EN BANC

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

Promulgated:

March 4, 2025

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SEPARATE CONCURRING OPINION

SINGH, *J.*:

I concur that all the other seized firearms and ammunitions from petitioner Ruben Comamo's (**Ruben**) residence consisting of: (a) a .45-caliber Colt 1911 pistol with serial number 421003, three magazines, 23 live ammunitions, one inside holster; (b) one live ammunition for M14 rifle; and (c) one live ammunition for .9-caliber pistol, are admissible in evidence.

Nevertheless, it is my humble position that the plain view doctrine is not applicable in the present case.

Inapplicability of the plain view doctrine

As a brief summary of the case, Search Warrant No. 19-13 was issued against Ruben authorizing the law enforcers to search his house for alleged illegal possession of a .9-caliber pistol, "among other firearms," which he allegedly keeps in his possession, custody, and control inside his residence. During the implementation of the warrant, the authorities asked Ruben to open a small cabinet in the kitchen, to which he complied. They then discovered the above-mentioned firearms and ammunitions. For failing to show any license authorizing Ruben to possess the same, he was charged with illegal possession of firearms and ammunitions.[1]

The Regional Trial Court (**RTC**) convicted him of the crime charged and ruled that the plain view doctrine applies not only during valid warrantless searches, but also during the execution of a search warrant.[2] On appeal, the Court of Appeals (**CA**) held that the said doctrine does not apply because the

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1 *Ponencia*, pp. 1–2.
2 *Id.* at 3.

seized items were not plainly exposed to sight. Nonetheless, it affirmed the conviction of Ruben because he consented to the search.[3]

In his Petition for Review on *Certiorari* before the Court, Ruben maintained that the seizure of the .45-caliber pistol and assorted ammunitions is not justified under the plain view doctrine. The *ponencia* ruled otherwise and declared that "the law enforcers *inadvertently uncovered* the other firearm and ammunitions in the course of the implementation of the search warrant," and "[t]he incriminating character of the contrabands [sic] found inside the cabinet was *immediately apparent* to the police officers because these objects are related to the criminal charge described in the search warrant."[4]

I respectfully disagree.

Indeed, the right of every individual against unreasonable searches and seizures in our jurisdiction is inviolable. This is clearly defined under Article III, Section 2 of our Constitution, which reads:

> SEC. 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 may produce, and particularly describing the place to be searched and the persons or things to be seized.

And to further protect or safeguard individuals from unreasonable searches and seizures, Section 3(2) of the same Article provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded from evidence for being the proverbial fruit of a poisonous tree. Stated elsewise, any evidence so obtained shall be inadmissible for any purpose in any legal proceeding.[5]

This constitutional proscription against warrantless searches and seizures, however, is subject to legal and judicial exceptions, namely: (1) warrantless search incidental to a lawful arrest recognized under Rule 126, Section 12 of the Rules of Court and by prevailing jurisprudence; (2) *seizure of evidence in plain view*; (3) search of moving vehicles; (4) consented warrantless search; (5) customs search; (6) stop and frisk situations (Terry search); and (7) exigent and emergency circumstances.[6] The Court, in

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3 *Id.* at 5.

4 *Id.* at 10–11. Emphasis supplied.

5 *See Pilapil v. Cu*, 880 Phil. 88, 98 (2020) [Per C.J. Peralta, First Division]. *See also People v. Manago*, 793 Phil. 505 (2016) [Per J. Perlas-Bernabe, First Division] citing *Comerciante v. People*, 764 Phil. 627 (2015) [Per J. Perlas-Bernabe, First Division].

6 *See People v. Jumarang*, 928 Phil. 27, 31(2022) [Per J. J.Lopez, Second Division]; *Dominguez v. People*, 849 Phil. 610, 622–623 (2019) [Per J, Caguioa, Second Division].

People v. Lagman,[7] has laid down the parameters for the application of seizure of evidence in plain view, or the so-called "plain view doctrine":

> Objects falling in plain view of an officer who has a right to be in position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) 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; (b) the discovery of evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. *The object must be open to eye and hand and its discovery inadvertent.*[8] (Emphasis supplied, citation omitted)

In *Miclat v. People*,[9] where the accused was caught in the act of arranging the heat-sealed plastic sachets in plain sight of the police officer, the Court highlighted that *an object is in plain view if the object itself is plainly exposed to sight.*[10] This can hardly be said to be the case here.

To recall, the authorities, in implementing Search Warrant No. 19-13, asked Ruben to open a small cabinet in his kitchen, with which he obliged. It was only then that the operatives saw the firearm and ammunitions consisting of the following: (a) a .45-caliber Colt 1911 pistol with serial number 421003, three magazines, 23 live ammunitions, and one inside holster; (b) one live ammunition for M14 rifle; and (c) one live ammunition for .9-caliber pistol.[11] Clearly, this only indicates that these items were not exposed to their plain sight – the firearm and ammunitions were not open to eye and hand or in plain view. They were inside a closed cabinet, which Ruben had to open upon the request of the police officers.

The 1999 case of *People v. Doria*[12] illustrates further what constitutes plain view:

> It is clear that an object is in plain view if the object itself is plainly exposed to sight. The difficulty arises when the object is inside a closed container. *Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant.* However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer,

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7 593 Phil. 617 (2008) [Per J. Carpio-Morales, *En Banc*].
8 *Id.* at 628–629.
9 672 Phil. 191 (2011) [Per J. Peralta, Third Division].
10 *Id.* at 207. Emphasis supplied.
11 *Ponencia*, p. 2.
12 361 Phil. 595 (1999) [Per J. Puno, En Banc].

> then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. *It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.*
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> . . . .
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> [S]tanding by the door of appellant Gaddao's house, PO3 Manlangit had a view of the interior of said house. Two and a half meters away was the dining table and underneath it was a carton box. The box was partially open and revealed something wrapped in plastic.
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> In his direct examination, PO3 Manlangit said that he was sure that the contents of the box were marijuana because he himself checked and marked the said contents. On cross-examination, however, he admitted that he merely presumed the contents to be marijuana because it had the same plastic wrapping as the "buy-bust marijuana." A close scrutiny of the records reveals that the plastic wrapper was not colorless and transparent as to clearly manifest its contents to a viewer. *Each of the [10] bricks of marijuana in the box was individually wrapped in old newspaper and placed inside plastic bags—white, pink or blue in color. PO3 Manlangit himself admitted on cross-examination that the contents of the box could be items other than marijuana. He did not know exactly what the box contained that he had to ask appellant Gaddao about its contents. It was not immediately apparent to PO3 Manlangit that the content of the box was marijuana.* The marijuana was not in plain view and its seizure without the requisite search warrant was in violation of the law and the Constitution. It was fruit of the poisonous tree and should have been excluded and never considered by the trial court.[13] (Emphasis supplied, citations omitted)

The factual backdrop in *Doria* may not be on all fours with the present case, but this bolsters my position that the items seized by the police were not in their plain view. What was in their view was merely the kitchen cabinet of Ruben. A kitchen cabinet is nothing more than a container. Up until the time that he opened it upon the instructions of the authorities, they had no idea that this cabinet contained the firearm and assorted ammunitions that would eventually be the basis for his conviction. Indeed, while it may be argued that the seized items are of an incriminating character, it still does not change the fact that these items were not immediately apparent to the law enforcers because had they not opened the cabinet, they would not have discovered the same.

I would also like to add that in *People v. Musa*,[14] the Court held that the plain view doctrine is usually applied where a police officer is *not* searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.[15] Thus, I could not subscribe to the view of the

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13 *Id.* at 634–640.

14 291 Phil. 623 (1993) [Per J. Romero, Third Division].

15 *Id.* at 640.

ponencia that the prosecution satisfied the second requisite of the plain view doctrine, *i.e.*, the discovery of evidence in plain view is inadvertent, as the law enforcers inadvertently uncovered the .45-caliber Colt 1911 pistol and other ammunitions in the course of the *implementation of the search warrant*.[16] In my view, this goes against the pronouncement in *Musa* because in the present case, the police officers were deliberately looking for evidence against Ruben for illegal possession of firearms. Thus, it cannot be gainsaid that the discovery or seizure of the other items were a product of a meticulous search, and not inadvertently.

In *United Laboratories Inc. v. Isip*,[17] the Court likewise underscored that the prosecution bears the burden of proving that all the essential requisites of the plain view doctrine are established. Thus:

> Objects, articles[,] or papers not described in the warrant but on plain view of the executing officer may be seized by him. *However, the seizure by the officer of objects/articles/papers not described in the warrant cannot be presumed as plain view. The State must adduce evidence, testimonial or documentary, to prove the confluence of the essential requirements for the doctrine to apply*, namely: (a) the executing law enforcement officer has a prior justification for an initial intrusion or otherwise properly in a position from which he can view a particular order; (b) the officer must discover incriminating evidence inadvertently; and (c) it must be immediately apparent to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure.
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> The doctrine is not an exception to the warrant. It merely serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search as an incident to a lawful arrest or some other legitimate reason for being present, unconnected with a search directed against the accused. The doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. It is a recognition of the fact that when executing police officers comes across immediately incriminating evidence not covered by the warrant, they should not be required to close their eyes to it, regardless of whether it is evidence of the crime they are investigating or evidence of some other crime. It would be needless to require the police to obtain another warrant. Under the doctrine, there is no invasion of a legitimate expectation of privacy and there is no search within the meaning of the Constitution.[18] (Emphasis supplied, citations omitted)

With all due respect, I find that the *ponencia* materially failed to show how the prosecution proved the application of the plain view doctrine. While the *ponencia* discussed each requisite, no evidence, testimonial or documentary, was cited to support the conclusion that the plain view doctrine is applicable.

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16 *Ponencia*, p. 10.
17 500 Phil 342 (2005) [Per J. Callejo, Sr., Second Division]..
18 *Id.* at 361–362.

Nevertheless, even if the present case does not fall within the purview of the plain view doctrine, the seized firearm and various rounds of ammunitions are still admissible in evidence by virtue of the search warrant issued against Ruben.

The phrase "among other firearms" does not make Search Warrant No. 19-13 a general warrant

It is elementary that the requisites of a valid search warrant as laid down in Article III, Section 2 of the 1987 Constitution and in Rule 126, Section 4 of the Rules Court are as follows: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. The absence of any of these requisites will cause the downright nullification of the search warrant.[19]

Here, it is undisputed that Search Warrant No. 19-13 was issued after judicial determination of probable cause. The *ponencia*, however, ruled that the phrase *"among other firearms"* in Search Warrant No. 19-13 defeats the objective to eliminate general search warrants because the language used is all-embracing as to include all conceivable firearms and ammunitions leaving the scope of the search to the discretion of the law enforcers.[20]

Again, I respectfully disagree.

I maintain that the phrase "among other firearms" in the search warrant does not make it a general warrant and, therefore, does not invalidate or render inadmissible the other seized articles. The following cases are instructive:

1. *Kho v. Makalintal*[21]

> Petitioners claim that [the] subject search warrants are general warrants proscribed by the Constitution. According to them, the things to be seized were not described and detailed out, *i.e.*, the firearms listed were not classified as to size or make, etc.
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> Records on hand indicate that the search warrants under scrutiny specifically describe the items to be seized thus:

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19 *Diaz v. People*, 877 Phil. 523, 532 (2020) [Per J. Hernando, Second Division].
20 *Ponencia*, p. 8.
21 365 Phil. 511 (1999) [Per J. Purisima, *En Banc*].

> Search Warrant No. 90-11
> "Unlicensed radio communications equipment such as transmitters, transceivers, handsets, scanners, monitoring device and the like."
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> Search Warrant No. 90-13
> "Unlicensed radio communications equipment such as transmitters, transceivers, handsets, radio communications equipment, scanners, monitoring devices and others."

The use of the phrase "and the like" is of no moment. The same did not make the search warrants in question general warrants. In *Oca v. Marquez*, the Court upheld the warrant although it described the things to be seized as "books of accounts and allied papers."

> Subject Search Warrant Nos. 90-12 and 90-15 refer to:
> "Unlicensed firearms of various calibers and ammunitions for the said firearms."
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> Search Warrant No. 90-14 states:
> "Chop-chop vehicles and other spare parts."

The Court believes, and so holds, that the said warrants comply with Constitutional and statutory requirements. *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. Otherwise, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things they are looking for.* Since the element of time is very crucial in criminal cases, the effort and time spent in researching on the details to be embodied in the warrant would render the purpose of the search nugatory.

> [T]he NBI agents could not have been in a position to know beforehand the exact caliber or make of all the firearms to be seized. Although the surveillance they conducted did disclose the presence of unlicensed firearms within the premises to be searched, they could not have known the particular type of weapons involved before seeing such weapons at close range, which was of course impossible at the time of the filing of the applications for the subject search warrants.[22] (Emphasis supplied)

2. *Columbia Pictures v. CA*[23]

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow; or when the description expresses a conclusion of fact -not of law - by which the warrant officer may be guided in making the search and seizure; or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. *If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than*

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22 *Id.* at 518–519.

23 330 Phil. 771 (1996) [Per J. Romero, Second Division]. Citations omitted.

> *those articles, to prove the said offense; and the articles, subject of search and seizure should come in handy merely to strengthen such evidence.*[24]

3. *Worldwide Web Corporation v. People*[25]

> A search warrant fulfills the requirement of particularity in the description of the things to be seized *when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.*[26] (Emphasis supplied, citation omitted)

4. *Microsoft Corporation v. Maxicorp, Inc.*[27]

> It is only required that a search warrant be specific as far as the circumstances will ordinarily allow. *The description of the property to be seized need not be technically accurate or precise. The nature of the description should vary according to whether the identity of the property or its character is a matter of concern.* Measured against this standard we find that paragraph (e) is not a general warrant. The articles to be seized were not only sufficiently identified physically, they were also specifically identified by stating their relation to the offense charged. Paragraph (e) specifically refers to those articles used or intended for use in the illegal and unauthorized copying of petitioners' software. This language meets the test of specificity.[28] (Emphasis supplied, citations omitted)

5. *HPS Software v. PLDT*[29]

> *[T]he subject search warrants are not general warrants because the items to be seized were sufficiently identified physically and were also specifically identified by stating their relation to the offenses charged* which are Theft and Violation of [Presidential Decree] No. 401 through the conduct of illegal ISR activities.[30] (Emphasis supplied)

Relatedly, it should be underscored that Rule 126, Section 4 of the Rules on Criminal Procedure provides that a search warrant shall be issued in connection with one specific offense. Thus:

> SEC. 4. *Requisites for issuing search warrant.* - A search warrant shall not issue except upon probable cause *in connection with one specific offense* to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (Emphasis supplied)

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24 *Id.* at 782–783.
25 713 Phil. 18 (2014) [Per C.J. Sereno, First Division].
26 *Id.* at 45.
27 481 Phil. 550 (2004) [Per J. Carpio, First Division].
28 *Id.* at 571.
29 700 Phil. 534 (2012) [Per J. Leonardo-De Castro, First Division]
30 *Id.* at 572.

In the present case, it should be noted that Search Warrant No. 19-13 was issued for the specific offense of illegal possession of firearms against Ruben. Therefore, on this ground alone, the phrase "among other firearms" in the subject search warrant does not render it a general one. The language used cannot be considered excessively broad, as it does not grant the authorities or the police officers unbridled discretion to conduct the search.

Requiring the police officers to describe with such certainty and precision, like the guns' caliber or make, would not only be impractical, but unrealistic. Otherwise, it would be impossible for our police officers to get a warrant for this offense, allowing the offender to get away unpunished. Limiting the confiscation to one specifically described firearm while allowing the offender to retain other firearms not described in detail would defeat the very purpose of the police operation.

In conclusion, it is my position that the plain view doctrine is not applicable. Nevertheless, all the seized firearms and ammunitions are admissible. They need not be described with specificity in the subject search warrant since they pertain to one specific offense, namely, illegal possession of firearms.

All told, I vote to **DISMISS** the Petition.

MARIA FILOMENA D. SINGH
Associate Justice