

NO. 29403

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
MARCO A. NEVAREZ, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KANE'OHE DIVISION
(HPD Traffic No. 1DTC-08-031728)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Marco A. Nevarez (Nevarez) appeals the Judgment entered on September 12, 2008, in the District Court of the First Circuit, Kane'ohē Division (district court).¹

Nevarez was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(1) (2007).

On appeal, Nevarez contends (1) the district court abused its discretion by denying his motion to compel discovery and (2) the State failed to establish the accuracy of the laser gun used in this case by failing to introduce substantial evidence that (a) the laser gun used by Officer Federico Delgadillo (Officer Delgadillo) had been tested according to the manufacturer's accepted procedures and was determined to be functioning properly, and (b) Officer Delgadillo was qualified by training and experience to operate the laser gun.

The State contends that the motion to compel discovery was properly denied and that the testimony of Officer Delgadillo is sufficient to convict Nevarez.

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 Nevarez's points of error as follows:

¹ Per diem District Court Judge Clyde E. Sumida presided.

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In this case, the record is sufficient to review Nevarez's point of error that the State failed to adduce sufficient evidence that the laser gun was tested according to the manufacturer's recommended procedures in order to establish sufficient foundation for the laser gun reading.

Officer Delgadillo did not testify that the laser gun was tested in accordance with the manufacturer's specifications. Therefore, the State failed to adduce sufficient evidence regarding the accuracy of the laser gun, and the laser gun reading should not have been admitted into evidence. State v. Assaye, 121 Hawai'i 204, 209-14, 216 P.3d 1227, 1232-37 (2009). Without evidence of the laser gun reading, there is insufficient evidence to convict Nevarez of Excessive Speeding. We need not address Nevarez's other point of error.

Therefore,

IT IS HEREBY ORDERED THAT September 12, 2008 Judgment of the District Court of the First Circuit, Kāne'ōhe Division, is reversed.

DATED: Honolulu, Hawai'i, November 24, 2009.

On the briefs:

Craig W. Jerome,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge