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UNITED STATE COURT OF APPEALS

NINTH CIRCUIT

GEORGE K. YOUNG JR., Plaintiff, vs. STATE OF HAWAII ET. AL.; Defendants.	No. 12-17808 CASE No. 12-00336 HG BMK NOTICE OF SUPPLEMENTAL AUTHORITY

Notice of Supplemental Authority

COME NOW THE PLAINTIFF-APPELLANT, George K. Young Jr., submits this Notice of Supplemental Authority primarily in support of his argument that H.R.S. 134 must be revised to allow for self-defense with a rifle and shotgun outside the home. The following provisions of the Hawaii Revised Statutes are the remaining provisions that restrict the ownership, carry and transport of rifles and shotguns. H.R.S. §134-26 (attached) prohibits the transport of loaded rifles, handguns and shotguns on public highways. A public highway is defined by §264-1 (attached). .

H.R.S. §134-51 (attached) prohibits the carry of dangerous weapons and in the case notes after the statute lists rifle and a shotgun as deadly and dangerous weapons. It defines the term as "instruments whose sole design and purpose is to inflict bodily injury or death. H.R.S. §134-8 (attached) maintains a complete ban on possession of short barrel shotguns and short barrel rifles inside the home. H.R.S. 134 complete ban on the carrying of rifles, shotguns, (in practice) handguns and their ammunition outside the home and prohibit their transport to locations without an important government interest. Moreover, *State v. Ogata*, 572 P. 2d 1222 - Haw: Supreme Court (1977) (attached) holds that "HRS § 134-51 maybe violated by the carrying of deadly or dangerous weapons, whether concealed or unconcealed" . *Id*. These provisions should be revised to reflect there is a right to bear arms outside the home that right applies to every class of arm which is protected by the Constitution, and items that are not arms themselves but give utility to a class of arm such as ammunition receive coextensive protection to the class of arms it associates with as independent classes of "associated" arms e.g. rifle magazine, shotgun ammunition.

Respectfully submitted this 16th day of March, 2013

s/ Alan Beck_____
Alan Beck (HI Bar No. 9145)

CERTIFICATE OF SERVICE

On this, the 16th day of March, 2013, I served the foregoing pleading by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.
I declare under penalty of perjury that the foregoing is true and correct.
Executed this the 16th day of March, 2013

s/ Alan Beck
Alan Beck (HI Bar No. 9145)

[§134-26] Carrying or possessing a loaded firearm on a public highway; penalty. (a) It shall be unlawful for any person on any public highway to carry on the person, or to have in the person's possession, or to carry in a vehicle any firearm loaded with ammunition; provided that this section shall not apply to any person who has in the person's possession or carries a pistol or revolver in accordance with a license issued as provided in section 134-9.

(b) Any vehicle used in the commission of an offense under this section shall be forfeited to the State, subject to the notice and hearing requirements of chapter 712A.

(c) Any person violating this section shall be guilty of a class B felony. [L 2006, c 66, pt of §1]

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PART I. HIGHWAYS, GENERALLY

§264-1 Public highways and trails. (a) All roads, alleys, streets, ways, lanes, bikeways, bridges, and all other real property highway related interests in the State, opened, laid out, subdivided, consolidated, and acquired and built by the government are declared to be public highways. Public highways are of two types:

(1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property highway related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and

(2) County highways, which are all other public highways.

(b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

(c) All roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails as follows:

(1) Dedication of public highways or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway or trail and naming the county as grantee in the case of a county highway or trail. The deed

of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway or the board of land and natural resources in the case of a state trail. In the case of a county highway or county trail, the deed shall be delivered to and accepted by the legislative body of a county.

(2) Surrender of public highways or trails shall be deemed to have taken place if no act of ownership by the owner of the road, alley, street, bikeway, way, lane, trail, or bridge has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of the county has, thereafter, by a resolution, adopted the same as a county highway or trail.

In every case where the road, alley, street, bikeway, way, lane, trail, bridge, or highway is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication or surrender of the same without exercise of discretion.

(d) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171. [L 1892, c 47, §2; RL 1945, §6111; am L 1947, c 142, pt of §1; am L 1949, c 74, §2; RL 1955, §142-1; am L 1957, c 155, §1; am L 1963, c 190, §1; HRS §264-1; am L 1977, c 68, §4; am L 1988, c 150, §1; am L 2008, c 12, §1]

Cross References

Construction of facilities for physically handicapped persons, see §286-9.
Highways, maintenance, see §27-31.

Attorney General Opinions

Public highway does not include proposed road not yet constructed. Att. Gen. Op. 63-54.

