

ISKAWA v. TRUST TERRITORY

As this court has consistently held, it is not the province of the Appellate Division to substitute its belief as to what the trier of fact should have found, and must sustain the verdict if there is sufficient competent evidence in the record to support the lower court's finding. *Fattun v. Trust Territory of the Pacific Islands*, 3 T.T.R. 571. *Uchel v. Trust Territory of the Pacific Islands*, 3 T.T.R. 578. 4 T.T.R. 534.

Judgment is hereby AFFIRMED.

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MARINO ISKAWA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Appeal No. 87

Appellate Division of the High Court

Palau District

April 12, 1982

Appeal from conviction for burglary and grand larceny. The Appellate Division of the High Court, Gianotti, Associate Justice, held that appellant's unsatisfactorily-explained possession of stolen items constituted substantial enough evidence to justify a burglary conviction, and the judgment was affirmed.

**Burglary—Evidence—Sufficiency**

Unexplained possession of stolen property is sufficient evidence to convict on a charge of burglary.

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Before BURNETT, *Chief Justice*, GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

Sometime during the year of 1978, the Koror Elementary School located on the Island of Palau suffered a burglary, losing some tape recorders in the process. Appellant was arrested, tried, and convicted on charges of burglary and grand larceny after one of the stolen tape recorders was sold by appellant to a third person. Appellant was convicted in part as a result of his having possession of the alleged stolen property.

The only question raised on appeal was whether appellant could be convicted as a result of his having possession of the tape recorder sold by him.

The answer to this question in the Trust Territory is yes. Both appellant and the State cited in their appeal briefs the Trust Territory case of *Nichig v. Trust Territory*, 1 T.T.R. 572, 576 (App. Div. 1953).

Appellant argues that because *Nichig* holds that subsequent possession of stolen goods is only an "indication" of the possessor's taking, it does not raise a presumption. Appellant then raises various points of law supporting his argument that possession is not a presumption of taking. However, the authorities quoted by the appellant were largely confined to decisions of the State of California. California has long been a master of perplexity, doing little to illuminate the torch of justice. As is common, California seems to be on the opposite side of the fence from the majority of court decisions.

We call appellant's attention to the case of *Harris v. United States*, 261 F.2d 897, 900:

In support of his contention that unexplained possession of stolen property will not justify the conviction for burglary, the appellant relies upon a number of California decisions. Whatever the rule may be in California, the rule in federal courts is to the contrary.

TRUST TERRITORY v. DABUCHIREN

Citing *Booth v. United States* (9th Cir.), 154 F.2d 73, *Morundy v. United States* (9th Cir.), 170 F.2d 5, and other cases.

In the case of *Masters v. United States*, 351 F.2d 107, wherein checks were stolen in a post office burglary and the defendant was convicted of burglary with intent to commit larceny, the Court stated:

The unexplained possession of a check obtained in a robbery constitutes substantial evidence connecting defendant with breaking and entering.

The majority opinion in the state and federal courts of the United States finds generally that there is sufficient evidence to convict based upon possession of stolen property and these decisions certainly give credence to the *Nichig* decision finding that the "indication" referred to in *Nichig* is a "substantial factor" sufficient to give rise to an inference that the possessor was the taker.

In the instant case, we find that the unsatisfactorily-explained possession of items removed from the elementary school did not rebut this inference and there was substantial enough evidence to justify the conviction.

Judgment AFFIRMED.

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TRUST TERRITORY OF THE PACIFIC ISLANDS,  
Plaintiff-Appellee

v.

RAPHAEL DABUCHIREN, Defendant-Appellant

Criminal Appeal No. 53

Appellate Division of the High Court

Yap District

June 16, 1982

Appeal from conviction for embezzlement. The Appellate Division of the High Court, Gianotti, Associate Justice, held that where prosecutor, in responding to a Bill of Particulars, denied any knowledge of what was done