

NO. 28671

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ERWIN A.K. KUDOBA, JR., Defendant-Appellant

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CRIMINAL NO. 07-1-0066(4))

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Defendant-Appellant Erwin A.K. Kudoba, Jr. (Kudoba) appeals from the Amended Judgment entered on July 9, 2007 in the Circuit Court of the Second Circuit (circuit court).¹ A jury convicted Kudoba of one count of Burglary in the Second Degree in violation of Hawaii Revised Statutes (HRS) § 708-811 (1993), and one count of Theft in the Fourth Degree in violation of HRS § 708-833(1) (1993). The charges stemmed from an incident in which Kudoba allegedly entered a church and stole a \$20 bill from the pastor's desk.

The circuit court sentenced Kudoba to five years of imprisonment for the burglary count and thirty days of imprisonment for the theft count, to run concurrently, with a mandatory minimum of one year and eight months. Kudoba was also sentenced to pay \$20 in restitution, a \$135 Criminal Injuries Compensation fee, and \$500 or the actual cost of a court-ordered DNA analysis.

¹ The Honorable Richard T. Bissen, Jr. presided.

Kudoba's sole point of error with regard to the burglary count is that "the State did not provide sufficient evidence to prove beyond a reasonable doubt that Mr. Kudoba: (1) intentionally entered the church unlawfully; or (2) intentionally remained in the church unlawfully."²

After a careful review of the record and the briefs submitted by both parties, and having given due consideration to the arguments advanced and the issues raised, we resolve Kudoba's point of error as follows:

Considering the evidence in the light most favorable to the State, State v. Richie, 88 Hawai'i 19, 33, 960 P.2d 1227, 1241 (1998), there was substantial evidence establishing that Kudoba intentionally entered or remained in the church unlawfully. The jury could reasonably have inferred that Kudoba entered the building after the pastor left for the day between 5:30 and 6:00 p.m., and before the custodian arrived at about 6:30 p.m. and discovered Kudoba in the pastor's office. The pastor testified that he did not know Kudoba, that the church was not open to the public when Kudoba entered the building, and that there were no church functions that evening. The jury could also have reasonably inferred from the evidence that when Kudoba entered the building, the outside door to the church office was locked, there was no one inside the building, and the church was

² Kudoba does not challenge his conviction on the theft count.

dark. In these circumstances, there was substantial evidence to support the conclusion that Kudoba was aware that he was "not licensed, invited, or otherwise privileged" to enter the building.³ HRS § 708-800 (1993 and Supp. 2006). Moreover, even assuming arguendo that Kudoba was licensed, invited, or privileged to enter some portion of the building, such as the chapel area, there was substantial evidence supporting the conclusion that any such license, invitation, or privilege did not extend to the pastor's office. Id. ("A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.").

Finally, there was substantial evidence to support the conclusion that even if Kudoba were licensed, invited, or privileged to enter the building in order to find someone to give him gasoline or to use the telephone, he stayed far longer than necessary in order to accomplish that objective, and thus remained in the building unlawfully. HRS § 708-800 (1993 and Supp. 2006).

³ We note that pursuant to HRS 708-812.5 (Supp. 2006), "[a] person engages in conduct 'with intent to commit therein a crime against a person or against property rights' if the person formed the intent to commit within the building a crime against a person or property rights before, during, or after unlawful entry into the building." (Emphasis added). There was substantial evidence that Kudoba formed such an intent subsequent to his entry into the church, since he admitted to police that he took a \$20 bill from the pastor's desk.

Accordingly, the Amended Judgment entered on July 9, 2007 in the Circuit Court of the Second Circuit is hereby affirmed.

DATED: Honolulu, Hawai'i, April 18, 2008.

On the briefs:

Melissa N. Lam,
Deputy Public Defender,
for Defendant-Appellant.

Renee Ishikawa Delizo,
Deputy Prosecuting Attorney,
County of Maui,
for Plaintiff-Appellee.



Chief Judge



Associate Judge



Associate Judge