

NO. 29875

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
vs.
VINCENT M. YOSHIOKA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DTC-08-046549)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Vincent M. Yoshioka (Yoshioka) appeals from the Judgment filed on May 8, 2009, in the District Court of the First Circuit (district court).^{1/} Yoshioka was convicted of the offense of excessive speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) (2007 & Supp. 2009).

Yoshioka's conviction was predicated on a police officer's testimony regarding the speed reading from a laser gun used by the officer to measure the speed of Yoshioka's vehicle. Yoshioka objected to the officer's testimony regarding the laser gun's speed reading on the grounds of lack of foundation and improper expert testimony. The district court overruled the objections and permitted the officer to testify about the speed reading he obtained from the laser gun.

On appeal, Yoshioka argues that (1) the district court erred in denying in part a motion to compel discovery; and (2) the district court erred in convicting Yoshioka because an inadequate foundation was laid to support the admission of the speed reading from the laser gun.

^{1/} The Honorable William A. Cardwell presided.

Plaintiff-Appellee State of Hawai'i (State) concedes that (1) under State v. Assaye, 121 Hawai'i 204, 216 P.3d 1227 (2009), an insufficient foundation was laid to support the admission of the laser gun's speed reading and (2) without that evidence, there was insufficient evidence to convict Yoshioka. We agree that Assaye is dispositive. Under Assaye, the district court erred in admitting the officer's testimony regarding the laser gun's speed reading. Without that testimony, there was insufficient evidence to convict Yoshioka. Accordingly, we reverse Yoshioka's conviction, which makes it unnecessary for us to address Yoshioka's discovery claim.

IT IS HEREBY ORDERED that the Judgment filed on May 8, 2009, in the district court is reversed.

DATED: Honolulu, Hawai'i, June 23, 2010.

On the briefs:

Taryn R. Tomasa
Deputy Public Defender
for Defendant-Appellant

Chief Judge

Delanie D. Prescott-Tate
Deputy Prosecuting Attorney
City and County of Honolulu
for Plaintiff-Appellee

Associate Judge

Associate Judge