

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29396

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.  
NOEL S. DEL ROSARIO, Defendant-Appellant

2009 JUN 30 AM 8:13  
Kiana Kikawa  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CASE NO. 2P108-01298)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting Chief Judge, Foley and Leonard JJ.)

Defendant-Appellant Noel S. Del Rosario (**Del Rosario**) appeals from the Judgment entered on September 5, 2008, in the District Court of the Second Circuit, Wailuku Division (**District Court**).<sup>1/</sup> Del Rosario was convicted of Criminal Trespass in the Second Degree, in violation of Hawaii Revised Statutes (**HRS**) § 708-814(1)(b) (Supp. 2007).<sup>2/</sup> On appeal, Del Rosario contends

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<sup>1/</sup> The Honorable Simone C. Polak presided.

<sup>2/</sup> HRS § 708-814 provides, in relevant part:

**§708-814 Criminal trespass in the second degree.** (1) A person commits the offense of criminal trespass in the second degree if:

- ....
- (b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For the purposes of this paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

(continued...)

that there was insufficient evidence to convict him.

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 conclude that there was insufficient evidence that Del Rosario entered or remained unlawfully upon a particular commercial property after a reasonable warning or request (as defined in HRS § 708-814(1)(b)) to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent or a police officer. See State v. Davalos, 113 Hawai'i 385, 389, 153 P.3d 456, 460 (2007) (when reviewing the "sufficiency of the

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<sup>2</sup>/(...continued)

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
  - (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned;
  - (iii) The name of the person giving the warning along with the date and time the warning was given; and
  - (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator; ...
- ....
- (2) Criminal trespass in the second degree is a petty misdemeanor.

evidence to support [a] conviction," this court considers the evidence in the light most favorable to the State to determine whether each element of the charged offense is supported by "credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion" (internal quotation marks and citations omitted)).

Accordingly, the District Court's September 5, 2008 Judgment is reversed.

DATED: Honolulu, Hawai'i, June 30, 2009.

On the briefs:

Setsuko Regina Gormley  
Deputy Public Defender  
for Defendant-Appellant

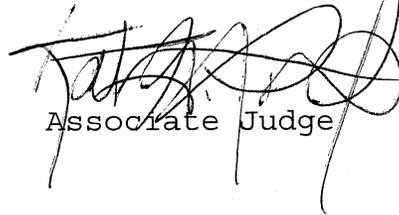
Richard K. Minatoya  
Deputy Prosecuting Attorney  
for Plaintiff-Appellee



Acting Chief Judge



Associate Judge



Associate Judge