IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellant,

v.

CANDIDO STEVEN TAMAN,
Defendant-Appellee.

Supreme Court Case No. CRA12-033
Superior Court Case No. CM1183-11

OPINION

Cite as: 2013 Guam 22

Appeal from the Superior Court of Guam
Argued and submitted on May 23, 2013
Hagåtña, Guam

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

MARAMAN, J.:

[1] Plaintiff-Appellant the People of Guam ("People") appeal from the trial court's decision and order granting Defendant-Appellee Candido Steven Taman's motion to suppress all evidence obtained from the onset of Taman's detention until his waiver of custodial interrogation rights.

[2] The People argue that the trial court erred in four respects: (1) in ruling that 8 GCA § 30.30 applies even when probable cause develops within fifteen minutes of the onset of an investigative detention; (2) in ruling that voluntary consent to continued investigative detention can never extend the time frame established by section 30.30; (3) in applying the constitutional remedy of exclusion to this case when the only allegations of illegality concern violations of Guam's Stop and Frisk Act; and (4) in retroactively suppressing evidence gathered before the alleged illegality took place.

[3] Taman argues that section 30.30 unambiguously sets an inflexible upper limit of fifteen minutes on investigative detentions within which law enforcement must either arrest or release a suspect, and that neither probable cause nor voluntary consent should toll this time limit because it would frustrate the purpose of the statutory scheme. Taman further argues that the constitutional remedy of exclusion is applicable to violations of Guam's Stop and Frisk Act because these statutes "serve as a carefully circumscribed statutory codification of the *Terry* decision . . . [and] are but a heightened Fourth Amendment protection," and that the trial court correctly suppressed all evidence gathered from the onset of an unlawful seizure in order to deter law enforcement from improperly detaining suspects beyond the statutorily prescribed fifteen-minute limit. Appellee's Br. at 5 (Mar. 25, 2013).

[4] We hold that obtaining voluntary consent tolls, and establishing probable cause obviates, the fifteen-minute rule contained in Guam's Stop and Frisk Act, and we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[5] Defendant-Appellee Candido Steven Taman was charged via Magistrate's Complaint with one count of Driving Under the Influence of Alcohol (As a Misdemeanor) and one count of Operation of a Motor Vehicle Without a Valid License (As a Petty Misdemeanor) for acts allegedly committed on or about November 25, 2011.

[6] Guam Police Officer Jesse J. Mendiola responded to the scene of a traffic accident where he stopped and questioned Taman at approximately 2:32 a.m. Officer Mendiola observed that Taman had bloodshot, watery eyes and slurred speech, and that he smelled of alcohol. At 2:37 a.m., Taman admitted that he consumed alcohol but could not remember how much. At 2:45 a.m., thirteen minutes from the onset of the investigative detention, Officer Mendiola asked Taman to participate in a standardized field sobriety test, which Taman failed.[1] At approximately 3:00 a.m., 28 minutes from the onset of the investigative detention, Taman, who did not have his driver's license, was handcuffed and placed under arrest. The police took Taman to the precinct station and advised him of his rights, which he first waived by signing a custodial interrogation form before making statements to the police.

[7] Almost one year later, Taman moved to suppress all evidence obtained from his investigative detention on the grounds that his detention lasted longer than the fifteen-minute limit prescribed by Guam's Stop and Frisk Act, 8 GCA § 30.30. The trial court issued a decision

[1] *See generally People v. Guerrero*, 2003 Guam 18 ¶ 3 (outlining three tests administered as part of standardized field sobriety test, namely, the Horizontal Gaze Nystagmus, the Walk-and-Turn Test, and the One Leg Stand Test).

and order suppressing all evidence gathered from the onset of Taman's investigative detention at 2:32 a.m. until his arrest at 3:00 a.m. The People filed a timely notice of appeal.

II. JURISDICTION

[8] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-36 (2013)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.20(a)(6) (2005) ("An appeal may be taken by the government from . . . [a]n order granting a motion to suppress evidence. This appeal may be taken prior to trial if the appeal is timely filed . . . and before the trial has commenced.").

III. STANDARD OF REVIEW

[9] Suppression orders are reviewed *de novo*. *People v. Hualde*, 1999 Guam 3 ¶ 19. We review the trial court's legal conclusions *de novo*. *See People v. Julian*, 2012 Guam 26 ¶ 8 (citing *People v. Rios*, 2008 Guam 22 ¶ 8). We review the trial court's factual findings under the clear error standard. *See People v. Farata*, 2007 Guam 8 ¶ 15. We review the trial court's statutory interpretation *de novo*. *Palomo v. Manglona*, 2012 Guam 18 ¶ 13 (citation omitted).

IV. ANALYSIS

[10] The issues on appeal are (1) whether obtaining voluntary consent tolls, or establishing probable cause obviates, the fifteen-minute limit prescribed by 8 GCA § 30.30, and (2) whether suppression of all evidence gathered from an investigative detention that lasts longer than fifteen minutes is the appropriate remedy. Other ancillary issues concern statutory interpretation and the interplay between Guam's Stop and Frisk Act and the Fourth and Fourteenth Amendments of the United States Constitution.

A. Whether Voluntary Consent Tolls, or Probable Cause Obviates, the Fifteen-Minute Limit Prescribed by 8 GCA § 30.30 of Guam's Stop and Frisk Act.

1. The Effect of Obtaining Voluntary Consent

[11] The first issue is whether obtaining voluntary consent tolls the fifteen-minute limit prescribed by Guam's Stop and Frisk Act. Chapter 30 of Title 8 of the Guam Code Annotated constitutes Guam's Stop and Frisk Act. The Act contains the following language:

> **§ 30.10. Detention Permitted; Standards.**
>
> Whenever a peace officer encounters any person under circumstances which reasonably indicate that such person has committed, is committing or is about to commit a criminal offense, the peace officer may detain such person.
>
> **§ 30.20. Detention; Purpose Defined, Limited.**
>
> Detention pursuant to § 30.10 shall be for the purpose of ascertaining the identity of the person detained and the circumstances surrounding his presence abroad which lead the officer to believe that he had committed, was committing, or was about to commit a criminal offense, but such person shall not be compelled to answer any inquiry of the peace officer.
>
> **§ 30.30. Time and Place Limitations Upon Detention.**
>
> No person shall be detained under the provisions of § 30.10 longer than is reasonably necessary to effect the purposes of that section, and in no event longer than fifteen (15) minutes. Such detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.
>
> **§ 30.40. When Arrest Permitted; Release Required.**
>
> If at any time after the onset of the detention authorized by § 30.10, probable cause for arrest of the person shall appear, the person shall be arrested. If after an inquiry into the circumstances which prompted the detention, no probable cause for the arrest of the person shall appear, he shall be released.
>
> **§ 30.50. Weapons Search Permitted.**
>
> Whenever a peace officer authorized to detain any person under the provisions of § 30.10 reasonably believes that a person whom he has detained, or is about to detain, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or another, the peace officer may search such person to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses a weapon or any evidence of a criminal offense, it may be seized.

§ 30.60. Limitations Upon Admissibility of Seized Evidence.

> Nothing seized by a peace officer in the search authorized by § 30.50 shall be admissible against any person in any court of this Territory unless both the detention and the search which disclosed its existence was authorized by, and conducted in compliance with, the provisions of this Chapter.

8 GCA §§ 30.10-30.60 (2005).

[12] The People argued to the trial court that Taman's voluntary consent to undergo the standardized field sobriety test "vitiate[d] the effect of 8 GCA § 30.30" and tolled the clock. Record on Appeal ("RA"), tab 46 at 5 (Dec. & Order, Dec. 20, 2012). The trial court seemed to recognize that in Guam, we have previously analyzed the effect of obtaining voluntary consent, though in the context of constitutional and not statutory rights. *See id.* at 5 n.3 (citing *People v. Santos*, 1999 Guam 1 ¶¶ 33-37; *People v. Chargualaf*, 2001 Guam 1 ¶¶ 14-15). Notwithstanding, the trial court held that the "unconditional language [of 8 GCA § 30.30] unequivocally imparts that no circumstance may serve as an exception to the time limit, be it exigency or even an express waiver by the detainee." *Id.* at 5.

[13] In renewing their argument on appeal, the People submit that if the court reasons that detainees can voluntarily consent to continued law enforcement contact, thereby impacting their constitutional rights, it should follow that the same detainees could similarly waive their statutory rights. Appellant's Br. at 25 (Feb. 21, 2013). In opposition, Taman argues that if consent tolled the fifteen-minute limit, this would frustrate the legislature's clear intent to limit the period of detention to fifteen minutes, a protection that goes beyond constitutional limitations. Appellee's Br. at 4.

[14] As the People suggest, it is generally easier to waive a statutory right. In their brief, the People cite *Quinata v. Superior Court*, wherein we stated:

> Thus, [*People v. Johnson*, 606 P.2d 738 (1980),] contemplated both a constitutional right, the waiver of which must be voluntary, knowing, and intelligent and could only be made by the defendant personally, and a statutory right, for which the defendant's consent could be implied.

2010 Guam 8 ¶ 27; *see also* Appellant's Br. at 25-26.

[15] We hold that voluntary consent does, as a matter of law, toll the fifteen-minute rule. To find otherwise would lead to pragmatic quagmires and absurdities; a suspect could, for example, strategically prolong an investigative detention beyond fifteen minutes to avoid arrest. We do not interpret section 30.30 as an invitation to detainees to voluntarily undergo investigation for sixteen or seventeen minutes, moving slowly and drawing out the investigation beyond its natural tempo, only to then move to suppress the evidence collected during the investigation because the officer failed to arrest within fifteen minutes. An implied waiver of a statutory right to be free from unreasonable seizures, such as by giving voluntary consent to continued police contact, would suffice to toll the fifteen-minute time limit set forth in section 30.30. Accordingly, the trial court erred when it stated that an express waiver would not toll this time limit, *see* RA, tab 46 at 5 (Dec. & Order), because even an implied waiver would suffice.

[16] As we stated in *People v. Chargualaf*, "[i]f consent is given during either a lawful encounter or a lawful detention, . . . the validity of the consent turns on whether it was voluntarily given." 2001 Guam 1 ¶ 15 (citing *Santos*, 1999 Guam 1 ¶¶ 33-34; *Commonwealth v. Strickler*, 757 A.2d 884, 888-89 (Pa. 2000)). A determination as to voluntariness should be made based on the totality of the circumstances, and the People carry the burden to establish voluntariness by a preponderance of the evidence. *See id.* ¶ 25. Given the limited factual record before us, we will not opine whether Taman voluntarily consented to continued police contact. Instead, we remand this case to the trial court to develop a fuller factual record with respect to the voluntariness of Taman's consent, if any. The trial court should take into account the factors

for determining voluntariness that we listed in *Chargualaf*, with appropriate modifications for investigative detentions.[2]

2. The Effect of Developing Probable Cause

[17] The second issue is whether the formulation of probable cause obviates the fifteen-minute rule prescribed by Guam's Stop and Frisk Act. The People argue that once probable cause to arrest an individual arises during an investigative detention, the time limit prescribed by section 30.30 no longer applies. Appellant's Br. at 11. Based on their interpretation of the language contained in Guam's Stop and Frisk Act, the People aver that once the police develop probable cause to arrest a suspect, the provisions of section 30.20 concerning the purposes of investigative detentions no longer govern the encounter, and that, instead, the mandatory "arrest" language of section 30.40 – which is not qualified by the same temporal restrictions – applies. Appellant's Br. at 11 (citing 8 GCA §§ 30.20, 30.40). In other words, the People argue that a finding of probable cause within fifteen minutes of the start of the investigative detention acts as a tolling mechanism for the time limits mandated by section 30.30, such that an arrest made after the fifteen-minute limit expires is not made in violation of Guam's Stop and Frisk Act. *Id.* at 12.

[18] By contrast, Taman argues that 8 GCA § 30.30 is clear and unambiguous and that its plain meaning governs. Appellee's Br. at 7 (citations omitted). Taman submits that a plain reading of section 30.30 requires a finding that detentions authorized under that section cannot, under any circumstances, exceed fifteen minutes, and that although the People cite to trial court

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[2] As we stated in *Chargualaf*, factors for determining voluntariness of consent to a search include:

> 1) whether the defendant was detained and the length of time of the questioning; 2) whether the defendant was threatened or intimidated by the police; 3) whether the defendant relied on misrepresentations or promises made by the police; 4) whether the person was in custody or under arrest when the consent was given; 5) whether the person was in a public or a secluded place; and 6) whether the defendant objected to the search.

2001 Guam 1 ¶ 25 (citing *Santos*, 1999 Guam 1 ¶ 36).

decisions that allow for tolling this time limit, those decisions never cited supporting authority. *Id.* at 8; *see also id.* at 9-10 ("The Prosecution's argument that probable cause or the appearance of consent tolls the running of the 15-minute time limit relies upon a tortured construction of a clear statutory and unambiguous scheme and is therefore without merit."). In other words, Taman avers that the police were required to either arrest him or release him once fifteen minutes had passed from the initial stop, and by failing to do so, the police violated the fifteen-minute rule. *Id.* at 8-9; *see also id.* at 10 ("The language of 8 G.C.A. § 30.30 states unambiguously that 'in no event' shall the detention exceed 15 minutes.").

[19] To support his position, Taman contends that the People's interpretation would allow police to detain a suspect "*ad infinitum*" if probable cause to arrest arises within fifteen minutes from the start of detention. *Id.* at 11-12. Moreover, Taman submits that interpreting section 30.40 to require arrest as soon as probable cause arises furthers the purpose of the statutory scheme, which, Taman argues, is to afford law enforcement a limited window of opportunity to decide whether to arrest or release the suspect. *Id.* at 12.

[20] In reply, the People clarify that their position is not as suggested by Taman. Specifically, the People reiterate what they submitted in their opening brief, that if Guam police officers detained a suspect *ad infinitum* without arrest, then Taman would clearly possess a valid constitutional argument. *See* Appellant's Reply Br. at 4 (Apr. 8, 2013) (citing Appellant's Br. at 13-14). In elucidating their position, the People distinguish Taman's rights under Guam's Stop and Frisk Act from his constitutional rights. *See id.* The People also take issue with Taman's insinuation that section 30.40 requires police to arrest a suspect immediately upon developing probable cause to do so. *Id.* at 9. The People assert that Guam's Stop and Frisk Act does not

require this. *See id.* at 10 ("Rather, the language reads that such an arrest can take place 'at any time' after probable cause has appeared.").

[21] The language of 8 GCA §§ 30.10 and 30.20 reflect, and we hereby confirm, that Guam's Stop and Frisk Act utilizes the same standard for reasonable suspicion that is articulated in *Terry v. Ohio* and its progeny for courts to apply when analyzing the legality of investigative detentions, albeit those courts apply the standard under a constitutional analysis. *See* 8 GCA §§ 30.10-30.20; *Terry v. Ohio*, 392 U.S. 1 (1968). The *Terry* court defined "reasonable suspicion" as follows:

> [W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety . . . .

392 U.S. at 30-31.

[22] We have previously explained that a level of suspicion less demanding than probable cause is required to support an officer's investigative detention of a suspect; an officer need only have a "'reasonable suspicion that an individual was engaged in or is about to be engaged in illegal conduct.'" *People v. Cundiff*, 2006 Guam 12 ¶ 40 (quoting *People v. Johnson*, 1997 Guam 9 ¶ 4). This begs the question: what constitutes probable cause under Guam law, given that, like reasonable suspicion, probable cause is a constitutional tenet rather than a creature of statutory law?

[23] The Supreme Court supplied a working definition of probable cause in *Beck v. Ohio*:

> [W]hether at that moment the facts and circumstances within [the police officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was committing an offense.

379 U.S. 89, 91 (1964) (citing *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949); *Henry v. United States*, 361 U.S. 98, 102 (1959)).

[24] We look to the language of the statutory scheme to evaluate the effect of probable cause on the fifteen-minute rule. In so doing, we follow the Supreme Court's age-old guidance, that "[i]t is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." *Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883).

[25] Section 30.30 cross-references section 30.10 by limiting the application of the fifteen-minute rule to detentions made "under the provisions of § 30.10." 8 GCA § 30.30. In turn, the purpose of an investigative detention effectuated under section 30.10 is outlined in section 30.20, which is "for the purpose of ascertaining the identity of the person detained and the circumstances surrounding his presence abroad which lead the officer to believe that he had committed, was committing, or was about to commit a criminal offense . . . ." *Id.* § 30.20.

[26] In other words, the purpose of investigative detentions conducted under section 30.10 is to aid officers, who are acting on their reasonable suspicions, to either confirm or deny those suspicions. The statutory framework evinces that once officers confirm their suspicions and develop probable cause to arrest a suspect, the nature of an investigative detention has been transformed into something more akin to an evidence-gathering mission to support a later conviction at trial, a graduated situation warranting greater intrusiveness than a *Terry* stop allows. *See, e.g.*, *Florida v. Royer*, 460 U.S. 491, 500 (1983) ("The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. . . . [A]n investigative detention must be temporary and

last no longer than is necessary to effectuate the purpose of the stop."). *But see People v. Moorman*, 859 N.E.2d 1105, 1119 (Ill. App. Ct. 2006) ("Since a greater intrusion on an individual's liberty is allowed once probable cause develops, it follows that an officer's actions are no longer limited by the dictates of *Terry* and its progeny. . . . It is the existence of probable cause that alters the relationship [between the officer and the individual].").

[27] Accordingly, we hold that, as a matter of law, the development of probable cause obviates the fifteen-minute limit imposed by Guam's Stop and Frisk Act on investigative detentions that are supported by reasonable suspicion, because the appearance of probable cause transforms the nature of the detention and thereby removes the encounter from the strict parameters of the statute. The trial court committed reversible error when it held that it "cannot reasonably adopt" an interpretation of the statute that would allow indefinite detention so long as the police develop probable cause within fifteen minutes of the initial stop, an interpretation the trial court felt "subverts [the Act's] entire purpose." RA, tab 46 at 4-5 (Dec. & Order). A prolonged detention supported by probable cause might implicate a constitutional claim, but the language of the statute as written does not preclude the police from extending their investigation well beyond fifteen minutes.

[28] Again, we hark back to the pragmatic implications of a decision to the contrary. In *United States v. Place*, the Supreme Court admonished of the dangers and impracticability imposed by inflexible time limits:

> We understand the desirability of providing law enforcement authorities with a clear rule to guide their conduct. Nevertheless, we question the wisdom of a rigid time limitation. Such a limit would undermine the equally important need to allow authorities to graduate their responses to the demands of any particular situation.

462 U.S. 696, 709 n.10 (1983).

[29] We do not opine that in Taman's case probable cause was developed within fifteen minutes from the onset of his initial detention. This is another factual determination the trial court must make on remand, and the trial court should clearly establish when the police developed probable cause to arrest Taman and for which crime, if any. It is clear from the language of Guam's Stop and Frisk Act that if police are conducting an investigative detention and no probable cause appears within fifteen minutes from the onset of the detention, the police must release the suspect, lest they violate the Act. But where probable cause appears, we hold the fifteen-minute time limit no longer applies.

B. Whether Suppression of All Evidence Gathered from an Investigative Detention Lasting More Than Fifteen Minutes is the Appropriate Remedy.

[30] Though other issues were raised by the parties on appeal, we will not address the application and scope of the exclusionary rule for violations of the fifteen-minute rule prescribed by 8 GCA § 30.30, nor the constitutional issues implicated and encompassed thereby, because we hold, as a matter of law, that the tendering of voluntary consent will toll the time limit and the appearance of probable cause obviates the time limitations imposed on investigative detentions effected under Guam's Stop and Frisk Act. The trial court must decide whether Taman's motion should be granted after a fuller factual record is developed on the issues of voluntary consent and probable cause.

V. CONCLUSION

[31] We hold that obtaining voluntary consent tolls, and establishing probable cause obviates, the fifteen-minute rule contained in Guam's Stop and Frisk Act, and that it was reversible error for the trial court to rule otherwise. We further hold that, absent obtaining voluntary consent or establishing probable cause within fifteen minutes from the onset of an investigative detention, an investigative detention exceeding the statutory limit violates Guam's Stop and Frisk Act.

Finally, because the trial court must develop further factual findings with respect to the voluntariness of Taman's consent and the development of probable cause, we reserve judgment on other matters raised.

[32] For the foregoing reasons, we **REVERSE** and **REMAND** this matter to the trial court for further proceedings not inconsistent with this opinion.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

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

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice