

**Electronically Filed
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SCWC-13-0003479

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII,
Respondent/Plaintiff-Appellee,

vs.

RICHARD C. REILLY,
Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-13-0003479; CASE NO. 1DTA-13-00739)

SUMMARY DISPOSITION ORDER

(By: McKenna, Pollack, and Wilson, JJ.,
with Wilson, J., concurring separately,
and Nakayama, J., dissenting,
with whom Recktenwald, C.J., joins)

Petitioner/Defendant-Appellant Richard C. Reilly seeks review of the Intermediate Court of Appeals' (ICA) June 4, 2015 Judgment on Appeal, entered pursuant to its May 4, 2015 Summary Disposition Order, which affirmed the District Court of the First Circuit's (district court) Notice of Entry of Judgment

and/or Order and Plea/Judgment entered on August 20, 2013.¹ The district court found Reilly guilty of Operating a Vehicle Under the Influence of an Intoxicant (OVUII), in violation of Hawai'i Revised Statutes (HRS) § 291E-61(a)(4) (Supp. 2012).² We accepted Reilly's Application for Writ of Certiorari, and we now vacate the ICA's Judgment on Appeal and the district court's Judgment and remand the case to the district court for further proceedings.

After being arrested for OVUII, Reilly was read an implied consent form.³ Reilly elected to take a blood test,

¹ The Honorable David W. Lo presided.

² HRS § 291E-61(a)(4) provides in relevant part:

(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:

. . . .

(4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood. . . .

³ The form, titled "Use of Intoxicants While Operating a Vehicle Implied Consent for Testing," stated in relevant part:

1. ___ Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent to a test or tests for the purpose of determining alcohol concentration or drug content of the persons [sic] breath, blood, or urine as applicable.

2. ___ You are not entitled to an attorney before you submit to any tests or tests to determine your alcohol and/or drug content.

3. ___ You may refuse to submit to a breath or blood test, or both for the purpose of determining alcohol concentration and/or blood or urine test, or both for the purpose of determining drug content, none shall be given,

which resulted in a blood alcohol content reading of 0.10 grams of alcohol per 100 milliliters or cubic centimeters of blood. In his motion to suppress the blood test results before the district court and on certiorari, Reilly contends, inter alia, that the blood test results were obtained based on his involuntary consent in violation of the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Hawai'i Constitution.

In State v. Won, 136 Hawai'i 292, 312, 361 P.3d 1195, 1215 (2015), we held that "coercion engendered by the Implied Consent Form runs afoul of the constitutional mandate that waiver of a constitutional right may only be the result of a free and unconstrained choice," and, thus, a defendant's decision to submit to testing after being read the implied consent form "is invalid as a waiver of his right not to be searched." In accordance with Won, the result of Reilly's blood test was the product of a warrantless search, and the ICA erred in concluding that Reilly's Fourth Amendment rights were not violated. Accordingly, Reilly's OVUII conviction cannot be upheld.

except as provided in section 291E-21. However, if you refuse to submit to a breath, blood, or urine test, you shall be subject to up to thirty days imprisonment and/or fine up to \$1,000 or the sanctions of 291E-65, if applicable. In addition, you shall also be subject to the procedures and sanctions under chapter 291E, part III.

IT IS HEREBY ORDERED that the ICA's June 4, 2015 Judgment on Appeal and the district court's Judgment are vacated, and the case is remanded to the district court for further proceedings consistent with this court's opinion in Won.

DATED: Honolulu, Hawai'i, March 4, 2016.

Jonathan Burge
for petitioner

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

Brian R. Vincent
For respondent

/s/ Michael D. Wilson



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