to HRS section 291E-61(a)(1), in an amount sufficient to impair his normal mental faculties or ability to care for himself and guard against casualty when he operated or assumed actual physical control of his vehicle on a public way, street, road, or highway in the County of Honolulu, State of Hawai'i.

Therefore, the Notices of Entry of Judgment and/or Order and Plea/Judgment, filed on December 12, 2016 and May 15, 2018, in the District Court of the First Circuit, Honolulu Division, are affirmed.

DATED: Honolulu, Hawai'i, June 20, 2018.

On the briefs:

John R. Foster,
Deputy Public Defender,
for Defendant-Appellant.

Justin P. Haspe,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge