IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JIMMY AGUON MANLEY,
Defendant-Appellant.

Supreme Court Case No.: CRA09-003
Superior Court Case No.: CF0100-02

OPINION

Cite as: 2010 Guam 15

Appeal from the Superior Court of Guam
Argued and submitted on March 9, 2010
Hagåtña, Guam

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

Appearing for Defendant-Appellant:
John P. Morrison, *Esq.*
Assistant Public Defender
Alternate Public Defender Div.
Public Defender Service Corp.
Suite 902, DNA Bldg.,
238 Archbishop F.C. Flores St.
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] This appeal involves the validity of a judgment entered after Defendant-Appellant Jimmy Aguon Manley ("Manley") pleaded guilty to one count of Vehicular Homicide (as a 2nd Degree Felony) and five counts of Aggravated Assault (as a 3rd Degree Felony). Manley argues that the Superior Court erred by: 1) accepting his guilty pleas without first determining whether he understood the nature of the charges against him, as required by 8 GCA § 60.50(a); 2) allowing consecutive sentences on the Aggravated Assault counts in violation of 9 GCA § 19.20(a)(2); and 3) finding no ambiguity in the intended unit of prosecution in 9 GCA § 19.20(a)(2), and thus finding no need to apply the rule of lenity. Plaintiff-Appellee People of Guam ("People") counter that Manley should be estopped from bringing this appeal because the plea agreement at issue contains a valid waiver of Manley's statutory appellate rights.

[2] We find that Manley's guilty plea to the Vehicular Homicide charge was constitutionally valid and therefore his plea agreement with the People bars his appeal of that conviction. Additionally, the plea agreement contains a valid waiver of Manley's statutory right to appeal his Aggravated Assault convictions. Manley's appeal of his sentence for Aggravated Assault is proper pursuant to our decision in *People v. Camacho,* 2009 Guam 6. Furthermore, 9 GCA § 19.20(a)(2) is unambiguous and the unit of prosecution is each assault victim, therefore, the Superior Court rightly imposed consecutive sentences as to the Aggravated Assault conviction. Accordingly, we affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In May 2001, Manley, while speeding, crashed his vehicle into another, killing one person and injuring five others. Defendant-Appellant's Excerpts of Record ("ER") at 7-8 (Plea Agreement, Sept. 12, 2002). Manley has been in custody since August of 2002. *See* Certified Docket Sheet at 6 (Feb. 16, 2010).

[4] Manley was indicted for: (1) one count of manslaughter as a 1st degree felony; (2) one count of vehicular homicide as a 2nd degree felony; (3) one count of vehicular homicide as a 2nd degree felony; (4) one count of criminally negligent homicide as a 3rd degree felony; (5) five counts of aggravated assault as a 3rd degree felony; (6) one count of reckless driving with injuries as a misdemeanor; (7) one count of possessing an open container as a misdemeanor; (8) one count of engaging in an unauthorized speed contest as a petty misdemeanor; and, (9) one special allegation of use of a deadly weapon in the commission of a felony. Plaintiff-Appellee's Supplemental Excerpts of Record ("SER"), tab 1, at 1 (Indictment, Mar. 7, 2002).

[5] Manley subsequently entered into a plea agreement with the People wherein Manley pleaded guilty to certain charges in exchange for dismissal of others. ER at 12-14 (Judgment, Feb. 18, 2009). Specifically, Manley pled guilty to: (1) one count of Vehicular Homicide (as a 2nd degree felony) in violation of 16 GCA §§ 3301, and 18111(a)[1]; and (2) five counts of Aggravated Assault (as a 3rd degree felony) in violation of 9 GCA § 19.20(a)(2). ER at 7 (Plea Agreement). In exchange, the People dismissed all other charges enumerated in the indictment. ER at 14 (Judgment).

[1] Both the plea agreement and the fully executed Judgment incorrectly cited 16 GCA § 18111(b). *See* ER at 7 (Plea Agreement); ER at 12 (Judgment). However, the parties stipulated at the sentencing hearing that the proper citation was 16 GCA § 18111(a). *See* Transcript ("Tr.") at 23-24 (Sentencing, Nov. 26, 2002,).

[6] In the written plea agreement, Manley averred that he had been advised and had understood, among other things, the nature of the charges against him including the elements of all charges. ER at 6 (Plea Agreement). Manley affirmed that he entered guilty pleas for the vehicular homicide and aggravated assault charges "voluntarily, and without coercion or promises apart from [the] plea agreement[.]". ER at 7 (Plea Agreement). He stated that he understood that he had "a right to move for a reduction of his sentence within one hundred twenty (120) days of sentencing pursuant to 8 GCA § 120.46," which he agreed to waive for purposes of the plea. *Id.* at 8. In addition, Manley acknowledged that he understood that he had a "right to appeal his convictions . . . pursuant to 8 GCA §§ 130.10 and 130.15," which he agreed to waive for purposes of the plea. *Id.*

[7] The Superior Court found that Manley's guilty pleas for the vehicular homicide and aggravated assault charges were knowingly and voluntarily made, accepted the plea agreement and Manley's guilty pleas, dismissed some of the charges against Manley in accordance with the agreement, and adjudged Manley guilty of the remaining charges. Transcript ("Tr.") at 59 (Change of Plea, Sept. 19, 2002).

[8] At the sentencing hearing, the Superior Court sentenced Manley to: (1) eight years for the Vehicular Homicide conviction; (2) three years each for the first two of the five Aggravated Assault convictions, to be served consecutively to each other and to the vehicular homicide charge; and (3) three years for the last three of the five Aggravated Assault convictions, to be served concurrently—for a total of fourteen years incarceration. *See* Tr. at 66-67 (Sentencing, Nov. 26, 2002); *see also* Appellee's Br. at 4 (Oct. 14, 2009).

[9] The People prepared and signed a judgment reflecting the plea agreement and the Superior Court's sentencing, and served it on Manley on November 29, 2002. Appellee's Br. at

5. This first judgment was apparently never signed by Manley or his counsel, and never filed. *Id.* Over the next couple of years, the People prepared a second and a third judgment and again served them on Manley. *Id.* Apparently, neither the second nor the third proposed judgment was signed by Manley or his counsel. *Id.*

[10] Approximately six years and three months after his sentencing, the People served a fourth judgment on Manley. *Id.* This fourth judgment was finally signed and filed on February 18, 2009. The Notice of Entry on the Docket was filed the following day. ER at 15 (Not. of Entry on Docket, Feb. 19, 2009). Manley timely appealed his sentence. ER at 16 (Not. of Appeal, Feb. 26, 2009).

II. JURISDICTION

[11] This court has jurisdiction over an appeal from a final judgment pursuant to 48 U.S.C.A. § 1424-1(a)(2) (year); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[12] A challenge to the validity of a guilty plea not raised in the trial court is reviewed for plain error. *People v. Van Bui*, 2008 Guam 8 ¶ 10. Whether the Superior Court's acceptance of a guilty plea complies with the requirements of 8 GCA § 60.50(a) is reviewed for plain error. *People v. Chung*, 2004 Guam 2 ¶¶ 8-9. Whether Guam's aggravated assault statute allows for consecutive sentences is a double jeopardy challenge. Double jeopardy challenges are generally reviewed *de novo*. *People v. San Nicolas*, 2001 Guam 4 ¶ 8 (quoting *People v. Florida*, No. CR96-00060A, 1997 WL 209044 at * 6 (D. Guam App. Div. 1997). The legality of a sentence is also reviewed *de novo*. *Id.* (citing *United States v. Farmigoni*, 934 F.2d 63, 65 (5th Cir. 1991). Whether Guam's aggravated assault statute is ambiguous is a question of statutory interpretation.

Issues of statutory interpretation are reviewed *de novo*. *Quichocho v. Macy's Dep't Stores, Inc.*, 2008 Guam 9 ¶ 13 (citing *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 16).

IV. DISCUSSION

[13] Manley's principal arguments on appeal are that the Superior Court erred by: (1) accepting his guilty pleas without first determining whether he understood the nature of the charges against him, as required by 8 GCA § 60.50(a); and (2) allowing multiple and consecutive sentences on the Aggravated Assault conviction. The People counter that Manley should be estopped from bringing this appeal because the plea agreement at issue contains a valid waiver of Manley's statutory appellate rights.

[14] We address each of these arguments in turn.

A. Guilty pleas to the Vehicular Homicide and Aggravated Assault charges were knowing and voluntary and therefore valid

[15] Title 8 GCA § 60.50(a) requires that the defendant know and understand the nature of the charges against him before the court can accept a plea of guilty:

> The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (a) the nature of the charge to which the plea is offered[.] . . .

8 GCA § 60.50(a) (2005). This section directs "a judge to inquire whether a defendant who pleads guilty understands the nature of the charge against him and whether he is aware of the consequences of his plea." *People v. Chung*, 2004 Guam 2 ¶ 14 (quoting *McCarthy v. United States*, 394 U.S. 459, 464 (1969)). This section enables a judge to ascertain the plea's voluntariness by allowing him "to develop a more complete record to support his determination in a subsequent post-conviction attack." *Id.* (quoting *McCarthy*, 394 U.S. at 466) (internal

citation omitted). We have said that a judge fails to comply with this section where he or she "does not personally inquire whether the defendant understood the nature of the charge," through the exposure of "the defendant's state of mind on the record." *Id.* (quoting *McCarthy*, 394 U.S. at 467) (internal citation omitted).

[16] In *People v. Chung*, we addressed the issue of the validity of guilty pleas and explained the U.S. Supreme Court's holding in *Henderson*, stating that "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." *Chung*, 2004 Guam 2 ¶ 17 (quoting *Henderson v. Morgan*, 426 U.S. 637, 647 (1976)). However; the *Henderson* presumption does not automatically apply in all cases. *See id.* Specifically, we stated that "before we apply this 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." *Id.* In *Chung*, the defendant appealed from his convictions of manslaughter, vehicular homicide, and a special allegation of use of a deadly weapon in the commission of a felony. Chung argued that the Superior Court accepted his guilty pleas without first informing him of and determining that he understood the nature of the charges. There, we looked to the transcript of Chung's guilty plea proceeding and determined that the Superior Court did not inquire whether Chung in fact understood the nature of the charges of manslaughter and/or vehicular homicide. We found "no indication or acknowledgement by Chung in the record that he *understood* the trial court's explication, if any, of the nature of the charges." *Id.* ¶ 16 (emphasis in original). Rather, the record revealed that the Superior Court "did not inquire of Chung's counsel, nor did Chung's counsel inform the court, that Chung was informed of, and that he understood, the nature of the charges against

him." *Id.* ¶ 17. On this basis, we found that the Superior Court accepted Chung's guilty pleas in violation of 8 GCA § 60.50(a). *Id.*

[17] The record before us in the instant case differs from the record in *Chung*. In *Chung*, the transcript of Chung's guilty plea proceeding plainly showed that the Superior Court never inquired whether Chung understood the nature of the charges to which he was pleading guilty. *Id.* ¶ 17. Here, in contrast, the transcript of Manley's change of plea proceeding indicates that the Superior Court inquired whether Manley understood the nature of the charges against him. *See* Tr. at 5-10 (Change of Plea). The relevant portion of the transcript provides:

> THE COURT: And have you gone over all the terms and conditions contained in this plea agreement with your lawyer before you signed it?
>
> THE DEFENDANT: Yes, I have.
>
> THE COURT: Okay. And are you fully satisfied with the advice and representations given to you by your counsel in this case?
>
> THE DEFENDANT: (Pauses) Yes.
>
> THE COURT: Okay. Answer, please?
>
> THE DEFENDANT: Yes, sir. Yes, Your Honor.
>
> THE COURT: Okay. And does -- Do you understand all the terms and conditions contained in this plea agreement?
>
> THE DEFENDANT: Yes, I do.
>
> . . .
>
> THE COURT: Are you entering this plea agreement out of your own free will because you are really guilty to the charges?
>
> THE DEFENDANT: Not...not entirely, Your Honor.
>
> THE COURT: Okay. I'm going to give you a minute or two to just discuss with your counsel the consequences, insofar as entering this guilty plea. Okay?
>
> THE DEFENDANT: Thank you, Your Honor.

> THE COURT: All right.
>
> (Pause; Counsel conferring with Defendant)
>
> . . .
>
> THE COURT: I'll repeat the last question. Thank you, Counselor. (To the Defendant) Are you pleading guilty out of your own free will because you are really guilty to the charges, pursuant to this plea agreement, under Section II, Vehicle Homicide and Aggravated Assault?
>
> THE DEFENDANT: For the most part, Your Honor, yes.
>
> THE COURT: Okay. And do you understand that you are pleading guilty to Vehicular Homicide as a second degree felony? For that particular charge, that carries a maximum sentence of eight years imprisonment and a maximum fine of Ten Thousand Dollars ($10,000). I also understand that you are pleading guilty to Aggravated Assault, five counts, as a third degree felony. For each count, that carries a maximum sentence of three years imprisonment and a maximum fine of Five Thousand Dollars ($5,000) for each count. Are you aware that these are the range of penalties for these charges that you are pleading guilty to this morning, Mr. Manley?
>
> THE DEFENDANT: Yes, Your Honor.

Tr. at 5-8 (Change of Plea). From this portion of the transcript, it is plain that the Superior Court inquired whether Manley understood the nature of the charges against him, in compliance with 8 GCA § 60.50(a).

[18] Manley counters that the record indicates that his guilty pleas were involuntary. A different section of the transcript of the September 19, 2002 change of plea hearing records Manley's recitation of the facts:

> THE COURT: Okay, Mr. Manley, tell me what happened which caused you to enter the guilty plea.
>
> THE DEFENDANT: To the most part, yes, *I was going over the speed limit*, but not as, I guess . . . not as fast as they say I was going. *Everything that is in here is basically what happened*, but it didn't -- My intentions weren't to hit anybody or get into a situation I'm in now. I -- I wasn't forced to accelerate to going over the speed limit, but making my lane-change to get into the accident, that's basically what happened. Losing control of my vehicle, I didn't exactly lose control of my

> vehicle. So, it only makes me look like I intentionally have done what...what the court has done now.
>
> . . .
>
> THE DEFENDANT: It wasn't -- Your Honor, I wasn't following the vehicle. When I had switched over to the inner lane, because it is the passing lane, as I accelerated coming down the hill, the vehicle that w-- I was originally following, as I was coming up almost to where...where I was almost, just about to meet up beside, he...the vehicle cuts me off. And having to avoid hitting him, I swerved into the outer lane and...not knowing that the vehicle that I had hit was there. Whether the vehicle was a darker color or was coming out of the shoulder lane, I did not know whether the vehicle was there. The vehicle that had cut me off, I was just basically trying to avoid hitting, and so that's basically what happened.
>
> THE COURT: Okay.
>
> THE DEFENDANT: Yeah. There was no intention to hurt anybody. That's all I have to say, Your Honor.

Tr. at 11-12 (Change of Plea) (emphasis added). In short, Manley stated that he was not driving as fast as the government alleged, that he never intended to hit anyone, and that the accident only occurred because a vehicle had cut him off and he swerved into another lane to avoid a collision. Appellant's Reply Br. at 3 (Oct. 27, 2009). Manley asserts that this factual recitation renders his guilty pleas involuntary because it reveals not only that he disputed the underlying facts, but more importantly, that he believed intent played into the crimes for which he was pleading guilty—an intent Manley claims he lacked. *Id.* at 3. Manley argues that under 8 GCA § 60.50(a), the Superior Court should not have accepted his guilty plea because it was not made knowingly, intelligently, or voluntarily.

[19] On the issue of intent the *mens rea* of "intentionally" is not an element of either Vehicular Homicide under either 16 GCA §§ 18111(a) or 18111(b), or of Aggravated Assault as charged under 9 GCA § 19.20(a)(2). Vehicular Homicide *may* require proof that a defendant drove or operated a vehicle "negligently" (or alternatively that he or she did an "act forbidden by

law"); Aggravated Assault requires proof that a defendant acted recklessly. 9 GCA § 19.20 (a)(2) (2005). Although Manley's colloquy can be taken to indicate that he did not commit these crimes "intentionally" the actions to which he did admit are sufficient indicators of "negligence" and "recklessness" to satisfy the elements of the crimes charged. *See i.e. People v. Yingling* 2009 Guam 11 ¶ 18 (explaining that *mens rea* can be proved by attendant actions, as well as by direct evidence).

[20] Moving to the larger issue of whether the plea in this case was properly taken, the U.S. Supreme Court's decision in *North Carolina v. Alford*, 400 U.S. 25 (1970), undermines Manley's assertion that his guilty pleas were involuntary. In *Alford*, a defendant indicted for the capital crime of first-degree murder pled guilty to a reduced charge of second-degree murder while simultaneously protesting his innocence. *Alford*, 400 U.S. at 28. Before the plea was formally accepted by the trial court, and after the state of North Carolina had presented its case, Alford took the stand and testified that he did not commit the murder, but rather, that he was pleading guilty because he faced the threat of the death penalty if he did not do so. *Id.* When queried, Alford acknowledged on the record that his counsel informed him of the difference between second-degree and first degree murder and of his rights if he chose to go to trial. *Id.* at 28-29. "The trial court then asked [Alford] if, in light of his denial of guilt, he still desired to plead guilty to the reduced charge." *Id.* at 29. He said yes. *Id.* The Court held that there is no constitutional error in accepting a guilty plea despite a defendant's claim of innocence "where strong evidence of actual guilt substantially negated defendant's claim of innocence and provided a strong factual basis for the guilty plea, and the state had a strong case of first-degree murder, so that defendant, advised by competent counsel, intelligently concluded that he should plead guilty to second-degree murder rather than be tried for [the higher charge]." *Id.* at 25.

