

NOT FOR PUBLICATION

NO. 26971

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JAMES ISAMU YUEN, Defendant-Appellant

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INTERMEDIATE COURTS
STATE OF HAWAII

FILED

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NOS. H81843H & H81844H)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant James Isamu Yuen (Yuen) appeals from the Judgment entered on October 29, 2004 in the District Court of the Third Circuit, North and South Kona Division (district court).^{1/} The district court found Yuen guilty of one count of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2003),^{2/} and one count of Instruction Permits, in

^{1/} The Honorable Joseph P. Florendo, Jr., presided.

^{2/} Hawaii Revised Statutes (HRS) § 291E-61 (Supp. 2003) provides in part:

§291E-61 Operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty[.]

violation of HRS § 286-110(e) (Supp. 2005).^{3/} On appeal, Yuen argues that this court should reverse his conviction because the State of Hawai'i (the State) did not adduce substantial evidence to prove that Yuen was operating his motorcycle.

On July 6, 2004, the State filed a Complaint charging Yuen with Operating a Vehicle Under the Influence of an Intoxicant (Count I) and Instruction Permits (Count II). The Complaint charged that on or about February 24, 2004, Yuen, the holder of only a temporary instruction permit, did operate or assume physical control of a motorcycle during hours of darkness while under the influence of alcohol in an amount sufficient to impair his normal mental faculties.

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 as raised by the parties, we conclude that there was substantial evidence adduced at trial to support the district court's finding that Yuen operated his motorcycle on February 24, 2004. State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996); State v. Gaston, 108 Hawai'i 308, 311, 119 P.3d 616, 619, reconsideration denied, 108 Hawai'i

^{3/} HRS § 286-110(e) (Supp. 2005) provides:

§286-110 Instruction permits.

- (e) No holder of a temporary instruction permit shall operate a motorcycle or a motor scooter during hours of darkness or carry any passengers.

314, 119 P.3d 622 (App. 2005), cert. denied, 108 Hawai'i 379, 120 P.3d 735 (2005); State v. Naeole, 62 Haw. 563, 565, 617 P.2d 820, 823 (1980).

Therefore,

The Judgment entered on October 29, 2004 in the District Court of the Third Circuit, North and South Kona Division, is affirmed.

DATED: Honolulu, Hawai'i, June 26, 2006.

On the briefs:

Jon N. Ikenaga,
Deputy Public Defender,
for Defendant-Appellant.

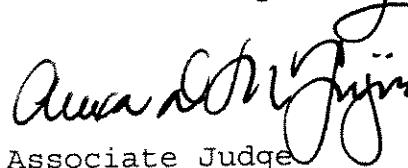
Kimberly B.M. Taniyama,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.



Acting Chief Judge



Associate Judge



Associate Judge