

Electronically Filed  
Intermediate Court of Appeals  
CAAP-17-0000916  
25-APR-2019  
07:53 AM

NO. CAAP-17-0000916

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.  
FRED F. FARZAMI, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CASE NO. 1DTI-17-010275)

SUMMARY DISPOSITION ORDER

(By: Ginoza, C.J., and Fujise and Reifurth, JJ.)

Defendant-Appellant Fred F. Farzami appeals from the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on December 26, 2017, in the District Court of the First Circuit, Honolulu Division ("District Court").<sup>1/</sup> Judgment in favor of the State was entered, finding that Farzami violated Hawaii Revised Statutes ("HRS") section 291C-137(a) (Supp. 2016), Mobile Electronic Devices.

On appeal, Farzami contends that (1) the deputy sheriff who issued the citation mistook Farzami's earpiece for a mobile device, and (2) he was "parked far enough from the driveway of Costco[,], which makes that a private property," and, thus, HRS section 219C-137 is inapplicable.

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 Farzami's points of error as follows and affirm:

---

<sup>1/</sup> The Honorable Florence T. Nakakuni presided.

Without a transcript of the proceeding, there is no basis to review Farzami's alleged use of an earpiece instead of a mobile device as set forth in the citation or whether Farzami was using an electronic device in the private parking lot of Costco or, as set forth in the citation, at the intersection turning right on to Dillingham Boulevard, which is a public way, street, road, or highway to which HRS section 291C-137(a) is applicable. Haw. Rev. Stat. § 291C-137(e). *Bettencourt v. Bettencourt*, 80 Hawai'i 225, 231, 909 P.2d 553, 559 (1995).

Furthermore, to the extent that Farzami contends that the District Court erred because it believed the State's evidence with regard to what the deputy sheriff saw and where Farzami was when the deputy sheriff saw it, we are unable to provide any relief. "An appellate court will not pass upon the trial judge's decisions with respect to the credibility of witnesses and the weight of the evidence because this is the province of the trial judge." *Porter v. Hu*, 116 Hawai'i 42, 60, 169 P.3d 994, 1012 (App. 2007) (quoting *State v. Eastman*, 81 Hawai'i 131, 139, 913 P.2d 57, 65 (1996)).

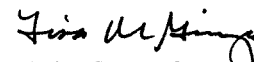
Therefore, IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order and Plea/Judgment, filed on December 26, 2017, in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, April 25, 2019.

On the briefs:

Fred F. Farzami,  
Pro Se Defendant-Appellant.

Chad Kumagai,  
Deputy Prosecuting Attorney,  
City & County of Honolulu,  
for Plaintiff-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge