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Gretchen Smith

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

RAY A. CAMACHO,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0018-CRM
Superior Court No. 16-0122

SLIP OPINION

Cite as: 2019 MP 2

Decided May 10, 2019

Robert Charles Lee, Assistant Attorney General, Office of the Attorney General,
Saipan, MP, for Plaintiff-Appellee,

Colin M. Thompson, Saipan, MP for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

MANGLONA, J.:

¶ 1 Defendant-Appellant Ray A. Camacho (“Camacho”) appeals his conviction for Assault and Battery. He seeks to vacate the conviction, asserting: (1) the trial court incorrectly interpreted 6 CMC § 1202(a) (“Section 1202(a)”) by applying the statute to Camacho without considering mens rea; and (2) Section 1202(a) is unconstitutionally vague as applied to Camacho’s circumstances. For the following reasons, we VACATE Camacho’s conviction.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Ryan Cavalear (“Cavalear”), an inmate at the CNMI Department of Corrections (“DOC”), yelled over the facility’s intercom, requesting medication for an oral surgery he had recently undergone. Camacho, a DOC officer, was by the control area and responded. Camacho noticed Cavalear was aggravated, yelling profanities as Camacho approached. When Camacho attempted to enter the cell and remove Cavalear’s cellmate, Cavalear failed to comply with at least one of his oral commands.¹ After a verbal exchange, Camacho grabbed Cavalear by the neck and forced him onto the floor. Camacho then restrained Cavalear, slapped him, and took him to a padded room in the booking area, at which point Camacho laughed at Cavalear, telling him he did not believe he was a veteran. Following the exchange, Camacho asked other DOC officers if they had seen him slap Cavalear. An investigating officer noticed red markings on Cavalear’s neck following the incident.

¶ 3 The Commonwealth of the Northern Mariana Islands (“Commonwealth”) charged Camacho with Assault and Battery in violation of Section 1202(a). At trial, the Commonwealth had to prove Camacho unlawfully struck, beat, wounded, or otherwise did bodily harm to Cavalear. *See* 6 CMC § 1202(a). Because Camacho was a correctional officer with authority to use force, at issue was whether the force Camacho used was unlawful, or “without lawful authority or purpose, or contrary to law, regulation or order of the detaining authority.” 6 CMC § 103(v).

¶ 4 At trial, the court scrutinized DOC’s internal policies and procedures and training standards. In particular, it considered Section G of DOC’s internal training policy, which explained the ‘Use of Force Continuum’ (“Continuum”). DOC instituted the Continuum to guide officers in “us[ing] the most appropriate force level depending on the situation.” App. 18–19. From lowest to highest, its

¹ Cavalear testified that he only ignored one verbal command by Camacho, whereas Camacho testified that Cavalear ignored multiple commands, including Camacho’s repeat instruction for Cavalear to step back. *See* tr. 458–59 (“I instructed Ryan Cavalear again to step back, he still refused. . . . He refused to follow my instruction as I told him, ‘give me your hand.’”).

levels of force included: Presence/Appearance, Voice/Tactical Communication Skills, Control and Restraints Techniques, Chemical Agents and Compliance Tools, Temporary Incapacitation, and Lethal Force.² The court focused on the language of the Continuum's fifth level, Temporary Incapacitation, which, in relevant part, states:

When the above techniques are ineffective, or the individual becomes more aggressive, the officer seeks compliance by additional physical means that includes the use of hands and feet to apply come-along holds, pressure points, and pain compliance techniques. These techniques should be used in accordance to the defensive tactics training. *Chokeholds, blows to the head, face and neck are prohibited.*

App. 18 (emphasis added). It also heard testimony from DOC officers and its prior director regarding the training officers receive to supplement and explain these policies.

¶ 5 The court then sought to apply DOC's policies and standards to Section 1202(a) to determine whether Camacho's actions constituted Assault and Battery. In doing so, it heard testimony from DOC officers present during the incident as to exactly what type of force Camacho used. The court also heard testimony from multiple expert witnesses on whether Camacho's grabbing Cavalear by the neck was unlawful in light of DOC's training and policies. It ultimately found Camacho's actions unlawful:

That's a mixed martial arts hold and it's a chokehold and it's basically to either make somebody pass out or to make them tap out in mixed martial arts. I consider this to be more of a headlock because [Cavalear] was trying to move away from being taken off the bed and being handcuffed. But one way or the other, it was

² Section F of the internal training policy on 'Situational Force Level' was also considered. It states:

The situational force level requires the selection of force level to be used depending on the situation. The correctional officer relies upon reasoned discretion in terms of the use of force option, the force is generally dictated by the amount of resistance from the individual. Depending on the situation, the officer will select the appropriate force level to be used to control the situation with minimum harm to both the officer and the individual. In the event that the situation worsens or escalates, the officer will reevaluate the situation and use the next force level or appropriate force level. Selecting the appropriate force level is based on the officer's knowledge, skills and ability to justify the use of force. Appropriate force level[s] are to be taken before resorting to the last option. which is use of lethal or deadly force.

grabbing his head and it should not have been done. . . . [G]rabbing him by the neck and putting him on the floor does rise to the level of being unlawful. . . . I find you guilty of assault and battery, under 6 CMC 1202(a).

Tr. 538 (emphasis added). Notably, although the court found that “Camacho knew that he did something wrong” by asking the other officers whether they saw him slap Cavalear, it did not discuss his mental state as to the chokehold. Tr. 536.

¶ 6 Following trial, Camacho was convicted of one count of Assault and Battery. He appeals his conviction.

II. JURISDICTION

¶ 7 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 8 The dispositive issue on appeal is whether the trial court properly convicted Camacho of Assault and Battery under 6 CMC § 1202(a) without considering whether he had the requisite mens rea. A court’s statutory interpretation of the criminal intent required for an offense is a question of law we review de novo. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 2.³

IV. DISCUSSION

A. Mens Rea

¶ 9 Camacho argues the trial court did not consider whether he had the proper mens rea to commit Assault and Battery. He asserts the statute’s silence does not dispense with the Commonwealth’s burden of proving criminal intent. Camacho claims that instead of discussing his culpability, the court simply convicted him for his employer’s shortcomings, treating Section 1202(a) more like a strict liability offense than a general intent crime. He purports the court should interpret Section 1202(a)’s intent element to require that the defendant have knowledge of

³ The parties briefly dispute whether the trial court actually found Camacho’s actions to be prohibited under the Continuum’s Temporary Incapacitation standard. We review findings of fact under a clearly erroneous standard, reversing a finding only if “[we are] left with a definite and firm conviction that a mistake was made.” *In re Estate of Malite*, 2016 MP 20 ¶ 7. The Continuum explains that “[c]hokeholds, blows to the head, face and neck are prohibited.” App. 18. Although not pertinent to the issues on appeal, we find the determination that Camacho’s “grabbing [Cavalear’s] head” and “grabbing Cavalear by the neck and putting him on the floor” violated the Continuum to be reasonable. Tr. 537–38. The court’s language can be read as finding Camacho’s actions to constitute prohibited blows to the head and neck. Even more transparently, the court stated in a subsequent order that “[t]here was ample testimony . . . that [Camacho] did use a chokehold on [Cavalear].” App. 9. As such, the court did indeed find Camacho’s actions to be prohibited, and we see no indication that such a finding was clearly erroneous.

the facts that make his conduct illegal.

¶ 10 Determining the proper mens rea for Section 1202(a) presents an issue of statutory interpretation. See *Atalig*, 2002 MP 20 ¶ 2; see, e.g., *United States v. Lynch*, 881 F.3d 812, 815 (10th Cir. 2018) (“Defendant contends that the district court erred in finding that 49 U.S.C. § 46504 does not require specific intent Issues of statutory interpretation are reviewed de novo.”). When interpreting a statute, we begin by examining its plain language; if the statute’s meaning is clear, our analysis ends there. *Oden v. N. Marianas Coll.*, 2003 MP 13 ¶ 10. “Conversely, where a statute is unclear, [our] objective is to ascertain and give effect to the intent of the legislature.” *Calvo v. N. Mar. I. Scholarship Advisory Bd.*, 2009 MP 2 ¶ 22 (citation omitted). In doing so, we use the statute’s history, context, and relevant caselaw, as well as tools of statutory construction. See *Commonwealth v. Ogumoro*, 2017 MP 17 ¶ 28–31.⁴

¶ 11 We have previously enunciated and applied general principles relating to mens rea in our statutes. In discerning culpable mental state, we stated that “[w]hen a criminal statute is silent as to intent, the default is general intent.” *Atalig*, 2002 MP 20 ¶ 67. Importantly, “a court need read into a statute ‘only that mens rea which is necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Cepeda*, 2009 MP 15 ¶ 42 (quoting *Carter v. United States*, 530 U.S. 255, 268–69 (2000)). Moreover, once mens rea is discerned, “a general presumption exists that the specified mens rea applies to each element of any non-public welfare offense.” *Commonwealth v. Inos*, 2013 MP 14 ¶ 17.

¶ 12 In considering such principles, we announced that because Section 1202(a) was silent as to intent, Assault and Battery was a general intent crime. *Atalig*, 2002 MP 20 ¶ 67. We explained that to satisfy Section 1202(a), “a defendant may not ‘specifically intend’ to act unlawfully, but he [must] ‘intend’ to commit the act.” *Id.* ¶ 66. In *Commonwealth v. Inos*, we similarly reasoned that Disturbing the Peace was a general intent crime because of a lack of mens rea in the statute, applying the intent requirement to each element of the offense. 2013 MP ¶ 19–20. As such, based on our precedent, the portion of Section 1202(a) at issue appears to be a general intent crime. It also follows that general intent is required as to each element of Assault and Battery, including the requirement that the force used be unlawful.

¶ 13 Although such guidance has previously proved sufficient, Camacho’s circumstances require a closer review of the application of these principles. Namely, because Camacho is a correctional officer authorized to use force, some

⁴ We begin with Section 1202(a)’s plain language. The statute provides that “[a] person commits the offense of assault and battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person’s consent.” 6 CMC § 1202(a). Consistent with our previous examinations of Section 1202(a), we find its text silent as to mens rea. See *Atalig*, 2002 MP 20 ¶ 67. Because the statute’s language does not provide a mens rea, we look to our caselaw on criminal intent.

of his applications of force are lawful and do not run afoul of Section 1202(a). Thus, our instruction from *Atalig* that a defendant must “‘intend’ to commit the act” requires further review. 2002 MP 20 ¶ 66. Specifically, we must determine whether, to violate Section 1202(a), a correctional officer must have simply intended to apply excessive force. In the alternative, we consider whether the violation of the statute requires knowledge that the force being applied is unlawful, or “without lawful authority or purpose, or contrary to law, regulation or order of the detaining authority.” 6 CMC § 103(v).

¶ 14 Because our precedent does not fully answer how the mens rea requirement in Section 1202(a) should be applied and interpreted, we look to the law of other jurisdictions for guidance. See *Cepeda*, 2009 MP 15 ¶ 34; *Borja v. Wesley Goodman & Younis Art Studio, Inc.*, 1 NMI 225, 247–48 (1990) (explaining that we may “look[] to the law of other jurisdictions in the process of interpreting ‘written law’”). Followed by many jurisdictions, “the Model Penal Code (“MPC”) is prepared by the American Law Institute and has generally been treated as possessing the same authority in criminal law matters as the Restatements have in civil matters.” *Cepeda*, 2009 MP 15 ¶ 34. We thus review the instruction on mens rea provided in the MPC and its application by various state courts.

¶ 15 The MPC states that generally, “a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.” Model Penal Code § 2.02.⁵ It also provides detailed definitions as to each level of culpability.⁶ Moreover,

⁵ Prior to the MPC’s implementation of mental states, “[t]he common law traditionally used a variety of overlapping and, frankly, confusing phrases to describe culpable mental states—among them, specific intent, general intent, presumed intent, willfulness, and malice.” *Voisine v. United States*, 136 S. Ct. 2272, 2281 (2016). “In 1970, the National Commission on Reform of Federal Criminal Laws decried the ‘confused and inconsistent ad hoc approach’ of the federal courts” to mens rea. *United States v. Bailey*, 444 U.S. 394, 403 (1980). The movement to redefine mens rea resulted in a “codification of workable principles for determining criminal culpability,” as well as “a general rethinking of traditional mens rea analysis.” *Id.* This new approach moved “away from the traditional dichotomy of intent and toward an alternative analysis of mens rea,” as exemplified in the American Law Institute’s Model Penal Code. *Id.* at 403–04. As a result, “[t]he MPC does not explicitly distinguish between general and specific intent, but instead classifies crimes based on whether the act is done . . . purposely, knowingly, recklessly, or negligently.” *Cepeda*, 2009 MP 15 ¶ 35.

