

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-12-0001072  
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NO. CAAP-12-0001072

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
KEVIN K.T. GUARD, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CASE NO. 1DTA-11-05472)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Kevin K.T. Guard (Guard) appeals from the November 16, 2012 Notice of Entry of Judgment and/or Order and Plea/Judgment convicting him of and sentencing him for violating Hawaii Revised Statutes (HRS) § 291E-61(a)(3) (Supp. 2014), Operating a Vehicle Under the Influence of an Intoxicant, entered by the District Court of the First Circuit, Honolulu Division (District Court) after a stipulated fact trial held on that date.<sup>1</sup>

Guard challenges his conviction based on the District Court's denial of his motion to suppress statements and evidence on three grounds: first, that he was misled by the warnings given to him before his decision whether to take a breath or blood alcohol test; second, that the police failed to warn him of his rights under Miranda v. Arizona, 384 U.S. 436 (1966) before he decided whether to take a breath or blood alcohol test; and third, the police misinformed him regarding his statutory right to an attorney under HRS 803-9 (2014).

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<sup>1</sup> The Honorable David Lo presided.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

We recently rejected the same arguments in State v. Won, 134 Hawai'i 59, 332 P.3d 661 (App. 2014) cert. granted, 2014 WL 2881259 (Jun. 24, 2014). Based on Won, we conclude that the District Court properly denied Guard's motion to suppress and we affirm his conviction and sentence under HRS § 291E-61(a)(3).

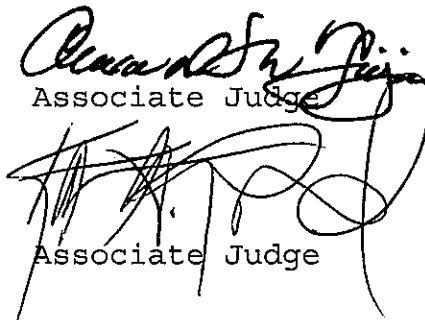
DATED: Honolulu, Hawai'i, May 29, 2015.

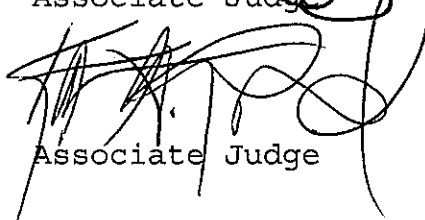
On the briefs:

Jonathan Burge,  
for Defendant-Appellant.

  
Presiding Judge

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

  
Associate Judge

  
Associate Judge