IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

MARTYN WILLIAM BRIDGEMAN, *Petitioner/Appellant*,

v.

HONORABLE CYNTHIA A. CERTA, et al., *Respondents/Appellees*.

No. 1 CA-CV 19-0083
FILED 6-15-2021

Appeal from the Superior Court in Maricopa County
LC2018-000474-001
The Honorable Stephen M. Hopkins, Judge

REVERSED

COUNSEL

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OPINION

Judge Kent E. Cattani delivered the opinion of the Court, in which Presiding Judge Maria Elena Cruz and Judge Jennifer M. Perkins joined.

C A T T A N I, Judge:

¶1 Martyn William Bridgeman appeals the superior court's judgment accepting jurisdiction but denying relief in his special action challenge to a municipal court's denial of his request for a jury trial on a criminal misdemeanor charge.

¶2 Preliminarily, we take this opportunity to clarify our jurisdiction over a direct appeal from such a judgment. The Legislature granted this court appellate jurisdiction to entertain an appeal from a "final judgment" entered in a "special proceeding" that is "commenced in a superior court." A.R.S. § 12-2101(A)(1). The special action Bridgeman filed—an original proceeding brought in superior court to challenge a limited jurisdiction court's interlocutory ruling in an ongoing case—is just such a special proceeding commenced in superior court. And because the superior court special action is a separate proceeding distinct from the underlying matter in the municipal court, the superior court's ruling resolving the special action constitutes a final judgment. Accordingly, by the terms of the statute, this court has appellate jurisdiction under A.R.S. § 12-2101(A)(1), not just discretionary special action jurisdiction, to review the superior court's final judgment.

¶3 On the merits, we hold that Bridgeman is entitled to a jury trial. The Arizona Constitution preserves the right to trial by jury for modern offenses derived from jury-eligible pre-statehood common-law offenses. And here, the elements of the misdemeanor charge against Bridgeman for causing death by a moving violation are comparable to the elements of the common-law, jury-eligible felony offense of involuntary manslaughter. Accordingly, we reverse the superior court's contrary ruling.

FACTS AND PROCEDURAL BACKGROUND

¶4 While driving through an intersection, Bridgeman hit a pedestrian in the roadway. The pedestrian later died from her injuries, and

the State charged Bridgeman with causing death by a moving violation. *See* A.R.S. §§ 28-672(A)(8), -794.[1] The Phoenix Municipal Court denied Bridgeman's request for a jury trial, and Bridgeman filed a petition for special action in Maricopa County Superior Court challenging that ruling. The superior court accepted jurisdiction but denied relief. Bridgeman timely appealed.

DISCUSSION

I. Jurisdiction.

¶5 Although neither party initially raised this issue, we have an independent duty to determine our jurisdiction over a case before us. *See Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997). Our case law has not been clear about the jurisdictional basis for our review of a superior court's decision in a special action challenging a limited jurisdiction court's ruling in an ongoing underlying proceeding—whether we have appellate jurisdiction, or alternatively, whether such a decision may be reviewed only by special action. *Compare, e.g.*, *State v. Chopra*, 241 Ariz. 353, 355, ¶¶ 7–8 (App. 2016) (assuming that appellate jurisdiction is appropriate and concluding that A.R.S. § 12-2101 rather than A.R.S. § 13-4032 applies when the State appeals from a superior court special action directed to a criminal case in justice court), *State v. Cooperman*, 230 Ariz. 245, 248, ¶ 5 (App. 2012), *Bohsancurt v. Eisenberg*, 212 Ariz. 182, 184, ¶¶ 4–5 (App. 2006), *and Urs v. Maricopa Cnty. Att'y's Off.*, 201 Ariz. 71, 72 (App. 2001) (exercising appellate jurisdiction in these circumstances), *with, e.g.*, *State v. Bayardi*, 230 Ariz. 195, 197–98, ¶¶ 6–7 (App. 2012), *State v. Kalauli*, 243 Ariz. 521, 523, ¶ 4 (App. 2018), *and Phx. City Prosecutor's Off. v. Nyquist*, 243 Ariz. 227, 233 n.2 (App. 2017) (accepting special action jurisdiction after characterizing appellate jurisdiction as "unclear").

¶6 Our appellate jurisdiction is defined by statute, and it extends to "all actions and proceedings originating in or permitted by law to be appealed from the superior court." A.R.S. § 12-120.21(A)(1); *see also* Ariz. Const. art. 6, § 9 (granting the court of appeals jurisdiction "as provided by law"). And in A.R.S. § 12-2101(A)(1), the Legislature granted this court appellate jurisdiction over a direct appeal "[f]rom a final judgment entered in . . . [a] special proceeding commenced in a superior court." As described

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[1] The subsections of § 28-672(A) were renumbered (and new predicate traffic violations added) after Bridgeman was charged. *Compare* A.R.S. § 28-672(A) (2017), *with* A.R.S. § 28-672(A) (2021). We cite the current codification.

below, this type of superior court special action is a "special proceeding" (separate and distinct from the underlying case) "commenced in a superior court" that results in a "final judgment." We thus have statutory appellate jurisdiction to review the superior court's ruling by direct appeal under § 12-2101(A)(1).

¶7 The parties here do not dispute that the superior court special action is a "special proceeding" that was "commenced in a superior court," and we agree. To be sure, under these circumstances, the superior court special action and the underlying case pending in a limited jurisdiction court are in some ways intertwined—the special action seeks an order requiring the limited jurisdiction court to change an interlocutory ruling. Nevertheless, the special action filed in superior court is best seen as a separate, original proceeding, collateral to and distinct from the underlying criminal case pending in limited jurisdiction court.

¶8 This understanding is consistent with how we have described the nature of a special action in the analogous situation of a special action brought in the court of appeals to challenge an interlocutory ruling in a pending superior court case. *See Coffee v. Ryan-Touhill*, 247 Ariz. 68, 71–72, ¶ 14 (App. 2019). There, we described a special action as "a separate, original proceeding where an appellate court examines the action or inaction of public officials and may issue orders (similar to a common law writ) affecting future proceedings in a case." *Id.* (citing, as relevant here, Ariz. R.P. Spec. Act. 1(a), which combines writs of certiorari, mandamus, and prohibition into the "special action" proceeding); *see also Bayardi*, 230 Ariz. at 201, ¶ 25 (Thompson, J., concurring) (citing cases that "treat[] the special action as separate from the [underlying] matter from which it arose"). That principle applies equally here. When the superior court acts as an appellate court, it reviews the limited jurisdiction court's ruling and renders a decision affecting future proceedings in the underlying case. *See* A.R.S. § 12-124(B) (granting the superior court authority to "issue writs of certiorari to inferior courts" affecting the course of proceedings pending in those courts).

¶9 Moreover, this understanding of a superior court special action as separate from the underlying case is borne out by the procedural rules governing the superior court proceedings. For example, a superior court special action is initiated by filing a complaint—a new pleading, distinct from the operative pleadings in the underlying case, which must be served, along with a summons, pursuant to Arizona Rule of Civil Procedure 4.1 or 4.2. *See* Ariz. R.P. Spec. Act. 4(c), (d). Similarly, the special action rules direct that the superior court's ruling "shall be in the form of a

judgment for any civil action," even if the underlying case (as here) is criminal in nature. Ariz. R.P. Spec. Act. 6. And filing the special action in superior court does not automatically stay the underlying proceeding. *See* Ariz. R.P. Spec. Act. 5. This means the limited jurisdiction court retains jurisdiction and, in general, may proceed with the underlying case while the special action proceeds in parallel, further evidence that the special action functions as an independent proceeding. *Cf. Coffee*, 247 Ariz. at 72, ¶ 15.

¶10 Because a superior court special action of this nature is a separate proceeding commenced in superior court, the superior court's decision resolving the issues raised in the special action is a "final judgment," even as the underlying case remains pending in a limited jurisdiction court. *See* A.R.S. § 12-2101(A)(1); *Bayardi*, 230 Ariz. at 201, ¶ 25 (Thompson, J., concurring). We recognize the apparent anomaly of a final superior court judgment on what is, in practice, a single interlocutory piece of an ongoing case. But because the special action is a distinct proceeding commenced in superior court, the superior court's ruling resolving all issues the special action presents concludes that independent proceeding. Whatever the resolution—declining jurisdiction, accepting jurisdiction and denying relief, or accepting jurisdiction and granting relief—the superior court's ruling fully disposes of the special action.

¶11 Accordingly, a superior court special action of this nature is an independent "special proceeding commenced in a superior court" resulting in a "final judgment," so it falls squarely within the scope of this court's appellate jurisdiction as defined by the Legislature in A.R.S. § 12-2101(A)(1). *See also* Ariz. R.P. Spec. Act. 8(a) (directing that a superior court special action ruling be "reviewed by appeal where there is an equally plain, speedy, and adequate remedy by that means"). We note that, appellate jurisdiction notwithstanding, the rules authorize speedier avenues of review—accelerated appeal or even special action—if a quicker resolution is necessary. *See id.*; *see also State ex rel. Montgomery v. Rogers*, 237 Ariz. 419, 421, ¶ 5 (App. 2015) (accepting special action jurisdiction despite available remedy by appeal when that remedy is not "equal or adequate").

¶12 In a matter such as this, before we may exercise appellate jurisdiction under § 12-2101(A)(1), the superior court must certify its judgment as final under Rule 54 of the Arizona Rules of Civil Procedure. *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 427–28, ¶ 12 (App. 2016). We acknowledge (as did the superior court in this case) the apparent oddity of requiring a Rule 54 certification (generally applicable to civil cases) when the underlying case in limited jurisdiction court is (as here) a

criminal matter. As we have noted, however, the superior court special action is a separate civil proceeding, *see Chopra*, 241 Ariz. at 355, ¶ 7; *cf.* Ariz. R.P. Spec. Act. 6, and the Rule 54 certification is directed to the final judgment in the superior court special action, not the underlying case in limited jurisdiction court.

¶13 Finally, we recognize that this construction of § 12-2101(A)(1) creates a right of direct appeal to this court on some issues that would be reviewable only by special action if the underlying case were pending in superior court rather than a limited jurisdiction court. *See Chopra*, 241 Ariz. at 355, ¶ 6. Similarly, recognizing a right of appeal to the court of appeals from the superior court's decision in this type of special action—which is functionally an interlocutory appeal from the underlying case—in effect gives the parties an unusual second layer of appellate review as of right. This is particularly anomalous because neither party to the underlying case in the limited jurisdiction court would generally have an appeal to this court as of right after the limited jurisdiction court enters judgment. *See* A.R.S. § 22-375(A)–(B); *see also Bayardi*, 230 Ariz. at 197, ¶ 7 n.4.

¶14 Nevertheless, the Legislature granted this court appellate jurisdiction over a "final judgment entered in . . . [a] special proceeding commenced in a superior court," A.R.S. § 12-2101(A)(1), and a superior court's final decision in a special action challenging a limited jurisdiction court's interlocutory ruling falls within that category. *See also* A.R.S. § 12-120.21(A)(1) (extending appellate jurisdiction to "all" superior court proceedings "permitted by law to be appealed" except death penalty cases). Because our jurisdiction is defined by statute, *see* Ariz. Const. art. 6, § 9; A.R.S. § 12-120.21(A)(1); *cf. Bayardi*, 230 Ariz. at 197, ¶ 6, it is for the Legislature to adjust the scope of our jurisdiction in these circumstances if and as it sees fit. *Cf.* A.R.S. § 12-124(A)–(B) (distinguishing between superior court's authority to review limited jurisdiction court rulings by appeal and by special action); A.R.S. § 22-375(A)–(B) (limiting review by the court of appeals after superior court's ruling on *appeal* from an action in limited jurisdiction court).

¶15 Accordingly, we have appellate jurisdiction under § 12-2101(A)(1) to consider Bridgeman's appeal from the superior court's final judgment in his special action challenge to the municipal court's interlocutory ruling on his request for a jury trial.

II. Jury Trial Right.

¶16 Bridgeman argues that the municipal court and later the superior court erred by denying his request for a jury trial. He contends a jury trial is guaranteed for the misdemeanor offense with which he was charged—causing death by committing the moving violation of failing to "exercise due care" to avoid colliding with a pedestrian on a roadway, *see* A.R.S. §§ 28-672(A)(8), -794—because it derives from common-law involuntary manslaughter, for which there was a pre-statehood entitlement to a jury trial. The State does not dispute that involuntary manslaughter was a jury-eligible offense at common law, but argues that the elements of the offense as charged here are not substantially similar to involuntary manslaughter and that this court's decision in *Phoenix City Prosecutor's Office v. Nyquist*, 243 Ariz. 227 (App. 2017), forecloses Bridgeman's request for relief. We generally review the superior court's denial of special action relief for an abuse of discretion, although we consider de novo as a question of law whether a defendant is entitled to a jury trial. *Stoudamire v. Simon*, 213 Ariz. 296, 297, ¶ 3 (App. 2006).

¶17 Article 2, Section 23, of the Arizona Constitution "preserves the right to jury trial as it existed at the time Arizona adopted its constitution." *Derendal v. Griffith*, 209 Ariz. 416, 419, ¶ 9 (2005). This right extends to any "modern statutory offenses of the same 'character or grade'" as a jury-eligible pre-statehood common-law offense. *Id.* at ¶ 10 (citation omitted). To determine whether a modern offense has a jury-eligible common-law antecedent, we focus on the elements of the offenses, considering whether the elements of the modern offense are "comparable" or "substantially similar" to the elements of the common-law offense. *Id.* at 419, 425, ¶¶ 10, 36, 39. The elements need not be identical, just substantially similar. *Crowell v. Jejna*, 215 Ariz. 534, 539–40, ¶ 22 (App. 2007).[2]

¶18 Here, the State charged Bridgeman with a misdemeanor offense for "causing serious physical injury or death by a moving violation"

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[2] A jury trial is also available for any "serious" offense. *Derendal*, 209 Ariz. at 420, ¶ 13 (construing Ariz. Const. art. 2, § 24). Offenses designated as misdemeanors and punishable by no more than six months' incarceration are presumed to be petty offenses (with no right to a jury trial), although this presumption may be rebutted by showing that a conviction of the offense leads to "additional severe, direct, uniformly applied, statutory consequences." *Id.* at 422–23, 425, ¶¶ 21, 26, 37. Bridgeman does not assert a right to a jury trial on this basis, so we do not further address it.

under A.R.S. § 28-672. That statute imposes criminal liability if (1) an individual commits any of 12 predicate traffic violations and (2) the violation results in an accident that causes death or serious physical injury. A.R.S. § 28-672(A). The specific charge against Bridgeman alleged that he caused death by committing the moving violation of failing to "[e]xercise due care to avoid colliding with any pedestrian on any roadway." *See* A.R.S. §§ 28-672(A)(8), -794.

¶19 Before statehood, Arizona recognized the jury-eligible common-law felony offense of involuntary manslaughter, defined as an "unlawful killing . . . without malice" resulting from either "the commission of an unlawful act not amounting to a felony" or "the commission of a lawful act . . . in an unlawful manner, or without due caution and circumspection." Ariz. Terr. Penal Code § 176 (1901); *Harding v. State*, 26 Ariz. 334, 341 (1924) (recognizing that the Penal Code definition "is practically that of the common law"); *see also* Ariz. Terr. Penal Code §§ 17 (defining "felony" based on authorized punishment), 177 (punishment for manslaughter), 895 (jury trial).

¶20 In this case, the elements of the specific charge against Bridgeman (causing death by failing to exercise due care to avoid colliding with a pedestrian on a roadway) are substantially similar to those of involuntary manslaughter. Both require a showing that the defendant unintentionally caused another's death. *See* A.R.S. § 28-672; *Harding*, 26 Ariz. at 341. Both also require a showing that the victim's death was caused by the defendant's lawful act (in Bridgeman's case, driving) that was performed negligently or "without due caution and circumspection" (in Bridgeman's case, failing to "[e]xercise due care" to avoid a pedestrian). *See* A.R.S. §§ 28-672(A)(8), -794; Ariz. Terr. Penal Code § 176; *Harding*, 26 Ariz. at 341.

¶21 The State argues that the offenses' elements do not align, asserting that the common-law offense of involuntary manslaughter required a deliberate act creating a dangerous situation or some "affirmative act[] outside the normal *modus operandi*"—that is, something more than just failing to exercise due care as in Bridgeman's alleged offense. But the definition of the common-law offense included death resulting from the defendant's lawful act if that act was "performed negligently" or "without due caution and circumspection," nothing more. Ariz. Terr. Penal Code § 176; *Harding*, 26 Ariz. at 341. The elements of the charge against Bridgeman are thus comparable to the elements of common-law involuntary manslaughter. *See Derendal*, 209 Ariz. at 419, ¶ 10.

¶22 The State further argues that under *Nyquist*, a jury trial is not required for *any* charge under § 28-672. Although the *Nyquist* court ruled that the defendant there was not entitled to a jury trial on a charge under § 28-672, *see* 243 Ariz. at 228, 231–32, ¶¶ 1, 13–19, that case involved a different alleged predicate traffic violation, a different alleged result, and a different posited common-law antecedent. *See id.* at 229, 231–32, ¶¶ 2, 16–17; *see also* A.R.S. §§ 28-672(A)(6), -773.

¶23 The *Nyquist* court reasoned that the statutory offense and proposed common-law antecedent at issue there did not "share the same fundamental character" because the common-law offense did not require resulting injury or death, whereas the statutory offense required precisely that. 243 Ariz. at 232, ¶ 17. In contrast, here, involuntary manslaughter (Bridgeman's posited common-law antecedent) of course requires that death in fact result. Ariz. Terr. Penal Code § 176; *Harding*, 26 Ariz. at 341. *Nyquist* did not address involuntary manslaughter as a potential common-law antecedent to an offense under § 28-672—nor could it, as the defendant there was alleged to have caused serious physical injury, not death. *Id.* at 229, 232, ¶¶ 2, 17. Although we acknowledge *Nyquist*'s broad language, *see id.* at 228, ¶ 1 (describing the jury-trial holding as applicable to "the statute"), *Nyquist* does not foreclose a jury-trial right here for a § 28-672 offense based on a different predicate traffic violation linked to a different common-law antecedent.

¶24 The State further argues that *Nyquist* construed A.R.S. § 28-672 as a strict liability offense, so any offense under that statute must be materially different than common-law involuntary manslaughter premised on negligence. *Id.* at 229–31, ¶¶ 4–12. But (constrained by the defendant's argument in that case) the *Nyquist* majority expressly limited its analysis to what mental state, if any, was required by the language of § 28-672 itself and declined to consider any potential mental state required by the predicate traffic violation. *Id.* at 229, 231, ¶¶ 3, 6, 12 n.3; *see also id.* at 232–33, ¶¶ 21–23 (Swann, J., concurring) (noting that the predicate traffic violation there "effectively imposes a negligence element," and that "neither civil nor criminal liability would attach" absent that mental state).

¶25 Although the language of § 28-672 itself does not specify a required mental state, *see id.* at 229–31, ¶¶ 4–12, here, the predicate traffic violation does. As alleged against Bridgeman, the predicate traffic violation underlying the offense is a failure to act with "due care," *see* A.R.S. §§ 28-672(A)(8), -794, which aligns almost exactly with the common-law mental state of "without due caution and circumspection." *See* Ariz. Terr. Penal Code § 176; *Harding*, 26 Ariz. at 341. Acknowledging the mental state

inherent in the § 28-794 predicate traffic violation does not add a new element to § 28-672, but rather recognizes that (unlike charges based on other possible predicate traffic violations) the offense as alleged against Bridgeman necessarily involves negligence. *See Nyquist*, 243 Ariz. at 232–33, ¶¶ 21–23 (Swann, J., concurring); *cf.* A.R.S. § 13-202(B).

¶26 Accordingly, we hold that the elements of the § 28-672 offense as charged against Bridgeman (causing death by failing to exercise due care to avoid a pedestrian in a roadway) are substantially similar to those of common-law involuntary manslaughter. *See Crowell*, 215 Ariz. at 539–40, ¶ 22. Because the charged offense has a jury-eligible common-law antecedent, Bridgeman is entitled to a jury trial. *See Derendal*, 209 Ariz. at 425, ¶ 36.

CONCLUSION

¶27 We reverse the superior court's ruling upholding the municipal court's denial of Bridgeman's right to a jury trial.

AMY M. WOOD • Clerk of the Court
FILED: AA