

NO. 29377

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIISTATE OF HAWAII, Plaintiff-Appellee,  
v.  
ROBERT MICHAEL ANDERSON aka ROBERT M. ANDERSON  
Defendant-AppellantCLERK, APPELLATE COURTS  
STATE OF HAWAII  
*Jeannette Kihana*

2009 SEP-4 AM 7:47

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
HONOLULU DIVISION  
(HPD TRAFFIC NOS. 1DTA-08-01535 and 1DTI-08-041698)SUMMARY DISPOSITION ORDER(By: Foley, Presiding Judge, and Nakamura, J.;  
and Leonard, J., dissenting)

Defendant-Appellant Robert Michael Anderson aka Robert M. Anderson (Anderson) appeals from the Judgment filed on August 28, 2008 in the District Court of the First Circuit, Honolulu Division (district court).<sup>1</sup>

The district court convicted Anderson of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawaii Revised Statutes (HRS) §§ 291E-61(a)(1) and 291E-61(b)(1) (2007 Repl.), and disregarding traffic lane markings, in violation of HRS § 291C-38 (2007 Repl.).<sup>2</sup>

On appeal, Anderson contends the district court erred by convicting him of OVUII because the oral charge made by the State of Hawaii (State) was insufficient because the State failed to allege the essential element that Anderson operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.

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, as

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<sup>1</sup> The Honorable William Cardwell presided.

<sup>2</sup> Anderson has not appealed his conviction for HRS § 291C-38.

well as the relevant statutory and case law, we conclude that the charge was sufficient because the State need not allege that Anderson was traveling on a public way, street, road, or highway in order to convict him of violating HRS §§ 291E-61(a)(1) and 291E-61(b)(1). State v. Ruggiero, 114 Hawai'i 227, 240-41, 160 P.3d 703, 716-17 (2007); State v. Kekuewa, 114 Hawai'i 411, 426, 163 P.3d 1148, 1163 (2007); see also Hamling v. United States, 418 U.S. 87, 118-19 (1974); United States v. Wicks, 187 F.3d 426, 428 (4th Cir. 1999); State v. Kern, 67 P.3d 272, 278 (Mont. 2003).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on August 28, 2008 in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, September 4, 2009.

On the briefs:

Craig W. Jerome,  
Deputy Public Defender,  
for Defendant-Appellant.

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge