

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29319

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ERIC B. GURLEY, Defendant-Appellant

K. HAMAKADO
CLERK APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD Traffic No. 1DTC-07-086160)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Eric B. Gurley (Gurley) appeals from the Judgment and/or Order and Plea/Judgment (Judgment), notice of entry of which was filed on July 14, 2008 in the District Court of the First Circuit (district court).¹ The Judgment convicted and sentenced Gurley for Excessive Speeding in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(2) (2007)² for driving a motor vehicle at a speed exceeding eighty miles per hour (mph). Gurley's conviction was predicated on evidence of a laser-gun reading that showed he was driving his motor vehicle at eighty-four mph in a fifty-five-mph speed zone.

On appeal, Gurley contends, among other arguments, that the district court erred in allowing a police officer to testify that a laser-gun reading showed that Gurley was driving his motor vehicle at eighty-four mph in a fifty-five-mph speed zone because Plaintiff-Appellee State of Hawai'i (State) failed to adduce the

¹ The Honorable Russel S. Nagata presided.

² HRS § 291C-105(a)(2) provides:

(a) No person shall drive a motor vehicle at a speed exceeding:

. . . .

(2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

requisite foundation to establish the proven accuracy of the laser gun used to measure the speed of Gurley's vehicle.

In light of the Hawai'i Supreme Court's recent decision in State v. Assaye, No. 29078, 2009 WL 3112426 (Haw. Sept. 30, 2009), we agree with Gurley. In Assaye, the supreme court held that the prosecution failed to lay a sufficient foundation for the admission of a laser-gun reading because the prosecution failed to adduce evidence that (1) the laser gun was tested according to procedures recommended by the manufacturer of the laser gun for demonstrating that the laser gun was operating properly, id. at *8; and (2) the officer who obtained the laser-gun reading had received training in the operation of the laser gun that met the requirements indicated by the laser gun's manufacturer. Id. at *12. The same deficiencies in establishing the foundation for the admission of the laser gun's reading that were identified in Assaye are present in this case. Thus, the district court erred in admitting the police officer's testimony regarding the reading given by the laser gun for Gurley's vehicle.

As in Assaye, without the officer's testimony regarding the reading from the laser gun, there was insufficient evidence to prove the speed at which Gurley was driving his motor vehicle. Id. at *13. Accordingly, we reverse the July 14, 2008 judgment convicting and sentencing Gurley. Our disposition of this appeal renders it unnecessary to consider Gurley's other arguments.

DATED: Honolulu, Hawai'i, October 30, 2009.

On the briefs:

James S. Tabe,
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State of Hawai'i,
for Defendant-Appellant.

Loren J. Thomas,
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City and County of Honolulu,
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