FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,
v.
JOAQUIN REYES CRISOSTOMO and
NEIL SABLAN TAISACAN,
Defendants,

NEIL SABLAN TAISACAN,
Defendant-Appellant.

Supreme Court Appeal No. 03-026-GA
Superior Court Criminal Case No. 00-0523A

OPINION

Cite as: *Commonwealth v. Taisacan,* 2005 MP 9

Argued and submitted on March 1, 2005
Saipan, Northern Mariana Islands
Decided June 23, 2005

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

DEMAPAN, Chief Justice:

¶ 1 Defendant-Appellant Neil Sablan Taisacan ("Taisacan") appeals from the trial court's orders convicting and sentencing him on felony charges after a jury acquitted him of misdemeanor charges in the same proceeding. Taisacan argues that the trial court erred because the conviction and sentencing violate the prohibition against double jeopardy and there was insufficient evidence to convict him. Because we find no double jeopardy violation and that there was sufficient evidence to convict Taisacan, the trial court's decision is AFFIRMED.

I.

¶ 2 Yong Tae Song ("Song") operates the Marianas Washland laundromat in Chalan Kanoa. On October 29, 2000, Song was robbed at about 11:00 p.m. behind his laundromat. One robber grabbed Song from behind. The other, holding a gun and wearing a baseball cap, faced him.

¶ 3 Lori Benhart ("Benhart") and Francisca Abraham ("Abraham") were outside Abraham's house in Chalan Kanoa at around 11:00 p.m. Abraham saw a car parked in front of the Life Restaurant. She then saw two or three men get out of the car and walk down a small road that leads to the Marianas Washland. Ten or fifteen minutes later, she saw them run back to the car. At that point, Abraham went inside her house.

¶ 4 Benhart witnessed a Toyota Celica, the same car seen by Abraham, drive through the neighborhood three times. The car parked near the Life Restaurant, and three men got out of the car and ran down the path toward the laundromat. She noticed that one of them carried a backpack that had a long object protruding from it. After twenty or thirty

minutes, she saw the men run back from the road leading to the laundromat. Benhart then witnessed two men get into the car and pull away, stopping near Abraham's house to pick up the third man. Benhart wrote down the license plate number of the car and gave it to the police. Benhart recognized a photograph of the car at trial.

¶ 5 Officer Patrick Maanao arrived on the scene and received the license plate number from Benhart. He relayed the license plate information and description of the car to other patrol cars.

¶ 6 Officer Michael Langdon went to the area where Song was robbed and saw the small road that leads from the laundromat to the neighborhood. He also received the license plate information over the police radio. Shortly after midnight, Officer Langdon saw the suspects' Celica parked near the Nang Ocha store in San Vicente. He radioed the location to other officers, parked behind the Celica, walked to the front of it, and placed his hand on the hood. He felt that the hood was very warm. Langdon looked inside the car and saw a black, wooden rifle stock on the floorboard of the passenger side.

¶ 7 Detective Jesus Cepeda and Officers Gordon Salas and Sylvanda Reyes arrived at the scene and went into a nearby poker establishment to try to locate the operator of the Celica. Detective Cepeda came out from the poker room with Joaquin Crisostomo ("Crisostomo"). Crisostomo said he was with his two brothers-in-law, Badobino Taisacan ("Badobino") and Neil Taisacan ("Taisacan"). Crisostomo denied operating the car. Detective Cepeda asked Crisostomo if he would consent to a search of the car. Crisostomo refused and said that the car belonged to his wife. Yvonne Taisacan, who lived with Crisostomo, testified that the Celica is registered to her mother, but that the car

was bought for her. She also testified that on the night of the crime, her brother Badobino woke her up and asked to borrow the car and she gave the keys to him.

¶ 8 Detective Cepeda questioned Badobino, who said that Crisostomo had picked up he and Taisacan at his mother's house and they arrived at the poker room at about 8:00 p.m.

¶ 9 Taisacan also came out of the poker room and Officer Langdon asked him if he was together with Crisostomo. Taisacan denied being with Crisostomo, and said he and Badobino had walked over from their house.

¶ 10 Detective Juan Santos conducted an inventory search of the Celica on October 30, 2000, the day after the crime took place. He found: a black wooden stock for a .22 rifle, the trigger housing upper receiver with magazine for a .22 rifle, ammunition for a .22 rifle, a black sixteen-inch barrel, a .38 caliber revolver, and .38 caliber ammunition. Song recognized the revolver seized from the Celica as the one pointed at his face during the attack. He also identified a hat seized from the car.

¶ 11 On October 30, 2000, the police arrested Taisacan, Badobino, and Crisostomo and later their pictures were taken. On November 27, 2000, Song was shown photos of several persons, including those of Taisacan, Badobino, and Crisostomo. Song identified Crisostomo in the pictures. He did not identify Taisacan or Badobino in the pictures. During the trial, however, Song pointed to Taisacan as the person who robbed him and held a gun on the night of the robbery.

¶ 12 Taisacan, Badobino, and Crisostomo were charged with the felonies: attempted murder, armed robbery, theft, assault with a dangerous weapon, two counts of unlawful carrying of a firearm, criminal use of a firearm, two counts of illegal possession of a firearm, possession of a prohibited firearm, possession of prohibited ammunition, and illegal pos-

session of ammunition, and misdemeanor charges of assault and battery, assault, and disturbing the peace. All of the felony charges were decided by the jury. The misdemeanor charges of assault and battery, assault, and disturbing the peace were decided by the trial judge.

¶ 13 On May 30, 2003, the jury found Taisacan not guilty of any of the felony charges.[1] The trial judge found Taisacan guilty of the misdemeanor charges of assault and battery, assault, and disturbing the peace.[2]

¶ 14 On June 30, 2003, Taisacan filed a motion to vacate the guilty verdict and dismiss the misdemeanor counts. He argued that based on "the Double Jeopardy Clause of the 5th Amendment to the U.S. Constitution, the court had no jurisdiction to enter a judgment inconsistent with that of the jury."[3] The trial court denied the motion.[4]

¶ 15 On August 8, 2003, the trial court sentenced Taisacan to one year imprisonment for assault and battery, six months for assault, and six months for disturbing the peace.[5] All terms were to run consecutively.[6] Taisacan timely filed this appeal.[7]

II.

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1 *Judgment of Conviction as to Defendant Neil Sablan Taisacan,* entered May 30, 2003.

2 *Id.*

3 *Defendant Neil Taisacan's Motion to Vacate Guilty Verdict and to Dismiss Misdemeanor Counts*, filed June 30, 2003.

4 *Order Denying Motion to Vacate and Dismiss*, entered July 31, 2003.

5 *Sentence and Commitment Order as to Defendant Neil Sablan Taisacan*, entered August 8, 2003.

6 *Id.*

7 Taisacan also filed a *Motion for Bail Pending Appeal* on May 6, 2005 and the Commonwealth filed a response to the motion. Since the Court is rendering this opinion, this motion is now moot.

¶ 16 This Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and 1 CMC § 3102(a).

III.

¶ 17 The issues presented and their respective standards of review are:

> 1. Whether the Double Jeopardy Clause of the C.N.M.I. Constitution[8] was violated when the trial judge convicted Defendant Taisacan for the misdemeanors assault and battery, assault, and disturbing the peace after the jury had found Taisacan not guilty of the felonies charged in the same trial. This issue is subject to *de novo* review.[9]
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> 2. Whether the offenses of assault and assault and battery are lesser-included offenses of disturbing the peace, and thus did the sentencing of Defendant Taisacan for assault and battery, assault, and disturbing the peace violate the Double Jeopardy Clause. These questions of law are reviewed *de novo*.[10]
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> 3. Whether the evidence was sufficient to convict Defendant Taisacan for assault and battery, assault, and disturbing the peace. "We review the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[11]

IV.

¶ 18 Taisacan argues that the prohibition against double jeopardy was violated because the trial judge found Taisacan guilty of the misdemeanor charges after the jury found him not guilty of the felony charges. According to Taisacan, assault and assault and battery are lesser-included offenses of disturbing the peace, thus his conviction for all three offenses

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[8] N.M.I. Const. art. I, § 4(e).

[9] *Commonwealth v. Oden*, 3 N.M.I. 186, 191 (1992).

[10] *Commonwealth v. Kaipat*, 4 N.M.I. 300, 303 n.10 (1995), *Oden*, 3 N.M.I. at 191.

[11] *Id.* at 191 (citations omitted).

also violates the prohibition against double jeopardy. Finally, Taisacan argues that there was insufficient evidence to find him guilty.

¶ 19 The Commonwealth argues that the prohibition against double jeopardy was not violated, since double jeopardy only applies when there are multiple trials and here there was only one. The Commonwealth also asserts that neither assault nor assault and battery are lesser-included offenses of disturbing the peace. Finally, the Commonwealth argues that there was sufficient evidence to find Taisacan guilty.

A. Double Jeopardy is Not Violated When the Jury Acquits and the Judge Convicts on Different Charges in Single Proceeding.

¶ 20 The Double Jeopardy Clause in our Constitution provides as follows: "[n]o person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution."[12]

¶ 21 This Court has previously explained that "[o]ur double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution."[13] The Double Jeopardy Clause of the U.S. Constitution is made applicable to the Commonwealth through the Covenant.[14] In our analysis of cases involving double jeopardy issues, we "resort to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy

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[12] N.M.I. Const. art. I, § 4(e).

[13] *Oden*, 3 N.M.I. at 206 (footnote omitted).

[14] *Oden*, 3 N.M.I. at 206 (footnote omitted). *See* COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, Section 501(a), 48 U.S.C § 1801 note, *reprinted in* CMC at *l*xxix, *et seq*.

provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause."[15]

¶ 22 It is important to note the distinction between double jeopardy and collateral estoppel. They are "related but analytically distinct": double jeopardy prohibits the reprosecution of the *same offense* and collateral estoppel deals with the relitigation of the *same factual issue*.[16] Clearly there was no double jeopardy issue here, since the statutes establish different offenses and Taisacan was only prosecuted once for each offense.

¶ 23 Nonetheless, the U.S. Supreme Court has held that collateral estoppel is provided under the Fifth Amendment prohibition against double jeopardy. "The ultimate question to be determined, then, . . . is whether [the] established rule of federal law [collateral estoppel] is embodied in the Fifth Amendment guarantee against double jeopardy. We do not hesitate to hold that it is."[17]

¶ 24 The *Ashe* court also explained that:

> [c]ollateral estoppel is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.[18]

¶ 25 Cases with similar procedural situations to the case at bar have upheld judge-determined convictions where juries acquitted defendants of separate charges. For exam-

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15 *Oden*, 3 N.M.I. at 206 (citations omitted).

16 *Copening v. United States*, 353 A.2d 305, 308 n.6 (D.C. 1976).

17 *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S. Ct. 1189, 1195, 25 L. Ed. 2d 469, 476 (1970).

18 *Ashe*, 397 U.S. at 443, 90 S. Ct. at 1194, 25 L. Ed. 2d at 475.

ple, in *Copening v. United States*,[19] the defendant was acquitted by a jury on the statutory charge but found guilty by the trial judge on each regulatory charge. The District of Columbia Court of Appeals held in *Copening* that the doctrine of collateral estoppel did not apply because the defendant had been "tried in a single proceeding, in which the adjudications as to his guilt were to be rendered by concurrent as opposed to successive triers."[20]

¶ 26 The District of Columbia Court of Appeals found that collateral estoppel did not apply to this situation:

> The existence of a prior judgment has been described as the "linchpin" of [*Ashe v. Swenson*], and subsequent case law has stressed the requirement of a previous trial. Because of the nature of the trial in this case, we conclude that there was no "prior adjudication" which would mandate application of the collateral estoppel doctrine.[21]

¶ 27 The *Copening* court did not accept appellant's argument that in effect there were two trials:

> It is appellant's position that merely because the jury announced its verdict on the statutory charge before the trial court pronounced judgment on the regulatory offenses, the jury's determinations constituted a "prior judgment" sufficient to compel collateral estoppel relief. We disagree. Both decisions were announced in the same proceedings, one immediately following the other. More importantly, despite the existence of two triers, the trial was in fact a single, unified hearing. The adversaries were required to present their cases but a single time. Both triers were exposed simultaneously to the same evidence and arguments, and they reached their respective conclusions through simultaneous, albeit, separate, deliberations. We therefore do not accept appellant's assertion that the existence of two triers rendered the proceeding, in effect, "two trials."[22]

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[19] *Copening*, 353 A.2d 305 (D.C. 1976).

[20] *Id.* at 310.

[21] *Id.* (citations and footnote omitted).

[22] *Id.* at 310-11 (citations and footnote omitted).

¶ 28 In the case at bar, Taisacan emphasized that the trial judge convicted him of the misdemeanor charges after the jury had handed down its findings of not guilty on the felony charges. This detail is insignificant, for trial judges could simply enter their findings of guilt or innocence before a jury's findings and avoid this scenario. But as explained in *Copening*, timing should not affect the applicability of collateral estoppel:

> The trial judge correctly noted that he would have been able to announce his conclusions as to the regulatory offenses before the jury returned its verdict . . . . The answer, of course, is that the traditional concern of the collateral estoppel doctrine is not with the outcome of a decisional race between different triers, but with the need to protect a party from the rigors of twice litigating the same issue.[23]

The court framed the issue as "whether the collateral estoppel principles enunciated in *Ashe v. Swenson* (and its progeny) should be extended to govern the procedurally unique situation in which several criminal charges against the same defendant have been allocated between two triers for concurrent adjudication upon virtually identical evidence."[24] The court concluded, "that they should not."[25]

¶ 29 This rationale was also adopted recently by the Supreme Court of Connecticut in *Connecticut v. Knight*.[26] "We find the reasoning of *Copening* persuasive, and adopt it in the present case."[27] The *Knight* court concluded that "the defendant's criminal trial was a single proceeding, and therefore that the doctrine of collateral estoppel does not apply."[28]

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[23] *Id.* at 310 n.10 (*citing Ashe*, 397 U.S. at 445-47, 90 S. Ct. at 1195-96, 25 L. Ed. 2d. at 476-78; *Green v. United States*, 355 U.S. 184, 187-90, 78 S. Ct. 221, 223-25, 2 L. Ed. 2d 199, 204-06 (1957)).

[24] *Id.* at 312.

[25] *Id.*

[26] *Connecticut v. Knight*, 835 A.2d 47 (Conn. 2003).

[27] *Id.* at 52.

[28] *Id.* at 53.

¶ 30 Similar issues were recently brought before the Court of Appeals of Maryland in *Galloway v. Maryland*,[29] which Taisacan relies on in support of his argument. His reliance is misplaced, as *Galloway* found the trial court "created improper inconsistent verdicts"[30] and was not decided on double jeopardy grounds.

¶ 31 The court made this clear, stating: "[w]hile we do not necessarily agree that double jeopardy violations can only occur in subsequent litigation, *under the facts of this case we shall not directly rely on double jeopardy principles but on Maryland common law principles*."[31] The court reiterated this point later in the opinion: "[w]e shall reverse for other reasons, that we shall hereafter discuss. In doing so, *we will not directly reach the constitutional issue of double jeopardy or constitutional collateral estoppel*."[32]

¶ 32 Taisacan also cites several Title VII cases in support of his argument that judges are bound by jury determinations of liability and cannot reach inconsistent conclusions. In those cases, the plaintiff has a legal right to a jury trial for the legal claim under 28 U.S.C. § 1983 and the jury decides the legal issues concerning damages. The judge rules on the equitable Title VII claims concerning reinstatement and back pay based on the findings of the jury.

¶ 33 These cases are unpersuasive, since in the case at bar there were no findings of fact made by the jury that the trial judge was bound to. Taisacan was acquitted of felonies that have elements that differ from the misdemeanors he was convicted of, and since the jury was only asked to find Taisacan "guilty" or "not guilty" of the offenses it is impossi-

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[29] *Galloway v. Maryland*, 809 A.2d 653 (Md. 2002).

[30] *Id.* at 675.

[31] *Id.* at 660 (emphasis added).

[32] *Id.* at 662 (emphasis added).

ble to determine what factual findings were made by the jury. Furthermore, accepting Taisacan's position would adversely affect the independence of the judge's determination of guilt or innocence for minor criminal offenses that are tried by judges rather than juries.[33]

¶ 34 We hold that there was no double jeopardy violation here, where the trial judge convicted Taisacan and the jury acquitted him on different charges in the same proceeding.

B. Assault and Assault and Battery Are Not Lesser-Included Offenses of the Crime of Disturbing the Peace.

¶ 35 This Court has stated, "[a]n offense is a lesser included offense if its elements 'are a subset of the charged offense.' This determination is accomplished by a textual comparison of the pertinent statutes."[34]

¶ 36 Thus a textual comparison of the disturbing the peace, assault, and assault and battery statutes is necessary. The text of the relevant statutes read as follows:

> Disturbing the Peace:
>
> (a) 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.
>
> (b) A person convicted of disturbing the peace may be punished by imprisonment for not more than six months.[35]
>
> Assault:
>
> (a) A person commits the offense of assault if the person unlawfully offers or attempts, with force or violence, to strike, beat, wound, or to do bodily harm to another.

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[33] [C]alling for a jury trial upon all of the charges not only would be undesirable in that it would usurp the trial court's traditional authority over minor regulatory offenses, but it also would contravene the specific [D.C.] statutory command that minor offenses shall be tried by a judge rather than before a jury.
Copening, 353 A.2d at 312-13 (citation omitted).

[34] *Kaipat*, 4 N.M.I. at 303 (citations and footnotes omitted).

[35] 6 CMC § 3101.

> (b) A person convicted of assault may be punished by imprisonment for not more than six months.[36]
>
> Assault and Battery:
>
> (a) 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.
>
> (b) A person convicted of assault and battery may be punished by imprisonment for not more than one year.[37]

¶ 37 In *Commonwealth v. Kaipat*, we held that the crime of assault as well as assault and battery are alternative lesser included offenses of assault with a dangerous weapon.[38] There, a textual comparison of the relevant statutes made it clear that "[e]ach of these charges contains a dispositive set of elements which is a subset of one of the alternative sets of elements of assault with a dangerous weapon."[39] These statutes contained nearly identical language, with the following exception: "[a]dd to either [assault or assault and battery] the elements of the use of a dangerous weapon and you have the charge of assault with a dangerous weapon."[40]

¶ 38 This is clearly not the case here. As evidenced above, the elements of assault are not a subset of disturbing the peace. Nor are the elements of assault and battery. The crime of assault is committed "if the person unlawfully offers or attempts, with force or violence, to strike, beat, wound, or to do bodily harm to another."[41] Assault and battery is

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[36] 6 CMC § 1201.

[37] 6 CMC § 1202.

[38] *Kaipat*, 4 N.M.I. at 303.

[39] *Id.*

[40] *Id.* at 303-04.

[41] 6 CMC § 1201.

committed "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."[42] The elements constituting disturbing the peace are quite different, for a person commits this crime 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."[43]

¶ 39 Taisacan argues that the elements of disturbing the peace should be read broadly, stating: "[t]he phrase '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' is a very broad act which includes every crime that breaches peace."[44] Under this rationale, a conviction for nearly every crime would also constitute disturbing the peace, thus rendering a conviction for disturbing the peace useless. Furthermore, "[w]e are to view these statutory provisions with an aim 'to effect the plain meaning of [their] object.'"[45] Thus, such a broad interpretation of the statutory language as suggested by Taisacan is impermissible and it is evident that assault as well as assault and battery are not lesser included offenses of disturbing the peace.

¶ 40 In addition, the crime of disturbing the peace requires "willful" conduct.[46] Assault and assault and battery under CNMI law must be intentional, but neither offense requires

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[42] 6 CMC § 1202.

[43] 6 CMC § 3101.

[44] *Opening Brief of Defendant-Appellant, Neil Sablan Taisacan* at 16.

[45] *Kaipat*, 4 N.M.I. at 304 (*quoting* 6 CMC § 104(d)).

