

FSM SUPREME COURT APPELLATE DIVISION

In the Matter of the Search and Seizure of:	)	APPEAL CASE NO. P1-2020
	)	(Search Warrant No. 2019-700)
WRECKED/DAMAGED HELICOPTER,	)	
shipping container holding the helicopter,	)	
and documents concerning said helicopter's	)	
usage and ownership which are located at	)	
the Pacific Transfer and Storage facility in	)	
Pohnpei.	)	
_____	)	
DAVE'S HELICOPTER SERVICE, INC.,	)	
	)	
Appellant-Real Party in Interest.	)	
_____	)	

OPINION

Argued: February 12, 2021  
Decided: January 17, 2022

BEFORE:

Hon. Cyprian J. Manmaw, Specially Assigned Justice\*  
Hon. Chang B. William, Specially Assigned Justice\*\*  
Hon. Mayceleen JD. Anson, Specially Assigned Justice\*\*\*

\*Chief Justice, State Court of Yap, Colonia, Yap  
\*\*Chief Justice, Kosrae State Court, Tofol, Kosrae  
\*\*\*Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

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For the Appellee: Josephine Leben James, Esq.  
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HEADNOTES

Appellate Review – Standard – Civil Cases – De Novo  
Issues of law are reviewed de novo by the appellate court. In re Wrecked/Damaged Helicopter, 23  
FSM R. 479, 484 (App. 2022).

Appellate Review – Standard – Civil Cases – Factual Findings  
When determining whether a factual finding is clearly erroneous, an appellate court cannot substitute

*In re Wrecked/Damaged Helicopter*  
23 FSM R. 479 (App. 2022)

its judgment for that of the fact finder. The trial court's factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 484 (App. 2022).

Appellate Review – Standard – Civil Cases – Factual Findings

When a trial court's factual findings are adequately supported by substantial evidence in the record it cannot be set aside on appeal. Substantial evidence has been defined to be evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 484 (App. 2022).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 484 (App. 2022).

Criminal Law and Procedure – Felonies

A serious offense is a violation of any law of the FSM or any of its states or political subdivisions which is a criminal offense that is punishable by imprisonment for more than one year or a law of a foreign state in relation to acts or omissions which had they occurred here in the FSM or any of its states or political subdivisions would be a criminal offense punishable by imprisonment of more than one year. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 485 n.4 (App. 2022).

Search and Seizure – Warrants

The FSM Secretary of Justice has the authority to make requests on behalf of the FSM to the appropriate foreign state authority for mutual legal assistance in any investigation commenced or proceeding instituted in the FSM relating to a serious offense and also act in three manners with respect to any request from a foreign state for mutual assistance in any investigation commenced or instituted in that state relating to a serious offense by either 1) granting the request, in whole or in part, on such terms and conditions that the Secretary deems fit; 2) refusing the request, in whole or in part, on the grounds that to grant the request would be likely prejudice the FSM's sovereignty, security, or other essential public interest; or 3) after consulting with the foreign state's competent authority, postpone the request, in whole or in part, on the grounds that granting the request immediately would be likely to prejudice the conduct of an FSM investigation or proceeding. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 485 & n.5 (App. 2022).

Search and Seizure – Warrants

To grant a search warrant application per a foreign request for judicial assistance, the FSM Supreme Court has to be satisfied that there was probable cause to believe that: a) a serious offense had been or may have been committed against the laws of the foreign state; and b) evidence relating to that offense may be found in a building, receptacle or place in the FSM; or be able to be given by a person believed to be in the FSM; and c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order. A statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the laws of the foreign state is prima facie evidence of that fact. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 485-86 (App. 2022).

Search and Seizure – Warrants

A search warrant issued pursuant to a foreign request for judicial assistance will be in the usual form in which a search warrant is issued in the FSM, varied to the extent necessary to suit the case and no document or thing seized and ordered to be sent to a foreign state will be sent until the Secretary of Justice

*In re Wrecked/Damaged Helicopter*  
23 FSM R. 479 (App. 2022)

is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 486 (App. 2022).

Search and Seizure – Probable Cause; Search and Seizure – Warrants

Even though a letter was based upon hearsay and may be inadmissible, it was sufficient to establish probable cause because a finding of probable cause may be based upon hearsay evidence, in whole or in part. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 486 (App. 2022).

Search and Seizure – Probable Cause; Search and Seizure – Warrants

The FSM Supreme Court clerk's signature with the court's seal on an affidavit is adequate, even though the affidavit was undated, when there was no reason presented to refute the application being executed on any other date than that of the warrant application attached. The inadvertent omission of the date on the affidavit is not fatal to the warrant application or the warrant itself. A search warrant application based on a letter, although hearsay and perhaps inadmissible, and the affidavit meet the standard necessary for a finding of probable cause to issue the search warrant. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 487 (App. 2022).

Search and Seizure – Warrants

The inaccurate identification of the helicopter's owner was not fatal to the search warrant for that helicopter because it is a technical defect when the helicopter was sufficiently described so that the police officer did not have a problem locating the thing to be found and seized it. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 487 (App. 2022).

Search and Seizure – Warrants

A warrantless search is not problematic when it was completed by an FSM law enforcement agency tasked with general law enforcement for the national government and not customs officers but was in an other place for export that was the functional equivalent of a border, because the border search exception to the constitutional search warrant applies equally to persons and goods leaving or entering the country and the only information taken from this warrantless search was that the helicopter's data plate and markings were no longer visible. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 487-88 (App. 2022).

Search and Seizure – Warrants

The Secretary of Justice has the authority to apply to the FSM Supreme Court for either a search warrant or an evidence-gathering order. A document or thing seized can be sent to the foreign state requesting the assistance conditional upon the Secretary being first satisfied that the foreign state has agreed to comply with any terms or conditions imposed when sending abroad the document or thing. There is no de facto confiscation of the thing seized when there was probable cause for the search warrant, and when there is authority for the FSM, upon the Secretary's satisfaction that the foreign state has agreed to comply with any terms and conditions imposed, to ship the seized helicopter to Guam so that it may aid criminal investigations there as provided in their request for judicial assistance. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 488 (App. 2022).

Aviation

When a Vanuatu corporation could have registered its helicopter anywhere in the world but chose to register it in the United States, and when the helicopter did not appear to be registered elsewhere, the U.S. government has jurisdiction over the helicopter per its registration despite the registration's invalidity. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 489 (App. 2022).

Aviation

An event is a reportable incident when after that incident the helicopter never flew again, which can only mean that there was substantial damage to it from the incident or that the incident was serious. In re Wrecked/Damaged Helicopter, 23 FSM R. 479, 489 (App. 2022).

Appellate Review – Standard – Civil Cases – Factual Findings; Evidence – Expert Opinion

The trial court is not bound by the expert testimony provided by one side even if the other side does not provide countervailing testimony. A trial court is free to accept or reject testimony and the reviewing court will only set aside those findings of fact when there is no credible evidence in the record to support the finding since it was the trial court that had the opportunity to view the witnesses and the manner of their testimony. *In re Wrecked/Damaged Helicopter*, 23 FSM R. 479, 490 (App. 2022).

Evidence – Expert Opinion

Expert opinions have no such conclusive force that there is an error of law in refusing to follow them. It is for the trier of fact to decide whether any, and if any what, weight is to be given to such testimony. Even if the testimony is uncontroverted, the trier of fact may exercise independent judgment. *In re Wrecked/Damaged Helicopter*, 23 FSM R. 479, 490 (App. 2022).

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COURT'S OPINION

PER CURIAM:

Dave's is appealing the trial court's order entered on January 27, 2020 that denied the return of property, and therefore dissolved the order delaying export of seized property that was entered on May 20, 2019. We affirm the trial court's decision. Our reasons follow.

I. BACKGROUND

*Facts*

This case involves a helicopter with a U.S. FAA registration number, N501SU. The helicopter, N501SU, is owned by Dave's, a Vanuatu Corporation. John Walker, a U.S. citizen, signed the April 18, 2011 FAA application form for Dave's to register as the new owner of the N501SU helicopter. Dave's was still the owner of the helicopter when the May 24, 2018 event<sup>1</sup> occurred and when it was seized on May 1, 2019 pursuant to the search warrant. Hansen Helicopter Services, Inc. is a corporation from Guam. It is not the owner of the N501SU helicopter; however, John Walker is involved in Hansen and uses some of the same Guam office personnel and equipment. The helicopter, N501SU, does not appear to be registered anywhere else, and the FAA still lists it as registered. *In re Wrecked/Damaged Helicopter*, 22 FSM R. 447, 455 (Pon. 2020). 206-07.

After the May 24, 2018 event, the helicopter never flew again. On May 28, 2018, the helicopter's pilot sent an incident report<sup>2</sup> about the event. The report was also sent to Phillip Turner Kapp, Hansen's maintenance director, who later provided it to the FSM national police. On June 10, 2018, the *Pacific Ranger* arrived in Pohnpei and the helicopter was off-loaded and stored in Hansen's container at the PT&S facility for future shipment to Subic Bay, Philippines. On June 29, 2018, the FSM national police viewed the

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<sup>1</sup> On May 24, 2018, the N501SU helicopter took over the *Pacific Ranger* and flew some 23 nautical miles away, set down on the ocean, and ended up floating on the ocean's surface until it was rescued by the *Pacific Ranger*. *In re Wrecked/Damaged Helicopter*, 22 FSM R. 447, 455 (Pon. 2020).

<sup>2</sup> "The report stated that, after safely touching down on the water and shutting down the engine, two to three meters swells caused the floating helicopter to lift upwards and the decelerating main rotor blades to droop downward resulting in a tailboom strike and damaging the main rotor blades and the upper canopy windshield." *In re Wrecked/Damaged Helicopter*, 22 FSM R. at 455. It was also reported that after calling a mayday the pilot and his passenger was safely rescued and are well and healthy. *Id.*

*In re Wrecked/Damaged Helicopter*  
23 FSM R. 479 (App. 2022)

helicopter at PT&S. They found that its data plate was missing and that its registration markings were no longer visible. There is an email from Mr. Kapp, with a Hansen's return address, that claims that they own the helicopter and that they plan to send it to the Philippines for further inspection. *In re Wrecked/Damaged Helicopter*, 22 FSM R. at 455.

*Procedure*

The U.S. Embassy sent a diplomatic note that contained a judicial assistance request<sup>3</sup> to the FSM Department of Foreign Affairs on April 22, 2019. The next day, the FSM Department of Foreign Affairs forwarded that diplomatic note to the FSM Department of Justice ("FSM DOJ"). On April 25, 2019, the FSM DOJ through one of its assistant attorney generals filed an application for a warrant in the FSM Supreme Court. The next day, the Chief Justice of the FSM Supreme Court granted the application and issued the search warrant.

On May 16, 2019, Dave's local counsel filed a motion for return of the seized helicopter claiming that Dave's owns it, requested for a hearing to determine whether there was probable cause for the search warrant and for the return of the seized property to Dave's, and sought to stop the helicopter's shipment including the container it was kept in.

On May 20, 2019, another FSM Supreme Court associate justice, after hearing the motion for return of the seized property or to delay export of the property, granted the motion to delay shipment of the helicopter off-island and set another hearing on June 7, 2019. The June 7, 2019 hearing, however, was continued because Dave's local counsel was off-island and would not return to Pohnpei until August or early September. The FSM DOJ opposed the continuance and sought reconsideration of the decision to continue the hearing, but was not successful. On June 11, 2019, Dave's filed a reply to FSM DOJ's opposition to its motion to return its helicopter. On July 3, 2019, the FSM DOJ filed a motion asking for leave to file a surreply with a copy of its proposed surreply.

The case was then reassigned on July 29, 2019 to the FSM associate justice whose decision is now being appealed. On August 1, 2019, he set a hearing on September 13, 2019; granted FSM DOJ's leave to file its surreply; and allowed Dave's to file a rejoinder to FSM DOJ's surreply, if they wanted to. On September 6, 2019, Dave's filed its rejoinder. During the September 13, 2019 hearing, the trial court heard arguments from the parties and also received testimony from witnesses who appeared on behalf of Dave's. The parties were then asked to submit further briefing on two issues, and their briefs were completed by October 28, 2019. Having considered the matter submitted to the trial court for a decision, the trial court entered its order denying return of property on January 27, 2020.

On February 4, 2020, Dave's appealed the trial court's final decision and judgment. On February 11, 2020, Dave's filed a motion to maintain injunction during appeal in the trial division. On March 2, 2020, the trial court granted the stay. On March 17, 2020, the FSM DOJ filed its opposition to maintain injunction during appeal and provided a copy of an email from Assistant U.S. Attorney Guerrero dated March 19, 2020 indicating that "if the helicopter were to be shipped to Guam, coordination could be made to have it shipped back to the FSM should the ruling be overturned." Appellant's App. 17, at 243. On March 20, 2020, the trial court granted FSM's motion for enlargement of time or its amended motion for enlargement of time and deemed the opposition filed on March 17, 2020 to be timely filed. On March 26, 2020, Dave's filed its opposition to motion to lift the stay. On March 30, 2020, the trial court heard arguments from the parties regarding whether the stay pending appeal should continue and asked for supplemental submissions. On May 5, 2020, the FSM DOJ filed its supplemental to opposition to motion to maintain injunction during appeal. On June 5, 2020, Dave's filed its supplement to opposition to motion to lift stay. On June 15, 2020,

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<sup>3</sup> It was a request for assistance in the investigation and prosecution of John D. Walker and others (Hansen's Helicopters). Appellant's App. 1, at 9-16.

*In re* Wrecked/Damaged Helicopter  
23 FSM R. 479 (App. 2022)

the trial court denied reinstatement of the dissolved injunction or a stay of the helicopter's "export" pending appeal.

Dave's filed its motion to maintain injunction and stay pending appeal in the appellate division on June 29, 2020. On October 14, 2020, we denied Dave's motion to maintain injunction and stay pending appeal allowing the "export" of the helicopter fuselage and directed the FSM DOJ to file a report every three months beginning on January 4, 2021 on the return of the helicopter. On January 11, 2021, the FSM DOJ concurrently filed a motion for an enlargement of time to file its status report and its status report on January 11, 2021. On February 9, 2021, we granted the motion for enlargement of time and deemed the FSM DOJ's status report filed on January 11, 2021 to be timely filed. On February 12, 2021, we heard oral arguments from the parties in this appeal.

## II. ISSUES ON APPEAL

Dave's raises fourteen issues on appeal. The last issue is now moot since we have issued an order denying Dave's motion to maintain injunction and stay pending appeal on October 14, 2020. Additionally, based on our review of Dave's issues, we reframe and synthesize the issues as follows:

1. According to Dave's, this case presents first impression issues; therefore, Dave's asks us to review the trial court's application of FSM law relating to mutual assistance requests by a foreign state, to set the proper application of those FSM statutes, and decide whether the trial court's application of those FSM statutes was proper.
2. Dave's argues that there was no probable cause to support the issuance of a search warrant in this case and that the original search violated the FSM Constitution.
3. Dave's asserts that there was no authority to remove the helicopter fuselage from the FSM.
4. Dave's argues that the U.S. government does not have jurisdiction over the helicopter fuselage.

## III. STANDARDS OF REVIEW

Issues of law are reviewed de novo by the appellate court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 415 (App. 2016).

When determining whether a factual finding is clearly erroneous, an appellate court cannot substitute its judgment for that of the fact finder. The trial court's factual findings are presumed correct. A factual finding is clearly erroneous when the appellate court, after reviewing the entire body of the evidence and construing the evidence in the light most favorable to the appellee, is left with the definite and firm conviction that a mistake has been committed. Thomson v. George, 8 FSM R. 517, 522 (App. 1998).

When a trial court's factual findings are adequately supported by substantial evidence in the record it cannot be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000). Substantial evidence has been defined to be evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. *Id.*

IV. ANALYSIS

*Mutual assistance request by a foreign state*

Dave's has requested that we review the relevant FSM statutes pertaining to mutual assistance requests by a foreign state, that we set the appropriate procedures, and that we decide whether the trial court correctly applied those statutes to the case at bar. We acknowledge Dave's concern with the application of the relevant statutes pertaining to mutual request for assistance; however, we limit our review of the relevant FSM statutes pertaining to mutual assistance request by a foreign state to the facts presented in this case.

According to the FSM judicial assistance agreement with the United States, "[a] national court in the Federated States of Micronesia may order a person residing or found within its jurisdiction to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative, or criminal investigation or proceeding in the United States." Appellant's App. 1, at 7.

12 F.S.M.C. 1703 provides for jurisdiction and application of mutual assistance in criminal matters, and it states, in pertinent part, that "[t]his act shall apply in relation to mutual assistance in criminal matters between the Federated States of Micronesia and any foreign state, subject to any condition, variation or modification in any existing or future agreement with that state, whether in relation to a particular case or more generally." 12 F.S.M.C. 1705 shows that the Secretary of the FSM Department of Justice ("Secretary") has the authority to make requests on behalf of the FSM to the appropriate foreign state authority for mutual legal assistance in any investigation commenced or proceeding instituted in the FSM relating to a serious offense<sup>4</sup> and also act in three manners with respect to any request from a foreign state for mutual assistance in any investigation commenced or instituted in that state relating to a serious offense.<sup>5</sup> 12 F.S.M.C. 1708 offers the contents of the request for assistance while 12 F.S.M.C. 1709 allows for foreign requests of either a search warrant or an evidence-gathering order when the Secretary has granted the foreign state request to obtain evidence in the FSM.

In the present case, the request for mutual assistance by the U.S. government was forwarded to the Department of Justice by the Department of Foreign Affairs. After receiving and granting the request, the FSM Department of Justice, through one of its assistant attorney generals, applied for a search warrant at the FSM Supreme Court. To grant the application for a search warrant by the FSM DOJ per the foreign request for judicial assistance, the FSM Supreme Court had to be satisfied that there was probable cause to believe that: "(a) a serious offense had been or may have been committed against the laws of the foreign state; and (b) evidence relating to that offense may: (i) be found in a building, receptacle or place in the Federated States of Micronesia; or (ii) be able to be given by a person believed to be in the Federated States of Micronesia; and (c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order." 12 F.S.M.C. 1709(2)(a)-(c).

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<sup>4</sup> A serious offense is defined as a violation of (a) any law of the Federated States of Micronesia or any of its states or political subdivisions which is a criminal offense that is punishable by imprisonment for more than one year or (b) a law of a foreign state in relation to acts or omissions which had they occurred here in the FSM or any of its states or political subdivisions would be a criminal offense punishable by imprisonment of more than one year. 12 F.S.M.C. 1704(15).

<sup>5</sup> The Secretary may either "(a) grant the request, in whole or in part, on such terms and conditions that he or she deems fit; (b) refuse the request, in whole or in part, on the grounds that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of the Federated States of Micronesia; or (c) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the grounds that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in the Federated States of Micronesia." 12 F.S.M.C. 1705(2).

*In re Wrecked/Damaged Helicopter*  
23 FSM R. 479 (App. 2022)

Additionally, 12 F.S.M.C. 1709(3) provides that, “[f]or the purposes of subsection (2)(a) of this section, a statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the laws of the foreign state is prima facie evidence of that fact.” Also, 12 F.S.M.C. 1709(9)-(10) states that, “[a] search warrant shall be in the usual form in which a search warrant is issued in the Federated States of Micronesia, varied to the extent necessary to suit the case” and that “[n]o document or thing seized and ordered to be sent to a foreign state shall be sent until the Secretary is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.”

We have reviewed the relevant statutes before us. We determine that the trial court did not err, in law or in fact, in its application of the above FSM statutes relating to request for mutual assistance from a foreign state, and that the trial court did not abuse its discretion in its application of the above FSM statutes to the case at hand.

*Search warrant*

Dave’s argues that the search warrant was fatally defective since it identified the wrong owner of the helicopter; that it was easy to find the owner of the helicopter online; and that the trial court erred when it found that Dave’s, Hansen Helicopter’s Inc. and John Walker are the same and interchangeable. Dave’s emphasizes that there was no probable cause for the FSM Supreme Court to issue the search warrant for the helicopter and to have it shipped to the United States. Dave’s claims that the supporting documents, i.e., Jeffrey Olson’s letter and FSM Police Captain Kasner Alden’s affidavit, for the application for a search warrant were insufficient and could not establish probable cause to justify the search warrant.

The FSM DOJ responds that the FSM Supreme Court had the authority to issue the search warrant under 12 F.S.M.C. 1709(2)(a), (b), and (c) because it was satisfied that there is probable cause to believe that a serious offense has been or may have been committed against a foreign state; there is evidence relating to that offense; and a search warrant is more appropriate than an evidence-gathering order. The FSM DOJ argues that even though the search warrant gave the wrong owner it is not defective because both companies, Hansen Helicopters, Inc. and Dave’s Helicopter Services, Inc., are owned by a John Walker a/k/a Jon Walker. Moreover, because the FSM DOJ was able to locate the helicopter stored at PT&S, the FSM DOJ represented that it did not matter that the owner was misidentified and that even though there was error regarding the owner of the helicopter, this error did not quash the warrant. The FSM DOJ avers that probable cause may be based upon hearsay evidence, in whole, or in part.

The trial court disagreed with Dave’s contention that the Jeffrey Olson letter could not be used to establish probable cause since it was not sworn and is therefore hearsay and inadmissible. The trial court held that it has been well-established that hearsay may be used to establish probable cause. The trial court also disregarded Dave’s contention that Captain Alden’s affidavit was deficient because it was sworn before a notary public and not an FSM Supreme Court clerk, and was undated. According to the trial court, the affidavit was signed by an FSM Supreme Court clerk and her signature is sealed by the FSM Supreme Court’s seal and that it had no reason to believe that the affidavit was executed on any other date than that of the warrant application that it was attached to, especially since the affidavit mentioned the event that occurred on April 9, 2019. The trial court could not see why the inadvertent omission of the date on the affidavit would be fatal to the warrant application or the warrant itself.

We agree with the trial court. Likewise, we determine that even though the Jeffrey Olson letter was based upon hearsay and may be inadmissible, it was sufficient to establish probable cause. A finding of probable cause may be based upon hearsay evidence, in whole or in part. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015) (hearsay can be used to support a probable cause finding, if it has the indicia of reliability); FSM v. Ezra, 19 FSM R. 497, 515 (Pon. 2014) (finding of probable cause may be based upon hearsay evidence in whole or in part and it is a general rule that a police officer may consider virtually any evidence in determining whether reasonable suspicion or probable cause exists); In re Anzures, 18 FSM R. 316, 324



n.12 (Kos. 2012).

Furthermore, we agree that the signature of the FSM Supreme Court clerk with the Court's seal on Captain Alden's affidavit is adequate even though the affidavit was undated, and that there was no reason presented before us to refute the application being executed on any other date than that of the warrant application attached. Additionally, we cannot determine why the inadvertent omission of the date on the Captain's affidavit would be fatal to the warrant application or the warrant itself. We therefore conclude that the search warrant application, the Jeffrey Olson letter, although hearsay and perhaps inadmissible, and the Captain Alden's affidavit meet the standard necessary for a finding of probable cause to issue the search warrant.

The trial court also disagreed with Dave's contention that it is a corporation separate from its owner and cannot be used interchangeably with its owner, John Walker, and that this stems from the "misidentification" of the owner of the helicopter on the application for the search warrant and then on the search warrant. The trial court considered the "misidentification" of Hansen instead of Dave's not fatal to the search warrant in that Walker owning the helicopter through Dave's and not through Hansen is a technical defect. The trial court provides that the U.S. government is investigating John Walker, and the N501SU helicopter was sufficiently described in that the police officers conducting the search had no problem identifying the thing being sought when it was found.

We also determine that the inaccurate identification of owner of the helicopter was not fatal to the search warrant. We further acknowledge that the U.S. government is investigating John Walker, and we therefore agree that the search warrant's indication of the helicopter being owned by Hansen Helicopter instead of Dave's is a technical defect. Moreover, we recognize that the helicopter was sufficiently described so that the police officer did not have a problem locating the thing to be found and seized it.

#### *Initial search*

Dave's argues that the initial search of the helicopter was wrongfully considered by the trial court to be a border search. Dave's claims that that search was unlawful and could not support the request for the subsequent search warrant. Dave's argues that the trial court has expanded the powers of the police by holding that they may search goods ready for export. Dave's maintains that Title 54 of the FSM Code provides only that the police may assist the customs officer, not that the police officer with an FBI agent may take on the authority of customs officers and make the search without the customs officer. Dave's contends that the national police without reason and without a customs officer cannot just search any location without a warrant because this would defeat the purpose of the search and seizure clause of the Constitution.

The FSM DOJ responds that the initial search can be considered a search and it is valid. The FSM DOJ offers that if Dave's determines that the initial search is not proper, then the appropriate remedy would be for Dave's to seek suppression in the U.S. District Court proceedings and not for this court to withdraw the search warrant.

The trial court found, with regards to the earlier viewing of the helicopter at PT&S, that most of the information used to establish probable cause for the search warrant was from other sources than the "initial viewing" on June 29, 2018 and that the only new information taken from that viewing was the removal of the helicopter's data plate and registration markings no longer visible. The trial court determined that the although the "initial viewing" on June 29, 2018 was a warrantless search, it is not as problematic as Dave's suggests because under 54 F.S.M.C. 235 a customs officer has the right to examine all goods subject to their control and among such goods are those for export from the time that they are brought to any port, airport, or other place for export until they are exported to any country outside the FSM.

The trial court recognized that PT&S is not a port or airport, but that it is a container yard that may be considered "other place for export." The trial court concluded that even though the examination was

*In re Wrecked/Damaged Helicopter*  
23 FSM R. 479 (App. 2022)

completed by a different FSM law enforcement agency tasked with general law enforcement for the national government and not customs officers should not invalidate the examination. The trial court explained that ports, airports and other places for export are functional equivalents of a border, or the border search exception to the constitutional search warrant applies equally to persons and goods leaving or entering the country.

We agree with the trial court regarding the “initial viewing” on June 29, 2018. We disagree that there is an expansion of police powers. We recognize that the FSM national police is tasked with general enforcement of FSM national law; therefore, it may appear to be that their power could also encompass the specialized powers given to other different FSM law enforcement agencies within the national government. More importantly, we find that there was other support for the search warrant and was not wholly taken from than the “initial viewing” on June 29, 2018. We also note that the only information taken from the “initial viewing” was that the helicopter’s data plate and markings were no longer visible.

*Authority to ship helicopter fuselage from the FSM*

Dave’s argues that the trial court abused its discretion in finding probable cause and requiring the shipment of the helicopter out of the FSM when other alternatives are available. Dave’s claims that there is no need for the helicopter to be shipped off when it can be examined and photographed here in Pohnpei since the container and its contents will not be brought into court and marked as an exhibit. Dave’s maintains that it disagrees with the trial court’s finding that this is a search warrant and not a confiscation order because the implementation of the search warrant and the resulting export of the helicopter is a de facto confiscation. Dave’s states that the court has the authority and discretion to change a search warrant to an evidence-gathering order under 12 F.S.M.C. 1709 which provides Dave’s more rights and privileges.

The FSM DOJ responds that the search warrant was not an abuse of discretion and that the Court was satisfied that there was probable cause for the search warrant and issued it in accordance with the laws in place. The FSM DOJ maintains that according to 49 C.F.R. § 830.5 if an accident/incident occurs, the operator of the helicopter should immediately notify the National Transportation Safety Board (“NTSB”) and Dave’s failed to do so. Moreover, the FSM DOJ maintains that the search warrant and the removal of the helicopter to the U.S. was appropriate, and that Dave’s cannot determine where the U.S. government will present its evidence so if there are problems with this Dave’s should take it up with the jurisdiction receiving the evidence. Furthermore, the FSM DOJ states that the data plate and registration markings are no longer visible on the helicopter, and the U.S. government is requesting for the FSM to assist so that it may use the helicopter for evidence in its trial.

We note that the Secretary has the authority to apply to the FSM Supreme Court for either a search warrant or an evidence-gathering order. In this case, the Secretary, through one of its assistant attorney generals, applied for a search warrant. We do not agree with Dave’s in its suggestion of alternative recourse in lieu of the helicopter’s shipment to Guam. The purpose of the search warrant was so that the property to be searched for would aid in the criminal investigations pending before Hansen Helicopters, Inc., John Walker and others in Guam. 12 F.S.M.C. 1709(10) allows for a document or thing seized to be sent to the foreign state requesting the assistance conditional upon the Secretary being first satisfied that the foreign state has agreed to comply with any terms or conditions imposed when sending abroad the document or thing. That being so, we cannot find merit in Dave’s’ arguments. There is no de facto confiscation of the helicopter. Dave’s may disagree with the shipment of the helicopter and offer alternative measures but the fact of the matter is that there was probable cause for the search warrant, and there is authority for the FSM, upon the Secretary’s satisfaction that the foreign state has agreed to comply with any terms and conditions imposed, to ship the helicopter to Guam so that it may aid in their criminal investigations as provided in their request for judicial assistance.

*U.S. jurisdiction over helicopter fuselage*

Dave's argues that the trial court disregarded its expert testimony on whether the damage to the helicopter was required to be reported and wrongfully considered it a crime to support the issuance of the search warrant. Dave's points out that there was no countervailing testimony from the plaintiff. Dave's contends that there was insufficient factual and legal information presented to the trial court to determine that the helicopter water landing was required to be reported to the U.S. FAA. Dave's avers that a violation of 49 C.F.R. § 830.5 is not a crime and does not support a search and seizure warrant, especially when it involves the confiscation of goods.

Dave's contends that the FSM failed to meet its burden of proof on the issue of jurisdiction and on the invalid registration of the helicopter. Dave's avers that the trial court, on its own effort and without testimony or support from the FSM or the U.S. entities seeking the removal of the helicopter, went into great detail on the issue of jurisdiction and the effects of the invalid registration. Dave's avers that the plaintiff must meet its burden of proof, and not the trial court taking the position of overcoming all the burdens that should have been addressed by the plaintiff.

The FSM DOJ responds that the U.S. government had jurisdiction over N501SU because it had registered in the U.S. According to the FSM DOJ, there are legal procedures in place for mutual assistance between the FSM and a foreign state. The FSM DOJ argues that if the accident/incident was not reportable the helicopter was and is still evidence of other serious offenses. The FSM DOJ lists an unauthorized pilot operating the helicopter, and the removal of the helicopter's information as examples of violations to U.S. federal law.

The trial court found that the May 24, 2018 event was a reportable accident or incident in that the helicopter took off the deck of *Pacific Ranger* to spot fish and when it returned to the *Pacific Ranger's* deck and the pilot and the passengers got off the N501SU helicopter was no longer in a flyable condition, or as the trial court puts it, it was no longer airworthy; therefore, according to the trial court, there was probable cause that a reportable event had occurred in accordance with 49 C.F.R. § 830.5(a)—either an "aircraft accident" because there was substantial damage to the helicopter, or because there had been a "serious incident." *In re Wrecked/Damaged Helicopter*, 22 FSM R. at 460.

The trial court concluded that the U.S. government had jurisdiction over the N501SU helicopter because it was registered in the U.S. and that it had U.S. nationality at all times. According to the trial court, the N501SU helicopter would be subject to U.S. FAA regulations wherever it flew in the world. The trial court determined that the N501SU helicopter was a "civil aircraft of the United States," had U.S. nationality, and the U.S. government may exercise extraterritorial jurisdiction over it. *In re Wrecked/Damaged Helicopter*, 22 FSM R. at 457. Furthermore, the trial court found that the U.S. government would still have jurisdiction over the N501SU helicopter even if the registration was invalid because Dave's chose to register it in the U.S. and an aircraft can only be registered in one country at a time. That being so, the trial court rejected Dave's argument that because the helicopter was invalidly registered in the U.S. and not registered anywhere else in the world then the helicopter would be beyond any nation's power or authority to regulate it when it was in international waters.

We note that Dave's is a Vanuatu corporation that chose to register its helicopter in the U.S. Similarly, with the trial court, we recognize that Dave's could have registered its helicopter anywhere in the world, but it chose to register it in the United States. We also note that even when its registration was declared invalid, the helicopter did not appear to be registered elsewhere. We agree with the trial court's findings with respect to the U.S. government having jurisdiction over the helicopter per its registration despite its invalidity. We further agree with the trial court that the May 24, 2018 was a reportable incident since after that incident the N501SU helicopter never flew again which can only mean that there was substantial damage to it from the incident or that the incident was serious. 49 C.F.R. § 830.5(a).

Additionally, we determine that the trial court is not bound by the expert testimony provided by Dave's even if the other side does not provide what it considers to be "countervailing testimony." A trial court is free to accept or reject testimony and the reviewing court will only set aside those findings of fact when there is no credible evidence in the record to support the finding since it was the trial court that had the opportunity to view the witnesses and the manner of their testimony. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008). Furthermore, expert opinions have no such conclusive force that there is an error of law in refusing to follow them. It is for the trier of fact to decide whether any, and if any what, weight is to be given to such testimony. Even if the testimony is uncontroverted the trier of fact may exercise independent judgment. *Id.* at 61. In this case, the trial court heard Mr. Bland's testimony and made its decision regarding it. We, as the reviewing court, find that there is credible evidence in the record before us to support the trial court's decision.

#### V. CONCLUSION

Based upon all the above reasons, the trial court's decision is hereby affirmed.

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