IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

ZACHARY RICHARD ULLOA CAMACHO,
Defendant-Appellee.

Supreme Court Case No.: CRA03-002
Superior Court Case No.: CF0070-02

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on October 14, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

TYDINGCO-GATEWOOD, J.:

[1] Plaintiff-Appellant, People of Guam ("the People"), appeal from the trial court's decision and order granting Defendant-Appellee Zachary Camacho's ("Camacho"**)** motion to suppress methamphetamine evidence. The People assert that the "plain view" doctrine and Guam Police Department ("GPD") Officer Maria Sumang's ("Officer Sumang") subjective "good faith" authorized her to seize the methamphetamine. We disagree and affirm the decision of the trial court.

I.

[2] On or about January 22, 2002, a burglary took place at a local firing-range business establishment known as the Firing Line. Numerous firearms were stolen during the burglary.

[3] On February 15, 2002, GPD officers obtained information from certain individuals indicating their involvement in the Firing Line burglary. The individuals explained that they had given some of the stolen firearms to a Harold Berger ("Berger"). There were also indications that the individuals claimed to have traded the firearms to Berger for methamphetamine.

[4] On February 16, 2002, GPD Special Agent Craig C. Chong obtained a search warrant to search Berger's Mangilao, Guam, residence ("Berger Warrant"). The Berger Warrant authorized a search for specific items identified as firearms, drugs (narcotics), drug paraphernalia, and ammunition and firearms accessories. GPD officers executed the Berger Warrant on February 16, 2002. Officer Sumang participated in the execution of the Berger Warrant.

[5] On February 17, 2002, based on information obtained during the GPD's execution of the Berger Warrant, GPD Special Agent Bryan J. Cruz ("Special Agent Cruz") sought and obtained a second search warrant, regarding the Mongmong, Guam, residence of Jacob G.U. Camacho ("Camacho Warrant"). Special Agent Cruz's affidavit in support of the Camacho Warrant stated that during the GPD's execution of the Berger Warrant on February 16, 2002, Berger said that he

received several stolen firearms from certain individuals in exchange for methamphetamine and later transferred the stolen firearms to a Jacob G.U. Camacho.

[6] The Camacho Warrant authorized a search of the Camacho residence as well as any extensions and curtilage for stolen firearms, twenty-five of which were specifically identified in Exhibit III of the Camacho Warrant. The Camacho Warrant did not mention ammunition.

[7] During the early evening of February 17, 2002, the GPD executed the Camacho Warrant at the Mongmong residence of Jacob G.U. Camacho. Officer Sumang also participated in the execution of the Camacho Warrant.

[8] Special Agent Cruz briefed the participating GPD officers prior to their execution of the Camacho Warrant. Officer Sumang was present at the briefing. Special Agent Cruz did not provide the Camacho Warrant or its supporting affidavit to any of the participating officers. Officer Sumang testified at the suppression hearing before the trial court that she personally did not receive a copy of the Camacho Warrant, but that she knew the Camacho Warrant was related to the same ongoing burglary investigation that was the basis for the Berger Warrant executed the previous day. Officer Sumang further testified that during Special Agent Cruz's briefing he told her to search for both firearms and ammunition. Officer Sumang also testified that she had no idea what type of guns or ammunition she was to search for. In spite of this lack of knowledge, Officer Sumang nevertheless proceeded to search for firearms and ammunition.

[9] When GPD officers entered the Camacho premises to execute the Camacho Warrant, Special Agent Cruz approached Jacob G.U. Camacho and gave him the search warrant together with its list of twenty-five particular firearms as described in Exhibit III.

[10] During the GPD's execution of the Camacho Warrant, Officer Sumang searched a room later identified as the living quarters of Zachary Camacho for firearms and ammunition. While in Zachary Camacho's room, Officer Sumang saw a yellow, non-transparent, cylindrical container about five to six inches tall and about two inches in diameter with a cap on it sitting in an upright position on top of a flat-surfaced entertainment center. Officer Sumang could not see inside the container and

thought it was a deodorant bottle. Officer Sumang picked up the container, shook it and opened it. Upon opening the container and looking inside it, Officer Sumang discovered and seized nineteen plastic straws containing suspected methamphetamine.

[11] Zachary Camacho was arrested and charged with Possession of a Schedule II Controlled Substance with Intent to Deliver as a First Degree Felony. He later filed a motion to suppress the methamphetamine evidence. The trial judge granted the motion and the People appealed.

II.

[12] This court has jurisdiction to hear this appeal from an order granting a motion to suppress evidence pursuant to Title 7 GCA § 3107(b) (1994) and Title 8 GCA § 130.20(a)(6) (1993).

III.

[13] The issue before us is whether the trial court erred in granting Camacho's motion to suppress methamphetamine evidence. Where a defendant's motion to suppress is grounded on a Fourth Amendment violation, the issue of the lawfulness of the search or seizure is reviewed *de novo*. *People v. Chargualaf*, 2001 Guam 1, **&** 12. Regarding the factual findings, however, this court has instructed that, "the findings of fact relied on by the trial judge in drawing the legal conclusion are reviewed for clear error," and, in undertaking such review, "[t]he facts are . . . construed in a light most favorable to the party prevailing at the trial level." *People v. Johnson*, 1997 Guam 9, **&** 3. "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." *Yang v. Hong*, 1998 Guam 9, ¶ 7 (quoting *People v. Chargualaf*, Civ. No. 88-00068A, 1989 WL 265040 at *2 (D. Guam App. Div. Sept. 26, 1989). Thus, an appellate court will accept the lower court's findings of fact unless upon review the entire record produces the definite and firm conviction that a mistake has been committed. *Id*.

IV.

[14] The People argue that the trial court erred in suppressing the methamphetamine evidence. The People assert that Officer Sumang's "good faith" and the "plain view" doctrine authorized her to seize the methamphetamine.

[15] The Organic Act of Guam, enacted by the United States Congress in 1950, includes a series of rights at Section 1421b, entitled "Bill of rights," which were modeled after the Bill of Rights found in the first ten amendments to the United States Constitution. *People v. Guerrero*, 290 F.3d 1210, 1214 (9th Cir. 2002). Section 1421b(c), nearly identical to the Fourth Amendment to the United States Constitution, provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Title 48 U.S.C. § 1421b(c). Further, in 1968, Congress amended the Organic Act by enacting Section 1421b(u) and thereby extended several "provisions of and amendments to the Constitution of the United States . . . to Guam to the extent that they ha[d] not been previously extended[,]" including the Fourth Amendment. Title 48 U.S.C. 1421b(u). Section 1421b(u) goes on to say that the extension to Guam of the constitutional protections "shall have the same force and effect [in Guam] as in the United States or in any State of the United States." *Id.* The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. This court has held that the Fourth Amendment is made applicable to Guam by the Organic Act. *Johnson*, 1997 Guam 9 at ¶ 4. Thus, the protections provided by the Fourth Amendment are afforded to the people of Guam through both Sections 1421b(c) and 1421b(u) of the Organic Act of Guam.

[16] The Fourth Amendment's requirement, "that warrants shall particularly describe the things to be seized[,] makes general searches under them impossible . . . ." *Marron v. United States*, 275 U.S. 192, 196, 48 S. Ct. 74, 76 (1927). The particularity requirement ensures that "[a]s to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Id*.; *see United States v. Hillyard*, 677 F.2d 1336, 1339 (9th Cir. 1982). In addition, "the Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment . . . ." *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2173 (1982) (internal quotation marks and citation omitted) (quoting *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S. Ct. 2408, 2412 (1978)). The general rule that warrantless searches are presumptively unreasonable, however, is subject to certain well established exceptions, such as "good faith" and "plain view," which find their roots in Fourth Amendment jurisprudence. *See United States v. Leon*, 468 U.S. 897, 908, 104 S. Ct. 3405, 3413 (1984) (regarding good faith); *Horton v. California*, 496 U.S. 128, 110 S. Ct. 2301 (1990) (regarding plain view); *Minnesota v. Dickerson*, 508 U.S. 366, 13 S. Ct. 2130 (1993) (following *Horton* and providing further analysis of the plain view exception).

[17] The good faith exception was articulated in the United States Supreme Court case of *United States v. Leon*, where the Court held that evidence seized in reasonable reliance on a search warrant later found to be invalid could nonetheless be introduced at trial. *Leon*, 468 U.S. at 919-21, 104 S. Ct. at 3418-19. Leon was the target of police surveillance based on an anonymous informant's tip. *Id*. at 901-02, 104 S. Ct. at 3409. Based on evidence from their surveillance, the police applied to a judge for a search warrant to search Leon's home. *Id*. at 902, 104 S. Ct. at 3409-10. The warrant was issued and the police recovered large quantities of illegal drugs from Leon's home. *Id*., 104 S. Ct. at 3410. Leon was indicted for violation of federal drug laws. *Id*. The trial court later concluded that the search warrant was invalid because the affidavit in support of the warrant did not establish adequate probable cause to support the warrant and thus the evidence obtained under the warrant

could not be introduced at Leon's trial. *Id*. at 903-04, 104 S. Ct. at 3410. The trial court's decision was affirmed by the Ninth Circuit Court of Appeals. *United States v. Leon*, 701 F.2d 187 (9th Cir. 1983) (affirming the trial court's holding without a reported opinion.) On appeal to the United States Supreme Court, the Court reversed and held that where the police act in good faith by reasonably relying on a facially valid warrant that is only later invalidated for a lack of probable cause to support the warrant, the evidence could be introduced at trial. *Leon*, 468 U.S. at 926, 104 S. Ct. at 3422.

[18] The good faith exception established in *Leon* does not apply to the instant case. In fact, the validity of the Camacho Warrant is not in dispute. Rather, the People argue in a conclusory fashion without any legal authority that Officer Sumang was "working on [her] good faith" when she searched for ammunition. Appellant's Opening Brief, p. 7. However, in the Fourth Amendment context, "[subjective] good faith . . . is not enough." *Beck v. Ohio*, 379 U.S. 89, 97, 85 S. Ct. 223, 229 (1964) (internal quotation marks omitted) (quoting *Henry v. United States*, 361 U.S. 98, 102, 80 S. Ct. 168, 171 (1959)). "If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate and the people would be 'secure in their persons, houses, papers, and effects' only in the discretion of the police." *Id*. (quoting the Fourth Amendment). Furthermore, "[a] policeman's pure heart does not entitle him to exceed the scope of a search warrant . . . ." *United States v. Ewain*, 88 F.3d 689, 694 (9th Cir. 1996) (clarifying that an officer's subjective good faith is not determinative of whether or not evidence should be suppressed). Because the *Leon* objective good faith exception is inapplicable to the instant case, and because Officer Sumang's subjective good faith did not entitle her to conduct a search that exceeded the scope of the validly executed search warrant, we reject the People's argument.

[19] The People further rely upon the plain view doctrine. The People argue that the seizure of the methamphetamine could be made, even if outside the confines of the warrant, because the evidence was properly seized under the plain view doctrine.

[20] The United States Supreme Court has held that warrantless seizures are permissible pursuant to the plain view doctrine. As the Court explained, "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *Dickerson*, 508 U.S. at 375, 13 S. Ct. at 2136-37. In its earlier *Horton* opinion, cited by the Court in support of its *Dickerson* test, the United States Supreme Court also provided a three-part test for the plain view doctrine, albeit worded slightly differently than the subsequent *Dickerson* Court's three-part test, holding that (1) the officer must "arriv[e] at the place from which the evidence could be plainly viewed" without violating the Fourth Amendment; (2) the evidence must be in "plain view" and its "incriminating character must also be immediately apparent;" and (3) the officer "must also have a lawful right of access to the object itself." *Horton*, 496 U.S. at 136-37, 110 S. Ct. at 2308. Essentially, the three-part tests of *Dickerson* and *Horton* are identical and thus we will apply them as one test.

[21] Applying the *Dickerson* and *Horton* test, we first consider whether Officer Sumang was lawfully in the position or place from which she viewed the object, that is, the methamphetamine. We find that she was not. Turning to the record in this case, it is undisputed that the Camacho Warrant particularly described *only* firearms as things to be seized. Specifically, Exhibit III attached to the warrant delineated the type, manufacturer, model, caliber, and serial number for twenty-five firearms. Ammunition was never identified in the Camacho Warrant as something that could be searched for or seized. Thus, when the GPD failed to particularly describe ammunition as an object of the search in the Camacho Warrant, a search for ammunition would be impossible because Officer Sumang was left with no discretion to execute the warrant outside the confines of the limitations of the warrant. *See Marron*, 275 U.S. at 196, 48 S. Ct. at 76.

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[22] Officer Sumang's search could also lawfully extend to containers in which the lawful objects of the search could be found. The United States Supreme Court has stated that:

> [a] lawful search of fixed premises generally extends to the *entire area in which the object of the search may be found* . . . . Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, *and containers in which the weapon*[*s*] *might be found*.

Ross, 456 U.S. at 820-21, 102 S. Ct. at 2170-71 (emphasis added).

[23] However, as stated earlier, the twenty-five firearms were the *only items* particularly identified in the Camacho Warrant as the objects of the search. In accordance with the warrant, Officer Sumang searched the Camacho home including the living area of Zachary Camacho. The warrant provided the officer with authority to open "containers in which the weapon[s] might be found." *Id*. Her search extended to a small, yellow, closed non-transparent deodorant container found in Zachary Camacho's room. The trial court found that none of the twenty-five firearms could have actually fit in the small container. As a result of this finding, the trial court found, and we agree, that the lawful search of Camacho's premises could not properly extend to the deodorant container where the firearms could not actually fit.

[24] Because the Fourth Amendment particularity requirement was not satisfied in the Camacho Warrant to justify a search for ammunition and the small deodorant container was not qualified to actually hold firearms as described in the Camacho Warrant, Officer Sumang conducted an unlawful search when she opened the container. Thus, she was not lawfully in the position or place from which she viewed the methamphetamine. *See Dickerson*, 508 U.S. at 375, 13 S. Ct. at 2136-37; *Horton*, 496 U.S. at 136-37, 110 S. Ct. at 2308.

[25] As to the second prong of the Supreme Court's *Dickerson* and *Horton* test, there is no dispute that the incriminating nature of the nineteen heat sealed straws containing methamphetamine was immediately apparent to Officer Sumang when she looked into the deodorant container in which the straws were packed. The incriminating nature of an item is immediately apparent "where the officer ha[s] 'probable cause to associate the property with criminal activity.'" *United States v. Hudson*, 100

F.3d 1409, 1420 (9th Cir. 1996) (quoting *Brown v. Texas*, 460 U.S. 730, 741-42, 103 S. Ct. 1535, 1543 (1983)). In *United States v. Nohara*, the United States Ninth Circuit Court of Appeals held that the incriminating nature of the items held by Nohara was immediately apparent to the arresting officer for plain view purposes at the moment the officer saw the items in Nohara's hands and concluded that they were a butane torch and a glass pipe with a white residue that he recognized as methamphetamine. *United States v. Nohara*, 3 F.3d 1239, 1243 (9th Cir. 1993) (citing *Horton*, 496 U.S. at 136, 110 S. Ct. at 2308). In the case at bar, probable cause to associate the nineteen heat sealed plastic straws containing a white powdery substance with criminal activity was triggered when Sumang picked up the container, looked into it, and viewed what she believed was methamphetamine evidence. Thus, the second prong of the Supreme Court's *Dickerson* and *Horton* test was satisfied in this case.

[26] With regard to the third prong of the Supreme Court's *Dickerson* and *Horton* test, there is no question that Officer Sumang did not have a "lawful right of access to the methamphetamine." *Dickerson*, 508 U.S. at 375, 13 S. Ct. at 2136-37; *Horton*, 496 U.S. at 136-37, 110 S. Ct. at 2307-08. Officer Sumang testified that when she opened the container she was searching for ammunition. As discussed previously, however, because officers failed to include ammunition in the Camacho Warrant as a lawful object of the search, the Fourth Amendment particularity requirement was violated when Officer Sumang searched for ammunition in the Camacho residence. Officer Sumang had no legal authority to search for ammunition. Further, as also stated previously, Officer Sumang's search for firearms could not extend to the small deodorant container as it was impossible for any of the twenty-five firearms listed in the warrant to fit in the container. *See Ross*, 456 U.S. at 820-21, 102 S. Ct. at 2170-71. Thus, once Officer Sumang unlawfully picked up, shook, opened and looked into the deodorant container, she was not lawfully in a position from which she could view the methamphetamine and therefore she did not have a lawful right of access to the methamphetamine.

[27] In sum, two of the three elements of the United States Supreme Court's *Dickerson* and *Horton* test are not satisfied. Although the incriminating nature of the nineteen heat sealed straws containing methamphetamine was immediately apparent to Officer Sumang when she first saw the evidence, she was not lawfully in the position or place from which she viewed the evidence and did not have a lawful right of access to the evidence. The *Dickerson* and *Horton* decisions make clear that all three prongs of the test must be satisfied. *See Dickerson*, 508 U.S. at 375, 13 S. Ct. at 2136-37; *Horton*, 496 U.S. at 136-37, 110 S. Ct. at 2308. Thus, the plain view exception does not validate the warrantless seizure of the methamphetamine evidence.

V.

[28] Based on the above, this court holds that the trial court's factual findings, construed in a light most favorable to Zachary Camacho, were not clearly erroneous and thus we accept the lower court's findings of fact. *See Johnson*, 1997 Guam 9 at ¶ 3. We are not left with the "definite and firm conviction that the court below committed a mistake." *Yang*, 1998 Guam 9 at ¶ 7. Further, based on the above we also hold that the trial court's legal conclusions survive *de novo* review. *Johnson*, 1997 Guam 9 at ¶ 3. Therefore the decision of the trial court is hereby **AFFIRMED** and the case is remanded to the trial court for further proceedings consistent with this opinion.