[46] 6 CMC § 3101.

willful conduct.[47] The United States Court of Appeals for the Third Circuit has analyzed similar statutes and likewise held:

> [Disturbing the Peace] involves willful or malicious conduct. An assault in the third degree under the Virgin Islands Code must be intentional, but the offense does not contain this specification of willful or malicious conduct. Thus, an element of the [Disturbing the Peace statute] is not present in the [Assault statute], such that under Virgin Islands law, Disturbing the Peace is not a lesser included offense of assault with a deadly weapon.[48]

¶ 41 Furthermore, the offenses have "totally different aggrieved parties (the public as opposed to an individual) . . . ."[49] Within the Commonwealth Code, assault and assault and battery fall under "Crimes Against Persons and Property," while disturbing the peace falls under "Offenses Against Public Peace, Safety and Morals." An analysis of similar statutes was performed in *Parham v. City of Opelika* and there the court held: "[Assault] is catalogued under the heading 'offenses involving danger to the person,' while disorderly conduct falls under 'offenses against public order and safety.' Therefore, we find that disorderly conduct is not a lesser included offense of assault in the third degree."[50] We reach the same conclusion here with regard to assault and assault and battery; they are not lesser included offenses of disturbing the peace.

¶ 42 The Commonwealth incorrectly asserts that a crime (in this case, assault and battery) cannot be a lesser-included offense if it has a higher maximum penalty than the crime it is argued to be included in (in this case, disturbing the peace). Assault and Battery, 6 CMC

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47 6 CMC §§ 1201, 1202.

48 *Virgin Islands v. Parrilla*, 550 F.2d 879, 882 (3d Cir. 1977). The court in *Parrilla* noted earlier in the opinion that assault with a deadly weapon under the Virgin Islands Code constitutes assault in the third degree. *Id*. at 880 n.3 (*quoting* 14 V.I. CODE ANN. § 297 (1977)).

49 *Parham v. City of Opelika*, 412 So. 2d 1268, 1269 (Ala. Crim. App. 1982).

50 *Id*.

§ 1202, is punishable "by imprisonment for not more than one year," 6 CMC § 1202(b), and a fine not to exceed $1,000. 6 CMC § 4101(c). Disturbing the Peace is punishable "by imprisonment for not more than six months," 6 CMC § 3101(b), and a fine not to exceed $500. 6 CMC § 4101(d). Thus, the Commonwealth argues, "Assault and Battery is a greater offense than Disturbing the Peace."[51] As stated above, the proper inquiry to determine whether an offense is a lesser-included offense is if its elements "are a subset of the charged offense," not the gravity of the penalty.

¶ 43 As explained, *supra*, assault and assault and battery are not lesser-included offenses of disturbing the peace. Thus, the trial court's sentencing Taisacan for assault, assault and battery, and disturbing the peace did not constitute a double jeopardy violation.

C. There Was Sufficient Evidence to Convict Taisacan.

¶ 44 Taisacan argues that there was insufficient evidence to convict him. To make this determination, "[w]e review the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[52]

¶ 45 There was sufficient evidence to convict Taisacan. The victim identified Taisacan at trial as one of the men that attacked him. Furthermore, Taisacan was with the other co-defendants in a poker establishment shortly after the crimes were committed, and their stories did not match up as to how they got there. The car they drove matched the license plate number an eyewitness to the getaway gave to the police. At trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car. Viewing this evidence

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[51] *Appellee's Response Brief on Appeal* at 8.

[52] *Oden*, 3. N.M.I. at 191 (citations omitted).

in the light most favorable to the prosecution, the trial judge properly convicted Taisacan for the misdemeanor charges.

V.

¶ 46 There was no double jeopardy violation because there was only one proceeding. Furthermore, sentencing did not violate the prohibition against double jeopardy because the elements of assault and assault and battery are not subsets of disturbing the peace. There was sufficient evidence to convict Taisacan.

¶ 47 For the foregoing reasons, the trial court's orders are AFFIRMED.

SO ORDERED this 23rd day of June 2005.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
ALEXANDRO C. CASTRO
Associate Justice

/s/_____
JOHN A. MANGLONA
Associate Justice