



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

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

**v.**

**ZERXES JABIDANDO VIVA,**  
Defendant-Appellee.

Supreme Court Case No.: CRA22-013  
Superior Court Case No.: CF0711-19

**OPINION**

**Cite as: 2023 Guam 24**

Appeal from the Superior Court of Guam  
Argued and submitted on August 23, 2023  
Hagåtña, Guam

Appearing for Plaintiff-Appellant:  
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**MARAMAN, J.:**

[1] Plaintiff-Appellant People of Guam (“People”) appeal the Superior Court’s granting of Defendant-Appellee Zerxes Jabidando Viva’s motion to suppress. On appeal, the People argue Viva gave consent to the search, and the motion to suppress should have been denied on that basis. We hold the trial court did not clearly err when it granted Viva’s motion to suppress because it could not determine consent had been given. Accordingly, we affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] Guam Police Department (“GPD”) Sergeant Ephraim Amaguin conducted a traffic stop after witnessing Viva drive through a stop sign. Transcript (“Tr.”) at 11–12 (Mot. Suppress Hr’g, July 19, 2022); Record on Appeal (“RA”), tab 73 at 2–3 (Dec. & Order, Oct. 11, 2022). After pulling over, Viva exited the car on his own, and he and Sgt. Amaguin stood in front of the vehicle. Tr. at 15 (Mot. Suppress Hr’g).

[3] Sgt. Amaguin performed none of the ordinary inquiries of a traffic stop. *See* RA, tab 73 at 10 (Dec. & Order). He did not ask for Viva’s license or registration, run the plates of the car, check for outstanding warrants, or issue a ticket or citation for failing to stop at the stop sign. *Id.* at 11–12. Instead, according to Sgt. Amaguin, he asked Viva: (1) if he was still on probation, to which Viva answered yes, Tr. at 27 (Mot. Suppress Hr’g),<sup>1</sup> (2) if he had any drugs on him, to which Viva answered no, *id.* at 31, and (3) for permission to search Viva’s vehicle, to which Viva gave consent, *id.* at 24, 31. Sgt. Amaguin testified to this conversation happening when the two were standing outside the vehicle; however, he later testified that he could not recall when in the

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<sup>1</sup> Viva was on parole when the traffic stop occurred, not probation. RA, tab 73 at 5 (Dec. & Order).

string of events this conversation had occurred. *Id.* at 24, 28, 31. He also testified that the car door was closed during this conversation, but later said it was open. *See id.* at 15. *But see id.* at 17. According to Sgt. Amaguin, after obtaining consent, he requested backup to conduct the search, and Officer Christopher Champion and trainee Officer Jonathan Clomera Conner responded to his request.

[4] Officer Champion testified he did not ask Viva for consent to search the vehicle as Sgt. Amaguin had obtained consent before he arrived on scene. The officers searched Viva's car. Officer Champion testified that he discovered a large kitchen knife and saw a suspicious message banner on Viva's phone. *Id.* at 41, 43, 45–46. The knife is referenced in only Officer Champion's police report. Officer Conner testified he did not observe a knife at the scene, nor did he hear any officers mention the knife while conducting the search. *Id.* at 60; *see also id.* at 12, 44. Evidence custody receipts do not indicate that a knife was confiscated.

[5] As for the suspicious message banner, Officer Champion believed it to be related to a drug deal, but he took no photographs of the message, nor did he extract any data from Viva's phone. He testified that he took possession of the phone, even though he did not have a warrant to search it. Tr. at 51 (Mot. Suppress Hr'g). Officer Conner testified he confiscated Viva's phone from the front passenger seat and did not himself observe the potentially drug-related message banner. *Id.* at 57, 62. The officers found a baggie containing a substance that tested positive for methamphetamine using a field test.

[6] The officers also found Viva's wallet, containing close to \$2,000.00, but it is unclear from their testimony whether they found the wallet during the search of Viva's car or if they discovered it on his person. *Compare id.* at 45, 48–49 (Officer Champion testifying he could not recall if wallet was found on Viva's person or in his vehicle), *with id.* at 63 (Officer Conner testifying that

Officer Champion found wallet when he conducted pat-down of Viva). Officer Champion testified he could not recall if he had put his hands on Viva during the search or before he had arrested Viva, although he was sure he patted down Viva “[a]t some point, . . . [o]nce the arrest was made.” *Id.* at 48.

[7] Officer Champion then arrested Viva. Officer Conner testified that none of the officers read Viva his *Miranda* rights. *See id.* at 61. In contrast, Officer Champion testified that he read Viva his *Miranda* rights at the precinct. *See id.* at 67. Based on the evidence the officers discovered during the search of Viva’s car (and potentially his person), Viva was charged with Possession of a Controlled Substance and Possession with Intent to Deliver.

[8] Viva moved to suppress the evidence as fruits of the poisonous tree, arguing he did not consent to the search. At the suppression hearing, Viva did not offer evidence to contradict Sgt. Amaguin’s testimony that he obtained consent from Viva before the search.

[9] In its Decision and Order, the trial court questioned the truthfulness of the officers’ testimony and ultimately did not find it persuasive. Instead, the trial court found the officers presented inconsistent testimony and that it was unclear whether Viva consented to the search.<sup>2</sup> Ultimately, unable to find that the officers obtained consent, the trial court granted Viva’s motion to suppress.

[10] The People now appeal the suppression, arguing the trial court did not properly address Viva’s consent. They contend the trial court “lacked a proper basis to suppress the evidence” because the police “obtained the defendant’s consent” and that there “was no evidence to contradict the officer’s testimony that [Viva] consented to the search.” Appellant’s Br. at 8 (May 15, 2023). As in their trial court filings, the People argue on appeal that Sgt. Amaguin obtained Viva’s

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<sup>2</sup> The trial court also found Officer Champion’s account of the knife “dubious” and questioned whether the knife even existed. RA, tab 73 at 15 (Dec. & Order).

consent, and that the search was valid as an exception to the warrant requirement under the Fourth Amendment. Viva disagrees, arguing the trial court did address consent and correctly found the officers' testimony too inconsistent to be credited. Viva contends the People cannot show clear error in the trial court's finding that they failed to prove Viva consented to the search.

## II. JURISDICTION

[11] This court has jurisdiction over an appeal from a Superior Court order granting a motion to suppress evidence. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-23 (2023)); 7 GCA §§ 3107, 3108(b) (2005); 8 GCA § 130.20(a)(6) (2005).

## III. STANDARD OF REVIEW

[12] “We review a trial court's decision on a motion to suppress *de novo*.” *People v. Quintanilla*, 2020 Guam 8 ¶ 9 (quoting *People v. Gallo*, 2017 Guam 24 ¶ 16). The trial court's factual findings are reviewed for clear error. *Id.* (citing *People v. Mansapit*, 2016 Guam 30 ¶ 8). When the People appeal a decision granting a motion to suppress, the facts are construed in the light most favorable to the defendant. *People v. Camacho*, 2023 Guam 9 ¶ 13. “A finding is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below committed a mistake.” *Mansapit*, 2016 Guam 30 ¶ 8 (quoting *People v. Camacho*, 2004 Guam 6 ¶ 13). We accept the trial court's findings of fact unless the entire record makes clear that a mistake was made. *Id.* “[T]he trial court's application of the facts to the law is reviewed *de novo*.” *People v. Santos*, 1999 Guam 1 ¶ 31 (citing *People v. Johnson*, 1997 Guam 9 ¶ 3; *United States v. Garcia*, 890 F.2d 355 (11th Cir. 1989)); *see also Gallo*, 2017 Guam 24 ¶ 16 (“[W]e review the trial court's legal analysis under a *de novo* standard of review.” (citing *People v. Chargualaf*, 2001 Guam 1 ¶ 12)).

[13] The trial court’s determination of the credibility of a witness is a question of fact and is “entitled to the greatest deference.” *United States v. Broadie*, 452 F.3d 875, 880 (D.C. Cir. 2006) (citations omitted). Moreover, “[w]hether a valid consent to search exists is generally a question of fact for the trial court.” *State v. Akuba*, 2004 SD 94, ¶ 25, 686 N.W.2d 406, 417. “[T]he trial court’s resolution of that question will be upheld unless our examination of the evidence, construed in a light most favorable to the trial court’s findings, convinces us that the finding was clearly erroneous.” *Id.* (quoting *State v. Almond*, 511 N.W.2d 572, 573 (S.D. 1994)).

#### IV. ANALYSIS

##### A. A Warrantless Search Is Presumptively Unreasonable

[14] The Fourth Amendment protects against unreasonable searches and seizures and applies to Guam through § 1421b(c) and 1421b(u) of the Organic Act of Guam. *See Camacho*, 2004 Guam 6 ¶ 15; *see also* U.S. Const. amend. IV; 48 U.S.C.A. § 1421b(c), (u). To be permitted under the Fourth Amendment, searches and seizures must be reasonable under the circumstances. *See Chargualaf*, 2001 Guam 1 ¶ 14 (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)).

[15] “A search or seizure made without a warrant is presumed to be unreasonable.” *Id.* “In the absence of a warrant, the police may lawfully conduct a search or seizure only if an exception to the warrant requirement applies.” *Id.* This court has long recognized consent or voluntariness as an exception to the warrant requirement. *See id.* (citing *Santos*, 1999 Guam 1 ¶ 33); *see also Camacho*, 2023 Guam 9 ¶ 15. The government bears the burden of proving the lawfulness of the search. *See People v. Calhoun*, 2014 Guam 26 ¶ 9.

[16] The People argue the consent exception to the warrant requirement applied as justification for the warrantless search of Viva’s vehicle. The People bear the burden of showing, by a preponderance of the evidence, that Viva consented to the search. Whether Viva consented to the

search of his car is a question of fact, and the trial court’s determination will be overturned only if it was clearly erroneous. *See Camacho*, 2023 Guam 9 ¶ 13.

**B. The Trial Court’s Decision Not to Credit the People’s Evidence on Consent Was Not Clearly Erroneous**

[17] While a trial court may find consent based solely on uncontradicted evidence, *see Santos*, 1999 Guam 1 ¶ 25 (citing *Garcia*, 890 F.2d at 359), the People must still show that consent was given by a preponderance of the evidence, *see Camacho*, 2023 Guam 9 ¶ 18. If it is clear from the record that the trial court did not question the credibility or veracity of uncontradicted evidence, then “neither credibility nor veracity” is at issue on appeal. *See Santos*, 1999 Guam 1 ¶ 32. But, if the record shows that the trial court doubted the credibility of the evidence provided, credibility and veracity remain at issue.

[18] In this case, the People argue that because “[t]here was no evidence to contradict the officer’s testimony that the defendant consented to the search[,] [t]he trial court lacked a proper basis to suppress the evidence in this case.” Appellant’s Br. at 8. However, it is clear from the record that the trial court did question the credibility of the witnesses. As stated in the Decision and Order:

The multitude of inconsistencies in the officers’ testimony and the testimony that the officers did not perform the ordinary inquiries during the traffic stop alludes that Sergeant Amaguin did not ask Defendant if he was on probation or obtain consent to search the vehicle. . . . [I]t is clear that the officers did not verify Defendant’s statement that he was on probation because if they had done so, they would have learned that he was not on probation but on parole. There are inconsistencies in the officer’s [sic] testimony regarding if and when they obtained consent to search the vehicle. Thus, the Court finds that the officers believed Defendant was on probation because they previously arrested him but did not actually know that Defendant was on parole.

RA, tab 73 at 16–17 (Dec. & Order). The trial court also questioned the truthfulness of Officer Champion’s testimony about the kitchen knife, calling its existence “dubious.” *Id.* at 15. Although

the trial court's ultimate findings could have been more clearly expressed, it is evident from the Decision and Order that the trial court did not find credible the testimony or evidence offered to show Viva gave consent.

[19] A trial court's determination of the credibility of a witness is a question of fact and is "entitled to the greatest deference." *Broadie*, 452 F.3d at 880. Thus, "[w]e do not redetermine questions of credibility." *People v. Frederick*, 48 Cal. Rptr. 3d 585, 595 (Ct. App. 2006); *see also People v. Robert*, 2019 Guam 2 ¶ 8 ("The credibility of witnesses and the weight given to such testimony is within the exclusive role of the trier of fact and is immune from appellate review . . . ."). We will uphold determinations of fact unless our examination of the evidence, construed in the light most favorable to the trial court's findings, shows the findings of fact are clearly erroneous. *See Camacho*, 2023 Guam 9 ¶ 13; *Akuba*, 2004 SD 94, ¶ 25.

[20] Giving great deference to the trial court, we look to whether the record supports a finding that consent was not given. In its Decision and Order, the trial court found that there were inconsistencies in the officers' testimony. Sgt. Amaguin testified he pulled over Viva for a traffic stop, yet he did not conduct the ordinary inquiries of a traffic stop. He testified first that the car door was open while he and Viva spoke, and then testified that it was closed. He testified Viva told him he was on probation, when Viva was actually on parole. Officer Champion testified to finding a large kitchen knife, but the custody receipts do not reflect that one was confiscated. Officer Conner testified that he did not see the kitchen knife and that he did not hear the other officers speak of a knife. Similarly, Officer Conner retrieved Viva's phone from the vehicle and testified he did not observe a suspicious message banner during the process of confiscating the phone, while Officer Champion testified that he saw a suspicious message banner appear on the phone.



[21] Viva need not produce evidence to contradict Sgt. Amaguin’s testimony about obtaining consent. Rather, the People had the burden of proving that Viva gave valid consent. The evidence they presented to the trial court was fraught with credibility issues, and it was the trial court’s prerogative to determine whether these issues were sufficiently addressed.

[22] The trial court’s finding that the People did not meet their burden of showing valid consent by a preponderance of the evidence is supported by the record and is not clearly erroneous. The decision to grant Viva’s motion to suppress was based on the trial court’s justified concerns about the credibility of the officers’ testimony, not on a failure to properly address the issue of consent.

### V. CONCLUSION

[23] In reviewing the trial court’s decision to grant Viva’s motion to suppress and the inconsistencies and contradictions in the officers’ accounts, the trial court’s decision to suppress the evidence was not clearly erroneous. Accordingly, we **AFFIRM** the Superior Court’s order granting Viva’s motion to suppress.

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/s/  
F. PHILIP CARBULLIDO  
Associate Justice

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/s/  
KATHERINE A. MARAMAN  
Associate Justice

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/s/  
ROBERT J. TORRES  
Chief Justice