

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29563

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JONATHAN P. WILSON, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(Case No. 1DTC-07-088247)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Jonathan P. Wilson (Wilson) appeals from the Judgment and/or Order and Plea/Judgment (judgment), notice of entry of which was filed on December 5, 2008 in the District Court of the First Circuit (district court),¹ Kāneʻohe Division, convicting and sentencing him for Excessive Speeding in violation of Hawaii Revised Statutes § 291C-105(a)(1) (2007). Wilson's conviction was based on evidence of a laser-gun reading that showed that on the evening of December 18, 2007, Wilson drove a motor vehicle at sixty-nine miles per hour (mph) along a portion of Kamehameha Highway where the posted speed limit was thirty-five mph.

On appeal, Wilson contends that (1) the district court abused its discretion by denying his Motion to Compel Discovery or in the Alternative, Motion to Dismiss for Violation of Hawaii Rules of Penal Procedure Rule 16(b) and (c); and (2) Plaintiff-Appellee State of Hawaii (State) failed to introduce sufficient evidence that (a) the laser gun used to clock his speed was tested according to the accepted procedures of the laser-gun manufacturer and was determined to be functioning properly, and (b) the police officer who used the laser gun was qualified by training and experience to operate the device.

¹ The Honorable Faʻauuga L. Toʻotoʻo presided.

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 Wilson's second contention. In Assaye, the supreme court held that the prosecution failed to lay a sufficient foundation for the admission of a speed reading from a laser gun 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 *6; 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 *11. 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 the speed of Wilson'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 Wilson was driving his motor vehicle. Id. at *13. Accordingly, we reverse the December 5, 2008 judgment convicting and sentencing Wilson. Our disposition of this appeal renders it unnecessary to consider Wilson's other point on appeal.

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

On the briefs:

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State of Hawai'i,
for Defendant-Appellant.

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for Plaintiff-Appellee.

