

NO. 28137

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
TROY TYLER, Defendant-Appellant

K. HAMAKADO  
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STATE OF HAWAI'I

2007 JUL 31 AM 8:37

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
'EWA DIVISION  
(HPD Traffic No. 1DTA-06-01799)

SUMMARY DISPOSITION ORDER

(Recktenwald, C.J., Watanabe, and Foley, JJ.)

Defendant-Appellant Troy Tyler (Tyler) appeals from the judgment entered by the District Court of the First Circuit<sup>1</sup> (the district court) on August 2, 2006, convicting and sentencing him for operating a vehicle under the influence of an intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and (3) (Supp. 2006).<sup>2</sup>

<sup>1</sup> The Honorable T. David Woo, Jr. presided.

<sup>2</sup> Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2006) states, in pertinent part:

**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;
- ...
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath[.]

HRS § 291E-1 (Supp. 2006) defines the following terms which are relevant to the foregoing statute:

"Operate" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway or to navigate or otherwise use or assume physical

(continued...)

Tyler contends that the district court erred in convicting him for OVUII because there was insufficient evidence to prove that he assumed actual physical control of a vehicle upon a public way, street, road, or highway.

Upon review of the record and the briefs submitted by the parties, and having duly considered the case law and statutes relevant to the arguments advanced on appeal, we disagree with Tyler.

The evidence in the record shows that Tyler's vehicle was found teetering on a concrete wall separating a public sidewalk from the First Hawaiian Bank parking lot in Pearl City, with its headlights shining and engine running. When asked by a police officer what had happened, Tyler admitted that he had driven his vehicle over the concrete wall. This admission constituted sufficient evidence to allow the district court to conclude that Tyler operated or assumed physical control of the vehicle.

The evidence in the record also shows that the parking lot in which Tyler's vehicle was found was part of a shopping center open to the public that included the following businesses: First Hawaiian Bank, McDonald's Restaurant, and Daiei Store. The parking lot thus qualified as a "public way, street, road, or highway" within the meaning of HRS § 291E-1 (Supp. 2006).<sup>3</sup>

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<sup>2</sup>(...continued)

control of a vessel underway on or in the waters of the State.

. . . .  
"Public way, street, road, or highway" includes:

. . . .  
(2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes[.]

<sup>3</sup> See footnote 2.

We conclude that there is substantial evidence in the record to support the district court's judgment.

Accordingly, we affirm.

DATED: Honolulu, Hawai'i, July 31, 2007.

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State of Hawai'i,  
for defendant-appellant.

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