

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29432

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIISTATE OF HAWAII, Plaintiff-Appellee, v.  
STEVE D. MARCELLO, JR., Defendant-AppellantK. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 OCT 28 AM 8:24

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
WAHIAWĀ DIVISION  
(HPD Traffic No. 1DTC-08-048348)SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Steve D. Marcello, Jr. (Marcello) appeals the Judgment and/or Order and Plea/Judgment, notice of entry of which was entered on September 25, 2008, in the District Court of the First Circuit, Wahiawā Division (district court).<sup>1</sup>

Marcello was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(2) (Supp. 2008).

On appeal, Marcello contends (1) the district court abused its discretion by denying his motion to compel discovery, (2) the State failed to prove that the laser gun used by the citing officer had been tested according to the manufacturer's accepted procedures, and (3) the State failed to adduce evidence that the citing officer was qualified by training and experience to operate the laser gun.

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 Marcello's points of error as follows:

The State failed to adduce evidence that the laser gun was tested according to the manufacturer's recommended procedures in order to establish sufficient foundation for the introduction

---

<sup>1</sup> Per diem District Court Judge Philip Doi presided.

of the laser gun reading into evidence. State v. Assaye, No. 29078, 2009 WL 3112426, at \*6-11 (Haw. Sept. 30, 2009). Without this evidence, there was insufficient evidence to support Marcello's conviction for Excessive Speeding. Consequently, we need not address Marcello's other points of error.

Therefore,

IT IS HEREBY ORDERED THAT the September 25, 2008 Judgment and/or Order and Plea/Judgment of the District Court of the First Circuit, Wahiawā Division, is reversed.

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

On the briefs:

Jon N. Ikenaga,  
Deputy Public Defender,  
for Defendant-Appellant.

  
Presiding Judge

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

  
Associate Judge

  
Associate Judge