⁶ Relevant to our discussion, purposely, knowingly, and recklessly are defined as follows:

(a) Purposely. A person acts purposely with respect to a material element of an offense when:

following the maxim that ignorance of the law is no excuse, the MPC instructs that “neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, *unless the definition of the offense or the [MPC] so provides.*” Model Penal Code § 2.02 (emphasis added); *see also id.* § 2.02(9) cmt. (“Subsection (9) establishes the basic proposition that knowledge of the law defining the offense is not itself an element of the offense. This is the sense in which the maxim ‘ignorance of the law is no excuse’ is accurate and should be applied.”). Notably, the MPC denotes a potential exception to this general rule when some awareness as to the lawfulness of an act is required. We must further examine this exception.

¶ 16 The MPC contains its own definitions for various criminal offenses. Although the MPC does not contain a provision for assault and battery, it contains two offenses worded similarly to our Assault and Battery statute: Felonious Restraint and False Imprisonment. In relevant part, Felonious Restraint requires *knowingly* “restrain[ing] another *unlawfully* in circumstances exposing him to risk of serious bodily injury.” Model Penal Code § 212.2 (emphases added). False Imprisonment requires “*knowingly* restrain[ing] another *unlawfully* so as to

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

(b) Knowingly. A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) Recklessly. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

Model Penal Code § 2.02. Notably, the definitions of knowingly and recklessly are very similar to our own, with the knowingly definition matching the first two subsections of our own statute verbatim. *See* 4 CMC §§ 102(p), 103(m).

interfere substantially with his liberty.” *Id.* § 212.3 (emphases added). The MPC’s explanatory note explicitly states that “[b]oth offenses require knowledge of the unlawful nature of the restraint.” *Id.* § 212.3 (explanatory comments). As to Felonious Restraint, the MPC’s comments further explain the rationale that the unlawful act be done knowingly:

[w]ith respect to the unlawful character of the restraint, a knowledge requirement seems proper *if only to guard against convicting peace officers of felonious restraint because of defects in their arresting authority*. For these reasons, Section 212.2 expressly requires a minimum culpability of knowledge with respect to each element of the offense.

State v. Warfield, 5 P.3d 1280, 1283 (Wash. Ct. App. 2000) (quoting ALI § 212.2, cmt. at 243) (emphasis added). The MPC is thus instructive on what mens rea should be applied to a statute’s requirement of unlawfulness, particularly in terms of protecting correctional officers.

¶ 17 We now examine states’ applications of these principles from the MPC. Following the MPC’s lead, a substantial majority of jurisdictions have abandoned the common law approach to classifying mens rea in criminal statutes. *Voisine*, 136 S.Ct. at 2281 (2016); *see also United States v. Christy*, 916 F.3d 814, 845 (10th Cir. 2019) (adding that federal criminal statutes have also departed from common law terminology for mens rea).⁷ Further, many states have inserted a mens rea of knowingly to offenses that include an element of unlawfulness. *See, e.g., Williams v. State*, 54 P.3d 248, 250 (Wyo. 2002) (felonious restraint requiring knowingly restraining another unlawfully); *People v. McNeese*, 892 P.2d 304, 311 (Colo. 1995) (reading mens rea of knowingly into ‘make-my-day’ statute requiring unlawful entry into a dwelling); *People v. Oram*, 217 P.3d 883, 888 (Colo. App. 2009) (burglary statute requiring knowingly breaking unlawfully into a building). The principle that emerges from these cases is that, where the prosecution is unable to prove, either by direct or circumstantial evidence, that the defendant was aware his or her behavior was of an unlawful nature, the conviction cannot stand. *Williams*, 54 P.3d 248, 251 (Wyo. 2002); *see, e.g., State v. Weide*, 775 S.W.2d 255, 258 (Mo. Ct. App. 1989). These statutes controvert the standard that “usually, ‘ignorance of the law is no excuse.’ . . . [K]nowledge of the law is a statutory element of the crime[s] . . . without proof of which, defendants’ convictions cannot stand.” *Warfield*, 5 P.3d at 1284.

⁷ In transitioning to the MPC’s mens rea framework, courts have noted that although the two sets of terms do not perfectly overlap, “‘purpose’ corresponds loosely with the common-law concept of specific intent, while ‘knowledge’ corresponds loosely with the concept of general intent.” *Christy*, 916 F.3d at 845 (quoting *United States v. Bailey*, 444 U.S. 394, 405 (1980)); *Pierre v. Attorney General of the U.S.*, 528 F.3d 180, 190 (3d Cir. 2008); *see United States v. George*, 386 F.3d 383, 389 (2nd Cir. 2004) (“The use of ‘knowingly’ . . . typically signals that the statute only requires a finding of general intent . . .”).

¶ 18 In *State v. Hunt*, the Missouri Supreme Court considered whether a deputy sheriff was properly convicted of burglary for his forced entry into a residence. 451 S.W.3d 251, 254 (Mo. 2014). There, the sheriff kicked in the door to a trailer and entered without a search warrant. *Id.* at 255–56. The Missouri statute criminalizing first-degree burglary required in relevant part that a defendant “knowingly enter[] unlawfully or knowingly remain[] unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.” *Id.* at 257. Opining on the requirement that a defendant knowingly enter unlawfully, the *Hunt* court explained that the sheriff must have been aware that he had no privilege to enter the trailer. *Id.* It instructed that the analysis must focus on subjective belief: the sheriff must have actually known he did not have authority to enter—“not just that he merely had a mistaken belief or that he guessed wrong under the circumstances.” *Id.* at 257-58. Under the particular circumstances, “[t]he lawfulness of the entry center[ed] on whether [the sheriff] had a reasonable belief that the suspect was inside the residence when he entered.” *Id.* If the sheriff had seen or otherwise gotten indication that the suspect was inside, the suspect’s active arrest warrant would have provided the sheriff with the lawful authority to enter. *Id.* The court ultimately found “insufficient evidence from which reasonable jurors could find each element of the offense beyond a reasonable doubt,” reversing the conviction. *Id.*

¶ 19 With this information, we turn back to our Assault and Battery statute. The circumstances here require a mens rea of knowingly to be read into Section 1202(a) to ensure wrongful conduct is separated from otherwise authorized conduct, and to avoid convictions of correctional officers properly exercising of their authority. Because the element of unlawfulness involves the nature of the conduct or the attendant circumstances, a conviction under Section 1202(a) requires that the defendant be aware that his conduct is unlawful or that such circumstances exist to make his conduct unlawful. The requirement of a defendant’s knowledge of unlawfulness may be proven by direct or circumstantial evidence, but must be tailored to the specific facts of the particular case. Such a result harmonizes our prior analyses applying general intent with its newer and more flexible sister standard of knowingly as defined in the MPC.

¶ 20 As a result, we find the trial court did not conduct the proper inquiry in determining whether Camacho was guilty of Assault and Battery. The court incorrectly interpreted Section 1202(a) as applied to correctional officers, seemingly applying no mens rea to the element of unlawfulness. Had the court properly applied the statute, it would have considered whether Camacho was aware that he did not have authority to put Cavalear in a chokehold (if indeed he did not). In doing so, it would have delved further, for example, into Cavalear’s disobedience and whether his actions would indicate to Camacho that his authority as a DOC officer allowed a greater level of force. The court might have also further scrutinized its finding that Camacho knew he did something wrong by asking the other officers whether they saw him slap Cavalear, as well as Camacho’s own admission that he laughed at Cavalear following the chokehold. However, because the question before us is solely one of statutory interpretation

of Assault and Battery, we are constrained to reviewing the court's application of Section 1202(a). We find the court did so incorrectly. Accordingly, Camacho's conviction cannot stand.⁸

V. CONCLUSION

¶ 21 For the foregoing reasons, we VACATE Camacho's conviction.

SO ORDERED this 10th day of May, 2019.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

⁸ Camacho also raised a second issue on appeal, claiming Section 1202(a) is unconstitutionally vague as applied to his circumstances. Because we resolve Camacho's appeal based on our statutory interpretation of Section 1202(a), we need not consider his constitutional argument. *See Villanueva v. City Trust Bank*, 2002 MP 1 ¶ 15 n.5 ("Having confined our analysis strictly on the mortgage statutes, we need not consider [Appellant's] constitutional argument"); *cf. Palacios v. Yumul*, 2012 MP 12 ¶ 1 n.2 ("[A] 'longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.'").



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RAY A. CAMACHO,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0018-CRM
Superior Court No. 16-0122

JUDGMENT

Defendant-Appellant Ray A. Camacho appeals the trial court's Sentencing Order finding him guilty of Assault and Battery in violation of 6 CMC § 1202(a). For the reasons discussed in the accompanying opinion, the Court VACATES Camacho's conviction.

ENTERED this 10th day of May, 2019.

/s/ _____
GRETCHEN A. SMITH
Clerk of the Supreme Court