

DISSENTING OPINION BY RAMIL, J.

I respectfully dissent. In my view, although the language of the UEMV statute is clear on its face, the statutory scheme and stated legislative intent are clearly at odds with the statute's application in Lagat's case. At the very least, this discrepancy creates an ambiguity that must be addressed. As such, I must disagree with the majority's view that adopts the plain language of the statute while disregarding equally clear evidence that calls the application of the statute in Lagat's case into doubt.

As the majority points out:

Departure from the literal construction of a statute is justified only when such construction would produce an absurd and unjust result and the literal construction is clearly inconsistent with the purposes and policies of the statute.

Majority at 19 (citing State v. Villeza, 85 Hawai'i 258, 272-73, 942 P.2d 522, 536 (1997) (internal quotation marks, brackets, and citations omitted)) (emphases added). Additionally,

we have rejected an approach to statutory [interpretation] which limits us to the words of a statute, no matter how clear they may appear upon perfunctory review. For we recognize our primary duty [in interpreting statutes] is to ascertain the intention of the legislature and to implement that intention to the fullest degree, and where there is . . . material evidencing legislative purpose and intent, there is no reason for a court to seek refuge in "strict construction," "plain meaning," or "the popular sense of the words."

Kaiama v. Aguilar, 67 Hawai'i 549, 554, 696 P.2d 839, 842 (1985).

Thus, when turning to the history of a statute to ascertain whether the legislature had a different meaning in mind when it adopted the language in question, the court must "do so with the

recognition that only [a clear] showing of contrary intentions from that data would justify a limitation on the 'plain meaning' of the statutory language." Id. (citing Garcia v. United States, 469 U.S. 70, 75 (1984)).

As noted in State v. Aplaca, 96 Hawai'i 17, 25 P.3d 792 (2001), "[t]his court may also consider the reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning. HRS § 1-15(2) (1993)." Id. at 22, 25 P.3d at 797 (citations omitted) (ellipsis points in original).

In Lagat's case, the statutory phrase "intent to commit a crime against a person," reading it out of context, specifically prohibits Lagat's actions at first glance. However, further inquiry into the statutory scheme reveals evidence that the legislature enacted HRS § 708-836.5 for a purpose at odds with the application of the statute in Lagat's case.

A. Section 708-836.5 Commentary and Statutory Scheme

The commentary to HRS § 708-836.5 (Supp. 2000) states, "Act 87, Session Laws 1996, added this section to the penal code and made the offense of unauthorized entry into motor vehicle a class C felony due to the increased number of car thefts in the State." (Emphasis added.) Also, HRS § 708-836.5 is found in HRS chapter 708, "Offenses Against Property Rights," under Part IV, "Theft and Related Offenses." (Emphasis added.)

These legislative choices, specifically the overt commentary to the UEMV statute, suggest the legislature had a

very specific purpose in mind when enacting the UEMV statute. Any general application of the statute, without requiring that Lagat's criminal conduct be related to theft, would not only exceed the bounds of the statute's stated purpose, but would unnecessarily "trump" other statutes.

B. Second Degree Burglary Rendered Superfluous

It is a rule of statutory construction that "courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." Keliipuleole v. Wilson, 85 Hawai'i 217, 221, 941 P.2d 300, 304 (1997).

One such statute that would be rendered superfluous by the majority's interpretation of the UEMV statute is second degree burglary, HRS § 708-811 (1993).¹ Like the UEMV statute, the burglary statutes are found in Chapter 708. The wording of the UEMV statute directly models the wording of the second degree burglary statute. The only difference between the two statutes is that the word "building," as it appears in the second degree burglary statute, is replaced with the phrase "motor vehicle" in

¹ HRS § 708-811 states:

Burglary in the second degree. (1) a person commits the offense of burglary in the second degree if the person intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.

(2) Burglary in the second degree is a class C felony.

the UEMV statute. See supra note 1. Both the UEMV and second degree burglary statutes are class C felonies. See HRS § 708-811(2) (1993); HRS § 708-836.5(2) (Supp. 2000).