[21] Similarly here, it was proper for the Superior Court to accept Manley's guilty pleas despite his testifying at the September change of plea hearing that he did not intend to hurt anyone. For our purposes, this testimony is arguably irrelevant because, as in *Alford*, there is evidence of Manley's actual guilt of the underlying charges and, as has long been recognized, "an accused, though believing in or entertaining doubts respecting his innocence, might reasonably conclude a jury would be convinced of his guilt and that he would fare better in the sentence by pleading guilty. . ." *Alford*, 400 U.S. at 33 (quoting *McCoy v. United States*, 363 F.2d 306, 308 (D.C. Cir. 1966) (internal citation omitted).

[22] Manley's reliance on our decision in *People v. Van Bui*, 2008 Guam 8, is misguided. *Van Bui* concerned the validity of a plea agreement entered into between Van Bui and the People of Guam wherein the former pled guilty to manslaughter in violation of 9 GCA § 16.50(a)(1). *Van Bui*, 2008 Guam 8 ¶ 1. At Van Bui's change of plea hearing, the Superior Court "asked counsel for the People to read the Indictment and highlight the essential elements of the offense so that Van Bui could understand the nature of the charges, as well as the elements of the offense." *Id.* ¶ 6 (internal quotations omitted). "Van Bui's counsel interrupted, stating that he would stipulate that the People would have proven the essential elements of the [charges] beyond a reasonable doubt...." *Id.* (internal quotations omitted). The People then offered a factual stipulation that characterized Van Bui's criminal homicide as reckless. Van Bui's counsel rejected the proffered stipulation and, after a pause in the proceedings in which counsel for both parties had a discussion, "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." *Id.* (internal quotations omitted). The prosecution agreed to this stipulation. Put simply, Van Bui's counsel orally

requested that the plea agreement be changed to reflect that Van Bui committed manslaughter pursuant to § 16.50(a)(2), rather than § 16.50(a)(1), because Van Bui was influenced by extreme mental or emotional disturbance. The Superior 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 guilty to 9 GCA § 16.50(a)(2), as opposed to (a)(1).

[23] Van Bui appealed his conviction on the basis that he was not advised of the elements of 9 GCA § 16.50(a)(2) and that his plea was therefore not made voluntarily, knowingly, and intelligently. *See id.* ¶ 8. Specifically, Van Bui contested that he did not understand the intent element of § 16.50(a)(2) because it was never "alluded to by either the superior court or counsel." *Id.* ¶ 21. This court found that while the record reflected that Van Bui was informed of the elements of 9 GCA § 16.50(a)(1), "nothing in the record indicate[d] that Van Bui was informed of the elements of 9 GCA § 16.50(a)(2)." *Id.* As stated above, "the record's only reference[] to the intent element are the government's reference to a homicide committed 'recklessly,' and defense counsel's offer to stipulate that Van Bui committed 'a homicide which would otherwise be murder.'" *Id.* ¶ 25. The problem was that "recklessly" was not the appropriate standard under 9 GCA § 16.50(a)(2). *Id.* Accordingly, we stated that any valid guilty plea by Van Bui required that the intent element of murder be explained to him before he pled guilty to committing that crime. This, combined with "the confusion regarding the offense to which Van Bui was pleading guilty and the last-minute change to the plea," compelled our conclusion that Van Bui's guilty plea was not made voluntarily, knowingly, and intelligently. *Id.* ¶ 28.

[24] Manley contends that the instant case is like *Van Bui*. Specifically, Manley argues that the last-minute switch during the sentencing hearing to have the plea agreement reference 16

GCA § 18111(a), and not 16 GCA § 18111(b),[2] makes this a *Van Bui* situation. This argument is without merit.

[25] In *Van Bui* we stated that the trial court's failure to ensure that Van Bui understood the intent element of criminal homicide was plain error. *Id.* ¶ 29. By entering a plea of guilty to a violation of 9 GCA § 16.50(a)(2), as opposed to (a)(1), Van Bui was essentially pleading guilty to a charge of criminal homicide that required an *additional* level of intent *greater* than standard recklessness, without knowing it. *Id.* ¶ 23, n.4. That did not happen here. The two differences between 16 GCA § 18111(a) and (b) are: (1) 18111(b) contains an additional element of intoxication that section 18111(a) does not; and (2) 18111(b) provides a range of imprisonment from five to fifteen years, whereas 18111(a) simply provides a maximum imprisonment term of eight years. 16 GCA § 18111(a), (b) (2005). The switch from (b) to (a) rendered the element of intoxication irrelevant. In the plea colloquy, the trial judge informed Manley that the maximum potential prison term for his Vehicular Homicide charged was eight years. Tr. at 7 (Change of Plea). The changes Manley highlights here were not "plain error", did not go to the "fairness, integrity, or public reputation of judicial proceedings", did not prejudice Manley in any way, and should excite no constitutional alarm. *Van Bui*, 2008 Guam 8 ¶ 29.

[26] Elsewhere in *Van Bui*, we noted that "[e]ven 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.*" *Van Bui*, 2008 Guam 8 ¶ 18 (citation omitted) (emphasis added). Here, although Manley contends that he was not adequately informed of the elements and nature of the

[2] *See* Tr. at 23-34 (Sentencing, Nov. 2, 2002), ER at 60-61 (Tr. , Sentencing, Nov. 26, 2002).

Vehicular Homicide and Aggravated Assault charges under 16 GCA § 18111(a) and 9 GCA § 19.20(a)(2), Manley admitted to facts constituting all the elements of the cited statutes.

[27] In Guam the elements of Vehicular Homicide are that: (1) on a date certain; (2) in Guam; (3) a defendant; (4) does any act forbidden by law in the driving of a vehicle or negligently drives a vehicle; (5) proximately causing the death of another. 16 GCA § 18111(a). The elements of Aggravated Assault are that: (1) on a date certain; (2) in Guam; (3) a defendant; (4) recklessly causes or attempts to cause; (5) serious bodily injury to another. 9 GCA § 19.20(a)(2).

[28] The record plainly indicates that the elements of the Vehicular Homicide and Aggravated Assault offenses have been satisfied: on or about May 27, 2001, in Guam, Jimmy Aguon Manley, while speeding in his vehicle (an act both "reckless" and "forbidden by law in the driving of a vehicle"), crashed into another vehicle, causing "seriously bodily injury" to five individuals, and killing one individual. The plea agreement Manley entered into with the People in substance repeated these basic facts. In addition, the colloquy contained the following averments by Manley: "Everything that is in [the plea agreement] is basically what happened[3], but it didn't . . . "; "To [sic] the most part, yes, I was going over the speed limit, but not as, I guess . . . not as fast as they say I was going,"; "And having to avoid hitting him, I swerved into the outer lane and . . . not knowing that the vehicle I had hit was there. Whether the vehicle was a darker color or was coming out of the shoulder lane, I did not know whether the vehicle was there. The vehicle that had cut me off, I was just basically trying to avoid hitting, and so that's

[3] This statement indicates Manley's acknowledgment of the factual scenario presented in the Plea Agreement, including the following: "Mr. Manley's pickup crashed into the back of [Victim One]'s pickup. Several persons riding in the bed of [Victim One]'s pickup received serious injuries. A passenger in [Victim One]'s pickup, [Victim Two] . . . was killed. . . . [Victim Three] received broken bones in his left foot, a broken right leg, and three broken ribs. [Victim Four] received a head injury and was flown to Queen's Hospital, Hawaii, by Medivac for treatment. [Victim Five] received an injury to his feet, back, and neck. [Victim Six] had broken bone in his right foot, an arm injury, and a head injury. [Victim One] received an injury to her arm." ER at 7-8 (Plea Agreement, Sept. 19, 2002). These uncontested facts establish proof of the death of one victim and proof of "serious bodily injury" to five other victims.

basically what happened." Tr. at 11-12 (Change of Plea). Taking the record, plea agreement, and colloquy together, this court is satisfied that Manley admitted to facts amounting to all the elements the offenses for which he has been convicted and he cannot now complain that he did not understand the nature of the charges against him. We find that Manley entered into the plea agreement voluntarily, knowingly, and intelligently and that the plea agreement is valid. *See Van Bui*, 2008 Guam 8 ¶ 11.

B. Manley is barred from appealing his convictions

[29] In *People v. Camacho,* we stated that although "we have subject matter jurisdiction over Camacho's appeal notwithstanding his waiver of appeal," we would "not exercise our jurisdiction to review the merits of Camacho's appeal if we conclude that he knowingly, voluntarily, and intelligently waived his right to appeal unless the result would work a miscarriage of justice." 2009 Guam 6 ¶ 12 (citation omitted). We find that Manley waived his right to appeal his convictions "voluntarily, knowingly, and intelligently" and that the result is not a "miscarriage of justice" both as to Vehicular Homicide and as to Aggravated Assault. It is clear from the text of the written plea agreement that Manley waived his statutory rights to appeal his convictions, as derived from 8 GCA §§ 130.10 and 130.15[4]. ER at 8 (Plea Agreement). As a matter of policy, it is also important for the courts to recognize the essential function plea bargains between the People and criminal defendants play in our system of justice. *See i.e. Santobello v. New York*, 404 U.S. 257, 260-61 (1971) ("The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining,' is an essential component of the administration of justice. Properly administered, it

[4] It is well settled that criminal defendants do not enjoy a federal constitutional right to appeal. *McKane v. Durston*, 153 U.S. 684, 687 (1894).

is to be encouraged . . . [plea bargaining] is not only an essential part of the process but a highly desirable part for many reasons."). Manley's convictions will stand.

C. Manley's appeal of his sentence for Aggravated Assault is proper

[30] In *Camacho,* the majority affirmed this court's earlier decision in *People v. Mallo*, holding that a defendant's valid waiver of the right to appeal his conviction is not necessarily a waiver of the right to appeal his sentence (or sentences). 2009 Guam 6 ¶ 22. In *Camacho*, the relevant waiver was found in the fifth paragraph of the plea agreement, which provided:

> Defendant understands that he has a right to appeal his conviction in this case pursuant to 8 GCA §§ 130.10 and 130.15, and agrees to waive that right for purposes of this plea.

Id. ¶ 4. Finding the above-quoted waiver provision to be "ambiguous" in scope, we held that it did not bar Camacho's appeal of his sentence. *Id.* ¶ 2.

[31] In the instant case, inasmuch as Manley is appealing the multiple consecutive sentences for the Aggravated Assault convictions, *see* Appellant's Br. at 8-14, this appeal is proper under *Camacho* as an appeal of the consecutive sentences Manley received. This is so because the above-quoted waiver provision at issue in *Camacho* is the same waiver provision at issue in the instant case and the Superior Court did not address the defendant regarding his waiver of appeal of his sentence. *Id.* ¶ 4; ER at 8 (Plea Agreement). It follows that if its scope did not bar Camacho's appeal of sentence, it does not bar Manley's.

D. The unit of prosecution for the crime of Aggravated Assault is each assault victim.

[32] Manley asserts that the consecutive sentences he received for his multiple convictions for Aggravated Assault are improper under a "unit of prosecution" test as articulated by this court in *People v. San Nicolas.* 2001 Guam 4 ¶¶ 13-22. In *San Nicolas* we explained that the "unit of prosecution" test is one of two established procedures for determining whether cumulative

punishment for statutory violations was appropriate. *San Nicolas* ¶ 10. The unit of prosecution test applies when a defendant is convicted of multiple violations of the same statute; courts must determine, from the language of the statute as promulgated by the legislature, whether the conduct at issue in a particular case should give rise to either a *single*, individual conviction *or* to *multiple* convictions. *Id.* ¶ 13 (citation omitted). In *San Nicolas* we held that the plain language of Guam's Child Abuse statute (9 GCA § 31.30) dictated that each child victim was the proper unit of prosecution; this result meant that the trial court in that case did not err when it sentenced San Nicolas to two consecutive sentences for a single abusive act which injured two children. *Id.* ¶ 29. Here, Manley argues that, based upon the "another" language of 9 GCA § 19.20(a)(2)[5], "where the driving of [a] vehicle causes serious bodily injury to several persons and Aggravated Assault is charged to cover these circumstances, the intended unit of prosecution is the [single] act of reckless driving." Appellant's Br. at 16. From this premise Manley concludes that the trial court erred when it sentenced him to consecutive sentences for his Aggravated Assault convictions in violation of 9 GCA § 1.22, the Guam statute governing double jeopardy which we considered in S*an Nicolas*. Appellant's Br. at 14, 17; *San Nicolas* at ¶¶ 23-28. We disagree and find that the appropriate unit of prosecution in Guam's Aggravated Assault statute is each assault victim.

[33] Guam's Aggravated Assault statute reads as follows: "A person is guilty of aggravated assault if he either recklessly causes or attempts to cause . . . serious bodily injury to *another*." 9 GCA § 19.20(a)(2) (emphasis added). We must determine, if possible from this plain language,

[5] Manley contrasts the language of the Aggravated Assault statute at issue here ("A person is guilty of aggravated assault if he . . . recklessly causes . . . serious bodily injury to another") with the language of the Child Abuse statute discussed in *San Nicolas* which defines as a crime any act where a defendant subjects "*a child* to cruel and unusual treatment" or where a defendant has "*a child* in his care or custody . . . and unreasonably cause[s] . . . the physical or emotional health of that child to be endangered". *See* Appellant's Br. at 10; 9 GCA § 19.20(a)(2); 9 GCA § 31.30 (2005); *San Nicolas* at ¶ 21 (emphasis from original).

the unit of prosecution intended by the Legislature. *San Nicolas* ¶ 13. Manley emphasizes the differences between the language of this statute ("another") and several other statutes within the criminal codes which use the term "another person". See Appellant's Br. at 11-13 citing 9 GCA § 19.70 and 9 GCA § 22.50(a). From these textual distinctions, Manley argues:

> when 'another person' is used, it is occasionally used in tandem with 'that person' as indicated in the foregoing, so that it is clear that the act intended to be prohibited is as to a specific person. Also, when 'another' is solely used in a criminal statute, it does not prevent the charging of separate offenses where separate acts occur instead of a single incident. Thus, the usage of 'another' and 'another person' is not superfluous and the distinction between the two is meaningful. When 'another' is used in the definition of an offense (while 'another person' is used in defining other offenses in other portions of the Criminal Code), such offense must therefore be construed to prohibit the act in general, and not the act as to a specific person. Thus, the Legislature must have intended that the reckless act causing serious bodily injury is the 'unit of prosecution', irrespective of the number of persons injured.

Appellant's Br., 12-13.

[34] While this is certainly a creative interpretation of Guam's criminal code, the distinction which Manley highlights does not point to the result he suggests. While the word "another" can be used both as a pronoun (i.e. "going from one place to another") and as an adjective (i.e. "we will depart at another time") the meaning of the word is essentially the same; "another" can mean either "something or someone different or distinct" (pronoun) or merely "different or distinct" (adjective). *See Webster's Third New International Dictionary (Unabridged)* 89 (1971). Thus, even if we agree that there is a technical grammatical distinction between "another" and "another person", it is not clear how this distinction supports the different treatment which Manley asserts is appropriate: in this context each "different or distinct" person injured by a criminal act may provide the basis for a separate prosecution, regardless of that person being identified either as "another" *or* as "another person". The distinction is not meaningful. As we stated in *San*

Nicolas "statutes using the word 'any' compel[] a construction that only one conviction under the statute is allowed despite the number of victims. By contrast, *statutes using the singular words 'a' or 'another' reveal the intent that each victim be the appropriate unit of prosecution.*" *San Nicolas* at ¶ 20 (citation omitted, emphasis added). Although the plain language of the statute is what compels this result, we also note that this finding is in line with numerous other jurisdictions which have considered similar arguments. *See Phillips v. State*, 787 S.W.2d 391, 395 (Tex. Crim. App. 1990); *People v. Gaither*, 343 P.2d 799, 803 (Dist. Ct. App. 1959); *Commonwealth v. Frisbie*, 485 A.2d 1098, 1101 (Pa. 1984). The consecutive sentences which Manley received were not improper.

V. CONCLUSION

[35] We find that Manley's guilty pleas as to the Vehicular Homicide and Aggravated Assault charges were constitutionally valid and that his plea agreement with the People bars appeal of his convictions. Manley's appeal of the Aggravated Assault sentences is proper pursuant to our decision in *People v. Camacho,* 2009 Guam 6. But, 9 GCA § 19.20(a)(2) is unambiguous and the unit of prosecution is each assault victim. Therefore, the Superior Court rightly imposed multiple and consecutive sentences as to the Aggravated Assault convictions.

[36] Accordingly, the Superior Court's judgment is **AFFIRMED**.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice