STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v MARVIN MILLER, Defendant-Appellee.	FOR PUBLICATION April 15, 2010 9:05 a.m. No. 294566 St. Clair Circuit Court LC No. 09-001837-FH

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

In this interlocutory appeal, plaintiff appeals by leave granted an order granting defendant's motion to quash a charge of larceny from a motor vehicle, MCL 750.356a(1). We reverse.

I.

On June 24, 2009, William Buchheister drove his truck to a softball field in Saint Clair County, parked it in a lot about 50 feet away from the field, and left it unlocked. At approximately 9:30 p.m., Buchheister was watching a softball game and a friend alerted him that someone was in his truck. Buchheister alleged that he saw defendant exit the truck and flee, so Buchheister and his friends pursued. Buchheister further alleged that his friends apprehended defendant about 15 minutes later. Buchheister's cellular telephone, keys, and wallet were removed from his truck. His cellular telephone and keys were found on a street corner, and his wallet was found in a factory near the area where defendant allegedly ran.

Defendant was charged with larceny from a motor vehicle pursuant to MCL 750.356a(1), based on the allegation that he took Buchheister's cellular telephone, and also with larceny under $200, MCL 750.356(5). Defendant moved to quash the charge of larceny from a motor vehicle, arguing that MCL 750.356a(1) does not apply to cellular telephones because they are not permanently attached to the vehicle and they would not reduce the value of the vehicle if taken. In granting defendant's motion, the trial court concluded that cellular telephones do not fall within the parameters of the statute. After the prosecutor unsuccessfully sought reconsideration from the trial court, this Court granted leave to appeal. *People v Miller*, unpublished order of the Court of Appeals, entered November 17, 2009 (Docket No. 294566).

II.

On appeal, the prosecutor argues that the trial court improperly interpreted MCL 750.356a(1) as being limited to electronic devices that are permanently attached to the vehicle. We agree. This Court reviews a trial court's decision on a motion to quash for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). To the extent that a lower court's decision on a motion to quash is based on an interpretation of the law, appellate review is de novo. *Id.*

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Droog*, 282 Mich App 68, 70; 761 NW2d 822 (2009). To determine the intent of the Legislature, this Court must first look to the language of the statute. *Bush v Shabahang*, 484 Mich 156, 166-167; 772 NW2d 272 (2009). The language must be read and understood in its grammatical context and in relation to the statute as a whole. *United States Fidelity & Guaranty Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 3; ___ NW2d ___ (2009); *Bush*, 484 Mich at 167. "[T]his Court must enforce clear and unambiguous statutory provisions as written. If the language of [a] statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *United States Fidelity*, 484 Mich at 3 (citations omitted). Nothing will be read into a clear and unambiguous statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *People v Nugent*, 276 Mich App 183, 189; 740 NW2d 678 (2007).

If a statute is ambiguous, judicial construction is appropriate. *People v Warren*, 462 Mich 415, 427; 615 NW2d 691 (2000). "A provision is not ambiguous just because 'reasonable minds can differ regarding' the meaning of the provision." *People v Gardner*, 482 Mich 41, 50 n 12; 753 NW2d 78 (2008), quoting *Lansing Mayor v Pub Service Comm*, 470 Mich 154, 166, 680 NW2d 840 (2004). On the contrary, a statutory provision is ambiguous only if it irreconcilably conflicts with another statutory provision or it is equally susceptible to more than one meaning. *Id.*

MCL 750.356a provides, in relevant part:

> (1) A person who commits larceny by stealing or unlawfully removing or taking any wheel, tire, air bag, catalytic converter, radio, stereo, clock, telephone, computer, or other electronic device in or on any motor vehicle, house trailer, trailer, or semitrailer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00, or both.

The language of MCL 750.356a(1) is clear and unambiguous. This subsection criminalizes stealing, unlawfully removing, or taking a specific and limited list of items of property (wheels, tires, air bags, catalytic converters, radios, stereos, clocks, telephones, computers, or other electronic devices) from a specific and limited list of vehicles (motor vehicles, house trailers, trailers, or semitrailers). The Legislature's adoption of the broad term "telephone," or "an apparatus, system or process for transmission of sound or speech to a distant point, esp. by an electric device," includes the cellular or "mobile telephone" that defendant allegedly took from Buchheister's truck. *Random House Webster's College Dictionary* (2000).

Nothing in the language of the statute expresses the legislative intent to limit the application of subsection (1) to items that are permanently attached to the vehicle. *Nugent*, 276 Mich App at 189. Rather, the subsection includes items "in or on" the limited list of vehicles. "In" is "used to indicate inclusion within space, a place, or limits," whereas "on" means "so as to be attached to or unified with." *Random House Webster's College Dictionary* (2000). The fact that wheels, tires, air bags, and catalytic converters are generally on or attached to a vehicle does not by itself limit the application of the subsection to other enumerated items that are not generally attached, but merely included within the space of the vehicle.

Contrary to defendant's argument, the application of subsection (1) to all enumerated items "in or on" the listed vehicles does not result in a scheme of punishment in subsection (1) that irreconcilably conflicts with the statute as a whole. *Gardner*, 482 Mich at 50 n 12. A person who violates subsection (1) is subject to felony punishment, regardless of the value of the property. In contrast, a person who violates subsection (2) is subject to a range of possible punishments, misdemeanor to felony, based on the value of the stolen or unlawfully removed property and the person's prior convictions. "[T]he ultimate authority to provide for penalties for criminal offenses is constitutionally vested in the Legislature." *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). As the Supreme Court explained in *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990), the distinctions between "sentencing ranges for different offenses across the spectrum of criminal behavior" reflect the Legislature's "value judgments concerning the relative seriousness and severity of individual criminal offenses." It is reasonable to conclude from the distinctions in subsections (1) and (2) that the Legislature intended to penalize the stealing, unlawful removal or taking of specific items commonly associated with vehicles in subsection (1) differently than the stealing or unlawful removal of other unspecified property in subsection (2).

Reversed.

/s/ Michael J. Kelly
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder