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**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant

v.

JAMES R. ABUY,
Defendant-Appellee

Commonwealth v. Abuy, 2001 MP 8
Appeal No. 2000-005
Traffic Case No. 99-5820

ORDER AMENDING OPINION

¶ 1

The Opinion filed on July 2, 2001 is amended as follows:

- (1) In the first sentence of ¶ 1, the word "is" is inserted after the word "which."
- (2) In the second sentence of ¶ 2, the word "was" is deleted.

SO ORDERED: JUL 20 2001



JOHN A. MANGLONA, Associate Justice

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IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant

v.

JAMES R. ABUY,
Defendant-Appellee

Cite as: *Commonwealth v. Abuy, 2001 MP 8*

Appeal No. 2000-005

JUDGMENT

¶ 1 Pursuant to Rule 36 of the Rules of Appellate Procedure, judgment is hereby entered. The trial court's ruling that 9CMC § 5503 does not create a strict liability offense is **AFFIRMED**. The judgment of acquittal, however, is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

Entered this 2nd day of July, 2001.

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Crispin M. Kaipat, Clerk of Court

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FOR PUBLICATION

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant

v.

JAMES R. ABUY,
Defendant-Appellee

OPINION

Cite as: *Commonwealth v. Abuy*, 2001 MP 8

Appeal No. 2000-005

Argued and submitted December 13, 2000

For the Commonwealth:

Elaine A. Paplos
Assistant Attorney General
Office of the Attorney General
Caller Box 10001, Civic Center Complex
Saipan, MP 96950

For James R. Abuy:

Robert T. Torres
P.O. Box 500714 CK
Saipan, MP 96950

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice
and JOHN A. MANGLONA, Associate Justice

MANGLONA, Associate Justice:

¶1 The Commonwealth appeals the judgment of acquittal of the defendant, James R. Abuy, who was cited for violating 9 CMC § 5503, which punished as a traffic infraction, and the trial court’s ruling that § 5503 is not a strict liability statute. The appeal is timely and we have jurisdiction pursuant to N.M.I. Const. art. IV, § 3 and 1 CMC § 3102(a).¹ The trial court’s decision is affirmed in part, reversed in part and remanded.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On September 7, 1999, the defendant, James R. Abuy (“Abuy”), was driving a pick-up truck when he stopped at the San Antonio Church intersection and waited to make a right turn onto Beach Road. *See* Commonwealth’s Excerpts of Record (“ER”) at 18. There was an uncovered storm drainage ditch was at the entrance of the intersection. As Abuy released the brake to make the right turn, his truck slid back and struck the front right side of a vehicle driven by Mr. Lim (“Lim”). Lim’s car sustained damage to the hood and to a headlight.

¶3 After interviewing the two drivers and observing the accident scene, Police Officer Andrea Ozawa (“Officer Ozawa”) cited Abuy for backing on a highway in violation 9 CMC § 5503² (“§ 5503”). ER at 21. After the Commonwealth rested, Abuy moved for acquittal on the ground that the statute contemplates

¹ Double jeopardy bars the Court from entertaining an appeal of a judgment of acquittal in criminal prosecutions. *See* N.M.I. Const. art. I, § 4(e); *United States v. Scott*, 437 U.S. 82, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978); *United States v. Affinito*, 873 F.2d 1261 (9th Cir. 1989). While Defendant did not raise this issue, we have an independent obligation to examine jurisdiction. We are satisfied on these facts that there is jurisdiction to entertain this appeal. *See United States v. Ward*, 448 U.S. 242, 100 S. Ct. 2636, 65 L. Ed. 2d 742 (1980); *Taylor v. Sherrill*, 819 P.2d 921 (Ariz. 1991); *Purcell v. United States*, 594 A.2d 527 (D.C. 1991); *Carlson v. State*, 676 P.2d 603 (Alaska Ct. App. 1984).

² 9 CMC § 5503 provides that “[n]o person may start a vehicle stopped, standing, or parked on a highway, nor may any person back a vehicle on a highway unless and until the movement can be made with reasonable safety.”

intentional conduct and that the Commonwealth presented no evidence which demonstrated such intentional conduct beyond a reasonable doubt.³ In response, the Commonwealth argued that the disputed statute was strict liability and that intent was not an element of the offense. The trial court rejected this argument and granted Abuy's Motion for Acquittal on the basis that the backward rolling of his truck into Lim's car did not constitute a § 5503 violation. ER at 34.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶4 We consider the following issues raised by the Commonwealth:

¶5 I. Whether the trial court erred in ruling that the traffic infraction denominated by 9 CMC § 5503 is not a strict liability offense. This inquiry calls for the construction of a statute and is reviewed *de novo*. See *Commonwealth v. Kaipat*, 2 N.M.I. 323, 328-29 (1991).

¶6 II. Whether the trial court erred in granting the defendant's renewed motion for judgment of acquittal. The granting of a motion for a judgment of acquittal is reviewed *de novo* and under the sufficiency of the evidence standard. See *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 237 (1995) and *United States v. Sharif*, 817 F.2d 1375, 1377 (9th Cir. 1987). In doing so, the Court determines whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt while viewing the evidence in the light most favorable to the prosecution. See *Sharif*, 817 F.2d at 1377.

ANALYSIS

¶7 Section 5503⁴ provides that “[n]o person may start a vehicle stopped, standing, or parked on a

³ Although Abuy styled his motion as a renewed motion for acquittal, it is unclear from the transcript excerpts at which stage of the trial the initial motion was made. See ER at 29.

⁴ Because § 5503 is a traffic infraction, we also must keep in mind the guiding principles of construction in 9 CMC § 1104(c) and (e). 9 CMC § 1104 (c) and (e) provide that:

(c) Words and phrases as used in this title shall be read within their context and shall be construed according to the common and approved usage of the English language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to their peculiar and appropriate meaning.

....

(e) The provisions of this title shall be construed according to the plain meaning of their terms, with a view to effect its object and to promote justice.

highway, nor may any person back a vehicle on a highway unless and until the movement can be made with reasonable safety.”

¶18 According to the Commonwealth, the plain reading of § 5503 does not articulate any culpable mental state. It also asserts that traffic violations are typically characterized as strict liability offenses because they carry a light penalty without jail time, and that the vehicle code classifies a § 5503 violation as an infraction punishable only by a fine.⁵ Given these factors, the Commonwealth insists that § 5503 embodies the “quintessential strict liability offense.”

¶19 Abuy initially responds by disputing that the trial court ruled § 5503 a strict liability statute. Alternatively, he counters the Commonwealth’s argument by pointing to, among other things, the qualifying language in the disputed section, “unless and until the movement can be made with reasonable safety.” According to Abuy, the phrase indicates that a mental element of disregarding safety, or a showing of fault, is a necessary prerequisite in establishing a § 5503 violation.

¶10 Abuy’s first argument raises a threshold issue of whether the trial court ruled that § 5503 qualifies as a strict liability statute. While such a ruling is implicit in the trial court’s decision to grant the motion for acquittal, our review of the trial transcript also uncovers the following statement from the trial court: “[t]his is not a strict liability case.” *See* ER 34. Clearly, that statement evinces the trial court’s firm rejection of the Commonwealth’s proffered argument that the statute defined a strict liability offense. ER 33-34. As explained in the following discussion, we nevertheless agree with the trial court that § 5503 is not a strict

⁵ 9 CMC § 7112(a) states:

(a) Except where a different penalty is provided, every person who fails or refuses to comply with or violates any provision of this title is guilty of an infraction punishable by a fine of not more than \$100 for the first conviction and for a second or any subsequent conviction within a period of one year by a fine of not more than \$250.

liability statute.

¶11 It is settled law that the function of defining the essential elements of crimes or other offenses lies with the legislature. Accordingly, the legislature has both the power to require a culpable mental state as an essential element of an offense, and to create strict liability offenses requiring no mental state element but only a showing that the proscribed conduct was voluntarily performed. *See Staples v. United States*, 511 U.S. 600, 604-05, 114 S. Ct. 1793, 1796-97, 128 L. Ed. 2d 608 (1994); *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952); *State v. Bash*, 925 P.2d 978, 982 (Wash. 1996); *Lui v. Barnhart*, 987 P.2d 942, 944 (Colo. Ct. App. 1999); *Lambert v. California*, 355 U.S. 225, 228, 78 S. Ct. 240, 243, 2 L. Ed. 2d 228 (1957). Where it is unclear whether a statute specifies a mental state, a court may resort to interpreting the statutory language through the lens of its legislative history. *Bash* at 982.

¶12 In general, traffic safety statutes are considered statutory crimes or regulatory offenses, as opposed to common law crimes. *Bash*, 925 P.2d at 983. Founded on the public policy of protecting the general public from the dangers posed by motorists, particularly those who fail to observe due caution, traffic safety statutes extensively regulate the operation of vehicles on highways to encourage safe driving. *See* HOUSE STANDING COMM. REP. NO. 3-80 at 2 (Third NMC Legislature 1982) (noting that comprehensive traffic code is a necessity given increase in number of motorists, registered vehicles and paved highways) and *Pierce v. Black*, 280 P.2d 913, 917 (Cal. Ct. App. 1955) (observing that “an automobile is a dangerous weapon when not operated with wisdom and due caution” and failure to operate a car without taking reasonable precautions to ensure no one is injured is guilty of negligence). The distinction between common law and regulatory crimes is significant because common law crimes generally require intent or guilty knowledge, even if the statute at issue is silent. *Morissette*, 242 U.S. at 251-56, 72 S. Ct. at 244-46. In

contrast, public welfare offenses, like traffic offenses, do not necessarily require proof of any mental element. *Id.* at 256, 72 S. Ct. at 246. The omission of qualifying words, such as “knowingly,” “intentionally,” or “fraudulently,” describing the requisite mental state, ordinarily indicates that a statute defines a strict liability offense. *See In re Marley*, 175 P.2d 832, 835 (Cal. 1946).