Case Notes

In absence of statute no particular form or ceremony is requisite in the dedication. 2 H. 118.

Defendant claiming right-of-way as a public highway cannot extend such right by using path in different or enlarged manner than usual custom. 2 H. 307.

Implied consent. 17 H. 523.

Territory cannot acquire fee in public highway by legislative enactment; only by condemnation or consent of owner. 17 H. 523.

A public highway can be closed only by the method prescribed by statute. 19 H. 168.

Lease of public land does not extinguish a highway existing across it. 19 H. 168.

Park road not public. 38 H. 592.

Seawall used as a public thoroughfare is included in term "public highways". 50 H. 497, 443 P.2d 142.

State which holds open a public thoroughfare for travel has duty to maintain it in condition safe for travel. 50 H. 497, 443 P.2d 142.

Ownership of fee underlying a road built by private parties and abandoned to the public. 50 H. 567, 445 P.2d 538.

Implied dedication by designation of roadways on subdivision maps. 55 H. 305, 517 P.2d 779.

A responsible government has a duty to keep its highways in safe condition. 57 H. 656, 562 P.2d 436.

Not applicable where trustees did not build or lay out a trail to the general public. 73 H. 297, 832 P.2d 724.

A highway is not a county highway unless it is accepted or adopted as such by

the county council. 2 H. App. 387, 633 P.2d 1118, 6 H. App. 414, 724 P.2d 118.

A public highway is not a state highway unless it is designated for inclusion in the state highway system under §264-41. 2 H. App. 387, 633 P.2d 1118.

Cited: 29 H. 820, 822, aff'd 188 F.2d 459.

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§134-8 Ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties. (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by section 134-4(e); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannons; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds.

(d) Any person violating subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony. [L 1988, c 275, pt of §2; am L 1989, c 261, §6 and c 263, §4; am L 1992, c 286, §§3, 4]

Case Notes

Trial court is mandated to sentence defendant to a term of imprisonment without any suspension of the sentence. 69 H. 458, 746 P.2d 976.

Section not unconstitutionally vague or overbroad on its face or as applied to defendant for "possession of a bomb". 87 H. 71, 951 P.2d 934.

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[PART III. DANGEROUS WEAPONS]

§134-51 Deadly weapons; prohibitions; penalty. (a) Any person, not authorized by law, who carries concealed upon the person's self or within any vehicle used or occupied by the person or who is found armed with any dirk, dagger, blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon shall be guilty of a misdemeanor and may be immediately arrested without warrant by any sheriff, police officer, or other officer or person. Any weapon, above enumerated, upon conviction of the one carrying or possessing it under this section, shall be summarily destroyed by the chief of police or sheriff.

(b) Whoever knowingly possesses or intentionally uses or threatens to use a deadly or dangerous weapon while engaged in the commission of a crime shall be guilty of a class C felony. [L 1937, c 123, §1; RL 1945, §11114; RL 1955, §267-25; HRS §727-25; ren L 1972, c 9, pt of §1; am L 1977, c 191, §2; am L 1983, c 267, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 195, §3 and c 281, §11; am L 1992, c 87, §4; am L 1993, c 226, §1; am L 1999, c 285, §2]

Case Notes

Probable cause for violation of section when police officer saw gun in vehicle stopped for speeding. 430 F.2d 58.

License to carry weapon as justification. 10 H. 585.

Weapons discovered in automobile lawfully stopped for traffic offense; legality of search and seizure considered. 50 H. 461, 443 P.2d 149.

Mentioned in connection with arrest without warrant after seeing pistol in automobile. 52 H. 497, 479 P.2d 800.

"Other deadly or dangerous weapon" is limited to instruments whose sole design and purpose is to inflict bodily injury or death. 55 H. 531, 523 P.2d

A "diver's knife" is neither a "dangerous weapon" nor a "dagger". "Deadly and dangerous weapon" is one designed primarily as a weapon or diverted from normal use and prepared for combat. 56 H. 374, 537 P.2d 14.

Cane, butterfly and kitchen knives are not deadly or dangerous weapons. 56 H. 642, 547 P.2d 587.

Sheathed sword-cane and wooden knuckles with shark's teeth were "deadly or dangerous weapons". 58 H. 514, 572 P.2d 1222.

Statute does not require that weapons be "concealed" within the vehicle. 58 H. 514, 572 P.2d 1222.

Vehicle stop being proper, seizure of weapons in plain view was authorized. 58 H. 514, 572 P.2d 1222.

