

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26939

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

STATE OF HAWAI'I, Plaintiff-Appellee,  
v.  
PHILLIP A. ESPANIOLA, JR., Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 02-1-0017)

SUMMARY DISPOSITION ORDER

(By: Burns, Chief Judge, Watanabe, and Nakamura, JJ.)

Defendant-Appellant Phillip Espaniola, Jr. (Espaniola) appeals from the Judgment entered on October 12, 2004, in the Circuit Court of the First Circuit (circuit court). A jury found Espaniola guilty as charged of Burglary in the First Degree (Burglary I), in violation of Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993).<sup>1</sup> Espaniola was sentenced to ten years' imprisonment with a mandatory minimum term of three years and four months as a repeat offender.

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<sup>1</sup> Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993) provides:

(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

. . . .

(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

On appeal, Espaniola argues that the circuit court committed "plain reversible error" in: 1) failing to instruct the jury on the "general *mens rea*" applicable to the attendant circumstances element of the Burglary I offense; and 2) failing to define the term "attendant circumstances" in its jury instructions.<sup>2</sup> We disagree with Espaniola's arguments and affirm the Judgment.

After careful review and consideration of the record and the briefs submitted by the parties, we hold as follows:

1. The attendant circumstances element of the charged Burglary I offense is that the building was the dwelling of another. The circuit court properly instructed the jury on the *mens rea* applicable to the attendant circumstances element in that the court's instruction required the jury to find that Espaniola "recklessly disregarded the risk that the building was the dwelling of another." We reject Espaniola's contention that the jury was required to find that Espaniola acted both intentionally and recklessly with respect to whether the building was the dwelling of another. The charged Burglary I offense does not require proof that Espaniola acted intentionally with respect to whether the building was a dwelling of another. HRS § 708-810(1)(c). Espaniola is therefore wrong in claiming that the circuit court's Burglary I instruction should have required the jury to find that Espaniola acted intentionally with respect to the attendant circumstances element.

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<sup>2</sup> The Honorable Marie N. Milks presided over the trial in this case.

2. The circuit court did not err in failing to define the term "attendant circumstances" in its jury instructions. The term "attendant circumstances" is plain English and has a commonly understood meaning. The jury could easily figure out that the requirement that the building was a dwelling of another was an attendant circumstance of the Burglary I offense and therefore determine which definition of "recklessly" to apply. The term "attendant circumstances" was chosen by the Hawai'i Legislature to describe one of the three types of elements that can be specified in an offense. HRS § 702-205 (1993). The Legislature did not further define the term and the family court was not required to do so. State v. Haili, 103 Hawai'i 89, 108-09, 79 P.3d 1263, 1282-83 (2003).

IT IS HEREBY ORDERED that the October 12, 2004, Judgment of the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 28, 2006.

On the briefs:

Earle A. Partington,  
for Defendant-Appellant

James M. Anderson,  
Deputy Prosecuting Attorney  
City and County of Honolulu  
for Plaintiff-Appellee

*James A. Burns*  
Chief Judge

*Corinne KA Watasabe*  
Associate Judge

*Craig H. Nakamura*  
Associate Judge