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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JIAN YUN YAO,
Defendant-Appellant.

SUPREME COURT NO. TR-05-0029-GA
SUPERIOR COURT NO. 05-02023

Cite as: 2007 MP 12

Decided July 10, 2007

Samuel J. Randall, IV, Assistant Public Defender, Commonwealth Public Defender's Office, for Defendant-Appellant
Arin Greenwood, Kristin St. Peter (argued), Assistant Attorneys General, Commonwealth Office of the Attorney General, for Plaintiff-Appellee

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice; EDWARD MANIBUSAN, Justice Pro Tem

MANGLONA, J.:

¶ 1 Appellant Jian Yun Yao ("Yao") appeals his conviction and sentence of reckless driving, and his conviction for failure to carry a valid vehicle registration card. He maintains there is insufficient evidence to support his convictions and that the trial court erred when it imposed his sentence. Because Yao's conduct clearly demonstrates a willful and wanton disregard for the safety of persons or property, we determine that there is sufficient evidence to support his reckless driving conviction. We further determine that sufficient evidence exists to convict Yao for failure to carry a valid vehicle registration card. However, we find that the trial court's sentence is erroneous. We, therefore, AFFIRM in part, REVERSE in part, and REMAND this matter to the trial court for re-sentencing.

I

¶ 2 In the early morning of April 17, 2005, Officer John Sablan (the "officer") observed a vehicle drifting in and out of driving lanes over the course of a minute and a half.[1] The officer first saw the vehicle drift onto the inside lane reflectors for four seconds before drifting back. The officer again watched the vehicle drift into both lanes of traffic for five seconds before correcting itself. Further down the road, the two lanes merged into one lane with a contiguous bike lane on the right separated with a white boundary line. As the vehicle approached the merge lane, the officer witnessed the vehicle veer right from the left lane until it drifted across the white line into the bike lane. After three seconds traveling in the bike lane, the vehicle corrected itself, at which time the officer pulled the vehicle over.

¶ 3 The officer approached the vehicle and Yao produced his driver's license. He asked Yao for the vehicle registration. Yao told the officer that he could not find the registration because he did not own the vehicle. At this time, the officer detected the strong odor of alcohol from Yao's breath. He advised Yao to exit the vehicle, and as he got out of the vehicle he held the door frame to prop himself up. While swaying, Yao admitted to drinking alcohol. The officer also noticed that Yao had bloodshot eyes. He then prepared to conduct a field sobriety test, but rain interfered with the test. As a result, he took Yao to the police station for an alcohol breath test. The officer failed to administer the test to Yao because Yao repeatedly failed to follow the officer's instructions on the proper use of the breathalyzer.

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[1] A driver in another vehicle contacted the police regarding the drifting vehicle prior to the officer's observations.

¶ 4 After a bench trial, the trial court found Yao guilty of reckless driving and failure to carry a vehicle registration card.[2] Yao was sentenced to thirty days in jail, all suspended, placed on probation for one year, and fined $500 plus court costs.

II

¶ 5 The issue of whether there is sufficient evidence to support Yao's convictions is reviewed de novo. *Commonwealth v. Yan*, 4 NMI 334, 336 (1996). "Our review must encompass all of the evidence, direct or circumstantial . . . ." *Commonwealth v. Ramangmau*, 4 NMI 227, 237 (1995). We do not re-weigh the evidence, but we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See, e.g.*, *Commonwealth v. Delos Reyes*, 4 NMI 340, 342 (1996).

¶ 6 The issue of whether a criminal sentence is improper is reviewed de novo. *Commonwealth v. Sablan*, 1996 MP 22 ¶2. However, if an appellant fails to challenge the sentence in the trial court then the sentence is reviewed for plain error. *CNMI v. Zhen*, 2002 MP 4 ¶ 48; *see also Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 23 ("Attorneys have a duty to their clients to raise objections during trial, so that the harm may be cured when it occurs. Furthermore, appeals should be based on questions and objections raised during trial, not after a review of the transcript."). In *Zhen*, appellant challenged the trial court's imposition of a fine and mandatory fee. 2002 MP 4 ¶ 48. Because appellant failed to raise the improper sentence in the trial court and at the sentencing hearing, we reviewed the sentence for plain error. *Id.* In the instant case, Yao did not challenge the sentence in the trial court. The issue is therefore reviewed for plain error.

III

Reckless Driving

¶ 7 Yao contends that there is insufficient evidence to prove he drove in a willful or wanton disregard for the safety of persons or property.[3] The Commonwealth Code provides that, "[e]very person who drives or operates any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving which is a misdemeanor." 9 CMC § 7104(a). To convict Yao under 9 CMC § 7104(a), the Commonwealth must prove,

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[2] Yao was acquitted of refusing to take a breathalyzer test under 9 CMC § 7106(c), driving under the influence under 9 CMC § 7105(a), and driving on the right side of the road under 9 CMC § 5301(a).

[3] Yao relies on *Commonwealth v. Scragg*, 2000 MP 4, and *Commonwealth v. Martinez*, 2000 MP 5, to support his argument. In both cases, the issue of recklessness was addressed in the procedural history of the opinion, but was not discussed in the merits of the opinion. Procedural history cannot form the basis of our reckless driving jurisprudence.

beyond a reasonable doubt, every element of the offense including that Yao drove in a willful or wanton disregard for the safety of persons or property.

¶ 8 The question we must determine is the meaning of willful or wanton in the context of 9 CMC § 7104(a). Generally, we should avoid interpretations of a statutory provision which would defy common sense or lead to absurd results. *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 NMI 212, 224 (1991). Willful or wanton refers to a mental state. However, absent a confession of guilt, direct evidence of mental state is difficult to ascertain. While 9 CMC § 7104(a) explicitly states a mens rea element to reckless driving, legislative history does not reveal the legislature's intent behind the terms willful or wanton. *See* PL 3-61. Thus, by necessity, we must determine whether the driver's actions imply a mindset rising to the level of willful or wanton.

¶ 9 When we examine 9 CMC § 7104(a), we find that the statute provides two separate and distinct bases upon which a finding of guilt may be premised. First, a person may be found guilty of violating the statute if he acts willfully. "Such conduct implies an act done intentionally, designedly, knowingly, or purposely, without justifiable excuse." *State v. Earlenbaugh*, 18 Ohio St. 3d 19, 21 (1985). Likewise, Section 7104(a) may be violated when a person acts wantonly in disregard of the safety of others. "A wanton act is an act done in reckless disregard of the rights of others which evinces a reckless indifference of the consequences to the life, limb, health, reputation, or property of others." *Id.* at 21-22. "Similarly, when the operator of a vehicle, with full knowledge of the surrounding circumstances, recklessly and inexcusably disregards the rights of other motorists, his conduct may be characterized as wanton." *Id.*

¶ 10 Accordingly, willful or wanton disregard for the safety of persons or property means conscious and intentional driving which the driver knows, or should know, creates an unreasonable risk of harm to others. *State v. Bolsinger*, 221 Minn. 154, 157 (1946). "By this is not meant that the driver must be personally conscious of his wrongdoing; it is sufficient that he ought to realize the fact." *Id.* Thus, to obtain a conviction for reckless driving "it is only necessary to establish that the vehicle was driven in willful or wanton disregard for the safety of others; in other words, under circumstances that show a realization of the imminence of danger and a reckless disregard or complete indifference for the probable consequences of such conduct." *State v. Brueninger*, 238 Kan. 429, 435 (1985) (quotation omitted).

¶ 11 For example, in *United States v. McIntosh*, 979 F. Supp. 1329, 1333 (D. Kan. 1997), the district court held that a rational fact finder could easily have found willful or wanton disregard for the safety of persons or property under the Kansas reckless driving statute. A police officer testified that he observed defendant enter the road after failing to stop at a stop sign. *Id.* The

police officer attempted to stop defendant, but defendant accelerated and passed a group of other vehicles. *Id.* The police officer estimated that defendant was driving sixty-five miles per hour in an area with a forty-five mile per hour limit. *Id.* Eventually defendant pulled over to the side of the road. *Id.*

¶ 12 In determining whether the defendant was guilty of reckless driving, the district court stated, "it is clearly appropriate to consider all of the facts and circumstances concerning his conduct, including the manner and degree of other violations of the law . . . ." including passing in a no passing zone and speeding. *Id.* Based on all the circumstances, the district court concluded that defendant's "conduct created a serious hazard to all persons traveling" on the road and defendant was guilty of reckless driving. *Id.*

¶ 13 Based on all the circumstances, Yao's operation of his vehicle was unsafe and showed blatant disregard for the property and safety of others. Yao admitted to drinking alcohol and drove in the dark conditions of the early morning. Although drinking by itself might be insufficient evidence, it is certainly a factor to be considered.[4] Yao also drifted into different lanes multiple times to the point where another driver had to call the police about Yao's erratic conduct. Further, Yao erratically drove into the designated bike lane– an area pedestrians and bikers frequent. Such conduct under the circumstances clearly demonstrates a willful and wanton disregard for the safety of persons or property.

¶ 14 In *Ramangmau*, we found that a reasonable jury could convict defendant for vehicular manslaughter and reckless driving after speeding, passing in the bicycle lane, and hitting a bicyclist in the bicycle lane. 4 NMI at 234, 239. We indicated that speed alone is sufficient evidence for a fact finder to infer that defendant drove in a manner evincing a willful or wanton disregard for the safety of persons or property. *Id.* at 238. A witness also testified that that defendant was not speeding when he hit the bicyclist, but we noted that her credibility was for the jury to decide. *Id.*

¶ 15 An automobile is a dangerous instrument, thus traffic laws are necessary for the safety of the public and must be strictly enforced. *See Yoo v. Quitugua*, 4 NMI 120, 123 (1994). Yao may be willing to risk his own life and property traveling in such a manner, but other drivers do not anticipate that a vehicle will drift in and out of traffic lanes and encroach into the bike lane. Drivers and pedestrians use our roads and expect that traffic will move in a reasonably safe

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[4] "[W]hile evidence of intoxication is a factor that might bear upon proof of . . . reckless driving in a given case, it does not, of itself, prove reckless driving." *Bishop v. Commonwealth*, 20 Va. App. 206, 210 (1995). "One may be both drunk and reckless. He may be reckless though not drunk; he may even be a total abstainer, and he may be under the influence of intoxicants and yet drive carefully. Indeed, with knowledge of his condition, he might . . . drive with extraordinary care." *Spickard v. City of Lynchburg*, 174 Va. 502, 504 (1940).

manner. Additionally, even if the driver only injured or killed himself in a crash, his conduct still would put at risk the emergency personnel and vehicles that would respond. While no injuries resulted from Yao's actions, we need not wait for a serious injury to occur, as in *Ramangmau*, before finding Yao's driving willful and wanton. *See State v. Stanko*, 974 P.2d 1139, 1146 (Mont. 1998) (finding that serious injury need not result from defendant's conduct before that conduct may be deemed willful or wanton in reckless driving prosecution).

Vehicle Registration

¶ 16 Yao maintains that there is insufficient evidence to prove that he violated 9 CMC § 2105 where the evidence shows that he is not the registered owner of the vehicle.[5] Section 2105 provides that:

> The bureau shall issue to the owner a registration card containing upon its face the date issued, the registration number, the name and address of the owner, and a description of the registered vehicle, including the engine number. The registration card shall be carried in the vehicle at all times while the vehicle or bicycle is being operated upon a highway.

9 CMC § 2105. Yao argues that since the statute states that the owner shall be issued a registration card, and since he is not the owner of the vehicle, he is not responsible for carrying a registration card in the vehicle. We reject his argument.

¶ 17 The second sentence of the statute contains language that indicates that a registration card must be carried in the vehicle at all times while the vehicle is being operated. Unlike the previous sentence which expressly limits the owner to obtaining a registration card, the second sentence neither contains the term "owner" nor any other limiting language. The second sentence is clear when it states that "[t]he registration card shall be carried in the vehicle *at all times* while the vehicle . . . is being operated upon a highway." *Id.* (emphasis added). In other words, the owner must obtain the registration card while the driver of the vehicle bears the burden of ensuring that the registration card is in the vehicle. *See State v. McClendon*, 130 N.C. App. 368, 377-78 (1998) (finding that a warning ticket was justified when defendant failed to, inter alia, produce a registration card for the vehicle he drove that belonged to someone else).

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[5] Yao raises a question on the validity and construction of 9 CMC § 2105, which makes it an offense for the driver of a vehicle to fail to carry vehicle registration. All cases in which such a question is raised hold that to require a driver to carry and display vehicle registration constitutes a valid exercise of a state's police power, since such legislation insures the general safety and welfare of the public. *See Goode v. State*, 41 Md. App. 623 (finding that statute requiring vehicle operator to carry registration card in vehicle at all times and to display it, on demand, to any police officer was constitutional); *see also United States v. Barnes*, 443 F. Supp. 137, 141-42 (S.D.N.Y. 1977) (holding that statute requiring vehicle operator to produce his registration card, on demand, and officer's stopping of the vehicle for this purpose was constitutional, where the officer observed the vehicle driven in a curious manner in the early morning in a high crime area and saw the vehicle cross the double yellow line).

One Year Probation

¶ 18 Yao next contends that the trial court erred when it sentenced him to a thirty-day suspended sentence and one year probation for an offense that carries a maximum punishment of six months. The Commonwealth agrees with Yao that the trial court erred in sentencing him, and states Yao's sentence should be reduced to six months. Under the plain error rule, reversal is proper when two factors are met: "(1) substantial rights of appellant are affected, and (2) it is necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice." *Zhen*, 2002 MP 4 ¶ 48.

¶ 19 Here, the trial court sentenced Yao to a thirty-day suspended sentence with one year of supervised probation for violating 9 CMC § 7104(a). Section 7104(a) sets a six-month prison limit for a first time reckless driving violation. In *Commonwealth v. Oden*, 3 NMI 189, 198 (1992), we stated that: "[w]e construe 'the maximum term of a sentence' that may be imposed by the trial court to mean the combined length of any prison term plus any suspended portion (and resulting probation) which is to follow any prison term." When imposing a sentence that includes incarceration and probation, as the trial court did here, the trial court may not exceed the maximum term under the statute. The maximum possible sentence under 9 CMC § 7104(a) is six months. Hence, the trial court erred in imposing a one-year supervised probation.

IV

¶ 20 Viewing the evidence in the light most favorable to the Commonwealth, we determine that there is sufficient evidence to conclude that Yao committed the offenses of reckless driving in a willful or wanton manner and failing to carry a registration card. These convictions are therefore AFFIRMED. However, Yao's sentence of one year supervised probation is REVERSED and this matter is REMANDED to the trial court for re-sentencing.

Concurring:
Castro, J., Manibusan, J.P.T.