

NO. 30107

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
ALYSSA K. McMILLAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
'EWA DIVISION
(CASE NO. 1DTC-09-031608)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Alyssa K. McMillan (McMillan) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment filed on August 26, 2009 in the District Court of the First Circuit, 'Ewa Division (District Court).¹ McMillan was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(2) (2007).

On appeal, McMillan contends that the District Court erred in (1) denying her motion to compel discovery, and (2) convicting McMillan where insufficient evidence existed of the accuracy of the laser gun.²

The State concedes that it failed to lay sufficient foundation for admission of the laser gun speed reading and that the judgment must be reversed.

^{1/} The Honorable David Lo presided.

^{2/} McMillan objected to testimony that the laser gun was working properly, based on a lack of foundation; that the laser gun was properly calibrated, based on lack of personal knowledge; and of the speed reading, based on lack of foundation of qualifications and maintenance of the laser gun.

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 McMillan's points of error as follows:

In this case, the record is sufficient to review McMillan's point of error that insufficient evidence existed of the accuracy of the laser gun.

The citing officer did not testify that the laser gun was tested in accordance with the manufacturer's specifications. Therefore, the State failed to adduce sufficient evidence regarding the accuracy of the laser gun, and the laser gun reading should not have been admitted into evidence. *State v. Assaye*, 121 Hawai'i 204, 210-14, 216 P.3d 1227, 1233-37 (2009). Without evidence of the laser gun reading, there is insufficient evidence to convict McMillan of Excessive Speeding. As a result, we need not address McMillan's other point of error. Therefore,

IT IS HEREBY ORDERED THAT the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on August 26, 2009 in the District Court of the First Circuit, 'Ewa Division, is reversed.

DATED: Honolulu, Hawai'i, October 28, 2010.

On the briefs:

Craig W. Jerome,
Deputy Public Defender,
for Defendant-Appellant.

Presiding Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge