

[5] If there is to be stability of judgments in the Trust Territory the provisions of Rule of Civil Procedure 18e must be consistently followed.

RULING

Defendants' Motion for Relief from Judgment was denied.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

SACHUO K. PETER

Criminal Case No. 207

Trial Division of the High Court

Truk District

February 3, 1967

In trial for burglary in violation of T.T.C., Sec. 391, the Trial Division of the High Court, Chief Justice E. P. Furber, acquitted accused on ground of substantial doubt as to whether accused had felonious intent.

1. Burglary-Generally

Statutory crime of burglary in Trust Territory is broader than common law definition, and includes entry by stealth. (T.T.C., Sec. 391)

2. Burglary-Generally

Trust Territory law on burglary should be construed in light of modern decisions and statutory changes in definition of burglary in various American jurisdictions. (T.T.C., Sec. 391)

3. Burglary-Force

Trust Territory law on burglary does away with requirement of actual breaking in sense of destroying or damaging anything. (T.T.C., Sec. 391)

4. Burglary-Force

In construing crime of burglary, tendency now is to hold that if any force at all is necessary to effect entrance into building, through any place of ingress, such entrance is sufficient to constitute burglary if other elements of offense are present. (T.T.C., Sec. 391)

5. Burglary-Felonious Intent

Where there is substantial doubt as to whether accused had intent to commit felony at time he entered building, he cannot be found guilty of burglary. (T.T.C., Sec. 391)

FURBER, *Chief Justice*

In connection with its finding of not guilty on the burglary charge, the court entered the following remarks in the record.

"Counsel for the accused in this case emphasized two grounds of defense, to *wit*: that the Government had failed to prove beyond a reasonable doubt (1) that the accused had used the requisite amount of force to gain entry into the building in question, and (2) that the accused had an intent to commit larceny at the time he entered. In support of his first ground, he laid stress on the common law requirement that there be either an actual constructive breaking, and quoted statements to the effect that gaining entrance through an already existing opening, such as an open door or window, did not constitute burglary and that it made no difference if the door or window were partially open and had to be pushed or raised further to gain entrance.

[1] The court called attention to the fact that the definition of burglary in Trust Territory Code, Section 391 as amended by Executive Order No. 93, is much broader than the common law definition and expressly includes entry 'by stealth'. In this case, the evidence showed entry had been gained in the middle of the night by pushing two strands of barbed wire apart far enough for the accused to crawl between them, but without breaking either of them or pushing either free from its fastenings. The inference of the argument of counsel for the accused was that this was merely the equivalent to or analogous to raising a partly raised window higher or pushing a partly open door further open so as to effect an entrance.

[2-4] In the hope of avoiding misunderstandings on this point, the court in making its finding, announced it considered that the Trust Territory Code Section on burglary should be construed in the light of modern decisions and statutory changes in the definition of burglary in various American jurisdictions and was intended to do away with the requirement of any actual breaking in the sense of destroying or damaging anything, and that the court considered the type of entry shown here came within the Trust Territory Code definition. The court quoted with approval the second paragraph of 13 Am. Jur. 2d, Burglary, § 18, reading as follows:-

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'According to the later cases, the further raising of a window or the further opening of a door already partly open, so as to admit a person, causes a material change of status which is accomplished by the application of force. The tendency now is to hold that even the slightest force is sufficient to change of status which is accomplished by the application of force. The tendency now is to hold that even the slightest force is sufficient to constitute a breaking. Therefore, if any force at all is necessary to effect an entrance into a building, through any place of ingress, usual or unusual, and whether open, partly open, or closed, such entrance is considered a breaking sufficient in law to constitute burglary if the other elements of the offense are present; and consequently it is correct to hold that the further opening of a window left partially open is sufficient to constitute ab:urglarious breaking.'

Attention was also called to the paragraph entitled 'Statutory Changes,' in Miller on Criminal Law, p. 339.

[5] The court bases its finding of not guilty on the burglary charge in this case on the substantial doubt which it feels as to whether the accused intended to commit larceny at the time he entered the building, but not on any lack of proof of the necessary type of entry to constitute burglary under Trust Territory Code, Section 391 as amended."