



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 213389
 Plaintiff-Appellee,

Present:

- versus -

BERSAMIN, C.J.,
BERNABE,
GESMUNDO,
CARANDANG, and
***INTING, JJ.**

EBO PLACIENTE y TEJERO,
 Accused-Appellant,

Promulgated:

AUG 14 2019

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DECISION

BERSAMIN, C.J.:

This appeal assails the decision promulgated on December 18, 2013,¹ whereby the Court of Appeals (CA) affirmed the conviction of accused-appellant Ebo Placiente y Tejero handed down by the Regional Trial Court (RTC) in Quezon City for illegal sale of *shabu* in violation of Section 5 and for illegal possession of *shabu* in violation of Section 11, both of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act*).

* Designated as Additional Member vice Justice Francis H. Jardeleza per Raffle dated August 7, 2019.

¹ *Rollo*, pp. 2-23; penned by Associate Justice Noel G. Tijam (later a Member of this Court but since retired), and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Agnes Reyes-Carpio.

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Antecedents

The accused-appellant was charged in the RTC under the following informations, to wit:

Criminal Case No. Q-05-132073

That on or about the 24th day of January, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, Zero point zero five (0.05 grams) containing white crystalline substance (Methylamphetamine Hydrochloride) a dangerous drug.

CONTRARY TO LAW.²

Criminal Case No. Q-05-132074

That on or about the 24th day of January, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did, then and there, wilfully, unlawfully and knowingly have in his/her/their possession and control, Zero point zero four (0.04 grams) containing white crystalline substance (Methylamphetamine Hydrochloride) a dangerous drug.

CONTRARY TO LAW.³

The cases were consolidated for arraignment and trial. At arraignment, the accused-appellant pleaded *not guilty* to the charges.⁴

The CA summarized the factual and procedural antecedents in the following manner:

THE PROSECUTION'S EVIDENCE:

Gathered from the testimonies of PO2 Balbino Reas and PO3 Noel Magcalayo, the following were established:

PO2 Reas and PO3 Magcalayo are members of the Philippine National Police (PNP) assigned at the Police Station 6, Batasan Hills, Quezon City.

On January 24, 2005, at around 3:30PM., a police informant arrived at Police Station 6 to report about the alleged peddling of illegal

² Records, p. 2.

³ Id. at 4.

⁴ *Rollo*, p. 4.

drugs by the accused-appellant in his place in Kaunlaran Street, Brgy. Commonwealth, Quezon City. Immediately, a police team, composed of SPO1 Amor Guiang, who acted as the team leader, PO2 Reas, who acted as the poseur[-]buyer of drugs, and PO3 Magcalayao, who acted as back-up was formed to confirm the veracity of the informant's report and conduct a buy-bust operation. Before dispatching the team, SPO1 Amor Guiang briefed them and gave their specific tasks. A Pre-Operation Report and Coordination Sheet were prepared and submitted to the Philippine Drug Enforcement Agency (PDEA). PO2 Reas also prepared the marked money consisting of 2 pieces of ₱100.00 each of which was marked with his initials, "BR".

At about 5 PM, the team proceeded to the target area along Kaunlaran Street in Brgy. Commonwealth, Quezon City.

Upon seeing accused-appellant in front of his house, PO2 Reas and the informant approached him. The informant introduced PO2 Reas to accused-appellant and told him that PO2 Reas wanted to buy shabu.

PO2 Reas told the accused-appellant that he only wanted to buy ₱200.00 worth of shabu. Accused-appellant first demanded for the payment. When PO2 Reas gave him the ₱200.00 marked money, accused-appellant handed him 1 small plastic sachet of suspected shabu. At that instance, PO2 Reas raised his right hand as a pre-arranged signal that the drug deal was consummated.

Upon seeing the pre-arranged signal, PO3 Magcalayo rushed towards the direction of PO2 Reas and accused-appellant. He then introduced himself to accused-appellant as police officer (sic).

After accused-appellant was apprised of his constitutional rights, PO3 [Magcalayo] did a bodily search on him and found another plastic sachet of suspected shabu inside the right pocket of his pants. PO3 Magcalayo recovered the buy-bust money, and a 9 mm pistol from accused-appellant's possession. Thereafter, the accused-appellant was handcuffed and arrested.

The police officers then brought accused-appellant to Police Station 6. There, PO2 Reas marked the 2 plastic sachets recovered from accused-appellant with his and accused-appellant's initials "BR-EP". When the 2 plastic sachets were submitted for laboratory examination, they yielded a positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

The prosecution and the defense stipulated on the proposed testimony of Engr. Leonard Jabonillo as follows: "(1) That he received the request for laboratory examination dated 24 January 2005; (2) That he conducted the examination on the specimen; (3) That he reduced his findings into writing, which is Chemistry Report No. D-056-2005; (4) That he found the specimen to be positive for methylamphetamine hydrochloride, a dangerous drug; and (5) That he has no personal knowledge as to the facts and the circumstances surrounding the arrest of the accused."

Likewise, the prosecution and the defense stipulated on the proposed testimony of PO1 Darwin Ferre as follows: "(1) That he

conducted the investigation on the accused when he was arrested; and (2) That he mechanically prepared the referral letter; the joint affidavit and the inventory and the inventory of seized items.”

* On cross-examination, PO2 Reas testified that the inventory of the seized articles from accused-appellant was done at Police Station 6 and not in the crime scene because the area was critical. On re-direct examination, he said that no photograph of the contraband was taken as their office was not issued with a camera. He also said that they had no more time to call on the media when the inventory of the seized articles took place.

The prosecution offered as documentary evidence, the following: (1) Request for Laboratory Examination of the 2 heat-sealed transparent plastic sachets containing white crystalline substances of suspected shabu marked as “BR/EP-1 and BR/EP-2” signed by Police Chief Inspector Arnold E. Abad; and (2) Chemistry Report No. D-056-2005 prepared by Engr. Leonard M. Jabonillo, Chemist II, Forensic Analyst of the PNP Crime Laboratory. The Report contains the following entries:

“SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A (BR/EP-1) = 0.05 gm & B (BR/EP-2) = 0.04 gm.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. xxx

CONCLUSION:

Specimen A and B are Methylamphetamine Hydrochloride, a dangerous drug. xxx”

THE DEFENSE EVIDENCE:

Accused-appellant and a certain Diosa Soria were presented as defense witnesses.

Accused-appellant testified that, on January 24, 2005, at around 2:30 PM, while he was taking a bath at his residence in 458 Kaunlaran Street, Brgy. Commonwealth, Quezon City, a barangay official named Jun Mitra, a.k.a. Ben and 14 other men arrived. Jun Mitra allegedly pointed a gun at him and ordered the other men to arrest him. PO2 Reas and a barangay official then held him on his shoulders, pushed him and brought him to Police Station 6, Batasan Hills, Quezon City.

When they reached the police station, a certain Lt. Aquino allegedly talked to him and asked him if he can produce ₱50,000.00. Since he did not have the money, the police officers detained him.

During cross-examination, accused-appellant testified that he did not have any argument with PO2 Reas and PO3 Magcalayo prior to his arrest. He said that he was arrested because when the barangay officials

arrived at their place, he was the only one left in the area; the other men scampered away. He said his father filed a case before the Ombudsman against the police officers and barangay officials who arrested him. The case, however, was dismissed because the subpoena was not properly served.

Diosa Soria, a candy vendor along Kaunlaran Street, testified that she was selling her merchandise in the same compound where accused-appellant lives. On June 24, 2005, she noticed several armed men in civilian attire, about 15 in number, search about 20 houses in the compound where accused-appellant lives. From where she was situated, about 3 to 4 meters away, she heard one of the armed men ask the accused-appellant if he knew of a person named Boboy. Accused-appellant replied that he does not know of a person named Boboy. Thereafter, one of the armed men showed a gun and said "arrest that man, this is the evidence against him". Accused-appellant was then ordered to sit down along the alley; he was handcuffed and brought to Police Station 6.⁵

Judgment of the RTC

On March 2, 2011, the RTC rendered judgment convicting the accused-appellant of the crimes charged, decreeing thusly:

ACCORDINGLY, judgment is rendered finding the accused EBO PLACIENTE Y TEJERO GUILTY beyond reasonable doubt of the two (2) offenses he was charged in this Court, namely, for violation of Section 5 of R.A. 9165 (for selling shabu, a dangerous drug) and for violation of Section 11 of R.A. 9165 (for unlawful possession of shabu) and consequently, the accused is hereby sentenced as follows:

In Q-05-132073, to a jail term of LIFE IMPRISONMENT and payment of a fine of ₱500,000.00, and (2) [i]n Q-05-132074, to a jail term of Twelve (12) Years and One (1) day, as minimum and Fourteen (14) Years as maximum and payment of a fine of ₱300,000.00.

