

NOT FOR PUBLICATION

NO. 26661

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
SAMUEL M. YOUNG, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH KONA DIVISION
(Case No. H-74179/KN)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Samuel M. Young (Defendant) appeals the September 28, 2004 judgment of the District Court of the Third Circuit (district court)¹ that convicted him of driving under the influence of an intoxicant (DUI); namely, alcohol.

After a meticulous review of the record and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we hold that there was not probable cause to arrest Defendant for DUI. Kernan v. Tanaka, 75 Haw. 1, 38 n.23, 856 P.2d 1207, 1226 n.23 (1993) ("it is the [field sobriety] test failure that provides the police with probable cause to arrest"); State v. Kaleohano, 99 Hawai'i 370, 377, 56 P.3d 138, 145 (2002) ("failing a field sobriety test is what usually provides police with probable cause to arrest for driving under the influence" (citing Kernan, supra)).

¹ The Honorable Joseph P. Florendo, Jr. presided.

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Therefore,

IT IS HEREBY ORDERED that the September 28, 2004 judgment of the district court is vacated and the cause remanded for entry of an order dismissing the DUI charge, with prejudice. See State v. Ramos, 93 Hawai'i 502, 513, 6 P.3d 374, 385 (App. 2000) (where a successful appeal of the trial court's denial of a motion to suppress left insufficient evidence to convict, this court vacated the judgment and remanded for entry of an order dismissing the charge, with prejudice).

DATED: Honolulu, Hawai'i, January 19, 2006.

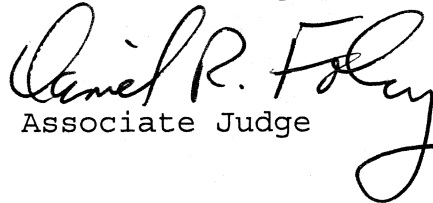
On the briefs:

Dayna-Ann A. Mendonca,
Deputy Public Defender,
for Defendant-Appellant.

Frederick D. Giannini,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.


Acting Chief Judge


Associate Judge


Associate Judge