

NO. CAAP-13-0003064

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
KENNETH A. MONIZ, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 12-1-0176)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kenneth A. Moniz (Moniz) appeals from the Judgment of Conviction and Probation Sentence, entered on August 5, 2013 in the Circuit Court of the Third Circuit (Circuit Court).¹

After entering into a conditional Guilty Plea, Moniz was convicted of Habitually Operating a Vehicle Under the Influence of an Intoxicant (HOVUII), in violation of Hawaii Revised Statutes (HRS) § 291E-61.5 (2007 and Supp. 2014). Moniz reserved his right to appeal the denial of his Motion to Suppress Evidence.

On appeal, Moniz contends the Circuit Court erred by denying his Motion to Suppress because (1) he was specifically advised that he had no right to an attorney, in violation of HRS § 803-9 (2014) and (2) his right to Due Process under the Hawai'i Constitution was violated when he was not given a Miranda warning.

¹ The Honorable Glenn S. Hara presided.

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 Moniz's point of error as follows:

(1) Moniz was not improperly advised that he was not entitled to an attorney, in violation of HRS § 803-9. State v. Won, 134 Hawai'i 59, 74, 332 P.3d 661, 676 (App. 2014), cert. granted, 2014 WL 2881259 (Jun. 24, 2014).

(2) A Miranda warning was not required to be given to Moniz before determining whether he would submit to a breath, blood, or urine test. Id. at 72, 332 P.3d at 674 (Miranda rights not implicated or violated by the police action in obtaining agreement to submit to a breath test).

IT IS HEREBY ORDERED that the Judgment of Conviction and Probation Sentence, entered on August 5, 2013 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 17, 2015.

On the briefs:

M. Kanani Laubach,
for Defendant-Appellant.

Presiding Judge

Kevin S. Hashizaki,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Plaintiff-Appellee.

Associate Judge

Associate Judge