



DEPARTMENT OF THE PROSECUTING ATTORNEY

State v. Sharon Har

February 22, 2021

The Charge: §291E-61, HRS Operating a Vehicle Under the Influence of an Intoxicant (DUI)

(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;
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per 210 liters of breath; or
- (4) With .08 or more grams of alcohol per 100 milliliters or cubic centimeters of blood.

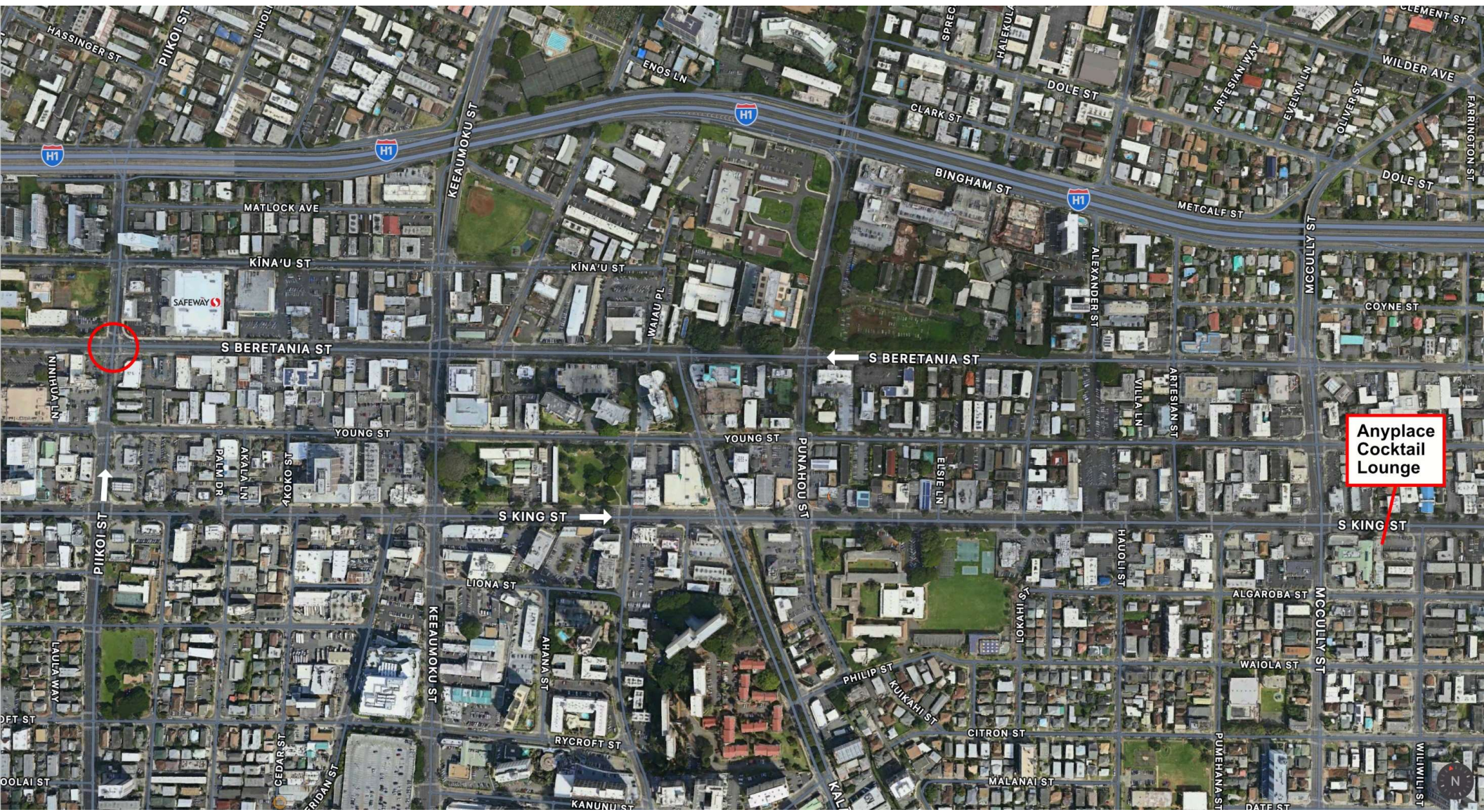
EVIDENCE/WITNESSES

1. Sgt. Adam Lipka:

- a. He stopped Ms. Sharon Har at the intersection of Beretania St. and Piikoi St. on February 22, 2021 at 10:06 p.m. Both Beretania and Piikoi are one-way streets.
- b. Ms. Har was driving the wrong way in the center lane into oncoming traffic on Beretania St.
- c. She almost hit a moped driver and other vehicles had to move out of the way.
- d. Sgt. Lipka instructed her to pull into the Territorial Savings parking lot.
- e. Instead, she started to make a right turn against oncoming traffic on Piikoi St. Sgt. Lipka used his vehicle to block her from turning onto Piikoi and then used his PA system to direct her into the parking lot.

EVIDENCE/WITNESSES

1. Sgt. Adam Lipka (cont'd):
 - f. Ms. Har looked confused. She reversed back and forth multiple times even though she had enough room to make the turn into the Territorial Savings parking lot in one movement.
 - g. She parked her vehicle but failed to keep it within the lines of the parking stall.
 - h. She smelled of alcohol.
 - i. Ms. Har said she came from the Anyplace Restaurant [sic]
 - j. Produced an expired vehicle registration card.
 - k. She looked at her phone for over 10 minutes and could never produce an insurance card.



Anyplace
Cocktail
Lounge

EVIDENCE/WITNESSES

2. Officer Danilo Ting:
 - a. Testified Ms. Har had a strong odor of alcohol.
 - b. She refused to take the field sobriety test.
 - c. Ms. Har tried to roll up her window, open her door, and get out of her car (when not told to do so).
 - d. Said she was a “spaz” multiple times.

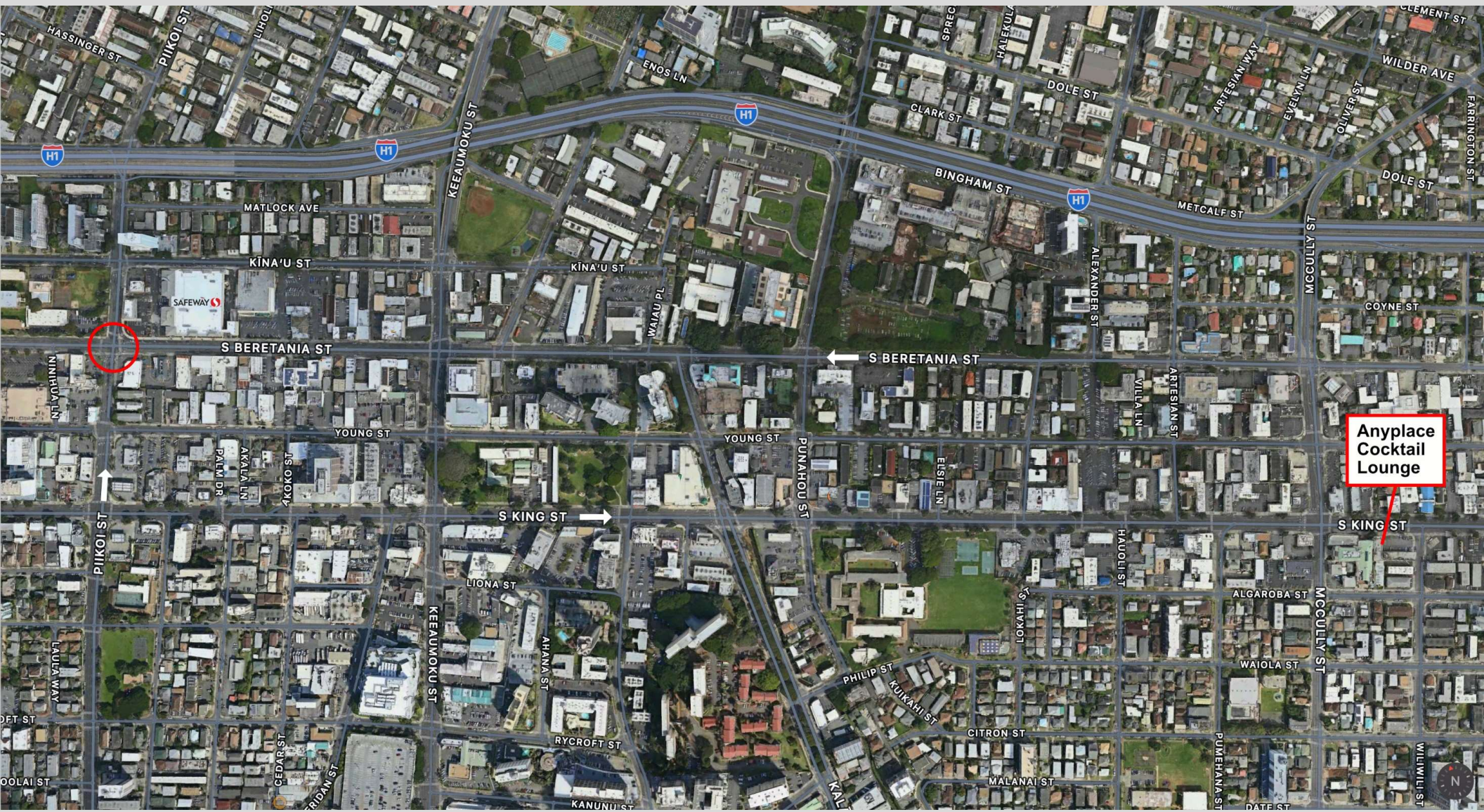
EVIDENCE/WITNESSES

3. Prosecutor Investigator Tommy Kong:
 - a. He introduced a video of Rep. Har apologizing to her House colleagues, saying she had a respiratory infection, was working long hours, was taking medication and drank a beer with dinner.

Hawaii State Capitol House of Representatives Floor Session

02/24/21 12:27:11





**Anyplace
Cocktail
Lounge**

EVIDENCE/WITNESSES

4. Bartender/Server at Anyplace Cocktail Lounge on February 22, 2021:
 - a. She testified that she served Rep. Har's table during that evening.
 - b. Ms. Har ordered four Miller Lite 12-oz bottles and was seen drinking from them.
 - c. The invoice, submitted into evidence, showed four orders for Miller Lite.
 - d. The bartender/server confirmed that only Ms. Har drank the Miller Lites.

3/28/2021

UNION Manager Portal

Ticket ID: 06CEF9

Anyplace Cocktail Lounge

TICKET

Opened	02/22/2021 7:26pm
Servers	13 B&S
Source	
Note	

DETAILS

Items	Amount
WELL Tito's Ordered at 07:26 PM	\$4.50
Bud Light Ordered at 07:27 PM	\$3.25
WELL Tito's Ordered at 07:31 PM	\$4.50
Miller Lite Ordered at 07:39 PM	\$3.25
Bud Light Ordered at 07:40 PM	\$3.25
WELL Tito's Ordered at 07:49 PM	\$4.50
Bud Light Ordered at 07:49 PM	\$3.25
WELL Tito's Ordered at 07:49 PM	\$4.50
Miller Lite Ordered at 07:49 PM	\$3.25
Subtotal	\$82.75
Tax	\$0.00
Service Charge	\$0.00
Gratuity	\$0.00
Total Due	\$82.75
Entered Tip	\$0.00
Total Payment	\$82.75

<https://manager.union-pos.com/ticket-details/22176860>

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3/28/2021

UNION Manager Portal

Items	Amount
Bud Ordered at 08:39 PM	\$3.25
Bud Light Ordered at 08:39 PM	\$3.25
Bud Ordered at 08:39 PM	\$3.25
Miller Lite Ordered at 08:55 PM	\$3.25
Bud Ordered at 08:55 PM	\$3.25
WELL Tito's Ordered at 08:55 PM	\$4.50
WELL Tito's Ordered at 08:55 PM	\$4.50
Bud Light Ordered at 08:55 PM	\$3.25
Bud Ordered at 09:16 PM	\$3.25
WELL Tito's Ordered at 09:16 PM	\$4.50
Miller Lite Ordered at 09:16 PM	\$3.25
WELL Tito's Ordered at 09:39 PM	\$4.50
WELL Tito's Ordered at 09:39 PM	\$4.50
Subtotal	\$82.75
Tax	\$0.00
Service Charge	\$0.00
Gratuity	\$0.00
Total Due	\$82.75
Entered Tip	\$0.00
Total Payment	\$82.75

Facel
\$51.00
\$133.75

PAYMENTS

#	Refund	Guest Name	Method	Card #	Input Mode	Status	Date	Subtotal	Entered Tip	Total
1		N/A	Cash	N/A	N/A	Approved	02/22/2021 11:10 pm	\$82.75	\$0.00	\$82.75

<https://manager.union-pos.com/ticket-details/22176860>

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STATE RESTED

A. Defense Motion to Dismiss

- Defense made an oral motion to dismiss under State v. Thompson
- The State argued that pursuant to Hawaii Rules of Penal Procedure (HRPP), Rule 12(b), motions to dismiss due to defects in the complaint need to be raised prior to trial because once jeopardy attaches, then the State cannot refile. The defense failed to file that motion pretrial.
- The State then pointed out that under HRPP Rule 12(f), failure to raise the motion prior to trial constitutes a waiver.
- Given that the defense failed to raise this motion prior to trial, the motion should not have been heard at this point and should not have been granted.

STATE RESTED (cont'd)

B. Defense Motion for Judgment of Acquittal (HRPP Rule 29)

JUDGMENT OF ACQUITTAL

The standard to be applied by the trial court in ruling upon a motion for a judgment of acquittal is whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the [trier of fact], a reasonable mind might fairly conclude guilt beyond a reasonable doubt.

Hawaii Supreme Court

State v. Alston 75 Haw. 517 (1994)

JUDGMENT OF ACQUITTAL

Given the evidence presented in this case viewed in the light most favorable to the prosecution:

- 4 beers at Anyplace Cocktail Lounge
- Driving the wrong way on Beretania St.
- Attempting to drive the wrong way on Piikoi St.
- Strong odor of alcohol
- Refusal to take a field sobriety test
- Failure to locate her insurance card through her phone (10 minutes +)

The State believes that a reasonable mind might fairly conclude guilty beyond a reasonable doubt and that the judge should have so ruled.

JUDGE STEVEN HARTLEY RULED

1. He granted the Motion to Dismiss pursuant to Thompson.
 - Based on the defense's failure to comply with HRPP Rule 12, this was in error.
2. Judge Hartley granted the defense's Motion for Judgment of Acquittal.
 - He said this ruling was because of inconsistencies in the officer's testimony and the lack of a blood alcohol content (BAC) meant that the State could not prove the case beyond a reasonable doubt.
 - This does not follow the appropriate standard for judgment of acquittal. Inconsistencies in the officer's testimony should be resolved in the light most favorable to the State. The lack of a BAC reading should not have been brought up at all, especially given that the reason for a lack of a BAC result is that Ms. Har refused to take a breath or blood test.