

NO. 29139

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
STEVE Y. RICHARDS, Defendant-Appellant

NORMA T. YARA
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STATE OF HAWAII

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APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(HPD TRAFFIC NO. 1DTC-07-086165)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Steve Y. Richards (**Richards**) appeals the Judgment of Conviction and Sentence/Notice of Entry, entered on March 19, 2008 (**Judgment**), in the District Court of the First Circuit, Ewa Division (**District Court**).^{1/} Richards was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes (**HRS**) § 291C-105(a)(2) (2007).

On appeal, Richards contends that: (1) the District Court erred by admitting testimony regarding Richards's speed because inadequate foundation was established regarding the accuracy of a laser gun; and (2) there was insufficient evidence to establish that Richards acted with a reckless state of mind by disregarding a substantial and unjustifiable risk of driving in excess of eighty miles per hour (**mph**).

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 resolve Richards's points of error as follows:

(1) Officer Kevin Ancog (**Officer Ancog**) provided the necessary foundation to testify about the eighty-four mph speed reading of the laser gun because he stated that he performed four functionality tests, the results of the test indicated that the

^{1/} The Honorable Hilary Gangnes presided.

laser gun was functioning properly, and he was certified to operate the laser gun after four hours of training. State v. Stoa, 112 Hawai'i 260, 261-62, 268, 145 P.3d 803, 804-05, 811 (App. 2006). Therefore, the District Court did not err by admitting Officer Ancog's testimony regarding the speed reading from the laser gun because proper foundation was provided regarding the laser gun's accuracy and Officer Ancog's training to operate the laser gun.

(2) Because HRS § 291C-105(a)(2)^{2/} is not a strict liability offense, the State must prove, at a minimum, that Richards consciously disregarded a substantial and unjustifiable risk that he was driving eighty mph or more to convict him of Excessive Speeding. See HRS § 702-204 (1993); see also State v. Pinero, 70 Haw. 509, 526, 778 P.2d 704, 715 (1989) (discussing HRS § 702-204) ("[W]hen the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.").

We note that the District Court orally misstated the applicable recklessness standard when it stated that Richards consciously disregarded the safety of others. In this case, Richards must have consciously disregarded the risk of traveling eighty mph or more, rather than consciously disregarded the safety of others, to be convicted of Excessive Speeding. We nevertheless consider the sufficiency of the evidence adduced in the District Court in the strongest light for the prosecution.

^{2/} HRS § 291C-105(a) provides:

§291C-105 Excessive speeding. (a) No person shall drive a motor vehicle at a speed exceeding:

- (1) The applicable state or county speed limit by thirty miles per hour or more; or
- (2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

See, e.g., State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998).

"Given the difficulty of proving the requisite state of mind by direct evidence in criminal cases, proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient." State v. Agard, 113 Hawai'i 321, 324, 151 P.3d 802, 805 (2007). Here, in addition to the evidence establishing that Richards was traveling at eighty-four mph, Officer Ancog testified that Richards's vehicle was "pulling away from another vehicle" and that Richards had just passed at least one fifty-five mph speed limit sign. The District Court found Officer Ancog to be credible. From these circumstances, the District Court could reasonably infer that Richards consciously disregarded a substantial and unjustifiable risk of traveling eighty mph or more. Thus, based on the circumstantial evidence and reasonable inferences therefrom, we conclude that there was substantial evidence of Richards's reckless state of mind as to the offense of Excessive Speeding in violation of HRS § 291C-105(a)(2).

For these reasons, the District Court's March 19, 2008 Judgment is affirmed.

Dated: Honolulu, Hawai'i, February 26, 2009.

On the briefs:

John M. Tonaki
Public Defender
Sandra Kim
Deputy Public Defender
for Defendant-Appellant

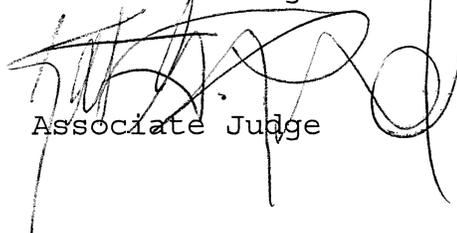
Peter B. Carlisle
Prosecuting Attorney
Brian R. Vincent
Deputy Prosecuting Attorney
for Plaintiff-Appellee



Presiding Judge



Associate Judge



Associate Judge