

CAAP-15-0000402

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
RACHEL VIAMOANA UI, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(NORTH & SOUTH KONA DIVISION)
(CASE NO. 3DTA-11-02996)

ORDER DENYING MOTION FOR RECONSIDERATION
(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Upon consideration of Defendant-Appellant's Motion for Reconsideration filed on June 6, 2016 (**Motion**), and the records and files in this case, we conclude we did not overlook or misapprehend any points of law or fact when we entered the May 25, 2016 Summary Disposition Order herein.

Defendant-Appellant Rachel Viamoana Ui (**Ui**) contends that, based on State v. Won, No. SCWC-12-0000858, 2015 WL 10384497, at *21 n.49 (Haw. Nov. 25, 2015) (opinion),¹ she is

¹ In a footnote, the Hawaii Supreme Court states:

"When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." Garcia, 96 Hawaii at 211, 29 P.3d at 930. This is the first time that we announce the

(continued...)

entitled to relief from her April 13, 2012 conviction for Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes § 291E-61(a) (Supp. 2015), because her appeal was not final when the Won decision was promulgated.

However, unlike the defendant in Won, Ui did not move to suppress the results of her blood alcohol test. At trial, Ui testified that she drank four bottles of Budweiser, four to five mixed shots of alcohol, and swigs of rum prior to the accident. The parties stipulated that Ui's blood alcohol level was 0.156 grams of alcohol per one hundred millimeters or cubic centimeters of blood. Ui did not challenge the blood test draw or results. Rather, defense counsel argued that the State failed to prove that Ui was the operator of the vehicle. Ui is not entitled to relief based on Won because she is not similarly situated to the defendant in Won in that she failed to file a motion to suppress or otherwise assert to the district court that evidence of her blood test should be suppressed. Motions to suppress must be brought before trial or else the argument is waived. See Hawai'i Rules of Penal Procedure Rule 12(b)(3) and (f).

¹(...continued)

constitutional principle that the threat of criminal sanctions inherently precludes a finding of voluntariness in the context of the consent exception to the warrant requirement. As such, this decision applies only to this case and to all cases pending on direct appeal or not yet final at the time that this decision is rendered. By final, we mean those cases in which the judgment of conviction has been rendered and the availability of appeal and certiorari has elapsed. Id. at 214, 29 P.3d at 933.

Won, 2015 WL 10384497, at *21 n.49.

Therefore, IT IS HEREBY ORDERED that the Motion is denied.

DATED: Honolulu, Hawai'i,

On the motion:

Steven T. Barta,
for Defendant-Appellant.

Presiding Judge

Associate Judge

Associate Judge