

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25671

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

ADAM M. RUGGIERO, Defendant-Appellant.

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CASE NO. TR18: 1/29/03)

SUMMARY DISPOSITION ORDER

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

The defendant-appellant Adam M. Ruggiero appeals from the January 29, 2003 judgment of conviction and sentence of the district court of the second circuit, the Honorable Reinette W. Cooper presiding, convicting him of and sentencing him for the offense of operating a vehicle under the influence of an intoxicant, in violation of Hawai'i Revised Statutes ("HRS") § 291E-61(a)(1) (Supp. 2002). On appeal, Ruggiero argues that (1) the district court erred in denying appellant's motion for judgment of acquittal because there was insufficient evidence that appellant committed the offense of operating a vehicle under the influence of an intoxicant, HRS § 291E-61, in conformity with the definitions contained in HRS § 291E-61, and (2) the district court abused its discretion in denying appellant's motion to dismiss as a de minimis offense under the totality of circumstances because the record lacks substantial evidence to support its findings of fact, and its conclusions of law, unsupported by facts, cannot be deemed right as a matter of law.

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Upon careful review of the record and the briefs submitted by the parties, it appears the state concedes that the district court erred when it convicted appellant of the offense of driving under the influence of intoxicating liquor, in violation of Section 291E-61 of the H.R.S., because the state failed to prove an essential element of the offense at trial (that the parking lot is one as defined in H.R.S. § 291E-1). We conclude that the state's confession of error is supported by the record and is well-founded in law. See State v. Wasson, 76 Hawai'i 415, 418, 879 P.2d 520, 523 (1994); see also Tachibana v. State, 79 Hawai'i 226, 240, 900 P.2d 1293, 1307 (1995); State v. Lewis, 94 Hawai'i 292, 297, 12 P.3d 1227, 1233 (2000). We also conclude that failure to prove an essential element of an offense at trial results in reversal of the conviction because there is insufficient evidence to prove the offense. See, e.g., State v. Figel, 80 Hawai'i 47, 904 P.2d 932 (1995). Therefore,

IT IS HEREBY ORDERED that appellant's conviction of and sentence for operating a vehicle under the influence of an intoxicant is reversed.

DATED: Honolulu, Hawai'i, March 19, 2004.

On the briefs:

Simone C. Polak, deputy  
prosecuting attorney for  
plaintiff-appellee

Phyllis J. Hironaka, deputy  
public defender for  
defendant-appellant