

NO. CAAP-12-0000980

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
TESSA LYNN MURPHY, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTA-12-01350)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Appellant Tessa Lynn Murphy (Murphy) appeals from the Judgment of Conviction and Sentence for Operating a Vehicle Under the Influence of an Intoxicant (OVUII) in violation of Hawaii Revised Statutes (HRS) § 291E-61(a)(3) (Supp. 2013)¹ entered by the District Court of the First Circuit, Honolulu Division (District Court) on October 11, 2012.²

On appeal, Murphy argues that the District Court erred by denying her motion to suppress the results of her breath test

¹ HRS § 291E-61(a)(3) provides:

(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:

. . . .

(3) With .08 or more grams of alcohol per two hundred ten liters of breath[.]

² The Honorable David Lo presided.

(1) when the police erroneously informed her that she "shall" be subject to thirty days in jail for refusing; (2) because she was asked while in custody whether she wanted to incriminate herself in the petty misdemeanor offense of OVUII without being informed of her Miranda rights; and (3) where the police violated HRS § 803-9 (1993) ("Examination after arrest; rights of arrested person") in securing the breath test. In her reply brief, Murphy also relies on Missouri v. McNeely, --- U.S. ---, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013), decided after the filing of her opening brief, for the proposition that under the Fourth Amendment of the United States Constitution and article 1 section 4 of the Hawai'i State Constitution, evidence of consent was necessary to admit the breath test results.

We recently rejected the same arguments in State v. Won, --- Hawai'i ---, --- P.3d ---, CAAP-12-0000858, 2014 WL 1270615 (App. Mar. 28, 2014, amended May 2, 2014). Based on Won, we conclude that the District Court properly denied Murphy's motion to suppress.

Therefore, we affirm the October 11, 2012 judgment entered by the District Court of the First Circuit, Honolulu Division.

DATED: Honolulu, Hawai'i, May 30, 2014.

On the briefs:

Jonathan Burge,
for Defendant-Appellant.

Presiding Judge

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge