

NOT FOR PUBLICATION

NO. 26020

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROBERT LEE TETU, Defendant-Appellant

KHAMAKA'DO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 02-1-1456)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant Robert Lee Tetu (Tetu) appeals from the Judgment entered on August 5, 2003, in the Circuit Court of the First Circuit.^{1/}

The July 12, 2002 Complaint charged that on or about July 4, 2002, Tetu committed the following offenses:

Count I, Terroristic Threatening in the First Degree, Hawaii Revised Statutes (HRS) § 707-716(1)(d).

Count II, Possession of Burglar's Tools, HRS § 708-812(1)(a).

Count III, Theft in the Fourth Degree, HRS §§ 708-833(1) and -830(7)^{2/}.

¹ Judge Virginia Lea Crandall presided.

² When he was arrested, Defendant-Appellant Robert Lee Tetu (Tetu) was found to be in possession of an envelope containing documents which was taken from the glove compartment of an automobile without the automobile owner's permission.

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During the jury trial, after the State concluded its case, the court denied Tetu's first motion for judgment of acquittal. After both sides rested, the court denied Tetu's second motion for judgment of acquittal.

The jury acquitted Tetu of Count I and found him guilty of Counts II and III. The court sentenced Tetu to confinement for one year for Count II and confinement for thirty days for Count III.

Tetu filed a notice of appeal on August 11, 2003. This case was assigned to this court on November 30, 2004.

At trial, Marlin David Redden (Redden), the resident manager of a fifty-eight unit apartment building in Waikīkī, testified that on Thursday, July 4, 2002, at approximately 9:00 a.m., he observed Tetu "for about two minutes" "at the bottom of the stairwell" standing with a bicycle next to him and "trying to pry and open the door" to the parking garage. The door was "steel framed" with "expanded metal mesh over the door." In Redden's words, "[I]t looked like [Tetu] was fumbling around; but, really, he was prying at the gate" securing the garage parking level of the building. Redden asked Tetu why he did not use his key. Tetu responded that "he didn't have a key[,] " but "wanted to park his bicycle inside . . . under the carport[.]"

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Tetu said he knew somebody living in the building. He gave a floor and a room number and Redden responded that "that was a wrong room number[.]" In Redden's words, "[W]e don't have room numbers that go that high." Tetu said that the person's name was "Shannon". In Redden's words, "It was a wrong room number; wrong person." During this verbal exchange, Redden opened the gate and exited the parking area, closing the gate behind him. As their encounter progressed, Redden saw that Tetu had "a chisel in his hand," "a rope" or maybe "a cord" in his hand, and a "blue T-shirt . . . around [his] hand[.]" When Redden walked up the stairs and Tetu heard Redden calling the police, Tetu "got excited" and said, "I wasn't the [sic] trying to break in[.]" Tetu walked up the stairs with the bicycle. When Redden blocked his way, Tetu "let go of the bike, which went crashing downstairs," and then Tetu and Redden "started having this little pushing match on the top of the landing." Tetu's "backpack flew off his shoulder, it hit the ground, he grabbed it, and some things . . . came out of the backpack, and he was trying to run." Some of the items that fell out of the backpack were pliers, screwdrivers, and a "scissors-type thing[.]"

Tetu testified that he carried his friend Brian's bicycle down the stairs to the gate to the lower parking garage

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intending to enter the parking garage so that he could tie the bicycle next to his friend Shannon's car. When he went down the stairs he had the bike, a piece of rope, and a chisel in his hand. He also had a backpack and cellular phone. The chisel was to cut the rope to tie up the bike. His blue T-shirt was on the handlebar of the bicycle. Tetu also testified that his friend Shannon had been living in the building seven months previously but he "was uncertain if she still was there or not."

Tetu contends that the court erred when it denied his second motion for judgment of acquittal of Count II, HRS § 708-812 (1993)^{3/}. He notes that HRS § 708-812

is a two step statute in that a defendant charged with this must first be shown to knowingly possess the tools, and then be shown to have intended to use the tools to enter a premises or commit a theft.

³ Hawaii Revised Statutes § 708-812 (1993) states, in relevant part, as follows:

Possession of burglar's tools. (1) A person commits the offense of possession of burglar's tools if:

- (a) The person knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking, and the person intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of the offense of the nature described aforesaid; . . .

. . . .

- (2) Possession of burglar's tools is a misdemeanor.

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The first element is not in issue as Robert Tetu admitted that the tools in Exhibit 24 were his and that he had them to help his friend repair a clogged drain. [Tetu] challenges the sufficiency of the evidence to support a finding that he had the intent to enter a premises or commit a theft therein.

(Case citation and record reference omitted.) Tetu contends that "the allegations of Marlen [sic] Redden are not supported by the physical evidence and cannot be believed." More specifically, he contends that "Marlen [sic] Redden's testimony [that] Robert Tetu was prying a metal door with a metal chisel is not believable. There should have been some damage to door or to the chisel. There was none."

The standard to be applied by the trial court in ruling upon a motion for a judgment of acquittal is whether, upon the evidence viewed in the light most favorable to the prosecution and in full recognition of the province of the trier of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. An appellate court employs the same standard of review.

State v. Keawe, 107 Hawai'i 1, 4, 108 P.3d 304, 307 (2005)

(brackets omitted) (quoting State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995)).

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments advanced and issues raised by the parties,

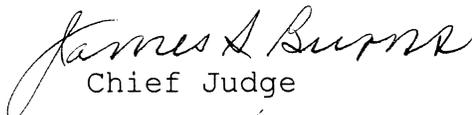
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IT IS HEREBY ORDERED that the August 5, 2003 Judgment is affirmed.

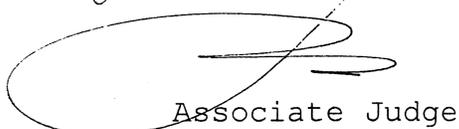
DATED: Honolulu, Hawai'i, October 18, 2005.

On the briefs:

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


Chief Judge

Jacob M. Merrill
for Defendant-Appellant


Associate Judge


Associate Judge