

EN BANC

G.R. No. 236548 (RUBEN COMAMO y JIMENO, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent).

Promulgated:

March 4, 2025

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CONCURRENCE

LAZARO-JAVIER, J.:

Search Warrant No. 19-13 (search warrant) was issued upon a finding of probable cause, authorizing law enforcers to search petitioner Ruben Comamo y Jimeno's (petitioner)'s house at Barangay Gaang, Currimao, Ilocos Norte, for alleged illegal possession of "a cal. 9mm pistol, among other firearms."<sup>1</sup> During the implementation of the search warrant, the officers asked petitioner to open a small cabinet in the kitchen. He obliged. It was then that the enforcers discovered the following firearms and ammunitions inside the cabinet: (a) a 45 mm caliber Colt 1911 pistol with serial number 421003, three magazines, 23 live ammunition, and one inside holster; (b) one live ammunition for an M14 rifle; and (c) one live ammunition for 9mm caliber pistol.<sup>2</sup> After the search, he signed the Certificate of Orderly Search.<sup>3</sup>

Consequently, petitioner was charged with illegal possession of firearms and ammunitions. Before the trial court and the appellate court, he argued that the confiscated firearms and ammunitions were inadmissible as evidence, not having been particularly described in the search warrant which was limited only to the seizure of a 9mm caliber pistol. He further contended that the firearms and ammunition were not seized pursuant to a valid warrantless search under the plain view doctrine since the same were not plainly exposed to sight. He also allegedly did not validly consent to the search given that he was intimidated by the enforcers at the time of the search.

The *ponencia* convicted petitioner of illegal possession of ammunition of a small firearm after excluding as evidence the: (a) 45 mm caliber Colt 1911 pistol with serial number 421003, three magazines, 23 live ammunition, and one inside holster; and (b) one live ammunition for an M14 rifle, while ordaining as admissible only the single live ammunition for 9mm caliber pistol, which bore a direct relationship to the alleged offense.

<sup>1</sup> *Ponencia*, p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 5.

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I agree with the *ponencia*'s verdict of conviction and opine that the search and seizure of the subject firearms and ammunitions was valid.

Indeed, Article III, Section 2 of the Constitution holds sacrosanct the right of all persons to be secure against unreasonable searches and seizures, viz.:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he [or she] may produce, and particularly describing the place to be searched and the persons or things to be seized.

Thus, as a rule, searches and seizures may be conducted by authorities *only* when a court issues a search warrant after it has determined the existence of probable cause through the personal examination under oath or affirmation of the complainant and the witnesses presented before the court, with the place to be searched and the persons or things to be seized particularly described.<sup>4</sup>

In other words, for a search and seizure to withstand the test of reasonableness, the judicial warrant upon which it is anchored must satisfy the following requisites: *first*, probable cause is present; *second*, such probable cause must be determined personally by the judge; *third*, the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; *fourth*, the applicant and the witnesses testify on the facts personally known to them; and *fifth*, *the warrant specifically describes the place to be searched and the things to be seized*.<sup>5</sup>

The absence of any of these requisites is a cause to quash the search warrant or to suppress the evidence seized.<sup>6</sup> If granted, the “exclusionary rule” enshrined under Article III, Section 3(2) of the Constitution<sup>7</sup> renders inadmissible as evidence the items seized pursuant to the invalid search. By extension, any evidence derived or indirectly obtained from this illegally seized evidence are equally inadmissible under the “fruit of the poisonous tree” doctrine.<sup>8</sup>

<sup>4</sup> *People v. Sapla*, 874 Phil. 240, 257 (2020) [Per J. Caguioa, *En Banc*].

<sup>5</sup> *People v. Castillo*, 798 Phil. 77, 88 (2016) [Per J. Peralta, Third Division].

<sup>6</sup> *See Abuan v. People*, 536 Phil. 672 (2006) [Per J. Callejo, Sr., First Division].

<sup>7</sup> CONSTITUTION (1987), art. III, sec. 3 (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

<sup>8</sup> *See People v. Fatallo*, 842 Phil. 1060, 1084 (2018) [Per J. Caguioa, Second Division].

Here, the presence of the first four requisites is not disputed. We thus reckon with the fifth requisite: were the confiscated firearms and ammunition specifically described in the search warrant?

I join the *ponencia* in ruling that they were not.

*Vallejo v. Court of Appeals*<sup>9</sup> provides the yardstick in ascertaining whether the fifth requisite has been met, i.e., the specific property to be searched for should be so particularly described as to preclude any possibility of seizing any other property. *Vallejo* further elucidates:

The things to be seized must be described with particularity. **Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission.** Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for. Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient.

However, the requirement that search warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant. **Thus, the specific property to be searched for should be so particularly described as to preclude the possibility of seizing any other property.**<sup>10</sup> (Emphasis supplied, citations omitted)

This is because a search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.<sup>11</sup>

Following the foregoing metric, the search warrant here perceptibly failed to meet the standards of particularity required by the Constitution insofar as it authorized the enforcers to “seiz[e] a Cal. 9MM Pistol[,] among other firearms which he keeps in his possession, custody, and control inside his residence at the above address.”<sup>12</sup> The phrase “among other firearms” effectively serves as a catch-all, which unlawfully authorizes enforcers to confiscate firearms other than the 9mm caliber pistol albeit, the same are not specifically described in the warrant, in patent violation of Article III, Section 2 of the Constitution.

<sup>9</sup> 471 Phil. 670 (2004) [Per J. Callejo, Sr., Second Division].

<sup>10</sup> *Id.* at 686–687.

<sup>11</sup> *People v. Nuñez*, 609 Phil. 176, 187 (2009) [Per J. Quisumbing, Second Division].

<sup>12</sup> *Ponencia*, p. 21

Indeed, this case may be differentiated from *Kho v. Macalintal*,<sup>13</sup> where the Court sustained the validity of the search warrant authorizing the seizure of “unlicensed firearms of various calibers and ammunitions for the said firearms,” pointing out that the National Bureau of Investigation agents who conducted the prior surveillance could not have been in a position to know beforehand the exact caliber or make of the firearms to be seized. What the surveillance revealed only was that unlicensed firearms were within the premises to be searched. Besides, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.

Here, however, the scope of the phrase “among other firearms” is broader, as it sanctions the confiscation of firearms, whether licensed or unlicensed. Verily, this general description of the items to be seized already warrants the confiscation of items though possession thereof may be unrelated to any offense. This, we cannot uphold.

Nonetheless, I agree with the *ponencia* that this general phrase does not render the search warrant void in its totality but merely removes from its protective mantle items confiscated which were not particularly described therein. Indeed, in *Dimal v. People*,<sup>14</sup> the Court sustained the validity of the seizure of the items particularly described in the search warrant and merely excluded those not so particularly described.

This notwithstanding, I agree that the confiscation of the other firearms and ammunitions, apart from the live ammunition for 9mm caliber pistol, is valid under the plain view doctrine.

Indeed, well-recognized in jurisprudence are the following instances when a warrantless search is valid: (a) warrantless search incidental to a lawful arrest; (b) search of evidence in plain view; (c) search of a moving vehicle; (d) consented warrantless searches; (e) customs search; (f) stop and frisk; and (g) exigent and emergency circumstances.<sup>15</sup>

The plain view doctrine applies when the following requisites concur: (1) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure.<sup>16</sup>

<sup>13</sup> 365 Phil. 511 (1999) [Per J. Purisima, *En Banc*].

<sup>14</sup> 830 Phil. 309 (2018) [Per J. Peralta, Second Division].

<sup>15</sup> *People v. Jumarang*, 928 Phil. 27, 31 (2022) [Per J. J. Lopez, Second Division].

<sup>16</sup> *Dominguez v. People*, 849 Phil. 610, 629 (2019) [Per J. Caguioa, Second Division].

All requisites are present here.

**First.** The entry of the enforcers into petitioner's house was completely justified as it is not disputed that the search warrant was valid save only for the general phrase therein which sanctions the confiscation of "other firearms." Verily, the enforcers had a right to enter petitioner's house and, in the course of the implementation of the warrant, to search the same, which is precisely what they were authorized to do.

It bears stress that at the time the enforcers requested petitioner to open the cabinet wherein the seized firearms and ammunition were found, the enforcers had yet to find the "cal. 9 MM pistol" they were authorized to confiscate. Taking this circumstance into consideration, it is evident that the opening of the cabinet was part and parcel of their search operation which, to reiterate, the enforcers were authorized to conduct pursuant to the validly issued search warrant.

Plainly, the first requisite has been met here since the enforcers, by virtue of the search warrant, had prior justification to enter petitioner's house and effect the search of, and consequently, view, the subject cabinet which petitioner himself opened.

**Second.** The enforcers discovered the firearms and ammunitions inadvertently. *United Laboratories v. Isip*,<sup>17</sup> explains that the requirement of inadvertence simply means that the officer must not have known in advance of the location of the evidence and intend to seize it. Discovery is not anticipated.

Here, there is simply no basis to conclude that the enforcers were aware in advance that the cabinet contained the subsequently seized firearms and ammunitions. There is no evidence adduced that they anticipated discovery of the same upon the opening of the cabinet or that they requested petitioner to open the same because they knew that it contained firearms and ammunitions. Neither can such conclusion be reasonably surmised considering that prior to the search, the item they reasonably suspected petitioner to possess was a "9mm caliber pistol" and none of the items actually seized.

**Finally.** It was immediately apparent to the enforcers that the firearms and ammunition inside the cabinet were the subject of the offense for which petitioner was being charged, illegal possession of firearms and ammunitions, especially since he failed to show any license to possess the same upon request.

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<sup>17</sup> 500 Phil. 342 (2005) [Per J. Callejo, Sr., Second Division].

Indeed, under the plain view doctrine, an object is in plain view if it is plainly exposed to sight, such that when the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant.<sup>18</sup>

True, while inside the cabinet, the seized firearms and ammunitions could not have been said to have been in plain view. But it must be pointed out that at such time, i.e., before the cabinet was opened, the plain view doctrine was yet to take effect. This is because before the confiscation of the items, the enforcers were acting completely within the authority of the search warrant. The operation, therefore, was conducted pursuant to a valid search warrant and *not yet* pursuant to a valid warrantless search.

The plain view doctrine only found application once the circumstance has been removed from the mantle of the search warrant's authority, i.e., from the moment the officers inadvertently discovered in the course of their search obviously contraband items not specifically described in the warrant. It was at this precise moment when the cabinet was opened and the items inadvertently discovered that the operation was taken outside the purview of the search warrant. Yet, at such time, with the cabinet open, the firearms and ammunition have been exposed to the officers' plain sight and their apparent unlawful nature made immediately apparent, authorizing their warrantless seizure.

At any rate, even assuming that the plain view doctrine cannot be applied here, the same can still be considered as a valid consented warrantless search.

For there to be a valid consented warrantless search or a voluntary waiver of the right against unreasonable searches and seizures, the Court must determine whether the following requisites are present: (1) it must appear that the rights exist; (2) the person involved had knowledge, actual or constructive, of the existence of such right; and (3) said person had an actual intention to relinquish the right.<sup>19</sup>

Further, in determining whether such waiver is indeed voluntary and freely given, the following circumstances must be taken into consideration: (1) the age of the defendant; (2) whether he was in a public or a secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in

<sup>18</sup> *People v. Nuevas*, 545 Phil 356 (2007) [Per J. Tinga, Second Division].

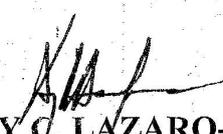
<sup>19</sup> *Amado v. People*, G.R. No. 244795, December 5, 2022 [Notice, First Division].

which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting.<sup>20</sup>

Taken altogether, it cannot be denied that all the requisites of a voluntary waiver of the right against unreasonable searches and seizures are present. **First**, the right to waive existed during the time of the search. In fact, all the details of accused-petitioner's search were specified in the search warrant. **Second** and **third**, he likewise had knowledge of the existence of such right, and actual intention to relinquish the same. To reiterate, petitioner voluntarily opened the cabinet, where the other firearms and ammunition were found, when the police authorities ordered him to do so. Again, there was no mention of any force or intimidation that was employed when petitioner opened it upon order of the police.

Ultimately, petitioner signed the Certificate of Orderly Search. In this document, he stated, among others, that "[he] was present at all time and has witnessed the conduct of search which was done in an orderly manner" and that "the search was conducted in accordance with law." Thus, the accused-petitioner "[does] not have any complaint whatsoever against any member of the Police Team that conducted the search." In fine, he did not controvert the authenticity of the document nor did he claim having been coerced or threatened into signing the same.<sup>21</sup> In other words, the entire search was, at the very least, orderly implemented. In fact, petitioner focused his arguments on the inadmissibility of the seized firearms and ammunition, and never on the implementation of the actual search. Hence, there is clear and convincing evidence that the waiver was executed voluntarily.<sup>22</sup>

Thus, I **VOTE** that other firearms and ammunition previously ruled inadmissible by the Court of Appeals in its Decision dated June 28, 2017 in CA-G.R. CR No. 38952 be declared admissible following the plain view doctrine or consented warrantless search exception.

  
AMY C. LAZARO-JAVIER  
Associate Justice

<sup>20</sup> *Amado v. People*, G.R. No. 244795, December 5, 2022 [Notice, First Division].

<sup>21</sup> Decision dated June 28, 2017 in CA-G.R. CR No. 38952.

<sup>22</sup> See *People v. Santos*, 930 Phil. 215 (2022) [Per SAJ, Leonen, Second Division].