

NO. 24431

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

VERNON SILK, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 99-0677)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

The defendant-appellant Vernon Silk appeals from the judgment of the first circuit court, the Honorable Karen Ahn presiding, convicting him of and sentencing him for the offense of kidnapping with the intent to terrorize (Count II), in violation of Hawai'i Revised Statutes (HRS) § 707-720(1)(e) (1993). On appeal, the defendant contends that the circuit court erred in: (1) failing to merge Count II (kidnapping with the intent to terrorize) with his unchallenged conviction of and sentence for Count I (assault in the third degree), pursuant to HRS § 701-109(1)(e) (1993); (2) concluding that there was sufficient evidence to establish beyond a reasonable doubt the restraint element of kidnapping; and (3) concluding that there was sufficient evidence to convict him of class A kidnapping pursuant to HRS § 707-720(1), rather than class B kidnapping, pursuant to HRS § 707-720(3) (1993).

Upon carefully reviewing 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 hold that: (1) pursuant to HRS § 701-109(1)(e) (1993), the defendant's conviction of the offense of kidnapping with the intent to terrorize does not merge into his conviction of the offense of assault in the third degree, because there was a sufficient factual basis for the trier of fact to conclude that Silk had separate and distinct intents to violate both HRS §§ 707-720(1)(e) and 707-712 (1993), see State v. Apao, 95 Hawai'i 440, 445, 24 P.3d 32, 37 (2001); State v. Ganai, 81 Hawai'i 358, 379, 917 P.2d 370, 391 (1996); State v. Hoey, 77 Hawai'i 17, 27 n.9, 881 P.2d 504, 514 n.9 (1994); (2) viewing the evidence in the light most favorable to the prosecution, see State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992), the circuit court did not err by concluding that there was sufficient evidence to establish beyond a reasonable doubt the restraint element of kidnapping; and (3) viewing the evidence in the light most favorable to the prosecution, see Batson, 73 Hawai'i at 248-49, 831 P.2d at 931, the circuit court did not err by concluding that there was sufficient evidence to convict the defendant of a class A kidnapping, pursuant to HRS § 707-720(1), rather than a class B kidnapping, pursuant to HRS § 707-720(3) (1993). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, May 3, 2002.

On the briefs:

Stuart N. Fujioka (of
Nishioka & Fujioka) for
the defendant-appellant,
Vernon Silk

Loren J. Thomas (Deputy
Prosecuting Attorney) for
the plaintiff-appellee,
State of Hawai'i