¶13 Where a determination is made that no mental state is provided by a particular statute, most jurisdictions then examine and weigh several factors bearing upon legislative intent to impose strict liability. *See Staples*, 511 U.S. 600, 114 S. Ct. 1793, 1797-1804; *Bash*, 925 P.2d at 983. Such factors include the following: (1) the construction of a statute in light of common law rules and the conventional *mens rea* element; (2) whether the crime can be characterized as a “public welfare offense;” (3) the extent to which a strict liability reading of the statute would encompass seemingly entirely innocent conduct; (4) the harshness of the penalty; (5) the seriousness of the harm to the public; (6) the ease or difficulty of the defendant ascertaining true facts; (7) relieving the prosecution of difficult and time-consuming proof of fault where the legislature thinks it important to stamp out harmful conduct at all costs; (8) the number of prosecutions to be expected; and (9) the consideration that criminal offenses with no requirement of a mental element have a generally disfavored status. *Bash* at 983.

¶14 Here we need not consider the *Staples* factors because the last clause of § 5103, which reads that “unless and until the movement can be made with reasonable safety,” clearly provides a culpable mental state, similar to the civil standard of negligence, as an essential element of a § 5103 violation.⁶ As such, a violation of § 5103 is predicated upon a reasonableness standard, the touchstone of civil negligence. *See Ito v. Macro Energy, Inc.*, 4 N.M.I. 46, 59 (1993) (discussing reasonable person standard in relation to

⁶ The term “civil negligence” refers to an extremely low level of *mens rea*, in contrast with “criminal negligence” which calls for proof of gross deviation from the standard of care. *See* MODEL PENAL CODE § 2.02(2)(d), 10 U.L.A. 433 (1974).

contributory negligence); *see also Potocki v. Trust Territory of the Pacific Islands*, 6 TTR 38, 39 (Trial Div. 1972)(construing a statute penalizing negligence as a criminal offense, without mentioning the degree, as requiring a factual finding on whether the disputed conduct violates the standard of care).

¶15 Our reading of § 5503 finds support in California decisional law interpreting an identical statute.⁷ In *Hughes v. MacDonald*, the court of appeals noted that the statute in question required a standard of care of a reasonably prudent person. 283 P.2d 360, 365 (Cal. Ct. App. 1955). *See also Smith v. Harger*, 191 P.2d 25, 30-31 (Cal. Ct. App. 1948) (statute permitting parked vehicle to be started or backed requires “only ordinary or reasonable care of the circumstances then existing”); *Waid v. Smith*, 195 P.2d 862 (Cal. Ct. App. 1948) (driver must use ordinary care in backing his vehicle and whether such care was used is largely a factual question).

¶16 Even though the legislature did not use typical qualifying words to describe the requisite mental state, our construction of § 5503, buttressed by California case law, compels the conclusion that the trial court was correct in ruling that the section does not define a strict liability offense.⁸ In fact, § 5503 imposes

⁷ *See* Cal. Vehicle Code § 22106.

⁸ Ironically, the trial court appears to have agreed with Abyu’s counsel’s argument, offered during the bench trial, that § 5503 was not based on negligence. Relevant excerpts from the trial transcript read as follows:

MR. TORRES: [T]he defense agrees with the court’s assessment that . . . [the statute requires] some intentional conduct, some volitional conduct, rather than negligent conduct or a failure to exercise due care caution which is more on negligent conduct.

ER at 30, lines 1-3 (Trial Transcript Excerpts).

THE COURT: I don’t think that that’s the intention of the law. I, I really think that what really happened here, Ms. Paplos, to keep it focused is, there was, I mean the defendant possibly could have been negligent in not stopping his vehicle completely and I think that if there’s any restitution, if your worry is restitution, I think there goes the restitution possibility in a small claim action but not in a criminal action.

ER at 33, lines 10-14 (Trial Transcript Excerpts).

a duty on a driver of a stopped, parked or standing vehicle, to operate the vehicle with reasonable safety.⁹ Accordingly, a driver who fails to conform to the requisite standard of care violates the statute and is subject to the penalty provided under the statute.

