

NO. 30077

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JOHNNY T. TAPUSOA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTC-08-044459)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Foley and Leonard, JJ.)

Defendant-Appellant Johnny T. Tapusoa (**Tapusoa**) appeals from the Judgment, entered on August 26, 2009, in the District Court of the First Circuit, Honolulu Division (**District Court**).¹ Tapusoa was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105 (Supp. 2009).

On appeal, Tapusoa contends, *inter alia*, that there was 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).

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 Tapusoa's points of error as follows:

As the State acknowledges on appeal, there was insufficient evidence to convict Tapusoa of Excessive Speeding because the State failed to adduce evidence that the laser gun was tested according to the manufacturer recommended procedures in order to establish sufficient foundation for the laser gun reading. See Assaye, 121 Hawai'i at 214, 216 P.3d at 1237. Without this evidence, there was insufficient evidence to support

¹ The Honorable Leslie Hayashi presided.

Tapusoa's conviction for Excessive Speeding.² We need not address Tapusoa's other point of error.

For this reason, the District Court's August 26, 2009 Judgment is reversed.

DATED: Honolulu, Hawai'i, June 17, 2010.

On the briefs:

Taryn R. Tomasa
Deputy Public Defender
for Defendant-Appellant

Chief Judge

Delanie D. Prescott-Tate
Deputy Prosecuting Attorney
for Plaintiff-Appellee

Associate Judge

Associate Judge

² The evidence was admitted over the objection of the defense based on lack of foundation and lack of scientific evidence.