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

---

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,**
Plaintiff-Appellee,

**v.**

**JOSEPH M. INOS, JR.,**
Defendant-Appellant.

---

**SUPREME COURT NO. 2011-SCC-0008-CRM**
SUPERIOR COURT NO. 10-0178B

---

**OPINION**

**Cite as: 2013 MP 14**

Decided November 8, 2013

Eden Schwartz, Assistant Public Defender, and Daniel Guidotti, Assistant Public Defender, Office of the Public Defender, Saipan, MP, for Defendant-Appellant Joseph M. Inos
James McAllister, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem.

BELLAS, J.P.T.:

¶ 1 Appellant-Defendant Joseph M. Inos ("Inos") appeals his conviction for disturbing the peace, 6 CMC § 3101, claiming the statute is void for vagueness as applied to him because it did not put him on notice that his actions disturbed the peace. For the following reasons, we AFFIRM Inos' conviction for disturbing the peace.

## I. Factual and Procedural Background

¶ 2 P.M.[1], a minor female, worked as a summer intern in a government office supervised by Inos. About two weeks into the internship, Inos asked P.M. and another minor female intern to come into his office and relax. He proceeded to tell the second intern to rest on his office couch while he took P.M. to a nearby store to buy snacks for both females.

¶ 3 Inos took a direct route to the store, but returned to the office via a long, gravel road enclosed by dense jungle on both sides. P.M. inquired about the detour, at which point Inos asked if P.M. wanted to go back to work right away. She said, "no," and that she was "just asking." Inos then explained that he wanted to show her some houses.

¶ 4 While driving through this road, Inos asked about the letter "B" drawn on P.M.'s left hand and then rubbed the drawing with his hand. P.M. replied that it stood for "boyfriend" and pulled her hand away. Shortly after, Inos again grasped P.M.'s hand, telling her she had soft hands. As before, P.M. withdrew her hand. Inos also asked whether she enjoyed partying, drinking, or smoking ice.

¶ 5 After returning to the office, the two walked into Inos' office where P.M. gave the second intern, who was still resting there, a drink. Inos then asked the second intern to leave, which both she and P.M. did.

¶ 6 But the girls soon returned to pick up P.M.'s belongings. When they did, Inos again asked the second intern to leave. After the second intern left, but before P.M. could leave, Inos locked his office door and told her to sit down. P.M., however, said she wanted to leave. Inos repeated that she sit down, but P.M. proceeded to leave anyway. As she was walking out, Inos reached up and touched her in the area of her buttocks.

¶ 7 Following these events, the Commonwealth charged Inos with: (1) assault and battery; (2) disturbing the peace; (3) misconduct in public office; and (4) false arrest. The trial court convicted Inos of disturbing the peace, but acquitted him of the other charges.

¶ 8 Inos timely appeals that conviction.

---

[1] We use initials because P.M. was a minor at the time of the incident.

## II. Jurisdiction

¶ 9 We have jurisdiction over Superior Court final judgments and orders, NMI CONST. art. IV, § 3; 1 CMC § 3102(a), as well as all criminal actions in the Commonwealth. NMI CONST. art. IV, § 2; 1 CMC § 3202.

## III. Standard of Review

¶ 10 We review constitutional issues de novo. *Commonwealth v. Mundo*, 2004 MP 13 ¶ 13. In so doing, we preserve the constitutionality of statutes whenever possible, *In re Seman*, 3 NMI 57, 73 (1992), and may affirm for any reason supported by the record. *See Villagomez v. Manibusan*, 2013 MP 6 ¶¶ 31, 39 (reversing a finding that implied permission is a question of law, but affirming the judgment because implied permission existed on other grounds); *see also Brightwell v. Lehman*, 637 F.3d 187, 191 (3rd Cir. 2011); *10 Ellicott Square Court Corp. v. Mt. Valley Indem. Co.*, 634 F.3d 112, 125 (2d Cir. 2010) (reiterating that appellate courts "may 'affirm a decision on any grounds supported in the record, even if it is not one on which the trial court relied'") (quoting *Thyroff v. Nationwide Mut. Ins. Co.*, 460 F.3d 400, 405 (2d Cir. 2006)).

## IV. Discussion

¶ 11 This case presents a single issue:[2] whether the disturbing-the-peace statute is so vague as applied to Inos that it violates the Due Process Clause in article I, section 5 of the NMI Constitution.[3]

¶ 12 To be impermissibly vague as applied, the statute must be so vague that a reasonable person would not know whether the defendant's conduct might violate the statute. *Mundo*, 2004 MP 13 ¶ 18. In making such a determination, we start with the statutory language, which we interpret according to its plain meaning. *Aurelio v. Camacho*, 2012 MP 21 ¶ 15. The plain meaning may be ascertained with the help of dictionaries. *See Dep't of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 19 (consulting a dictionary to clarify the meaning of "responsibilities").

¶ 13 The Commonwealth's disturbing-the-peace statute criminalizes unlawful acts done willfully that either unreasonably annoys or disturbs others, or provokes a breach of peace:

> A person commits the offense of disturbing the peace if he or she unlawfully and willfully does any act [that] unreasonably annoys or disturbs another person so that the

---

[2] In the briefs, the parties also discussed whether the statute was void on its face, but Inos expressly limited himself to an as-applied challenge at oral argument. Oral Argument at 9:49:02-46, *Commonwealth v. Inos*, 2011-SCC-0008-CRM (NMI Sup. Ct. June 28, 2013). As a result, we do not reach whether the statute is unconstitutional on its face. *In re San Nicolas*, 2013 MP 8 ¶ 21 (refraining from answering a constitutional question because the parties conceded it); *Palacios v. Yumul*, 2012 MP 12 ¶ 1 n.2 (requiring courts to "'avoid reaching constitutional questions in advance of the necessity of deciding them.'") (quoting *Camreta v. Greene*, 563 U.S. __; 131 S. Ct. 2020, 2031; 179 L. Ed. 1118, 1132 (2011)).

[3] The Due Process Clause of the United States Constitution may also be relevant, but the parties failed to adequately address it and, therefore, we do not reach it. *See Matsunaga v. Cushnie*, 2012 MP 18 ¶¶ 13, 15, 25 (waiving several claims because they were insufficiently developed).

> other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace.

6 CMC § 3101.

¶ 14 In light of the statute's seemingly spacious sweep, the thrust of Inos' argument is two-fold: The statute's lack of specificity effectively deprived him of notice that his behavior might violate the statute, Inos Opening Br. 3, and that, in fact, his behavior "was not unreasonable." Inos Reply Br. 2. We disagree.

¶ 15 The terms "annoy" and "disturb," possess commonly understood meanings. "Annoy," for example, means to "'irritate, especially by continued or repeated acts; to weary or trouble; to irk; to offend.'" *State v. Hoffman*, 695 A.2d 236, 244 (N.J. 1997) (citing BLACK'S LAW DICTIONARY 89 (6th ed. 1990)). "Disturb," on the other hand, means "'to break up or destroy the tranquility or settled state of [someone.]'" *State v. Linares*, 232 Conn. 345, 358, 655 A.2d 737 (Conn. 1995) (quoting AMERICAN HERITAGE DICTIONARY (1981)).

¶ 16 Our case law further illustrates what type of behavior unreasonably annoys or disturbs someone such that it disturbs the peace. In *Commonwealth v. Atalig*, 2002 MP 20, for example, the defendant engaged in a series of maneuvers over the course of a business conference to isolate one of his female employees, and then subjected her to repeated sexual advances, both verbal and physical, in her hotel room. *Id.* ¶¶ 5-17. Meanwhile, in *Commonwealth v. Mundo*, 2004 MP 13, the defendant arrived at a bar already drunk and then proceeded to take customers' food, beg for drinks, get in a loud argument, which included "picking up a chair in a threatening way," and then refused to leave even after both the bar owner and the police told him to go. *Id.* ¶¶ 2-6. As these cases highlight, far from being vague, the terms "annoy" and "disturb" provide a comprehensible normative standard so that a reasonable person will know its meaning. Under that normative standard, to unreasonably annoy or disturb someone requires more than the commonplace irritations people encounter in the normal course of life. It requires loud noise, the threat of violence, repeated and socially inappropriate sexual advances, or other behavior so unreasonably annoying or disturbing as to warrant criminal consequences.

¶ 17 The statute is further constrained by a bedrock principle of criminal law: *mens rea*. Unqualified acceptance of this principle, which prohibits the imposition of criminal penalties unless a person not only commits an act, but does so with a guilty mind, stretches back at least to the English common law. *Morissette v. United States*, 342 U.S. 246, 251 (1952). In its modern form, a general presumption exists that the specified *mens rea* applies to each element of any non-public welfare offense,[4] *Staples v. United*

[4] Not all offenses require a *mens rea*. These offenses are typically regulatory in nature with the purpose of protecting public health and safety – such as regulations governing traffic, food, or drugs. They also possess light penalties involving little-to-no moral or reputational opprobrium. Because these offenses regulate public welfare and impose criminal sanctions without a finding of improper intent, they are often referred to as public-welfare or strict-liability offenses. Outside these limited circumstances, however, strict liability is "disfavored." *United States v. United States Gypsum Co.*, 438 U.S. 422, 438 (1978).

*States*, 511 U.S. 600, 619 (1994); MODEL PENAL CODE § 2.02 Comment at 229 (underscoring that "unless some element of mental culpability is proved with respect to each material element of the offense, no valid criminal conviction may be obtained").

¶ 18 In keeping with this presumption, the United States Supreme Court has repeatedly read a state-of-mind component into an offense or element(s) of an offense, even when the statutory definition did not provide such terms. *See, e.g.*, *Flores-Figueroa v. United States*, 556 U.S. 646, 657 (2009) (finding a *mens rea* requirement existed for the relevant elements expressly lacking such a requisite under a federal bank robbery statute); *Staples*, 511 U.S. at 619 (holding that a knowledge requirement must be imputed to the entire offense). These cases operated on the premise that mere "omission . . . of intent [in the statute] will not be construed as eliminating that element from the crimes denounced," because legislatures are presumed "to have legislated against the background of our traditional legal concepts which render intent a critical factor." *United States v. United States Gypsum Co.*, 438 U.S. 422, 437 (1978). As a result, "absence of contrary direction [will] be taken as satisfaction with widely accepted [concepts], not as a departure from them." *Id.* (quoting *Morissette*, 342 U.S. at 263); *see also id.* at 438 (highlighting the narrow circumstances under which strict-liability offenses are appropriate before concluding: "Certainly far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement").

¶ 19 Flowing from those principles, in *Atalig*, the first case to analyze 6 CMC § 3101, we observed in dicta that disturbing the peace is a general-intent crime.[5] *Atalig*, 2002 MP 20 ¶ 73. We did so by noting that the statute lacked a *mens rea* regarding "annoy" and "disturb," *see id.* ¶¶ 67, 73, and then suggested the general rule that "[w]hen a criminal statute is silent as to intent, the default is general intent," meaning that disturbing the peace was a general-intent crime. *Id.* ¶ 67 (citing *United States v. Hernandez-Landaverde*, 65 F. Supp. 2d 567, 572 (S.D. Tex. 1999)).

¶ 20 Against that legal background, there is no evidence suggesting that the legislature meant to criminalize all acts willfully done, whether or not the person had a guilty mind towards the result of that act. Nor is this the type of offense that would justify the discarding of a *mens rea*. We, therefore, believe the legislature intended proof of some level of *mens rea* to establish the challenged behavior was "unreasonably annoy[ing] or disturb[ing]." 6 CMC § 3101. Into that absence of an express *mens rea*, we infer general intent. *Atalig*, 2002 MP 20 ¶ 67. As a result, we conclude that to disturb the peace pursuant to 6 CMC § 3101, a person must willfully and unlawfully commit an act the person either knew or should

---

[5] During the Trust Territory era, courts likewise required general intent as an implied element of a disturbing-the-peace statute nearly identical to 6 CMC § 3101. *See Oingerang v. Trust Territory*, 2 TTR 385, 388 (1963) (stating, in support of the prosecutor's argument that TTC was a general intent crime, that words "likely to bring about an altercation," even if uttered without specifically intending to produce an altercation, could disturb the peace).

have known would annoy or disturb a reasonable person under the circumstances. That annoyance or disturbance, in turn, must be more than the typical annoyances and disturbances resulting from the friction of living in a community. It must instead be of sufficient magnitude that a reasonable person would conclude the acts warranted criminal consequences.

¶ 21 Applying that test to whether Inos knew or should have known that his conduct would be annoying or disturbing to a reasonable person, we look at the surrounding circumstances. These circumstances included that Inos exploited his supervisorial authority over P.M., an underage intern, to engineer a trip to a convenience store that isolated her in his personal vehicle; then returned using a different and remote road. While driving down that secluded road, Inos took and rubbed P.M.'s hand – an intimate act – and asked her about the meaning of her tattoo (even though Inos had no reason to grab P.M.'s hand if he simply meant to engage in conversation about the tattoo). P.M. took her hand away, but Inos proceeded to grab it again, commenting that she had soft hands and then asking her inappropriate and suggestive questions about whether she enjoyed partying, drinking, or smoking ice. Back at work, Inos again isolated P.M. in his office, locked the door, and told her to remain after the other intern already left. When P.M. tried to leave, Inos reached out, and made yet another offensive contact in the area of her buttocks.

¶ 22 Under the totality of these facts, the question then is whether the disturbing-the-peace statute gave Inos adequate notice that his behavior would unreasonably annoy or disturb a reasonable person. We hold it did. A reasonable subordinate employee (and even more so an underage subordinate) will likely feel uncomfortable when a supervisor engages in acts with him or her that contain sexual undertones. When suggestive behavior of the kind that occurred here happens repeatedly in a short period, that discomfort over unwanted touches, inappropriate questions, and ongoing efforts to get the employee alone reasonably escalates to annoyance or disturbance. As a result, the type of touches, the tenor of the questions, and P.M.'s reactions to them, as well as the settings (the workplace and a drive along a remote road), should have put Inos on notice that his conduct would annoy or disturb a reasonable person. We, therefore, find that the statute is not vague as applied to Inos because he should have been on notice that his repeated efforts to engage in inappropriate and intimate physical contact with a subordinate minor intern might violate the statute.

## V. Conclusion

¶ 23 For the foregoing reasons, we AFFIRM Inos' conviction for disturbing the peace.

SO ORDERED this 8th day of November, 2013.

/s/
F. PHILIP CARBULLIDO
Justice Pro Tem

/s/
ROBERT J. TORRES
Justice Pro Tem

/s/
TIMOTHY H. BELLAS
Justice Pro Tem