NOT FOR PUBLICATION

NO. 27454

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

v.

JOSEPH M. TOLER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 5850965MO)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Joseph M. Toler (Toler) was cited for violating Hawaii Revised Statutes § 291C-102 (Supp. 2005) by driving sixty-three miles per hour in a forty-five miles per hour zone on January 16, 2005.

On July 21, 2005, the court[1/] decided that the State of Hawai'i had proven the charge and ordered Toler to pay a $90 fine, a $40 administrative fee, and a $7 driver's education fee.

Toler filed a notice of appeal on August 16, 2005. This case was assigned to this court on March 24, 2006.

In the opening brief, Toler contends, in relevant part, that:

1. "[A]t no point was my vehicle . . . traveling at 63 miles per hour on January 16th 2005";

1/ Judge Clarence A. Pacarro presided.

2. "[F]rom where the police officer's vehicle was located at the time of the alledged [sic] violation there is no way he could have accurately used [h]is laser tag device to determine the speed I was going"; and

3. "[T]he officer was using a reading off his laser tag device that was taken more than 1000 feet away (beyond the distance for a correct reading)."

In support of his contentions, Toler attached to his opening brief xerox copies of four photographs which he says show that "the laser tag device was used at a distance further then [sic] 1000 feet, and the view from the officer's vehicle to 1300 feet away was blocked by a bus stop, an electrical box, and large trees and brush."

A transcript of the July 21, 2005 hearing is not a part of the record on appeal because Toler failed to request it. Therefore, we are unable to determine what evidence was presented in his case, and we are unable to conclude that Toler has satisfied his burden on appeal of showing that the evidence against him is insufficient to support the court's decision.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the District Court's July 21, 2005 decision is affirmed.

DATED: Honolulu, Hawai'i, June 8, 2006.

On the briefs:

Joseph M. Toler
Pro Se Defendant-Appellant.

Anne K. Clarkin
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee.

James A. Burns
Chief Judge

Corinne K.A. Watanabe
Associate Judge

Associate Judge