The two (2) sachets of [methylamphetamine] hydrochloride (shabu) involved in these two (2) cases are ordered transmitted to PDEA thru DDB for disposal pursuant to R.A. 9165.

SO ORDERED.⁶

The RTC opined that the buy-bust operation mounted against the accused-appellant was legitimate; that the accused-appellant and his witness, Diosa Soria had incurred in inconsistencies; that the evidentiary value of the items seized from the accused-appellant had been preserved; that the police officers had made the inventory at the police station because it had become dangerous for them to remain and make the inventory at the place of arrest;

⁵ Id. at 4-8.

⁶ CA rollo, pp. 21-22.

that the situation at the time had justified the departure from the prescribed procedure; and that the inventory had been nonetheless done immediately following the arrest in a manner as to avoid the suspicion that the police officers had switched the items seized from the accused-appellant.⁷

Decision of the CA

As earlier stated, the CA affirmed the conviction of the accused-appellant through the appealed decision,⁸ viz.:

WHEREFORE, the appeal is **DENIED**. The Decision of the RTC of Quezon City, Branch 79, in Crim. Case No. Q-05-132073 and Crim. Case No. Q-05-132074, are hereby **AFFIRMED**.

SO ORDERED.⁹

The CA pointed out that the identity of the accused-appellant as the person who had sold the *shabu* to PO2 Balbino Reas was established; that the Prosecution had delineated how the sale of the *shabu* had actually taken place, and how the accused-appellant had also possessed another plastic sachet of suspected *shabu*; that the chain of custody of the seized dangerous drugs had not been compromised; and that the integrity and evidentiary value of the evidence seized were presumed to be preserved absent any showing of bad faith and ill will on the part of the arresting officers, or absent proof showing that the same had been tampered with.¹⁰

Issues

In his appeal, the accused-appellant reiterates the arguments contained in his appellant's brief filed in the CA. He argues that the Prosecution did not prove his guilt beyond reasonable doubt because the apprehending officers had not complied with the statutory requirements imposed by R.A. No. 9165; that gaps regarding the whereabouts and condition of the seized drugs from the time they had come into the possession of the apprehending officers until they had been tested in the laboratory existed; that the such gaps had allowed the possibility of the seized drugs being exposed to alteration, tampering, contamination and even substitution, thereby placing the integrity and evidentiary value of the seized items in question; that the failure of the police officers to comply with the procedure for the custody of the seized drugs raised doubts as to their origin, and negated the presumption of regularity in the performance of their official duties accorded to the apprehending police officers; that there had been no representatives from the

⁷ Id. at 20-21.

⁸ Supra note 1.

⁹ Id. at 22-23.

¹⁰ Id. at 10-22.

media and from the Department of Justice (DOJ), or any elected public official in attendance despite such persons being required to participate in the operation and despite such individuals being required to sign the inventory of seized items; that the excuse given by the apprehending officers for their non-compliance with the statutory requirements necessary for the preservation of the chain of custody had not been justifiable; and that the lapses committed by the apprehending officers had cast doubt on whether the items allegedly confiscated were the same items submitted for the examination at the laboratory and later presented as evidence of guilt during the trial.¹¹

The OSG counters that the accused-appellant's guilt for the illegal sale and for the illegal possession of the dangerous drugs had been proved beyond reasonable doubt because all the elements of the crimes charged had been shown to be present; that the integrity and evidentiary value of the two seized sachets of *shabu* had been preserved; that the procedure under Section 21 of R.A. No. 9165 prescribed for the custody and handling of the seized dangerous drugs was not stringent in application for as long as the integrity and evidentiary value of the seized items were shown to have been preserved; that the failure to make the inventory of the seized items at the place of arrest could be excused because their continued stay in the area of the arrest would have endangered their safety; that there was no showing of any break in the chain of custody that would cast doubt on the identity and integrity of the two sachets of illegal drugs; and that absent any showing of bad faith or ill will on the part of the arresting officers, the integrity and evidentiary value of the seized drugs were presumed to be preserved; and that the testimony of defense witness Diosia Soria on the events did not bolster the version of the accused-appellant.¹²

Ruling of the Court

We reverse the conviction of the accused-appellant on the ground of reasonable doubt.

Section 21 of R.A. No. 9165, as amended, states the procedural safeguards to be observed in relation to the seizure, custody and disposition of the confiscated drug, thus:

Sec. 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

¹¹ CA rollo, pp. 45-53.

¹² Id. at 69-96.

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 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 noncompliance of 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. (Emphasis supplied)**

X X X X

The Implementing Rules and Regulations of Section 21 of R.A. No. 9165 (IRR) reiterates the statutory safeguards, *viz.*:

- (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; (Emphasis supplied)**

X X X X

The State bears the burden of proving the elements of the offense committed in violation of R.A. No. 9165, which indispensably includes the proof the *corpus delicti*, or the body of the crime. *Corpus delicti* has been

defined as the body or substance of the crime and refers, in its primary sense, to the fact that a crime was actually committed. In criminal prosecution of alleged violations of R.A. No. 9165, like the offense charged herein, the *corpus delicti* is no other than the dangerous drug itself. Hence, the State must be able to present the seized drug, along with proof that there were no substantial gaps in the chain of custody thereof from the time of its confiscation until its presentation during the trial as to raise any doubts about its authenticity as evidence of guilt when presented in court. The State and its agents are mandated to faithfully observe the safeguards in their drug-related operations and prosecutions.¹³

To establish the *corpus delicti*, the proper handling of the confiscated drug is paramount in order to ensure the unbroken chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*. For this purpose, the State needs only to show a rational basis from which to conclude that the evidence being presented to establish criminal guilt is what the State claims it to be, that is, the drug that was confiscated at the time of the buy-bust or other operation to arrest the violator. Indeed, the courts require a more stringent foundation for the chain of custody of the item with sufficient completeness to render it improbable that the original item has either been changed with another or tampered with.¹⁴

We have noted with alarm that the apprehending officers did not follow the procedural safeguards of the law. For one, they did not do the marking and the inventory of the evidence seized immediately at the place of arrest despite the law itself directing such acts to be done then and there. To excuse their lapse, PO2 Reas openly declared that “... *the area is critical and we have to leave the place immediately and we do not have time to make the inventory there.*”¹⁵ Such declaration was hardly plausible, however, because outside of the officer’s self-serving claim, the Prosecution adduced no evidence that would have substantiated the “critical” conditions then obtaining that had prevented compliance with the statutory safeguards.¹⁶ The lawmen ought not to trifle so easily with such safeguards that were erected by our lawmakers precisely for the protection of the rights and freedoms of our citizens from unreasonable intrusions by our law enforcers.

As if compounding the lapses already noted, the absence of the elected public official and representative of the DOJ or the media specifically required to witness the physical inventory and photographing of the evidence seized, and that no photograph was taken to document the seizure of drugs were also undeniable. PO2 Reas justified the lack of the photographs by merely asserting that the station had not been issued any camera. In our view, such justification for the failure to take photographs

¹³ *People v. Calates*, G.R. No. 214759, April 4, 2018.

¹⁴ *People v. Lim*, G.R. No. 231989, September 4, 2018.

¹⁵ TSN, May 12, 2008, p. 23.

¹⁶ *People v. Mola*, G.R. No. 226481, April 18, 2018.

was ridiculous because the statutory requirement like the photographing of the seized articles, being very crucial to the preservation of the chain of custody, was of substantive significance and should not be so slightly or lightly regarded by every worthy anti-drug law enforcer. We take this view with grave concern for in this time of technological advances practically all cellular phones, which we presume the officers themselves were carrying, were already equipped with cameras. Anent the inventory, the document being represented for that purpose was not even signed by PO2 Reas, or by any of the witnesses specifically required to sign it under R.A. No. 9165.¹⁷ There was even no showing that the marking of the seized items and the inventory had been accomplished in the presence of the accused-appellant or of his designated representative. Lastly, the arresting officers did not render explanation why they did not secure the presence of the witnesses required under the rules.¹⁸

