



Republic of the Philippines
Supreme Court
 Baguio City

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
 Appellee,

G. R. No. 229926

Present:

CARPIO, *J.*, Chairperson,
 PERLAS-BERNABE,
 CAGUIOA,
 REYES, J., JR.,* and
 LAZARO-JAVIER, *JJ.*

- versus -

PERIGRINA CADUNOG,
 Appellant.

Promulgated:

03 APR 2019

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DECISION

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision¹ dated 21 September 2016 of the Court of Appeals, Cebu City (CA) in CA-G.R. CR-HC No. 02069. The CA affirmed the Decision² dated 21 May 2015 of the Regional Trial Court of Oslob, Cebu, Branch 62 (RTC), in Criminal Case No. OS-08-532 convicting appellant Perigrina Cadungog (appellant) for violation of Section 5, Article II of Republic Act No. (RA) 9165.³

* On official leave.

¹ *Rollo*, pp. 4-14. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring.

² *CA rollo*, pp. 46-53. Penned by Judge James Stewart Ramon E. Himalaloan.

³ Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x x

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The Facts

The Information dated 1 August 2008, filed against appellant, states:

INFORMATION

The undersigned accuses PERIGRINA CADUNOG for VIOLATION OF SEC. 5, ART. II OF R.A. 9165 [THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002], committed as follows:

That on 31st day of July, 2008, at about 6:30 o'clock in the evening, more or less, in Barangay Looc, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER two [2] heat-sealed plastic sachet[s] of white crystalline substance of METHAMPHETAMINE HYDROCHLORIDE or SHABU powder weighing 0.02 gram, which is classified as a dangerous drug in a BUY[-] BUST OPERATION, to a poseur buyer PO1 ROMEO D. CAACOY, JR. for and in consideration of the sum of Five Hundred Pesos [₱500.00], Philippine Currency, bearing Serial No. UC 810476 which amount was paid to PERIGRINA CADUNOG and was recovered from her possession.

CONTRARY TO LAW.⁴

Upon arraignment, appellant pleaded not guilty.

During trial, the prosecution presented four witnesses: (1) PO1 Romeo D. Caacoy, Jr. (PO1 Caacoy), (2) PS/Insp. Ryan Sala (PS/Insp. Sala), (3) PS/Insp. Amadeo Pepito (PS/Insp. Pepito), and (4) PO2 Antonio Icalina (PO2 Icalina).

The evidence for the prosecution established that sometime in 2008, the Malabuyoc Police Station received an information from a confidential informant that a woman, later identified as the appellant, was selling illegal drugs in Barangay Looc, Malabuyoc, Cebu (Brgy. Looc). After conducting a surveillance in Brgy. Looc to verify the information, the police officers confirmed that appellant was indeed engaged in selling illegal drugs.

Thereafter, a team was formed to conduct a buy-bust operation against appellant. The team was composed of PO1 Caacoy as poseur buyer, PO2 Icalina, SPO2 Ariel Mascardo, and SPO1 Mario Paller. Coordination was then made with the Philippine Drug Enforcement Agency (PDEA).

⁴ Records, p. 1.

On 31 July 2008, the team, with the informant, went to Brgy. Looc. Upon their arrival, PO1 Caacoy and the informant proceeded to the house of appellant. The informant knocked on the door and called appellant through her nickname "Bagi." When appellant opened the door, PO1 Caacoy told appellant that he wanted to buy shabu worth ₱500.00. PO1 Caacoy then gave ₱500.00 to appellant. The latter accepted the money and put it inside her pocket. Appellant, then, handed the two heat-sealed plastic sachets containing white crystalline substance suspected to be shabu to PO1 Caacoy.

After receiving the two plastic sachets, PO1 Caacoy tapped his head twice, which is the agreed pre-arranged signal that the sale was consummated. The police officers, who accompanied PO1 Caacoy and hid in strategic locations, arrived at appellant's house. PO1 Caacoy then arrested appellant, informed her of her constitutional rights, and recovered from her the ₱500.00 bill he gave.


PO1 Caacoy marked the two plastic sachets with the initials "PC-1" and "PC-2," conducted an inventory of the seized plastic sachets, and prepared a Receipt of Property Seized, which was signed by him and PO2 Icalina. Appellant's neighbors, namely, Angeles Luague, Cesario Basadre, and Angelo Binongo also signed the Receipt of Property Seized. Thereafter, appellant and the seized items were brought to the police station.

At the police station, PS/Insp. Pepito, the Chief of Police of Malabuyoc Police Station, signed a letter-request. Then, PO2 Icalina, with PO1 Caacoy, brought the two plastic sachets with markings "PC-1" and "PC-2" together with the letter-request to the Philippine National Police (PNP) Regional Crime Laboratory.

At the PNP Regional Crime Laboratory, PO3 Rosaldo received the letter-request and the seized items, while PS/Insp. Sala examined the contents of the seized items. Per Chemistry Report No. D-818-2008 of PS/Insp. Sala, the contents of the seized items were confirmed to be shabu or methamphetamine hydrochloride, a dangerous drug. After PS/Insp. Sala completed the laboratory examination, he then forwarded the original copy of the Chemistry Report, letter-request, and the drug specimen to the evidence custodian, Police Officer Bucayan, for safekeeping.

On the other hand, the defense presented appellant as its sole witness.

In her version of the incident, appellant narrated that at around 6:30 p.m. of 31 July 2008, she was alone in her house and was cooking for supper, when suddenly, a police vehicle arrived and parked in front of her house. Persons, who were not in uniform, alighted from the vehicle, kicked her door without knocking, and barged into her house. These persons held her hands, dragged her into the police vehicle, and brought her to the police



station. At the police station, the said persons brought out two plastic sachets before her and told her that she owned the drugs. She denied but they insisted that the drugs were recovered from her, and so, they filed a case against her.

The Ruling of the RTC

In its Decision dated 21 May 2015, the RTC found the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165. The dispositive portion of the RTC Decision reads:

IN VIEW OF THE FOREGOING, the court finds accused Perigrina Cadungog GUILTY beyond reasonable doubt of the offense [of] Violation of Sec. 5, Article II of R.A. 9165 and sentences her to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

Let a *mittimus* issue transferring her commitment to Leyte Regional Prison in Abuyog, Leyte. Her period of preventive imprisonment shall be credited to her favor.

SO ORDERED.⁵

According to the RTC, the prosecution was able to prove beyond reasonable doubt the object test in determining the validity of the buy-bust operation and the unbroken link in the chain of custody, although Section 21 of RA 9165 was not strictly followed because no photographs were taken during the conduct of inventory. The RTC also held that appellant failed to adduce sufficient proof of her defense and there is no evidence of ill-motive on the part of the police officers.

The Ruling of the CA

In its Decision dated 21 September 2016, the CA affirmed the RTC's Decision against the appellant. The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is DENIED. The decision of the Regional Trial Court, Branch 62, Oslob, Cebu RTC, dated May 21, 2015 finding appellant PERIGRINA CADUNGOG guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 is AFFIRMED.

SO ORDERED.⁶

The CA affirmed the RTC's finding that the guilt of the appellant for the sale of illegal drugs has been proven beyond reasonable doubt. The CA held that the prosecution sufficiently proved that the integrity and

⁵ CA rollo, p. 53.

⁶ Rollo, p. 13.

evidentiary value of the seized illegal drugs were preserved every step of the process.

Hence, this appeal.

The Ruling of the Court

The appeal is meritorious.

For a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.⁷ In the prosecution of drug cases, it is of paramount importance that the existence and identity of the drug, the *corpus delicti* of the crime, be established beyond reasonable doubt.⁸ It is precisely in this regard that RA 9165, particularly its Section 21, prescribes the procedure to ensure the existence and identity of the drug seized from the accused and submitted to the court.⁹

Section 21 of RA 9165 outlines the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia, to wit:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x (Emphasis supplied)

⁷ *People v. Bartolini*, 791 Phil. 626 (2016), citing *People v. De la Cruz*, 591 Phil. 259 (2008).

⁸ *Id.*, citing *People v. Gatlabayan*, 669 Phil. 240 (2011); *People v. Almodiel*, 694 Phil. 449 (2012), citing *People v. Laylo*, 669 Phil. 111 (2011).

⁹ *People v. Almodiel*, supra note 8.

Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165, which mandates that:

x x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof:** *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further, that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**

x x x x (Emphasis supplied)

On 15 July 2014, RA 10640 amended Section 21 of RA 9165, adopting the saving clause under Section 21(a) of the IRR of RA 9165 and modifying the number of witnesses during the conduct of inventory, thus:

x x x x

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, **conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:** *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided*, finally, That **non-compliance [with] these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**

x x x x (Emphasis supplied)

Since the offense subject of this appeal was allegedly committed on 31 July 2008, the original version of Section 21 applies. Section 21 clearly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and



confiscation. If this is not practicable, the IRR allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. The inventory must be done in the presence of the accused, or his representative or counsel, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. This means that the three required witnesses should already be physically present at the time of apprehension or immediately thereafter – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.¹⁰ At the time of the inventory, the presence of the three witnesses who will sign the inventory becomes indispensable. The buy-bust team has enough time and opportunity to bring with them, or immediately after the buy-bust, the said witnesses.¹¹ The requirement for the presence of a DOJ representative, the media and an elected public official at the time of the inventory was to insulate the inventory from any taint of illegitimacy or irregularity.¹²

Under Section 21 of the IRR, the Court may allow deviation from the procedure only when the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; **and** (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In *People v. Sipin*,¹³ this Court held that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165 and its **failure to follow the mandated procedure must be adequately explained, and must be proven as a fact** under the rules. In *People v. Lim*,¹⁴ we have held that it must be alleged and proved that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.¹⁵

¹⁰ *People v. Callejo*, G.R. No. 227427, 6 June 2018.

¹¹ *Id.*

¹² *People v. Catalan*, 699 Phil. 603 (2012).

¹³ G.R. No. 224290, 11 June 2018.

¹⁴ G.R. No. 231989, 4 September 2018.

¹⁵ *Id.*, citing *People v. Sipin*, G.R. No. 224290, 11 June 2018.

In the present case, the police officers failed to comply with certain procedures prescribed by Section 21 of RA 9165 and its IRR, without any justifiable ground.

First, PO1 Caacoy testified that the police officers only made an inventory receipt at the place of the arrest,¹⁶ and he marked the two plastic sachets recovered from appellant in the police station.¹⁷ PO1 Caacoy did not provide any explanation as to why he did not immediately mark the seized items. In *People v. Bartolini*,¹⁸ we have held that the failure to mark the drugs immediately after seizure from the accused cast doubt on the prosecution's evidence, which warrants an acquittal on reasonable doubt. The non-explanation of this failure creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from the accused.¹⁹

Second, the RTC aptly held that no photographs were taken during the conduct of the inventory. The police officers failed to explain the reason for their non-compliance with this requirement.

And, third, a representative of the DOJ, media, and public elective official were not present during the conduct of the physical inventory of the seized items. There was no signature of any representative of the DOJ, media, and public elective official in the inventory receipt, although both PO1 Caacoy and PO2 Icalina claimed that there were barangay officials present. The Receipt of Property Seized was only signed by PO1 Caacoy, PO2 Icalina, and three neighbors of the appellant, according to the police officers. It was only during the testimony of PO2 Icalina that the lack of the three witnesses mandated by RA 9165 was addressed:

Q: Mr. witness, during your direct examination you said that you conducted the inventory of the seized items at the area specifically outside the house of the accused, if you could still remember who were present during the conduct, Mr. witness?

Witness (PO2 Antonio Icalina)

A: Inspector Romeo Caacoy and SPO1 Mario Paller.

Q: Is there a representative from the media or DOJ, Mr. witness?

A: None, ma'am.

Q: Why was [there] none, Mr. witness?

A: Because the incident suddenly happened.

Q: Was there an elected official present during that time?

A: There were Barangay Officials present.

¹⁶ TSN, 30 June 2011, p. 11.

¹⁷ TSN, 30 June 2011, pp. 7-8.

¹⁸ *People v. Bartolini*, supra note 7, citing *People v. Umipang*, 686 Phil. 1024 (2012).

¹⁹ Id.

Q: Do you recall their names, Mr. witness?

A: I could not recall their respective names.

Q: But there was?

A: Yes, ma'am.²⁰

The offered explanation for the lack of three witnesses mandated by RA 9165 does not fall within the justifiable reasons accepted by the Court. To reiterate, considering that a buy-bust operation is, by its nature, a planned activity, the buy-bust team has enough time and opportunity to bring with them, at the time of the buy-bust or immediately thereafter, the said witnesses. Moreso, in this case, when after receiving information that a woman was selling drugs in Brgy. Looc on 20 July 2008,²¹ they were still able to conduct surveillance and to execute the buy-bust operation only 11 days after receiving the information, or on 31 July 2008.

In a number of cases, we have acquitted the accused based on reasonable doubt, because of the failure of the prosecution to justify its non-compliance with Section 21 of RA 9165, specifically its failure to obtain the presence of the three witnesses – a representative of the DOJ, media, and public elective official – during the conduct of inventory of seized items.²²

In this case, the police officers failed to recognize their lapses and to explain their failure to follow the mandated procedure in drugs cases. Their non-compliance with Section 21 of RA 9165, without justifiable grounds, seriously casts doubt as to the existence and identity of the alleged drug seized from appellant and submitted to the court.

As a reminder, this Court in *People v. Lim*²³ laid down the mandatory guidelines, which are prospective in nature, that must be followed by the prosecution in order that the provisions of Section 21 of RA 9165 be well-enforced, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to

²⁰ TSN, 20 March 2014, p. 2.

²¹ TSN, 6 December 2012, p. 5.

²² *People v. Oliva*, G.R. No. 234156, 7 January 2019; *People v. Malana*, G.R. No. 233747, 5 December 2018; *People v. Ilagan*, G.R. No. 227021, 5 December 2018; *People v. Medina*, G.R. No. 225747, 5 December 2018; *People v. Dela Cruz*, G.R. No. 225741, 5 December 2018; *People v. Torio*, G.R. No. 225780, 3 December 2018; *People v. Tumangong*, G.R. No. 227015, 26 November 2018; *People v. Abdula*, G.R. No. 212192, 21 November 2018; *People v. Señeres, Jr.*, G.R. No. 231008, 5 November 2018; *People v. Jimenez*, G.R. No. 230721, 15 October 2018; *People v. Mendoza*, G.R. No. 225061, 10 October 2018; *People v. Lim*, supra note 14.

²³ Supra note 14.

preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

Conviction must stand on the strength of the prosecution's evidence, and not on the weakness of the defense - the prosecution must be able to prove beyond reasonable doubt that the accused is guilty of the crime charged.²⁴ The presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused,²⁵ and the presumption of regularity stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.²⁶ As applied to dangerous drugs cases, the prosecution cannot rely on the presumption of regularity when there is a showing that the apprehending officers failed to comply with the requirements laid down in Section 21 of RA 9165,²⁷ as in this case. Accordingly, we find that the prosecution fell short in proving beyond reasonable doubt that the appellant is guilty of the crime charged.

WHEREFORE, we **GRANT** the appeal. The 21 September 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02069, which affirmed the 21 May 2015 Decision of the Regional Trial Court of Oslob, Cebu, Branch 62, in Criminal Case No. OS-08-532, finding appellant Perigrina Cadungog guilty of violating Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Perigrina Cadungog is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women in Mandaluyong City for immediate implementation. Said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action she has taken.

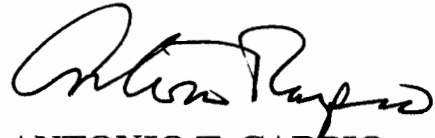
²⁴ *People v. Bartolini*, supra note 7, citing *People v. Mendoza*, 736 Phil. 749 (2014).

²⁵ *People v. Catalan*, supra note 12.

²⁶ *People v. Luna*, G.R. No. 219164, 21 March 2018, citing *People v. Mendoza*, 736 Phil. 749 (2014).

²⁷ *Id.*

SO ORDERED.

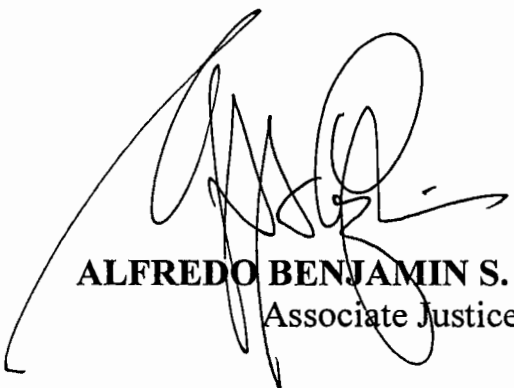


ANTONIO T. CARPIO
Associate Justice

WE CONCUR:




ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(on official leave)
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

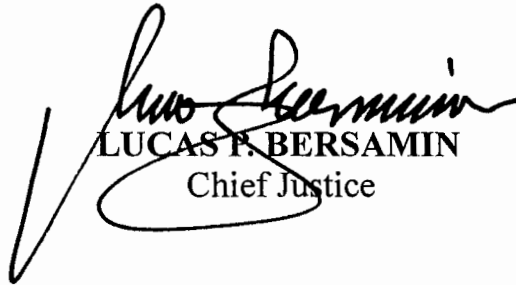
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

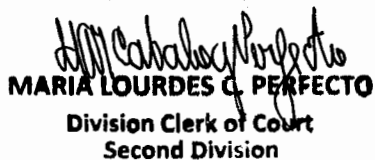
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS F. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY



MARIA LOURDES C. PERFECTO
Division Clerk of Court
Second Division