

NO. CAAP-16-0000373

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
PAUL STEPHEN GLEED, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3DTC-15-052965)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant Paul Stephen Gleed appeals from the Judgment and Notice of Entry of Judgment, filed on March 4, 2016 in the District Court of the Third Circuit ("District Court").¹ Gleed was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes section 291C-105(a)(2) (2007).

On appeal, Gleed contends that: (1) the charge was insufficient for failing to allege that the offense occurred on a highway; (2) the District Court failed to conduct an adequate colloquy under *Tachibana v. State*, 79 Hawai'i 226, 900 P.2d 1293 (1995) and failed to obtain a waiver of his right to testify; (3) the District Court erred by admitting the radar gun speed reading because it lacked proper foundation; and (4) the District Court

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The Honorable Margaret M. Masunaga presided.

plainly erred by admitting Gleed's traffic citation into evidence because it was not relevant and was hearsay.

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 Gleed's points of error as follows:

In conducting the "ultimate" *Tachibana* colloquy, the District Court did not obtain an on-the-record waiver of the right to testify directly from Gleed, but instead accepted the implicit representation of Gleed's counsel that Gleed did not want to testify. In doing so, the District Court failed to comply with the requirements of *Tachibana* and failed to obtain a valid waiver of Gleed's right to testify. *State v. Staley*, 91 Hawai'i 275, 286-87, 982 P.2d 904, 915-16 (1999). This error was not harmless beyond a reasonable doubt. *See State v. Hoang*, 94 Hawai'i 271, 279-90, 12 P.3d 371, 379-80 (App. 2000)); *State v. Cooper*, No. CAAP-15-0000646, 2017 WL ____, at *__ (Hawai'i App. June 28, 2017).

We consider then whether there was sufficient evidence to warrant remand for further proceedings or whether the judgment should be reversed. Gleed contends that the radar speed reading should not have been admitted into evidence because Hawai'i Police Department Officer Kimo Keliipaakaua's testimony regarding a manual was hearsay and violated the best evidence rule and there was insufficient evidence that Officer Keliipaakaua was qualified to operate the radar gun and that the radar gun was tested according to the manufacturer's requirements.

Here, the State failed to lay a sufficient foundation that Officer Keliipaakaua was qualified to operate the radar device used to determine the speed of Gleed's car. *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); *Cooper*, 2017 WL ____, at *__.

Based on the foregoing, we need not address Gleed's first and fourth points of error and we reverse Gleed's conviction and the Judgment and Notice of Entry of Judgment,

filed on March 4, 2016 in the District Court of the Third Circuit.

DATED: Honolulu, Hawai'i, June 30, 2017.

On the briefs:

Antoinette V. Lilley, Deputy Public Defender, for Defendant-Appellant.	Associate Judge
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David Blancett-Maddock, Deputy Prosecuting Attorney, County of Hawai'i, for Plaintiff-Appellee.	Associate Judge
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