

For Publication

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,

v.

DIEGO S. MUNDO,
Defendant/Appellant.

Supreme Court Appeal No. 02-033-GA
Criminal Case No. 01-0398T

OPINION

Cite as: *Commonwealth v. Mundo*, 2004 MP 13

Argued and submitted on August 14, 2003
Saipan, Northern Mariana Islands
Decided July 19, 2004

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

DEMAPAN, Chief Justice:

¶1 Diego S. Mundo (“Mundo”) appeals his convictions for disturbing the peace and resisting arrest, claiming that his right to due process was violated because the Commonwealth’s disturbing the peace statute is unconstitutionally vague and claiming alternatively that the prosecution failed to prove all elements of disturbing the peace beyond a reasonable doubt. Because the disturbing the peace statute is not unconstitutionally vague as applied to Mundo in this situation and because a reasonable trier of fact could have found that all elements of the crime were proven beyond a reasonable doubt, we affirm.

I.

¶2 At 1:30 a.m. on August 4, 2001, Mundo arrived intoxicated at Rosie’s Gazebo Restaurant on Tinian. He sat down at the table of some Korean tourists and started to eat their food and beg the tourists to buy him drinks. The tourists then left the restaurant.

¶3 Shortly after the tourists left, Mundo got into an argument with Norbert Manglona. During the course of the argument, Mundo picked up one of the chairs and threatened Manglona with the legs of the chair facing toward Manglona. When the argument escalated with Manglona also picking up a chair and Mundo’s voice becoming very loud, the police were called.

¶4 Officer Pascua was the first officer to arrive at the scene. Narciso Menduriao, the cook at Rosie’s, asked Officer Pascua to tell Mundo and Manglona to leave because they were disturbing the peace of the customers. Officer Pascua told Mundo and Manglona to leave or face an official complaint of disturbing the peace. After this request, Manglona left the restaurant.

¶5 Mundo, however, refused to leave, even after Officer Pascua asked him five times to go. Mundo shouted at the officer, insisting that he was doing nothing wrong. When Mundo became louder and even more uncooperative, Officer Pascua radioed Officer Kiyoshi for assistance.

¶6 Officer Kiyoshi arrived and asked Mundo to leave three additional times, to no avail. He told Mundo that he was being arrested for disturbing the peace. When Officer Kiyoshi took out his handcuffs, Mundo backed up, swinging his arms over his head. Officer Kiyoshi was eventually able to grab Mundo, take him to the ground and handcuff him. The officers brought Mundo back to his feet, and he struggled with the officers all the way to the patrol car.

¶7 On September 11, 2001, the Office of the Attorney General filed an Information charging Mundo with disturbing the peace and resisting arrest.

¶8 At the bench trial on July 19, 2002, Mundo moved to dismiss on the grounds that 6 CMC § 3101(a), the disturbing the peace statute, was void for vagueness. The trial court denied the motion, stating that the “court’s not going to rule on the constitution[ality] of the statute on the eleventh hour of the trial without any argument or briefing...”

¶9 Mundo then moved for acquittal based on the Government’s inability to prove the elements of the statute. In response, the court stated that “the testimony is clear and [in] this court’s opinion if disturbing the peace needed a definition, it would be the act testified to that Defendant did.”

¶10 The trial court found that Mundo was guilty of disturbing the peace and resisting arrest. He was sentenced to six months in jail and fined \$500 for disturbing the peace and sentenced to 12 months in jail and fined \$1,000 for resisting arrest. The sentence is consecutive.

II.

¶11 This Court has jurisdiction pursuant to Article IV, Section 3 of the Northern Mariana Islands Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

III.

¶12 We consider two questions on appeal. First, we consider whether Mundo’s due process rights were violated because the Commonwealth’s disturbing the peace statute, 6 CMC § 3101(a), is unconstitutionally vague. Second, we consider whether the prosecution failed the requirement in 6 CMC § 3101(a) to prove beyond a reasonable doubt that Mundo engaged in “unlawful” conduct.¹

¶13 Mundo first argues that his convictions should be reversed on all counts because he was improperly deprived of his due process rights. He contends that 6 CMC § 3101(a), the Commonwealth’s disturbing the peace statute, is void for vagueness and violative of due process because it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. A question involving the application of the U.S. or N.M.I. Constitution is reviewed de novo. *Commonwealth v. Bergonia*, 3 N.M.I. 22, 35 (1992) (citing *Commonwealth v. Peters*, 1 N.M.I. 466, 470 (1991)). As we recognized in *In re Seman*, 3 N.M.I. 57, 73 (1992), there is a strong, widely recognized judicial policy in favor of preserving statutes in the face of constitutional challenges whenever possible.

