FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Plaintiff/Appellee,

v.

FELIPE Q. ATALIG,

Defendant/Appellant.

OPINION

Cite As: *Commonwealth v. Atalig,* 2002 MP 20

Appeal Nos. 00-025/00-036(Consolidated)
Criminal Case No. 99-0098E

Argued on November 16, 2001
Decided September 13, 2002

Counsel For Appellant:
Michael W. Dotts, Esq.
O'Connor Berman Dotts
& Banes
Second Floor, Nauru Bldg.
P.O. Box 501969
Saipan, MP 96950

Counsel For Appellee:
Marvin J. Williams
Assistant Attorney General
Office of the Attorney General
Caller Box 10007
Criminal Division,
Civic Center Complex
Saipan, MP 96950

BEFORE: VIRGINIA SABLAN-ONERHEIM, Justice *Pro Tem*pore, FRANCES TYDINGCO-GATEWOOD, Justice *Pro Tempore*, STEVEN S. UNPINGCO, Justice *Pro Tempore*

SABLAN-ONERHEIM, Justice *Pro Tem*.:

¶1 Appellant Felipe Q. Atalig [hereinafter Atalig] appeals the trial court's Order of June 23, 2000 [hereinafter Order] finding Atalig guilty of one count of Assault and Battery,[1] one count of Disturbing the Peace, and two counts of Misconduct in Public Office, and the trial court's Sentencing Order of September 27, 2000 [hereinafter Sentencing Order]. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3103.[2] We affirm.

ISSUES PRESENTED AND STANDARD OF REVIEW

¶2 The issues presented are as follows:

I. Did the trial court correctly apply 6 CMC § 3101(a), when it found Atalig guilty of Disturbing the Peace? This issue presents a question of law and is reviewed *de novo*. *Commonwealth v. Oden*, 3 N.M.I. 186, 191 (1992).

II. Did the court violate double jeopardy by convicting Atalig for both Disturbing the Peace and for Assault and Battery? This issue presents a question of law and is reviewed *de novo*. *Id*.

---

[1] The trial court's June 23, 2000, Order contains a obvious typographical error on pages 6 and 8 where it identifies Atalig as violating 6 CMC § 1201(a) instead of 6 CMC § 1202(a).

[2] Incorrectly identified as "6 CMC 3102" in Opening Br. of Appellant Felipe Q. Atalig at 1.

III. Whether the trial court misapplied 6 CMC § 3202 in finding Atalig guilty of Misconduct in Public Office? This issue presents a question of law and is reviewed *de novo*. *Oden*, 3 N.M.I. at 191.

IV. Whether the trial court violated the confrontation clause by limiting Atalig's questioning of Ms. Mina L. Muna regarding her pending Equal Employment Opportunity Commission claims against him? This issue presents a question of law and is reviewed *de novo*. *Id.*

V. Whether the trial court improperly admitted hearsay evidence? This issue is reviewed under the abuse of discretion standard. *Tropical Isles Cable TV Corp. v. Mafnas*, App. No. 97-015 (N.M.I. Sup. Ct. Sept. 22, 1998) at 2.

VI. Did the trial court misunderstand intent as it relates to the Assault and Battery and Disturbing the Peace charges? This issue presents a question of law and is reviewed *de novo*. *Commonwealth v. Palacios*, 4 N.M.I. 330, 334 (1996).

PROCEDURAL BACKGROUND

¶3 This criminal matter proceeded to bench trial on June 14, 2000, in Rota. The trial ended on June 16, 2000, and the trial court found Atalig guilty of one count of Assault and Battery, one count of Disturbing the Peace, and two counts of Misconduct in Public Office. *See* Appellant's Excerpts of Record [hereinafter E.R.] at tab 1 (Order). On September 27, 2000 a Sentencing Order was filed outlining the court's sentence as pronounced on September 25, 2000. *See* E.R. at tab 2 (Sentencing Order). Atalig filed a timely notice of appeal on September 26, 2000.

FACTUAL BACKGROUND

¶4 Unless otherwise noted, the following facts are from the Order which is the subject of this proceeding:

¶5 On or before March 10, 1999, Ms. Mina L. Muna [hereinafter Muna] was informed that she was to go on a trip to Rota with other employees of the Coastal Resources Management Office [hereinafter CRM] for the purpose of attending functions related to the Rota Beautification Project. These functions included a "Trash-a-thon" and an official dinner. Employees attending the functions on behalf of CRM included the director of CRM, Atalig, Muna, Mr. Martin B. Castro, and Mr. Joaquin D. Salas. Atalig, as the director of CRM, made the decision as to which CRM employees would travel to Rota. Order at 1.

¶6 Muna was informed that arrangements had been made for her to stay at the Rota Resort and Country Club [hereinafter Rota Resort] in a suite with two males and a female. Muna expressed, to another CRM employee, that she was not comfortable staying in a suite with people she did not know. Muna knew, however, that Mr. Martin B. Castro would be staying at the Sunrise Hotel and therefore intended to make arrangements to stay at that same hotel. Order at 1-2.

¶7 On March 11, 1999, Muna encountered Atalig at the airport on Saipan prior to departing for Rota. Atalig informed Muna that he was scheduled to arrive on Rota approximately thirty minutes after Muna's arrival on Rota. Order at 2.

¶8 Muna arrived on Rota in the early evening and awaited transportation from the airport to the Sunrise Hotel. Muna was offered transportation to the Sunrise Hotel from an employee of the Office of the Mayor of Rota, but declined as she knew Atalig would arrive within the hour. Order at 2.

¶9 Atalig arrived approximately one hour after Muna and upon seeing her took it upon himself to rent a car for her use on Rota. The trial court found that the act of

renting a car for Muna was not part of a preconceived plan but rather was a spontaneous act performed after learning that Muna did not have transportation. The trial court did find, however, that later in the evening Atalig concocted a plan to separate Muna from the other CRM employees, specifically Mr. Martin Castro, who was staying at the Sunrise Hotel and that the reason for this separation was for his own improper purposes. Order at 2.

¶10 In separate rental cars, Atalig led Muna to the Sunrise Hotel, whereupon Atalig made arrangements for Muna to view a room. Muna indicated that the room was acceptable, yet Atalig insisted that they proceed to the Rota Resort to view alternative accommodations. The trial court found that Atalig specifically intended to give Muna the impression that she had a choice of accommodations, even though he was in fact making the choice that she should stay at the Rota Resort, away from Mr. Martin B. Castro and other CRM employees. Order at 2.

¶11 While at the Sunrise Hotel, Atalig made arrangements for a private dinner to be served later that evening at the Sunrise Hotel. Atalig had inquired whether Muna had tried the local food on Rota and she had responded that she had not. The trial court found that it was not improper for Atalig to arrange to have dinner with an employee but that it was improper to do as part of a greater plan to isolate Muna from the other employees for improper purposes. Order at 2.

¶12 Atalig and Muna then proceeded in Atalig's rental car, to the Rota Resort and parked in front of the hotel restaurant and bar. Atalig and Muna went inside and each ordered a drink before proceeding, by car, to the area immediately next to the lobby and reservation desk. Atalig then left Muna in the car while he went to the reservation desk.

Atalig returned and handed Muna an envelope containing a room key. The room key had originally been reserved for Lieutenant Governor Jesus Sablan, as indicated by the name on the envelope. Muna told Atalig that she was unsure if it would be proper to stay in a room reserved for the Lieutenant Governor, but Atalig reassured her that it would be okay. The trial court found that Atalig improperly used his position as Director of CRM to obtain the room for Muna for the purpose of separating her from other CRM employees, specifically Mr. Martin B. Castro. Order at 3.

¶13 Atalig and Muna then went to the room and Muna indicated that the room was acceptable even though she preferred the Sunrise Hotel because that was where Mr. Martin B. Castro was staying. Order at 3.

¶14 Atalig and Muna then returned to the Sunrise Hotel where a meal had been prepared for them at Atalig's expense. The meal was presented to Atalig and Muna in a small, private, "Totot Dining" bungalow away from the main dining area. Atalig and Muna were seen eating at the bungalow by a Mr. Joseph S. Inos. Muna testified that after the meal was finished and the two of them were leaving the bungalow, Atalig turned off the light and attempted to kiss her and place his tongue in her mouth. Atalig, however, testified that such an incident did not occur. Order at 3.

¶15 Atalig and Muna then proceeded in the same rental car to two poker parlors and a karaoke bar. At the karaoke bar, Atalig sang two songs dedicated to Muna. Atalig and Muna then left the karaoke bar and proceeded in a car driven by Atalig to the Sunset Villa where Atalig ordered some more drinks. Atalig and Muna did not stay long at the Sunset Villa because Atalig believed that there were "too many people," and so they left the Sunset Villa and proceeded to the Rota Resort. Muna testified that on the way to the

Rota Resort, Atalig twice took Muna's hand and placed it on his mid-thigh area. Atalig, however, testified that no such incident took place. Order at 3.

¶16 Also on the way to the Rota Resort, Muna offered some chewing gum to Atalig, who indicated that he would like some gum but that he preferred that she chew the gum prior to giving it to him. Muna initially declined to do so, but later agreed after Atalig persisted in his request. Order at 4.

¶17 Upon arrival at the Rota Resort, Atalig took Muna's baggage to the front door. Muna opened the door and entered the suite and carried her bags to one of the bedrooms. After placing her bags in the room, Atalig went to the door of the room where Muna was standing. Atalig grabbed Muna and kissed her on the mouth while at the same time placing his hands on the sides of her face. Atalig attempted to force his tongue inside Muna's mouth, but Muna resisted. Atalig, while continuing to hold Muna and kiss her ear and nose, said: "open your vagina to me, I am licking your clitoris." Atalig then took his hand and forcibly lifted up Muna's blouse and bra, exposing her left breast, which he proceeded to place in his mouth to suck the nipple. Muna told Atalig: "stop, you are my boss, if you continue to do this I can no longer work at CRM." Atalig replied: "I'm not so stupid to try this in the office," then grasped Muna's right hand and placed it on his erect penis. Muna pulled her hand back and pushed Atalig away. Atalig then grasped Muna's wrists and suggested that they move to the couch, but Muna resisted. Atalig then ceased approaching Muna and informed her that he would return to the room in the morning to pick her up. Atalig also asked if he could have the key in case she was still asleep in the morning when he arrived. Muna refused to give him the room key and

promptly locked the door to the suite and to the bedroom after Atalig departed. Order at 4.

¶18 On March 12, 1999, at approximately 5:30 to 6:30 a.m., Atalig returned to the suite at Rota Resort, ostensibly to transport Muna to that day's functions related to the Rota Beautification Project. Muna opened the main door to the suite for Atalig who then grasped Muna and attempted to kiss her on the mouth. Muna pushed Atalig away and went inside a bathroom in the suite to retrieve some personal items. Atalig followed Muna into the bathroom and proceeded to remove a hair dryer from the wall and dry Muna's hair. Muna allowed Atalig to dry her hair, then took the dryer from Atalig's hand and placed it back on the wall. Order at 4.

¶19 Atalig and Muna then proceeded to Atalig's rental car which he then drove to the Sunrise Hotel where the rental vehicle he had procured for Muna was located. Atalig told Muna to return to the Rota Resort and remain there until 2:00 p.m., when he would return to pick her up so that he might take her sightseeing. Atalig also told Muna that she did not have to attend the "Trash-a-thon" function if she did not wish to do so. Order at 5.

¶20 Muna returned to the hotel and made arrangements to leave Rota. At approximately 8:30 a.m., Muna left Rota and returned to Saipan. Upon arriving on Saipan, Muna related the incidents involving Atalig to her husband and to several co-workers. Order at 5.

¶21 Additional facts relevant to this appeal include: (1) during the bench trial, the judge sustained an objection by Plaintiff Commonwealth of the Northern Mariana Islands [hereinafter the Government] limiting the amount of questioning by Atalig's counsel regarding Muna's claim

before the Equal Employment Opportunity Commission [hereinafter EEOC] regarding the incident, E.R. at tab 4, and (2) the judge allowed three witnesses to testify as to what Muna related to them regarding the incident, over the hearsay objections of Atalig's counsel, E.R. at tab 1 (Order) p. 5.

ANALYSIS

I. The Trial Court Correctly Applied 6 CMC § 3101(a) When it Found Atalig Guilty of Disturbing the Peace.

¶22 Pursuant to 6 CMC § 3101:

> (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.

¶23 Thus, under the statute, the elements of Disturbing the Peace are: (1) unlawfully and willfully doing any act ; (2) which unreasonably annoys or disturbs another person ; (3) so that the other person is deprived of his or her right to peace and quiet, or which provoked a breach of the peace. 6 CMC § 3101(a).

¶24 The trial court found that Atalig's behavior met every element of the offense of Disturbing the Peace under the statute: Atalig's sexual advances toward Muna were unlawful and willful; the unlawful and willful acts unreasonably annoyed and disturbed Muna; Muna's peace and quiet was breached by the unlawful and willful acts. E.R. at tab 1 (Order) p. 9. Atalig does not dispute these findings.

¶25 Instead, Atalig argues that because the assault took place out of public view in a hotel room doorway, it could not constitute a disturbance of the peace. "Normally, a charge of disturbance of the peace requires a showing of some sort of disruption to the public," argues

Atalig, whereas here, the disturbing act, the kiss, occurred just inside Muna's hotel room. Opening Br. of Appellant Felipe Q. Atalig [hereinafter Opening Br.] at 8.

¶26 No evidence was presented that public tranquility was disturbed on Rota or at the Rota Resort, the morning of March 12. *Id*. As such, Atalig asserts that the conviction of Atalig of Count VI, Disturbing the Peace (and the subsequent conviction of Count VIII, Misconduct in Public Office predicated on this disturbance of the peace), were in error. We disagree with Atalig's interpretation of the CNMI's disturbing the peace statute.

¶27 This appeal represents a case of first impression in the interpretation of 6 CMC § 3101. To ascertain whether, as Atalig asserts, the disruption in question must be in "public," we first examine the language of 6 CMC § 3101. According to the plain meaning rule, when interpreting a statute, "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485, 37 S. Ct. 192, 194, 61 L. Ed. 442, 452 (1917)**.**

¶28 Here, the language indicates that the statute applies to both private and public disturbances because it seeks to punish "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." 6 CMC § 3101(a) (emphasis added). Clearly, the legislature omitted an express provision to the statute punishing only "public" disturbances.

¶29 While the language of the statute is clear, in a case of first impression it is especially useful to examine the legislative history of 6 CMC § 3101, in order to ascertain whether there is an expressed legislative intention contrary to the language of the statute. *Escobar Ruiz v. I.N.S.*, 838 F.2d 1020, 1023 (9th Cir. 1988), *overruled on other grounds by Rueda-Menicucci v. I.N.S.*,

132 F.3d 493 (9th Cir. 1997) and *Singh v. I.N.S.*, No. C-92-1826 MHP, 1998 U.S. Dist. LEXIS 2212 (N.D. Cal. Feb. 23, 1998).

¶30 Section 3101 was codified by the Third Northern Marianas Commonwealth Legislature by Public Law 3-71, § 1 (§ 461). *See* 6 CMC § 3101. According to Senate Bill No. 3-85, S.D. 2, Standing Committee Report No. 3-141, the source for 6 CMC § 3101 was the Trust Territory Code,[3] specifically, 11 TTC § 551 (1970), which states as follows:

> Disturbing the peace. - Every person who shall unlawfully and willfully commit any acts which annoy or disturb other persons so that they are deprived of their right to peace and quiet, or which provoke a breach of the peace, shall be guilty of disturbing the peace, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than fifty dollars, or both. (Code 1966, § 426; Code 1970, tit. 11, § 551.)

¶31 For purposes of this appeal, it is significant to note that the Third Legislature rejected the wording of the Model Penal Code for Disorderly Conduct, § 250.2 which specifically focuses on "public" disturbance.[4]

---

[3] *See* Standing Committee Report No. 3-141, June 24, 1983, Re: S.B. No. 3-85, S.D. 2, which calls for the Committee on Judiciary and Governmental Operations "to provide for a Criminal Code of the Commonwealth, to repeal certain section of the Trust Territory Code, and for other purposes."

[4] Model Penal Code § 250.2 Disorderly Conduct provides:

> (1) Offense Defined. A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
>
> (a) engages in fighting or threatening, or in violent or tumultuous behavior; or
>
> (b) makes unreasonable noise or offensively coarse utterance gesture or display, or addresses abusive language to any person present; or
>
> (c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.
>
> "Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools prisons, apartment houses, places of business or amusement, or any neighborhood.
>
> (2) Grading. An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

¶32 Trust Territory cases which interpret the Disturbing the Peace statute, TTC § 426 (1966), the predecessor to 11 TTC § 551 (1970), indicate that disruption of the peace encompasses a large range of activities. *See Oingerang v. Trust Territory*, 2 TTR 385, 388 (1963) (Crime of disturbing the peace covers large range of activities which annoy and disturb people affected to such an extent as to deprive them of right to peace and quiet and to provoke breach of the peace.); *Medewes v. Trust Territory*, 1 TTR 214 (1954) (A defendant was judged guilty of disturbing the peace where he came to a house between 1:00 a.m. and 3:00 a.m., called to persons therein in a loud voice, and thereby frightened the entire household.). As such, we find that 6 CMC § 3101 can apply to both public and private disturbances.

¶33 Moreover, we agree with Muna that Atalig's flawed argument is unsupported by cases which are on point or persuasive authority. The cases cited by Atalig concern statutes which are very different from 6 CMC § 3101. Each of the cases mentioned on page 8 of Atalig's Opening Brief involved statutes that criminalize disorderly conduct such as obscene gestures, abusive language, and conduct destroying public order, whereas 6 CMC § 3101 makes it a crime to disturb the peace of a singular person.

