86 Hawai‘i 1, 8, 946 P.2d 955, 962 (1997)))) (some brackets added, some omitted, and some in original) (some ellipses points added and some in original) (some citation omitted).

B. Statutory Interpretation

> "[T]he interpretation of a statute . . . is a question of law reviewable de novo." . . . Arceo, 84 Hawai‘i [at] 10, 928 P.2d [at] 852 . . . (quoting State v. Camara, 81 Hawai‘i 324, 329, 916 P.2d 1225, 1230 (1996) (citations omitted)). See also State v. Toyomura, 80 Hawai‘i 8, 18, 904 P.2d 893, 903 (1995); State v. Higa, 79 Hawai‘i 1, 3, 897 P.2d 928, 930, reconsideration denied, 79 Hawai‘i 341, 902 P.2d 976 (1995); State v. Nakata, 76 Hawai‘i 360, 365, 878 P.2d 669, 704, reconsideration denied, 76 Hawai‘i 453, 879 P.2d 556 (1994), cert. denied, 513 U.S. 1147, 115 S.Ct. 1095, 130 L.Ed.2d 1063 (1995).
>
> Gray v. Administrative Director of the Court, State of Hawai‘i, 84 Hawai‘i 138, 144, 931 P.2d 580, 586 (1997) (some brackets added and some in original). See also State v. Soto, 84 Hawai‘i 229, 236, 933 P.2d 66, 73 (1997). Furthermore, our statutory construction is guided by established rules:
>
> > When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.
> >
> > When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . .
> >
> > In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." HRS § 1-15(1) [(1993)]. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.
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> Gray, 84 Hawai‘i at 148, 931 P.2d at 590 (quoting State v. Toyomura, 80 Hawai‘i 8, 18-19, 904 P.2d 893, 903-04 (1995)) (brackets and ellipsis points in original) (footnote omitted). This court may also consider "[t]he 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). "Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." HRS § 1-16 (1993).

State v. Kotis, 91 Hawai‘i 319, 327, 984 P.2d 78, 86 (1999) (quoting State v. Dudoit, 90 Hawai‘i 262, 266, 978 P.2d 700, 704 (1999) (quoting State v. Stocker, 90 Hawai‘i 85, 90-91, 976 P.2d

399, 404-05 (1999) (quoting Ho v. Leftwich, 88 Hawai‘i 251, 256-57, 965 P.2d 793, 798-99 (1998) (quoting Korean Buddhist Dae Won Sa Temple v. Sullivan, 87 Hawai‘i 217, 229-30, 953 P.2d 1315, 1327-28 (1998))))) (some brackets and ellipses points added and some in original).

C. Plain Error

> "We may recognize plain error when the error committed affects substantial rights of the defendant." State v. Cullen, 86 Hawai‘i 1, 8, 946 P.2d 955, 962 (1997) (citations and internal quotation signals omitted). See also Hawai‘i Rules of Penal Procedure (HRPP) Rule 52(b) (1993) ("Plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

Jenkins, 93 Hawai‘i at 101, 997 P.2d at 27 (quoting State v. Staley, 91 Hawai‘i 275, 282, 982 P.2d 904, 911 (1999) (quoting Maumalanga, 90 Hawai‘i at 63, 976 P.2d at 377 (quoting State v. Davia, 87 Hawai‘i 249, 253, 953 P.2d 1347, 1351 (1998)))).

III. The Circuit Court's Response To The Jury's Communication Was Plainly Erroneous

Silk's points of error lack merit.[6] Nevertheless, we

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[6] Silk's first point of error is without merit because the testimony that he urges was inadmissible pursuant to Hawai‘i Rules of Evidence (HRE) Rule 404(b) was not HRE Rule 404(b) evidence at all: the testimony was that Silk was "mean" to Ongory and that she had asserted that he needed to seek some "help." Inasmuch as her testimony did not identify or even allude to a specific "bad" act, it did not constitute Rule 404(b) evidence. Moreover, her testimony was adduced in the context of explaining Silk's conduct -- to wit, her observation that the remark about Silk's needing "help" seemed to "set him off" -- and, thus, the evidence was relevant. Because of its vagueness, we do not believe that the prejudicial effect of the testimony substantially outweighed its probative value; therefore, it was not inadmissible under HRE Rule 403.

With regard to Silk's second point of error, evidence of Ongory's psychiatric disorder, if any, was irrelevant and, in any event, Silk made no proffer of any evidence to support his assertion that she suffered from a psychiatric disorder that would either impair her competence as a witness or bears upon her truthfulness, thereby undermining her credibility. Similarly, Ongory's history of drug abuse was no more relevant than Silk's and, in any event, Silk was permitted to testify regarding Ongory's alleged drug use on the day of the incident.

Silk's third point of error -- that the circuit court erred by refusing to instruct the jury that it could not predicate conviction of either of the kidnapping offenses on the "same act" supporting a conviction for attempted

(continued...)

must hold that the circuit court's response to the jury's communication regarding the state of mind requisite to the charged kidnaping offenses constituted plain error.

As noted supra in section I, the jury inquired, during its deliberations, whether, with regard to the two kidnaping charges, "all definitions of intent (3) need to be met or only one (1)." The jury referred to the circuit court's instruction predicated on HRS § 702-206(1) (1993), which provides in relevant part that:

> (a) A person acts intentionally with respect to his [or her] conduct when it is his [or her] conscious object to engage in such conduct.
> (b) A person acts intentionally with respect to attendant circumstances when he [or she] is aware of the existence of such circumstances or believes or hopes

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[6](...continued)
first degree assault, or its included offense of third degree assault -- is without merit. Silk relies upon State v. Caprio, 85 Haw. 91, 937 P.2d 933 (App. 1997), which based its holding upon HRS § 701-109 (1993); Silk does not invoke principles of double jeopardy. In Caprio, the ICA held that, the defendant's conviction of both the kidnapping and the sexual assault offenses violated HRS §§ 701-109(1)(a) and 701-109(4), insofar as "the [d]efendant's leg restraint of [the c]omplainant occurred concurrently with his acts of sexual assault[,]" and, therefore, "the jury could not rely on the same leg restraint" to satisfy both the "restraint" required by the kidnapping offense and the "strong compulsion" required by the sexual assault offenses. Id. at 94, 106, 937 P.2d at 935, 947. In other words, Caprio presented a factual scenario wherein it was impossible to commit the sexual assault offenses without also necessarily committing the kidnapping offense and, therefore, the kidnapping offense was an included offense of the sexual assault offenses. See HRS § 701-109(4)(a). However, here, the offenses are not included within each other, inasmuch as both of the kidnapping offenses require proof of restraint whereas third degree assault requires proof of causation of bodily injury and, moreover, distinct factual evidence was adduced at trial supporting each charge. See HRS § 701-109(4). As a final matter, we note that the circuit court did instruct the jury regarding merger of the charged offenses. See, State v. Hoey, 77 Hawai'i 17, 38, 881 P.2d 504, 525 (1994) (merger occurs "under circumstances in which (1) there is but one intention, one general impulse, and one plan, (2) the two offenses are part and parcel of a continuing and uninterrupted course of conduct, and (3) the law does not provide that specific periods of conduct constitute separate offenses," (citations omitted)).

With respect to Silk's final point of error alleging improper jury deliberations, the circuit court did not abuse its discretion in denying Silk's motion for a mistrial and resubmitting the matter to the jury for further deliberation to complete the special verdict forms. See, e.g., State v. Manipon, 70 Haw. 175, 177, 765 P.2d 1091, 1092-93 (1989) ("When an . . . improper verdict is returned by the jury, the court should permit the jury to correct the mistake before it is discharged" (quoting Dias v. Vanek, 67 Haw. 114, 117, 679 P.2d 133, 135 (1984) (ellipsis points added))).

> that they exist.
> (c) A person acts intentionally with respect to a result of his [or her] conduct when it his [or her] conscious object to cause such a result.

The circuit court responded to the jury's communication, "Only one."

HRS § 702-204 (1993) provides in relevant part that "a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense." Pursuant to HRS § 702-205 (1993), "[t]he elements of an offense are such (1) conduct, (2) attendant circumstances, and (3) results of conduct, as . . . [a]re specified by the definition of the offense[.]" Accordingly, HRS § 702-206 defines "intentionally," "knowingly," "recklessly," and "negligently" in connection with each of three foregoing elements, each of which, if statutorily required by an offense defined in the HPC, must be proved beyond a reasonable doubt. See, e.g., State v. Kalama, No. 22457, slip. op. at 13-14 (Haw. Sept. 29, 2000); Jenkins, 93 Hawai'i at 111, 997 P.2d at 37; State v. Klinge, 92 Hawai'i 577, 584-85, 994 P.2d 509, 516-17 (2000); State v. Hoang, 86 Hawai'i 48, 58, 947 P.2d 360, 370 (1997).

In count II of the complaint, Silk was charged with "kidnaping with intent to terrorize," see supra note 2, which is not defined by the HPC as including a "result of conduct" element and, thus, does not require that the prosecution prove beyond a reasonable doubt that a person was actually terrorized. Rather, the offense of "kidnaping with intent to terrorize" requires only that a person intentionally or knowingly restrain another person with the intent to terrorize the restrained person or a third person. The act of restraint is the "conduct" element of the offense and, accordingly, may be established by proof beyond a

reasonable doubt that the defendant committed an act, the conscious object of which was to restrain another person (if found to be committed "intentionally"), or, alternatively, that the defendant was aware that his or her act was of a restraining nature (if found to be committed "knowingly"). See HRS §§ 702-206(1)(a), supra, and 702-206(2)(a) ("[a] person acts knowingly with respect to his [or her] conduct when he is aware that his [or her] conduct is of that nature"). Although whether a defendant's conduct is terroristic is an attendant circumstance of the offense, HRS § 707-720(1) requires that this element be satisfied by no less than proof that the defendant intended, when restraining another person, to terrorize that person or a third person. Thus, a "knowing" state of mind does not satisfy this element of the offense but, rather, is merely an alternative state of mind that will satisfy the requirements of HRS § 702-204 with regard to the "conduct" element of the offense. Accordingly, in the words of HRS § 702-206(1), in order to convict a defendant of kidnaping with the intent to terrorize, the prosecution must prove beyond a reasonable doubt that the defendant was aware, believed, or hoped that his conduct, the conscious object of which was to restrain another person, was terrorizing either the person restrained or a third person.

In light of the foregoing, it is evident that, in a hypertechnical sense, the circuit court's response was correct with regard to the offense of kidnaping as charged in count II, insofar as: (1) the offense does not have a "result of conduct" element and, therefore, the definition of "intentionally" set forth in HRS § 702-206(1)(c) does not apply; (2) the "conduct" element may be satisfied by either an "intentional" or a "knowing" state of mind, and, therefore, the definition of

"intentionally" set forth in HRS § 702-206(1)(a) does not necessarily apply because the jury may convict on a finding that Silk acted "knowingly" with regard to his conduct, rather than intentionally; and, consequently, (3) the "only one" of the three definitions of "intentionally" that must be found by the jury is that which adheres to the attendant circumstance of the offense, to wit, that Silk was aware, believed, or hoped that, while restraining Ongory, his conduct was terrorizing her.

The foregoing analysis similarly applies to the offense of kidnaping with the intent to inflict bodily injury, see supra note 2, charged in count III of the complaint. The offense does not have a "result of conduct" element, inasmuch as the statute does not require the actual infliction of bodily injury. Accordingly, the definition of "intentionally," as set forth in HRS § 702-206(1)(c), does not apply. The state of mind statutorily specified as to the "conduct" element of the offense -- i.e., an act of restraint -- is either "intentional" or "knowing," and, therefore, HRS § 702-206(1)(a) does not necessarily apply, insofar as the jury may conclude that the defendant knowingly, rather than intentionally, restrained another person. And, consequently, the "only one" of the definitions of "intentionality" that must be found by the jury is that set forth in HRS § 702-206(1)(b), pertaining to the attendant circumstance of the offense: to wit, that the defendant was aware, believed, or hoped that his or her conduct was causing bodily injury to the person restrained.

However, because the circuit court's terse response to the jury's communication did not clearly communicate that the "only one" of the definitions that the jury was required to find was that which defined the "intentional" state of mind with

regard to the attendant circumstance of the two kidnaping offenses, it therefore constituted an incomplete and misleading statement of the law. Pursuant to the circuit court's response, there is a reasonable possibility that the jury could have found that Silk acted "intentionally" with regard to his conduct -- e.g., that his conscious object in, say, latching the door, was to restrain Ongory. And, having found the presence of "only one" of the definitions of "intentionality," the jury could have assumed that its deliberations with regard to whether Silk possessed the requisite state of mind to commit the offense of "kidnaping with intent to terrorize" were complete without so much as considering, much less finding beyond a reasonable doubt -- as required by the HPC --, whether Silk was aware, believed, or hoped that his conduct was terrorizing Ongory. Similarly, there is a reasonable possibility that, having found that Silk's conscious object while he held Ongory down on the bed was to restrain her, the jury, heeding the circuit court's response, did not consider whether Silk was aware, believed, or hoped that his conduct was causing bodily injury. Given such reasonable possibilities, we hold that the circuit court's insufficient and misleading answer to the jury's communication was not harmless beyond a reasonable doubt, affected Silk's substantial rights, and, consequently, was plainly erroneous.

IV. CONCLUSION

In light of the foregoing, we vacate the circuit court's judgment of conviction and sentence with regard to the two charged kidnaping offenses and remand the matter for a new trial consistent with this opinion.

DATED: Honolulu, Hawai'i, October 27, 2000.

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