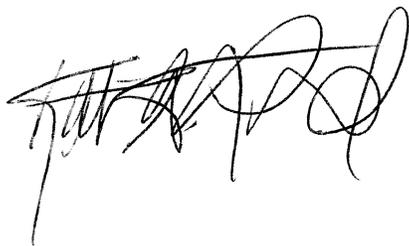


DISSENT BY LEONARD, J.

I respectfully dissent. For the reasons stated in this court's March 6, 2009 Summary Disposition Order in State v. Wheeler (No. 29149), *certiorari* pending, it appears that the oral charge in this case was insufficient. The charge failed to include a plain, concise and definite statement of each of the essential facts constituting the offense of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61(a) because it failed to allege that Anderson operated a vehicle on a public road, street or highway, an attendant circumstance of the offense. See Hawai'i Rules of Penal Procedure Rules 5(b) and 7(a); HRS § 702-205; State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977) (oral charge must sufficiently allege all of the essential elements of the offense charged; defective charge constitutes denial of due process). Inasmuch as the charge was defective, the District Court of the First Circuit, Honolulu Division, was without jurisdiction in this matter. See State v. Sprattling, 99 Hawai'i 312, 327, 55 P.3d 276, 291 (2002).

A handwritten signature in black ink, appearing to be "Leonard J.", written in a cursive style.