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Supreme Court of Guam, Clerk of Court

**SUPREME COURT CASE NO. CRA2019-013  
SUPERIOR COURT CASE NO. CF0619-18**

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**IN THE SUPREME COURT OF GUAM  
HAGATNA, GUAM**

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**THE PEOPLE OF GUAM,  
Plaintiff-Appellant,**

**vs.**

**GERALD WAYNE CRUZ II aka  
GERARD WAYNE CRUZ II,**

**Defendant-Appellee.**

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**PLAINTIFF-APPELLANT'S OPENING BRIEF**

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**Appeal from a Decision and Order**

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## **JURISDICTION**

This court has jurisdiction over this matter pursuant to 48 U.S.C. § 1493. See People v. Rios, 2008 Guam 22 ¶ 28 (holding that the People may appeal a decision dismissing one or more counts of an indictment).<sup>1</sup>

## **STATEMENT OF THE ISSUE**

1. Guam law explicitly makes it a felony to cause serious physical injury to an animal. Cruz shot two animals with a rifle causing serious physical injury to both; the animals died as a result of the injuries they suffered. The question presented in this appeal is whether the People are prohibited from prosecuting Cruz for causing serious physical injury to the animals because the animals ultimately died as a result of their injuries?

## **STATEMENT OF THE CASE**

The People charged Cruz with five counts of Animal Abuse (As a Third Degree Felony) and one count of Unsworn Falsification (As a Misdemeanor) on October 23, 2018. The People filed a Superseding Indictment on December 13, 2018 charging Cruz with two counts of

<sup>1</sup> The People initially cited *People v. Pak*, 1998 Guam 27 ¶ 6 and 8 GCA § 130.20(a)(5) as a basis for jurisdiction in this matter. Statement of Jurisdiction, Oct. 14, 2019. However, this court reversed *Pak* on that point in *Rios*. This court went on to conclude that the Organic Act provided an alternative basis for jurisdiction in cases where there is a dismissal of a count in an indictment.

Animal Cruelty (As a Third Degree Felony) and Unsworn Falsification  
(As a Misdemeanor).

Cruz moved to dismiss the felony animal abuse charges arguing that the People could only charge him with a misdemeanor offense because he shot and killed the animals, but he was not acting cruelly. The trial court granted Cruz's motion on February 11, 2019.

The People filed a Second Superseding Indictment on July 1, 2019, alleging that Cruz caused serious physical injury to the animals, which is a felony offense under Guam law. Three weeks later, Cruz moved to dismiss those charges, repeating his argument that the People could only charge him with a misdemeanor because he killed the animals.

The trial court granted Cruz's motion on September 4, 2019, holding that the People could only pursue felony charges based on allegations that a defendant caused serious physical injury to an animal if the animal survived its injuries. The decision was entered on the docket that day. The People filed its notice of appeal on October 4, 2019.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Cruz shot and killed a dog named Pugua on September 27, 2018. Excerpts of Record ("ER") at 1 (Magistrate's Complaint, October 12,

2018). A day earlier, Cruz argued with neighbors of Pugua's owners because Pugua was barking at him as he walked by the front of their house. Id. During the argument, Cruz threatened Pugua and another dog. Id.

The investigating officers interviewed Lavonne Kloulubak, Cruz's wife. Id. She told officers that she saw Cruz kill Pugua with a rifle. Kloulubak also told officers that in May 2018 she saw Cruz shoot a cat with a rifle, pick up the cat's body, throw it into his truck and then drive off. Id. Police officers executed a search warrant at Cruz's home and found four firearms, including a .22 rifle. Id.

Cruz admitted that he shot the cat, but denied shooting Pugua. Id.

Cruz moved to dismiss the felony animal abuse charges filed against him arguing that "[t]o kill an animal with a firearm would be to cause its death but not with cruelty or by torture. That could perhaps be so if one were to intentionally only wound an animal with a gunshot; and intend that it die a slow and painful death from the wound. But that is not alleged here." ER at 16 (Motion to Dismiss Superseding Indictment, Dec. 27, 2018).

The trial court agreed with Cruz, holding that “[i]t is difficult to think of a less cruel way to kill an animal than death by gunshot.” ER at 21 (Decision and Order, Feb. 11, 2019). The trial court stated that “[s]erious physical injury is not at issue here because [Cruz] is accused of killing the animals, not just creating a substantial risk of their deaths or otherwise physically harming them.” Id. The trial court dismissed the felony charges of animal abuse “[b]ecause the indictment accuses [Cruz] of shooting the animals, but not cruelly killing or torturing them.” Id. at 25.

The People filed a Second Superseding Indictment against Cruz alleging that “he did intentionally, knowingly or recklessly cause serious physical injury” to Pugua and a cat by shooting them. ER at 26 (Second Superseding Indictment, July 1, 2019). During the grand jury proceeding, testimony was presented that Dr. Thomas M. Poole, the Guam Territorial Veterinarian, conducted a post-mortem assessment of Pugua and observed Pugua’s injuries. Dr. Poole found that “[t]he wounds to Pugua were caused by a relatively high velocity projectile passing through the chest and shoulder musculature.” Tr. at p. 28. Dr. Poole also found that “the wound channel was wide and jagged, and



there was extensive bleeding, both in and out of [Pugua's] body . . . This indicated that death was not immediate, and Pugua likely suffered excruciating pain and immediate lameness." Id. at pp. 28 - 29.

The Grand Jury returned a True Bill on July 1, 2019. ER at 26 (Second Superseding Indictment, July 1, 2019).

Cruz again moved to dismiss the felony animal abuse charges, arguing that the section 70.10.1(a) is unconstitutionally vague. ER at 29 (Mot. to Dismiss Second Superseding Indictment, July 25, 2019). Cruz also argued that it would be absurd for the Legislature to make it a felony offense to intentionally, knowingly, or recklessly cause serious injury to an animal while making it a misdemeanor to kill someone else's animal. Despite evidence presented to the grand jury that Pugua likely suffered excruciating pain, Cruz asked the trial court to affirm its prior finding that — as a matter of law — killing an animal by shooting it can never be cruel.

The trial court, again, granted Cruz's motion. The trial court started by observing that an indictment must contain all elements of the crime alleged. ER at 46 (Dec. and Order at 2, Sept. 4, 2019). The trial court then cited 9 GCA § 70.10(a)(3) and observed that the People

had not charged Cruz with violating that section but instead had charged Cruz with violating 9 GCA § 70.10.1(a)(1). Id. at p. 3. The court therefore conceded that the People *had* alleged Cruz caused serious physical injury to the animals. Id.

Rather than contend with the plain language of Section 70.10.1(a)(1), however, the court held that it would be absurd for the Legislature to make it a crime for a person to cause serious physical injury to an animal and for a person to kill an animal. Id. The court justified its decision by finding that “in every instance where a person kills an animal, he or she also causes serious injury or tortures the animal.” Id. Without any citation to the legislative record, the trial court concluded that “the Legislature therefore intended to create two frameworks for punishing animal abuse; one for cases where the animal dies and another for cases where the animal survives.” Id. at 4 (Dec. and Order at 4, Sept. 4, 2019).

This appeal followed.

### **SUMMARY OF ARGUMENT**

The plain language of Guam law makes it a felony to cause serious physical injury to an animal. This is consistent with the Legislature’s

intent in enacting Section 70.10.1 to strengthen punishment against people who abuse animals. This Court should uphold the plain language and intent of Section 70.10.1, reverse the trial courts Decision and Order, and allow the People to pursue felony animal abuse charges against Cruz for shooting and causing serious physical injury to two animals.

### STANDARD OF REVIEW

This court conducts a *de novo* review of questions of statutory interpretation. People v. Robert, 2019 Guam 2 ¶ 5 (citing People v. Diaz, 2007 Guam 3 ¶ 55).

### ARGUMENT

#### **I. Cruz committed a felony when he shot, injured and killed Pugua and a cat.**

Section 70.10.1(a)(1) provides that a person who causes serious physical injury to an animal commits a felony offense. 9 GCA § 70.10.1(a)(1). The People charged Cruz with violating that section based on him shooting and injuring two animals on separate occasions. The question presented in this matter is whether section 70.10.1(a)(1) is inapplicable in cases where an animal dies as a result of its injuries.

A. The plain language of the statute makes it a felony to cause serious physical injury to an animal.

“In cases involving statutory construction, the plain language of a statute must be the starting point.” Guam YTK Corp. v. Port Authority of Guam, 2019 Guam 12 ¶ 43 (quoting Pangelinan v. Gutierrez, 2000 Guam 11 ¶ 23). In this case, the plain language of 9 GCA § 70.10.1 provides:

(a) A person commits the crime of animal abuse in the first degree if the person intentionally, knowingly or recklessly, except as otherwise authorized by law:

(1) causes serious physical injury to the animal(s), cruelly<sup>2</sup> causes the death of the animal(s) or tortures the animal(s)

9 GCA § 70.10.1. “Serious physical injury” is defined as “physical injury that creates a substantial risk of death or that causes protracted disfigurement, impairment of health or impairment to the function of a limb or bodily organ.” 9 GCA § 70.01(h).

The law at issue here is unambiguous. Section 70.10.1 expressly makes it a crime when a person “causes serious physical injury” to animals. 9 GCA § 70.10.1(a)(1). Furthermore, Guam law expressly sets

<sup>2</sup> In the version of Section 70.10.1 found in Title 9 on the Compiler of Laws website it provides: “cruelty (sic) causes the death of the animal(s).” However, Public Law 31-05 correctly states “cruelly causes the death of the animal(s).” Guam Pub. L. 31-05 § 5. The People have used the language found in Public Law.

out what constitutes “serious physical injury.” 9 GCA § 70.01(h). “If a statute is unambiguous, then the judicial inquiry into the meaning of the statute is complete.” People v. Lau, 2007 Guam 4 ¶ 14 (citing People v. Quichocho, 1997 Guam 13 ¶ 5). This court would not need to conduct any further analysis based on the clear language of the statute.

B. The Legislature intended to make it a felony to cause serious physical injury to an animal.

“The plain meaning of a statute prevails where there is no clear legislative intent to the contrary.” People v. Angoco, 2007 Guam 1 ¶ 50 (citation omitted). Here, not only is there no clear legislative intent to the contrary, instead, legislative intent clearly supports the plain meaning of the statute that the act of causing serious physical injury to an animal is a felony offense.

Section 70.10.1 of Title 9, GCA was initially proposed in Bill No. 9-31 (LS) and enacted as Public Law 31-5 on March 9, 2011. The Legislature found that then-existing laws pertaining to animal care and cruelty were antiquated. Guam Pub. L. 31-5 § 1. For instance, prior to 2011, it was not a crime to cause serious physical injury to an animal. In proposing Bill No. 9-31, the Legislature’s stated intent was to “strengthen punishments against perpetrators and address persons

whose actions fall outside legitimate and legally sanctioned conduct, and who intentionally, negligently, or with criminal negligence inflict harm on animals for no valid societal or legally sanctioned reason[.]” Id.

The Legislature carried out this intent through its creation of two degrees of animal abuse: second degree animal abuse—a misdemeanor—included causing physical injury to an animal; and first degree animal abuse—a third degree felony—included causing serious physical injury to an animal. Id. §§ 4, 5. The Legislature also separately defined “physical injury” and “serious physical injury” as the terms pertained to animal abuse. Id. § 3.

The Legislative history, the expressed legislative intent, the statutory framework and the plain language of the statute demonstrate that the Legislature intended to make it a felony offense to cause serious physical injury to an animal. There being no legislative intent to the contrary, the plain meaning of Section 70.10.1 should prevail and the People should be allowed to pursue charges against Cruz under this Section.

C. It is not absurd that Cruz may have committed multiple crimes when he shot, seriously injured, and killed the animals.

The trial court eschewed the plain language of the statute and the legislative intent and instead focused on 9 GCA § 70.10(a)(3). That section provides that a person commits second degree animal abuse if he or she “kills, impounds or injures any animal belonging to another without the legal authority of the owner.” 9 GCA § 70.10(a)(3). The trial court held that it would be absurd for the Legislature to make it a criminal offense to cause serious physical injury to an animal and to make it a separate offense to kill an animal “because in every instance a person kills an animal, he or she also causes serious injury or tortures the animal.” ER at 46 (Dec. and Order, Sept. 4, 2019).

The trial court’s holding contradicts Guam law and this court’s decisions. First, Guam law provides that “[w]hen the same conduct of a defendant may establish the commission of more than one offense, *the defendant may be prosecuted for each such offense.*” 9 GCA § 1.22 (emphasis added). Accordingly, this court has held that “a defendant may be prosecuted for multiple offenses arising from the same conduct if the conduct establishes the commission of more than one offense.” People v. Aguirre, 2004 Guam 21 ¶ 18 (citing People v. Reyes, 1998

Guam 32). The fact that Cruz may have committed two crimes when he shot, seriously injured, and killed Pugua and the cat is not absurd; it is a situation that is expressly contemplated and authorized by Guam law.

The ability to charge two offenses arising out of the same conduct is not unique to animal abuse. For example, murder, manslaughter, or negligent homicide occurs when someone intentionally, knowingly, recklessly or negligently causes the death of another. 9 GCA §§ 16.40, 16.50. Aggravated assault occurs when someone causes serious bodily injury to another. 9 GCA § 19.20(a)(2).

Under the trial court's reasoning, if a victim dies as result of serious bodily injury, the People would be unable to charge a defendant with aggravated assault or any other lesser included offenses, and would be restricted to a homicide charge. To the contrary, however, it is undoubtedly permissible, and an established practice, for the People to charge a defendant for both aggravated assault and a homicide crime based on the same conduct.

Because the law permits prosecution for each offense arising from the same conduct if the conduct establishes the commission of more than one offense, this court should reverse the trial court's decision and



permit the People to prosecute Cruz for the felonious conduct of causing serious physical injury to Pugua and the cat regardless of the fact that both animals died as a result of their injuries.

### **CONCLUSION**

The plain language of 9 GCA § 70.10.1(a)(3) makes it a felony to cause substantial injury to an animal. The legislative intent of that section supports such a reading. “There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports, and a court is not at liberty to depart from the plain language of a statute by reading into it exceptions, limitations or conditions that the legislature did not express.” Kunkel v. Walton, 689 N.E.2d 1047, 1054 (Ill. 1997). The trial court erred by creating a statutory requirement that does not exist and in dismissing the felony animal abuse charges. Therefore, the People request that this court reverse the trial court’s decision and allow the People to proceed with the felony animal abuse charges against Cruz.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/

By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**, Attorney General

**CERTIFICATE REQUIRED BY RULE 13(j)**

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The undersigned, counsel of record for Plaintiff-Appellant **THE PEOPLE OF GUAM**, hereby certifies that to the best of his knowledge, none of the Justices of this Court have presided over any portion of the instant case or any related proceeding in the court below and none of the Justices have served as counsel of record or have provided legal advice to Plaintiff-Appellant **THE PEOPLE OF GUAM**. These representations are made to enable the Justices of the Court to evaluate possible recusal.

Dated this 22nd day of January 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/

By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**  
Attorney General

**CERTIFICATE AS TO INTERESTED PARTIES**

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The undersigned, counsel of record for Plaintiff-Appellant **THE PEOPLE OF GUAM**, hereby certifies that there are no known interested parties other than those participating in this case.

Dated this 22nd day of January 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/

By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**  
Attorney General

**STATEMENT OF RELATED CASES**

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The undersigned, counsel of record for Plaintiff-Appellant **THE PEOPLE OF GUAM**, hereby certifies that there are no known related cases other than this case.

Dated this 22nd day of January 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/  
By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**  
Attorney General

**CERTIFICATE OF COMPLIANCE**

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Pursuant to the GRAP 16(a)(7)(D)(i), the undersigned counsel hereby certifies that the **Opening Brief of Plaintiff-Appellant The People of Guam** is proportionately spaced, has a typeface of 14 points and contains 2,659 words, excluding parts of the brief otherwise exempted from said Rule.

Dated this 22nd day of January 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/  
By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**  
Attorney General

## CERTIFICATE OF SERVICE

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I, **LEEVIN T. CAMACHO**, do hereby certify that on January 22, 2020, I caused to file, via electronically with the Supreme Court of Guam, the following described documents:

- **Opening Brief of Plaintiff-Appellant The People of Guam; and**
- **Excerpts of Record of Plaintiff-Appellant The People of Guam.**

I further certify that I caused to have a copy of the above-described documents served on counsel for Defendant-Appellee, via electronically, to the Attorney for Defendant-Appellee so registered with the Supreme Court of Guam, to wit: William Bischoff, and will further cause to deliver and leave copies of said documents on January 22, 2020, at the Public Defender Service Corporation to the attention of William Bischoff, Attorney for Defendant-Appellee, at the address indicated below:

**WILLIAM BISCHOFF**  
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Dated this 22nd day of January 2020.

**OFFICE OF THE ATTORNEY GENERAL**  
Leevin T. Camacho, Attorney General of Guam

/S/  
By: \_\_\_\_\_  
**LEEVIN T. CAMACHO**  
Attorney General