

SUPREME COURT OF HAWAI‘I

State of Hawai‘i v. Carson Lalepa Wheeler, 121 Haw. 383

219 P.3d 1170 (2009) · No. No. 29149 · Decided November 17, 2009

SUMMARY

The Supreme Court of Hawai‘i held that operation of a vehicle upon a public way, street, road, or highway is an attendant circumstance and essential element of the offense of operating a vehicle under the influence of an intoxicant. Because the oral charge against Carson Lalepa Wheeler did not allege that the vehicle was operated in such a location, the charge was legally insufficient. The court affirmed the Intermediate Court of Appeals’ judgment vacating the conviction and remanding with instructions to dismiss without prejudice.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Recktenwald, J.; Moon, C.J.; Nakayama, J.; Acoba, J.; Duffy, J.
JURISDICTION	Hawaii
DECIDED	November 17, 2009
DOCKET	No. 29149
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State petitioned for a writ of certiorari to review the Intermediate Court of Appeals' judgment vacating Wheeler's OVUII conviction and remanding with instructions to dismiss the charge without prejudice.
STANDARD OF REVIEW	The Supreme Court reviews acceptance of certiorari applications for grave errors of law or fact and obvious inconsistencies under HRS § 602-59. The sufficiency of a criminal charge and statutory interpretation are reviewed de novo under the right/wrong standard.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Hawai‘i
PARTIES	Carson Lalepa Wheeler v. State of Hawai‘i

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- appellate jurisdiction
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether operation of a vehicle upon a public way, street, road, or highway is an essential element or attendant circumstance of the OVUII offense under HRS § 291E-61(a)(1).
2. Whether the oral charge was legally sufficient when it used the word "operate" but did not allege that Wheeler operated the vehicle upon a public way, street, road, or highway.
3. Whether *State v. Ruggiero* and *State v. Kekuwa* required a contrary result or controlled the sufficiency-of-the-charge issue.
4. Whether the timely pretrial objection prevented application of the liberal post-conviction construction rule applicable to defective charges challenged for the first time on appeal.

HOLDINGS

1. Operation of a vehicle upon a public way, street, road, or highway is an attendant circumstance and therefore an essential element of the OVUII offense under HRS § 291E-61(a)(1).
2. The oral charge was insufficient because it did not allege that Wheeler operated or assumed actual physical control of the vehicle upon a public way, street, road, or highway.
3. *Ruggiero* and *Kekuwa* did not require a contrary result because they addressed allegations concerning prior OVUII convictions and did not decide whether the public-roadway requirement was an essential element or was adequately alleged.
4. The *Motta/Wells* liberal construction rule did not apply because Wheeler timely objected to the sufficiency of the oral charge before trial.

KEY QUOTATIONS

"Accordingly, the operation of a vehicle on a public way, street, road, or highway is an attendant circumstance of the offense of OVUII, and is therefore an element of the offense." (1179-80)

"The use of the phrase "operate" did not provide adequate notice to Wheeler that the State was required to prove that his operation of the vehicle occurred on a public way, street, road, or highway." (1183)

"Thus, because Wheeler timely objected to the oral charge in the district court, the Motta/Wells analysis is not applicable here." (1187)

FACTUAL BACKGROUND

Wheeler was stopped after an officer observed his vehicle traveling seventy-one miles per hour in a fifty-mile-per-hour zone on Moanalua Freeway. The officer observed signs of intoxication, administered field sobriety tests, and arrested Wheeler for operating a vehicle under the influence of alcohol. The prosecution's oral charge alleged that Wheeler operated or assumed actual physical control of a motor vehicle while impaired, but did not allege that the operation occurred upon a public way, street, road, or highway.

PROCEDURAL HISTORY

Wheeler was orally charged in the District Court of the First Circuit with first-offense operating a vehicle under the influence of an intoxicant. The district court denied his pretrial motion to dismiss and later denied his motion for judgment of acquittal, convicted him, and imposed sentence. The ICA vacated the judgment and remanded for dismissal without prejudice because the oral charge did not allege that the vehicle was operated upon a public way, street, road, or highway. The Supreme Court of Hawai‘i affirmed the ICA.

DISPOSITION

affirmed

CASES CITED

- State v. Ruggiero, 114 Hawai‘i 227, 160 P.3d 703 (2007)
- State v. Kekuewa, 114 Hawai‘i 411, 163 P.3d 1148 (2007)
- State v. Jendrusch, 58 Haw. 279, 567 P.2d 1242 (1977)
- State v. Wells, 78 Hawai‘i 373, 894 P.2d 70 (1995)
- State v. Merino, 81 Hawai‘i 198, 915 P.2d 672 (1996)
- State v. Cummings, 101 Hawai‘i 139, 63 P.3d 1109 (2003)
- State v. Aiwohi, 109 Hawai‘i 115, 123 P.3d 1210 (2005)
- Potter v. Hawai‘i Newspaper Agency, 89 Hawai‘i 411, 974 P.2d 51 (1999)
- State v. Shimabukuro, 100 Hawai‘i 324, 60 P.3d 274 (2002)
- State v. Kaakimaka, 84 Hawai‘i 280, 933 P.2d 617 (1997)
- State v. Bayly, 118 Hawai‘i 1, 185 P.3d 186 (2008)
- Fowler v. State, 65 S.W.3d 116 (Tex. App. 2001)
- State v. Mark, 154 N.C. App. 341, 571 S.E.2d 867 (2002)
- State v. McNeil, 164 Vt. 129, 665 A.2d 51 (1995)
- Commonwealth v. Owen, 397 Pa. Super. 507, 580 A.2d 412 (1990)
- State v. Rollins, 469 S.W.2d 46 (Mo. App. 1971)
- Hamling v. United States, 418 U.S. 87, 94 S. Ct. 2887, 41 L. Ed. 2d 590 (1974)
- Russell v. United States, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962)
- State v. Israel, 78 Hawai‘i 66, 890 P.2d 303 (1995)
- State v. Baker, 55 Haw. 621, 525 P.2d 571 (1974)
- State v. Sprattling, 99 Hawai‘i 312, 55 P.3d 276 (2002)
- State v. Treat, 67 Haw. 119, 680 P.2d 250 (1984)
- Webster v. Fall, 266 U.S. 507, 45 S. Ct. 148, 69 L. Ed. 411 (1925)
- E & J Lounge Operating Co., Inc. v. Liquor Commission of City & County of Honolulu, 118 Hawai‘i 320, 189 P.3d 432 (2008)
- United States v. L.A. Tucker Truck Lines, Inc., 344 U.S. 33, 73 S. Ct. 67, 97 L. Ed. 54 (1952)
- Indian Oasis-Baboquivari Unified School District v. Kirk, 91 F.3d 1240 (9th Cir. 1996)

- State v. Domingues, 106 Hawai'i 480, 107 P.3d 409 (2005)
- State v. Motta, 66 Haw. 89, 657 P.2d 1019 (1983)
- State v. Robins, 66 Haw. 312, 660 P.2d 39 (1983)

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