

NO. 30019

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
WAYNETTE W. BOTELHO, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
'EWA DIVISION  
(Case No. 1DTC-08-052143)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Defendant-Appellant Waynette W. Botelho (Botelho) appeals the judgment, entered on July 1, 2009, in the District Court of the First Circuit, 'Ewa Division (district court).<sup>1</sup>

Botelho was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105 (2007 and Supp. 2009).

On appeal,<sup>2</sup> Botelho contends the district court erred by (1) denying her Motion to Compel and (2) convicting her based on insufficient evidence to establish the accuracy of the laser gun in accordance with State v. Assaye, 121 Hawai'i 204, 216 P.3d 1227 (2009). The State agrees that there was insufficient foundation for the laser gun reading under Assaye.

Based on our review of the evidence presented, we conclude there was insufficient 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. Assaye, 121 Hawai'i at 214, 216 P.3d at 1237. Without this evidence, there was insufficient evidence to support

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<sup>1</sup> The Honorable Faye M. Koyanagi presided.

<sup>2</sup> At trial, Botelho objected to the evidence of the laser gun's speed reading.

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Botelho's conviction for Excessive Speeding. We need not address Botelho's other point of error.

Therefore,

IT IS HEREBY ORDERED that the judgment, entered on July 1, 2009, in the District Court of the First Circuit, 'Ewa Division is reversed.

DATED: Honolulu, Hawai'i, June 22, 2010.

On the briefs:

Jennifer D.K. Ng,  
Deputy Public Defender,  
for Defendant-Appellant.

Presiding Judge

Delanie D. Prescott-Tate,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

Associate Judge

Associate Judge