Commonwealth of Puerto Rico
IN THE COURT OF APPEALS
JUDICIAL REGION OF MAYAGÜEZ
PANEL IX

THE PEOPLE OF PUERTO RICO

Appellee

V.

GEORGEAN LÓPEZ VIGO

Appellant

KLAN201100018

Appeal from the Court of First Instance, Room Mayaguez

About: Law Constitutional, Law Criminal and Law Criminal Procedure

Case Number: ISCR201000392

Panel composed of its president, Judge Coll Martí, Judge Jiménez Velázquez and the Judge Domínguez Irizarry

Domínguez Irizarry, Judge Rapporteur

"Anyone who is accustomed to despising the life of any living being is in danger of despising human life as well."

Albert Schweitzer, Nobel Peace Prize winner, 1958

JUDGMENT

In San Juan, Puerto Rico, December 19, 2011.

The appellant, Mr. Gorgean López Vigo, appears before this Forum and requests our intervention so that let us annul the sentence issued by the Court of First Instance, Mayagüez Chamber, on November 15, 2010. Through the aforementioned opinion, the forum of origin found here appellant guilty for violation of Article 7 of the Law for the Welfare and Protection of Animals, Law No.

154 of August 4, 2008, 5 LPRA sec. 1670, which outlaws the crime
of aggravated animal abuse. As a result of the above, it is
He imposed a prison sentence of twelve (12) years on the appellant.

For the reasons that we will explain below, it is confirmed
the appealed sentence.

I

Miracles. That is the name of the harmed creature in this case. It is about
of a small mare, just over a year old.

On July 9, 2010, the Public Ministry presented an accusation
against the person here appealed for the commission of the crime of *aggravated abuse of animals,* as typified in Article 7 of the Law for the Welfare and
Protection of Animals, Law No. 154 of August 4, 2008, 5
LPRA sec. 1670. Particularly, in the aforementioned document it was established that the
February 7, 2010, in the territorial demarcation of the jurisdiction of
Añasco, he knowingly, voluntarily, illegally and criminally tortured a
equine by tying him by the neck of his vehicle and dragging him along the
road, consequently causing severe physical injuries. You will
accused of having exposed the animal to the risk of death, as well as having
caused some disability in his extremities, all with the purpose
primary purpose of inflicting and prolonging his pain.

After several incidents typical of the procedures, on August 10
In 2010, the jury trial began. In support of its theory, the Ministry
Public presented the testimony of agents David Cordero González
(Agent Cordero González), Edgard J. Lorenzo Bonet (Agent Lorenzo
Bonet) and Carlos Bonet Quiles (Agent Bonet Quiles). Likewise, he offered the
statement of Mrs. Lisa M. Embree (Mrs. Embree) and Dr. Victor
Openheimer, veterinarian. For its part, the appellant's evidence

consisted of the testimony of his father, Mr. George López Miranda and
from Dr. Luis Colón, also a specialist in veterinary medicine. Of the
Likewise, the jury had before its consideration documentary evidence and
material, which included the incident report and the agent's notes
intervener in the case, the document of legal warnings signed
by the appellant, the veterinary expert's report and a host of photographs
that illustrated the injuries suffered by the animal.

As established in the hearing on the merits, on the day of
events, at around 8:30 pm, Agent Cordero González, member of
the Puerto Rico Police and assigned to the Añasco district, received two (2)
confidential phone calls to headquarters. Through them, you
warned about the commission of the same criminal event, therefore,
He immediately informed his companions on patrol. In order to corroborate
the aforementioned information, agents Lorenzo Bonet and Bonet Quiles,
They went to the indicated place, namely the Jardines de Daguey Urbanization
of the aforementioned municipality. Once there, they corroborated the confidences
issued and also witnessed the reported conduct. At a distance
approximately twenty-five feet (25'), officers realized that
a small blue car was dragging what, in the distance, seemed to be a horse.
The animal was tied by the neck to the left post of the vehicle in
movement, a course that, although slow, prevented him from getting up. Of
Immediately, the agents ordered the driver to stop, more were seen
in the obligation to cross his official vehicle to prevent it from continuing
running on public roads.

The driver turned out to be the appellant, who abandoned his car after
that it was required. Agent López Bonet told him the reasons why
who intervened, read him the corresponding legal warnings

and placed him under arrest. When he put him in the patrol car, he asked him for his information.
personal requirements, to which he reacted in a hostile manner
and challenging. This being so, the officer retired to examine what turned out to be
be the mare in question, which he found weak, with multiple
lacerations on the body and bleeding on the legs, side and ribs. He
official spoke with several of those present. From your research
It emerged that the appellant here dragged the animal for a period of approximately
between fifteen (15) to twenty (20) minutes and that, at different intervals,
He stopped his vehicle, got out of it and hit him. Immediately afterwards, the
The police took the appellant to the corresponding police station. During the
journey, he asked him the reason why he attacked his mare, to which
He coldly replied that, since he didn't want to walk, he got upset and,
He simply dragged her down the road. Once at the scene, the Agent
López Bonet read him the legal warnings again, which the appellant
He stated that he had understood after signing the corresponding document.
Given the particular nature of the case, the officer again asked the appellant the
motivations for which he mistreated the animal. He once again admitted that
He dragged him due to the equine's refusal to want to walk. There it was given
part of the matter to the representative of the competent Public Ministry.

For his part, Agent Bonet Quiles guarded the vehicle of the
appellant and the equine. When he approached him, after having witnessed
being dragged, the animal was leaning towards its left side,
with a rope around his neck that lacerated him and prevented him from gaining movement.
The officer's greatest impression was the state in which the mare was
found: thin, with multiple blows to her head and body and with
bleeding wounds. While his companion drove the appellant to the
barracks, Bonet Quiles and a local resident tried to incorporate the animal

to place it in a cargo vehicle, an act that, given its condition, was difficult. Another officer, Sergeant Rosa, showed up there, who, after Investigating the details of the matter also helped move the horse.

Agent Bonet Quiles moved the appellant's car to the barracks, while the Samaritan drove the animal in his bus. The mare could move little. So much so, that it required the help of the officers to be able to be removed from the vehicle. Little by little he managed support himself and was able to ingest the food that was provided to him. the animal He remained in the barracks under the observation and care of the agents concerned. Late at night, around 10:30 pm, Agent Lorenzo Bonet contacted Ms. Embree, director of the organization Horse Rescue of Puerto Rico.1 He informed him that in the facilities of the barracks, they had a horse injured after being dragged by a vehicle. The next day, she went to the place along with her work team to pick up the animal. Upon seeing the mare, he immediately perceived her severe condition. of malnutrition. His bones and ribs were completely palpable, as well as sunken eyes. He found her injured, with multiple lacerations on his legs, ears, shoulders and head. When the tried to get on the cart to take her to the shelter, the mare She appeared complaining, with discomfort, almost lack of movement. That caused They had to buy a hammock to be able to carry the animal and thus provide you with the necessary assistance. On the way, Mrs. Embree contacted

1 The aforementioned entity, founded ten (10) years ago, is a non-profit organization, whose main objective is to provide help and assistance to abused horses. For her part, Mrs. Embree has collaborated in the care of horses for a period of twenty (20) years.

with Dr. Víctor Openheimer, specialist in veterinary medicine and

reported everything that happened.2

That day in the afternoon, the doctor arrived at the shelter in the municipality of Isabella. The state of the mare was so deplorable that they worked on her until the wee hours of the morning. Just by observing her, Dr. Openheimer found the animal severely thin, to the extent that its vertebrae and ribs could easily be distinguished. After examining her, her weight revealed the poor physical condition he presented; from an average of four hundred (400) pounds for a horse of her age, the mare only weighed two hundred fifty (250). The doctor verified that, in fact, the animal, with difficulty Unfortunately, it could stand on its four legs. In an unusual act in the horses, he was trying to find balance and his constant moaning was the result of an injury to the femorotibial joint present in his extremities.
On the upper part of the right eyelid, the mare had a lesion of the size of a coin, which, according to the experience of veterinarian, was compatible with a tear in his skin caused by a fall Likewise, on the left shoulder, the animal showed three (3) wounds consistent with the loss of the epidermis, which, because they are infected and extremely painful, they could not be sutured.3 The mare also suffered two (2) severe and deep lacerations to the elbow left of the front leg. Likewise, his left side He appeared seriously affected, after presenting a deep scratch, raw, indicative of a hit with a vehicle. According to the

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2 Dr. Openheimer has seventeen (17) years of experience in the practice of veterinary medicine and is a member of the Board of Directors of the College of Veterinary Doctors in Puerto Rico. Likewise, Dr. Openheimer provides his voluntary services to the aforementioned association.

3 The aforementioned injuries were described under the term *degloving injury,* which, in the area in which the matter takes place, implies a superficial tear of the skin.

doctor's experience, all the injuries described above were the
direct result of drag.

Listening to the animal turned out to be an arduous task, given its multiple signs of severe pain. The little mare was agitated, trying to avoid the doctor's intervention and constantly assumed a state of rigidity. However, his injuries did not just turn out to be superficial. According to the doctor's intervention, the horse also suffered a tear in his left hock that affected his ability to flex said extremity. In the same way, in its left juncture, the The consequences of the vile treatment he received became evident. As a result, the horse suffered a deep wound with the presence of bacteria, which, penetrating deep into the tendon, could involve risk of death, as well as serious injuries to his metacarpals. Finally, traces of the incident became a perennial presence in the animal by causing a dislocation in patella which resulted in the loss of fifty percent (50%) of his locomotion.

The appellant's evidence could not call into question the evidence provided by the Public Ministry. In fact, it served to reinforce the theory of the State when accusing him. As part of his defense, his father, Mr. George López Miranda and Dr. Luis Colón, veterinarian. In what relevant, the first witness confirmed that the appellant had no interest any regarding the animal. In his statement he indicated that the mare was in poor condition and that on the day of the events, he was transporting her to his home. To try to contribute to his son's cause, the witness indicated that, the intervention in controversy was unfounded and that the agents concerned had beaten the appellant. However, being confronted, López Miranda acknowledged that, regarding said allegation, he did not

took any legal action, even though he was part of the
uniformed

For his part, Dr. Luis Colón referred to his experience
regarding caring for horses and gave his opinion regarding the matter in
quarrel. On more than one occasion he attempted to establish that several of the
injuries that the animal had were not the result of the alleged drag.
However, their expressions were based on blank photographs
and black, difficult to pin down. Likewise, he admitted never having
examined the mare nor have made any report regarding its
condition. Likewise, the doctor acknowledged charging certain
remuneration for services rendered in court.

On September 15, 2010, the jury concerned issued a
verdict of guilty as to the herein-appellant. Consequently, the
On the following November 15, the Court of First Instance sentenced him to
a prison sentence of twelve (12) years. In disagreement, he requested the
reconsideration of the ruling, a request that was denied by
resolution notified on December 8, 2010.

Dissatisfied, on January 14, 2011, the appellant came before us
through the resource at hand. In it he states that:

> The Court of First Instance erred in denying the request to dismiss the accusatory document based on the unconstitutionality of articles 2 (n) and 7 of Law No. 154 of August 4, 2008, because said provisions violate the principles of legality and vagueness due to excessive breadth.

> The Court of Instance erred by not giving instructions to the jury under Article 4 of Law No. 154 of August 4, 2008, despite the fact that the defense requested such an instruction and the evidence presented justified giving it.

> The Court of First Instance erred in finding the appellant guilty even though the evidence presented by the Ministry

Public did not prove his guilt or intention to commit the crime beyond a reasonable doubt.

The Court of Instance erred by denying the benefit of the alternative sentence to prison confinement even though, in accordance with the provisions of Art. 7 of Law 154, the appellant is eligible for it.

The sentence of twelve years of imprisonment imposed on the appellant violates the prohibition against cruel and unusual punishment. Furthermore, the statute suffers from unconstitutionality due to the existence of disproportionality between the penalty and the nature of the prohibited act.

After examining the case file in detail and with the benefit of the appearance of both parties of the heading, as well as with the original records of the case in the sentencing court and the transcript oral proceedings, we are in a position to dispose of the present matter in accordance with the applicable standard.

II

A

Our rule of law considers as legitimate the task of applying criminal statutes, only to the extent that they are clear and precise. *People v. Hernández Villanueva,* 179 DPR 872 (2010). *Town v. Ríos Dávila,* 143 DPR 687 (1997). It is a maxim reiterated in our legal system that the interpretation of criminal law must be exercised restrictively as to what is detrimental to the accused of crime and in a liberal manner with respect to what favors him. *People v. Figueroa Pomales ,* 172 DPR 403 (2007); *People v. Dávila Rivers, supra.* Therefore, in the healthy exercise of judicial hermeneutics, the courts are called to give the statute in question its true scope, without tending to an incorrect or extensive judgment thereof. In harmony with the above and as a corollary of the due process of law guaranteed in

our Supreme Law, the *principle of legality,* as established in the

Article 2 of the Penal Code expressly provides that:

> [n]o criminal action will be instituted against any person for an act that is not expressly defined as a crime in this code, nor will penalties or security measures be imposed that the law has not previously established.
>
> 33 LPRA sec. 4630.

The aforementioned provision enshrines the Latin premise *nullum crimen, nulla poena sine previae lege,* a rule that prohibits prosecuting a citizen for an event that the law, previously and explicitly, does not would have been conceived as criminal in nature. *People v. Figueroa Pomales, supra.* Consequently, in order to reach a fair solution, the punishability of certain conduct is necessarily subject to that the statute that proscribes it allows the common citizen to foresee what proceeding is liable to be punished. *People v. Ríos Dávila, supra.* The affirmative action of the legislator in terms of classifying a crime must be concrete; hence it is recognized that the guarantee of due process of law when a statute is written in such a way that an individual of ordinary intelligence is forced to guess its meaning. *Pueblo v. Figueroa Pomales, supra; Pueblo v. Barreto Rohena,* 149 DPR 718 (1999); *People v. Ríos Dávila, supra.* Therefore, in order to enforce the principles of stability and legal certainty, criminal law must warn citizens about conduct that is prohibited to them. *People v. Figueroa Pomales, supra; People v. Barreto Rohena, supra.* Let's remember that *the purpose of the criminal law is not to catch the unwary, but to prevent citizens from the conduct that it prohibits. People v. Ríos Dávila, supra,* to page 698. Thus, the determining factor is that the common individual knows what what you are allowed to do and what you are not allowed to do. *People v. Ríos Dávila, supra.*

Although, as a rule, the principle of legality is not complied with when, to know what is prohibited, a layman requires a hermeneutical effort typical of jurists, the truth is that the aforementioned premise does not require an exhaustive enumeration of all the elements that constitute a certain crime. *People v. Ruiz,* 159 DPR 194 (2003). Our rule of law has been emphatic in recognizing that, in the criminal law, a certain degree of interpretation is permissible. *Town v. Ríos Dávila, supra.* In fact, it is a reiterated doctrinal premise that all Laws, even the clearest ones, require some kind of deepening. *People v. Ruiz, supra; People v. Ríos Dávila, supra.* By Therefore, even under the principle that criminal statutes must be interpreted restrictively, in the exercise of such management must always validate the true and evident purpose of the legislator, in pursuit of prevent strict adherence to the letter of the law from resulting in a result absurd. *People v. Figueroa Pomales, supra; People v. Ruiz, supra; Town v. Dávila Rivers, supra.*

On the other hand and as a corollary of the above, our system of law proscribes laws that suffer from *vagueness* and *breadth excessive.* On repeated occasions it has been established that the claim to To invoke these doctrines is to attack the constitutionality of a provision legal on its face, but not on its application. *People v. García Colón,* Res. 9 of junio de 2011, 2011 TSPR 83; *Pueblo v. APS Healthcare of P.R.,* 175 D.P.R. 368 (2009). Even though both norms have the same effect, namely; the nullity of the statute that is questioned, the truth is that they distinguish each other. *Dissident Univ. of PR v. Dept. of State,* 145 DPR 689 (1998).

Regarding the *vagueness* of a legal precept, the rule of law in force considers that it is flawed to the extent that it does not offer

a sufficient parameter to warn about the consequences
penalties for certain conduct. Likewise, it suffers from such a defect if it does not
contains minimum guidelines that delimit the intervention of the
officials in charge of enforcing compliance, so that
Supreme rights are violated, nor is arbitrary application encouraged.
of the same. *People v. García Colón, supra; Boys and Girls Club v. Srio. of Hacienda,* 179 D.P.R. 746 (2010); *Pueblo v. APS Healthcare of P.R., supra; Vives Vázquez v. Superior Court,* 101 DPR 139 (1973). Thus, consonant
With the above, a law is considered void due to vagueness if: 1) a
person of ordinary intelligence is not properly warned of the act
or omission that the statute intends to prohibit and penalize; 2) if it promotes a
arbitrary and discriminatory application by authorities
competent and; 3) if it affects and interferes with fundamental rights.
Pueblo v. APS Healthcare of P.R., supra; Vives Vázquez v. Tribunal Superior, supra.

Now, and in harmony with what was previously outlined regarding the
norms of hermeneutics, the doctrine of vagueness, in no way
implies that criminal statutes must be drafted in such a way that
dispense with judicial interpretation. When evaluating an approach
constitutional under the canopy of this norm, the courts are called
to examine whether the language of the law provides to distinguish conduct that
It is considered criminal. However, this task is not limited only to
the letter of the provision in question. In such management, it is useful to analyze
the legislative history of the challenged criminal statute and its exposition of
reasons, this in pursuit of the principle that invites us to always validate the
intention of the legislator through reasonable analysis. *People v. Saw Rodriguez ,* 137 DPR 903 (1995); *People v. Dávila Rivers, supra.*

For its part, a claim about *excessive breadth* raises the validity of a regulation whose main purpose is to prohibit an activity not constitutionally protected, but its wording or interpretation could have the effect of outlawing expressions that find protection under the clause of freedom of expression or association. *People v. Garcia Columbus, supra; People v. APS Healthcare of PR, supra; UNTS v. UNTS Seriously. de Health,* 133 DPR 153 (1993). In line with the above, it is necessary to highlight that the interpretative doctrine of this norm, both at the federal and in the state, it has properly limited its application to those instances in which a right protected by the aforementioned is claimed clauses. R. Serrano Geyls, *Constitutional Law of the United States and Puerto Rico,* San Juan, Ed. C. You. PR, 1988, Vol. II, p. 1319; *People v. García Colón, supra; People v. APS Healthcare of PR, supra; People v. Hernández Colón,* 118 DPR 891 (1987). This is how aims to prevent the neutralizing effect of a provision from occurring legal that, in its attempt to punish conduct vetoed by the State, sanctions those that are not. Likewise, the proscription of a law that suffers from excessive breadth, it equally responds to the policy of avoiding any possible selective and arbitrary application of its terms by state officials. *People v. APS Healthcare of PR, supra.*

Now, in order to declare the nullity of a statute on its face due to overextension, the claimed excessive amplitude must be of a real and substantial nature, *vis-à-vis* the legitimate scope that the disposition in controversy may have. *People v. García Colón, supra; Pueblo v. APS Healthcare of PR, supra; Pueblo v. Hernández Colón, supra.* However, it should be noted that considering a law invalid due to suffer from excessive breadth, it operates as an exception. The above

responds to the fact that, as a general rule, no individual is allowed question the constitutionality of a certain piece of legislation, under the allegation that it would violate certain rights, if applied in circumstances other than the controversy being aired. *People v. APS Healthcare of PR, supra; Velez v. Municipality of Toa Baja,* 109 DPR 369 (1980). A decree of nullity must constitute the last resort, after that a narrow interpretation of the law, or a partial invalidation of the law same, do not exclude the threat on expressions constitutionally sheltered. *People v. García Colón, supra.*

B

On the other hand, the Constitution of the Free Associated State of Puerto Rico provides that, in all proceedings of a criminal nature, the accused of crime is presumed innocent until proven, so satisfactory, his guilt. Article II, Section 11, Constitution of Puerto Rico, 1 LPRA The *presumption of innocence* constitutes one of the main maxims in the current system of law and order, therefore, to be refuted, the rule of law imposes on the State the duty to comply with a *quantum* of proof beyond a reasonable doubt, as a burden evidence required in its task of prosecuting all conduct threatening to public safety. *People v. Santiago et al,* 176 DPR 133 (2009).

The duty of the State cannot be discharged lightly. In this context, it is a reiterated premise that said management is not achieved only presenting merely sufficient evidence as to all the elements of the crime that a certain citizen is accused of. The test It must also be satisfactory, that is, it produces certainty or moral conviction in a conscience free of worry or in a spirit

not prevented. *People v. Irizarry,* 156 DPR 780, (2002). This is how considers that reasonable doubt is not a speculative or imaginary doubt, nor any possible hesitation. *Reasonable doubt* is that that arises as a product of the reasoning of all the elements of judgment involved in the case. Consequently, in order to justify the acquittal of an accused, this evidentiary aspect must be the result of the calm, fair and impartial consideration of the totality of the evidence of the case, or the lack of sufficient evidence to support the accusation. So Well, reasonable doubt is nothing other than the dissatisfaction of the conscience of the judge with the evidence presented. *People v. Santiago et al, above.*

Repeatedly, our Supreme Court has affirmed that the determination of whether or not the guilt of the accused was proven in light of The aforementioned burden of proof is reviewable on appeal, given that the appreciation of the evidence presented in a trial is a combined matter in fact and law. *People v. Irizarry, supra,* at p. 788; *People v. Rivero, Lugo and Almodóvar,* 121 DPR 454 (1988). However, the estimation of the evidence corresponds to the sentencing forum, which is why which the appellate courts will only intervene with it when there are the circumstances that legitimize their work, or when the evidence itself does not agrees with the factual reality of the case and, consequently, turns out to be inherently impossible. *People v. Irizarry, supra.*

Pertinent to the cause at hand, through the approval of the Law No. 154, *supra,* incorporated into our legislative scheme a statute of particular relevance: to promote respect, defense and protection of animals. Starting from the premise that every society civilized society recognizes and encourages the humanitarian and dignified treatment of these beings,

our jurisdiction modified its position regarding the growing problem of contempt towards the different types of manifestation of life. In this way, with the purpose of eradicating all expression of mistreatment, the rule of law imposed greater rigor on its previous position regarding the matter, in order to deter and penalize that behavior contrary to the purposes of the law in question. Explanation of Reasons, Law No. 154, *supra.*

In pursuit of the effort to give a voice to defenseless beings who They depend on those who can demand fair and equitable treatment on their behalf. worthy, Law No. 154, *supra,* establishes certain parameters clearly severe, which allow us to glimpse the intolerance of our system to conduct that criminalizes. Regarding, Article 7 of the aforementioned statute, typifies the crime of *aggravated abuse of animals.* TO For this purpose, it provides as follows:

> to. A person commits the crime of aggravated animal abuse if the person intentionally or knowingly:
>
> Yo. Torture an animal; either
> ii. Kills an animal under circumstances that demonstrate premeditated malice or gross disregard for life.
>
> b. Aggravated animal abuse is classified as a second-degree serious crime, the penalty for which is imprisonment for a term of not less than eight (8) years and one day, and a maximum of fifteen (15) years.
>
> Yo. If the accused is convicted, he qualifies and agrees to serve the sentence on probation or any other alternative method to prison confinement, a mandatory fine of ten (10) thousand to twenty (20) thousand dollars would apply to the sentence.
>
> c. Notwithstanding, subsection (b) of this Article, aggravated animal abuse [sic] will be classified as a second degree serious crime without the right to alternative benefits to prison confinement if:

Yo. The person committing the crime of animal abuse has been previously convicted of one or more offenses related to:

a) Any law related to the protection of Puerto animals

Rico or equivalent laws or regulations of another jurisdiction; either

b) Any Port statute
Rico on domestic violence, child or elder abuse, or equivalent laws of another jurisdiction; either

c) The person knowingly [commits]
the abuse of animals in the immediate presence of a minor.
For purposes of this paragraph, a minor is in the immediate presence of animal abuse if the abuse is seen or otherwise directly perceived by the minor.

5 LPRA sec. 1670.

According to the transcribed provision, the rule of law considers as punishable any intentional act that demonstrates a clear purpose of inflict or prolong the pain of the animal subjected to the actor's torture, as well as as that premeditated behavior that, in evidence of a clear disregard for life, causes or puts an animal at risk of suffering damage to your health and physical integrity. 5 LPRA sec. 1660 (n). Regarding its involvement in the person of the convicted person, the crime of aggravated abuse of animals is one of the second degree, whose penalty fluctuates between eight (8) years and one (1) day and fifteen (15) years. However, the law in question provides so that he can enjoy an alternative method to the penalty of confinement, provided that it qualifies for this purpose, in accordance with the rehabilitative nature of our criminal law system. Thus, in circumstances in which, at the discretion of the judge, there is no attack against the social order and at the same time, the effectiveness of the determination of the

matter regarding the convict, he can enjoy an alternative
equivalent to prison restraint.

It is worth noting that the aforementioned option, although it is expressly recorded in the aforementioned statute, does not imply a mandatory guide. The general interpretation in this matter recognizes that the determination of granting an alternative sentence to imprisonment is subject to the discretion of the concerned judge. *People v. Echevarría Rodríguez I, supra.* The above finds support in the fact that, whether they are crimes recorded in the Penal Code, or conduct classified by law special conditions, the aforementioned concession is subject to compliance with certain common criteria, such as: the content of the report pre-sentence, the mitigating and aggravating circumstances present in the facts, the seriousness of the crime and its results, the previous conduct of the convict and his attitude regarding recognizing what is charged, the security of the community, among others. 33 LPRA secs. 4697, 4699, 4700, 4709. Thus, It is perfectly legal to claim that the benefits of an alternative sentence to prison confinement, are not properly a right that assists the convicted, but a privilege that is granted in light of the circumstances that surround their environment. Furthermore, it should be noted that, as a rule, these Remedies are only available for third and fourth felonies degree and its attempts, as well as for attempts at the serious crime of second grade. 33 LPRA sec. 4696.

C

On the other hand, in our system, anyone accused of a crime serious or a crime that carries a penalty of such classification, is assisted by

constitutional maxim that provides for him to be prosecuted in a trial for an impartial jury. *People v. Agudo Olmeda,* 168 DPR 554 (2006). He *trial by jury* implies that the guilt, or non-guilty, of the accused, will be determined by a representative group of the community, after whoever presides over the process instructs you on the legal norm applicable to the facts it considers. *People v. Negron Ayala,* 171 DPR 406 (2007); *Village v. Echevarría Rodriguez I, supra; Village v. Women,* 110 DPR 164 (1980). It has been repeatedly recognized that this law seeks to impose the common sense of laymen, thus mitigating the possibility that the criminal process in question is tainted by the arbitrary and partial exercise of the competent authorities. *People v. Echevarría Rodríguez I, supra.* Therefore, the role of the jury lies in reaching a verdict free of coercion, consisting, in turn, with the law and the particularities of the case. *People v. Negron Ayala, supra; People v. González Colón,* 110 DPR 812 (1981); *People v. Rosary Centeno,* 90 DPR 874 (1964).

In harmony with the above, it is recognized that in order for members of the jury correctly and properly exercise the responsibility that they is entrusted, it is imperative that all the elements of judgment that must be considered prior to deciding on the relationship of the accused in the matter. Instructions *to the jury* are outlined as a mechanism by which they come to effective knowledge of the law applicable to the case. *People v. Rodríguez Vicente,* 173 DPR 292 (2008). Its purpose is to illustrate and familiarize the members of this body with the basic norms of law on which they must base their verdict; hence it is required that the instructions given by the judge are correct, clear, precise and logical. *People v. Acevedo Estrada,* 150

DPR 84 (2000); *People v. Echevarria Rodriguez I, supra; People v. Andrades González,* 83 DPR 849 (1961). In pursuit of this principle, Rule 137 of Criminal Procedure, 34 LPRA App. II, R. 137, provides that:

> [f]once the reports are completed, the court must instruct the jury by summarizing the evidence and setting forth all issues of law necessary for the information of the jury. By stipulation of the parties, made immediately before beginning the instructions and approved by the court, the summary of the evidence may be omitted. All instructions will be verbal unless the parties consent otherwise. Either party may submit to the court a written request for certain instructions at the conclusion of the parade of evidence, or earlier if the court reasonably orders it. A copy of said request must be served to the opposing party. The court may accept or reject any or all such requests, duly noting its decision on each one, and will inform the parties of its decision before they inform the jury. Neither party may point out as an error any portion of the instructions or omission in them unless he raises his objection to them or requests additional instructions before the jury leaves to deliberate, clearly stating the reasons for his objection, or for his request. . You will be given the opportunity to formulate these outside the presence of the jury. The court will then proceed to resolve the issue, recording its resolution in the file or transmitting any additional instructions it deems pertinent. At the end of the instructions, the court will appoint the foreman of the jury and order the jury to retire to deliberate. In its deliberations and verdict, the jury will be obliged to accept and apply the law as set forth by the court in its instructions.

In light of the transcribed provision, the trial judge is called to properly instruct jurors on all issues submitted to their scrutiny. In the spirit of bringing to your attention the essential facts aired in court, as a rule, the judge comes in the obligation to summarize the evidence presented, in order to avoid questions irrelevant to the matter, are considered at the time of its final resolution, This, of course, without departing from the evidence presented and admitted in court

and without giving more emphasis to one event than another. *People v. Acevedo Estrada, supra; People v. Echevarria Rodriguez I, supra; People v. Rodriguez Esmurria,* 90 DPR 532 (1964). In relation to the regulatory field, the The instruction given to the jury must provide for all the essential elements of the crime charged, as well as those of those inferior rights included in it and all aspects of law that, under any reasonable theory, turn out to be relevant to the deliberations, even if the defense evidence is weak, inconsistent or of dubious credibility. *People v. Rosario,* 160 DPR 592 (2003); *People v. Acevedo Estrada, supra; People v. Miranda Santiago,* 130 DPR 507 (1992); *People v. Bonilla Ortiz,* 123 DPR 434 (1989). Likewise, the Jurors must be adequately warned about the burden evidence required to establish the commission of the crime object of the procedure, as well as the form of guilt required, that is, the aspect of intention or negligence, as the case may be, since it is within your have to determine the presence of subjective elements of the actor. *Town v. Rosario, supra; People v. Bonilla Ortiz, supra.*

Regarding the instructions that must cover the elements of the minor crimes included in the accused conduct, it is the norm of firm roots that they operate whenever the test is presented in this way justify it. *People v. Rosario, supra; People v. Bonilla Ortiz, supra; People v. Rodríguez Santana,* 146 DPR 860 (1998). In this way, a instruction regarding included minor crimes, does not operate in a automatic; For this to be the procedure of the judge, it is necessary that there is evidence from which the jury can infer that the defendant committed in the commission of a lesser crime. *People v. Rosario, supra.* In fact, if the evidence presented and admitted at the corresponding hearing

establishes all the elements of the felony, the judge is not required to give instructions for the subsumed minor crimes, this although a request is made by the accused. *People v. Rodríguez Vicente, supra.* Therefore, the adjudicator has no impact when denying an instruction about an included misdemeanor if, in your judgment, the evidence, even if can be believed by the jury, is not sufficient to establish the commission of conduct that implies less legal rigor. *People v. Rosario, supra.* The same rationale applies to the fact that the evidence does not reveals the presence of any element of a different crime.

An erroneous, insufficient or harmful instruction to the rights of the accused, may lead to the revocation of the sentence in appeal. However, to establish that, in effect, the judge influenced When giving instructions, it is necessary to consider them together, this depending on its impact with respect to the opinion issued and the rights that are invoked. *People v. Torres García,* 137 DPR 56 (1994). Therefore, an error in the jury instructions does not necessarily lead to the revocation of the convict's sentence. For such to be the eventuality, The fault must be of a substantial nature. Thus, in the spirit of carrying out such determination, it must be considered whether, if the error had not been made invoked, the verdict of the case would have been different. *People v. Towers García, supra; People v. Miranda Santiago,* 130 DPR 507 (1992).

D

In our rule of law, the premise of proportionality between the seriousness of the crime charged and the penalty imposed as a result of liability. *People v. Echevarría Rodríguez I, supra.* It constitutes a nuance prohibition constitutional, subjecting any citizen to cruel and unusual punishment

that goes against the most basic principles of justice and equity. Emda. VIII, Constitution of the United States of America, LPRA Volume I; Article II, Section 12, Constitution of the Commonwealth of Puerto Rico Rico, LPRA Volume I. As a consequence, it is estimated that the imposition of penalties must respond to the following principles: 1) prevention crime and social protection; 2) fair punishment to the perpetrator, in proportion to the seriousness of the crime; 3) the moral and social rehabilitation of the convict and; 4) justice for the victims. Article 47 of the Penal Code, 33 LPRA sec. 4675. This is how the ordinance provides for the punishment provided certain individual is related to the rehabilitative ideal of the system and, in Consequently, it is not excessively or oppressively restrictive of its freedom. *People v. Pérez Zayas,* 116 DPR 197 (1985).

The legal treatment of this premise, although limited, recognizes that, judicial intervention is only justified with the legislative task when The punishment imposed is *grossly disproportionate* to the behavior that is typified. E, Chiesa Aponte, *Criminal Procedure Law of Puerto Rico and the United States,* Colombia, Ed. Forum, 1992 Vol. II, sec. 18.2, pgs. 480-481; *People v. Rodriguez Cabrera,* 156 DPR 742 (2002); *Harmelin v. Mich.,* 501 US 957 (1990). Let us remember that, by virtue of the separation of powers typical of our republican system of government, courts, as a rule, must grant broad deference to the legislator's power to proscribe conduct that threatens against preeminent social values and, therefore, to establish penalties that he considers fair. Therefore, the only limitation that the exercise of this power, is an affirmative judicial determination of the criteria previously indicated. *People v. Rodríguez Cabrera, supra; People v. Kings Morán,* 123 DPR 786 (1989). Thus, given the extreme nature of the aforementioned criterion,

It is worth establishing that not every approach to alleged cruel punishment
and unusual, it meets its parameters.

III

In the case at hand, the appellant presents us with a host of
statements that, in his opinion, confirm that the Court of
First Instance when issuing the corresponding sentence, after
found him guilty of the commission of the charged crime, namely,
aggravated animal abuse. First of all, he maintains that he committed
the primary forum made an error by not dismissing the accusatory statement under the
basis of the alleged unconstitutionality of the law in controversy,
this due to vagueness due to excessive breadth of its terms. He adduces,
in turn, that the competent judge acted contrary to law, by not
Give the members of the jury the instructions corresponding to the
crime of *aggravated negligence against animals,* as typified in the
Article 4 of Law No. 154, *supra,* 5 LPRA sec. 1667, since,
According to his criteria, the evidence presented at trial demonstrated the elements
constituents thereof. Likewise, it tells us that the verdict of
guilt issued against him, finds no support in the
evidence presented at trial. In particular, he maintains that there was no
evidence regarding the element of intention that distinguishes the crime by the
who was declared convicted. On the other hand, he also points out that the
Court of First Instance by denying him the benefit of the alternative sentence
to imprisonment, of which, according to his opinion, he is a creditor and by imposing a
sentence in violation of the constitutional prohibition regarding punishments
cruel and unusual. After carrying out a detailed examination of the above
indications, in light of the law applicable to the factual particularities

of this case, we resolve to fully agree with the opinion
issued. Consequently, we confirm the appealed sentence.

The appellant questions the constitutionality of Law 154, *supra,*
on the grounds that it suffers from vagueness due to excessive breadth,
this for, allegedly, not delimiting the scope of its extension and, in
Consequently, criminalize behaviors that are legally and socially
acceptable. Using extremely misleading approaches, he argues that the
The aforementioned provision promotes the arbitrary exercise of the authorities of the
state and the inconsistent application of the law by understanding that it
does not provide, with sufficient certainty, for the common citizen to know and
understand the behavior that typifies it and the consequences of engaging in it.
Nothing could be further from the truth.

From the face of the contested provision, it clearly emerges what the
conduct that criminalizes, what the rule of law punishes and
What are the results of an act contrary to what is established? By
Likewise, the Explanation of Reasons of the Law in question, vastly reflects
the reasons why the legislator incorporated into our legal scheme
a provision aimed at deterring mistreatment against certain types of
animals. Specifically it provided for the growing current of
inhuman actions against them, the social problem that it entails and the
adverse effect it has on the mental health of the individual. of the same
way, not only did he specify regarding the behavioral disorder
criminalized, but also warned the citizen about the
responsibility that involves taking in an animal as an extension of the
family nucleus.

A simple reading of the terms of Law No. 154, *supra,* reveals
clearly its meaning and scope, which is why we consider it as

perfectly valid. We are of the opinion that it is not required
extreme intelligence to fully know what its purpose is, until
what scope it extends and what type of animal it refers to. The
appellant's arguments are not sufficient to prevail in his
claim of unconstitutionality. The alleged vagueness is not present.
The law is specific, since, with respect to the matter it addresses, it constitutes a
clear warning. It is quite enough in the sense that it only criminalizes
conduct that motivated its writing and, consequently, does not provide for its
arbitrary application. Finally, regarding the allegation of breadth
excessive, we remind the appellant that said rule, although it deals with
to the overextension of the law, the truth is that it is of restrictive application
to the area of freedom of association and expression. These not being the
matters that distinguish the present controversy, its analysis is totally
incorrect.

On the other hand, the appellant argues that the Court of First
Instance by not giving the jury members instructions
pertinent to the crime defined in Article 4 of Law No. 154, *supra,*
namely, *aggravated negligence against animals,* since, in his opinion, the
himself is a minor one included in that for which he was found guilty.
He states that the evidence presented at the trial allegedly established the
elements that make it up and, in support of its containment, maintains that it erred
the judge when determining that the aforementioned conduct is different and not a
subsumed in the crime of aggravated abuse of animals.

As we indicated, in a jury trial, guilt or
not guilty of the accused of a crime is subject to knowledge in
right that a select group of the community develops, after,
after assessing the factual details of the matter, they are transmitted to you

the corresponding instructions of the standards applicable to them.
It is the judge who presides over the procedure who has the unavoidable duty
to instruct the panel on the doctrines that dispose of the matter in a manner
clear, effective and sufficient. The instructions are adequate to the extent
in which they deal with all the essential elements of the charged crime,
as well as those of those minors included in it, provided that the
test, even if slight, justifies it. In the absence of evidence, the
The trial judge is not obliged to automatically issue a
instruction regarding a misdemeanor included. So that such is your
proceed, it is imperative that there is evidence to this end.

We completely differ from the argument proposed by the appellant.
By evaluating the disputed provisions in detail, we arrive at the
conclusion that *aggravated neglect of animals* and *mistreatment*
aggravated animal crimes, are two different crimes and not one included in
the eldest The component that distinguishes them is one of a subjective nature.
Likewise, while one punishes the actor's omission, the other penalizes his
direct and affirmative action, a reason that contributes to the fact that both behaviors are
give them a different treatment. When applying this rule to the case of
records, the evidence presented at the trial demonstrated the intentional conduct
of the appellant regarding causing extreme harm to the horse and torturing it in
the desire to intensify his agony. The corresponding evidence nothing
established regarding criminal negligence established in Article 4,
supra. Far from proving a gross negligence in minimal care
required by every animal, the concurrence of a behavior was established
vile, tinged with contempt and cruelty. In this way, nothing had to
instruct the competent judge regarding the aforementioned crime. The test does not

justified guidance on the concurrence of the elements of a crime
different from the one for which the case was being heard.

Now, it is necessary to highlight that the judge concerned did instruct the
jury for the crime actually subsumed within the aggravated abuse of
animals: *third degree animal abuse,* 5 LPRA 1669. A
Examination of the proceedings at trial reveals that, indeed, the
evidence scrutinized there, imposed on the adjudicator the duty of giving the
corresponding warning. His performance having been such, he specifies
conclude that the matter was not tainted by any procedural error. He
The jury concerned had all the necessary elements of judgment before it.
to issue his verdict. The instructions given were
adequate and sufficient.

On the other hand, the appellant argues that the evidence presented at trial does not
proved his guilt beyond a reasonable doubt. He maintains that
The Public Ministry failed to comply with the duty to establish the attendance of the
element of intention, typical of the crime for which he was prosecuted. A
Examination of the evidence contained in the record reveals that,
Again, the appellant emphasizes his attempt to question the actions
state regarding their conduct.

The evidence admitted and believed in the trial, together with the
particularities of the case, patently established that the appellant, in a
act of coldness and without any legitimate reason, he dragged the
mare here injured. It was believed by the judge that, on occasions,
He stopped his vehicle, hit the animal and continued on his way in order to
continue to inflict more pain and suffering on him. The horse was
tied by the neck, lacerated and unable to move. Even so,
the appellant continued his course, showing his complete indifference

to the life and health of Milagros. It should be noted that he recognized before Agent López Bonet, without condolences in any way, who dragged the animal, as a sign of its annoyance, just because it did not want to walk. Better expression that reveals an intentional attitude we could not find! By Likewise, all the injuries suffered by the animal turned out to be compatible with the results that would have derived from the imputed conduct. The mare lost half of her movement functions. He suffered severe damage in most of his joints, as well as suffering lacerations deep cuts, infections and tears in your skin. Such data were solidly established by the evidence submitted by the Public Ministry.

For all the above, we do not find any basis that moves our criteria to differ with the result of the procedure in question. It is a fact that the appellant tortured the horse, just for pleasure. He attacked his physical integrity, without any penalty and without considering their suffering. We agree that the elements of the crime for which the appellant was processed, were clearly demonstrated during the course of the judgment. Consequently, we affirm that, contrary to what is alleged, fulfilled the evidentiary burden inherent to the present case. Of this In any case, his sentence is in accordance with the law.

Now, the appellant maintains that he erred in denying him the benefit of an alternative sentence to prison confinement, this despite the fact that the Article 7 of Law 154, *supra,* provides that, if eligible, the same be granted. It indicates that the exclusive instances of the aforementioned grace are not applicable to him, so he is proclaimed as a creditor of the same. We differ from this argument.

Although, in effect, the crime for which he was convicted contains certain provisions that make it feasible to grant an alternative to

confinement, the truth is that this mechanism constitutes a privilege
subject to compliance with certain general order requirements. In
On multiple occasions, the legal system has established that said
instance proceeds only when there is a full guarantee regarding the
rehabilitation of the convict and the security of society. Thus,
The judge has to evaluate the totality of the circumstances
that are presented in the case, the pre-sentence report that was submitted
and full compliance with the pertinent criteria, to then resolve
on the matter. However, in the present case, although the appellant did not
incurred in the conduct provided for in the aforementioned crime as a means of
exclusion to enjoy an alternative sentence, the truth is that this
failed to comply with the general requirements that accredit his qualification for
such an end. Firstly, the pre-sentence report submitted to the
The judge's consideration was not favorable. In it it was established
that the appellant had denied the commission of the acts alleged to him
They charged that he had little control of his emotions and that he had
failed with his duty to support his children, given the existence of
a debt regarding his obligation as a obligor. In the same way,
the appellant had engaged in previous criminal conduct, as well as
Also, he had demonstrated a certain pattern of antisocial behavior. By
Therefore, the denial of the requested benefit was neither unreasonable nor
illegal; On the contrary, it constitutes the healthy use of judgment and
discretion of the trial judge regarding a person with a tendency to
commit a crime Now, it is necessary to point out that, as a rule, crimes
typified as second degree do not qualify for an alternative penalty.
However, although this is the classification of the conduct in question, in

the most benevolent application of the criminal law did not meet the others criteria.

Finally, regarding the alleged cruel and unusual nature of the punishment imposed, we are of the opinion that the appellant affects his claim. As we outlined, the current norm provides that only such a penalty that is *grossly disproportionate* to the conduct for which it results. This is how, both at the federal level and in the state, an extremely strict criterion is established so that courts of justice consider the legislative function as illegitimate in the exercise of its powers by proscribing crimes and imposing its respective penalties. Therefore, a simple argument is not enough. A successful attack on the proportionality of a given penalty must deal with an extreme gap between what is judged and the punishment that is attributes to him.

Appellant maintains that his twelve (12) year sentence is cruel and unusual, this under the protection of the fact that behaviors that he considers to be of greater social implication to the one they committed, are penalized more laxly. Without However, in examining their arguments, we agree that the opinion in question is a fair one and in which the penalty awarded to the crime we are dealing with It is totally proportional. Article 7, *supra,* punishes mistreatment, torture, contempt for life. On the other hand, it promotes dignified treatment to animals, this in conjunction with the civility that must prevail in all ordered society. The fact that the object of the matter is an animal, It does not reduce or minimize the criminal intent displayed. This is how We resolve that his contention lacks support, the sentence issued responds to the principles of proportionality, fair punishment to the actor and justice to the victim. Therefore, the alleged error was not committed.

This cause serves to warn about the total repudiation of the ordinance to any manifestation of abusive behavior. An environment of symbiosis and harmony between living beings, constitutes a benefit for society Puerto Rican. Protecting and caring for animals projects us as a avant-garde, sensitive and mentally healthy country. It is precisely It is this last argument that sparks the interest in channeling all aggressive behavior that could lead to a bigger problem. He Animal abuse predisposes to social violence. On numerous occasions It has been proven that a person who does not feel respect for animals, can easily belittle the life of another.

IV

For the foregoing reasons, the sentence is confirmed. appealed.

It was agreed upon and ordered by the Court and certified by the Secretary. of the Court.

Mildred Ivonne Rodríguez Rivera
Acting Secretary of the Court of Appeals