

NO. 29150

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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STATE OF HAWAII, Plaintiff-Appellee, v.
JOEL L. SUMAJIT, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(HPD Traffic No. 1DTA-07-16282)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakamura and Fujise, JJ.)

Defendant-Appellant Joel M. Sumajit (Sumajit) appeals the Judgment, entered on April 2, 2008, in the District Court of the First Circuit, Honolulu Division (district court).¹

Sumajit was convicted of Operating a Vehicle Under the Influence of an Intoxicant (OUVII), in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(1) and/or 291E-61(a)(3) (2007).

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 Sumajit's point of error as follows:

On appeal, Sumajit contends there was insufficient evidence to convict him on OUVII. We review the sufficiency of evidence on appeal as follows:

¹ The Honorable William A. Cardwell presided.

[E]vidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact.

State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998) (quoting State v. Quitog, 85 Hawai'i 128, 145, 938 P.2d 559, 576 (1997)).

Prior to stopping Sumajit, Officer Brannon Noguchi (Officer Noguchi) observed that Sumajit drifted from side to side within the lane, the right passenger tire went over the dotted line, Sumajit corrected himself and pulled back into the center lane, Sumajit changed to the far right lane without signaling, broke the solid white line on the shoulder and corrected himself, and rode the line for a while.

Officer Noguchi testified that Sumajit had red bloodshot eyes, flushed skin, and slurred speech. Officer Noguchi further testified that Sumajit could not keep his balance by keeping his feet in line while performing the walk and turn test, Sumajit missed his heel to toe more than a half inch, stepped off the line, and raised his arms, and swayed, raised his arms, put his foot down and hopped during the one-leg test. Although Officer Noguchi admitted that wind from passing cars may affect a person's ability to balance, Sumajit did not state that he lost his balance due to wind from passing cars, thus there was no contradictory evidence to Officer Noguchi's testimony. Officer Noguchi also opined that lighting in the area was adequate. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." State v. Mattiello, 90 Hawai'i 255, 259, 978 P.2d 693,

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697 (1999) (internal quotation marks, citations, and brackets omitted; block quote format changed).

Therefore,

The Judgment, entered on April 2, 2008, in the District Court of the First Circuit, Honolulu Division is affirmed.

DATED: Honolulu, Hawai'i, April 17, 2009.

On the briefs:

Craig K. Furusho,
for Defendant-Appellant.


Chief Judge

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


Associate Judge


Associate Judge