REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT OF MANILA
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 34

OFFICE OF THE EXECUTIVE JUDGE

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Retired Police Senior Inspector FULGENCIO FAVO, Retired Senior Police Officer IV BIENVENIDO LAUD @TATAY LAUD, PO3 VIVENCIO JUMAWAN, PO1 ENRIQUE AYAO, ROLANDO DUWILAG, VALENTIN DUWILAG, IAN DUWILAG, JEMELITO DURAN, DANNY BALO, DODONG TATAD @ALEX, Two (2) JOHN DOES, and other occupants of LAUD GOLD CUP FIRING RANGE, Laud Compound, Purok 3, Brgy. Ma-a, Davao City,
Respondents.

Search Warrant No. 09-14347
For: Violation of Art. 248 (Murder 13 counts) Revised Penal Code

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URGENT MOTION TO QUASH and to SUPPRESS ILLEGALLY SEIZED EVIDENCE

(Re: Search Warrant No. 09-14347 dated 03 July 2009)

Respondent **BIENVENIDO LAUD**, by counsel, respectfully moves for the quashal of Search Warrant No. 09-14347 dated 03 July 2009 ("Search Warrant") and, in support thereof, respectfully states:

PREFATORY STATEMENT

So jealously guarded is the fundamental dictum that search and seizure must be done through a valid and enforceable judicial warrant; otherwise they become unreasonable and susceptible to challenge. Commenting on the

importance of upholding such inviolable right, the Supreme Court in the case of ***People vs. Argawanon***[1], solicitously held:

> "This constitutional provision is a safeguard against wanton and unreasonable invasion of the privacy and liberty of a citizen as to his persons, papers and effects. The right of a person to be secure against unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. A statute, rule or situation which allows exceptions to the requirement of a warrant of arrest or search warrant must be strictly construed. We cannot liberally consider arrests or seizures without warrant or extend their application beyond the cases specifically provided or allowed by law. To do so would infringe upon personal liberty and set back a basic right so often violated and yet, so deserving full protection and vindication."

For a search and seizure to be reasonable, the same must be effected by means of a valid search warrant. In a long line of decisions, the Supreme Court declared invalid search warrants issued in utter disregard of the aforementioned constitutional injunction.[2]

Specifically observing the dangers borne by the permutation of applying for search warrants in a court less conspicuous and far removed from the territory where the alleged offense was committed, or where the articles sought to be seized are found, Chief Justice Hilario G. Davide, Jr., in his dissent in the case of ***Malaloan vs. Court of Appeals,***[3] prophetically stated:

> "The absence of any express statutory provision prohibiting a court from issuing a search warrant in connection with a crime committed outside its territorial jurisdiction should not be construed as a grant of blanket authority to any court of justice in the country to issue a search warrant in connection with a crime committed outside its territorial jurisdiction. The majority view suggests or implies that a municipal trial court in Tawi-Tawi, Basilan, or Batanes can validly entertain an application for a search warrant and issue one in connection with a crime committed in

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[1] 215 SCRA 652
[2] Lim vs. Ponce de Leon, 66 SCRA 301 (1975)
[3] G.R. No. 104897, 06 May 1994, 232 SCRA 249, 256

> Manila. Elsewise stated, all courts in the Philippines, including the municipal trial courts, can validly issue a search warrant in connection with a crime committed anywhere in the Philippines. Simply put, all courts of justice in the Philippines have, for purposes of issuing a search warrant, jurisdiction over the entire archipelago.
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> "I cannot subscribe to this view since, in the first place, a search warrant is but an incident to a main case and involves the exercise of an ancillary jurisdiction therefore, the authority to issue it must necessarily be co-extensive with the court's territorial jurisdiction. To hold otherwise would be to add an exception to the statutory provisions defining the territorial jurisdiction of the various courts of the country, which would amount to judicial legislation."

What hitherto had been a voice raised in dissent is now a core principle of the present rules on search and seizure, particularly with respect to the proper courts where applications for search warrants should be filed. A perfunctory review of the rules thus promulgated would have prevented the erroneous issuance of the contested Search Warrant here.

The instant case has brought to bear a gross and shameless fishing expedition against Respondent, whose right to be secured in his property was unabashedly trampled upon on the juvenile strength of an improperly issued search warrant.

It is in light of procedural rules anchored on well-settled constitutional pronouncements that Respondent respectfully moves for the quashal of the Search Warrant issued by Executive Judge Romulo A. Lopez, and for the suppression of illegally seized evidence on the following grounds:

[A]

THE HONORABLE COURT HAS NO JURISDICTION TO ISSUE THE SEARCH WARRANT.

[B]

EVEN ASSUMING THAT THE HONORABLE COURT HAS JURISDICTION TO ISSUE THE SEARCH WARRANT, THE SAME SHOULD BE QUASHED FOR LACK OF PROBABLE CAUSE.

[C]

THE SEARCH WARRANT IS QUASHABLE FOR VIOLATION OF THE RULE AGAINST FORUM-SHOPPING.

[D]

THE SEARCH WARRANT IS INVALID FOR BEING VIOLATIVE OF THE ONE-SPECIFIC-OFFENSE RULE AND LACK OF SPECIFICITY OF THE PLACE TO BE SEARCHED AND THE ARTICLES TO BE SEIZED.

[E]

THE SEARCH WARRANT IS QUASHABLE FOR THE ABRASIVENESS OF OFFICIAL INTRUSIONS AGAINST RESPONDENT'S PROPERTY.

DISCUSSION

[A]

THE HONORABLE COURT HAS NO JURISDICTION TO ISSUE THE SEARCH WARRANT.

The Honorable Court has no territorial jurisdiction over the place where the alleged offense was committed.

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1. Well-settled is the rule that venue in search warrant applications ultimately involves a question of territorial jurisdiction. ***Section 2, Rule 126 of the Revised Rules on Criminal Procedure*** distinctly provides:

> "Court where application for search warrant shall be filed. - An application for search warrant shall be filed with the following:
>
> "(a) Any court within whose territorial jurisdiction a crime was committed.
>
> "(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> "However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending."

2. The aforecited rule vests in the court where the criminal action is pending exclusive and primary jurisdiction to resolve applications for the issuance of search warrants. This conforms with the principle that where the court acquires jurisdiction over a particular case, it does so to the exclusion of all other courts, including the issuance of ancillary writs and processes.

3. By way of exception, an application for a search warrant may be filed with another court, within the judicial region, but only for extreme and compelling reasons which the applicant should prove to the satisfaction of that court.

4. As enunciated by the Supreme Court in ***Malaloan vs. Court of Appeals***[4]:

> "The court wherein the criminal case is pending shall have primary jurisdiction to issue search warrants necessitated by and for purposes of said case. An application for a search warrant may be filed with another court only under extreme and compelling circumstances, that the applicant must prove to the satisfaction of the latter court which may or may not give due course to the application depending on the validity of the justification offered for

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[4] *supra*

not filing the same in the court with primary jurisdiction thereover."

5. In the present case, no separate criminal action has yet been instituted against the Respondent. Clearly, **any application for a search warrant should be filed only with the judge within whose territorial jurisdiction the crime was committed.**

6. Perusing the face of the contested Search Warrant, the offenses hurled against Respondent were allegedly committed in Davao City. The place of the commission of the offense being Davao City, this Honorable Court clearly had no jurisdiction to entertain any application for, much less issue, the Search Warrant.

There are no compelling reasons to warrant deviation from the rule.
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7. As aforementioned, the application for a search warrant may be filed in a court other than the court having territorial jurisdiction over the place where the crime was committed only if the applicant can show "compelling reasons" therefor. Such "compelling reasons" must be stated in the application and must be of such a nature as to make it extremely necessary to depart from the established jurisdictional rule.

8. Thus, the application must advance reasons of such grave importance that would "compel" a judge, free from biases and preconceptions, to apply the exception, rather than the general rule, namely, that for that particular case only, the application may be filed in the court not having primary jurisdiction.

9. It becomes all too clear here that no extreme and compelling reason whatsoever had been advanced by the applicant and his witness that would justify the filing of the application with this Honorable Court.

10. The application here merely parroted the very ethereal proposition that filing the same with the proper court would lead to a "frustration of justice." How the filing of the application with the proper court will lead to a frustration of justice is so difficult to fathom that all is left to the clairvoyance of the Executive Judge issuing the Search Warrant. This, to Respondent's mind, is sorely insufficient to justify a deviation from the established rule.

11. Thus, with all due respect, in the absence of any extreme and compelling reason, the issuance of a search warrant by a court not having exclusive and primary jurisdiction is unjustifiable and arbitrary, therefore invalid.

The Honorable Court does not even belong to the same judicial region as the court where the alleged offense was committed or where the warrant shall be enforced.
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12. Even granting for the sake of argument that compelling reasons exist to justify the filing of the application for a search warrant in a court other than the court within whose territorial jurisdiction a crime was committed, still, the very same rule requires that such other court must be within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant is to be enforced.

13. The foregoing judicial dictum was clarified by the Supreme Court in the case of ***Sony Computer Entertainment, Inc., vs. Supergreen, Incorporated***[5], in this manner:

> "Now, in the present case, respondent's premises in Cavite, within the Fourth Judicial Region, is definitely beyond the territorial jurisdiction of the RTC of Manila, in the National Capital Region. Thus, the RTC of Manila does not have the authority to issue a search warrant for offenses committed in Cavite. Hence, petitioner's reliance in Malaloan is misplaced. Malaloan involved a court in the same judicial region where the crime was committed. The instant case involves a court in another region. Any other interpretation re-defining territorial jurisdiction would amount to judicial legislation."

14. There should be no debate over the clarity of the above Supreme Court pronouncement. In fact, as early as the case of ***Malaloan vs. Court of Appeals***, the Supreme Court recognized that the Judiciary Reorganization Act of 1980 conferred upon the regional trial courts and their judges a "territorial jurisdiction, regional in scope." Hence, the pronouncements of the Supreme Court regarding the authority of the courts to issue search warrants should not be read apart from the Judiciary Reorganization Act of 1980.

15. The premises sought to be searched and the place where the articles are to be found are undeniably located in Davao City, falling under the Eleventh Judicial Region. The Honorable Court which issued the contested Search Warrant, on the other hand, belongs to the National Capital Judicial Region. No amount of legal reasoning could dislodge the fact that the Honorable Court, with due respect, had no jurisdiction to issue, and should not have issued, the questioned Search Warrant.

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[5] G.R. No. 161823, 22 March 2007

The alleged offense of murder is neither a transitory nor a continuing offense.

16. Admittedly, the Supreme Court also recognized an exception to the foregoing rule. The exception is when the alleged acts would constitute a transitory or continuing offense. The Supreme Court held in ***Sony Computer Entertainment, Inc., vs. Supergreen, Inc.,***[6] that an application for a search warrant may be filed in any court where any element of the alleged offense was committed.

17. A transitory offense is one where any one of the essential ingredients took place, such as estafa, malversation, and abduction, while a continuing offense is one which is consummated in one place, yet by reason of the nature of the offense, the violation of the law is deemed continuing. In transitory or continuing offenses, some acts material and essential to the crime occur in one province and some in another, in which case, the rule is settled that the court of either province where any of the essential ingredients of the crime took place has jurisdiction to try the case.[7]

18. In the instant case, the alleged offense, which is murder, is said to have been committed in Davao City. The Search Warrant further mentions that the remains of the victims were allegedly buried, likewise, in Davao City. Certainly, the crime of murder is neither a transitory nor a continuing offense, which would justify the filing of the application for a search warrant in a court other than the court having territorial jurisdiction over the crime allegedly

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[6] *ibid.*

[7] Parulan vs. Director of Prisons, 22 SCRA 638 (1988)

committed. To even attempt to say that any of the essential elements of the crime of murder had been committed in Manila is more absurd.

19. Thus, if all the acts material to the crime and requisite of the consumption thereof occurred in one territory, the court therein has sole jurisdiction to try the case, and consequently, to issue ancillary processes such as a search warrant. All these requisites point to Davao City as the proper court where the application should have been filed.

The Guidelines on the Application for and Enforceability of Search Warrants ("Guidelines") is inapplicable in the instant case.

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20. The Guidelines issued by the Supreme Court authorizing the Executive Judge and Vice Executive Judges of the Regional Trial Courts of Manila and Quezon City to issue search warrants, *if justified,* which may be served in places outside the territorial jurisdiction of said courts is inapplicable to the instant case.

21. First, said Guidelines does not vest unbridled authority over Executive Judges of Manila and Quezon City to issue search warrants without complying with the fundamental standards as set forth in the Rules of Court, *i.e.,* the place to be searched and the things to be seized must still be particularly described. Non-compliance with such established rule renders the search warrant void even if issued under the authority granted under the Guidelines.

22. Second, the Guidelines cover only applications for search warrants involving heinous crimes, illegal gambling, dangerous drugs and illegal possession of firearms[8], and violations of Intellectual Property Code, the Anti-Money Laundering Act of 2001, and the Tariff and Customs Code.[9] Certainly, murder, the offense alleged to have been committed, does not fall under any of the enumerated covered offenses.

23. "Heinous Crimes", on the other hand, had neither been defined nor characterized by Congress. Republic Act 7659 itself merely selected some existing crimes for which it prescribed death as an applicable penalty.[10] It did not give a standard or characterization by which courts may be able to appreciate the heinousness of a crime. In other words, Republic Act 7659 merely imposes death penalty on already existing offenses once the court appreciates the presence of aggravating circumstances.

[B]

EVEN ASSUMING THAT THE HONORABLE COURT HAS JURISDICTION TO ISSUE THE SEARCH WARRANT, THE SAME SHOULD BE QUASHED FOR LACK OF PROBABLE CAUSE.

24. Probable cause for purposes of issuance of a search warrant has been defined as such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. Probable cause must be shown to be within the personal knowledge of

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[8] A.M. No. 99-20-09-SC, 25 January 2000.
[9] A.M. No. 03-8-02-SC, 27 January 2004.
[10] Please see *J. Panganiban's* Separate Opinion in People vs. Echagaray, 267 SCRA 682

the complainant or the witnesses he may produce and not based on mere hearsay.[11]

25. There is no showing that the exacting requirements for the determination of the existence of probable cause were satisfied in the instant case. It is inconceivable that this Honorable Court had satisfied itself with the statements of the applicant and his lone witness and immediately concluded that probable cause exists to justify the issuance of a search warrant against Respondent.

26. First, the application was not based on the personal knowledge of the applicant. The applicant merely alleges that he had verified, validated, and conducted surveillance thus vesting in him personal knowledge of the unverified story of his witness. How such verification, validation, and surveillance were conducted, however, were never mentioned in the application.

27. Respondent respectfully invites the Honorable Court to take guidance in the Supreme Court ruling in the landmark case of ***Prudente vs. The Hon. Executive Judge A.M. Dayrit***[12], wherein the High Court aptly observed:

> "In his application for search warrant, P/Major Alladin Dimagmaliw stated that 'he has been informed' that Nemesio Prudente 'has in his control and possession' the firearms and explosives described therein, and that he 'has verified the report and found it to be a fact.' On the other hand, in his supporting deposition, P/Lt. Florencio C. Angeles declared that, as a result of their continuous surveillance for several days, they *gathered informations from verified sources* that the holders of the said firearms and explosives are not licensed to possess them. **In other words, the applicant and his witness had no personal knowledge of the facts and circumstances which became the basis for issuing the**

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[11] *ibid*

[12] 180 SCRA 69 (1989)

questioned search warrant, but acquired knowledge thereof only through information from other sources or persons.

"While it is true that in his application for search warrant, applicant P/Major Dimagmaliw stated that *he verified the information* he had earlier received that petitioner had in his possession and custody the firearms and explosives described in the application, and that he found it to be a fact, **yet there is nothing in the record to show or indicate *how* and *when said applicant verified* the earlier information acquired by him as to justify his conclusion that he found such information to be a fact**. xxx." (emphasis supplied)

28. What transpired in the instant case is precisely what the Supreme Court had already ruled against in the ***Prudente*** case. This Honorable Court risks a repetition of the very evils sought to be prevented by the Supreme Court in that case for the Search Warrant here was obviously issued despite the obvious lack of personal knowledge of the applicant thereof.

29. Second, the Honorable Court should have taken into consideration the length of time which had passed before the applicant and his lone witness surfaced to prosecute an offense which they claim to have been committed a considerable time ago. Let it be stressed that the alleged offense was committed sometime in years 2002 and 2003, while the application for the Search Warrant was unbelievably made only in 2009! The ineptitude and negligence by which the applicant and his sole witness carried on the prosecution of an otherwise gruesome offense negate even the remotest of possibilities that such offense was indeed committed in the first place.

30. In ***Asian Surety & Insurance Co., Inc. vs. Herrera,***[13] the Supreme Court observed that the offenses alleged took place from 1961 to 1964 and the application for search warrant was made on October 27, 1965. **The time of the**

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[13] 54 SCRA 312

application is so far removed in time as to make the probable cause of doubtful veracity and the warrant vitally defective. The affidavits containing statements as to the time of the alleged offense must be clear and definite and must not be too remote from the time of the making of the affidavit and issuance of the search warrant.

31. Third, the Honorable Court should have been fully alert of the possible ulterior motives which the applicant and/or his witness may have against Respondent. Respondent, for sure, holds no grudge whatsoever against applicant or the witness he produced. The same may not hold true with respect to the applicant and his witness.

32. In cautioning the courts against unscrupulous applicants for search warrants, the Supreme Court in the case of ***Quintero vs. National Bureau of Investigation***,[14] observed that had the respondent judge been cautious in issuing the questioned search warrant, he would have wondered and, therefore, asked the affiant why said incident was reported only on 31 May 1972, when the latter allegedly witnessed it on 29 May 1972. The High Court further observed that respondent judge should have questioned the statements of complainant, and should have been alert to some ulterior motives on the part of the latter, considering that complainant's wife was one of those implicated in the expose made by Quintero. **An ulterior motive to an application for search warrant should alert the judge to possible misrepresentations.**

33. Fourth, and more importantly, there is no competent proof of particular acts or specific omissions had been advanced by the applicant to

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[14] 162 SCRA 471

justify the ascertainment of probable cause in the instant case. All that was offered for the Honorable Court to precipitately issue the contested Search Warrant was the superficial allegation that the thirteen (13) victims were killed and were buried upon the instructions of Respondent. This allegation, however, does not constitute competent proof to engender a well-founded belief that an offense was indeed committed. As early as the case of ***Stonehill vs. Diokno***[15], the Supreme Court had already stressed the importance of competent proof of particular acts or specific omissions in the ascertainment of probable cause, lacking which, the search warrant issued becomes susceptible to invalidation.

[C]

THE SEARCH WARRANT IS QUASHABLE FOR VIOLATION OF THE RULE AGAINST FORUM-SHOPPING.

34. Even granting that for exceptional reasons, the application for issuance of search warrant may be filed at a court other than the court having jurisdiction of the place where the offense was committed, a search warrant may still be quashed if the applicant had been guilty of forum-shopping.

35. There is forum-shopping when a party respectively avails himself of several judicial remedies in *different venues simultaneously or successively,* all substantially founded on the same transactions, essential facts and circumstances, all raising substantially the same issues and involving exactly the same parties.[16]

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[15] 20 SCRA 383 (1967)
[16] Candido vs. Camacho, G.R. No. 136751, 15 January 2002

36. The assailed Search Warrant was issued by this Honorable Court pursuant to the application filed by PSSUPT Roberto B. Fajardo of the Philippine National Police. Said application sought to search "Laud Gold Cup Firing Range, Laud Compound, Purok 3, Brgy. Ma-a, Davao City" for the remains of summarily executed victims reportedly buried under ground of the premises owned by Respondent. The Search Warrant was issued on 03 July 2009, giving the police officers up to 13 July 2009 to conduct their search.

37. However, perhaps feeling apprehensive over the fact that they could not possible dig the entire Laud Compound in ten (10) days, another application for search warrant was posthastedly filed in the Regional Trial Court of Davao City, Branch 15, again seeking authorization to dig up the very same Laud Compound to search for the very same fancied human bones allegedly belonging to persons believed to be victims of summary execution.

38. It therefore appears that two (2) separate search warrants were sought, one after the other, seeking authorization from two (2) different Regional Trial Courts, to search the very same place and to seize the very same articles, hoping to achieve favorable warrants from both courts.

39. Such highly improper, procedurally defective, and contumacious conduct constitutes forum-shopping which more than justifies the quashal of the Search Warrant. The Supreme Court in the case of ***Washington Distillers, Inc. vs. Court of Appeals***[17], already ruled:

> "Judge Descallar based his order not only on the theory that a search warrant cannot be enforced outside the territorial

[17] 260 SCRA 821 (1996)

jurisdiction of the court which issued it but also upon his finding that private respondent was guilty of forum-shopping. '"There is forum-shopping whenever as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another."' This is exactly what private respondent did in seeking the issuance of a search warrant from the Manila Regional Trial Court, after failing to obtain warrants from the Pampanga courts. x x x.

"It cannot be contended that the rule against forum-shopping applies only to actions, but not to a search warrant because the latter is simply '"a process"' incidental to a criminal action. Circular No. 28-91 requires parties to certify under oath that they have not "'theretofore commenced any other *action or proceeding* involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency"' and that to the best of their knowledge '"no such *action or proceeding* is pending"' in said courts or agencies.

"Indeed, the policy against multiple court proceedings clearly applies to applications for search warrants. If an application for search warrant can be filed even where there are other applications pending or denied in other courts, the situation would become intolerable. Our ruling in *Malaloan* recognized this problem and implied that forum-shopping is prohibited even in search warrant proceedings.

[D]

THE SEARCH WARRANT IS INVALID FOR BEING VIOLATIVE OF THE ONE-SPECIFIC-OFFENSE RULE AND LACK OF SPECIFICITY OF THE PLACE TO BE SEARCHED AND THE ARTICLES TO BE SEIZED.

40. ***Section 4, Rule 126 of the Revised Rules of Criminal Procedure*** provides the indispensable requisites for the issuance of a valid search warrant as follows:

> 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."

41. The Search Warrant was issued in violation of the above rule that it must be issued in connection with one specific offense. A cursory reading of the face of the Search Warrant will readily show that it was issued in connection with the alleged murder of 13 different persons. Clearly, these constitute 13 different offenses, which should be covered by 13 individual and separate search warrants.

42. Fundamental is the rule that there must be a specific description of the place to be searched and the things to be seized to prevent arbitrary and indiscriminate use of the warrant. The purpose of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant - to leave the officers of the law with no discretion regarding what articles they shall seize.[18]

43. Scanning the four corners of the contested Search Warrant, one could easily note that the same miserably failed to conform to the preclusive rule as aforecited. The Search Warrant only haphazardly provides:

> "xxx and buried the remains of those persons they summarily executed namely @ JOVANI, @ TONY, @BOBONG, @TOTO, @JAY, @ALEX, @ALVIN, @PEPING, @DONDON, @HARON LUPON, @ALIMUDIN JULKIFLI, @ DATU ALA, AND @TAIB.
>
> "YOU ARE HEREBY COMMANDED to dig the ground and search at any time of the day or night the premises of LAUD GOLD FIRING RANGE, Laud Compound, Purok 3, Brgy Ma-a, Davao City, as shown in the attached sketch, Exh. A, A-1 and picture, Exh. B, B-1 and to retrieve the remains of the above mentioned victims for laboratory examination."[19]

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[18] Tambasen vs. People, G.R. No. 89103, 14 July 1995

[19] Page 2, Search Warrant No. 09-14347.

44. The contested Search Warrant in fact authorizes the police officers to dig the entire grounds of Laud Gold Firing Range, which is not only physically improbable but unduly oppressive to Respondent.

45. Let it be emphasized that the Laud Compound sought to be brazenly searched is composed of at least three (3) separate firing ranges, sprawled over approximately seven (7) hectares of land and hilly terrains, portions of which are covered by thick shrubs and growing trees. The Laud Compound was never enclosed by any sort of fence or border walls, thus exposing it to outside elements which the owner cannot possibly exclude at all times. In fact, the Laud Compound had been infested with subversive elements known to be members of the New People's Army (NPA) some fifteen (15) or so years ago.

46. With all due respect, by issuing the Search Warrant in question, this Honorable Court had virtually given the police officers a roving commission to scour the entire length and breadth of the Laud Firing Range in the vain hope that some evidence against Respondent may literally be unearthed. The contested Search Warrant now gives authority to the police officers to dig, and consequently disturb and damage, all of the seven (7) hectares of Respondent's land, as the Search Warrant failed to specifically describe which place or portion thereof is to be searched. Of the at least three (3) firing ranges composing the Laud Compound, which firing range should the police officers dig? Obviously, the police officers are granted blanket authority to dig up whichever portion they deem fit, making the Search Warrant grossly defective and invalid.

47. Further, the Search Warrant likewise authorizes the police officers to exhume alleged human remains without undergoing the necessary procedure for exhumation. More astoundingly, the Search Warrant commands the police officers to retrieve the "remains" of the enumerated persons whose real names cannot even be cited by the Honorable Court. How then can the Search Warrant purport to have specifically described the place to be searched and the things to be seized?

48. Even the dictates of logic rebel against the validity of the challenged Search Warrant. It is highly improbable, if not impossible, for the police officers, who are neither exhumation nor autopsy experts, to determine that the remains as flimsily described in the Search Warrant are the very same remains, should there be any, found in the premises. Strangely, the police officers are looking for "remains" the description and particularity of which they cannot even ascertain.

49. Apart from the lack of particularity in the description, the "personal property" sought to be searched and seized are alleged "remains" of some thirteen (13) victims, described only by their aliases, who were supposedly buried in the Laud Compound. However, such "remains" do not fall under the list of personal property which may be seized under ***Section 3, Rule 126 of the Revised Rules of Criminal Procedure*** because neither the application nor the deposition alleged that such "remains" sought to be seized were the subject of an offense, or stolen or embezzled property or other proceeds or fruits of an offense, or used or intended to be used as a means of committing an offense. Let it be stressed that the list of personal property which may be subject of search and seizure is exclusive.

50. In ***Pendon vs. Court of Appeals***[20] the Supreme Court emphasized:

> "Another infirmity of Search Warrant No. 181 is its generality. The law requires that the articles sought to be seized must be described with particularity. The items listed in the warrant, to wit: '"NAPOCOR galvanized bolts, grounding motor drive assembly, aluminum wires and other NAPOCOR Towers parts and line accessories"' are so general that the searching team can practically take half of the business of Kener Trading, the premises searched. Kener Trading, as alleged in petitioner's petition before respondent Court of Appeals and which has not been denied by respondent, is engaged in the business of buying and selling scrap metals, second hand spare parts and accessories and empty bottles.
>
> "Far more important is that the items described in the application do not fall under the list of personal property which may be seized under Section 2, Rule 126 of the Rules on Criminal procedure because neither the application nor the joint deposition alleged that the item/s sought to be seized were: a) the subject of an offense; b) stolen or embezzled property and other proceeds or fruits of an offense; and c) used or intended to be used as a means of committing an offense."

[E]

THE SEARCH WARRANT IS QUASHABLE FOR THE ABRASIVENESS OF OFFICIAL INTRUSIONS AGAINST RESPONDENT'S PROPERTY.

51. While the Search Warrant authorizes the police officers to conduct the search at "any time of the day or night", the same does not give the latter justification to abrasively interfere with the peace of Respondent's property and unjustly intrude on his privacy.

52. The officers who conducted the search were present at Respondent's property at **5:00 o'clock in the morning**. They did not bother to locate and serve a copy of the Search Warrant on Respondent. The search, in fact, began as early as 6:00 o'clock in the morning. If the purpose of the search is

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[20] G.R. No. 84873, 16 November 1990, 191 SCRA 429

to dig up the ground and retrieve human remains, there is no logical reason at all to carry out such an activity during such ungodly hours when the officers would presumably know that the premises itself would still be dark before daybreak. The irresponsible digging at such hour would have caused unnecessary damage to Respondent's property. While the officers are authorized to remain on the premises only so long as it is reasonably necessary to conduct the search, the same comes with the caveat that they should avoid unnecessary damage to the premises.[21]

53. Further, Respondent was not even allowed access, much less entry, to his own property while the unlawful search was being conducted. The enforcement of a search warrant cannot be a subterfuge for an arbitrary and unlawful confiscation of Respondent's property. The Search Warrant was not issued nor even presented to Respondent. Instead, the Search Warrant was apparently received by a certain Pacito Panay, who is not even a caretaker of the property but merely a hired hand tasked to sweep the area. There is absolutely no justification for the officers to serve the Search Warrant to a sweeper when Respondent himself could have been easily served with the warrant. The search was undeniably made without the presence of the lawful occupant thereof despite the willingness and eagerness of the latter to be present thereat.

54. All the foregoing considered, it becomes clear that the issuance of the Search Warrant, being invalid, arbitrary, and unwarranted as it is, is not only grossly violative of the rules promulgated by the Supreme Court for the proper administration of justice, but is likewise unduly repugnant to Respondent's basic

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[21] U.S. vs. Penn, 647 F.2d 876

constitutional rights, which this Honorable Court, as the ultimate guardian of the Constitution, has the bounden duty to protect.

PRAYER

WHEREFORE, considering the manifest invalidity of Search Warrant No. 09-14347 issued against Respondent, it is respectfully prayed that the same be quashed and that any evidence obtained thereby be suppressed for being inadmissible for any purpose in any proceeding.

Respondent prays for such just and equitable relief under the premises.

San Juan City for City of Manila,
09 July 2009.

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24

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NOTICE OF HEARING

THE BRANCH CLERK OF COURT
OFFICE OF THE EXECUTIVE JUDGE
Regional Trial Court
National Capital Judicial Region
City of Manila, Branch 34

OFFICE OF THE CITY PROSECUTOR
Hall of Justice, City of Manila

Greetings:

Please take notice that undersigned counsel will submit the foregoing Motion to Quash (Re: Search Warrant No. 09-14347 dated 03 July 2009) for the consideration and approval of the Honorable Court on 14 July 2009 at 8:30 o'clock in the morning or as soon thereafter as matter and counsel may be heard.

VITALIANO AGUIRRE II

COPY FURNISHED:

THE BRANCH CLERK OF COURT
OFFICE OF THE EXECUTIVE JUDGE
Regional Trial Court
National Capital Judicial Region
City of Manila, Branch 34

OFFICE OF THE CITY PROSECUTOR
Hall of Justice, City of Manila

PSSPT. ROBERTO B. FAJARDO 10/07/09
Applicant of Search Warrant No. 09-14347
Philippine National Police
PNP-NHQ Building, Camp Crame
Quezon City

JESUS AME VERZOSA
Chief, Philippine National Police
Camp Crame, Quezon City

Office of the Chief
Philippine National Police
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