An interpretation of the UEMV statute that prohibits any crime committed in a vehicle (including simple assault), would render the second degree burglary statute superfluous as it pertains to vehicles. The definition section applicable to the burglary statutes defines "building" to include vehicles "used for lodging."² The majority's interpretation of the UEMV statute eliminates the need for that part of the second degree burglary statute, as the UEMV statute criminalizes all crimes committed upon unauthorized entry of any vehicle, whether or not the vehicle is used for lodging. If the legislature intended to criminalize Lagat's conduct (i.e., assault) under the UEMV statute, a better route would have been to amend the burglary statute to model those of other jurisdictions who have enacted similar statutes.

C. Other jurisdictions

The uncertainty and ambiguity presented by the Hawai'i UEMV statute prompts a review of other jurisdictions with similar statutes. Some jurisdictions have enacted "carjacking" statutes,

² HRS § 708-800 (1993) states:

"Building" includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

(Emphases added.)

drafted specifically to cover the taking of a motor vehicle from a person or custody of another -- these statutes take on a form very similar to general robbery statutes.³ Other jurisdictions have opted to include a UEMV-like statute as part of their general burglary statutes.⁴ These jurisdictions are specific

³ FLA. STAT. ANN. § 812.133 (West 2001) ("**Carjacking.** "Carjacking" means the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear."); GA. CODE ANN. § 16.5.44.1 (2001) ("**Hijacking a motor vehicle.** (b) A person commits the offense of hijacking a motor vehicle when such person while in possession of a firearm or weapon obtains a motor vehicle from the person or presence of another by force and violence or intimidation or attempts or conspires to do so."); 720 ILL. COMP. STAT. 5/18-3 (West 2001) ("**Vehicular hijacking.** (a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force."); IND. CODE ANN. § 35-42-5-2 (West 2001) ("**Carjacking.** A person who knowingly or intentionally takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force."); MD. ANN. CODE art. 27, § 348A (2000) ("**Carjacking.** (b)(1) An individual commits the offense of carjacking when the individual obtains unauthorized possession or control of a motor vehicle from another individual in actual possession by force or violence, or by putting that individual in fear through intimidation or threat of force or violence."); MICH. COMP. LAWS ANN. § 750.529a (West 2001) ("**Carjacking.** (1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking"); S.C. CODE ANN. § 16-3-1075 (Law. Co-op. 2001) ("**Felony of carjacking; penalties.** (B) A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle. . . ."); VA. CODE ANN. § 18.2-58.1 (West 2001) ("**Carjacking; penalty.** (B) "carjacking" means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat of presenting of firearms, or other deadly weapon or instrumentality whatsoever. . . .")

⁴ CAL. PENAL CODE § 459 (West 2001) ("Chapter 2. **Burglary. Definition.** Every person who enters any house, room, apartment, . . . any house car, . . . vehicle . . . , when the doors are locked, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary."); OKLA. STAT. ANN. tit. 21, § 1435 (West 2001) ("**Burglary in second degree- Acts constituting.** Every person who breaks and enters any building or part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel, or other

(continued...)

when defining the types of crimes covered by the statute, most jurisdictions listing felonies and theft-related crimes as the underlying offenses. See supra note 4. Hawaii's UEMV statute does not share this level of clarity.

Although it is not the judiciary's job to redraft statutes, it is our job to give meaning to the chosen words of the legislature and exert effort to insure that the meaning coincides with legislative intent. The ambiguities presented by the UEMV statute as drafted do not convince me that this duty will be fulfilled by affirming Lagat's conviction under this statute.

⁴(...continued)

structure or erection, in which any property is kept, . . . with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree."); TENN. CODE. ANN. § 39-14-402 (2000) ("**Burglary.** (a) A person commits burglary who, without effective consent of the property owner: . . . (4) Enters any freight or passenger car, automobile, truck, trailer, boat, airplane or other motor vehicle with intent to commit a felony, theft or assault or commits or attempts to commit a felony, theft of assault.")