

DISSENT BY ACOBA, J.

I respectfully dissent.

Here, no witness observed Petitioner/Defendant-Appellant Luther S. Williams (Petitioner) operating the vehicle. Sergeant Ron Hamasaki testified it was possible Petitioner's slurred speech and unsteadiness could have resulted from the accident in which Petitioner was involved, and agreed he would expect the driver of such an accident to be "shaken up." He could not "prove" Petitioner was under the influence based on what he testified to. On the field sobriety test (FST) administered to Petitioner, Officer Christopher Bugarin was impeached on his observations of the walk and turn test and admitted that some persons do a "military" about-face on the walk and turn test. Petitioner did not sway, raise his arms, or hop on the one leg stand test. The officer agreed that it was a major accident, that the driver in such an accident could be "somewhat shaken up," and that such a condition could affect the driver's ability to perform the FST. Officer Bugarin's report indicated that a witness who helped Petitioner out of his car stated Petitioner appeared to be "badly shaken up." Based upon the FST, Officer Bugarin did not know whether Petitioner was under the influence.

It cannot be concluded that there was "credible evidence . . . of sufficient quality . . . to enable a person of reasonable caution to support [the court's] conclusion" of guilt

beyond a reasonable doubt. State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996) (brackets omitted) (emphasis added). At least a part of Respondent/Plaintiff-Appellee State of Hawaii's case lacked credibility, and overall, reasonable caution would not support a conviction on the state of the evidence in the record. Because of insufficient evidence to support the conviction, I would reverse the Summary Disposition Order of the Intermediate Court of Appeals and the judgment of the district court of the first circuit.

 