

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29700

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
FRANK TORRES GIRON, JR., Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(HPD TRAFFIC NO. 1DTC-08-045781)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Chief Judge, Fujise and Leonard, JJ.)

Defendant-Appellant Frank Torres Giron, Jr. (**Giron**) appeals the judgment entered on February 17, 2009 in the District Court of the First Circuit, Honolulu Division (**District Court**).^{1/} Giron was convicted of Excessive Speeding, in violation of HRS § 291C-105(a) (1) (Supp. 2009).

On appeal, Giron contends that the District Court erred when it: (1) denied his motion in limine because the State failed to adduce the requisite foundation for admissibility of the laser gun speed reading; and (2) denied his motion to compel discovery. Giron argues that "as there was insufficient foundation laid for Officer Maeshiro's testimony as to Giron's alleged speed, his conviction must be vacated and the case remanded for an order striking all of Officer Maeshiro's testimony as to the alleged speed of his vehicle and dismissing this case with prejudice."

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 Giron's points of error as follows:

^{1/} The Honorable Paula Devens presided.

JENNIFER KIKIOTO
CLERK OF THE COURTS

2010 FEB 18 AM 8:00

FILED

The State failed to adduce 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.^{2/} See State v. Assaye, 121 Hawai'i 204, 210-14, 216 P3d 1227, 1233-37 (2009). Without the laser gun reading, there was insufficient evidence to convict Giron of Excessive Speeding. We need not address Giron's other point of error.

For this reason, the District Court's February 17, 2009 judgment is reversed.

DATED: Honolulu, Hawai'i, February 18, 2010.

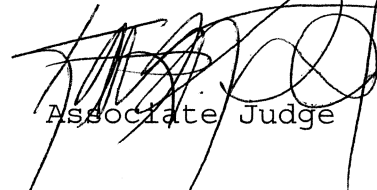
On the briefs:

Jon N. Ikenaga
Deputy Public Defender
for Defendant-Appellant

Brian R. Vincent
Deputy Prosecuting Attorney
for Plaintiff-Appellee


Chief Judge


Associate Judge


Associate Judge

^{2/} Giron objected to evidence of the laser gun reading.