

NO. 23686

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee

vs.

RAYMOND J. GALLANT, Defendant-Appellant

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(TRAFFIC NO. 99-371536)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Defendant-appellant Raymond J. Gallant appeals from the May 22, 2000 judgment of conviction and sentence of the district court of the first circuit, the Honorable Colette Y. Garibaldi presiding, for driving under the influence of intoxicating liquor, in violation of Hawai'i Revised Statutes (HRS) § 291-4 (1993).<sup>1</sup> Gallant argues that the trial court reversibly erred in denying his motion for judgment of acquittal and motion for reconsideration of judgment of acquittal because the prosecution did not allege each essential element of the charge against Gallant.

Upon careful review of the record and the briefs

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<sup>1</sup> HRS § 291-4 provides in relevant part:

- (a) A person commits the offense of driving under the influence of intoxicating liquor if:
  - (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or
  - (2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath.

submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties, we hold that while the prosecution's omission of the word "liquor" was harmless, the oral charge was nonetheless insufficient because the prosecution failed to allege that "under the influence of intoxicating liquor" meant the consumption of an intoxicating liquor in "an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty[.]" HRS § 291-4(a)(1) (1993).

IT IS HEREBY ORDERED that the district court's judgment of conviction is hereby reversed.

DATED: Honolulu, Hawai'i, July 11, 2002.

On the briefs:

Timothy I. Mac Master  
for defendant-appellant

Bryan K. Sano, Deputy  
Prosecuting Attorney,  
for plaintiff-appellee