**IN THE SUPREME COURT OF GUAM**

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| **DEPARTMENT OF AGRICULTURE, GOVERNMENT OF GUAM,**<br><br>Plaintiff-Appellant,<br><br>**vs.**<br><br>**ONE (1) REMINGTON 12-GAUGE SHOTGUN, MOD. 1187, SER. NO PC230904; ONE (1) WHITE NATIONAL HEADLAMP AND BATTERY; SHOTGUN AMMUNITION; ONE (1) BUCK KNIFE WITH SHEATH; ONE (1) WATER CANTEEN AND CASE; AND ONE (1) DEER CALL,**<br><br>Defendants-Appellees. | Supreme Court Case No. CVA97-004<br>Superior Court Case No. CV1220-95<br><br>**OPINION** |

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Appeal from the Superior Court of Guam

Argued and Submitted February 20, 1998

Hagåtña, Guam


Appearing for Plaintiff-Appellant
Monty R. May
Assistant Attorney General
Office of the Attorney General
Suite 2-200E, Judicial Center Building
120 West O'Brien Drive
Hagåtña, Guam 96910

Appearing for Defendants-Appellees
Jesse Anthony Blas#107 Ifil Court
Liguan Terrace
Dededo, Guam 96912

BEFORE: PETER C SIGUENZA, Chief Justice, JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

CRUZ, J.:

**[1]** This matter comes before the Court on appeal from the Superior Court based on a denied petition for forfeiture of items seized in connection with the illegal hunting of wild game. The Plaintiff-Appellant questions the trial court’s interpretation and application of the fish and game and forfeiture statutes. Upon review of the applicable laws, this Court REVERSES the trial court’s decision.

## FACTUAL AND PROCEDURAL BACKGROUND

**[2]** On or about the evening of April 4, 1995, Conservation Officers Rodney Perez and Mark Aguon were in the vicinity of the Ugam River Dam investigating shotgun blasts that had been heard in the area. The officers observed spotlighting activity in the jungle and discovered Jesse Anthony Blas who was in possession of a deer call, a shotgun with ammunition, an operational headlamp on his head, and a knife, which was found as a result of a pat-down search. The Officers advised Blas of his Miranda rights. Blas told the Officers that he was in the jungle searching for herbal medicine.

**[3]** The Government filed a petition for Order of Forfeiture on August 11, 1995. Pursuant to 5 GCA § 63128 (1994), the petition called for the forfeiture of (1) a Remington .12-gauge shotgun, Mod. 1187, Ser. No. PC230904; (2) a white National headlamp; (3) shotgun ammunition; (4) a buck knife with sheath; (5) a water canteen and case; and (6) a deer call. On November 29, 1995, Blas appeared *pro se* and entered a denial to the petition. A bench trial was held on March 11, 1996. The trial court reserved decision on the matter and finally issued a brief three-page written Decision and Order on January 2, 1997. The court’s decision denied forfeiture of all items seized. The Government filed a notice of appeal on January 31, 1997.

## ANALYSIS

**[4]** The Government raises the following issues on appeal: (1) whether the trial court erred in denying forfeiture of the defendant headlamp after making a finding that it was used in violation of 5 GCA § 63125; (2) whether the trial court erred in denying forfeiture of the defendant shotgun pursuant to 5 GCA § 63128 after making a finding that such was used in conjunction with a headlamp in violation of Section 63125; (3) whether the trial court erred in its interpretation of the term "taking"; and (4) whether the trial court erred in its interpretation and application of the term "paraphernalia."

**[5]** The Court has jurisdiction to hear this matter pursuant to 48 U.S.C. § 1424-3(d) and 7 GCA § 3107[1]. Questions of statutory interpretation are reviewed *de novo. People v. Quichocho,* 1997 Guam 13, ¶ 3.

### *A. Forfeiture of the Headlamp*

**[6]** The statute clearly states that a "taking" of game with a spotlight or other artificial light is established, as a prima facie case, where a person is found with a light, a gun, and ammunition after dark in a wooded area "where any game may reasonably be expected."[2] In its decision and order, the trial court expressly stated that Blas was found after dark with a shotgun, ammunition and a light

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[1]After oral arguments had already been conducted, the court discovered that no final judgment had been entered by the court below. This court issued a limited remand for the purpose of providing the Superior Court jurisdiction to enter a judgment in this case. Given that the parties have had the opportunity to brief the issues on appeal, that oral arguments have been completed, and that the court below has now entered a final judgment in the case, the court finds that it has jurisdiction over the case.

[2]5 GCA § 63125 provides in relevant part:

> It shall be unlawful for any person to take any game with a spotlight or any other artificial light of any kind. To be found with any spotlight with any rifle, shotgun or other firearm, and with ammunition, after sunset, in any wooded section or other place where any game may reasonably be expected, shall be prima facie evidence of violation of this section.

in the jungle. Furthermore, the court concluded that the Government presented prima facie evidence of a violation which Blas did not rebut. Yet, the trial court denied forfeiture of the lamp, holding that since no criminal prosecution was initiated against Blas, the items could not be seized pursuant to 5 GCA § 63128.[3] However, the code section does not require criminal prosecution against an individual in order for forfeiture to be directed. All that section 63128 does require is a violation of any code section within Title 5, Chapter 63, Article 1. It is clear that the Government established a violation of section 63125 making it a public nuisance and making forfeiture proper.

***B. Forfeiture of the gun***

**[7]** The trial court went on to assert that no "taking," within the meaning of the statute, had occurred to justify forfeiture of the seized items because "no carcass was found, nor was there any other evidence of a kill." *Dep't of Agric. v. One (1) Remington .12-Gauge Shotgun, Mod. 1187, Ser. No. PC230904,* CV1220-95 (Super. Ct. Guam, January 2, 1997). A "taking" or to "take" is defined in the statute as to "hunt, pursue, catch, angle, seize, kill, trap, would [sic], shoot in any way or by any agency or device; every attempt to do such acts or to assist any other person in the doing of or the attempt to do such acts." 5 GCA § 63101(g). Under this definition, there is no need to produce a carcass or any other evidence of a kill. "Take" not only means killing, but also the hunt or pursuit of game. A person may go out to hunt, but never happen upon any game to shoot or kill; however,

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[3] Illegal use of nets, vessels including engines, motors and all vessel accessories, paraphernalia, beasts of burden, traps, firearms, electrical devices, or vehicles; seizure; forfeiture proceeding; sale or destruction. Any net, vessel including engines, motors and all vessel accessories, paraphernalia, beast of burden, trap, firearm, electrical device or vehicle used for taking or transporting fish or game taken in violation of the provisions of this Article is a public nuisance. Every person authorized to make an arrest for such violation shall seize and keep such net, vessel including engines, motors and all vessel accessories, trap, firearm, electrical device or vehicle and report the seizure to the Department of Agriculture.

such action would still fall within the statutory definition of take.[4] Furthermore, it need not be proven that an individual was actually in the act of pursuing or taking game at the time of his apprehension. *Redding v. State,* 458 S.E.2d 168, 169 (Ga. Ct. App. 1995). The question is whether Blas hunted or pursued game to constitute a "taking" under the statute.

**[8]** The case of *State v. Hillock*, involved criminal prosecution of defendants who were convicted of hunting in violation of a Maine state statute making it unlawful to hunt between a half hour after sunset until a half an hour before sunrise. 384 A.2d 437, 438 (Me. 1978). The defendants were convicted of hunting in violation of that provision merely because they were caught at night in their truck in an area where deer were known to abound, with a shotgun and search light in plain view. *Id.* at 441. Although this case involved the criminal prosecution of the individuals who were determined to be unlawfully hunting at night, what is significant about the *Hillock* case is the fact that the aforementioned evidence was sufficient to establish that the defendants were "hunting" with a gun and light in an area known for hunting. *Id.* at 440. No carcass was found and the defendants were never observed outside of the truck; however, hunting was held proven.

### *C. Definition of Take or a Taking*

**[9]** As applied to this case, although not a criminal prosecution, what needs to be established is that a "taking" occurred. The trial court did not indicate that it believed Blas' contention that he was searching for medicinal herbs. It did, however, find that section 63125 was violated. Returning to section 63125, the statute reads that it is a violation to take game with a light. Prima facie evidence of a violation is established if a person is found at night with a light, a gun and ammunition in any wooded section or other place where game may reasonably be expected. The statute presumes a "taking" if a person is in a wooded area after dark with a gun and ammunition. The evidence of

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[4] A person can be hunting in the woods and never see a deer; hunting does not require the killing of a deer or even the firing of a shot. *Pharr v. State*, 465 So.2d 294, 300 (Miss. 1984).

being out at night in the jungle with a gun, ammunition, a light, a deer call, a canteen and a knife' and being in the vicinity of where the Conservation Officers heard shots; presents more than sufficient evidence of a "taking." As noted in the *Hillock* case the absence of evidence of a carcass or a kill is legally irrelevant. With no substantial evidence to the contrary, it appears the trial court erred in both its interpretation and application of the law in this case.

### *D. Definition of Paraphernalia*

**[10]** The final question is whether the ammunition, knife, canteen and deer call should have been forfeited under section 63128. Section 63128 permits forfeiture for the illegal use of "net, vessel including engines, motors and all vessel accessories, paraphernalia, beast of burden, trap, firearm, electrical device or vehicle used for taking or transporting fish or game" as public nuisances. 5 GCA § 63128. The Government argues that the aforementioned items would qualify as "paraphernalia" and be subject to seizure and forfeiture under section 63128. The trial court stated that those items "might" fall within the definition of paraphernalia, but discounted the possibility because none of those items seized were specifically enumerated within the statute itself.

**[11]** The Government asks the Court to adopt a definition of paraphernalia which is associated with the more commonly used concept of drug paraphernalia-- "used, intended for use, or designed for use[5]," in this case, in the taking of game. The Court both accepts and adopts the preceding definition of paraphernalia. In this case, the canteen is a rather innocuous item; however, combined with the ammunition, knife and deer call, as well as the gun and headlamp, all would be used, intended for use, or designed for use in the taking of game. As such, the remainder of the seized items, as paraphernalia, were subject to forfeiture under section 63128.

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[5] Drug paraphernalia has been statutorily defined in many jurisdictions as "all equipment, products, and materials of any kind that are used, intended for use, or designed for use" in activities related to either the production or consumption of drugs. HAW. REV. STAT. § 329-1 (1997); MONT. CODE ANN. § 45-10-101 (1997); WASH. REV. CODE § 69.50.102 (1997).

## CONCLUSION

**[12]** A plain reading of the statute would indicate that Blas violated section 63125 and Guam Admin. R. & Regs. § 15300.1.[6] In turn, forfeiture of all the seized items would be proper under section 63128 expressly and impliedly as paraphernalia. The Court hereby reverses the trial court’s decision as the court below misapplied the law in this case. Reversed and Remanded for proceedings consistent with this decision.

BENJAMIN J. F. CRUZ, Associate Justice

JANET HEALY WEEKS, Associate Justice

PETER C. SIGUENZA, Chief Justice

[6]It shall be legal to hunt wild game in season from one half hour before sunrise to one half hour after sunset. Guam Admin. R. & Regs. 15300.1.