

CONCURRING OPINION BY NAKAMURA, C.J.

I concur in the majority's decision to reverse the defendant's excessive speeding conviction based on the lack of sufficient foundation regarding the officer's qualification to operate the laser gun because I believe this decision is dictated by existing precedent of the Hawai'i Supreme Court. See State v. Amiral, 132 Hawai'i 170, 178-79, 319 P.3d 1178, 1186-87 (2014); State v. Gonzalez, 128 Hawai'i 314, 327, 288 P.3d 788, 801 (2012). However, I write separately to express my continuing disagreement with what I believe is an undue emphasis in these precedents on training requirements indicated by the laser gun's manufacturer in laying a sufficient foundation. See State v. Ramos, No. CAAP-12-0000138, 2014 WL 2694230, at *7-9 (Jun. 13, 2014) (Nakamura, C.J., concurring) (MOP); State v. Amiral, No. CAAP-11-0000374, 2013 WL 1829591, at *3-4 (Nakamura, C.J., dissenting) (SDO).

Although compliance with the manufacturer's training requirements is *one way* to show that the operator of a laser gun was qualified to operate the device, it is not the *only way* of making this showing. See State v. Eid, 126 Hawai'i 430, 444-45, 272 P.3d 1197, 1211-12 (2012); State v. Amiral, 132 Hawaii 170, 180-81, 319 P.3d 1178, 1188-89 (2014) (Recktenwald, C.J., concurring). For example, in my view, the prosecution could establish that a police officer was qualified to operate the laser gun by demonstrating the officer's ability to use the laser gun to obtain accurate results for vehicles traveling at known speeds.

In Ramos, the State of Hawai'i (State) represented that the manufacturer of the UltraLyte 20-20, the laser gun used in this case, had not set forth specific training requirements for the operation of the laser gun. See Ramos, 2014 WL 2694230, at *8. If this is true, it is easy to see why the State has struggled to lay a foundation that focuses on compliance with training requirements indicated by the manufacturer. As in this case, the officer can testify that he or she was trained to operate the device in accordance with the instructions set forth

in the manufacturer's operating manual. But if the manual itself does not contain specific training requirements, the officer cannot say what the manufacturer's training requirements were or demonstrate compliance with the non-existent requirements. While the State could demonstrate that the officer's training met the requirements indicated by the manufacturer by hiring a manufacturer's representative to conduct or participate in the training, I do not see why hiring a manufacturer's representative should be required.

The record indicates that according to the manufacturer's manual, once the officer performs the four tests to assure the laser gun is in proper working order, the actual use of the gun to obtain a speed reading is not complicated. The officer aims the laser gun through the scope at the front or back license plate area of the vehicle. If the laser gun successfully locks onto the vehicle, it will emit a distinctive audible tone and display the speed reading; if the laser gun is unable to obtain a speed reading, it will not emit the distinctive tone and sometimes an error message will appear. Under these circumstances, no great amount of training would appear to be necessary to qualify a person to properly operate the laser gun.

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