

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 30127

IN THE INTERMEDIATE COURT OF APPEALS  
 OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
 DAVID K. BRANCO, Defendant-Appellant

JEAN R. KIKUNOTO  
 CLERK APPELLATE COURTS  
 STATE OF HAWAII

2010 AUG 17 AM 8:30

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,  
 HONOLULU DIVISION  
 (Case No. 1DTC-09-033913)

SUMMARY DISPOSITION ORDER

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

Defendant-Appellant David K. Branco (Branco) appeals from the Judgment entered on September 23, 2009 in the District Court of the First Circuit, Honolulu Division (district court).<sup>1</sup>

The district court convicted Branco of Excessive Speeding, in violation of Hawaii Revised Statutes (HRS) § 291C-105(a)(1) (2007 Repl. & Supp. 2009).

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

The State concedes the district court erred by admitting the laser gun reading into evidence.

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 conclude there was insufficient evidence to convict Branco of Excessive Speeding because the State failed to adduce evidence that the laser gun

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

had been tested according to the manufacturer-recommended procedures in order to establish sufficient foundation for the admissibility of the laser gun reading. Assaye, 121 Hawai'i at 214, 216 P.3d at 1237. Without this evidence, there was insufficient evidence to support Branco's conviction for Excessive Speeding.

Therefore,

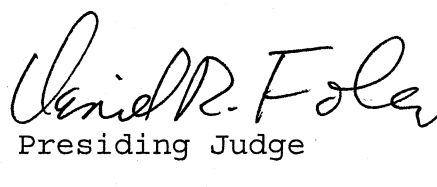
IT IS HEREBY ORDERED that the Judgment entered on September 23, 2009 in the District Court of the First Circuit, Honolulu Division, is reversed.

DATED: Honolulu, Hawai'i, August 17, 2010.

On the briefs:

Jon N. Ikenaga,  
Deputy Public Defender,  
for Defendant-Appellant.

Stephen K. Tsushima,  
Deputy Prosecuting Attorney,  
City and County of Honolulu,  
for Plaintiff-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge