

CONCURRING OPINION BY NAKAMURA, C.J.

I concur in the result reached by the majority. I write separately to comment on what I believe is an overemphasis in recent Hawai'i Supreme Court decisions on the manufacturer's requirements or recommendations in laying an adequate foundation for admission of evidence derived from a scientific measuring device.

In my view, to lay an adequate foundation that the radar gun reading in this case was sufficiently reliable to warrant admission, the prosecution was required to show that (1) the radar gun was in proper working order; and (2) the officer who used the radar gun was qualified to operate it. See State v. Amiral, No. CAAP-11-0000374, 2013 WL 1829591, at *3 (Hawai'i App. Apr. 30, 2013) (Nakamura, C.J., dissenting) (citing State v. Eid, 126 Hawai'i 430, 443-44, 272 P.3d 1197, 1210-11 (2012)). While proof of compliance with the manufacturer's requirements or recommendations is one way to establish an adequate foundation, it is not the only way to establish that a scientific measuring device was in proper working order and that the person who used the device was qualified to operate it. See Amiral, No. CAAP-11-0000374, 2013 WL 1829591, at *3-4 (Nakamura, C.J., dissenting) (discussing various ways of showing that a person who used a laser gun device was qualified to operate it).

In this case, the prosecution did not lay an adequate foundation that the radar gun was in proper working order. I therefore agree with the majority that the district court erred in admitting the speed reading from the radar gun.

Craig H. Nakamura