

**Electronically Filed
Supreme Court
SCWC-30516
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NO. SCWC-30516

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

LAWRENCE PAI, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30516; CASE NO. 1DTA-10-00706)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakayama, Duffy, and McKenna, JJ.;
with Acoba, J., dissenting)

Petitioner Lawrence Pai ("Pai") seeks review of the Intermediate Court of Appeal's July 14, 2011 Judgment on Appeal, entered pursuant to its June 14, 2011 Summary Disposition Order, which affirmed the District Court of the First Circuit's April 9, 2010 Order and Notice of Entry of Order. The District Court adjudged Pai guilty of Operating a Vehicle Under the Influence of an Intoxicant, in violation of Hawaii Revised Statutes ("HRS")

§ 291E-61(a)(3)(2007).¹ We accepted Pai's application for writ of certiorari and now affirm the ICA's Judgment on Appeal.

On certiorari, Pai contends that the ICA gravely erred in holding that mens rea need not be alleged in an HRS § 291E-61(a)(3) charge. In State v. Nesmith, we agreed that mens rea need not be alleged (or proven) in an HRS § 291E-61(a)(3) charge, as the legislative intent to impose absolute liability for an HRS § 291E-61(a)(3) offense plainly appears. State v. Nesmith, ___ Hawai'i ___, ___ P.3d ___ (2012). Therefore, the ICA did not gravely err in so holding.

IT IS HEREBY ORDERED that the ICA'S Judgment on Appeal is affirmed.

DATED: Honolulu, Hawai'i, May 3, 2012.

Timothy I. MacMaster
for petitioner/
defendant-appellant

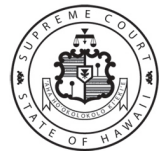
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

Keith M. Kaneshiro,
Prosecuting Attorney,
and Anne K. Clarkin,
Deputy Prosecuting Attorney,
for respondent/plaintiff-
appellee

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



¹ HRS § 291E-61(a)(3) provided at the time of the alleged offense, "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 . . . [w]ith .08 or more grams of alcohol per two hundred ten liters of breath[.]"