

**CRIMINAL LAW:
MENS REA ALIVE AND WELL: LIMITING PUBLIC
WELFARE OFFENSES — *IN RE C.R.M.***

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I. INTRODUCTION

Recently, there has been some question as to whether the Minnesota Legislature intended Minnesota Statute section 609.66, subdivision 1d to require *mens rea*.¹ The statute, adopted in 1993, outlaws dangerous weapons on school property.² The Minnesota Supreme Court finally addressed the issue in June of 2000 in *In re*

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1. BLACK'S LAW DICTIONARY 999 (7th ed. 1999). *Mens rea* is defined as "[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness." *Id.* *Mens rea* is an essential element of every crime at common law. *See id.*

2. MINN. STAT. § 609.66, subd. 1d (2000). Section 609.66, subdivision 1d(a), as amended in 1994, reads as follows:

Whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

MINN. STAT. § 609.66, subd. 1d(a).

*C.R.M.*³ The Minnesota Supreme Court reversed the decision of the Minnesota Court of Appeals, holding that section 609.66, subdivision 1d, requires the state to prove that a defendant had knowledge of possession of the dangerous weapon while on school property.⁴ In ruling on this issue, the Minnesota Supreme Court correctly interpreted section 609.66, subdivision 1d, as not dispensing with *mens rea*.

This note briefly examines the general history behind the concept of *mens rea*, and the history of decisions of the United States Supreme Court and Minnesota courts regarding the *mens rea* requirement in enforcement of statutes enacted for the welfare of the public. This note also explores the history of section 609.66, subdivision 1d. Part III considers the supreme court's holding in *In re C.R.M.* Part IV analyzes the court's approach. The note concludes that the court's ruling is in accordance with the long established principle of American criminal jurisprudence that common law crimes and felony level offenses require *mens rea*.

II. HISTORY

A. *Early History of Mens Rea*

For centuries, western civilized nations have looked at the intent behind a wrongdoer's act to determine "both the propriety and the grading of punishment."⁵ The basic premise that in order for an actor to be held criminally liable some *mens rea* is required, is expressed by the Latin maxim *actus not facit reum nisi mens sit rea* (an act does not make one guilty unless his mind is guilty).⁶ However, ancient English law tended towards strict liability for acts.⁷

By the middle of the eighteenth century, unqualified acceptance of the concept of *mens rea* within English criminal law was indicated by Blackstone's statement: "So that to constitute a crime against human laws, there must be, first, a vicious will; and,

3. *In re C.R.M.*, 611 N.W.2d 802, 805 (Minn. 2000).

4. *Id.* at 810. The case was remanded to the trial court to determine whether appellant had the requisite knowledge.

5. *United States v. Cordoba-Hincapie*, 825 F.Supp. 485, 489-92 (E.D.N.Y. 1993) (providing a concise analysis of the early history of the *mens rea* requirement).

6. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* § 3.4(a) at 212 (1986).

7. *See Cordoba-Hincapie*, 825 F.Supp. at 490.

secondly, an unlawful act consequent upon such vicious will.”⁸

By the time the Constitution incorporated the right to a jury trial and the concept of due process through its first amendments, *mens rea* was an already established, general rule of law.⁹ *Mens rea* is a safeguard for beliefs firmly embedded “within our traditions of individual liberty, responsibility and duty.”¹⁰ As state statutory criminal law slowly came into effect, even where *mens rea* was not expressly provided for in their enactments, state courts “assumed that the omission did not signify disapproval of the principle” only that the concept was so inherent in the crime itself that it required no express declaration.¹¹

The history of *mens rea* has been marked by development, adjustment, and shifting attitudes. Legislative exceptions to the common law rule have come to be known as “public welfare offenses” or “regulatory offenses.”¹² These duties and crimes, the violation of which “result in no direct or immediate injury to person or property but merely create the danger or probability of it”, are not subject to a presumption requiring proof of a *mens rea* to establish liability.¹³ Accordingly, the state need only prove that a prohibited act was performed regardless of what the actor knew or did not know and intended or did not intend).¹⁴

Public welfare offenses were a response to the new dangers brought about by the arrival of the industrial revolution.¹⁵ The increased number of people exposed to injury due to new technologies, traffic, the congestion of cities, the overcrowding of quarters, and the wide distribution of goods during this period all

8. *Id.* at 492 (citing II WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *20-21).

9. *Cordoba-Hincapie*, 825 F.Supp. at 495-96.

10. *Id.*

11. *See Morissette v. United States*, 342 U.S. 246, 252 (1952).

12. *Id.* at 252-56.

13. *Id.* at 255-56. However, “the rationale for eliminating such a presumption is that regulatory statutes impose liability” for conduct that should reasonably put the actor on notice that he or she is engaging in conduct inherently dangerous to the public. *See In Re C.R.M.*, 611 N.W.2d 802, 806 (citing *Liparota v. United States*, 471 U.S. 419, 433 (1985)); *see also Staples v. United States*, 511 U.S. 600, 610-11 (1994) (finding that “[i]n the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger.”)

14. *See People v. Hudick*, 551 N.W.2d 656, 660-61 (Mich. 1996).

15. *See Laurie L. Levenson, Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 CORNELL L. REV. 401, 419 (Mar. 1993) (discussing the implications of the criminal strict liability doctrine and the good faith defense).

led to increasingly numerous and detailed regulations, “which heighten the duties of those in control of particular industries” and activities that affect the public’s health and welfare.¹⁶

The pioneer of the movement towards criminal strict liability in this country seems to be a decision that “a tavernkeeper could be convicted for selling liquor to a habitual drunkard even if he did not know the buyer to be such.”¹⁷ By the turn of the century, regardless of fault, criminal liability could be attached in situations where the actor’s conduct involved: “minor violations of liquor laws, the pure food laws, the anti-narcotics laws, motor vehicle and traffic regulations, sanitary, building and factory laws and the like.”¹⁸ These regulatory measures were “in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*.”¹⁹

B. *United States Supreme Court History*

Against this conceptual background, the United States Supreme Court has issued a series of decisions, some expanding and maintaining the *mens rea* principle and others seemingly disregarding it. This being said, “[t]he existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-

16. See *Morissette*, 342 U.S. at 254.

17. *Id.* at 256 (citing *Barnes v. State*, 19 Conn. 398 (1849)).

18. *United States v. Cordoba-Hincapie*, 825 F.Supp. 485, 496 (E.D. NY 1993) (quoting Francis Bowes Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 78 (1933) (hereinafter *Public Welfare*)). For example, “[I]n Massachusetts, a person [could] be convicted of the crime of selling intoxicating liquor as a beverage, though he [or she] did not know it to be intoxicating.” See *People v. Roby*, 18 N.W. 365, 366 (Mich. 1884) (citing *Commonwealth v. Boynton*, 84 Mass.(1 Allen)(1861)). Likewise, “[e]vidence of a guilty intent and a guilty knowledge on the part of [a defendant were] not necessary to warrant a conviction” for the offense of selling adulterated milk. *State v. Smith*, 10 R.I. 258, 260-61 (1872).

19. *United States v. Balint*, 258 U.S. 250, 252 (1922). Chief Justice Thomas Cooley, writing for the Michigan Supreme Court, concisely described the public-welfare doctrine in light of the general rule that a criminal statute requires a *mens rea*:

I agree that as a rule there can be no crime without a criminal intent; but this is not by any means a universal rule Many statutes which are in the nature of police regulations . . . impose criminal penalties irrespective of any intent to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible.

Roby, 18 N.W. at 366.

American criminal jurisprudence.”²⁰ Generally speaking, *mens rea* still remains an indispensable element of a crime.²¹ In a much-cited passage from *Morissette v. United States*, Mr. Justice Jackson speaking for the Court observed:

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. 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.²²

On a number of different occasions, the United States Supreme Court has read the common law rule requiring *mens rea* into an offense even where the statute’s language did not in express terms so provide.²³ The *mens rea* presumption has not only been read into statutes codifying common-law crimes, but also where a particular offense is solely statutory in nature.²⁴

The Court has interpreted public welfare statutes as eliminating the requirement of a “guilty mind” as an element of a crime.²⁵ These regulatory offenses are recognized in “limited circumstances.”²⁶ Usually, public welfare offenses are recognized as those that involve statutes that deal with particularly harmful or injurious items.²⁷ However, the Court is careful to point out that

20. *United States v. United States Gypsum Co.*, 438 U.S. 422, 436 (1978) (citing *Dennis v. United States*, 341 U.S. 494, 500 (1951)).

21. *See id.* at 437.

22. *Morissette*, 342 U.S. at 250.

23. *United States Gypsum Co.*, 438 U.S. at 437, 443 (concluding that criminal offenses defined by the Sherman Act are to be construed as including intent as an element).

24. *See also Staples v. United States*, 511 U.S. 600, 620 n.1 (1994) (Ginsburg, J. concurring) (observing that the Court has “not confined the presumption of *mens rea* to statutes codifying traditional common-law offenses, but [has] also applied the presumption to offenses that are ‘entirely a creature of statute.’”). In general, “when an act is prohibited and made punishable by statute only, the statute is to be construed in the light of the common law and the existence of criminal intent is to be regarded as essential, although the terms of the statute do not require it.” ROLLIN M. PERKINS, *PERKINS ON CRIMINAL LAW* 741 n.17 (2d ed. 1969) (quoting *State v. Shedoudy*, 118 P.2d 280, 285 (N.M. 1941)).

25. *Staples*, 511 U.S. at 607, n.3. “Under such statutes [the Court has] not required that the defendant know the facts that make his conduct fit the definition of the offense.” *Id.*

26. *Id.* at 607 (citing *United States Gypsum Co.*, 438 U.S. at 437).

27. *Id. See, e.g., United States v. Freed*, 401 U.S. 601, 609 (1971) (interpreting the revised National Firearms Act as a regulatory measure in the interest of public safety, which can “be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act” and subject to no

neither it nor, so far as it is aware, has any other court “undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not.”²⁸

Historically, a statute’s penalty plays an important role in the Court’s determination of whether the statute constitutes a public welfare offense, and thereby dispensing with the intent requirement.²⁹ The Court has observed that the public welfare analysis hardly seems appropriate for a felony offense.³⁰ A severe penalty is an indication of legislative intent not to eliminate *mens rea* as an element of a crime.³¹ “In such a case, the usual presumption that a defendant must know the facts that make his conduct illegal should apply.”³²

The elimination of a *mens rea* requirement from a given offense essentially clears the path straight towards the conviction of an alleged offender.”³³ The Court is “reluctant to impute [such a] purpose where . . . it would mean easing the path to convicting persons whose conduct would not even alert them to the probability of strict regulation in the form of a statute”³⁴

C. Minnesota History

The legislative authority to create criminal strict liability

regulations).

28. *Morissette v. United States*, 342 U.S. 246, 260 (1952).

29. *Staples*, 511 U.S. at 616. Commonly, the penalties for public welfare offenses “are relatively small, and conviction does no grave damage to an offender’s reputation.” *Morissette*, 342 U.S. at 256. “[T]he penalty for a civil offense [i.e., a public welfare offense] should never be severe. The maximum should be a moderate fine or something of a comparable nature. It should never include imprisonment.” PERKINS, *supra* note 24, at 794.

30. *Staples v. United States*, 511 U.S. 600, 618 (1994).

31. *See id.*

32. *Id.*

33. *See id.* at 615 (citing *Morissette*, 342 U.S. at 263). “The purpose and obvious effect of eliminating the requirement of a guilty intent is to ease the prosecution’s path to conviction.” *Id.*

34. *See id.* at 615-16. The Court usually looks upon offenses that have no *mens rea* requirement with disapproval. *See id.* at 606 (citing *Liparota v. United States*, 471 U.S. 419, 426 (1985)). “Given the *Morissette* [sic] holding, tone, and general discussion of the nature of criminal laws, many courts not surprisingly view the decision as a license to interpret statutes with harsh penalties as implicitly requiring a culpable *mens rea*.” Levenson, *supra* note 15, at 429. In fact, “[c]ourts are [more likely] to take this approach when the defendant in a strict liability case proffers a mistake of fact defense.” *Id.*

offenses has been recognized in Minnesota.³⁵ The Minnesota Supreme Court has acknowledged the idea that while a person need not intend his act to be criminal, it is essential that he should intend to do the act that is criminal.³⁶ Consistent with this notion, the Minnesota Supreme Court has held that a *mens rea* requirement is to be incorporated as a matter of law into statutory crimes despite the legislature having not expressly stated such a requirement.³⁷

The distinction between strict liability crimes and those requiring a *mens rea* has been recognized in both Minnesota case law and statutes.³⁸ Section 609.02, subdivision 9 provides definitions for chapter 609 offenses.³⁹ Up until its ruling in *In re C.R.M.*, the Minnesota Supreme Court had yet to rule on whether, under section 609.02, a chapter 609 offense must be interpreted as a strict liability crime where it contains no language indicating intent or knowledge as a requirement.⁴⁰ However, in several opinions, the court had addressed whether mere “possession” in various contexts requires a *mens rea*.⁴¹

35. See *State v. Morse*, 281 Minn. 378, 383-84, 161 N.W.2d 699, 702-03 (1968). The legislature has the power to create strict liability offenses as long as this intent is made clear in the statute. *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987); see, e.g., *State v. Mayard*, 573 N.W.2d 707, 710 (Minn. Ct. App. 1998) (recognizing Minn. Stat. section 169.791, subdivision 2, as a strict liability crime based on the plain language of the statute).

36. See *State v. Kremer*, 262 Minn. 190, 191, 114 N.W.2d 88, 89 (1962). The legislature may forbid the doing of an act and make its commission criminal without regard to intent or knowledge on the part of the party committing the act, subject to the qualification that he intended to do the act that constituted the crime. *Id.*

37. See *State v. Orsello*, 554 N.W.2d 70, 72 (Minn. 1996) (stating “if the legislature chooses to not include an intent requirement into a statutory crime, one is implied as a matter of law”); see also *State v. Charlton*, 338 N.W.2d 26, 30 (Minn. 1983) (stating “[a] criminal state of mind, or *mens rea*, is a required element of any crime originating in the common law, and where not specified in the statute is implied as a matter of law.”).

38. *In re C.R.M.*, 611 N.W.2d 802, 807 (Minn. 2000).

39. MINN. STAT. § 609.02, subd. 9(1)-(4) (2000). Section 609.02, subdivision 9(1) provides that “[w]hen criminal intent is an element of a crime in this chapter, such intent is indicated by the term ‘intentionally,’ the phrase ‘with intent to,’ the phrase ‘with intent that,’ or some form of the verbs ‘know’ or ‘believe.’” *Id.*

40. *In re C.R.M.*, 611 N.W.2d at 807.

41. *Id.* See, e.g., *State v. Strong*, 294 N.W.2d 319, 320 (Minn. 1980) (holding that in prosecution for the introduction of contraband into prison, the state must prove scienter); *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975) (holding that in order to convict a defendant of the felony offense of unlawful possession of a controlled substance, the state must prove that defendant consciously possessed the substance and had actual knowledge of its nature); *Cf.*

D. History of Section 609.66, Subdivision 1d

Considering totals of nonfatal crime (that is, serious violent crime plus simple assault), students ages twelve through eighteen were victims of about 2.7 million crimes while they were at school in 1998.⁴² In general, while crime may have decreased in recent years, violence at school and to and from school can lead to disruptive and threatening environments reducing student performance.⁴³ Concern over school crime and violence has driven many public schools to implement a variety of measures aimed at reducing and preventing violence and ensuring safety in schools.⁴⁴

As public outrage concerning the unsafe conditions of American public schools⁴⁵ has intensified, various states,⁴⁶ including

State v. Loge, 608 N.W.2d 152, 158-59 (Minn. 2000) (holding that the state need not prove that the driver of a vehicle had knowledge of the existence of the open bottle containing intoxicating liquor in order to convict driver of the misdemeanor offense).

42. See PHILIP KAUFMAN, ET AL., U.S. DEP'T. OF EDUC. AND JUST., *Indicators of School Crime and Safety, 2000*, NCES 2001-017/NCJ-184176 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/iscs00.txt> (providing the latest U.S. Dep't. of Education and Justice statistics on school related crime and violence). In 1993, 1995, and 1997, approximately seven to eight percent of high school students reported being threatened or injured with a weapon such as a gun, knife, or club on school property in the past twelve months before the survey. *Id.* In 1997, eighteen percent of students reported carrying a weapon such as a gun, knife, or club at any time in the past thirty days, while nine percent reported they had carried the weapon while on school property. *Id.* Whereas twenty-three percent of ninth graders carried a weapon in 1997 alone. *Id.*

43. *Id.* The presence of weapons at school can create an atmosphere of intimidation, making both teaching and learning difficult. *Id.*

44. *Id.* Such measures may include adopting zero-tolerance policies (i.e., a school or district policy that mandates predetermined consequences or punishments for specific offenses), requiring students to wear school uniforms, employing various security measures, having police or other law enforcement personnel stationed at the school, and offering students various types of violence prevention programs. *Id.* Approximately nine out of ten schools reported having adopted zero-tolerance policies for firearms (ninety-four percent) and weapons other than firearms (ninety-one percent). *Id.* In the 1996-97 school year, there were over 5,000 students expelled for possession or use of a firearm and an additional 3,300 were transferred to alternative schools. *Id.* at Table A6. Schools have taken a number of measures to secure their grounds, such as requiring visitor sign-in, using metal detectors; implementing closed-campus policies, drug and weapon sweeps, and random metal detector checks on students. See *id.* at App. A.

45. See Carl W. Chamberlin, *Johnny Can't Read 'Cause Jane's Got a Gun: The Effects of Guns in Schools, and Options After Lopez*, 8 CORNELL J.L. & PUB. POL'Y 281, 282 n.6 (1999) (citing Catherine J. Whitaker and Lisa D. Bastion, U.S. Dep't. of Just., *Teenage Victims, A National Crime Survey Report* (May 1991)). "Approximately half of all violent crimes against youths aged 12 to 19 occur on school property or adjacent streets." *Id.* Approximately thirty-seven percent of violent crimes and

Minnesota⁴⁷ have been prompted to adopt laws designed to eliminate crime and violence from schools.⁴⁸ The United States Congress has also adopted several measures directed at the escalating violence in schools.⁴⁹

In 1993, Minnesota adopted section 609.66, subdivision 1d(a), which makes possessing or storing a dangerous weapon on school property a felony.⁵⁰ Section 609.66, subdivision 1d(a), was amended in 1994.⁵¹ The section was designed to regulate and promote safe

eighty-one percent of theft against younger teenagers occur at school. *Id.* “In 1989, over 400,000 students aged 12 to 19 were victims of violent crime in or around their schools within the previous six months.” *Id.* at n.9.

46. Some states, like Minnesota, contain no express statutory element requiring that individuals charged with possession of a dangerous weapon on school property must have knowledge of that possession. *See, e.g.*, CAL. PENAL CODE § 626.10(a)-(b) (West 2000) (stating “[a]ny person . . . who brings or possesses” a weapon, as set forth in this section, upon school property is guilty of a public offense, punishable by imprisonment); MICH. COMP. LAWS § 750.237a(4) (Supp. 2001) (mandating that the possession of a weapon in a weapon free school zone is a misdemeanor punishable by one or more of the following: imprisonment, community service or fine); N.D. CENT. CODE § 62.1-02-05 (2001) (declaring a person who “possesses” a firearm at a public gathering is guilty of a Class B misdemeanor and defining “public gathering” as including schools or school functions). On the other hand, some states outlawing possession of a weapon on school property expressly require that a defendant have some form of knowledge or intent. *See, e.g.*, 720 ILL. COMP. STAT. 5/24-1 (2000) (providing that a person violates the statute when he “knowingly possesses” a knife while on school grounds); N.Y. PENAL LAW § 265.06 (McKinney 2001) (prohibiting any person age sixteen or older from “knowingly” possessing a weapon in or upon the grounds of any school); S.D. CODIFIED LAWS § 13-32-7 (Michie 2000) (stating that “[a]ny person . . . who intentionally carries, has in his possession, stores, keeps, leaves, places or puts into the possession of another person . . . any dangerous weapon” on school property is guilty of a Class 1 misdemeanor); WIS. STAT. § 948.61(2)(a) (2001) (stating that “[a]ny person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of [a] Class A misdemeanor”).

47. “[Minnesota] Representative Charles Weaver testified that three million crimes occur on school campuses each year, 160,000 children skip school every year for fear of being hurt, and weapons are appearing more frequently in Minnesota schools.” *In re C.R.M.*, 611 N.W.2d 802, 805 n.8 (Minn. 2000).

48. *See generally* Paul M. Bogos, Note, “*Expelled. No Excuses. No Exceptions.*” – *Michigan’s Zero-Tolerance Policy in Response to School Violence: M.C.L.A. Section 380.1311*, 74 U. DET. MERCY L. REV. 357, 358-374 (Winter 1997) (discussing violence in public schools and state legislative responses).

49. *See* Chamberlin, *supra* note 45, at 284-85 (citing the Gun-Free School Zone Act, 18 U.S.C. § 922(q), (x) (2001), the Gun-Free Schools Act of 1994, 20 U.S.C. § 8921 (2001), the Safe Schools Act of 1994, 20 U.S.C. §§ 5961, 5962 (2001), and the Educate America Act, 20 U.S.C. § 5802 (2001)).

50. MINN. STAT. § 609.66, subd. 1d(a) (2000). The section was introduced in the legislature in three separate bills, none including a reference to knowledge or intent. *In re C.R.M.*, 611 N.W.2d at 805.

51. MINN. STAT. § 609.66, subd. 1d(a) (Historical and Statutory Notes 2000)

schools and to make the possession of weapons other than guns on school property a felony.⁵² The issue that arises most frequently with regards to section 609.66, subdivision 1d, is what exactly constitutes a “dangerous weapon” or “firearm?”⁵³ The Minnesota Supreme Court had never addressed whether section 609.66, subdivision 1d, created a strict liability crime or whether it required some showing of knowledge or intent.⁵⁴

III. THE *IN RE C.R.M.* DECISION

A. *The Facts*

On November 2, 1998, a teacher found a folding knife with a four-inch blade in fifteen-year-old C.R.M.’s coat pocket in the course of a standard contraband check conducted on students’ coats at a juvenile day school in Anoka County.⁵⁵ C.R.M. immediately identified the coat as his but when asked what was in the coat pocket, he said he did not know.⁵⁶ Waneta Hord, the lead teacher at the school, testified that when C.R.M. was told that a knife was found in his pocket he replied, “Oh man, I forgot to take it out. I was whittling this weekend.”⁵⁷ C.R.M. was charged with possession of a dangerous weapon⁵⁸ on school property in violation

(deleting “as defined in section 609.02, subdivision 6, on’ following ‘or keeps a dangerous weapon,’ inserted ‘or uses or brandishes a replica firearm or a BB gun on’”).

52. *In re C.R.M.*, 611 N.W.2d at 805-06.

53. *See, e.g.*, *State v. Coquette*, 601 N.W.2d 443, 444 (Minn. Ct. App. 1999) (holding that a paintball gun is not a real weapon and, therefore, is not within the Minn. Stat. section 609.02, subdivision 6, definition of “dangerous weapon”). Minn. Stat. section 609.02, subdivision 6, states in relevant part:

“Dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.

MINN. STAT. § 609.02, subd. 6 (2000).

54. *See In re C.R.M.*, 611 N.W.2d at 807.

55. *Id.* at 803. C.R.M. attended the Anoka County Juvenile Day School pursuant to a prior dispositional order. *Id.* The school conducts contraband searches on the students’ coats nearly every day. *Id.*

56. *Id.*

57. Trial Tr. ¶ 9. In accordance with school policy upon finding serious contraband, school officials contacted the police. *In re C.R.M.*, 611 N.W.2d at 803.

58. C.R.M. did not contest at trial, nor on appeal, that the knife found in his

of section 609.66, subdivision 1d(a).⁵⁹

Trial was held on November 18, 1998. At trial, C.R.M. testified that he had forgotten the knife was still in his pocket from the prior weekend and that before leaving for school he had patted himself down but missed the knife.⁶⁰ C.R.M.'s mother told the court that C.R.M. had on a "double jacket" that day so even though he patted himself down before leaving for school, he could not feel the knife.⁶¹ Ms. Hord testified that C.R.M.'s reaction to the knife was "spontaneous" and "believable."⁶²

C.R.M. moved for a directed verdict, arguing that section 609.66, subdivision 1d, required that he knew that the knife was in his coat pocket and that general intent required knowledge of possession.⁶³ After having heard all the evidence in the case, the trial judge noted that he believed that C.R.M. brought the knife to school "accidentally."⁶⁴ Despite believing C.R.M.'s assertions that he did not know the knife was in his pocket while at school, the trial court felt constrained to find C.R.M. guilty because Minn. Stat. section 609.66, subdivision 1d(a) does not explicitly refer to any intent or knowledge requirement.⁶⁵ The trial court did, however, recognize and note that the statute could be susceptible to another interpretation, one requiring *mens rea*, but left that question open for appeal.⁶⁶

The trial court found C.R.M. guilty of the charged offense.⁶⁷ A dispositional order was filed ordering C.R.M. to comply with previously imposed conditions relating to earlier offenses, to write a

coat pocket was a "dangerous weapon" for purposes of Section 609.66, subdivision 1d(a). Appellant's Br. at 5, n.2.

59. *In re C.R.M.*, No. C6-98-2385, 1999 WL 595371, at *1 (Minn. Ct. App. 1999) *rev'd*, 611 N.W.2d 802(Minn. 2000); MINN. STAT. § 609.66, subd. 1d(a) (2000).

60. *In re C.R.M.*, 611 N.W.2d at 803-04.

61. *Id.* at 804.

62. *Id.* at 803. Ms. Hord testified that C.R.M. was very cooperative throughout questioning. *Id.* at 803. Anoka County police officer William Hammes gave a similar account of C.R.M.'s reaction to the situation. Trial Tr. ¶¶ 13-16. A probation officer also testifying at trial, told the court there was no evidence that C.R.M. brought the knife to school to get into a fight. *In re C.R.M.*, 611 N.W.2d at 804.

63. *In re C.R.M.*, 611 N.W.2d at 804; MINN. STAT. § 609.66, subd. 1d (2000).

64. *In re C.R.M.*, No. C6-98-2385, 1999 WL 595371, at *1.

65. Trial Tr. ¶ 21.

66. *In re C.R.M.*, 611 N.W.2d at 804. The trial court noted:

67. *In re C.R.M.*, No. C6-98-2385, 1999 WL 595371, at *1 (holding that subdivision 1d(a) did not require a defendant to have knowledge of possession when entering school property).

letter of apology and to possess no weapons, including knives, until he turned nineteen.⁶⁸ C.R.M. appealed the decision.⁶⁹ The court of appeals affirmed, holding that proof of knowledge of possession of the knife was not required to sustain a conviction.⁷⁰ The Minnesota Supreme Court granted review.⁷¹

B. *The Court's Analysis*

The Minnesota Supreme Court reversed the appellate court.⁷² The court noted that strict liability statutes are generally disfavored⁷³ and legislative intent to impose strict liability must be clear.⁷⁴ Section 609.66, subdivision 1d has never included a reference to knowledge or intent.⁷⁵ Because the statutory language provided the court with little guidance, it turned to examining the “public welfare” nature of section 609.66, subdivision 1d.⁷⁶ The court concluded that the nature of the weapon here – a knife – was not so inherently dangerous that C.R.M. should be on notice that

68. *In re C.R.M.*, 611 N.W.2d at 804. For C.R.M.’s earlier offenses, he was placed under the supervision of Anoka County Juvenile Corrections until his nineteenth birthday. He was ordered to pay restitution to his victims of his assaults in the amount of \$85.47, to have no contact with the victims, one victim’s family members and his accomplices, to engage in no assaultive or violent behavior, to attend counseling and to be monitored under home electronic monitoring. *Id.* at n.3.

69. *In re C.R.M.*, 611 N.W.2d at 804.

70. *See id.* at 804-05. The court of appeals concluded that C.R.M. knew he had a duty to determine whether the knife was in his coat, but failed to do so. *Id.* Because the appellate court felt C.R.M. should have known that he possessed the knife while on school grounds, the trial court’s decision was affirmed. *Id.*

71. *Id.* at 804.

72. *Id.* at 810.

73. *Id.* at 805 (citing *Staples v. United States*, 511 U.S. 600, 606 (1994)). The United States Supreme Court has suggested that some indication of congressional intent, express or implied, is required to effectively dispense with *mens rea* as an element of a crime. *Staples*, 511 U.S. at 604.

74. *In re C.R.M.*, 611 N.W.2d at 805 (citing *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987)). The court’s determination that the legislature intended to create a strict liability crime can only be reached after a careful examination of the statutory language. *Id.* at 805 (citing *State v. Orsello*, 554 N.W.2d 70, 74 (Minn. 1996)).

75. *Id.*; *see also supra* note 50. However, the United States Supreme Court has noted that “[c]ertainly far more than a simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement.” *In re C.R.M.*, 611 N.W.2d at 809 (quoting the Court in *United States v. United States Gypsum Co.*, 438 U.S. 422, 438 (1978)).

76. *In re C.R.M.*, 611 N.W.2d at 805-06. The court noted that the two goals underlying adoption of section 609.66, subdivision 1d, were to create safer schools and to create consistent felonies. *Id.*

mere possession would be a crime.⁷⁷

The court acknowledged the distinction between strict liability crimes and those requiring a *mens rea* as created through its own body of jurisprudence.⁷⁸ The court indicated its heightened concern regarding the importance of the level of punishment attached to the offense in considering whether the legislature intended strict liability.⁷⁹

In light of the long established principle in American criminal jurisprudence that in common law crimes and in felony level offenses *mens rea* is required, the court concluded there was not a sufficiently clear expression of legislative intent to dispense with *mens rea* with regards to section 609.66, subdivision 1d.⁸⁰ The court held that the state was required to prove that C.R.M. knew he possessed the knife on school property as an element of the section 609.66, subdivision 1d offense charged.⁸¹

IV. ANALYSIS OF THE *IN RE C.R.M.* DECISION

The Minnesota Supreme Court properly interpreted section 609.66 when it held that subdivision 1d requires proof that an individual had knowledge that he or she possessed, stored or kept a dangerous weapon on school property.⁸² The Supreme Court's holding depends on a common-sense evaluation of the nature of the particular conduct the legislature has subjected to regulation, the expectations and knowledge that individuals may reasonably have with regard to that conduct, and the penalty attached to a violation.⁸³

77. *Id.* at 810. The United States Supreme Court has acknowledged that even dangerous items can, in some cases, be so commonplace and generally available that the court would not consider them to alert individuals to the likelihood of strict regulation. *See Staples*, 511 U.S. at 611.

78. *In re C.R.M.*, 611 N.W.2d at 807, *supra* notes 35-38, 41.

79. *In re C.R.M.*, 611 N.W.2d at 808-09. Of great significance to the court was the legislative discussion of the severe penalty attached to section 609.66, subdivision 1d, because it emphasized that the weapon possession statute was to be more than merely regulatory in nature. *Id.* That is, an important objective of the statute was to expand felony level penalties for possession of dangerous weapons other than guns in school zones. *Id.* at 805.

80. *Id.* at 808-09.

81. *Id.* at 810. The case was remanded to the trial court to determine whether C.R.M. had knowledge of possession of the knife while on school property. *Id.*

82. *Id.* at 810 (construing MINN. STAT. § 609.66, subd. 1d (2000)).

83. *Staples v. United States*, 511 U.S. 600, 619 (1994).

After looking for and failing to find an express statement,⁸⁴ the court engaged in a thorough analysis of section 609.66, subdivision 1d and found no clear legislative intent to enact a strict liability offense.⁸⁵ The Minnesota Supreme Court's position is strengthened by well-established jurisprudential history that requires clear legislative intent to dispense with proof of *mens rea*.⁸⁶ The "rule of lenity," which requires penal statutes to be strictly construed in favor of a criminal defendant, is further indication that knowledge of possession is required by section 609.66, subdivision 1d.⁸⁷ "Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability."⁸⁸

The Minnesota Supreme Court was correct in concluding that the legislature intended section 609.66, subdivision 1d, to be more than merely regulatory.⁸⁹ When punishment of the wrongdoer far outweighs regulation of the social order as a purpose of the law in question, as does section 609.66, then *mens rea* should be required.⁹⁰

84. *In re C.R.M.*, 611 N.W.2d at 805 (citing *State v. Orsello*, 554 N.W.2d 70, 74 (Minn. 1996)). Silence concerning the *mens rea* required for violation of section 609.66, subdivision 1d, by itself, does not suggest that the legislature intended to dispense with the conventional *mens rea* requirement per se, thus requiring the defendant to know the facts that make his conduct illegal. See *Staples*, 511 U.S. at 605.

85. *In re C.R.M.*, 611 N.W.2d. at 808-09; see also MINN. STAT. § 645.16 (2000) (providing that the object of statutory interpretation is to determine and effectuate legislative intent).

86. See *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987). The *Neisen* court was guided by the public policy that if criminal liability, particularly gross misdemeanor or felony liability is to be imposed for conduct unaccompanied by fault, the legislative intent must be clear. *Id.* Indication of legislative intent, express or implied, is necessary to create a strict liability offense. See *Staples*, 511 U.S. at 606.

87. See *Orsello*, 554 N.W.3d at 74; see also *Rewis v. United States*, 401 U.S. 808, 812 (1971) (stating that "ambiguity concerning the ambit of criminal statutes should be resolved in the favor of lenity.").

88. *Liparota v. United States*, 471 U.S. 419, 427 (1985).

89. See *In re C.R.M.*, 611 N.W.2d at 809. The bill's legislative sponsor emphasized that it was intended to create and expand felony level penalties to include the possession of all dangerous weapons on school grounds. *Id.*

90. See *United States v. Cordoba-Hincapie*, 825 F.Supp. 485, 496 (E.D.N.Y. 1993) (interpreting Sayre's identification of the contours of the public welfare offense doctrine in *Public Welfare supra*, note 18, at 78). Likewise, if the penalty is light, involving a relatively small fine and not including imprisonment, then *mens rea* is probably not required. *Id.*

Public welfare offenses infer from silence a legislative intent to dispense with conventional *mens rea* requirements.⁹¹ However, great care is taken to avoid interpreting statutes as eliminating *mens rea* where doing so criminalizes a broad range of what would otherwise be innocent conduct.⁹² In applying the reasoning of *Staples*,⁹³ the Minnesota Supreme Court observed that knives as common household utensils are not inherently dangerous, as they can be used for a variety of completely innocent purposes.⁹⁴ In general, the destructive or injurious potential of knives cannot be said to put individuals on notice of the likelihood of regulation for their possession to justify interpreting section 609.66, subdivision 1d as dispensing with *mens rea*.⁹⁵

The court's heightened concern regarding the elimination of a *mens rea* requirement when it comes to felony offenses is well placed. As the United States Supreme Court has pointed out, imprisonment seems incompatible with the reduced culpability required for public welfare offenses.⁹⁶ Commentators studying the early public welfare cases have argued that offenses punishable by imprisonment, such as the offense charged in *In re C.R.M.*, cannot be understood to be public welfare offenses, but must require *mens rea*.⁹⁷ "Certainly, the cases that first defined the concept of the public welfare offense almost uniformly involved statutes that provided for only light penalties such as fines or short jail sentences, not imprisonment in the state penitentiary."⁹⁸

The court of appeals acknowledged the legitimacy of the heightened concern surrounding the elimination of *mens rea* with regard to a felony offense⁹⁹ but erroneously concluded that because

91. See *Staples v. United States*, 511 U.S. 600, 607 (1994). In such cases, the United States Supreme Court has "reasoned that as long as a defendant knows that he is dealing with a dangerous device of a character that places him in responsible relation to a public danger . . . he should be alerted to the probability of strict regulation." *Id.* (citation omitted). The *Staples* court concluded that guns do not fall within the category of dangerous devices as it has been developed in public welfare offense cases. *Id.* at 607-15.

92. *Id.* at 610.

93. *Id.*

94. *In re C.R.M.*, 611 N.W.2d at 810.

95. Cf. *Staples*, 511 U.S. at 611-12 (reasoning that gun owners are not sufficiently put on notice that regulation is likely simply because guns have dangerous potential).

96. *Id.* at 617-18.

97. See *Staples*, 511 U.S. at 617 (citing PERKINS, *supra* note 31, at 793-98).

98. *Staples*, 511 U.S. at 616.

99. *In re C.R.M.*, No. C6-98-2385, 1999 WL 595371, at *2 (Minn. Ct. App.

C.R.M. received a light sentence, the statute constituted a strict liability offense.¹⁰⁰ It is not justifiable to remove the *mens rea* requirement from an offense where the actual sentence is light but the potential sentence is heavy.¹⁰¹ Incarceration, with its extraordinary effects on both the defendant's liberty and status within society, requires moral culpability.¹⁰² Accordingly, in the absence of very clear legislative intent, courts have historically refused to eliminate *mens rea* requirements in the context of felony offenses.

In addition, the Minnesota Supreme Court's ruling is sound from a public policy standpoint.¹⁰³ Blameworthiness or intent is an element of crime "first, as a survival of true moral standards; second, because to punish what would not be blameworthy in an average member of the community would be to enforce a standard which was indefensible theoretically, and which practically was too high for that community."¹⁰⁴ "[T]he fact remains that the determination of the boundary between intent and negligence spells freedom or condemnation for thousands of individuals."¹⁰⁵ The Minnesota Supreme Court is also wise to call attention to the fact that "[i]n many if not most cases prosecuted under a statute proscribing occurrences on school property . . . the accused will be a school-aged minor."¹⁰⁶

The Minnesota Supreme Court's decision that Minn. Stat. section 609.66, subdivision 1d requires knowledge of possession of

1999).

100. *In re C.R.M.*, 611 N.W.2d 802, 810 n.14 (Minn. 2000). "The fact that appellant received a light sentence is of no consequence in the determination of whether *mens rea* is required under the statute because obviously the state's burden of proof of guilt cannot be determined on the level of sentence the trial court later imposes." *Id.*

101. *See id.* Indeed, the infamy of the crime still remains that of a felony, "which, says Maitland, is ' . . . as bad a word as you can give to a man or thing.'" *Morissette v. United States*, 342 U.S. 246, 260 (1952) (quoting 2 SIR FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND 465 (Cambridge University Press 1898)).

102. Levenson, *supra* note 15, at 405 (citing Herbert L. Packer, *Mens Rea and the Supreme Court*, 1962 SUP. CT. REV. 107, 150 (hereinafter Packer, *Mens Rea*)).

103. "To inflict substantial punishment upon one who is morally entirely innocent, who caused injury through reasonable mistake or pure accident, would so outrage the feelings of the community as to nullify its own enforcement." Sayre, *Public Welfare*, *supra* note 18, at 56. Minnesota law provides that the courts may be guided by the presumption that the legislature does not intend absurd or unreasonable results. *See* MINN. STAT. § 645.17, subd. 1 (2000).

104. OLIVER WENDELL HOLMES, *THE COMMON LAW* 76 (34th prtg. 1938).

105. *Morissette v. United States*, 342 U.S. 246, 256 n.14 (1952).

106. *In re C.R.M.*, 611 N.W.2d 802, 810 (Minn. 2000).

a dangerous weapon is in accord with modern scholars' views, which generally are critical of strict criminal liability crimes.¹⁰⁷ The general consensus is that punishing conduct without reference to the actor's state of mind fails to reach the desired end and is unjust.¹⁰⁸ Professors LaFave and Scott observe:

It is inefficacious because conduct unaccompanied by an awareness of the factors making it criminal does not mark the actor as one who needs to be subjected to punishment in order to deter him or others from behaving similarly in the future, nor does it single him out as a socially dangerous individual who needs to be incapacitated or reformed. It is unjust because the actor is subjected to the stigma of a criminal conviction without being morally blameworthy. Consequently, on either a preventative or retributive theory of criminal punishment, the criminal sanction is inappropriate in the absence of *mens rea*.¹⁰⁹

The Minnesota Supreme Court's analysis in *In re C.R.M.* is not at all inconsistent with those applied in other jurisdictions across the country. Many courts, in various contexts, have gone through comparable examinations of statutes and have similarly imposed a *mens rea* requirement even where, as here, the statute is silent on the matter. For instance, Indiana courts review some of the following factors, which are in accordance with those considered by the Minnesota Supreme Court, when determining whether *mens rea* is an essential element of a given crime: 1) the legislative history of a criminal statute; 2) similar or related statutes; 3) the severity of the punishment attached to an offense; 4) the danger to the public of prohibited conduct; and 5) the defendant's opportunity to ascertain whether conduct is prohibited.¹¹⁰

Finally, the majority opinion appropriately points out that the special concurrence misreads and overstates the majority decision when it suggests that the majority has created "a new standard requiring the legislature to explicitly state its intent to create strict liability offenses in all felony level crimes."¹¹¹ The majority opinion

107. LA FAVE & SCOTT, *supra* note 6, at 248.

108. *Id.*

109. *Id.* (quoting Packer, *Mens Rea*, *supra* note 102).

110. See *Wagerman v. State*, 597 N.E.2d 13, 15 (Ind. Ct. App. 1992) (holding that the State must prove that the defendant had knowledge of serial number's alteration in order to be convicted for possession of a handgun with an altered serial number).

111. *In re C.R.M.*, 611 N.W.2d at 810.

retains Minnesota's longstanding precedent relating to strict liability crimes that requires only that there be clear legislative intent to dispense with *mens rea*.¹¹² The majority is merely trying to re-emphasize its main position regarding legislative intent; express or implied, it must be clear in order to eliminate the requirement of *mens rea*.

V. CONCLUSION

The Minnesota Supreme Court has correctly interpreted Minnesota Statute section 609.66, subdivision 1d(a) as requiring the state to prove that a defendant knew that he possessed, stored or kept a dangerous weapon while on school property. The *In re C.R.M.* decision is in accordance with the legislative intent behind enactment of the section when analyzed in light of United States Supreme Court and Minnesota decisions concerning the *mens rea* in enforcement of statutes enacted for the welfare of the public. It also provides the legislature with a clear standard to guide its creation of strict liability offenses. The decision follows the long-standing principles of American criminal jurisprudence that require *mens rea* as the rule, rather than the exception.

112. *Id.* The majority opinion states, “[i]f it is the legislature’s purpose to convict a student for a felony for the unknowing possession of a knife on school property, it should say so directly and unequivocally with respect to that specific crime . . .” *Id.* at 809. This statement is not unlike that in *Staples*: “[I]f Congress had intended to make outlaws of gun owners who were wholly ignorant of the offending characteristics of their weapons, and to subject them to lengthy prison terms, it would have spoken more clearly to that effect.” *Staples v. United States*, 511 U.S. 600, 620 (1994).