UNITED LABORATORIES, INC., PETITIONER, VS. ERNESTO ISIP AND/OR SHALIMAR PHILIPPINES AND/OR OCCUPANTS, SHALIMAR BUILDING, NO. 1571, ARAGON STREET, STA. CRUZ, MANILA, RESPONDENTS.

G.R. NO. 163858. June 28, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Rolando H. Besarra, Special Investigator III of the National Bureau of Investigation (NBI), filed an application, in the Regional Trial Court (RTC) of Manila, for the issuance of a search warrant concerning the first and second floors of the Shalimar Building, located at No. 1571, Aragon Street (formerly No. 1524, Lacson Avenue, Sta. Cruz, Manila) occupied and/or used by Shalimar Philippines, owned/operated by Ernesto Isip; and for the seizure of the following for violation of Section 4(a), in relation to Section 8, of Republic Act (R.A.) No. 8203:

- Finished or unfinished products of UNITED LABORATORIES (UNILAB), particularly REVICON multivitamins;

- Sundry items such as tags, labels, boxes, packages, wrappers, receptacles, advertisements and other paraphernalia used in the offering for sale, sale and/or distribution of counterfeit REVICON multivitamins;

- Sales invoices, delivery receipts, official receipts, ledgers, journals, purchase orders and all other books of accounts and documents used in recording the manufacture and/or importation, distribution and/or sales of counterfeit REVICON multivitamins.[1]

The application was docketed as People v. Ernesto Isip, et al., Respondents, Search Warrant Case No. 04-4916 and raffled to Branch 24 of the court. Appended thereto were the following: (1) a sketch[2] showing the location of the building to be searched; (2) the affidavit[3] of Charlie Rabe of the Armadillo Protection and Security Agency hired by United Laboratories, Inc. (UNILAB), who allegedly saw the manufacture, production and/or distribution of fake drug products such as Revicon by Shalimar Philippines; (3) the letter-request of UNILAB, the duly licensed and exclusive manufacturer and/or distributor of Revicon and Disudrin, for the monitoring of the unauthorized production/manufacture of the said drugs and, if warranted, for their seizure; (4) the letter-complaint[4] of UNILAB issued through its Director of the Security and Safety Group; and (5) the joint affidavit[5] of NBI Agents Roberto Divinagracia and Rolando Besarra containing the following allegations:

> 2. When learned that an Asset was already placed by ARMADILLO PROTECTIVE AND SECURITY AGENCY named CHARLIE RABE, who was renting a room since November 2003, at the said premises located at No. 1571 Aragon St., Sta. Cruz, Manila. MR. RABE averred that the owner of the premises is a certain MR. ERNESTO ISIP and that the said premises which is known as SHALIMAR PHILIPPINES, Shalimar Building, are being used to manufacture counterfeit UNILAB products, particularly REVICON multivitamins, which was already patented by UNILAB since 1985;

> 3. Upon verification of the report, we found out that the said premises is a six-story structure, with an additional floor as a penthouse, and colored red-brown. It has a tight security arrangement wherein non-residents are not allowed to enter or reconnoiter in the premises;
>
> 4. We also learned that its old address is No. 1524 Lacson Avenue, Sta. Cruz, Manila, and has a new address as 1571 Aragon St., Sta. Cruz, Manila; and that the area of counterfeiting operations are the first and second floors of Shalimar Building;
>
> 5. Since we cannot enter the premises, we instructed the Asset to take pictures of the area especially the places wherein the clandestine manufacturing operations were being held. At a peril to his well-being and security, the Asset was able to take photographs herein incorporated into this Search Warrant Application.[6]

A representative from UNILAB, Michael Tome, testified during the hearing on the application for the search warrant. After conducting the requisite searching questions, the court granted the application and issued Search Warrant No. 04-4916 dated January 27, 2004, directing any police officer of the law to conduct a search of the first and second floors of the Shalimar Building located at No. 1571, Aragon Street, Sta. Cruz, Manila. The court also directed the police to seize the following items:

> a. Finished or unfinished products of UNITED LABORATORIES (UNILAB), particularly REVICON multivitamins;
>
> b. Sundry items such as tags, labels, boxes, packages, wrappers, receptacles, advertisements and other paraphernalia used in the offering for sale, sale and/or distribution of counterfeit REVICON multivitamins;
>
> c. Sales invoices, delivery receipts, official receipts, ledgers, journals, purchase orders and all other books of accounts and documents used in recording the manufacture and/or importation, distribution and/or sales of counterfeit REVICON multivitamins.[7]

The court also ordered the delivery of the seized items before it, together with a true inventory thereof executed under oath.

The search warrant was implemented at 4:30 p.m. on January 27, 2004 by NBI agents Besarra and Divinagracia, in coordination with UNILAB employees. No fake Revicon multivitamins were found; instead, there were sealed boxes at the first and second floors of the Shalimar Building which, when opened by the NBI agents in the presence of respondent Isip, contained the following:

> QUANTITY/UNIT DESCRIPTION
>
> 792 Bottles Disudrin 60 ml.
>
> 30 Boxes (100 pieces each) Inoflox 200 mg.[8]

NBI Special Investigator Divinagracia submitted an inventory of the things seized in which he declared that the search of the first and second floors of the Shalimar Building at No. 1571, Aragon Street, Sta. Cruz, Manila, the premises described in the warrant, was done in an orderly and peaceful manner. He also filed a Return of Search Warrant,[9] alleging that no other articles/items other than those mentioned in the warrant and inventory sheet were seized. The agent prayed that of the items seized, ten boxes of Disudrin 60 ml., and at least one box of Inoflox be turned over to the custody of the Bureau of Food and Drugs (BFAD) for examination.[10] The court issued an order granting the motion, on the condition that the turn over be made before the court, in the presence of a representative from the respondents and the court.[11]

The respondents filed an “Urgent Motion to Quash the Search Warrant or to Suppress Evidence.”[12] They contended that the implementing officers of the NBI conducted their search at the first, second, third and fourth

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floors of the building at No. 1524-A, Lacson Avenue, Sta. Cruz, Manila, where items in “open display” were allegedly found. They pointed out, however, that such premises was different from the address described in the search warrant, the first and second floors of the Shalimar Building located at No. 1571, Aragon Street, Sta. Cruz, Manila. The respondents, likewise, asserted that the NBI officers seized Disudrin and Inoflox products which were not included in the list of properties to be seized in the search warrant.

UNILAB, in collaboration with the NBI, opposed the motion, insisting that the search was limited to the first and second floors of the Shalimar building located at the corner of Aragon Street and Lacson Avenue, Sta. Cruz, Manila. They averred that, based on the sketch appended to the search warrant application, Rabe’s affidavit, as well as the joint affidavit of Besarra and Divinagracia, the building where the search was conducted was located at No. 1571, Aragon Street corner Lacson Avenue, Sta. Cruz, Manila. They pointed out that No. 1524 Lacson Avenue, Sta. Cruz, Manila was the old address, and the new address was No. 1571, Aragon Street, Sta. Cruz, Manila. They maintained that the warrant was not implemented in any other place.[13]

In reply, the respondents insisted that the items seized were different from those listed in the search warrant. They also claimed that the seizure took place in the building located at No. 1524-A which was not depicted in the sketch of the premises which the applicant submitted to the trial court.[14] In accordance with the ruling of this Court in People v. Court of Appeals,[15] the respondents served a copy of their pleading on UNILAB.[16]

On March 11, 2004, the trial court issued an Order[17] granting the motion of the respondents, on the ground that the things seized, namely, Disudrin and Inoflox, were not those described in the search warrant. On March 16, 2004, the trial court issued an advisory[18] that the seized articles could no longer be admitted in evidence against the respondents in any proceedings, as the search warrant had already been quashed.

UNILAB, through the Ureta Law Office, filed a motion, in collaboration with the NBI agents, for the reconsideration of the order, contending that the ground used by the court in quashing the warrant was not that invoked by the respondents, and that the seizure of the items was justified by the plain view doctrine. The respondents objected to the appearance of the counsel of UNILAB, contending that the latter could not appear for the People of the Philippines. The respondents moved that the motion for reconsideration of UNILAB be stricken off the record. Disputing the claims of UNILAB, they insisted that the items seized were contained in boxes at the time of the seizure at No. 1524-A, Lacson Avenue corner Aragon Street, Sta. Cruz, Manila, and were not apparently incriminating on plain view. Moreover, the seized items were not those described and itemized in the search warrant application, as well as the warrant issued by the court itself. The respondents emphasized that the Shalimar Laboratories is authorized to manufacture galenical preparations of the following products:

> Products:
>
> - Povidone Iodine
> - Chamomile Oil
> - Salicylic Acid 10 g.
> - Hydrogen Peroxide 3% Topical Solution
> - Aceite de Alcamforado
> - Aceite de Manzanilla[19]

In a manifestation and opposition, the respondents assailed the appearance of the counsel of UNILAB, and insisted that it was not authorized to appear before the court under the Rules of Court, and to file pleadings. They averred that the BFAD was the authorized government agency to file an application for a search warrant.

In its counter-manifestation, UNILAB averred that it had the personality to file the motion for reconsideration because it was the one which sought the filing of the application for a search warrant; besides, it was not proscribed by Rule 126 of the Revised Rules of Criminal Procedure from participating in the proceedings and filing pleadings. The only parties to the case were the NBI and UNILAB and not the State or public prosecutor. UNILAB also argued that the offended party, or the holder of a license to operate, may intervene through counsel under Section 16 of Rule 110, in relation to Section 7(e), of the Rules of Criminal Procedure.

UNILAB prayed that an ocular inspection be conducted of the place searched by the NBI officers.[20] In their rejoinder, the respondents manifested that an ocular inspection was the option to look forward to.[21] However, no such ocular inspection of the said premises was conducted.

In the meantime, the BFAD submitted to the court the result of its examination of the Disudrin and Inoflox samples which the NBI officers seized from the Shalimar Building. On its examination of the actual component of Inoflox, the BFAD declared that the substance failed the test.[22] The BFAD, likewise, declared that the examined Disudrin syrup failed the test.[23] The BFAD had earlier issued the following report:

PRODUCT NAME

Manufacturer

L.N.

E.D.

FINDINGS

1.Phenylpropanolamine
(Disudrin) 2.5 mg./5mL Syrup

Unilab

21021552

3-06

-Registered, however, label/physical appearance does not conform with the BFAD approved label/ registered specifications.

2.Ofloxacin (Inoflox)
200 mg. tablet.

Unilab

99017407

3-05

-Registered, however, label/physical appearance does not conform with the BFAD approved label/ registered specifications.[24]

On May 28, 2004, the trial court issued an Order[25] denying the motion for reconsideration filed by UNILAB. The court declared that:

> The Search Warrant is crystal clear: The seizing officers were only authorized to take possession of "finished or unfinished products of United Laboratories (UNILAB), particularly REVICON Multivitamins, and documents evidencing the counterfeit nature of said products. The Receipt/Inventory of Property Seized pursuant to the warrant does not, however, include REVICON but other products. And whether or not these seized products are imitations of UNILAB items is beside the point. No evidence was shown nor any was given during the proceedings on the application for search warrant relative to the seized products.
>
> On this score alone, the search suffered from a fatal infirmity and, hence, cannot be sustained.[26]

UNILAB, thus, filed the present petition for review on certiorari under Rule 45 of the Rules of Court, where the following issues are raised:

> Whether or not the seized 792 bottles of Disudrin 60 ml. and 30 boxes of Inoflox 200 mg. are INADMISSIBLE as evidence against the respondents because they constitute the "fruit of the poisonous tree" or, CONVERSELY, whether or not the seizure of the same counterfeit drugs is justified and lawful under the "plain view" doctrine and, hence, the same are legally admissible as evidence against the respondents in any and all actions?[27]

The petitioner avers that it was deprived of its right to a day in court when the trial court quashed the search warrant for a ground which was not raised by the respondents herein in their motion to quash the warrant. As such, it argues that the trial court ignored the issue raised by the respondents. The petitioner insists that by so doing, the RTC deprived it of its right to due process. The petitioner asserts that the description in the search warrant of the products to be seized – "finished or unfinished products of UNILAB" – is sufficient to include counterfeit drugs within the premises of the respondents not covered by any license to operate from the BFAD, and/or not authorized or licensed to manufacture, or repackage drugs produced or manufactured by UNILAB. Citing the ruling of this Court in Padilla v. Court of Appeals,[28] the petitioner asserts that the products seized were in plain view of the officers; hence, may be seized by them. The petitioner posits that the respondents themselves admitted that the seized articles were in open display; hence, the said articles were in plain view of the implementing officers.

In their comment on the petition, the respondents aver that the petition should have been filed before the Court of Appeals (CA) because factual questions are raised. They also assert that the petitioner has no locus standi to file the petition involving the validity and the implementation of the search warrant. They argue that the petitioner merely assisted the NBI, the BFAD and the Department of Justice; hence, it should have impleaded the said government agencies as parties-petitioners. The petition should have been filed by the Office of the Solicitor General (OSG) in behalf of the NBI and/or the BFAD, because under the 1987 Revised Administrative Code, the OSG is mandated to represent the government and its officers charged in their official capacity in cases before the Supreme Court. The respondents further assert that the trial court may consider issues not raised by the parties if such consideration would aid the court in the just determination of the case.

The respondents, likewise, maintain that the raiding team slashed the sealed boxes so fast even before respondent Isip could object. They argue that the seizure took place at No. 1524-A, Lacson Avenue, Sta. Cruz, Manila covered by Transfer Certificate of Title (TCT) No. 220778, and not at No. 1571, Aragon Street, Sta. Cruz, Manila covered by TCT No. 174412 as stated in the search warrant. They assert that the ruling of the Court in People v. Court of Appeals[29] is applicable in this case. They conclude that the petitioner failed to prove the factual basis for the application of the plain view doctrine.[30]

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In reply, the petitioner asserts that it has standing and is, in fact, the real party-in-interest to defend the validity of the search warrant issued by the RTC; after all, it was upon its instance that the application for a search warrant was filed by the NBI, which the RTC granted. It asserts that it is not proscribed under R.A. No. 8203 from filing a criminal complaint against the respondents and requesting the NBI to file an application for a search warrant. The petitioner points out that the Rules of Criminal Procedure does not specifically prohibit a private complainant from defending the validity of a search warrant. Neither is the participation of a state prosecutor provided in Rule 126 of the said Rules. After all, the petitioner insists, the proceedings for the application and issuance of a search warrant is not a criminal action. The petitioner asserts that the place sought to be searched was sufficiently described in the warrant for, after all, there is only one building on the two parcels of land described in two titles where Shalimar Philippines is located, the place searched by the NBI officers.[31] It also asserts that the building is located at the corner of Aragon Street and Lacson Avenue, Sta. Cruz, Manila.[32]

The petitioner avers that the plain view doctrine is applicable in this case because the boxes were found outside the door of the respondents' laboratory on the garage floor. The boxes aroused the suspicion of the members of the raiding team – precisely because these were marked with the distinctive UNILAB logos. The boxes in which the items were contained were themselves so designated to replicate true and original UNILAB boxes for the same medicine. Thus, on the left hand corner of one side of some of the boxes[33] the letters "ABR" under the words "60 ml," appeared to describe the condition/quality of the bottles inside (as it is with genuine UNILAB box of the true medicine of the same brand). The petitioner pointed out that "ABR" is the acronym for "amber bottle round" describing the bottles in which the true and original Disudrin (for children) is contained.

The petitioner points out that the same boxes also had their own "license plates" which were instituted as among its internal control/countermeasures. The license plates indicate that the items within are, supposedly, "Disudrin." The NBI officers had reasonable ground to believe that all the boxes have one and the same data appearing on their supposedly distinctive license plates. The petitioner insists that although some of the boxes marked with the distinctive UNILAB logo were, indeed, sealed, the tape or seal was also a copy of the original because these, too, were marked with the distinctive UNILAB logo. The petitioner appended to its pleading pictures of the Shalimar building and the rooms searched showing respondent Isip;[34] the boxes seized by the police officers containing Disudrin syrup;[35] and the boxes containing Inoflox and its contents.[36]

The issues for resolution are the following: (1) whether the petitioner is the proper party to file the petition at bench; (2) whether it was proper for the petitioner to file the present petition in this Court under Rule 45 of the Rules of Court; and (3) whether the search conducted by the NBI officers of the first and second floors of the Shalimar building and the seizure of the sealed boxes which, when opened, contained Disudrin syrup and Inoflox, were valid.

On the first issue, we agree with the petitioner's contention that a search warrant proceeding is, in no sense, a criminal action[37] or the commencement of a prosecution.[38] The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in nature, and made necessary because of public necessity. It resembles in some respect with what is commonly known as John Doe proceedings.[39] While an application for a search warrant is entitled like a criminal action, it does not make it such an action.

A search warrant is a legal process which has been likened to a writ of discovery employed by the State to procure relevant evidence of crime.[40] It is in the nature of a criminal process, restricted to cases of public prosecutions.[41] A search warrant is a police weapon, issued under the police power. A search warrant must issue in the name of the State, namely, the People of the Philippines.[42]

A search warrant has no relation to a civil process. It is not a process for adjudicating civil rights or maintaining mere private rights.[43] It concerns the public at large as distinguished from the ordinary civil action involving the rights of private persons.[44] It may only be applied for in the furtherance of public prosecution.[45]

However, a private individual or a private corporation complaining to the NBI or to a government agency charged with the enforcement of special penal laws, such as the BFAD, may appear, participate and file pleadings in the search warrant proceedings to maintain, inter alia, the validity of the search warrant issued by the court and the admissibility of the properties seized in anticipation of a criminal case to be filed; such private party may do so in collaboration with the NBI or such government agency. The party may file an opposition to a motion to quash the search warrant issued by the court, or a motion for the reconsideration of the court order granting such motion to quash.[46]

In this case, UNILAB, in collaboration with the NBI, opposed the respondents' motion to quash the search warrant. The respondents served copies of their reply and opposition/comment to UNILAB, through Modesto Alejandro, Jr.[47] The court a quo allowed the appearance of UNILAB and accepted the pleadings filed by it and its counsel.

The general rule is that the proper party to file a petition in the CA or Supreme Court to assail any adverse order of the RTC in the search warrant proceedings is the People of the Philippines, through the OSG. However, in Columbia Pictures Entertainment, Inc. v. Court of Appeals,[48] the Court allowed a private corporation (the complainant in the RTC) to file a petition for certiorari, and considered the petition as one filed by the OSG. The Court in the said case even held that the petitioners therein could argue its case in lieu of the OSG:

> From the records, it is clear that, as complainants, petitioners were involved in the proceedings which led to the issuance of Search Warrant No. 23. In People v. Nano, the Court declared that while the general rule is that it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the Court of Appeals, if there appears to be grave error committed by the judge or a lack of due process, the petition will be deemed filed by the private complainants therein as if it were filed by the Solicitor General. In line with this ruling, the Court gives this petition due course and will allow petitioners to argue their case against the questioned order in lieu of the Solicitor General.[49]

The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it.[50] In this case, the Court has opted to take cognizance of the petition, considering the nature of the issues raised by the parties.

The Court does not agree with the petitioner's contention that the issue of whether the Disudrin and Inoflox products were lawfully seized was never raised in the pleadings of the respondents in the court a quo. Truly, the respondents failed to raise the issue in their motion to quash the search warrant; in their reply, however, they averred that the seized items were not included in the subject warrant and, therefore, were not lawfully seized by the raiding team. They also averred that the said articles were not illegal per se, like explosives and shabu, as to justify their seizure in the course of unlawful search.[51] In their Opposition/Comment filed on March 15, 2004, the respondents even alleged the following:

> The jurisdiction of this Honorable Court is limited to the determination of whether there is a legal basis to quash the search warrant and/or to suppress the seized articles in evidence. Since the articles allegedly seized during the implementation of the search warrant – Disudrin and Inoflux products – were not included in the search warrant, they were, therefore, not lawfully seized by the raiding team; they are not illegal per se, as it were, like an arms cache, subversive materials or shabu as to justify their seizure in the course of a lawful

> search, or being in plain view or some such. No need whatever for some public assay.
>
> The NBI manifestation is a glaring admission that it cannot tell without proper examination or assay that the Disudrin and Inoflox samples allegedly seized from respondent's place were counterfeit. All the relevant presumptions are in favor of legality.[52]

The Court, therefore, finds no factual basis for the contention of the petitioner that the respondents never raised in the court a quo the issue of whether the seizure of the Disudrin and Inoflox products was valid.

In any event, the petitioner filed a motion for the reconsideration of the March 11, 2004 Order of the court a quo on the following claims:

> 2.01 The Honorable Court ERRED in ruling on a non-issue or the issue as to the alleged failure to particularly describe in the search warrant the items to be seized but upon which NO challenge was then existing and/or NO controversy is raised;
>
> 2.02 The Honorable Court ERRED in its ruling that "finished or unfinished products of UNILAB" cannot stand the test of a particular description for which it then reasons that the search is, supposedly unreasonable; and,
>
> 2.03 The Honorable Court ERRED in finding that the evidence seized is lawfully inadmissible against respondents.[53]

The court a quo considered the motion of the petitioner and the issue raised by it before finally resolving to deny the same. It cannot thus be gainsaid that the petitioner was denied its right to due process.

On the validity of the seizure of the sealed boxes and its contents of Disudrin and Inoflox, the Court, likewise, rejects the contention of the petitioner.

A search warrant, to be valid, must particularly describe the place to be searched and the things to be seized. The officers of the law are to seize only those things particularly described in the search warrant. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime. The search is limited in scope so as not to be general or explanatory. Nothing is left to the discretion of the officer executing the warrant.[54]

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.[55]

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.[56] Under the doctrine, there is no invasion of a legitimate expectation of privacy and there is no search within the meaning of the Constitution.

The immediate requirement means that the executing officer can, at the time of discovery of the object or the facts therein available to him, determine probable cause of the object's incriminating evidence.[57] In other words, to be immediate, probable cause must be the direct result of the officer's instantaneous sensory perception of the object.[58] The object is apparent if the executing officer had probable cause to connect the object to criminal activity. The incriminating nature of the evidence becomes apparent in the course of the search, without the benefit of any unlawful search or seizure. It must be apparent at the moment of seizure.[59]

The requirement of inadvertence, on the other hand, means that the officer must not have known in advance of the location of the evidence and intend to seize it.[60] Discovery is not anticipated.[61]

The immediately apparent test does not require an unduly high degree of certainty as to the incriminating character of evidence. It requires merely that the seizure be presumptively reasonable assuming that there is probable cause to associate the property with criminal activity; that a nexus exists between a viewed object and criminal activity.[62]

Incriminating means the furnishing of evidence as proof of circumstances tending to prove the guilt of a person.[63]

Indeed, probable cause is a flexible, common sense standard. It merely requires that the facts available to the officer would warrant a man of reasonable caution and belief that certain items may be contrabanded or stolen property or useful as evidence of a crime. It does not require proof that such belief be correct or more likely than true. A practical, non-traditional probability that incriminating evidence is involved is all that is required. The evidence thus collected must be seen and verified as understood by those experienced in the field of law enforcement.[64]

In this case, Disudrin and/or Inoflox were not listed in the search warrant issued by the court a quo as among the properties to be seized by the NBI agents. The warrant specifically authorized the officers only to seize "counterfeit Revicon multivitamins, finished or unfinished, and the documents used in recording, manufacture and/or importation, distribution and/or sale, or the offering for sale, sale and/or distribution of the said vitamins." The implementing officers failed to find any counterfeit Revicon multivitamins, and instead seized sealed boxes which, when opened at the place where they were found, turned out to contain Inoflox and Disudrin.

It was thus incumbent on the NBI agents and the petitioner to prove their claim that the items were seized based on the plain view doctrine. It is not enough to prove that the sealed boxes were in the plain view of the NBI agents; evidence should have been adduced to prove the existence of all the essential requirements for the application of the doctrine during the hearing of the respondents' motion to quash, or at the very least, during the hearing of the NBI and the petitioner's motion for reconsideration on April 16, 2004. The immediately apparent aspect, after all, is central to the plain view exception relied upon by the petitioner and the NBI. There is no showing that the NBI and the petitioner even attempted to adduce such evidence. In fact, the petitioner and the NBI failed to present any of the NBI agents who executed the warrant, or any of the petitioner's representative who was present at the time of the enforcement of the warrant to prove that the enforcing officers discovered the sealed boxes inadvertently, and that such boxes and their contents were incriminating and immediately apparent. It must be stressed that only the NBI agent/agents who enforced the warrant had personal knowledge whether the sealed boxes and their contents thereof were incriminating and that they were immediately apparent.[65] There is even no showing that the NBI agents knew the contents of the sealed boxes before they were opened.

In sum then, the Court finds and so hold that the petitioner and the NBI failed to prove the essential requirements for the application of the plain view doctrine.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The assailed orders of the Regional Trial Court are AFFIRMED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

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[1] Rollo, p. 95.

[2] Id. at 108.

[3] Id. at 99.

[4] Id. at 103-104.

[5] Id. at 106-107.

[6] Rollo, p. 106.

[7] Id. at 112.

[8] Rollo, p. 114.

[9] Id. at 116.

[10] Id.

[11] Rollo, p. 115.

[12] Id. at 117-124.

[13] Rollo, pp. 125-128.

[14] Id. at 129-136.

[15] G.R. No. 126379, 26 June 1998, 291 SCRA 400.

[16] Rollo, p. 138.

[17] Id. at 153-155.

[18] Id. at 157.

[19] Rollo, p. 195.

[20] Rollo, p. 207.

[21] Id. at 214.

[22] Id. at 175.

[23] Id. at 177.

[24] Id. at 182.

[25] Rollo, pp. 18-19.

[26] Id. at 19.

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[27] Id. at 46.

[28] G.R. No. 121917, 12 March 1997, 269 SCRA 402.

[29] G.R. No. 126379, 26 June 1998, 291 SCRA 400.

[30] Rollo, pp. 229-244.

[31] Annexes “A” and “A-1,” Rollo, p. 285.

[32] Annex “G,” Id. at 125.

[33] Annexes “C-2” and “C-4,” Id. at 288-289.

[34] Annexes “A” to “A-1” and “B-2,” Rollo, pp. 286-287.

[35] Annexes “C-2” and “C-4,” Id. at 288-289.

[36] Annexes “C-5,” “C-6” and “C-7,” Id. at 290-291.

[37] State v. Kieffer, 187 NW 164 (1922).

[38] Bevington v. United States, 35 F.2d 584 (1929).

[39] State v. Kieffer, supra.

[40] Lodyga v. State, 179 NE 542 (1932).

[41] C.J.S., Searches and Seizures § 63, p. 825, citing State v. Derry, 85 N.E. 765; Brooks v. Wyner, 46 So.2d 97; and Philipps v. Johns, 12 Tenn. App. 354.

[42] Section 1, Rule 126 of the Revised Rules of Criminal Procedure.

[43] State v. Derry, 86 NE 482 (1908).

[44] Lodyga v. State, supra.

[45] State v. Derry, supra.

[46] 20th Century Fox Film Corporation v. Court of Appeals, G.R. Nos. L-76649-51, 19 August 1988, 164 SCRA 655.

[47] Rollo, p. 145.

[48] G.R. No. 111267, 20 September 1996, 262 SCRA 219.

[49] Id. at 224.

[50] Ark Travel Express, Inc. v. Abrogar, G.R. No. 137010, 29 August 2003, 410 SCRA 148.

[51] Rollo, pp. 131-132.

[52] Rollo, pp. 140-141.

[53] Id. at 23.

[54] People v. Go, G.R. No. 144639, 12 September 2003, 411 SCRA 81.

[55] Coolidge v. New Hampshire, 403 US 443, 91 S.Ct. 2022 (1971).

[56] United States v. Gray, 484 F.2d 352 (1973).

[57] United States v. Beal, 810 F.2d 574 (1987).

[58] Ibid.

[59] Coolidge v. New Hampshire, supra.

[60] Texas v. Brown, 460 US 730, 103 S.Ct. 1535 (1983).

[61] Coolidge v. New Hampshire, supra.

[62] United States v. Beal, supra.

[63] United States v. Truitt, Jr., 521 F.2d 1174 (1975).

[64] Texas v. Brown, supra.

[65] People v. Go, supra.

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