

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29112

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
MIRTHA G. POW, Defendant-Appellant

KHAMAKADO  
OLENA APPELLATE COURTS  
STATE OF HAWAII

2009 OCT 28 AM 8:21

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
WAHIAWĀ DIVISION  
(HPD Traffic No. 1DTC-07-022495)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Watanabe and Fujise, JJ.)

Defendant-Appellant Mirtha Pow (Pow) appeals the Judgment and/or Order and Plea/Judgment, notice of entry of which was filed on March 18, 2008, in the District Court of the First Circuit, Wahiaiwā Division (district court).<sup>1</sup>

Pow was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(1) (Supp. 2008).

On appeal, Pow raises the issue, among others, that the district court erred in allowing Officer Edward Belcher (Officer Belcher) to testify as to the accuracy of the LTI 2020 laser gun and as to the readings obtained from the laser gun and, without that evidence, there was insufficient evidence to convict.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we determine that the issue regarding the admissibility of the laser gun readings is dispositive.

The State failed to adduce evidence that the laser gun was tested according to the manufacturer-recommended procedures or that the training of Officer Belcher met the requirements of the laser gun manufacturer in order to establish sufficient foundation for the laser gun reading. State v. Assaye, No.

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<sup>1</sup> Per diem District Court Judge Clyde Sumida presided.

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29078, 2009 WL 3112426, at \*6-11, 13 (Haw. Sept. 30, 2009).

Without the laser gun reading, there was insufficient evidence to convict Pow of Excessive Speeding. We need not address Pow's other points of error.

For this reason, the Judgment and/or Order and Plea/Judgment, filed on March 18, 2008 in the District Court of the First Circuit, Wahiawā Division, is reversed. It is further ordered that Pow's motion for this court to take judicial notice of the transcript for the afternoon of March 18, 2008 in Appeal No. 29111 is denied as unnecessary.

DATED: Honolulu, Hawai'i, October 28, 2009.

On the briefs:

Phyllis J. Hironaka,  
Deputy Public Defender,  
for Defendant-Appellant.



Chief Judge

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.



Associate Judge



Associate Judge