The obligation imposed by Section 21 of R.A. No. 9165 to tender the credible explanation for any non-compliance with the affirmative safeguards firmly rested on the State and its agents, and on no other. The Court has stressed the importance of the Prosecution's obligation to justify their non-compliance with the safeguards in *People v. Lim*,¹⁹ pronouncing therein that:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 or R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Under the circumstances, the arresting officers must prove that they had exerted efforts to comply with the mandated procedure, and that their actions were reasonable under the obtaining circumstances.²⁰ If the State and its agents did not discharge such obligation, then the evidence of guilt necessarily becomes suspect.²¹ Among the consequences of the non-discharge of the obligation is to deprive the apprehending officers of the presumption in their favor of the regularity in the performance of their official duties. They must then prove the regularity of their performance.

¹⁷ TSN, May 12, 2008, pp. 23-24.

¹⁸ Id. at 25, 27-28.

¹⁹ G.R. No. 231989, September 4, 2018; also, *People v. Sipin*, G.R. No. 224290, June 11, 2018.

²⁰ *People v. Angeles*, G.R. No. 218947, June 20, 2018.

²¹ *Casona v. People*, G.R. No. 179757, September 13, 2017, 839 SCRA 448, 463.

Without such proof of regularity, the identification and authentication of the evidence of guilt are nearly impossible. In this case, therefore, the various lapses engendered the possibility of evidence substitution or tampering, and necessarily negated the reliability of the incrimination of the accused-appellant.

On the other hand, the accused-appellant's defense of not having been the original target of the buy-bust operation mounted by the police officers in the area because he had earlier encountered them that same evening without them accosting him for the crime he was ultimately charged with should be given sympathetic consideration. In fact, the defense was substantiated by the pre-operation report/coordinated sheet²² that the arresting officers had accomplished and submitted. Therein, they detailed the summary information on their operation "TO CONDUCT NARCOTICS OPN. AGAINST VIOLATORS OF RA 9165 AKA IRENE OF BRGY. OLD BALARA G.C. AND OTHER TARGET PERSONALITIES," which was a self-explanatory reference to a different target. We should not also ignore that the accused-appellant's witness Diosa Soria recalled that after the arresting officers could not extract information from her on the whereabouts of alias Boboy, one of them had then produced a gun and said: *Arrest that man* [pointing to the accused-appellant], *this is the evidence against him*. These circumstances were strong corroboration of the version of the accused-appellant that they had apprehended him then because he had been the only person left in the area.

In fine, the Court acquits the accused-appellant for failure of the Prosecution to prove the elements of the crimes charged beyond reasonable doubt.

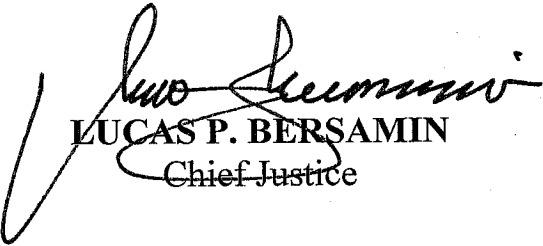
WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on December 18, 2013; **ACQUITS** accused-appellant **EBO PLACIENTE y TEJERO** on the ground that his guilt was not established beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the Bureau of Corrections, New Bilibid Prison, Muntinlupa City unless there are other lawful causes warranting his continuing confinement thereat.

The Court **DIRECTS** the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City to implement the immediate release of accused-appellant **EBO PLACIENTE y TEJERO**, and to report his compliance herewith within 10 days from receipt.

²² Records, p. 10.


No pronouncement on costs of suit.

SO ORDERED.

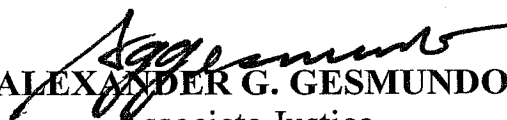


LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:



ESTELA M. PERLAS-BERNABE
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



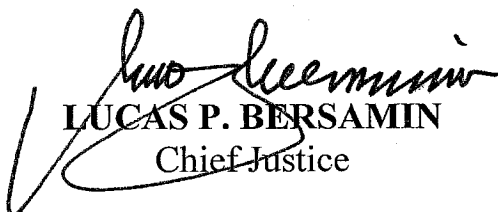
ROSMARIE D. CARANDANG
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 P. BERSAMIN
Chief Justice