

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27471

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
WESLEY JHUNG TUNG TENN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 04413831)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Lim, JJ.)

Wesley Jhung Tung Tenn (Defendant) appeals the August 1, 2005 judgment of the District Court of the First Circuit (district court)¹ that convicted him of driving under the influence of alcohol.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we dispose of Defendant's points of error on appeal as follows:

1. Given the prerogative of the finder of fact to determine the credibility of the witnesses and the weight of the evidence, State v. Taliferro, 77 Hawai'i 196, 201, 881 P.2d 1264, 1269 (App. 1994), and to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence, State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996), we conclude there was substantial evidence, id., that Defendant operated his vehicle under the influence of alcohol.

¹

The Honorable Yvonne Shinmura presided.

K. HAMAKA'AO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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Hawaii Revised Statutes (HRS) §§ 291E-61(a)(1) & -61(a)(3) (Supp. 2006).

2. The district court correctly denied Defendant's June 8, 2005 motion to suppress his breath alcohol concentration test result, because the police accurately informed Defendant of his statutory right to consent to or refuse the test, as well as the consequences of each, and Defendant was thus able to knowingly and intelligently make his choice. HRS § 291E-11(b)(2) (Supp. 2005); State v. Wilson, 92 Hawai'i 45, 49, 987 P.2d 268, 272 (1999). Even if the district court was, *arguendo*, wrong in this regard, the error was harmless beyond a reasonable doubt, State v. Holbron, 80 Hawai'i 27, 32, 904 P.2d 912, 917 (1995), because there was overwhelming other evidence that Defendant was impaired. HRS § 291E-61(a)(1); Wilson, 92 Hawai'i at 54 n.14, 987 P.2d at 277 n.14.

Therefore,

IT IS HEREBY ORDERED that the August 1, 2005 judgment of the district court is affirmed.

DATED: Honolulu, Hawai'i, March 28, 2007.

On the briefs:

R. Patrick McPherson,
for Defendant-Appellant.

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.


Chief Judge


Associate Judge


Associate Judge