Shotgun is a deadly or dangerous weapon. 61 H. 135, 597 P.2d 210.

A .22 caliber rifle is a "deadly or dangerous weapon". 63 H. 147, 621 P.2d 384.

Nunchaku sticks are not per se deadly or dangerous weapons. 64 H. 485, 643 P.2d 546.

The crime underlying a subsection (b) offense is, as a matter of law, an included offense of the subsection (b) offense, within the meaning of §701-109(4)(a), and defendant should not have been convicted of both the subsection (b) offense and the underlying second degree murder offense; thus, defendant's conviction of the subsection (b) offense reversed. 88 H. 407, 967 P.2d 239.

"Billy" as used in this section refers to "policeman's club" or "truncheon"; a club-like implement designed for purpose of striking or killing fish is not a "billy"; section extends only to weapons deadly or dangerous to people. 10 H. App. 404, 876 P.2d 1348.

Cited: 43 H. 347, 367; 10 H. App. 584, 880 P.2d 213.

State v. Ogata, 572 P. 2d 1222 - Haw: Supreme Court 1977

572 P.2d 1222 (1977)

STATE of Hawaii, Plaintiff-Appellee,

v.

Philip T. OGATA and Gerald F. Sullivan, Defendants-Appellants.

No. 5822.

Supreme Court of Hawaii.

December 27, 1977.

1223 *1223 Dennis A. Daughterty, Honolulu, for defendants-appellants.

Stanley H.C. Young, Deputy Pros. Atty., Honolulu, for plaintiff-appellee.

Before RICHARDSON, C.J., and KOBAYASHI, **OGATA**, MENOR and KIDWELL, JJ.

MENOR, Justice.

The defendants appeal from the judgment and sentence of the trial court based upon their convictions for the offense of carrying a deadly weapon, in violation of HRS § 134-51. The recovery of a sheathed sword-cane, which was found lying against the raised

transmission tunnel in front of the center portion of the front seat of the defendants' vehicle, and wooden knuckles with shark's teeth embedded in the striking surface, which were found on the floor of the vehicle, supplied the basis for the charge. Both of these instruments were "deadly or dangerous weapons" within the meaning of HRS § 134-51.

Two issues are presented in this appeal: (1) Whether the trial court erred in denying the defendants' motion to suppress the weapons as evidence, and (2) whether *concealment* of the weapons *within the vehicle* was a necessary element of the crime charged.

I

We consider first the issue of whether the defendants' motion to suppress should have been granted. From the record before us, we hold that the trial court properly denied the motion. The defendants' vehicle was stopped by the police at approximately 8:52 p.m. on the evening of October 7, 1974. Earlier that night, one Jacqueline Richie had called the police department to report that the Church of Scientology had received a telephone call from an anonymous caller threatening to kill someone at the church that evening. Officer Tadly was one of the officers who responded to the complaint. He reached 143 Nenue Street in Honolulu, where the church was located, at 8:47 o'clock p.m. Officers Wery and Foley were already interviewing the complainant when he arrived. Shortly thereafter, the officers saw a Chevrolet El Camino automobile cruising slowly by, and noticed the two men in the vehicle looking in their direction. Because the
1224 threat presumably was to have been carried out at 9:00 p.m., Officer Tadly *1224
deemed it advisable to follow them. At the same time he called the police dispatcher for an expedited registration check of the automobile. As they neared the next street

intersection near the M's Ranch House restaurant, Officer Tadly was informed by police dispatch that the vehicle was registered under defendant **Ogata**, who had been named by the complainant as the suspected caller. The officer immediately turned on his police "blue light," and shortly the other vehicle turned into and came to a stop in the restaurant parking area. Officer Tadly followed and after leaving his vehicle walked over to talk to the two men. He found defendant **Ogata** behind the wheel with defendant Sullivan sitting on the passenger side. While speaking to the occupants, he detected a strong alcoholic odor emanating from inside the vehicle. He immediately ordered the two men out of the automobile, for the purpose of verifying their identification and to administer a sobriety test to the driver. While Officer Tadly was administering the test and examining their identification papers, Officer Foley, who in the meantime had arrived at the scene, looked into the vehicle from the outside and saw the sheathed sword-cane. Upon opening the car door to secure the instrument, he saw the knuckles on the vehicle floor.

Stopping the vehicle in which the defendants were riding was a seizure of their persons within the meaning of the Fourth Amendment to the United States Constitution. *See* *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The stop in this case, however, was justified. The conduct of the police was in response to a bona fide complaint. Defendant **Ogata** was named by the complainant as the suspected caller. He was present in the vicinity at or about the time the threat was supposed to have been carried out. The vehicle was not stopped until it was ascertained that he was the owner of the automobile. In acting as they did, the police could point to specific and articulable facts from which they could reasonably infer that criminal activity involving defendant **Ogata** was possibly afoot. *Cf.* *United States v. Robinson,* 536 F.2d 1298 (9th Cir.1976). *See* *Terry v. Ohio, supra*; ***State*** *v. Joao,* 55 Haw. 601, 525 P.2d 580 (1974); ***State*** *v. Onishi,* 53 Haw. 593, 499 P.2d 657 (1972). At the very least, it was

incumbent upon the police to take some investigative action designed to prevent or to discourage the perpetration of a threatened criminal act. The stop having been proper, the seizure of the sword-cane, which was in plain view, and the recovery of the knuckles were also proper. *Cf.* ***State*** *v. Hanawahine,* 50 Haw. 461, 443 P.2d 149 (1968); ***State*** *v. Goudy,* 52 Haw. 497, 479 P.2d 800 (1971).

II

The defendants also contend that before they could be convicted of the offense under the statute, it must first have been shown that the deadly and dangerous instruments were *concealed within the vehicle* in which they were riding. We disagree. The defendants were charged under HRS § 134-51 which provides as follows:

> "Any person not authorized by law, *who carries concealed upon his person or within any vehicle used or occupied by him, or who is found armed with* any dirk, dagger, blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon, shall be fined not more than $250, or imprisoned not more than one year, or both." (Emphasis added)

While penal statutes must be construed in favor of the accused, *see* ***State*** *v. Rackle,* 55 Haw. 531, 523 P.2d 299 (1974), this rule may not be applied to defeat reasonable, manifest legislative purpose. In *United States v. Standard Oil Co.,* 384 U.S. 224, 225, 86 S.Ct. 1427, 1428, 16 L.Ed.2d 492 (1966), the Supreme Court commented:

> "But whatever may be said of the rule of strict construction, it cannot provide a substitute for common sense, precedent, and legislative history. We cannot construe [the statute] in a vacuum. Nor can we read it as Baron

Parke would read a pleading."

And in ***State*** *v. Prevo,* 44 Haw. 665, 669, 361 P.2d 1044, 1047 (1961), this court said:

> "Even the rule that penal statutes are to be strictly construed does not
> 1225 permit a *1225 court to ignore the legislative intent, nor does it require the rejection of that sense of the words used which best harmonizes with the design of the statute or the end in view . .. And the mere fact that the language of the penal statute is open to several constructions, one of which would sustain a conviction and the others an acquittal does not require that the interpretation be made in favor of freedom. The interpretation sustaining the conviction will be adopted if the court is satisfied that such was the sufficiently expressed intention of the legislature."

Statutory language must be read in the context of the entire statute, and the harm or evil it seeks to prevent must point the way to its construction. Where statutory language is ambiguous, yet capable of being fairly and reasonably construed, ***State*** *v. Prevo, supra,* the purpose and objective which moved the legislature to enact it may be determinative of its interpretation. *See* *United States v. National Dairy Products Corp.,* 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963). And even where there is no ambiguity, a departure from the literal application of statutory language will be justified if such literal application will lead to absurd consequences. ***State*** *v. Park*, 55 Haw. 610, 525 P.2d 586 (1974); ***State*** *v. Taylor,* 49 Haw. 624, 425 P.2d 1014 (1967).

HRS § 134-51 had its genesis in House Bill No. 24, which, as originally introduced, provided that "[a]ny person not authorized by law, *who shall carry, or be found armed with* any bowie-knife, pistol, or other deadly weapon, shall be [punished]." (Emphasis

The bill was subsequently amended to read that "[a]ny person not authorized by law, *who shall carry concealed upon his person or within any vehicle used or occupied by him, or who shall be found armed with,* any dirk, dagger, blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon, shall be guilty of a misdemeanor... ." (Emphasis added)

The legislature, however, in thus amending the bill, expressed no intention of deviating from its original purpose. In its committee report, it said:

> "House Bill No. 24 makes it a specific misdemeanor *to be found with, or carrying, dangerous or deadly weapons and anyone so offending may be charged and convicted of such offense* without the necessity of proving that the defendant has been guilty of continuing vagabondage.
>
> The district magistrates of Honolulu, who administer laws of this character, have expressed themselves in favor of the enactment of this Bill, which we consider a meritorious measure.
>
> The Bill, however, should in our opinion be amended *to strengthen its wording and to some degree enlarge its scope.* ..." 1937 House Journal at 612.
>
> (Emphasis added)

It is not clear to us how the addition in the amended version of the words "concealed upon his person" after the word "carry" could have had the effect of strengthening the language or enlarging the scope of the statute. What is clear, however, is that the

addition of the words "or within any vehicle used or occupied by him" did extend its reach.

The purpose of the *concealed* weapons statutes is probably best expressed in *People v. Raso,* 9 Misc.2d 739, 170 N.Y.S.2d 245, 251 (1958):

> "... The purpose of *all* concealment statutes is clear. At the time they were enacted, the open carrying of weapons upon the person, was not prohibited. The purpose of the concealed weapons statutes was to prevent men in sudden quarrel or in the commission of crime from drawing concealed weapons and using them without prior notice to their victims that they were armed. The person assailed or attacked would behave one way if he knew his assailant was armed and perhaps another way if he could safely presume that he was unarmed." (Emphasis in the original)

Obviously, this was not what the legislature had in mind when it enacted the statute
1226 under consideration. It intended to *1226 make it an offense to be found with or to carry deadly and dangerous weapons. *See* 1937 House Journal at 612. By expressly approving the purpose of the original bill, and by specifically making it an offense to be found armed with any of the weapons enumerated, the legislature thereby evinced its intent that concealment was not to be the determinative factor in the application of the statute. Certainly, a person who carries a prohibited weapon upon his person, *whether concealed or unconcealed,* is a person "armed" within the meaning of the statute. *People v. Reaves,* 42 Cal. App.3d 852, 856, 117 Cal. Rptr. 163, 166 (1974).

But whatever may be said about the application, in a given case, of the word "concealed" upon a specific charge of carrying a weapon concealed upon the person, we are satisfied that the word "concealed" was not used to modify "within the vehicle" in

the strict sense of precluding any violation if unconcealed deadly weapons were to be found within the vehicle. We think that if the legislature meant to limit the violations as such, it would have clearly and expressly so provided. Moreover, in holding as we do that the prohibited weapons need not be concealed within the vehicle, we are adopting a fair and reasonable construction which is clearly consistent with, and consummative of statutory purpose and legislative policy.

The statute is founded upon public policy having for its principal object the preservation of human life and the maintenance of public peace and good order in society. Public policy finds repulsive the practice or act of going and being ready for offense or defense, in case of conflict with another, with instruments ordinarily used for criminal and improper purposes. The legislature's purpose was to minimize the danger, accidental or otherwise, to public safety arising from free access to weapons that could be used for crimes of violence.

To adopt the construction urged upon us by the defendants would require us to read into the statute the word "concealed" immediately before the words "within any vehicle." This we are not prepared to do, for not only would such a construction be plainly at variance with the legislative purpose, but it would also invariably lead to absurd results. For example, under the interpretation urged upon us by the defendants, prohibited weapons lying exposed on the unoccupied back seat of a vehicle would not support a charge under the statute, while these same objects over which a newspaper had been thrown would supply a basis for the imposition of penal liability. Then again, we might have a situation where weapons carried in the trunk of a vehicle would support a charge, but not where they were carried uncovered on the floor behind the driver's seat.

The defendants have relied very heavily upon *People v. Frost*, 125 Cal. App. Supp.

794, 12 P.2d 1096 (1932). Their reliance is misplaced. In *Frost*, the court held that a showing of concealment within the vehicle was required. Accordingly, it found the charge, which omitted an allegation of concealment, to be fatally defective. The California statute provided that "[e]xcept as otherwise provided in this act, it shall be unlawful for any person within this **state** to carry concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person ..." It further provided that "[t]he unlawful concealed carrying upon the person or within the vehicle of the carrier of any ... pistol, revolver, or other firearm capable of being concealed upon the person, is a nuisance." The emphasis upon concealment is clearly evident from a reading of the California statute. The placement of the word "concealed" *before* the word "carrying" so as to modify the latter was considered by the court to be determinative. The court said:

> "The word `concealed' is so placed in this last quotation as to leave no doubt that it applies to carrying either upon the person or within the vehicle." 125 Cal. App. Supp. at 795, 12 P.2d at 1097.

1227 *1227 The California court also considered significant that part of the title of the act expressing the legislative intent "to prohibit the carrying of concealed firearms except by lawfully authorized persons," and also the statutory exception that firearms "carried openly" in a certain manner "shall not be deemed to be concealed." Unlike the California statute, HRS § 134-51 may be violated by the carrying of deadly or dangerous weapons, *whether concealed or unconcealed.*

Affirmed.