

NO. 29891

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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

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**).¹
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,² 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

¹ The Honorable T. David Woo presided.

² 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

Chief Judge

Earle A. Partington
for Defendant-Appellant

Associate Judge

Acting Associate Judge