

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Respondent**

v.

PETER SUGIYAMA, Defendant-Appellant

Criminal Appeal No. 85

Appellate Division of the High Court

September 7, 1983

Appeal from conviction for embezzlement. The Appellate Division of the High Court, Laureta, District Judge, held that necessary element of initial "lawful possession" of embezzled property was not proved beyond a reasonable doubt, and therefore conviction was reversed.

1. Embezzlement—Elements of Offense

The crime of embezzlement contains three elements: (1) lawfully obtaining the personal property of another; (2) taking and carrying away of that property without the owner's knowledge or consent; and (3) having the intent to convert it to his own use. (11 TTC § 854)

2. Embezzlement—Elements of Offense

In order to convict a defendant of embezzlement, it is necessary that the government prove beyond a reasonable doubt each and every element of the crime. (11 TTC § 854)

3. Statutes—Construction—Strict Construction

When interpreting a criminal statute, the language of the statute must be strictly construed.

4. Embezzlement—Elements of Offense

Public official's conviction for embezzlement was reversed, where the government could not prove the necessary element of initial "lawful possession" of the embezzled property, since uncontradicted evidence showed that another official withdrew funds from an agency account, and gave it to the public official, and therefore the public official never had "lawful possession" of the funds. (11 TTC § 854)

TRUST TERRITORY v. SUGIYAMA

Before LAURETA*, *Associate Justice (Temporary)*, and
BURNETT, *Chief Justice*

LAURETA, *District Judge*

On October 11, 1979, the Trial Division of this Court found Peter Sugiyama (Sugiyama) guilty of embezzlement under 11 Trust Territory Code (TTC) § 854. Sugiyama now appeals his conviction. For the reasons stated herein, we reverse.

I. STATEMENT OF THE FACTS/CASE

Sugiyama was Chairman of the Palau Public Land Authority (PPLA) at all times relevant herein. Lucius Malsol was the Administrative Officer of the PPLA. In his position as Administrative Officer, Malsol was the sole person authorized to make withdrawals on the PPLA account at the Palau Branch of American Savings and Loan Association (bank).

On or about November 2, 1978, Sugiyama told Malsol that he needed \$6,000 to pay off personal debts. On the following day, Malsol made a withdrawal request on the PPLA account. The bank issued a check, payable to "Bearer" in the amount of \$6,000. Malsol gave the check to Sugiyama, who, on the same day, deposited it to his personal account. At no time before, during or after the withdrawal of the PPLA funds at issue did Sugiyama make or direct to be made a memorandum evidencing the debt.

In February or March of 1979, the Speaker of the House of the Palau Legislature requested in a letter to the High Commissioner of the Trust Territory that an audit be conducted of the PPLA account. A copy of this letter was sent to PPLA.

* Judge, District Court of the Northern Mariana Islands, designated Temporary Judge by the Secretary of the Interior.

Upon receiving notice that an audit was impending, Malsol so informed Sugiyama and asked him to repay the \$6,000. On April 4, 1979, before the audit, Sugiyama delivered to Malsol a check for \$6,000 which Malsol deposited to the PPLA account.

On August 2, 1979, the Trust Territory (Government), through its Attorney General, filed an information charging Sugiyama on five counts: (I) Embezzlement (11 TTC § 854); (II) False Pretenses (11 TTC § 53); (III) Grand Larceny (11 TTC § 52); (IV) Unlawful Possession or Removal of Government Property (11 TTC § 1405); and (V) Misconduct in Public Office (11 TTC § 1051). Sugiyama entered a plea of not guilty to all five counts.

Prior to trial, a motion to elect was filed by Sugiyama. The Government elected not to proceed on Count III, grand larceny. No election was required by the court on the remaining counts.

On October 10 and 11, 1979, trial was had before the Honorable E. F. Gianotti, Associate Justice of the High Court, sitting without a jury, on Counts I, II, IV and V of the Information. Count V of the Information, charging Sugiyama with Misconduct in Public Office, was dismissed by the Court at the close of the Government's case.

On October 11, 1979, the Court entered its verdict finding Sugiyama not guilty of False Pretenses as charged in Count II of the Information and Possession or Removal of Government Property as charged in Count IV of the Information. The Court found Sugiyama guilty of Embezzlement as charged in Count I of the Information.

The Trial Court pronounced sentence on Sugiyama on January 16, 1980, the sentence pronounced being three years in the Palau jail, all suspended except nine months, and a five hundred dollar (\$500) fine. The Court's Record of Sentence was filed on January 17, 1980. Execution of the sentence was stayed pending appeal.

II. ISSUES

Sugiyama raises the following issues on appeal:

1. Whether, at some point during the period in question, Sugiyama had lawful possession of the money.
2. Whether Sugiyama had the intent to permanently convert the money to his own use.

III. ANALYSIS

[1, 2] Sugiyama was convicted of embezzlement under 11 TTC § 854, which reads in pertinent part:

“Every person who, after having lawfully obtained possession of the personal property of another, shall take and carry away said property without the owner’s knowledge and consent, and with intent to permanently convert it to his own use shall be guilty of embezzlement. . . .”

The crime of embezzlement contains three elements: (1) lawfully obtaining the personal property of another; (2) taking and carrying away of that property without the owner’s knowledge or consent; and (3) having the intent to permanently convert it to his own use. See *Trust Territory v. Mick*, 4 T.T.R. 147 (High Court, Tr. Div. 1968). In order to convict a defendant of embezzlement, it is necessary that the government prove beyond a reasonable doubt each and every element of the crime. *Id.* at p. 149.

[3] The crime of embezzlement did not exist at common law; it is strictly a creature of statute. *Bell v. United States* (June 13, 1983) 51 U.S.L.W. 4749, 4750. When interpreting a criminal statute, the language of the statute must be strictly construed. Chief Justice Marshall in *United States v. Wiltberger* (18 U.S.) (5 Wheat.) 76, 95, 5 L. Ed. 37, 42 (1820) stated:

The rule that penal laws are to be construed strictly is, perhaps, not much less old than construction itself. It is founded in the tenderness of the law for the rights of individuals; and on the plain

principle that the power of punishment is vested in the legislative, not in the judicial department.

The principle of strict construction of criminal statutes is one which is well-established in American law. *United States v. Enmons*, 410 U.S. 396, 93 S. Ct. 1007, 35 L. Ed. 2d (1973), *United States v. Bass*, 404 U.S. 336, 92 S. Ct. 515, 30 L. Ed. 2d 488 (1971).

We now turn to the first element of the embezzlement statute. Did Sugiyama have lawful possession of the money? It must be remembered that the nature of the initial possession is a distinguishing feature of embezzlement. In *Moore v. United States*, 160 U.S. 268, 16 S. Ct. 294, 40 L. Ed. 2d 422 (1895), the Supreme Court noted the following distinction between embezzlement and larceny:

Embezzlement is the fraudulent appropriation of property by a person to whom such property has been intrusted, or into whose hands it has lawfully come. It differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking.

160 U.S. at 270-71, 16 S. Ct. at 295, 40 L. Ed. at 424. See, e.g., W. Lafave and A. Scott, *Handbook on Criminal Law*, 618-22 (1972). Therefore, if Sugiyama never had lawful possession of the money, the embezzlement conviction cannot stand.

The dispositive facts on this issue are undisputed. Malsol, the Administrative Officer of the PPLA, was the only person with legal authority to withdraw funds from the PPLA savings account; by virtue of this exclusive authority, Malsol, alone, exerted control and possession of the PPLA funds. On or about November 2, 1978, Malsol was told by Sugiyama that he wished to borrow \$6,000 to pay his personal debts. Malsol thereafter withdrew the money and delivered it to Sugiyama. If the money was to be used

for a lawful purpose, then Sugiyama would have had lawful possession. However, Sugiyama had Malsol withdraw the funds for the unlawful purpose of paying his personal debts with PPLA funds. Therefore, the initial taking was illegal.

[4] The Government presented no evidence showing that Malsol was entrusting the money to Sugiyama with the knowledge and consent of PPLA for some lawfully authorized purpose. The uncontradicted evidence shows that Sugiyama never obtained possession lawfully. The Government has failed to sustain its burden of proving beyond a reasonable doubt the first element of embezzlement.¹

IV. CONCLUSION

For the reasons stated herein, we reverse the conviction of Sugiyama.