

Takada v. Trial Div. of Sup. Ct., 3 ROP Intrm. 262 (1993)
KAZUMA TAKADA,
Petitioner,

v.

SUPREME COURT OF THE REPUBLIC OF PALAU,
TRIAL DIVISION, and REPUBLIC OF PALAU,
Respondents.

SPECIAL PROCEEDING NO. 1-93
Criminal Case No. 391-92

Supreme Court, Appellate Division
Republic of Palau

Opinion and order
Decided: June 28, 1993

Counsel for Petitioner: David L. Negri, Public Defender

Counsel for Respondent Republic of Palau: Susan Schwartz, AAG

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
JANET H. WEEKS, Part-Time Associate Justice, Sitting by Designation

BEATTIE, Associate Justice:

Petitioner seeks a Writ of Prohibition in order to prohibit the trial court from conducting further proceedings in Criminal Case No. 391-92. In that case, Petitioner has been charged with Assault and Battery With a Dangerous Weapon in violation of 17 PNC § 504. The Petition is based on the contention that 17 PNC § 504 is unconstitutional on its face because it lacks a *mens rea* requirement.¹

1263 It is now fundamental that, where a statute incorporates an offense from the common law, a culpable state of mind must accompany the conduct proscribed by the statute. ² “It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.”

¹ We have previously held that a petition for a writ of prohibition under Rule 21 of the Rules of Appellate Procedure is an appropriate method of seeking relief where the government attempts to enforce a criminal statute which is alleged to be unconstitutional on its face. *Kazuo v. Republic of Palau*, 1 ROP Intrm. 154 (1984).

² We do not mean to imply that every criminal offense requires *mens rea*. So called “strict liability” crimes designed as regulatory measures have been upheld where the offense was unknown at common law, the penalty is relatively small, and the conviction does not gravely besmirch. See, *Holdridge v. United States*, 282 F.2d. 302 (8th Cir. 1960).

Takada v. Trial Div. of Sup. Ct., 3 ROP Intrm. 262 (1993)
Morissette v. United States, 342 U.S. 246, 250, 72 S.Ct. 240, 243, (1952). The absence of a *mens rea* element in a criminal statute can therefore violate a defendant's right to due process. *United States v. Wulff*, 758 F.2d 1121 (6th Cir. 1985).

The Republic of Palau assault and battery with a dangerous weapon statute, 17 PNC § 504, is as follows:

§ 504. Assault and battery with a dangerous weapon.

Every person who shall unlawfully commit assault and battery upon another by means of a dangerous weapon shall be guilty of assault and battery with a dangerous weapon, and upon conviction thereof shall be imprisoned for a term of five years, or fined not more than \$1,000.00, or both.

This statute clearly incorporates the offense of assault and battery, a common law crime. 6 Am. Jur. 2d, Assault and Battery § 1. The statute, on its face, contains no *mens rea* requirement. However, a long and unbroken line of judicial decisions in the United States has held that, where a statute incorporates an offense from the common law and is silent with respect to the requisite *mens rea*, the courts will construe the statute as requiring the common law *mens rea*. *Morissette, supra.*, 342 U.S. at 261-263, 72 S.Ct. at 249-250. Petitioner contends that we are prevented from such a saving construction of 17 PNC § 504 by reason of the provisions of 1 PNC § 303, which provides in pertinent part that:

§ 303. Applicability of common law.

The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United 1264 States, shall be the rules of decision in the courts of the Republic in applicable cases, . . . *provided that no person shall be subject to criminal prosecution except under the written law of the Republic* (emphasis added)

Petitioner reads too much into this statute. The emphasized provision is designed to abolish all common law crimes. The meaning of the provision is that a person cannot be criminally prosecuted for an act unless the Olbiil Era Kelulau has, by statute, declared the act to be a crime. It means that the judiciary cannot create a crime. It does not prevent the courts from construing a criminal statute by reference to common law where the statute itself borrows phrases or terms of art from the common law. *See, e.g., Stewart v. State*, 109 P. 243 (Okla. 1910); *State v. Dailey*, 124 N.E. 481, 20 A.L.R. 1004 (Ind. 1922); 21 Am. Jur. 2d, *Criminal Law* § 9. In *Gallegos v. People*, 411 P.2d 956, 959 (Colo. 1966), the court restated the principle that:

[W]here the statute does not define a crime, but merely gives to it its common-law name or designation, resort must be had to the common law to ascertain what acts constitute the crime in question.

Takada v. Trial Div. of Sup. Ct., 3 ROP Intrm. 262 (1993)

The assumption is that, where the legislature by statute adopts a common law crime, “it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.” *Morissette, supra.*, 342 U.S. at 263, 72 S.Ct. at 250.³

The Republic of Palau’s assault and battery with a dangerous weapon statute is a re-enactment of the Trust Territory statute. Accordingly, it is appropriate that we look to cases construing the Trust Territory statute in attempting to determine the requisite *mens rea*. See, *Thompson v. People*, 510 P.2d. 311 (Colo. 1973). In *Ngeruangel v. Trust Territory*, 2 T.T.R. 620 (App. Div. 1959), the court held that assault and battery with a dangerous 1265 dangerous weapon was a crime requiring a *mens rea* of general intent. That is the *mens rea* generally assigned to assault and battery and assault and battery with a dangerous weapon in the United States. See, *People v. Rocha*, 479 P.2d. 372 (Cal. 1971).

We hold that the criminal intent which is required under 17 PNC § 504 is an intent to commit an act which constitutes an assault and battery with a dangerous weapon. ⁴ Accordingly, what is required is an intent to strike another person with such a weapon. It is immaterial whether the defendant intended to violate the law or knew his conduct was unlawful. The intent to injure in the sense of inflicting bodily harm is not necessary. In terms of the case at bar, this means that the prosecution must, in addition to the other elements of the crime, prove beyond a reasonable doubt that the defendant intentionally struck the victim with the vodka bottle.⁵

In view of our holding that 17 PNC § 504 has the *mens rea* element which is constitutionally required in common law crime, the Petition For Writ of Prohibition is DENIED.

³ The OEK adopted this principle of construction by enacting 1 PNC § 202, which provides that “words and phrases as may have acquired a peculiar and appropriate meaning in the law shall be interpreted and understood according to their peculiar and appropriate meaning.”

⁴ We need not decide at this time whether an act committed in wanton and reckless disregard for the probable consequences to others may be considered to be intentional. See, 6 Am. Jur. 2d., *Assault and Battery* § 40.

⁵ We assume, without deciding, that the vodka bottle is a dangerous weapon.