

NO. 29420

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
JASON MARK A. SEATON, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
KĀNE'OHE DIVISION
(HPD Traffic No. 1DTC-08-031761)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Fujise and Leonard, JJ.)

Defendant-Appellant Jason Mark A. Seaton (Seaton) appeals the Judgment entered on September 19, 2008, in the District Court of the First Circuit, Kāne'ōhe Division (district court).¹

Seaton was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes § 291C-105(a)(1) (2007).

On appeal, Seaton contends (1) insufficient evidence existed to establish that Seaton was driving the vehicle, (2) the district court abused its discretion by denying his motion to compel discovery, and (3) the district court erred in admitting evidence of the laser-gun reading absent requisite foundation where the State failed to prove that (a) the laser gun used by Sergeant Shermon Dowkin (Sergeant Dowkin) had been tested according to the manufacturer's accepted procedures, and (b) Sergeant Dowkin was qualified by training and experience to operate the laser gun.

The State contends that (1) sufficient evidence existed that Seaton was driving the vehicle, (2) the district court properly limited the scope of discovery, and (3) the district court did not err in admitting the laser-gun reading based on the tests that were performed.

¹ The Honorable Fa'auuga To'oto'o presided.

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 Seaton's points of error as follows:

In this case, the record is sufficient to review Seaton's point of error that the State failed to adduce sufficient evidence that the laser gun was tested according to the manufacturer's recommended procedures in order to establish sufficient foundation for the laser-gun reading.

Sergeant Dowkin did not testify that the laser gun was tested in accordance with the manufacturer's specifications. Therefore, the State failed to adduce sufficient evidence regarding the accuracy of the laser gun, and the laser-gun reading should not have been admitted into evidence. State v. Assaye, 121 Hawai'i 204, 209-14, 216 P.3d 1227, 1232-38 (2009). Without evidence of the laser-gun reading, there is insufficient evidence to convict Seaton of Excessive Speeding. We need not address Seaton's other points of error.

Therefore,

IT IS HEREBY ORDERED THAT the September 19, 2008 Judgment of the District Court of the First Circuit, Kāne'ohe Division, is reversed.

DATED: Honolulu, Hawai'i, December 14, 2009.

On the briefs:

Craig W. Jerome,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Brian R. Vincent,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge