IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ELI CHARFAUROS QUINTANILLA,
Defendant-Appellant.

OPINION

Cite as: 2020 Guam 8

Supreme Court Case No.: CRA18-010
(Consolidated with CRA18-012)
Superior Court Case No.: CF0486-15

Appeal from the Superior Court of Guam
Argued and submitted on May 30, 2019
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and ROBERT J. TORRES, Associate Justice.[1]

CARBULLIDO, J.:

[1] Defendant-Appellant Eli Charfauros Quintanilla appeals a final judgment convicting him of Possession of a Schedule II Controlled Substance (As a Third Degree Felony). Quintanilla seeks reversal of his conviction on three grounds. First, Quintanilla argues the evidence was insufficient for a rational trier of fact to find he knowingly possessed a Schedule II controlled substance. Second, Quintanilla contends the prosecution improperly vouched for one of its witnesses during rebuttal closing argument. Third, Quintanilla asserts that the trial court erred in denying his motion to suppress evidence recovered from a search of his car. For the reasons discussed below, we affirm the judgment of conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On the night he was arrested, Quintanilla and Julius Nedlic drove Quintanilla's car to pick up Joey Salas. Salas sat in the backseat of the vehicle and fell asleep. A pipe loaded with drugs fell out of Salas's pocket onto the backseat. When they arrived at a parking lot of a nearby bar, Salas left the car to make a phone call. When he returned, Quintanilla had moved to the backseat, so Salas sat in the front passenger seat. Salas and Nedlic testified that they were smoking crystal methamphetamine, known as "ice," in the car. Transcript ("Tr.") at 13-14, 119 (Jury Trial, May 21, 2018). Nedlic testified that he believed smoke was percolating around the interior of the vehicle. Both Nedlic and Salas testified that they did not see Quintanilla smoking or in possession of drugs. When questioned by the prosecution about prior testimony in a separate case where

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was argued and submitted.

Nedlic testified that he had been "smoking with Quintanilla," Nedlic clarified that he meant he was with Quintanilla in the same vehicle, not that Quintanilla was smoking. *Id.* at 81, 96.

[3] Guam Police Department officers arrived at the parking lot to conduct an unrelated search for a suspect at the bar. Upon arrival, Officer Eric Asanoma noticed a vehicle parked in a poorly lit, far corner of the parking lot. The vehicle "appeared to be off." Tr. at 9 (Jury Trial, May 22, 2018). After spending "a little bit over 30 minutes" inside the bar conducting the check for the suspect in the unrelated matter, Officer Asanoma returned to the parking lot and noticed that the same vehicle was still in the far corner of the parking lot but now had its parking lights on. *Id.* Based on these observations, the officers "decided to make a check of that vehicle." *Id.*

[4] The officers approached the vehicle and knocked on the windows. When the windows were rolled down, Officer Asanoma observed a cloud of odorless smoke emit from the vehicle and noticed that the occupants appeared to be under the influence of drugs. The officer asked the three occupants of the vehicle what they were doing, and all three simultaneously responded with different answers. He asked the occupants to exit the vehicle. Nedlic was sitting in the driver's seat and Officer Asanoma, noticing that Nedlic exited the vehicle holding a rolled-up sweater that seemed to conceal something, asked if he could search Nedlic; Nedlic consented. Upon conducting the search, the officer discovered drugs and drug paraphernalia within the sweater. Officer Asanoma testified that he asked Nedlic for consent to search the vehicle and that Nedlic consented. Nedlic testified that he did not provide such consent and instead told the officer he could not consent because he was not the owner of the vehicle, Quintanilla was. Upon a search of the vehicle, the officers found a pipe loaded with suspected drugs in plain view on the rear seat. Salas testified that this pipe was his and that he had loaded it. No contraband was found on the

person of Quintanilla or Salas. Officer Asanoma testified that upon questioning, Nedlic and Salas both said that they had been smoking with Quintanilla. The officers arrested the three men.

[5] The People charged Quintanilla with Possession of a Schedule II Controlled Substance (As a Third Degree Felony). Before trial, Quintanilla moved to suppress evidence recovered from the search of his vehicle. After a hearing on the issue, the trial court denied the motion. At the close of the People's case-in-chief, Quintanilla moved for a judgment of acquittal, which the court denied.

[6] During closing arguments, defense counsel questioned Officer Asanoma's ability to remember these events, as they occurred three years prior. In rebuttal closing arguments, the prosecution responded by commenting that defense counsel had a chance to cross-examine the officer and to ask about his memory of the events, but that defense counsel had failed to do so. Defense counsel objected on the basis that the prosecution was allegedly misconstruing defense counsel's cross-examination of the officer. The trial court overruled the objection.

[7] The jury found Quintanilla guilty. The court entered a judgment and sentenced Quintanilla to one year of imprisonment, with credit for time served. Quintanilla timely filed a notice of appeal.

II. JURISDICTION

[8] This court has jurisdiction over an appeal from a final judgment of conviction. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-140 (2020)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[9] "Where a defendant has raised the issue of sufficiency of evidence by motion for acquittal in the trial court, the denial of the motion is reviewed *de novo*." *People v. Belga*, 2016 Guam 1 ¶

16 (quoting *People v. Anastacio*, 2010 Guam 18 ¶ 10). When a defendant alleges prosecutorial misconduct in the form of vouching but failed to object at trial, this court reviews the conduct for plain error. *See People v. Guerrero*, 2017 Guam 4 ¶¶ 40, 42. "We review a trial court's decision on a motion to suppress *de novo*." *People v. Gallo*, 2017 Guam 24 ¶ 16. However, a trial court's factual findings are reviewed for clear error. *People v. Mansapit*, 2016 Guam 30 ¶ 8.

IV. ANALYSIS

[10] Quintanilla challenges his conviction on three grounds: (1) insufficiency of the evidence, (2) prosecutorial misconduct through vouching, and (3) the trial court's failure to suppress evidence recovered from the search of his car. We address each argument in turn and find that none warrants reversal.

A. The Evidence is Sufficient for a Rational Trier of Fact to Find Beyond a Reasonable Doubt that Quintanilla Knowingly Possessed a Schedule II Controlled Substance

[11] When evaluating the sufficiency of evidence, we consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt based on the evidence in the record, viewing the evidence in the light most favorable to the prosecution. *People v. Taitano*, 2015 Guam 33 ¶ 12. "[T]he only relevant question is 'whether [the conviction] was so insupportable as to fall below the threshold of bare rationality.'" *Id.* (quoting *Coleman v. Johnson*, 566 U.S. 650, 656 (2012) (per curiam)). "When ruling on a motion for judgment of acquittal, the trial court is concerned with the existence or nonexistence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence." *Belga*, 2016 Guam 1 ¶ 43 (quoting *People v. Mendiola*, 2014 Guam 17 ¶ 21). However, "[w]hile circumstantial evidence is sufficient to sustain a conviction, juries must not be allowed to convict on mere suspicion and innuendo." *Anastacio*, 2010 Guam 18 ¶ 18 (citations omitted). "A trial

court should grant a motion for judgment of acquittal when the evidence merely raises a suspicion that the accused is guilty." *People v. Song*, 2012 Guam 21 ¶ 29.

[12] Quintanilla was charged with possession of a Schedule II controlled substance for "unlawfully and knowingly possess[ing] an amphetamines-based controlled substance, in violation of 9 GCA §§ 67.401.2(a) and (b)(1), as amended." Record on Appeal ("RA"), tab 2 at 2 (Indictment, Aug. 13, 2015). The indictment follows the essential elements of Guam's drug possession statute, which states, in relevant part, "It is unlawful for any person knowingly or intentionally to possess a controlled substance . . . ." 9 GCA § 67.401.2(a) (as amended by Guam Pub. L. 28-105:1 (Apr. 14, 2006)). A "[m]aterial, compound, mixture, or preparation containing any quantity of . . . amphetamine" is a Schedule II controlled substance. 9 GCA Ch. 67 App. B(c)(1) (as amended by Guam Pub. L. 31-110:7 (Sept. 30, 2011)); *see also* 9 GCA § 67.205 (2005).

[13] At issue is whether Quintanilla "possessed" a controlled substance. "[O]ur duty is to interpret statutes in light of their terms and legislative intent. Absent clear legislative intent to the contrary, the plain meaning prevails." *People v. Quenga*, 2015 Guam 39 ¶ 36 (quoting *People v. Flores*, 2004 Guam 18 ¶ 8). Guam's drug possession statute does not define the term "possess." *See* 9 GCA §§ 67.101 (as amended by Guam Pub. L. 32-018:1 (Apr. 11, 2013)), 67.401.2. However, 9 GCA § 4.15 states, "Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for sufficient time to have been able to terminate his control." 9 GCA § 4.15(b) (2005). The jury was instructed on this definition. Tr. at 70 (Jury Instrs., May 23, 2018). This definition does not distinguish between actual and constructive possession, but contemplates that to charge a defendant with possession, the defendant need not be in physical custody of a controlled substance. Rather, a defendant may be in possession of a controlled substance where he is "aware of his control of it for sufficient time

to have been able to terminate his control." 9 GCA § 4.15(b). This plain reading of the statute is further supported by caselaw from the former Appellate Division of the District Court of Guam.

[14] The Appellate Division found sufficient evidence for a possession conviction where "the government proved a case of constructive possession." *People v. Castro*, Crim. No. 78-006A, 1979 WL 15096, at *1 (D. Guam App. Div. July 13, 1979). There, the court found that a defendant maintained control or a right to control contraband where "heroin was found in the area of defendant's car shortly after he promised to supply the heroin in exchange for $3,000." *Id.* As there is no distinction between actual and constructive possession under Guam's definition of possession, an indictment need not identify specifically whether the government is charging a defendant with actual or constructive possession. *See, e.g.*, *United States v. Walker*, 734 F.3d 451, 454 n.1, 457-58 (6th Cir. 2013) (holding evidence sufficient to establish possession, "whether actual or constructive," for weapon possession conviction where indictment alleged defendant "knowingly possess[ed] a firearm and or ammunition in and affecting commerce" (alteration in original)); *United States v. Bryant*, 349 F.3d 1093, 1097-98 (8th Cir. 2003); *United States v. Rogers*, 41 F.3d 25, 28-29 (1st Cir. 1994); *United States v. Wilcher*, 408 F. Supp. 2d 147, 148 (W.D.N.Y. 2006).

[15] Quintanilla additionally argues that accomplice testimony, standing alone, cannot support a conviction. *See* Appellant's Br. at 23-25 (Jan. 9, 2019). Even if this were true, there was sufficient evidence apart from accomplice testimony to support his conviction. Officer Asanoma testified that he found a pipe with drugs in it in plain view on the rear seat of the car, next to Quintanilla. *See* Tr. at 11, 15-16 (Jury Trial, May 22, 2018). Officer Asanoma also testified that he observed a cloud of odorless smoke emit from the vehicle when the occupants rolled down their windows, *id.* at 10, and that the occupants of the vehicle—which included Quintanilla—appeared

to be under the influence of drugs, *see id.* at 12. When asked whether Quintanilla made any statements about the pipe, Officer Asanoma testified that Quintanilla admitted "he had smoked from the pipe, denied ownership, and indicated that it was at a friend's -- they smoked at a friend's house with Salas and -- and Nedlic earlier in the day." *Id.* at 22. Viewing this evidence in the light most favorable to the People, there was sufficient evidence to support the inference that Quintanilla knew drugs were present and that he was aware of his control of the drugs for sufficient time to have been able to terminate his control. A rational trier of fact could have found beyond a reasonable doubt that Quintanilla possessed a Schedule II controlled substance.

B. The Prosecution Did Not Impermissibly Vouch for its Witness

[16] Quintanilla argues that the following comments made by the prosecution during rebuttal closing arguments constituted improper vouching:

> So Mr. Spivey indicates, "Well, you can't necessarily trust what Officer Asanoma testified to, because the stories that these guys were so similar." Well, if they all said the same thing, the stories would likely be similar. So where is the evidence that this is just the officer misremembering one story between the three? As you remember, I asked Officer Asanoma these questions very specifically. And then Mr. Spivey had the opportunity to potentially cross examine him on this very issue. Did you see him, Mr. Spivey, ask any questions to the officer about the possible event, "Well, maybe you're misremembering this stuff. Well, maybe these things will bleed together." No, he did not. . . . So, Mr. Spivey, although, he had the opportunity to develop this line of attack on cross-examination, he did not do so. And Mr. Spivey knows how to cross-examine the witness.

Tr. at 36-37 (Jury Trial, May 23, 2018); *see also* Appellant's Br. at 30-33. The prosecution made these comments after defense counsel questioned Officer Asanoma's memory of the night in question because the events were "three years [ago] . . . and, you know, things kind of get mixed up when you wait that long." Tr. at 31 (Jury Trial, May 23, 2018).

[17] Although defense counsel objected to the prosecutor's statements, counsel objected on the basis that the prosecution allegedly misconstrued defense counsel's cross-examination of the

officer, not because the statements impermissibly vouched for a government witness or shifted the burden of proof. *See id.* at 36-37. Therefore, we review the statements for plain error. *See, e.g.*, *United States v. Pratt*, 239 F.3d 640, 644 (4th Cir. 2001) (applying plain error review where defendant objected at trial to use of co-conspirator statements under Federal Rule of Evidence 801(d)(2)(E), but pressed different aspect of the same rule on appeal); *United States v. Heath*, 970 F.2d 1397, 1407 (5th Cir. 1992) (applying plain error review where party objected to jury instruction at trial, but relied on different ground for objection on appeal). Under plain error review, we will not reverse a conviction unless "(1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process." *People v. Meseral*, 2014 Guam 13 ¶ 16 (quoting *People v. Quitugua*, 2009 Guam 10 ¶ 11).

[18] "Vouching occurs when the government either: (1) suggests that the government is aware of evidence not presented to the jury which would tend to support a particular witness' testimony; or (2) places the 'prestige of the government behind the witnesses through personal assurances of their veracity . . . .'" *People v. Ueki*, 1999 Guam 4 ¶ 19 (omission in original) (quoting *United States v. Molina*, 934 F.2d 1440, 1445 (9th Cir. 1991)). "To succeed on a claim of prosecutorial misconduct, a petitioner must demonstrate that the 'prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *People v. Mendiola*, 2010 Guam 5 ¶ 12 (quoting *People v. Evaristo*, 1999 Guam 22 ¶ 20).

[19] Quintanilla contends that the prosecution's comments regarding defense counsel's failure to ask specific questions of the People's witness was improper vouching.[2] In Quintanilla's view,

[2] Although Quintanilla argues that the prosecution both bolstered the testimony of Officer Asanoma and vouched for him, vouching and bolstering are distinct doctrines. *See People v. Finik*, 2017 Guam 21 ¶¶ 27-34

the government suggested that it was aware of evidence not presented to the jury—questions that defense counsel could have asked—that would support Officer Asanoma's testimony. We reject these arguments.

[20] Generally, commenting on defense counsel's failure to cross-examine a witness, though dangerous, is not vouching. *See, e.g.*, *United States v. Rodríguez-Vélez*, 597 F.3d 32, 44 (1st Cir. 2010); *Hall v. United States*, 46 F.3d 855, 858 (8th Cir. 1995); *United States v. Walker*, 835 F.2d 983, 989 (2d Cir. 1987) (citing *Virgin Islands v. Joseph*, 770 F.2d 343, 350 nn.8 & 9 (3d Cir. 1985)); *State v. Craig*, 95-2499, pp. 7-8 (La. 5/20/97); 699 So. 2d 865, 869-70; *Green v. State*, 698 S.W.2d 776, 781 (Tex. Ct. App. 1985). We have recently noted that "[a]s a general proposition, 'a prosecutor's comment on defendant's failure to present exculpatory evidence, standing alone, does not shift the burden of proof to defendant.'" *People v. Lessard*, 2019 Guam 10 ¶ 15 (quoting *People v. Viloria*, No. 92-00023A, 1993 WL 470409, at *4 (D. Guam App. Div. Oct. 12, 1993)). Here, the prosecution merely stated that defense counsel failed to cross-examine Officer Asanoma as to his memory of the night in question. This did not shift the burden of proof.

[21] Even if the prosecution's comments alluded to evidence not in the record, the comments were invited. In a factually similar case, a defendant challenged his conviction because in rebuttal closing argument the prosecutor referred to the alleged existence of inadmissible evidence—a non-existent arrest record. *People v. Quichocho*, Crim. No. 90-00083A, 1991 WL 336913, at *4 (D. Guam App. Div. June 13, 1991). The government argued this comment was appropriate because it was made in response to defense counsel's comment, "But other than that, what in this man's background and his history, arrest records, convictions, thefts, burglaries, crimes, what in his

(explaining difference between bolstering and vouching); Appellant's Br. at 30-33. Quintanilla's arguments relate to vouching, not bolstering.

background would explain what he did?" *Id.* at *4 n.5. The Appellate Division ruled that the prosecutor's comment did not warrant reversal because "[d]efense counsel invited the first of the complained-of comments concerning the reference to the arrest record," and "[g]enerally, reversal is not required if the prosecutor responds reasonably in closing argument to defense counsel's remarks." *Id.* at *5. The court cited with approval the U.S. Supreme Court's statement that "the import of the 'evaluation has been that if the prosecutor's remarks were "invited," and did no more than respond substantially in order to "right the scale," such comments would not warrant reversing a conviction.'" *Id.* (quoting *United States v. Young*, 470 U.S. 1, 12-13 (1985)). As in *Quichocho*, the challenged statements here did no more than respond substantially in order to "right the scale." Accordingly, Quintanilla has failed to establish that the prosecution's statements were erroneous under the first prong of the plain error test, and therefore these statements do not warrant a reversal.

C. The Trial Court Did Not Err in Denying Quintanilla's Motion to Suppress the Physical Evidence Recovered During a Search of His Car

[22] Quintanilla presented three distinct issues regarding whether the trial court erred in failing to suppress evidence recovered by a search of his car: (1) whether the officers' initial contact with Quintanilla and his fellow passengers constituted a seizure within the meaning of the Fourth Amendment; (2) whether Nedlic had the authority under the Fourth Amendment to consent to a search of the vehicle; and (3) whether, as a factual matter, Nedlic actually provided the requisite consent. As the first two questions present questions of law, we review them *de novo*. *See People v. Chargualaf*, 2001 Guam 1 ¶ 12. With respect to the third issue, we defer to the credibility determinations made by the trial court and reverse only where the trial court has committed clear error. *See People v. Santos*, 1999 Guam 1 ¶ 19; *see also Gallo*, 2017 Guam 24 ¶ 26. We find that the trial court properly denied Quintanilla's motion to suppress.

[23] As an initial matter, the parties characterize the officers' first interaction with Quintanilla differently. Quintanilla characterizes the interaction as an unlawful detention—a traffic stop. *See, e.g.*, Appellant's Br. at 34. To conduct a traffic stop, an officer needs reasonable suspicion to believe that the vehicle's occupants had or were engaged in criminal activity before approaching the vehicle. *See Chargualaf*, 2001 Guam 1 ¶ 17. The People characterize the interaction as one that began as a consensual encounter, which would not require reasonable suspicion. *See, e.g.*, Appellee's Br. at 25 (Feb. 27, 2019). We agree with the People that the initial interactions between Quintanilla and the officers constituted a consensual encounter that did not implicate the Fourth Amendment.

[24] "A person is deemed to be seized for the purposes of the Fourth Amendment if a police officer has, by means of physical force or show of authority, restrained the person's freedom to walk away." *Chargualaf*, 2001 Guam 1 ¶ 21 (quoting *People v. Cruz*, No. CR96-0010A, 1997 WL 208994, at *3 (D. Guam Apr. 21, 1997)). In determining whether there was a seizure, a court must look at the totality of the circumstances. *Id.* "If the person would feel free to leave, then the continued presence of the person is not a seizure; rather, it is a consensual encounter with the police that does not implicate the Fourth Amendment." *Id.* "The Fourth Amendment is not triggered when law enforcement officers merely approach an individual in a public place and ask a few questions." *United States v. Douglass*, 467 F.3d 621, 623 (7th Cir. 2006) (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002)).

[25] The Seventh Circuit case of *United States v. Douglass*, 467 F.3d 621 (7th Cir. 2006), is illustrative. There, a defendant appealed a denial of his suppression motion regarding a gun found in his vehicle by arguing he was seized without reasonable suspicion before the officers discovered the weapon. *See Douglass*, 467 F.3d at 623. As evidence of a seizure, the defendant pointed to

these facts: police officers had parked their car in front of his, approached his vehicle on foot from two sides, and shone their flashlights in his car. *Id.* The court ruled that the Fourth Amendment had not been triggered, given the brevity and non-intrusive nature of the encounter. *Id.* at 624. The court noted, "Only a few moments had passed between the officers' approach and [their] discovery of the ammunition in [the defendant's] vehicle." *Id.* The court also noted that the officers' stance on either side of the vehicle did not "convert the encounter into a seizure because [the defendant] still could have declined to answer their questions and driven away . . . ; he was thus free to leave." *Id.* The court also found that the defendant had not been blocked, as the police officers parked their vehicle "some twenty feet away." *Id.*

[26] Here, the officers did not restrain Quintanilla's or Nedlic's freedom to walk away. The officers approached the vehicle and knocked on the window. There is no evidence they ordered that the windows be rolled down or that they blocked Quintanilla's vehicle so he could not leave. Once the windows were rolled down, Officer Asanoma observed a cloud of odorless smoke emit from the vehicle and noticed that the occupants displayed signs of being under the influence. These observations provided reasonable suspicion that criminal activity, namely, the possession of controlled substances, was occurring and to then detain the occupants of the vehicle. *Cf. United States v. Cephas*, 254 F.3d 488, 495 (4th Cir. 2001) (finding that smell of marijuana "alone would almost certainly have given [a police officer] probable cause to believe that contraband—marijuana—was present in [an] apartment"). Having determined that the initial detention—i.e., asking the occupants to get out of the car—was proper, we must next address whether the search of the vehicle was constitutional.

[27] The Fourth Amendment to the U.S. Constitution clarifies that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

shall not be violated." U.S. Const. amend. IV; *see also* 48 U.S.C.A. § 1421b(c), (u) (Westlaw through Pub. L. 116-140 (2020)). Under the Fourth Amendment, all searches and seizures must be reasonable. *See* U.S. Const. amend. IV; *Chargualaf*, 2001 Guam 1 ¶ 14. A warrantless search or seizure is presumed to be unreasonable. *Chargualaf*, 2001 Guam 1 ¶ 14. The police may lawfully conduct a search or seizure without a warrant only if an exception to the warrant requirement applies. *Id.* Voluntary consent is such an exception. *Id.* The person giving consent must have the authority to do so. *See United States v. Matlock*, 415 U.S. 164, 171 (1974). While Nedlic had the authority to give consent for the search of his own person, Quintanilla argues that Nedlic did not have the authority to consent to the search of the vehicle. We reject this argument, as Nedlic had the necessary control over the vehicle to provide consent to search it.

[28] The U.S. Supreme Court in *United States v. Matlock*, 415 U.S. 164 (1974), addressed the search of a residence and noted that common authority rests

> on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

415 U.S. at 171 n.7. The Third Circuit has applied this test to searches of vehicles and ruled that "a driver of a vehicle has the authority to consent to a search of that vehicle." *United States v. Morales*, 861 F.2d 396, 399 (3d Cir. 1988). The Third Circuit reasoned that a driver "is the person having immediate possession of and control over the vehicle" and "has general access to all areas of the vehicle." *Id.* Therefore, the court ruled, "a driver has the requisite 'joint access and control' giving rise to the authority to consent to a full search of a vehicle." *Id.* The Eleventh Circuit agreed that "[u]nder the rationale of *Matlock*, a third party in sole possession and control of a vehicle clearly has the authority to consent to its search." *United States v. Dunkley*, 911 F.2d 522,

526 (11th Cir. 1990) (per curiam). It held that where a driver who was not the owner of a vehicle consented to a search and the actual owner of the vehicle, who was a passenger, did not object, the consent was valid. *Id.* at 526-27. Similarly, the Seventh Circuit in *United States v. West*, 321 F.3d 649 (7th Cir. 2003), held that a search of a defendant's bag was valid where a driver consented to a search of the vehicle, and defendant told officers that the bag was his but did not revoke the driver's consent to search the entire car, including his bag. 321 F.3d at 651-52.

[29] When the police approached the vehicle, Nedlic was in the driver seat of the car. Under *Matlock* and its progeny, Nedlic therefore had the authority to consent to the search of the vehicle. Our inquiry does not end here, however, as the parties also contest whether Nedlic actually provided consent as a factual matter. *See* Appellant's Br. at 34-35; Appellee's Br. at 28-30. Nedlic testified that he did not consent. Tr. at 25-26 (Jury Trial, May 21, 2018). Officer Asanoma, on the other hand, testified that Nedlic did consent. Tr. at 14, 15 (Jury Trial, May 22, 2018). The issue is thus one of credibility.

[30] "A trial judge, based on his or her experience, is in the best position to weigh and determine the credibility of evidence received at a suppression hearing." *Santos*, 1999 Guam 1 ¶ 19. We "afford[] deference to the trial court regarding such credibility determinations," *People v. Farata*, 2007 Guam 8 ¶ 25 (quoting *State v. Irvin*, 210 S.W.3d 360, 363 n.3 (Mo. Ct. App. 2006)), and review such determinations for clear error, *id.* "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." *People v. Calhoun*, 2014 Guam 26 ¶ 8 (quoting *People v. Camacho*, 2004 Guam 6 ¶ 13).

[31] Here, the trial court held a suppression hearing and stated, "Although the testimony given by Nedlic and Officer Asanoma directly contradicted each other as to whether or not consent was

given, the Court finds Officer Asanoma's testimony to be more credible in this regard than Nedlic's." RA, tab 236 at 5-6 (Dec. & Order, May 15, 2018). The court noted, "Nedlic testified that his recollection of the events on the night in question was incomplete and that he could not remember everything because he was under the influence of ice." *Id.* at 6. The transcript of the suppression hearing supports this statement. *See* Tr. at 11, 13, 18 (Mot. Suppress Hr'g, May 2, 2018). Upon our review of the record, we do not have a definite and firm conviction that the court below committed a mistake. Therefore, the trial court did not err in determining that Officer Asanoma was more credible than Nedlic and thus did not err in ruling that Nedlic consented to the search. As Nedlic had the authority to consent to the search of the vehicle and did so consent, the search did not violate the Fourth Amendment. Therefore, we hold that the trial court did not clearly err in accepting Officer Asanoma's testimony as credible and correctly denied Quintanilla's motion to suppress the evidence found in that search.

V. CONCLUSION

[32] For these reasons, we **AFFIRM** the Judgment of Conviction.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice