

NO. 30047

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
TOGIASO DURAN, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
KĀNEʻOHE DIVISION  
(Case No. 1DTC-08-032491)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Tagiaso Duran (Duran) appeals the Notice of Entry of Judgment and/or Order and Plea/Judgment entered on August 7, 2009, in the District Court of the First Circuit, Kāneʻohe Division (district court).<sup>1</sup>

Duran was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(1) (2007).

On appeal, Duran contends that the district court abused its discretion in admitting the laser gun reading without adequate foundation of officer training and laser gun testing consistent with the manufacturer's recommendations, and that, without evidence of speed, insufficient evidence exists to sustain the conviction. The State argues that the error was waived because Duran did not object to admissibility of the speed reading based on any lack of foundation. Duran counters that defense counsel's "questions were designed to challenge [Officer Shermon Dowkin's (Officer Dowkin)] qualifications and the accuracy of the particular laser gun" and that the court intervened and found, based on the officer's qualification and training, that the laser gun was working properly.

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<sup>1</sup> The Honorable Faʻauuga L. Toʻotoʻo presided.

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 Duran's points of error as follows.

(1) Duran waived his challenge to Officer Dowkin's testimony regarding the laser gun reading where Duran failed to make any objection prior to the officer's testimony establishing Duran's speed, nor did he object to a lack of foundation at anytime during trial, and no basis for plain error review exists. State v. Wallace, 80 Hawai'i 382, 409-10, 910 P.2d 695, 722-23 (1996); State v. Naeole, 62 Haw. 563, 570, 617 P.2d 820, 826 (1980). See also State v. Winfrey, No. 28737 (Haw. December 22, 2009) (order affirming judgment on appeal).

(2) There was sufficient evidence presented that Duran committed the offense of excessive speeding. Officer Dowkin testified that he observed Duran pass two posted City and County 35 mile-per-hour speed signs on Pali Highway. Officer Dowkin further testified that the laser gun reflected Duran's speed at 68 miles per hour. Evidence of the laser gun speed reading, "even though incompetent, if admitted without objection or motion to strike, is to be given the same probative force as that to which it would be entitled if it were competent." Wallace, 80 Hawai'i at 410, 910 P.2d at 723 (quoting 2 Wharton's Criminal Evidence § 265 n.3 (14th ed. 1986) (internal quotation marks omitted)). Accordingly, taken in the light most favorable to the State, State v. Grace, 107 Hawai'i 133, 139, 111 P.3d 28, 34 (App. 2005), there was sufficient evidence for the conviction.

IT IS HEREBY ORDERED THAT the Notice of Entry of Judgment and/or Order and Plea/Judgment, entered on August 7,

2009, in the District Court of the First Circuit, Kāneʻohe Division, is affirmed.

DATED: Honolulu, Hawaiʻi, July 27, 2010.

On the briefs:

Thomas R. Waters  
(Hawk Sing Ignacio & Waters),            Chief Judge  
for Defendant-Appellant.

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

Associate Judge