

OPINION BY RAMIL, J.
CONCURRING IN PART AND DISSENTING IN PART

I agree that the trial court committed plain error when it failed to define the specific conduct that constituted entry for purposes of the Unauthorized Entry into Motor Vehicle (UEMV) statute. It is likely that such failure contributed to Faria's conviction. Thus, the jury instructions were prejudicially insufficient and misleading. See State v. Arceo, 84 Hawai'i 1, 11, 928 P.2d 843, 853 (1996). More importantly, as I have stated in my dissent in State v. Lagat, 97 Hawai'i 492, 503-04, 40 P.3d 894, 905-06 (2002) (Ramil, J., dissenting), the overt commentary to the UEMV statute indicates that the legislature had a very specific purpose in mind when it enacted this statute. I do not think that the legislature intended the UEMV statute to apply to the facts presented in this case.

As I have explained in my dissent in Lagat:

The commentary to HRS § 708-836.5 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." Also, HRS § 708-836.5 is found in HRS chapter 708, "Offenses Against Property Rights," under Part IV, "Theft and Related Offenses."

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 [the defendant'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, [such as our second degree burglary statute].

97 Hawai'i at 503, 40 P.3d at 905 (emphasis in the original).

I believe that, on the facts of this case, the majority's misapplication of the law runs afoul of the reason and spirit of the statutory scheme at issue.

Lagat is wrongly decided. The instant case is another illustration of how extending Lagat to all fact scenarios where a crime committed in a vehicle is involved leads to absurd and unjust results. Here, it is likely that Faria was convicted of a class C felony because the mace spray entered vehicle. Such application is clearly beyond the legislature's contemplation when it enacted the statute.