NO. CAAP-12-0000746

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I,
Plaintiff-Appellee,
v.
STEVEN TUIAANA,
Defendant-Appellant,
and
SHAYNA M. CABANLET-CUIZON and YOLANDA U. OLSEN,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 11-1-1625)

SUMMARY DISPOSITION ORDER
(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Steven Tuiaana appeals a July 27,
2012 Judgment of Conviction and Probation entered in the Circuit
Court of the First Circuit[1] (circuit court) convicting him of
burglary in the first degree pursuant to Hawaii Revised Statutes
(HRS) § 708-810(1)(c) (1993) and robbery in the second degree
pursuant to HRS § 708-841(1)(a) (Supp. 2012).

On appeal Tuiaana contends the circuit court erred in
concluding the offenses of burglary and robbery did not merge
pursuant to HRS § 701-109(e) (1993), which provides in part:

§701-109 **Method of prosecution when conduct
establishes an element of more than one offense.** (1) When
the same conduct of a defendant may establish an element of

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[1]   The Honorable Richard W. Pollack presided at the bench trial.

more than one offense, the defendant may be prosecuted for
each offense of which such conduct is an element. The
defendant may not, however, be convicted of more than one
offense if:

. . . .

(e) The offense is defined as a continuing course of
conduct and the defendant's course of conduct was
uninterrupted, unless the law provides that specific periods
of conduct constitute separate offenses.

This court has stated:

HRS·§ 701-109(1)(e) was intended to prohibit the State from
dividing a crime, defined by statute as a continuing
offense, into separate temporal or spatial units, and then
charging a defendant with committing several counts of the same
statutory offense, each count based on a separate temporal or
spatial unit of the continuing offense.

State v. Caprio, 85 Hawaiʻi 92, 104, 937 P.2d 933, 945 (App.
1997).

"Whether a course of conduct gives rise to more than one
crime within the meaning of HRS §701-109(1)(e) depends in part on
the intent and objective of the defendant. The test to determine
whether the defendant intended to commit more than one offense is
whether the evidence discloses one general intent or discloses
separate and distinct intents. Where there is one intention, one
general impulse, and one plan, there is but one offense. . . . HRS
§ 701-109(1)(e), however, does not apply where a defendant's
actions constitute separate offenses under the law."

State v. Frisbee, 114 Hawaiʻi 76, 81, 156 P.3d 1182, 1187 (2007)
(Citations and brackets omitted) (quoting State v. Matias, 102
Hawaiʻi 300, 305, 75 P.3d 1191, 1196 (2003)).

A person is guilty of burglary if he enters the
dwelling of another with the intent to commit an offense. HRS
§ 708-810. Robbery occurs when a person, in the course of
committing a theft, either inflicts bodily injury upon another;
threatens the use of force; or uses force in the commission of a
theft. HRS § 708-841. Tuiaana committed burglary when he
unlawfully and forcibly entered complaining witness's (CW) home
with the intent to commit a theft within that dwelling. When CW
was unable to open his own safe, Tuiaana repeatedly assaulted CW
with an electric gun to force CW to open the safe. The circuit
court did not err when it found Tuiaana had separate and distinct

intents, when committing each crime and therefore, the offenses of burglary and robbery did not merge.

Therefore,

IT IS HEREBY ORDERED that the July 27, 2012 Judgment of Conviction and Probation entered in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 21, 2013.

On the briefs:

Randall K. Hironaka
(Miyoshi & Hironaka)
for Defendant-Appellant.

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

Chief Judge

Associate Judge

Associate Judge