

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28681

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,  
v.  
JASON TANAKA, aka Kevin Nakayama,  
Defendant-Appellant

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2008 DEC 23 AM 9:02

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CR. NO. 04-1-0735)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Nakamura, and Leonard, JJ.)

Defendant-Appellant Jason Tanaka (Tanaka), also known as Kevin Nakayama, appeals from the Judgment filed on July 19, 2007, in the Circuit Court of the First Circuit (circuit court).<sup>1/</sup> After a bench trial, Tanaka was found guilty of second-degree burglary, in violation of Hawaii Revised Statutes (HRS) § 708-811 (1993).<sup>2/</sup> The circuit court sentenced Tanaka to five years of imprisonment to be served concurrently with any other sentence he was serving.

On appeal, Tanaka contends that 1) there was insufficient evidence to convict him of second-degree burglary and 2) the circuit court erred in failing to consider whether to convict Tanaka of the lesser-included offense of trespass. We disagree.

There was ample evidence to support Tanaka's conviction. When viewed in the light most favorable to the prosecution, State v. Ugalino, 107 Hawai'i 144, 158, 111 P.3d 39,

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<sup>1/</sup> The Honorable Karl K. Sakamoto presided.

<sup>2/</sup> HRS § 708-811(1) provides that "[a] person commits the offense of burglary in the second 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."

53 (App. 2005), the evidence showed that the police found Tanaka inside B&W Photography's studio at about 10:00 p.m., several hours after the business had closed for the day. A security company monitoring the studio's alarm system notified the police that the alarm had been triggered. Tanaka was found in possession of \$104, which roughly corresponded with the amount one of the studio's owners estimated was missing from the studio's petty cash box, and a DVD belonging to one of the owners. In addition, the studio's stereo and speakers had been moved and placed in a duffel bag, and a storage cabinet had been bent, suggesting that someone had attempted to pry it open. The studio's owners did not know Tanaka and had not given him permission to enter the studio after business hours.

There was substantial evidence that Tanaka had "intentionally enter[ed] or remain[ed] unlawfully in a building with intent to commit therein a crime against . . . property rights." HRS § 708-811(1). Because there was sufficient evidence to support Tanaka's conviction for second-degree burglary, the circuit court was not required to consider the lesser-included offense of trespass.

IT IS HEREBY ORDERED that the circuit court's Judgment filed on July 19, 2007, is affirmed.

DATED: Honolulu, Hawai'i, December 23, 2008.

On the briefs:

Stuart N. Fujioka  
for Defendant-Appellant

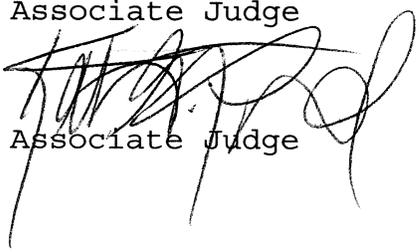
Loren J. Thomas  
Deputy Prosecuting Attorney  
City and County of Honolulu  
for Plaintiff-Appellee



Presiding Judge



Associate Judge



Associate Judge