

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 30012

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
JORDAN N. KOTANI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(Case No. 1DTC-08-057813)

JEAN R. KIKUMOTO  
CLERK, APPELLATE COURT  
STATE OF HAWAI'I

2010 JUN 21 AM 8:20

FILED

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Fujise and Leonard, JJ.)

Defendant-Appellant Jordan N. Kotani (Kotani) appeals from the Judgment entered on July 21, 2009 in the District Court of the First Circuit, Honolulu Division (district court).<sup>1</sup>

Kotani was convicted of Excessive Speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) (1993 & Supp. 2009).

On appeal, Kotani contends the district court erred by admitting the laser-gun reading into evidence over his objection because it lacked proper foundation in accordance with State v. Assaye, 121 Hawai'i 204, 216 P.3d 1227 (2009).

The State of Hawai'i (State) concedes there was insufficient evidence to convict Kotani of Excessive Speeding, but argues there was sufficient evidence to support a finding for the State with respect to the included traffic infraction of Speeding, in violation of HRS § 291C-102(a)(1) (1993).

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, as well as the relevant statutory and case law, we resolve Kotani's points of error as follows:

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<sup>1</sup> The Honorable Faye M. Koyanagi presided.

There was insufficient evidence to convict Kotani of Excessive Speeding because the State failed to adduce evidence that the laser gun was tested according to the manufacturer recommended procedures in order to establish sufficient foundation for the laser gun reading. Assaye, 121 Hawai'i at 214, 216 P.3d at 1237. Without this evidence, there was insufficient evidence to support Kotani's conviction for Excessive Speeding.

The State's reliance upon Officer Kam's testimony that he saw Kotani's car "pulling away from the other vehicles" does not provide sufficient proof that Kotani was traveling in excess of the posted speed limit of 45 miles per hour. Therefore, there is also insufficient evidence that Kotani violated HRS § 291C-102.

Therefore,

IT IS HEREBY ORDERED that the Judgment entered on July 21, 2009, in the District Court of the First Circuit, Honolulu Division, is reversed.

DATED: Honolulu, Hawai'i, June 21, 2010.

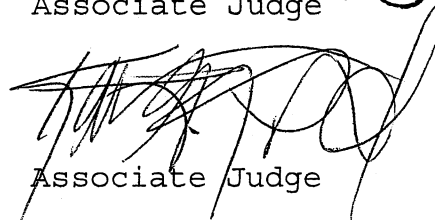
On the briefs:

Brian A. Costa  
James A. DeLacy  
(Costa & DeLacy, LLC)  
for Defendant-Appellant.

  
Presiding Judge

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

  
Associate Judge

  
Associate Judge