IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KERRJOE RECHIREI,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2022 Palau 7
Criminal Appeal No. 21-005
Appeal from Criminal Action No. 21-030

Decided: June 27, 2022

Counsel for Appellants .... Siegfried B. Nakamura
Counsel for Appellee .... Ernestine K. Rengiil
Laisani Tabuakuro

BEFORE: JOHN K. RECHUCHER, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION

RECHUCHER, Associate Justice:

[¶ 1] This appeal involves certain items discovered missing from the home of Mr. Oldiais Ngiraikelau (hereafter "Oldiais") and his wife, Mrs. Shunrang Dionne Ngiraikelau (hereafter "Dionne"). Appellant Kerrjoe Rechirei (hereafter "Appellant") was charged with burglary in the first degree and theft in the first degree in connection with the missing items. At trial, the Trial Division acquitted Appellant on the charge of burglary in the first degree, but the court convicted him on the charge of theft in the first degree and sentenced him to 10 years imprisonment and required him to pay restitution in the amount of $39,297.50. Appellant timely appealed his conviction and raised a sole issue

of sufficiency of evidence to support his conviction. Finding no error committed by the Trial Court, we **AFFIRM**.

BACKGROUND

[¶ 2] On December 26, 2020, Oldiais and Dionne noticed that two glass louvers of the window of their bedroom were broken. Oldiais initially believed it was caused by Dionne's pillow and repaired the broken louvers. Three days later, unsatisfied with the explained cause of the broken louvers, Dionne had a closer look at the window and noticed that a protective security screen had been slashed open. This led her to check a wooden chest inside their bedroom where she kept her *toluk*—Palauan money made from turtle shell—and she discovered that 10 *toluk* were missing. A week prior, Dionne had checked the chest and confirmed that all her *toluk* were still there. The missing *toluk* were to be given to her sons, and Dionne had marked the *toluk* individually with stickers written with the names of her two sons on the back of each *toluk*.

[¶ 3] Shortly after, Dionne recovered three of her missing *toluk* from a friend. Appellant had sold the friend these three *toluk* on Christmas Day for $100 each. Dionne identified the *toluk* as three of the *toluk* that were missing from the chest in her bedroom.

[¶ 4] Over the next several weeks, while an investigation was ongoing, Oldiais and Dionne discovered that other personal items were missing from their home: three Tiffany necklaces, a Bvlgari bag, a small metal safe, dress jackets, and several food items. Testimony and receipts showed that the total value of the missing property, including the *toluk*, exceeds $20,000. Besides the three *toluk*, however, none of the other property was ever recovered.

[¶ 5] Appellant was charged with burglary in the first degree and theft in the first degree. After a two-day bench trial, the Trial Division acquitted on the burglary charge and convicted Appellant on the theft charge. The Trial Division sentenced Appellant to 10 years imprisonment and ordered him to pay restitution of $39,297.50. Appellant timely appealed.

STANDARD OF REVIEW

[¶ 6] "We review the sufficiency of the evidence underlying a criminal conviction for clear error, asking whether the evidence presented was sufficient

for a rational fact-finder to conclude that the appellant was guilty beyond a reasonable doubt as to every element of the crime." *Xiao v. ROP*, 2020 Palau 4 ¶ 8 (cleaned up). In doing so, we do not "reweigh the evidence" or "draw inferences from the evidence." *ROP v. Ngiraboi*, 2 ROP Intrm. 257, 259 (1991). Instead, we view the evidence "in the light most favorable to the prosecution." *Xiao*, 2020 Palau 4 ¶ 8.

DISCUSSION

[¶ 7] The Trial Division convicted Appellant of theft in the first degree. A person commits theft in the first degree "if the person commits theft of property or services, the value of which exceeds twenty thousand dollars ($20,000)." 17 PNC § 2602(a). So theft in the first degree has two elements: (1) theft of property, and (2) the value of the property stolen must be more than $20,000. Appellant challenges the sufficiency of the evidence on both elements, and we consider each challenge in turn.

I.

[¶ 8] We begin our analysis with Appellant's argument that the Republic failed to introduce sufficient evidence that he committed a theft. In Palau, theft is categorized into several acts, all of which require an "intent to deprive" another of property. 17 PNC § 2601. The relevant subsection here is § 2601(a), which states that a person commits theft if the person "obtains or exerts unauthorized control over the property of another with intent to deprive the other of the property."

[¶ 9] Appellant argues that the Republic failed to present sufficient evidence to prove the elements of theft in the first degree, particularly Appellant's intent to deprive Oldiais and Dionne of their properties, as required under 17 PNC § 2601.[1] Evidence of intent is usually proved with

[1] There can be little dispute that sufficient evidence showed that Appellant obtained or exerted control over the property of Oldiais and Dionne. Evidence showed that Appellant had possession of three of the missing *toluk*—thus exerting control over that property—when he sold them to one of Dionne's friends. While Appellant argues that no witness testified seeing him take the missing items from the home, that is not a requirement of 17 PNC § 2601(a).

circumstantial evidence. *ROP v. Tascano*, 2 ROP Intrm. 179, 185 (1990) ("Evidence of specific intent is usually circumstantial."). Appellant's intent to deprive Dionne of her property is inferred from the evidence that Appellant sought a buyer for the three *toluk* later identified as belonging to Dionne and then sold the *toluk* without Dionne's consent or authorization. From these facts a reasonable inference can be drawn that Appellant intended to deprive Dionne of her property (and, as explained below, this evidence of intent can extend to the rest of the property stolen from the home of Oldiais and Dionne). Considering the evidence in the light most favorable to the Republic, a reasonable fact finder could have found the evidence sufficient to support the Trial Division's finding that Appellant committed a theft, the first element of the offense.

II.

[¶ 10] We next consider Appellant's argument that the evidence was insufficient to convict him of theft in the first degree because the only missing items directly connected to him—the three *toluk*—were worth far less than $20,000. In other words, Appellant argues that there was insufficient evidence to find him guilty to stealing the other items—the Tiffany necklaces, a Bvlgari bag, a small metal safe, dress jackets, and several food items—that were never recovered and make up the vast majority of the value of the stolen property.

[¶ 11] The resolution of this issue requires us to consider the doctrine of recent possession, which has not previously been discussed in Palau caselaw.[2] Under that doctrine, "the possession of recently stolen property is a strong circumstance tending to show guilt." 50 Am. Jur. 2d *Larceny* § 135. This inference is, however, "not conclusive"; the "inference derived from the defendant's recent possession of stolen property is to be considered by the [fact-finder] merely as an evidentiary fact along with other evidence in the case

[2] Appellant argues that the Republic has forfeited its reliance on the doctrine of recent possession because it was raised for the first time on appeal. But even if the doctrine was not explicitly referred to by name below, it is clear that the Republic's theory of this case was that because Appellant was caught with the stolen *toluk*, he also stole the other property that went missing around the same time. Trial Tr. 218–20. Thus, we will address the doctrine in response to Appellant's sufficiency-of-the-evidence argument.

in determining whether the [government] has carried the burden of satisfying the [fact-finder] beyond a reasonable doubt of the defendant's guilt of larceny." *Id.* The inference that possession of recently stolen property can raise is simply an example of circumstantial evidence, which we have long held can be considered by the fact-finder in a criminal case. *ROP v. Kikuo*, 1 ROP Intrm. 254, 255 (1985) ("Circumstantial evidence is evidence which proves a fact or facts from which inferences may be drawn which lead to the conclusion in the mind of the fact finder that another fact or facts are necessarily true.").

[¶ 12] Here, the doctrine of recent possession clearly raises an inference—accepted by the Trial Division—that Appellant exerted unauthorized control over the three *toluk*. But that leaves the question of how the doctrine applies to the *other* items. "The possession of a part of the recently stolen property warrants the inference that the accused has stolen all of it," but only for "property taken at about the same time as that found in the accused's possession." 52B C.J.S. *Larceny* § 144. In other words, "[t]he inference of guilt is not repelled … by reason of the fact that only a part of the recently stolen property is found in the possession of the accused." *Id.* Thus, courts routinely hold that when various items of property are stolen about the same time, unexplained possession of *some* of the items is sufficient to support a conviction for *all* of the stolen items. *See State v. Washington*, 357 S.E.2d 419, 429 (N.C. Ct. App. 1987) ("While not all of the stolen property was recovered, defendant's possession of part of the property under these circumstances warrants the inference that defendant stole all of it."); *Hite v. State*, 650 S.W.2d 778, 781 (Tex. Crim. App. 1983) (en banc) ("[W]hen various items of property are stolen at the same time, recent, unexplained, personal possession of any one item is sufficient to support a conviction for theft of *all* the stolen items."); *State v. Kennedy*, 396 S.W.2d 595, 598 (Mo. 1965) (rejecting argument that government failed to prove larceny because only four of the fourteen stolen items were found in defendant's possession).

[¶ 13] So too here. Appellant's possession of part of the stolen property—the three *toluk*—raised a permissible inference that he stole the rest of the items—the jewelry, handbag, dress jackets, safe, and food—taken at or about the same time from the home of Oldiais and Dionne. It is the Trial Division's responsibility—not ours—to decide whether to draw that inference from the evidence presented. *See Ngiraboi*, 2 ROP Intrm. at 259. Considering the

evidence in the light most favorable to the Republic, a reasonable fact-finder could have found the evidence sufficient to support the Trial Division's finding that the value of the property exceeded $20,000, the second element of the offense.

[¶ 14] We find no clear error in the Trial Division drawing this inference and finding that Appellant was guilty of theft of property valued at more than $20,000.[3]

CONCLUSION

[¶ 15] For the reasons set forth above, we **AFFIRM** Appellant's conviction for theft in the first degree.

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[3] Appellant argues that expert testimony was required in order to value each piece of stolen property. We reject that contention. The Republic introduced either testimony, receipts, or both showing the value of the jewelry, handbag, and dress jacket—which, combined, exceeded $20,000. *See* Trial Tr. at 33, 121, 123, 140; *see also* 50 Am. Jur. 2d *Larceny* § 38 ("Although the testimony about the original purchase price is not the strongest possible evidence of market value, the original purchase price of an item is admissible as circumstantial evidence of its current value in a larceny prosecution, and the owner of the stolen merchandise may establish the value by testifying about what he paid for the stolen items."). While *Remengesau v. ROP*, 18 ROP 113, 125 (2011), *permitted* expert testimony where the value of land—not personal property—was at issue, nothing in that case *requires* expert testimony for every valuation of property.