

NO. 29812

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
LARRY F. EBUENG, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(HPD TRAFFIC NO. 1DTC-08-45095)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Larry F. Ebueng (**Ebueng**) appeals from the judgment entered on April 8, 2009 in the District Court of the First Circuit, Honolulu Division (**District Court**).¹ Ebueng was convicted of Excessive Speeding, in violation of HRS § 291C-105(a)(1) (Supp. 2009).

On appeal, Ebueng contends, *inter alia*, that the District Court erred by denying his motion in limine because the State failed to adduce the requisite foundation for admissibility of the laser gun speed reading. Ebueng argues that "[t]he State failed to adduce sufficient evidence to prove every element of the offense beyond a reasonable doubt."

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 Ebueng's points 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 sufficient foundation for the laser gun reading.² See State v.

¹ The Honorable Lenore Lee presided.

² Ebueng objected to evidence of the laser gun reading.

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 Ebueng of Excessive Speeding. Accordingly, we need not address Ebueng's other points of error.

For this reason, the District Court's April 8, 2009 judgment is reversed.

DATED: Honolulu, Hawai'i, February 25, 2010.

On the briefs:

Jon N. Ikenaga
for Defendant-Appellant

Chief Judge

Anne K. Clarkin, Esq.
for Plaintiff-Appellee

Associate Judge

Associate Judge