¶34 Since 6 CMC § 3101 concerns private annoyances, Atalig's proposition that a public breach of the peace was required is without merit. The law does not place a burden on the prosecution to show a disturbance of public tranquility on the morning of March 12, 1999. The right to peace and quiet guaranteed by 6 CMC § 3101 is personal. Therefore, Atalig's act of non-consensual sexual contact with Muna was a violation of CNMI law. We find that Atalig's guilt was sufficiently proven and his conviction on Counts VI and VIII should be affirmed.

II. The Trial Court Did Not Violate the Double Jeopardy Clause by Trying Atalig for Both Disturbing the Peace and for Assault and Battery.

¶35 Atalig asserts that his conviction should be reversed on all counts because by being charged with both Disturbing the Peace and with Assault and Battery, he was improperly placed in double jeopardy. Opening Br. at 9. We disagree.

¶36 The Double Jeopardy Clause of the 5th Amendment to the United States Constitution is replicated in Article 1, § 4(e) of the Commonwealth Constitution. This provision protects against three types of abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076, 23 L. Ed. 2d 656, 664-65 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989); *United States v. Halper*, 490 U.S. 435, 440, 109 S. Ct. 1892, 1897, 104 L. Ed. 2d 487, 496 (1989), *overruled on other grounds by Hudson v. United States*, 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450 (1997); *Dep't of Revenue of Mont. v. Kurth Ranch*, 511 U.S. 767, 769, 114 S. Ct. 1937, 1941, 128 L. Ed. 2d 767, 773 (1994), *abrogation recognized by United States v. Warneke*, 199 F.3d 906 (1999); *Commonwealth v. Cabrera*, 1997 MP 18 ¶7, 5 N.M.I. 104, 105.

¶37 Contrary to Atalig's assertions, in the CNMI we do not apply the "actual evidence" test in determining whether a violation of a defendant's privilege against double jeopardy has been violated. Instead, we follow the test supplied by the US Supreme Court in *Blockburger v. United States.*, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306, 309 (1932). *See Commonwealth v. Oden*, 3 N.M.I. 186, 207 (1992).

¶38 Under the "Blockburger test," "the applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof

of a fact which the other does not." *Oden*, 3 N.M.I. at 207 (*citing Brown v. Ohio*, 432 U.S. 161, 166, 97 S. Ct. 2221, 2225, 53 L. Ed. 2d 187, 194 (1977) (*quoting Blockburger*, 284 U.S. at 304, 52 S. Ct. at 182, 76 L. Ed. at 309)).

¶39 When applying the test the focus is "on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial." *Illinois v. Vitale*, 447 U.S. 410, 416, 100 S. Ct. 2260, 2265, 65 L. Ed. 228, 235 (1980). If each statute requires proof of a fact that the other does not, the "*Blockburger* test" is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crime. *Iannelli v. United States*, 420 U.S. 770, 786 n.17, 95 S. Ct. 1284, 1294 n.17, 43 L. Ed. 2d 616, 628 n.17 (1975). Courts are to look at the statutory elements of the crime for which the defendant was charged in evaluating whether double jeopardy has been implicated. *United States v. $405,089.23 U.S. Currency*, 33 F.3d 1210, 1220 n.10 (9th Cir. 1994), *rev'd sub. nom. on other grounds by United States v. Usery*, 518 U.S. 267, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996).

¶40 In this case, Atalig was convicted of Disturbing the Peace under 6 CMC § 3101(a), and was convicted of Assault and Battery under 6 CMC § 1202(a). In order to determine whether Atalig's convictions under both of these statutes constitutes a violation of double jeopardy, we examine the elements of each statute, to see whether each requires proof of a fact that the other does not.

¶41 Assault and Battery is defined under 6 CMC § 1202(a) as follows: "[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).

¶42 The elements of 6 CMC §3101(a), as discussed in the previous section, are: (1) unlawfully and willfully doing any act; (2) which unreasonably annoys or disturbs another person; (3) so that the other person is deprived of his or her right to peace and quiet, or which provoked a breach of the peace.

¶43 It is clear from this comparison that each statute requires proof of elements not required by the other statute. For example, to be found guilty of Assault and Battery a person must be shown to have used "force or violence" in committing the unlawful act of violence; no such showing is required under the Disturbing the Peace statute. Disturbing the Peace, meanwhile, requires proof that the unlawful behavior "unreasonably annoys or disturbs another person," while an Assault and Battery need not be unreasonably annoying or disturbing. Thus, Atalig was not subjected to double jeopardy with convictions under both statutes.

III. The Trial Court Did Not Misapply 6 CMC § 3202 in Finding Atalig Guilty of Misconduct in Public Office.

¶44 Atalig argues that the trial court committed error by finding that Atalig's Assault and Battery and Disturbing the Peace convictions were a basis for two convictions of Misconduct in Public Office. "The error of the trial court," argues Atalig, "was that there was no evidence in the record that either crime came about 'under the color of public office.'" Opening Br. at 12. We disagree.

¶45 Pursuant to 6 CMC § 3202, Misconduct in Public Office:

> [e]very person who, being a public official, does any illegal act under the color of office, or willfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office, and upon conviction thereof may be imprisoned for a period of not more than one year, or fined not more than $1,000, or both.

¶46 In order, then, to prove that Atalig violated 6 CMC § 3202, he must have been shown to have been:

1. a public official who does

2. any illegal act

3. under color of office

¶47 Because Atalig concedes (for the purposes of this section) that he is a public official who committed an illegal act, we need only examine whether the act took place under color of office in order to determine whether the trial court properly found him guilty of Misconduct in Public Office. Opening Br. at 12.

¶48 The trial court found that Atalig had:

> improperly used his position as director of CRM to obtain the [hotel] room for Ms. Muna for the purpose of separating her from other CRM employees . . . in order that he may attempt to achieve sexual gratification at her expense. On March 11, 1999, [Atalig] used this room to grasp Muna's breast without her consent, an act which the court has found to constitute the crime of assault and battery. As such, the court finds that [Atalig] committed an illegal act, assault and battery, under color of his office by using his position as the director of CRM to obtain a room for Ms. Muna which was away from other CRM employees for the improper purpose of committing assault and battery on a subordinate employee while traveling on a government trip on official CRM business.

Order at 13-14.

¶49 Atalig argues that while he may have committed two crimes against Muna over the course of a weekend the two spent in Rota for a work-related activity, the crimes committed against Muna were not committed "under color of office." "The only act here, arguably under color of office, was providing Muna the hotel room keys. *That act* was not unlawful." Opening Br. at 13.

¶50 In his reply brief, Atalig elaborates, arguing that "the intention of 6 CMC §3202 was to prevent public officials from abusing their power. . . . Here, there was an alleged assault and a disturbing of the peace that had nothing to do with [Atalig's] official functions or office. The 'act' was not 'under color of public office.'" Reply Br. of Appellant Felipe Q. Atalig [hereinafter Reply Br.] at 15.

¶51 Atalig argues that the only "official" act he committed over the course of the weekend in Rota was to secure for Muna a key for a hotel room she had intended to occupy all along. Opening Br. at 12. We disagree.

¶52 The trial court found that the room Muna was brought to, by Atalig, was one secured by Atalig to separate her from her colleagues; that she was taken there by a person who remained at all times her superior; that during the entire course of the Assault and Battery and Disturbance of the Peace, Muna and Atalig remained employee and superior. This is not to mention that Muna and Atalig were on Rota exclusively for work purposes. E.R. at tab 1. All these factors lead inexorably to the conclusion that Atalig was "under color of office" while committing the Assault and Battery and Disturbance of the Peace. It would defy logic to reach any other conclusion.

IV. The Trial Court Did Not Violate the Confrontation Clause By Limiting Questioning of Muna Regarding Her EEOC Claims.

¶53 Atalig argues that his constitutional right to confront adverse witnesses was violated when the trial court limited his cross-examination of Muna on the subject of possible bias due to her pending EEOC claim against him. Opening Br. at 14. We disagree.

¶54 Pursuant to Article I, Section 4(b) of the Commonwealth Constitution, in all criminal prosecutions, "[t]he accused has the right to be confronted with adverse witnesses and to have compulsory process for obtaining favorable witnesses." N.M.I. Const. art. I, § 4(b). "Because

the CNMI Constitution's Confrontation Clause [N.M.I. Const. art. I, § 4(b)] is patterned after the U.S. Constitution's Confrontation Clause (Sixth Amendment), we resort to the U.S. Supreme Court's interpretation of the federal Confrontation Clause in interpreting the CNMI's Confrontation Clause." *Commonwealth v. Condino*, 3 N.M.I. 501, 507 (1993), *aff'd*, 33 F.3d 58 (9th Cir. 1994), *cert. denied*, 514 U.S. 1021, 115 S. Ct. 1368, 131 L. Ed. 2d 224 (1995).

¶55 "Generally, abuse of discretion review applies to limitations placed on counsel's questioning, but when the limitations directly implicate the core values of the Sixth Amendment right to confrontation, review is *de novo.*" *United States v. Given*, 164 F.3d 389, 392 (7th Cir. 1999); *See also United States v. Neely*, 980 F.2d 1074, 1080 (7th Cir. 1992). "A trial judge, however, does have discretion to limit cross-examination to avoid prejudice, repetition, confusion, or harassment." *Commonwealth v. Zhen*, 2002 MP 4 ¶32. *See also Delaware v. Van Arsdall*, 475 U. S. 673, 678-79, 106 S. Ct. 1431, 1435, 89 L. Ed. 2d 674, 683 (1986).

¶56 While defendants must be afforded sufficient opportunity to confront adverse witnesses through cross-examination, the court "is not required 'to permit cross-examination on topics of very slight or marginal relevance simply upon the theory that bias or prejudice might be disclosed.'" *United States v. Romero-Felix*, No. 99-50628, 2000 U.S. App. LEXIS 15358 at *4 (9th Cir. June 20, 2000), *aff'd* 229 F.3d 1161 (9th Cir. 2000) (*quoting Chipman v. Mercer*, 628 F.2d 528, 531 (9th Cir. 1980), *overruled on other grounds by Van Arsdall*, 475 U.S. 673, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)).

¶57 An appellant cannot merely assert that his right of confrontation is violated by the trial court's limiting cross examination of a particular subject with a witness; he must also show how he was prejudiced by the court's limitation. *See, e.g., Commonwealth v. Hanada*, 2 N.M.I. 343,

350 (1991)(holding that trial court's limitation of cross-examination on government witness's plea agreement was proper).

¶58 Here, while Atalig has asserted that the court's limiting his questioning of Muna's possible bias as a result of her pending EEOC claim violated his right of confrontation, Atalig has failed to show how his inability to question Muna on this subject adversely affected his ability to defend himself. In fact, from the sections of the trial transcript provided to this court,[5] it seems that the trial judge, sitting as finder of fact, was provided with evidence of the pending claim, despite the restrictions on cross-examination.

¶59 When Atalig has failed to provide this court with any information whatsoever, aside from a general complaint that bias would have been shown had further testimony on the EEOC claim been permitted, this court will not find that the trial court abused its discretion when it limited cross-examination on the pending claim.

V. The Trial Court Did Not Improperly Admit Hearsay Evidence.

¶60 Atalig asserts that the court improperly allowed in hearsay testimony from three co-workers of Muna over the Defendant's objection. Opening Br. at 16. Atalig shirks the responsibility of showing that this purportedly improper admission harmed his case, stating instead, "[o]bviously, the admission of this hearsay was not harmless error." Opening Br. at 16.

¶61 We do not think it so obvious that the error, if in fact the admission of the testimony was in error, was harmful to Atalig. The witnesses merely corroborated Muna's testimony, and did not produce any independent facts on which the trial court based its factual or legal findings; the

[5]We note that for unknown reasons, neither party provided this Court with more than scattershot pages of the relevant sections of the trial transcripts.

trial court could have made all its factual and legal findings on Muna's testimony alone. E.R. at tab 1.

¶62 In the absence of any showing that Atalig suffered harm as a result of hearsay testimony wrongly introduced as testimony, we will not reverse the trial court's decision to admit the testimony.

VI. The Trial Court Did Not Misunderstand Intent as it Related to the Assault and Battery and Disturbing the Peace Charges.

¶63 Atalig argues that both the Assault and Battery and the Disturbing the Peace charges are specific intent crimes that require, as an element, that the accused intended the unlawful conduct. Opening Br. at 17.

A. The Trial Court Did Not Misunderstand the Intent Required to Find Atalig Guilty of Assault and Battery Under 6 CMC § 1202(a).

¶64 Atalig argues Assault and Battery is a specific intent crime, and that because the court wrongly focused its analysis on whether Muna consented to the Atalig's sexual contact, and failed sufficiently to probe the issue of whether Atalig intended specifically to commit Assault and Battery, his conviction should be reversed. "It was reversible error for the trial court to focus on Ms. Muna's *consent* and not on Appellant's *intent*. The judgment should be reversed and the matter remanded for a second trial." Reply Br. at 9.

¶65 We begin by noting that, contrary to Atalig's assertion, Assault and Battery under 6 CMC § 1202(a) is not a specific intent crime.[6] It is, rather, a general intent crime, and the trial court properly analyzed it as such.

---

[6] We also note that Atalig has inexplicably failed to provide the Court with even a single legal authority in support of his assertion that Assault and Battery is a specific intent crime.

¶66 Specific intent crimes are those which require not merely the carrying out of some unlawful behavior, but "the intent to accomplish the precise criminal act that one is later charged with." *United States v. Hernandez-Landaverde*, 65 F. Supp. 2d 567, 571 n.1 (S.D. Tex. 1999) (*citing* BLACK'S LAW DICTIONARY 814 (7th ed. 1999)). By contrast, "[g]eneral intent is broadly (and somewhat circularly) defined as the state of mind required for certain crimes not requiring specific intent or imposing strict liability. . . . In essence . . . specific intent concerns willful and knowing engagement in criminal behavior, while general intent concerns willful and knowing acts. Thus, a defendant may not 'specifically intend' to act unlawfully, but he did 'intend' to commit the act." *United States v. Berrios-Centeno*, 250 F.3d 294, 298-99 (5th Cir. 2001) (citations omitted) (emphasis added).

¶67 The statute in question is silent on the issue of intent. When a criminal statute is silent as to intent, the default is general intent. *See, e.g., Hernandez-Landaverde*, 65 F. Supp. 2d at 572. Thus, the court was correct to focus its inquiry on whether the elements of Assault and Battery had been committed, not on whether Atalig specifically intended to commit an Assault and Battery.

¶68 Pursuant to the statute, Atalig's actions constitute an Assault and Battery if Atalig (1) had sexual contact with Muna, (2) without Muna's consent. 6 CMC § 1202(a). Because it is undisputed that Atalig had sexual contact with Muna, the question is whether that sexual contact occurred without Muna's consent. Opening Br. at 17-18.

¶69 Whether Muna consented to Atalig's sexual touching is an issue of fact. *See, e.g., Roland v. Indiana*, 501 N.E.2d 1034, 1037 (Ind. 1986). Findings of fact are reviewed under a clearly erroneous standard, and the trial court's factual findings will not be disturbed unless,

after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made. *Camacho v. L & T Int'l Corp.,* 4 N.M.I. 323, 325 (1996).

¶70 In this case, there is more than enough evidence to support the trial court's finding that Muna did not consent to Atalig's sexual contact, and additionally that she clearly and explicitly informed Atalig that she did not consent to the sexual contact. We therefore uphold Atalig's Assault and Battery conviction.

B. The Trial Court Did Not Misunderstand the Standard of Intent Required to Find Atalig Guilty of Disturbing the Peace Under 6 CMC § 3101(a).

¶71 Atalig argues that Disturbing the Peace is a specific intent crime, and that because the trial court did not find that he specifically intended to violate the Disturbing the Peace statute, his conviction should be reversed.[7] Opening Br. at 17. We disagree.

¶72 Pursuant to the Disturbing the Peace statute, 6 CMC § 3101(a), in order to be convicted of Disturbing the Peace, the trial court must have found beyond a reasonable doubt that Atalig: (1) unlawfully and willfully did any act; (2) which unreasonably annoyed or disturbed 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.

¶73 For the reasons described above in VI.A, we find again that Disturbing the Peace is a general intent crime, not a specific intent crime. Therefore, the trial court need not have been convinced that Atalig intended to violated the statute, but merely that his behavior violated the statute. Again, we find that the trial court had ample evidence to convict Atalig on this count.

---

[7] Atalig again fails to cite even one case, statute, law review article, treatise, or any other legal authority to support his proposition that Disturbing the Peace is a specific intent crime. The court exercises maximal restraint in choosing not to sanction Atalig or his attorney for ignoring the most basic rules of legal argument – namely, that it be supported by legal authority, or that a good explanation be provided for why it is not so supported. We suggest that in the future, Atalig and his attorney may wish to supply the Court with legal authority for their legal arguments, and if this suggestion is not followed, Atalig and his attorney will find themselves sanctioned.

CONCLUSION

¶74 For the foregoing reasons, the Order is hereby AFFIRMED.

So ORDERED this 13th day of September 2002.

/s/ Virginia Sablan-Onerheim
VIRGINIA SABLAN-ONERHEIM,
Justice *Pro Tempore*

/s/ Frances Tydingco-Gatewood
FRANCES TYDINGCO-GATEWOOD,
Justice *Pro Tempore*

/s/ Steven S. Unpingco
STEVEN S. UNPINGCO
Justice *Pro Tempore*