

NO. 29891

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
SCOTT E. MCKELLAR, Defendant-Appellant

JEAN R. KIKUNOTO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2010 MAY 13 AM 7:46

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CASE NO. 1DTC-08-045782)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Leonard, J.,  
and Circuit Court Judge Kim, in place of  
Foley and Fujise, JJ., all recused)

Defendant-Appellant Scott E. McKellar (**McKellar**)  
appeals from the Judgment entered on May 22, 2009 in the District  
Court of the First Circuit, Honolulu Division (**District Court**).<sup>1/</sup>  
McKellar was convicted of Excessive Speeding, in violation of HRS  
§ 291C-105(a)(1) (2007).

On appeal, McKellar contends that the District Court  
erred by admitting, over objection,<sup>2/</sup> the laser speed reading of  
McKellar's vehicle because the State failed to adduce the  
requisite foundation for admissibility of the laser gun speed  
reading.

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 McKellar's point of error as follows:

As the State acknowledges on appeal, the State failed  
to adduce evidence that the laser gun was tested according to the  
manufacturer's recommended procedures in order to establish

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<sup>1/</sup> The Honorable T. David Woo presided.

<sup>2/</sup> McKellar objected on the ground of lack of foundation.

sufficient foundation for the laser gun reading. See State v. Assaye, 121 Hawai'i 204, 210-14, 216 P.3d 1227, 1233-37 (2009). Without the laser gun reading, there was insufficient evidence to convict McKellar of Excessive Speeding.


For this reason, the District Court's May 22, 2009 Judgment is reversed.

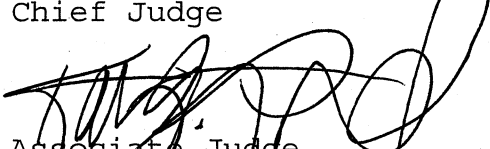
DATED: Honolulu, Hawai'i, May 13, 2010.

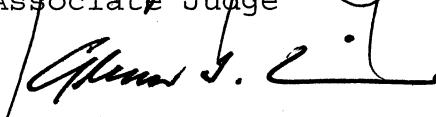
On the briefs:

Anne K. Clarkin  
Deputy Prosecuting Attorney  
for Plaintiff-Appellee

Earle A. Partington  
for Defendant-Appellant

  
Chief Judge

  
Associate Judge

  
Acting Associate Judge