II. The trial court erred in granting the defendant's renewed motion for judgment of acquittal.

¶17 The Commonwealth contends that because § 5503 is a strict liability offense, the statute only requires proof that Abuy, while operating a motor vehicle, backed on a highway when the movement could not be made with reasonable safety. During the Commonwealth's case-in-chief, Officer Ozawa's testified that the collision occurred when Abuy's truck slid back, as it prepared to move forward onto Beach Road, and struck the other car. ER at 33. The Commonwealth claims that Officer Ozawa's testimony satisfied its evidentiary burden under the statute.

¶18 In response, Abuy maintains that the trial court correctly interpreted § 5503 to require a showing of intent to back on a highway, i.e., by engaging the car in reverse gear. He also insists that he did not violate § 5503 given the trial court's findings that the collision with Lim's car occurred because he had released the brake to proceed onto Beach Road, but instead of moving forward, the slope of the drainage ditch caused the truck to roll back into Lim's car. Abuy urges that these findings are subject to clear error review and that under this standard, the judgment of acquittal was justified because the court properly applied the facts to the elements of a § 5503 offense. We disagree.

THE COURT: Because . . . he was not suppose to have done that, he was negligent, no question about it. I don't think that's being . . . challenged.

ER at 33, lines 19-22 (Trial Transcript Excerpts).

⁹ It would be absurd to think that merely backing on a highway would violate § 5503. One can imagine any number of instances where backing on a highway may be a driver's only option. The legislature must have taken such instances into account when drafting the vehicle code.

¶19 At issue here is not the trial court’s factual findings but its conclusion that § 5503 does not apply to the facts of this case where Abuy’s truck slid back “unintentionally” and collided with Lim’s car. As such, the standard of review for determining the applicability of a particular law, a legal question, is *de novo*. See *Yoo v. Quitugua*, 4 N.M.I. 121, 122 (1994); see also *Kaipat*, 2 N.M.I. at 328-29 (trial court’s construction of a statute is reviewed *de novo*). Moreover, contrary to the trial court’s interpretation, our reading of § 5503 informs us that the “backward” slide of the truck falls squarely within the types of “driver” conduct regulated by the statute.

¶20 The parties and the court below focused unnecessarily on the “back a vehicle” clause of § 5503, presumably because of Officer Ozawa’s testimony that the ground for the citation was for “backing on a highway.” In doing so, they overlooked the first clause which regulates the starting of any “stopped,” “standing,” and “parked” vehicle. When viewing the facts within that framework, Abuy’s conduct, from the stopping of the truck at the intersection to the releasing of the brake which caused it to roll into Lim’s car, describes to us the starting of a stopped or standing vehicle. Cf. *De La Motte v. Rucker*, 130 P.2d 444 (Cal. Ct. App. 1942) (indicating that statute required driver making U-turn to first determine if space is sufficient to allow for movement to be made safely). As such, the trial court erred in concluding that Abuy’s operation of the truck was not regulated by § 5503.

¶21 We now turn to whether the Commonwealth presented sufficient evidence to defeat Abuy’s Renewed Motion for Judgment of Acquittal. Our *de novo* review is the same sufficiency of the evidence standard that the trial court used in considering the motion. See *Ramangmau*, 4 N.M.I. at 237; *Sharif*, 817 F.2d at 1377.

¶22 Here the record demonstrates that Abuy stopped his truck at the San Antonio intersection in order to make a right turn onto Beach Road. Abuy admitted to Officer Ozawa that when he released the brake

to make the turn, the truck rolled back into Lim's vehicle. The Commonwealth presented no evidence that Lim did anything to cause the collision. Consequently, the evidence only suggests that Abuy did not start his truck with reasonable safety. In fact, the trial court observed that Abuy was negligent in not stopping the backward movement of the truck as it rolled toward the other car. *See supra* note 8. Implicit in that observation is a finding that Abuy may not have exercised the requisite due care specified by § 5503. Coupled with Officer Ozawa's testimony, that observation steers us to a conclusion that the Commonwealth presented ample evidence to defeat Abuy's Renewed Motion for Judgment of Acquittal. Accordingly, even though the Commonwealth's argument is premised on an erroneous interpretation that § 5503 is a strict liability statute, we nevertheless agree that the trial court's granting of the subject motion was improper.


CONCLUSION

¶23 The trial court's ruling that 9 CMC § 5503 does not create a strict liability offense is **AFFIRMED**; The judgment of acquittal, however, is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

SO ORDERED THIS 2nd DAY OF JULY 2001.


MIGUEL S. DELMAPAN, Chief Justice


ALEXANDRO C. CASTRO, Associate Justice


JOHN A. MANGLONA, Associate Justice