

NO. 30192

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
MARVIN C.F. CREWS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTC-09-036739)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Leonard and Reifurth, JJ.)

Defendant-Appellant Marvin C.F. Crews (Crews) appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered on January 7, 2010 in the District Court of the First Circuit, Honolulu Division (District Court).¹ Crews was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) and/or (a)(2) (2007).

On appeal, Crews contends that the District Court erred by admitting a speed check card into evidence because the State failed to adduce the requisite foundation required by *State v. Fitzwater*, 122 Hawai'i 354, 227 P.3d 520 (2010), and therefore, there was insufficient evidence to convict him of Excessive Speeding.²

The State admits that there was insufficient foundation to admit the speed check card into evidence under *Fitzwater*, and, therefore, insufficient evidence to convict Crews of Excessive Speeding without the speedometer reading. However, the State

¹ The Honorable Leslie A. Hayashi presided.

² The District Court admitted the speed check card over Crews's objection on the ground of lack of foundation.

contends, without elaboration, that the case should be remanded to the District Court for entry of a judgment against Crews for violating HRS § 291C-102, a non-criminal traffic violation of speeding.

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 Crews's point of error as follows:

The State failed to establish how and when the speed check was performed, including whether it was performed in the manner specified by the manufacturer of the equipment used to perform the check, and the identity and qualifications of the person performing the check. *Fitzwater*, 122 Hawai'i at 376-77, 227 P.3d at 542-43. Therefore, there was insufficient foundation to admit the speed check card into evidence. Without admission of the speed check card into evidence, there was insufficient evidence to convict Crews of Excessive Speeding.

There was also insufficient evidence to find that Crews was speeding. Unlike *Fitzwater*, Crews did not admit to driving at any speed because he did not testify. Other than Officer Lucas's testimony regarding his inadmissible speedometer reading, the State adduced no evidence of Crews's speed. Therefore, there was insufficient evidence to find that Crews was speeding.

Therefore,

IT IS HEREBY ORDERED THAT the Notice of Entry of Judgment and/or Order and Plea/Judgment entered on January 7, 2010, in the District Court of the First Circuit, Honolulu Division, is reversed.

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

On the briefs:

Earle A. Partington,
for Defendant-Appellant.

Chief Judge

Anne K. Clarkin,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge