

*** NOT FOR PUBLICATION ***

NO. 23744

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee

vs.

SAMUEL HARPER, Defendant-Appellant

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0033)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ.,
Circuit Judge Alm, in place of Duffy, J., recused,
and Acoba, J., dissenting)

Defendant-appellant Samuel Harper appeals from the August 21, 2000 judgment of the circuit court of the second circuit, the Honorable Joseph E. Cardoza presiding, convicting Harper of and sentencing him for: (1) criminal trespass in the first degree, in violation of Hawai'i Revised Statutes (HRS) § 708-813(1)(a)(i) (1993)¹ (Count I); (2) assault in the third degree, in violation of HRS § 707-712(1)(a) (1993)² (Count II); (3) abuse of family and household member, in violation of HRS § 709-906 (Supp. 1999)³ (Count III); (4) criminal property damage

¹ HRS § 708-813(1)(a)(i) provides in relevant part that "[a] person commits the offense of criminal trespass in the first degree if . . . [t]hat person knowingly enters or remains unlawfully . . . [i]n a dwelling"

² HRS § 707-712(1)(a) provides in relevant part that "[a] person commits the offense of assault in the third degree if the person . . . [i]ntentionally, knowingly, or recklessly causes bodily injury to another person"

³ HRS § 709-906 provides in relevant part:

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member, or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, "family or household

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in the fourth degree, in violation of HRS § 708-823 (1993)⁴ (Count IV); and (5) burglary in the first degree, in violation of HRS § 708-810(1)(c) (1993)⁵ (Count V). On appeal, Harper argues that: (1) the circuit court erred by denying his motion for a judgment of acquittal on Count V; (2) there was insufficient evidence to support the conviction on Count V; and (3) the jury instructions were inadequate and insufficient, causing substantial prejudice.

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, we hold that: (1) a reasonable trier of fact could find that Harper's initial entry onto Sifferman's lanai was not an entry into Sifferman's dwelling pursuant to HRS § 708-810(1)(c); (2) the circuit court did not err by denying Harper's motion for a judgment of acquittal, inasmuch as the evidence viewed in the light most favorable to the prosecution supports a conclusion that reasonable minds could find that Harper was guilty of burglary in the first degree beyond a reasonable doubt, see State v. Hironaka, 99 Hawai'i 198, 53 P.3d 806 (2002); (3) the prosecution adduced substantial evidence, based on Sifferman's and Ogawa's testimony, supporting

member" means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

⁴ HRS § 708-823 provides that "[a] person commits the offense of criminal property damage in the fourth degree if the person intentionally damages the property of another without the other's consent."

⁵ HRS § 708-810(1)(c) provides in relevant part:

(1) A person commits the offense of burglary in the first 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, and:

. . . .
(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling. . . .

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the jury's conclusion that Harper was guilty of the Count V burglary charge, see State v. Okumura, 78 Hawai'i 383, 894 P.2d 80 (1995); and (4) when read and considered as a whole, the jury instructions given were not prejudicially insufficient, erroneous, inconsistent, or misleading, inasmuch as (a) the definition for "building" was provided, (b) the definition for "structure" was not necessary because the word is a commonly used term, (c) the findings of fact were not inconsistent because the jury impliedly found that there were two separate entries into Sifferman's apartment, and (d) there was no single course of conduct because the evidence establishes the formation of separate and distinct intents in connection with each entry into Sifferman's apartment. Therefore,

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

DATED: Honolulu, Hawai'i, February 13, 2004.

On the briefs:

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Samuel Harper

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