

CONCURRING OPINION BY NAKAMURA, C.J.

I concur with the majority's decision. In determining whether a sufficient foundation has been laid that a police officer is qualified to operate a speed detection device, the existing precedents of the Hawai'i Supreme Court have focused on whether the State has shown that the officer's training met the requirements indicated by the manufacturer of the device. 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). It is not clear that the manufacturer of the radar device used in this case has actually established any specific training requirements. In this case, Officer Kimo Keliipaakau, the officer who used the radar device, testified that the manufacturer did not require special training to use the radar device. See also State v. Ramos, No. CAAP-12-0000138, 2014 WL 2694230, at \*8 (Hawai'i App. June 13, 2014) (SDO) (Nakamura, C.J., concurring) ("In this appeal, the State of Hawai'i (State) represents that the manufacturer of the laser gun used in this case has not set forth specific training requirements for the operation of the laser gun."). Obviously, it would be difficult to lay a foundation based on training requirements indicated by the manufacturer if the manufacturer had not established any specific training requirements.

Hawai'i Supreme Court precedents have imposed two basic requirements for laying a foundation for the admission of speed readings from speed detection devices, such as a radar device and a laser gun, that are based on accepted scientific principles. A sufficient foundation can be laid by showing: (1) the device was tested in accordance with accepted procedures to determine that it was functioning properly or was in good working order (the "proper functioning prong"); and (2) the operator was qualified by training and experience to operate the device (the "qualified operator prong"). State v. Tailo, 70 Haw. 580, 582, 779 P.2d 11, 13 (1989) ("The accuracy of a particular radar unit can be established by showing that the operator tested the device in accordance with accepted procedures to determine that the unit was functioning properly and that the operator was qualified by

training and experience to operate the unit." (internal quotation marks and citation omitted); see State v. Eid, 126 Hawai'i 430, 443-44, 272 P.3d 1197, 1210-11 (2012). These two requirements are separate and distinct. Proof that a speed detection device was tested in accordance with accepted procedures and found to be in good working order, i.e., satisfying the proper functioning prong, is not sufficient to lay the foundation for admission of a speed reading produced by the device. Proof that the operator of the device was qualified to operate it, i.e., satisfying the qualified operator prong, it is also required. This is because there is no assurance that a device in good working order will produce accurate results if it is used by someone who is not qualified to operate it.

With respect to the qualified operator prong, the evidence presented in this case is that there are no special training requirements indicated by the manufacturer of the radar device used by Officer Keliipaakau. That should not mean, however, that it is impossible to lay an adequate foundation that Officer Keliipaakau was qualified to operate the device. The purpose of requiring proof that the operator was qualified to operate the device is to provide assurance that the speed reading produced by the operator's use of the device can be relied upon as being accurate. It seems to me that proof that the operator was qualified to operate a speed detection device can be shown in a variety of ways, which is not restricted to proof that the operator met training requirements indicated by the manufacturer.<sup>1</sup> The key question is whether the operator was

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<sup>1</sup>Even though Officer Keliipaakau testified that the manufacturer of the radar device did not require special training to use the device, the State of Hawai'i (State) attempted to show that Officer Keliipaakau's training met the requirements indicated by the manufacturer by eliciting Officer Keliipaakau's testimony that he received training to be a certified instructor through the manufacturer of the radar device. The reason that compliance with training requirements indicated by the manufacturer is sufficient to show that a person is qualified to operate the device is because we naturally assume that the manufacturer of a speed detection device knows what is necessary (continued...)

qualified to use the device to obtain accurate speed readings, and the focus in laying an adequate foundation should be on presenting evidence showing that this question can be answered affirmatively. Thus, in my view, the requisite foundation for the qualified operator prong can be established by showing, for example, that the operator had passed a test designed to verify the operator's ability to use the device accurately to obtain a vehicle's speed or that the officer had otherwise demonstrated the ability to obtain speed readings that were shown to be accurate.

In this case, the State of Hawai'i (State) failed to present evidence demonstrating Officer Keliipaakau's competency or proficiency in operating the radar device to obtain accurate speed readings. While the State presented evidence that Officer Keliipaakau had undergone training on how to use the radar device, the State did not present evidence on the nature of that training or indicate how the training was designed to demonstrate Officer Keliipaakau's ability to use the radar device to obtain accurate readings of a vehicle's speed. Had Officer Keliipaakau been tested to determine if he was able to use the radar device to obtain accurate speed readings? Did he, for example,

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<sup>1</sup>(...continued)

to operate the device to obtain accurate speed readings. We therefore conclude that compliance with training requirements indicated by the manufacturer ensures that the person receiving such training is qualified to operate the device. The same reasoning, assumption, and conclusion applies to training provided or conducted by a representative of the manufacturer. Just as compliance with training requirements indicated by the manufacturer would demonstrate that a person is qualified to operate the device, so would the successful completion of training provided or conducted by a representative of the manufacturer. In this case, however, while Officer Keliipaakau referred to receiving training to be a certified instructor "through the actual manufacturer," he did not provide any details concerning the training he received, and he did not indicate whether he had completed the training or had been certified as an instructor or in the use of the radar device. Thus, while proof that Officer Keliipaakau had successfully completed training provided or conducted by a representative of the manufacturer would, in my view, have been sufficient to satisfy the qualified operator prong, the State did not present such evidence.

participate in a field test in which he was asked to use the device to obtain speed readings on vehicles traveling at known speeds? Did he pass any such tests? Was there other evidence that would show he had used the device in the past to obtain accurate speed readings? In what manner was Officer Keliipaakau's training designed to ensure that he was qualified and competent to use the device to obtain accurate speed readings? Did he receive a certification or other indication showing that he successfully completed the training? What was required for him to receive such a certification or to show that he successfully completed the training?

The State failed to provide answers to any of these questions or to otherwise present evidence tending to show that Officer Keliipaakau was able to use the device to obtain accurate speed readings. It therefore failed to satisfy the qualified operator prong of the requirements for laying a sufficient foundation to admit the speed reading.