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NO. CAAP-20-0000307

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
JENSEN DONALD SIPE, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HONOLULU DIVISION)
(CASE NO. 1DTA-19-03690)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, Wadsworth and Nakasone, JJ.)

Defendant-Appellant Jensen Donald Sipe (**Sipe**) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment filed on February 10, 2020 (**Judgment**), in the District Court of the First Circuit, Honolulu Division (**District Court**).^{1/}

Sipe was convicted of Operating a Vehicle Under the Influence of an Intoxicant (**OVUII**), in violation of Hawaii Revised Statutes (**HRS**) § 291E-61(a)(1) (Supp. 2018).^{2/}

^{1/} The Honorable Alvin K. Nishimura presided.

^{2/} HRS § 291E-61(a)(1) states:

§ 291E-61 Operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of

Sipe raises a single point of error on appeal, contending that there was insufficient evidence to convict him of OVUIII, specifically, that there was insufficient evidence that he operated a vehicle while under the influence of alcohol in an amount sufficient to impair his normal mental faculties or ability to care for himself and guard against casualty.

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, we resolve Sipe's point of error as follows:

When the evidence adduced at trial is considered in the strongest light for the prosecution, which we must do, we conclude that there was substantial evidence to support Sipe's conviction for OVUIII. See State v. Matavale, 115 Hawai'i 149, 157-58, 166 P.3d 322, 330-31 (2007).

Officer Christopher Chong (**Officer Chong**) testified that on November 18, 2019, at about 12:45 a.m., he stopped at the intersection of Bethel Street and South King Street while driving on patrol. He saw Sipe stopped in his vehicle on Bethel Street, which is a public street in the City and County of Honolulu,

^{2/}(...continued)

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[.]

State of Hawai'i. Sipe was facing south on Bethel Street which is a one-way street that only goes north. After a vehicle going north on Bethel crossed the intersection and passed Sipe, Sipe turned left on to King Street where Officer Chong pulled him over. Officer Chong testified that Sipe was a little slow to pull over. As Officer Chong explained to Sipe why he had been stopped, Officer Chong noticed Sipe's eyes were red and glassy, and he could smell a strong odor of alcohol from Sipe's breath.

Officer Ty Ah Nee (**Officer Ah Nee**) testified that on November 18, 2019, he administered the field sobriety tests to Sipe. While he was administering the horizontal gaze nystagmus (**HGN**) test to Sipe, he noticed that Sipe's eyes were very red, glassy, and watery, and there was a strong odor of an alcoholic-type beverage coming from him. During the HGN test, Sipe appeared to sway side to side one or two inches. During the instructional portion of the walk-and-turn test, Officer Ah Nee noted that Sipe stepped out three times, but Sipe claimed that his right knee was sore, which caused the second and third step out. Sipe only took eight out of nine steps forward, missed two heel-to-toe steps, turned by shuffling his feet, and missed two out of nine heel-to-toe steps back, all contrary to the instructions. During the one-leg stand test, Sipe raised his left foot and stood only on his right leg for 30 seconds, after Sipe previously stated that his right knee was sore and caused him to step out twice during the instructional stance of the

walk-and-turn test. Sipe's left foot swayed in a circular motion during the one-leg stand test, but he otherwise maintained his balance without raising his arms or putting his foot down.

We conclude that there was substantial evidence that Sipe operated a vehicle while under the influence of alcohol in an amount sufficient to impair his normal mental faculties or ability to care for himself and guard against casualty when: (1) he was observed to have red, glassy, and watery eyes and a strong odor of alcohol on his breath; (2) he was observed driving the wrong way on a one-way street; (3) he swayed from side to side during the HGN test; (4) he incorrectly performed the walk-and-turn test; and (5) his left foot swayed during the one-leg stand test.

Accordingly the District Court's February 10, 2020 Judgment is affirmed.

DATED: Honolulu, Hawai'i, June 14, 2021.

On the briefs:

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

Donn Fudo,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge