

NO. 29490

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
CARRIE L. ABT, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
WAHIAWA DIVISION
(HPD TRAFFIC NO. 1DTC-08-028763)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Watanabe, and Foley, JJ.)

Defendant-Appellant Carrie L. Abt (Abt) appeals from the October 28, 2008, Judgment entered by the District Court of the First Circuit (district court).^{1/} Abt was convicted of the offense of excessive speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) (2007),^{2/} for driving a motor vehicle exceeding the applicable speed limit by thirty miles per hour or more. Abt's conviction was predicated on evidence of a laser-gun reading which showed that Abt was driving her vehicle at a speed of seventy miles per hour in a thirty-five miles per hour zone.

On appeal, Abt contends that the district court erred in: 1) admitting a police officer's testimony regarding the laser-gun reading because the prosecution failed to establish an adequate foundation for such evidence; and 2) denying Abt's motion to compel discovery of certain materials. Based on the Hawai'i Supreme Court's decision in State v. Assaye, 121 Hawai'i 204, 216 P.3d 1227 (2009), we reverse Abt's conviction.

^{1/} The Honorable Lono Lee presided.

^{2/} HRS § 291C-105(a)(1) provides:

(a) No person shall drive a motor vehicle at a speed exceeding:

(1) The applicable state or county speed limit by thirty miles per hour or more;

I.

In Assaye, the Hawai'i Supreme Court held that the prosecution failed to lay a sufficient foundation for the admission of a speed reading from a laser gun because the prosecution failed to adduce evidence that: 1) the laser gun was tested according to procedures recommended by the manufacturer for demonstrating that the laser gun was operating properly; and 2) the officer who obtained the laser-gun reading had received training in the operation of the laser gun that met the requirements indicated by the laser gun's manufacturer. Id. at 210-16, 216 P.3d at 1233-39. The same deficiencies in establishing the foundation for the admission of the laser gun's speed reading that were identified in Assaye are present in this case. Thus, the district court erred in admitting the police officer's testimony regarding the speed reading obtained from the laser gun for Abt's vehicle.

As in Assaye, without the officer's testimony regarding the speed reading from the laser gun, there was insufficient evidence to prove that Abt was driving her vehicle at a speed exceeding the applicable speed limit by thirty miles per hour or more. See id. at 216, 216 P.3d at 1239. Accordingly, we reverse Abt's conviction. Our reversal of Abt's conviction renders it unnecessary for us to address Abt's discovery claim.

II.

The October 28, 2008, Judgment entered by the district court is reversed.

DATED: Honolulu, Hawai'i, December 24, 2009.

On the briefs:

Taryn R. Tomasa,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Delanie D. Prescott-Tate,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge