IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

LARRY VAN BUI,
Defendant-Appellant.

OPINION

Cite as: 2008 Guam 8

Supreme Court Case No.: CRA05-009
Superior Court Case No.: CF0319-03

Appeal from the Superior Court of Guam
Argued and submitted on October 10, 2006
Hagåtña, Guam

Appearing for Defendant-Appellant:
Howard Trapp, *Esq.*
Howard Trapp Inc.
200 Saylor Bldg.
139 Chalan Santo Papa
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
287 W O'Brien Dr.
Hagåtña, GU 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice;[1] ALEXANDRO C. CASTRO Justice *Pro Tempore*.

TORRES, J.:

[1] This appeal concerns the validity of a plea agreement entered into by Defendant-Appellant Larry Van Bui ("Van Bui") and Plaintiff-Appellee People of Guam ("People"), wherein Van Bui pleaded guilty to Manslaughter (as a 1st Degree Felony), as a lesser-related offense of Aggravated Murder (as a 1st Degree Felony), as well as a Special Allegation of Possession and Use of a Deadly Weapon in the Commission of a Felony. The written plea agreement signed by Van Bui, the People, and Van Bui's trial counsel stated that Van Bui committed Manslaughter in violation of 9 GCA § 16.50(a)(1). Towards the end of the colloquy at Van Bui's change of plea hearing, however, Van Bui's counsel orally requested that the plea agreement be changed to reflect that Van Bui committed Manslaughter pursuant to 9 GCA § 16.50(a)(2) rather than § 16.50(a)(1) because Van Bui was influenced by extreme mental or emotional disturbance. Judgment was thereafter entered against Van Bui. Mr. Van Bui seeks to withdraw his plea, and appeals from the judgment, arguing that he was not advised of the elements of 9 GCA § 16.50(a)(2), and that his plea therefore was not made knowingly, intelligently, and voluntarily as required by the Due Process Clause.

[2] Because of the last-minute change in the criminal offense to which Van Bui was pleading guilty, the record indicates that nobody explained to Van Bui the intent element of the crime to which he pleaded guilty, and we find that Van Bui's plea was not made knowingly and intelligently.

[1] After this matter was submitted, but prior to the issuance of this opinion, Justice Robert J. Torres was sworn in as Chief Justice, and Justice F. Philip Carbullido assumed the role of Associate Justice.

I.

[3] Van Bui was indicted on July 1, 2003, with one count of Aggravated Murder (as a 1st Degree Felony), and a Special Allegation of Possession and Use of a Deadly Weapon in the Commission of a Felony. The Indictment charged that on or about June 23, 2003, Van Bui intentionally and with premeditation caused the death of Gina Doan, in violation of 9 GCA § 16.30(a)(1) and 16.30(b). Appellant's Excerpts of Record ("ER"), p. 1 (Indictment). The indictment also charged that, in the commission of that offense, Van Bui possessed and used a deadly weapon, a knife, in violation of 9 GCA § 80.37.

[4] Van Bui and his counsel negotiated and signed a written plea agreement with the People, in which Van Bui agreed to plead guilty to Manslaughter (as a 1st Degree Felony), in violation of 9 GCA §§ 16.50(a)(1), 16.50(b), and 80.30, and would receive a sentence of three to fifteen years imprisonment. ER, pp. 3-11 (Plea Agreement). For the Special Allegation of Possession and Use of a Deadly Weapon in the Commission of a Felony, the parties agreed that Van Bui would be sentenced to five years, to run consecutively to the sentence for the Manslaughter charge.

[5] The lower court held a change of plea hearing on September 14, 2004. Before engaging in the colloquy with Van Bui, the court inquired of his trial counsel whether he had informed Van Bui "of the nature of the charges in this case" and whether it appeared to counsel "that he fully understands each of these charges." ER, p. 15 (Change of Plea Hr'g). Van Bui's trial counsel responded in the affirmative. *Id.* The lower court also asked Van Bui's counsel whether "this plea agreement protect[s] his rights and [whether] it appear[s] to be fair and reasonable

under the circumstances of this case," to which Van Bui's counsel again responded in the affirmative. *Id.*

At this point, the lower court began its colloquy with Van Bui. Relevant portions of this colloquy are as follows:

THE COURT:	Have you seen a written copy of your plea agreement in this case?
[VAN BUI]:	Yes.
THE COURT:	Have you gone over with your Counsel the terms and conditions contained in this plea agreement before you signed it?
[VAN BUI]:	Yes.
THE COURT:	Do you understand all the terms and conditions contained in this plea agreement?
[VAN BUI]:	Yes.
THE COURT:	Are you satisfied with the advice and representation given to you by your Counsel?
[VAN BUI]:	Yes.
	. . . .
THE COURT:	Are you entering into this plea agreement out of your own free will because you are really guilty of the charges?
[VAN BUI]:	Yes.

Id. at 17-18.

[6] The lower court then asked counsel for the People to "read the Indictment" and "highlight the essential elements of the offense, so that [Van Bui] can understand the nature of the charges, as well as the elements of the offense." *Id.* at 21. Van Bui's counsel interrupted, stating that he would stipulate that the People would have proven "the essential elements of Manslaughter and the Special Allegation beyond a reasonable doubt," but stated that he "did not want to go into t[o]o many facts." *Id.* at 22. The People then offered a factual stipulation, as follows:

> Defendant committed a criminal homicide . . . recklessly. . . . The Defendant stabbed the victim . . . [who] died shortly thereafter. And Dr. Aurelio Espinola confirmed the cause of death . . . was . . . from both a stab wound to the abdomen and a stab wound from the abdomen into the chest. The elements of recklessness can be met. The elements of Possession and Use of a Deadly Weapon under 9 G.C.A. Section 80.37 can be met.

Id. at 22-23. The court asked if the defense would stipulate to these facts, but Van Bui's counsel did not agree to the proffered stipulation, instead stating that "our intention was . . . that [the manslaughter] was committed under extreme mental and emotional disturbance." *Id.* at 23. While recklessness is an element of 9 GCA § 16.50(a)(1), the influence of extreme mental or emotional disturbance is an element of 9 GCA § 16.50(a)(2). 9 GCA §§ 16.50(a)(1) and (a)(2) (2005). When the court asked for a factual stipulation from the defense, Van Bui's counsel asked to speak to opposing counsel. After a pause in proceedings, defense counsel offered to stipulate that the elements of the offense would be proven beyond a reasonable doubt, including that Van Bui committed a homicide "which would otherwise be murder" under the influence of extreme mental or emotional disturbance, and that such explanation or excuse was reasonable. *Id.* at 24.

[7] The prosecution agreed that this stipulation was satisfactory to the People. The court did not ask Van Bui if he understood and agreed to the revised plea agreement or stipulation, and the court did not explain to Van Bui that he was pleading to 9 GCA § 16.50(a)(2) as opposed to (a)(1). Rather, the court then asked Van Bui how he wished to plead to the offense of Manslaughter and the Special Allegation. Van Bui responded, "[g]uilty." *Id.* at 26. The court then made a finding on the record that Van Bui was "fully competent and capable of entering an informed plea, and that [Van Bui] is aware of the nature of the charges and the consequences of

the plea, and that the plea of guilty is a knowing and voluntary plea supported by independent basis and fact containing each of the essential elements of the offense." *Id.* at 26-27.

[8] Van Bui now challenges the voluntariness of his plea, arguing that he was never advised of the elements of 9 GCA § 16.50(a)(2), which differ from the elements of 9 GCA § 16.50(a)(1).

II.

[9] This appeal is from a final judgment. This court has jurisdiction over an appeal from a final judgment of the Superior Court. 48 U.S.C. § 1424-1(a)(2) (Westlaw though Pub. L. 110-237 (2008)); 7 GCA §§ 3107(b) and 3108(a) (2005).

III.

[10] Because Van Bui did not bring the alleged error to the attention of the Superior Court, despite the opportunity to do so, for example, by seeking to withdraw his plea prior to sentencing, our review is for plain error. *See People v. Chung*, 2004 Guam 2 ¶ 9; *see also Boykin v. Alabama*, 395 U.S. 238, 241-42 (1969) (finding error "plain on the face of the record" because guilty plea was not intelligent and voluntary). Under plain error review, Van Bui has the burden of proving: (1) that there has been a violation of a legal rule, not waived by Van Bui, during court proceedings; (2) the error must be plain in that it is "clear" or "obvious" under current law; and (3) the plain error must have affected Van Bui's substantial rights. *Chung*, 2004 Guam 2 ¶ 9; *see also* 8 GCA § 130.50(b) (permitting review on appeal of unpreserved errors only if they are "[p]lain errors or defects affecting substantial rights."); *United States v. McKinney*, 954 F.2d 471, 476 (7th Cir. 1992) (holding that the defendant bears the burden of proving that a plain error affected substantial rights, even if the alleged error is a constitutional

error).[2] Plain error also requires a finding that the error has seriously affected the fairness, integrity or public reputation of judicial proceedings. *United States v. Gandia-Maysonet*, 227 F.3d 1, 5-6 (1st Cir. 2000) (finding plain error where defendant was misinformed of intent requirement); *see also Chung*, 2004 Guam 2 ¶ 18.

IV.

[11] A court may not accept a guilty plea unless the defendant is adequately informed of the nature of the charge against him. *See* 8 GCA § 60.50 (2005) ("The court shall not accept a plea of guilty . . . without first, by addressing the defendant personally in open court, informing him of and determining that he understands . . . the nature of the charge"). Because a guilty plea operates as a waiver of important rights, it is constitutionally valid "only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences.'" *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)); *see also Chung*, 2004 Guam 2 ¶¶ 13-14. A guilty plea "'cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.'" *Chung*, 2004 Guam 2 ¶ 14 (quoting *McCarthy v. United States*, 394 U.S. 459, 466 (1969)). The defendant must also be informed of the crime's elements, or the constitutional requirements will not have been met. *Stumpf*, 545 U.S. at 182-83 (citing *Henderson v. Morgan*, 426 U.S. 637, 644-45 (1976)).

[12] Some elements, such as intent, are "critical element[s]," and a description of such elements is required. *Henderson*, 426 U.S. at 647 n.18 (setting aside plea where defendant had

[2] The federal statute governing plain error review of criminal convictions is substantively identical to the corresponding Guam statute. *Compare* 8 GCA § 130.50(b) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."), *with* Fed. R. Crim. P. 52(b) ("A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.").

not been informed of intent to kill element of second-degree murder). But it might not be necessary to describe elements of an offense that are not critical. *See id.* ("assum[ing]," without deciding, that "a description of every element of the offense" is *not* required). In determining whether an element is "critical" within the meaning of *Henderson*, courts have often examined whether "the omitted or unexplained element was one which elevated the degree and seriousness of the crime to which the plea was offered above some other offense." 5 Wayne R. LaFave, et al., *Criminal Procedure* § 21.4(c) & n.76 (3d ed. Westlaw through 2008) (citing *United States v. Minore*, 292 F.3d 1109, 1117 (9th Cir. 2002)).

[13] The level of explanation required may depend on the complexity of the charges. *See Chung*, 2004 Guam 2 ¶ 16; *United States v. James*, 210 F.3d 1342, 1345 (11th Cir. 2000) ("'Charges of a more complex nature . . . may require more explication.'" (quoting *United States v. DePace*, 120 F.3d 237, 237 (11th Cir. 1997))). When the elements of a crime are easily understood, reading the indictment or a summary of the charges in the indictment may be sufficient to advise a defendant of the elements of the crime. *United States v. Van Buren*, 804 F.2d 888, 892 (6th Cir. 1986). If the charge is more complex or uses concepts or terms that may be foreign to a lay person, however, the court may require more than a reading of the indictment. *Id.*; *Chung*, 2004 Guam 2 ¶ 16.

[14] The notice requirement may also be violated if a court misinforms the defendant regarding an element of the offense. *See Bousley v. United States*, 523 U.S. 614, 618-19 (1998); *Gandia-Maysonet*, 227 F.3d 1, 5 (1st Cir. 2000).

[15] In determining whether a guilty plea was a knowing and voluntary act, we review the totality of the relevant circumstances. *Hanson v. Phillips*, 442 F.3d 789, 798 (2d Cir. 2006);

Beck v. Angelone, 261 F.3d 377, 394 (4th Cir. 2001); *see Henderson*, 426 U.S. at 644. Any facts in the record at the time of the plea proceeding may be used to support the plea. *United States v. Adams*, 448 F.3d 492, 499 (2d Cir. 2006).

[16] The elements of each charge do not need to be explained to the defendant by the judge himself on the record. *Stumpf*, 545 U.S. at 183. Rather, the record is sufficient if it reflects that defendant's counsel explained the elements of the crime to him. *Id.* "Where a defendant is represented by competent counsel, the court usually may rely on that counsel's assurance that the defendant has been properly informed of the nature and elements of the charge to which he is pleading guilty." *Id.*

[17] The Supreme Court had suggested earlier in dicta from *Henderson* that, "even without such an express representation, it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit." 426 U.S. at 647. Courts have taken different positions on whether and how that dicta should be applied. In *State v. Reid*, for example, the Connecticut Supreme Court stated that the presumption should apply, "'unless a record contains some positive suggestion that the defendant's attorney had not informed the defendant of the elements.'" 894 A.2d 963, 976 (Conn. 2006) (quoting *State v. Lopez*, 850 A.2d 143, 144 (Conn. 2004). By contrast, in *Abrams v. State*, a Maryland appellate court found that, after the *Stumpf* decision:

> No longer can a trial judge rely on the presumption that defense counsel has sufficiently explained to the defendant the nature of the offense to which he or she is entering a guilty plea [as Maryland precedent had allowed prior to *Stumpf*]. Instead, the trial judge must either (1) explain to the defendant on the record the nature of the charge and the elements of the crime, or (2) obtain on the record a

> representation by defense counsel that the defendant has been 'properly informed of the nature of the elements of the charge to which he [or she] is pleading guilty.'

933 A.2d 887, 900 (Md. Ct. Spec. App. 2007) (quoting *Stumpf*, 545 U.S. at 183).

[18] Even if the record does not demonstrate that the elements of an offense were properly explained to a defendant by the court or by counsel, courts have sometimes assumed that if a defendant admits to facts amounting to an element of the offense to which he pleads guilty, then he cannot complain that he was not informed of that element. LaFave et al., *supra*, § 21.4(c) & n.95 (collecting cases). *But see United States v. Syal*, 963 F.2d 900, 905 (6th Cir. 1992) (holding that plea was not intelligently made despite a factual stipulation to the acts committed, because "there was no explanation of the legal significance of those acts.").

A. Adequate Explanation of the Elements of the Crime

[19] Defendant contends that he was not adequately informed of two elements of 9 GCA § 16.50(a)(2), namely: (1) that the reasonableness of the explanation of "extreme mental or emotional disturbance" must be viewed from the perspective of a reasonable person in the defendant's situation; and (2) that the death must have been intentional. Appellant's Reply Brief, p. 6 (July 18, 2006).

1. Lack of Explanation Regarding a Mitigating Factor Is Not Reversible Error

[20] One element of 9 GCA § 16.50(a)(2) is whether the killing was "committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse," where the reasonableness is "determined from the viewpoint of a reasonable person." 9 GCA § 16.50(a)(2). Van Bui argues that plain error occurred because he was not informed of the perspective from which the reasonableness of the excuse of extreme mental or emotional disturbance is measured. The excuse of extreme mental or emotional disturbance, however, is a

mitigating factor that lessens the offense from murder to manslaughter. *See* 9 GCA § 16.50(a)(2). Because a mitigating factor does not "elevate[] the degree and seriousness of the crime," it is not a "critical element" that is constitutionally required to be explained to a defendant. LaFave, et al., *supra*, § 21.4(c) & n.76 (analyzing *Henderson*). Thus, even if Van Bui did not fully understand this element, it did not affect his substantial rights or constitute plain error. *See id.*; *Chung*, 2004 Guam 2 ¶ 9.

2. Van Bui Was Not Properly Informed of the Intent Element of § 16.50(a)(2)

[21] Van Bui also asserts that he did not understand the intent element of § 16.50(a)(2).[3] In his brief, Van Bui represents that the intent element of (a)(2) was never "alluded to by either the superior court or counsel," Appellant's Reply Brief, p. 6. Intent is a critical element that must be described to the defendant. *Henderson*, 426 U.S. at 647 n.18. While the record clearly reflects that Van Bui was informed of the elements of 9 GCA § 16.50(a)(1), nothing in the record indicates that Van Bui was informed of the elements of 9 GCA § 16.50(a)(2).

[22] The difference between (a)(1) and (a)(2) is the element of intent. Title 9 GCA § 16.50 provides, in relevant party:

> **§ 16.50. Manslaughter Defined and Classified.**
> (a) Criminal homicide constitutes manslaughter when:
> (1) it is committed recklessly; or
> (2) a homicide which *would otherwise be murder* is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse (The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The

[3] Van Bui states that he was not informed that he "had to have caused the death of Gina Doan intentionally." Appellant's Reply Brief, p. 6. Van Bui is mistaken, however, in that 16.50(a)(2) is not limited to intentional homicide, but also includes homicide committed "knowingly" or "recklessly under circumstances manifesting extreme indifference to the value of human life." 9 GCA § 16.40(a)(1) and (2).

> defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.)

9 GCA § 16.50 (emphasis added). Whether a homicide would be "murder" is defined by 9 GCA § 16.40, and includes an intent element that includes a homicide that is intentional, knowing, or committed with extreme recklessness:

> **§ 16.40. Murder Defined.**
>
> (a) Criminal homicide constitutes murder when:
>
> (1) it is committed intentionally or knowingly; or
>
> (2) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life[.]

9 GCA § 16.40 (2005). In other words, manslaughter requires either standard recklessness under § 16.50(a)(1), or a level of intent of at least recklessness manifesting extreme indifference to the value of human life, combined with the mitigating factor of extreme emotional or mental disturbance under § 16.50(a)(2). *Cf. State v. Pinero*, 778 P.2d 704, 714 (Haw. 1989) (discussing the intent element for a similar manslaughter statute).

[23] During the hearing, defense counsel offered to stipulate that the government would have proven each of the essential elements of "[m]anslaughter" beyond a reasonable doubt, but did not specify whether he was referring to (a)(1) or (a)(2), and he expressly declined to offer a factual basis to support the guilty plea. ER, p. 22 (Change of Plea Hr'g) ("[T]he Defense did not want to go into t[o]o many facts at this point but reserve that for the sentencing."). The People sought to add a factual stipulation that Van Bui committed the homicide "recklessly" by stabbing the victim twice. *Id.* at 22-23. Recklessness is the intent element of § 16.50(a)(1).[4]

[4] To the extent that Van Bui relied on this proposed factual stipulation or on the written plea agreement, both of which related to 9 GCA § 16.50(a)(1), he would have been misled, as 9 GCA § 16.50(a)(2) requires a level of intent greater than standard recklessness. *Cf. Bousley*, 523 U.S. at 618-19 (finding that the notice requirement may be violated if a court misinforms the defendant regarding an element of the offense).

[24] The defense, however, did not agree to the People's proposed stipulation of a recklessly committed homicide by stabbing. When the court asked whether Van Bui would agree to such a factual stipulation, his counsel stated, "[w]ell, Your Honor, with respect to the elements of Manslaughter, our intention was to – the Manslaughter was that it was committed under extreme mental and emotional disturbance." *Id.* at 23. The court then requested a factual stipulation from the defense. After a pause in proceedings during which defense counsel conferred with counsel for the People, defense counsel stated:

> I've spoken to the Government and . . . I've offered to stipulate . . . as follows.
>
> > That had the matter gone to trial, the Government would have proved the following beyond a reasonable doubt; that the Defendant committed *a homicide which would otherwise be murder*; it was committed under the influence of extreme mental or emotional disturbance; and had the matter gone to trial, we would have established the reasonableness of such explanation or excuse to the jury.

Id. at 24 (Change of Plea Hr'g) (emphasis added). No further explanation was provided of § 16.50(a)(2).

[25] Thus, the record's only references to the intent element are the government's reference to homicide committed "recklessly," and defense counsel's offer to stipulate that Van Bui committed "a homicide which would otherwise be murder." *Id.* at 22-24. But "recklessly" is not the appropriate standard under (a)(2), and a constitutionally-valid plea requires that the intent element of "murder" be explained to a defendant before he pleads guilty to committing that crime. *Stumpf*, 545 U.S. at 183; *Henderson*, 426 U.S. at 647. While "a homicide which would otherwise be murder" is an element listed in (a)(2), and counsel included that element in the stipulation, "murder" contains several elements of its own, and the record provides no indication that those underlying elements were explained to Van Bui. Murder as opposed to homicide or

manslaughter is a concept that may be foreign to a lay person and should be explained to a defendant prior to a guilty plea. *See Van Buren*, 804 F.2d at 892. By referring to "murder," it cannot be presumed that a defendant understands or is informed of the elements of that crime. *See id.*; *see also* Appellee's Brief, p. 11 (June 23, 2006) (conceding that "the intent element . . . was not self-explanatory[.]").

[26] Even if it were generally appropriate to presume that a competent defense counsel would have explained the elements of the crime to the defendant, such a presumption cannot be applied under the unusual circumstances of this case, where the last-minute switch to the plea provides a "positive suggestion" that the elements of the crime to which Van Bui pleaded guilty were not explained to him. *Reid*, 894 A.2d at 976; *see also Chung*, 2004 Guam 2 ¶ 17 ("[B]efore we may apply [the *Henderson*] presumption, some factual basis in the record must exist from which we can conclude that Chung's counsel explained the nature of the charges to him and that Chung thereby understood the nature of the charges."). Van Bui's counsel did not request the change until the colloquy with Van Bui was almost complete, and Van Bui's counsel never states that he explained the new factual stipulation to Van Bui. ER, pp. 23-28 (Change of Plea Hr'g). The proceedings were confusing regarding which form of manslaughter Van Bui was pleading guilty to. In fact, the court mistakenly entered judgment under § 16.50(a)(1) rather than (a)(2), ER, p. 32 (Judgment), though the parties agree that the plea was to (a)(2), ER, p. 25 (Change of Plea Hr'g).

[27] While the factual stipulations offered with a guilty plea sometimes provide a basis for assuming that the defendant understood the intent element of the crime, such a presumption cannot be made here. *Cf.* LaFave et al., *supra*, § 21.4(c). Defense counsel's stipulation did not

address the element of intent other than to state, without providing a factual basis, that he committed "a homicide which would otherwise be murder." ER, p. 24 (Chang of Plea Hr'g). While the government's proposed factual stipulation provided that Van Bui committed the homicide "recklessly" and described how the murder was committed, Van Bui and his counsel did not agree to stipulate to those facts. *Id.* at 22. The stipulation offered by Van Bui's counsel included only the legal conclusion that Van Bui committed a homicide that "would otherwise be murder." *Id.* at 24.

[28] The record in a guilty plea case will normally contain "either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused." *Henderson*, 426 U.S. at 647. In this case, the record reflects that Van Bui was informed of and understood the elements of 9 GCA § 16.50(a)(1). But the record does not contain an explanation of the 16.50(a)(2) charge by the trial judge, or a representation by defense counsel that the nature of (a)(2) had been explained to the accused. *See id.*; *Stumpf*, 545 U.S. at 183. Thus, based on the record before us, including the confusion regarding the offense to which Van Bui was pleading guilty and the last-minute change to the plea, we find that Van Bui was not provided sufficient notice of the element of intent under 9 GCA § 16.50(a)(2). *See Stumpf*, 545 U.S. at 183; *Henderson*, 426 U.S. at 647; *Chung*, 2004 Guam 2 ¶ 18.

B. The Failure to Explain the Intent Element of Manslaughter Under 9 GCA § 16.50(a)(2) Constituted Plain Error

[29] "[T]here may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction." *Chapman v. California*, 386

U.S. 18, 22 (1967). When a court has failed to adequately determine that a defendant understands the nature of the charges to which he is pleading guilty, however, the error affects the defendant's substantial rights, and seriously affects the fairness, integrity or public reputation of judicial proceedings. *Chung*, 2004 Guam 2 ¶ 18 (finding plain error). Such a plea cannot be deemed constitutionally voluntary and constitutes plain error. *Id.*; *see also United States v. Guerra*, 94 F.3d 989, 995 (5th Cir. 1996) ("A guilty plea that was not knowingly, voluntarily, and intelligently entered is invalid and may be withdrawn by the defendant; a conviction resting upon such a plea must be vacated."). We therefore vacate the trial court's judgment of conviction. *See Chung*, 2004 Guam 2 ¶ 18.

V.

[30] Because the record indicates that Van Bui was not adequately informed of the intent element of the offense to which he pleaded guilty, we find that the plea was not knowing, intelligent, and voluntary. We therefore **VACATE** the judgment and **REMAND** to the trial court for further proceedings consistent with this opinion.

ROBERT J. TORRES

ROBERT J. TORRES
Associate Justice

ALEXANDRO C. CASTRO

ALEXANDRO C. CASTRO
Justice *Pro Tempore*

F. PHILIP CARBULLIDO

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Chief Justice