¶14 The statute in question, 6 CMC § 3101(a), reads as follows:

A person commits the offense of disturbing the peace if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace.

¹ We shall not consider whether the prosecution violated Commonwealth Rule of Criminal Procedure 7(c)(1), which provides that “[t]he information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged,” since under Commonwealth Rule of Criminal Procedure 12(b)(2), defenses and objections based on defects in the information must be raised before trial by motion. Mundo is raising this issue for the first time on appeal.

¶15 Mundo claims that the statute is vague because it does not define “annoys or disturbs” or “peace and quiet.” Since there is no objective standard to which a defendant may conform his or her conduct, argues Mundo, the statute is void for vagueness.

¶16 Due process of law requires that a penal statute or ordinance state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or it is void for vagueness. Statutes must give a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited so that he or she may choose between lawful and unlawful conduct. *Bergonia*, 3 N.M.I. at 36 (citing *Commonwealth v. Kaipat*, 2 N.M.I. 322, 330 n.7 (1991)).

¶17 The U.S. Supreme Court examines vagueness challenges that do not implicate First Amendment interests on an “as applied” basis. *Maynard v. Cartwright*, 486 U.S. 356, 361, 108 S. Ct. 1853, 1857-58, 100 L. Ed. 2d 372, 380 (1988). That is, vagueness challenges that do not implicate First Amendment freedoms are examined in light of the facts of each particular case. *Burns v. City of Detroit*, 660 N.W.2d 85, 96 (2002) (“In light of our conclusion above that the specific facts of the instant case clearly and unequivocally supported a finding of sexual harassment, the relevant provisions of the Civil Rights Act were *not* vague . . . as applied to defendants' conduct.”) In *Maynard*, the U.S. Supreme Court stated, “[o]bjections to vagueness under the Due Process Clause rest on the lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk.” 486 U.S. at 361, 108 S. Ct. at 1857, 100 L. Ed. 2d at 380.

¶18 The instant vagueness challenge does not implicate the First Amendment, so we will examine the statute for vagueness as it was applied to Mundo in this specific situation. We will examine whether a reasonable person would know that Mundo’s conduct was at risk.

¶19 When we examine the specific facts of this case, it is not at all vague that Mundo's conduct at Rosie's unreasonably annoyed or disturbed other people so as to deprive them of their right to peace and quiet. On the night in question, he showed up drunk at Rosie's and began eating customers' food and begging drinks from them. He got into a loud argument with another man that resulted in Mundo picking up a chair in a threatening way. He refused to leave the restaurant even after being asked by the owner of Rosie's and by the police. The facts of this case clearly and unequivocally support a finding of disturbing the peace.

¶20 Any reasonable person is on notice under this statute that intoxicated harassment of others is prohibited conduct. A person of ordinary intelligence certainly would know that Mundo's antics in this situation constitute conduct that would annoy or disturb others. Since the facts of this case unquestionably support a finding of disturbing the peace, 6 CMC § 3101(a), as applied to Mundo's conduct in this situation, is not vague.

¶21 We now turn to Mundo's second contention that the prosecution failed to prove one of the elements of the offense, namely, that Mundo did something "unlawful." Mundo states that he did nothing "unlawful" under the statute and that, therefore, this element of the crime has not been proven beyond a reasonable doubt. In assessing whether there was sufficient evidence to prove an element of a crime, we review the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the element beyond a reasonable doubt. *Commonwealth v. Oden*, 3 N.M.I. 186, 191 (1992), *aff'd*, 19 F.3d 26 (9th Cir. 1994).

¶22 Section 103(v) of Title 6 of the Commonwealth Code defines "unlawfully" as "without lawful authority or purpose, or contrary to law, regulation or order of the detaining authority." Mundo's actions were indeed without lawful authority and contrary to law. He stole food,

picked up a chair to threaten another man, harassed the customers at Rosie's and trespassed at Rosie's by refusing to leave despite being asked by the owner and the police to leave. In light of this behavior, we find that a reasonable trier of fact could have found that Mundo's actions were unlawful beyond a reasonable doubt.

IV.

¶23 For the foregoing reasons, Mundo's convictions are AFFIRMED.

SO ORDERED THIS 19TH DAY OF JULY 2004.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice