



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
RECORDED  
JUN 28 2019  
BY: Ysa  
TIME: 2:54 am

SECOND DIVISION

JESUS CONCEPCION y TABOR  
a.k.a. "BAKLA/BONG,"  
Petitioner,

G.R. No. 243345  
Present:

- versus -

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

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

11 MAR 2019

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DECISION

CAGUIOA, J.:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court<sup>1</sup> (Petition) questioning the Decision<sup>2</sup> dated April 30, 2018 and Resolution<sup>3</sup> dated November 14, 2018 of the Court of Appeals Former Ninth Division (CA) in CA-G.R. CR No. 39753. The Decision dated April 30, 2018 affirmed the Judgment<sup>4</sup> dated February 16, 2017 of the Regional Trial Court of Daet, Camarines Norte, Branch 41 (RTC), which convicted herein petitioner Jesus Concepcion y Tabor (Concepcion) for violation of Section 11, Article II of Republic Act No. 9165<sup>5</sup> (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

<sup>1</sup> Rollo, pp. 13-31.  
<sup>2</sup> Id. at 33-49. Penned by Associate Justice Danton Q. Bueser with Associate Justices Mariflor P. Punzalan Castillo and Henri Jean Paul B. Inting concurring.  
<sup>3</sup> Id. at 51-53.  
<sup>4</sup> Id. at 70-75. Penned by Presiding Judge Arniel A. Dating.  
<sup>5</sup> Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

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*The Facts*

On December 17, 2012, an Information was filed against Concepcion, the accusatory portion of which reads:

That on or about 4:30 in the morning of November 15, 2012, at Purok 1, Brgy. IV, Mantagbac, Municipality of Daet, Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control twelve (12) pieces of small heat sealed transparent plastic sachets each containing white crystalline substance, with markings "RA-1 to RA-12" and marked as specimens A to L, respectively. The net weights are the following: A-0.06 gram; B-0.02 gram; C-0.05 gram; D-0.03 gram; E-0.06 gram; F-0.02 gram; G-0.03 gram; H-0.02 gram; I-0.03 gram; J-0.04 gram and K-0.05 gram; and L-0.01 gram; which after qualitative examination conducted on the above specimens gave positive result to the tests for the presence of methamphetamine hydrochloride, or shabu, a dangerous drug, having a total net weight of 0.42 gram, per Chemistry Report No. D-89-12, without authority of law.

CONTRARY TO LAW.<sup>6</sup>

During his arraignment, Concepcion pleaded not guilty to the charge against him. Trial on the merits ensued.

The prosecution presented four (4) witnesses, namely: PCI Grace Tugas (PCI Tugas), IO2 Rodel Abina (IO2 Abina), SO2 Christopher Viaña (SO2 Viaña), and Dennis Lladoc (Lladoc). Only the testimony of Concepcion was presented by the defense.

As gathered by the CA, the antecedent facts are as follows:

Witness PCI Tugas, the forensic chemist of the Camarines Norte Crime Laboratory, testified that on November 15, 2012, she received a request from IO2 Abina for the laboratory examination of the subject specimens. After the necessary examination of the content of the twelve (12) heat-sealed sachets, it was found that the submitted specimens are positive for the presence of methamphetamine hydrochloride or *shabu*. She further confirmed that she had reduced her findings in the document denominated as Chemistry Report No. D-89-12.

Witness IO2 Abina, in turn, narrated that on November 15, 2012, he participated in the implementation of the search warrant dated November 14, 2012 issued against the appellant. Agent Magpantay, their team leader, designated him to be the searcher. He recounted that at around 4:30 a.m., after being given the go signal, he conducted the search for illegal drugs and was able to recover twelve (12) pieces of small heat-sealed plastic sachets containing crystalline substance that they suspected to be shabu. The plastic sachets were found inside the matchbox placed in a plastic Orocan or cabinet located just beside the bedroom door leading to the kitchen. The witness affirmed that during the conduct of the search, the barangay captain, DOJ

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<sup>6</sup> *Rollo*, pp. 34-35.



representative Lladoc, Mr. Ricky Pera from the media, and one barangay kagawad and the appellant were present.

Witness IO2 Abina further testified that he put markings on each of the twelve (12) sachets with "RA1 11-15-12" to "RA12 11-15-12[.]" The inventory was then prepared. After the necessary documentation, he proceeded to the crime laboratory and submitted the request for laboratory examination together with the specimens. He also identified a series of photographs depicting the scenes during the implementation of the search warrant against the appellant, and the affidavit he executed in connection with this case.

SO2 Viana, in turn, testified that he was assigned as the arresting officer in the enforcement of the search warrant against the appellant on November 15, 2012. He personally saw it when IO2 Abina found the subject items inside the Orocan cabinet. After seeing the seizure of the suspected illicit drugs, he arrested the appellant, brought the latter to the Provincial Office, and then submitted him for medical examination. Like IO2 Abina, SO2 Viana identified the several photographs that were taken during the implementation of the search warrant and the affidavit of arrest that he had executed in connection with this case. He also identified appellant in open court as the accused in the present case.

On the other hand, the testimony of witness Lladoc, a representative of the Department of Justice (DOJ), was stipulated upon by the public prosecutor and the defense. Both parties admitted that: (a) the witness is one of the witnesses in the conduct of the inventory seized from the appellant; and (b) said witness, as one of the witnesses in the preparation of the inventory process, had affixed his signature in the Certificate of Inventory marked as Exhibit "G[.]"

For the defense, the sole testimony of the appellant was presented in evidence. Appellant categorically denied the charges against him. He claimed that in the morning of November 15, 2012 at around 4:30 a.m., he was awakened by three (3) to four (4) male persons knocking at his door. Said men asked him why the lights in his house were switched off and instructed him to turn on the lights in his living room. He then switched on the light, after which the said unidentified men barged into his house. The door had been forcibly opened with a bolt cutter.

Continuing with his testimony, appellant recounted that said persons then conducted a search of the living room, the bedroom and the kitchen but found nothing. Thereafter, two (2) persons left and came back at around 6:00 o'clock in the morning, this time accompanied by other persons and a matchbox with plastic sachets. Supposedly, the plastic sachets had been found in his place. Appellant asserted that he never had a match inside his house. He further clarified that during the period when the two (2) persons had left, he remained inside his house with one of the three (3) persons guarding him. He also claimed that he had rented said house for about a month prior to his arrest.<sup>7</sup>

#### *Ruling of the RTC*

In a Judgment dated February 16, 2017, the RTC found Concepcion guilty beyond reasonable doubt for the crime charged:

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<sup>7</sup> Id. at 35-37.



WHEREFORE, under the foregoing considerations, the prosecution having proven the guilt of accused Jesus Concepcion y Tabor aka “Bakla/Bong” beyond reasonable doubt for having violated Section 11, Article II of R.A. 9165, he is hereby sentenced to the indeterminate penalty of imprisonment from nineteen (19) years, eleven (11) months, twenty nine (29) days to twenty (20) years and to pay the fine of Three Hundred Thousand (Php300,000.00) Pesos.

The object pieces of evidence are confiscated in favor of the government to be disposed of in accordance with existing rules and regulations.

SO ORDERED.<sup>8</sup>

Aggrieved, Concepcion appealed his conviction to the CA.

#### *Ruling of the CA*

In a Decision dated April 30, 2018, the CA affirmed the RTC’s findings but reduced the penalty imposed. The CA found that the minimum period imposed by the RTC was not in accordance with the Indeterminate Sentence Law. Thus:

While the imposition of the penalty of fine is proper, the minimum period imposed by the trial court upon the appellant defies the mandate of the Indeterminate Sentence Law. A difference of one day between the minimum and maximum periods essentially obliterates the purpose for which the Indeterminate Sentence Law is enacted. It bears to stress that the Indeterminate Sentence Law is a legal and social measure of compassion, and should be liberally interpreted in favor of the accused.

x x x x

WHEREFORE, the foregoing considered, the Judgment dated February 16, 2017 rendered by the RTC is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of imprisonment imposed upon the appellant is **REDUCED** to twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum.

SO ORDERED.<sup>9</sup>

A motion for reconsideration<sup>10</sup> filed by Concepcion was denied by the CA in the Resolution dated November 14, 2018 for lack of merit.

Hence, this Petition.

#### *Issue*

The Petition presents the following issues for resolution:

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<sup>8</sup> Id. at 74-75.

<sup>9</sup> Id. at 46-48.

<sup>10</sup> Id. at 95-102.



- (i) Whether the CA gravely erred in affirming Concepcion's conviction of Section 11, Article II of R.A. No. 9165 despite the inconsistencies between the testimonies of the prosecution witnesses and the affidavit of searcher;<sup>11</sup> and
- (ii) Whether the CA gravely erred in affirming Concepcion's conviction of Section 11, Article II of R.A. No. 9165 notwithstanding the prosecution's failure to establish the chain of custody and integrity of the seized drugs allegedly possessed by Concepcion.<sup>12</sup>

*The Court's Ruling*

The Petition is denied.

Foremost, the Court notes that the petition directly raises questions of fact, which are outside the Court's scope of review in appeals by *certiorari* under Rule 45. As an arbiter of laws, the Court is not duty bound to analyze or weigh all over again the evidence already considered in the proceedings below. While the Court has entertained questions of fact in justifiable circumstances, Concepcion failed to show that the case falls within the allowable exceptions. Consequently, the factual findings of the lower courts are generally respected in the absence of a showing that facts or circumstances were overlooked and could therefore affect the outcome of the case, as in the instant Petition. Nonetheless, even if the foregoing rules were to be relaxed, the Court finds no reversible error committed by the CA in affirming Concepcion's conviction.

The substantive issues being interrelated, the Court shall discuss the same jointly.

To recall, Concepcion's main defense consists of his claim that an inconsistency in the testimony of IO2 Abina, one of the police officers present in the search, places his conviction in doubt as it goes into the mandatory witness requirement under Section 21 of R.A. No. 9165.<sup>13</sup> In effect, Concepcion is implying that the prosecution failed to establish compliance with the three-witness rule mandated by R.A. No. 9165.<sup>14</sup> Concepcion is gravely mistaken.

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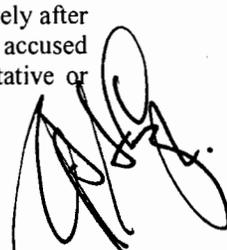
<sup>11</sup> Id. at 19.

<sup>12</sup> Id. at 20.

<sup>13</sup> Prior to its amendment by Republic Act No. 10640, otherwise known as "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" (July 15, 2014).

<sup>14</sup> 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 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



In the first place, aside from the overwhelming documentary evidence establishing compliance with the procedure, the presence of Department of Justice (DOJ) representative Lladoc was already admitted by Concepcion when he stipulated on such matter during trial.<sup>15</sup> Moreover, such discrepancy was sufficiently explained by the prosecution, as duly observed by the CA:

Indeed, what the appellant perceives as glaring inconsistencies are unfounded, as they are inexistent. The fact that IO2 Abina's affidavit neglects to categorically mention the presence of DOJ representative Lladoc's (sic) during the search operation does not run counter to his testimony. **The perceived discrepancy neither affects the truth of the testimony of the prosecution witness nor discredits his positive identification of appellant. Besides, apart from the duly signed Certificate of Inventory and Certificate of Orderly Search, it had already been stipulated and admitted by the parties that Lladoc was indeed a witness in the conduct of the search and inventory of the confiscated drugs.** For this reason, such stipulation is already a judicial admission of the facts stipulated. Appellant is clearly beyond his bearings in disputing this judicially admitted fact. **What is more, photographs were offered in evidence to prove that the necessary witnesses, including Lladoc, had been present during the search operation.**<sup>16</sup> (Emphasis supplied)

Further, Concepcion casts doubt on the validity of the search conducted in that the implementation of the search warrant was documented to begin at 4:30 A.M. while the seizure of the drugs was made at around 6:30 A.M.<sup>17</sup> Such interval, Concepcion claims, gave the police officers an opportunity to fabricate evidence against him.<sup>18</sup> Again, the CA found the prosecution's explanation on this point sufficient when weighed against the speculative arguments of Concepcion:

In the same vein, the supposed inconsistency regarding the exact time the search warrant was implemented is, if at all, minor and without consequence. As argued by the appellee, **the team had arrived at appellant's house to implement the search warrant at 4:30 a.m. The police officers did not immediately search the residence because they still had to wait for the barangay officials and the media representatives. Thus, the search only began after around thirty (30) minutes to one (1) hour.** This interval closely coincides with the time of discovery and seizure of the subject specimens as indicated on the Request for Laboratory Examination. Such minor inconsistency does not warrant the reversal of appellant's conviction.<sup>19</sup> (Emphasis supplied)

In prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not

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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[.]

<sup>15</sup> *Rollo*, pp. 36-37.

<sup>16</sup> *Id.* at 40-41.

<sup>17</sup> *Id.* at 39.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 41.



authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>20</sup> Proceeding from the foregoing, the Court is fully satisfied that the prosecution was able to establish Concepcion's guilt beyond reasonable doubt for the said crime. The evidence adduced collectively established all elements necessary to produce a conviction.

Grasping at straws, Concepcion attempts to absolve himself from liability by claiming that the integrity of the *corpus delicti* was compromised in that the chain of custody of the seized drugs was broken.<sup>21</sup> Without more, such empty claims, being unsupported by the records, deserve scant consideration. On the contrary, the movement of the confiscated contraband from the point of seizure until its presentation in court was duly established by both testimonial and documentary evidence. The CA had already laid this issue to rest, as follows:

x x x Contrary to what the appellant wants to portray, the chain of custody of the seized sachets of *shabu* was shown to be unbroken. Pursuant to protocol, the police officers enforced the search warrant cautiously and deliberately within legal bounds.

First off, IO2 Abino, having initial custody and control of the specimens, made a physical inventory, took photographs and put markings "RA1 11/15/12" to "RA12 11/15/12" on the sachets at the scene of the crime immediately after seizure and confiscation. Second, the search conducted was witnessed by DOJ representative Lladoc, media representative Ricky Pera, the barangay captain and a barangay kagawad. These witnesses signed the Certificate of Inventory as well as the Certificate of Orderly Search. Photographs also prove[d] the presence of these witnesses during the search and inventory.

Mindful not to break the chain of custody, IO2 Abina brought all the confiscated items to the Camarines Norte Crime Laboratory. On the same day, IA1 Erwin Magpantay, their team leader, executed a request for a laboratory examination of the specimens. IO2 Abina thereafter turned over all the evidence to PSI Tugas, the forensic chemist, who dutifully conducted the laboratory examination on the white crystalline substance found inside the plastic sachets. After the examination, PSI Tugas reported that the subject specimens with markings "RA-1" to "RA 1-2" all tested positive for methamphetamine hydrochloride or *shabu* and indicated said findings in her Chemistry Report No. D-89-12. During trial, both IO2 Abina and PSI Tugas attested that the pieces of object evidence presented by the prosecution are the same specimens that they had seized, marked and tested. More importantly, contrary to the speculations of the appellant, PSI Tugas confirmed in open court that the Crime Laboratory retained possession of the specimens after such examination.<sup>22</sup>

As a final point, it does not go unnoticed that strict compliance with the mandatory procedure under R.A. No. 9165 was achieved by the apprehending officers; there was no record of any deviation from the requirements under the

<sup>20</sup> *People v. Montevirgen*, 723 Phil. 534, 542 (2013).

<sup>21</sup> See *rollo*, p. 26.

<sup>22</sup> *Id.* at 43-44.

law. Hence, absent contrary proof to the facts established, Concepcion's conviction must follow. In criminal cases, "proof beyond reasonable doubt" does not entail absolute certainty of the fact that the accused committed the crime, and neither does it exclude the possibility of error.<sup>23</sup> What is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.<sup>24</sup>

The Court thus quotes with approval the following disquisition of the CA in this regard:

As can be gleaned from the records, the prosecution presented both testimonial and documentary evidence supporting the conviction of the appellant. Beyond a reasonable doubt, it was duly established that appellant had illicit drugs in his possession during the implementation of the search warrant issued against him. **As established by the testimonies of police agents IO2 Abina and SO2 Viana, twelve (12) heat-sealed plastic sachets with crystalline substances were found inside appellant's cabinet.** Without dispute, said testimonies prove not only the guilt of the appellant but also the identity of the illegal drugs seized from him. The testimony of forensic chemist PCI Tugas, in turn, has clearly proven that the confiscated specimens are positive for the presence of methamphetamine hydrochloride or *shabu*, an identified dangerous drug. **Photographs and other documentary exhibits further show the strict compliance with the rules relative to the enforcement of the search warrant and in the preservation of the integrity and custody of the *corpus delicti*.**

X X X X

**As the records present, the prosecution has proven that there was compliance with Section 21 of the Implementing Rules and Regulations of RA 9165.** It was also established that the integrity of the drugs seized from appellant was duly preserved. Contrary to what the appellant wants to portray, the chain of custody of the seized sachets of *shabu* was shown to be unbroken. Pursuant to protocol, the police officers enforced the search warrant cautiously and deliberately within legal bounds.<sup>25</sup> (Emphasis supplied)

All told, the Court is convinced that Concepcion was indeed guilty of illegal possession of dangerous drugs, thereby violating Section 11, Article II of R.A. No. 9165.

### *Conclusion*

The authority to enforce the law does not come with the freedom to make optional what is mandatory; the law, if not enforced in full, is not enforced at all. The Court is thus hard-pressed to emphasize that it is when the

<sup>23</sup> *People of the Philippines v. Tropa*, 424 Phil. 783, 789 (2002).

<sup>24</sup> *People v. Casitas, Jr.*, 445 Phil. 407, 420 (2003).

<sup>25</sup> *Rollo*, pp. 39-43.

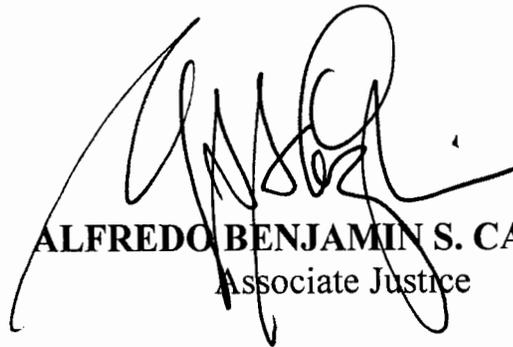
perils of impunity are present that the law is most needed, even at the inconvenience of its enforcers.

On this score, too often has the Court been a last resort to those convicted despite fatal lapses affecting the very *corpus delicti* of the crime. This pattern culminated in the recent case of *People v. Lim*<sup>26</sup> where the Court, in recognition of the malignant culture of selective law enforcement, finally laid down a mandatory policy with respect to Section 21 of R.A. No. 9165.

This case, however, comes to the Court not as an opportunity for correction, but as a product of adherence to the rule of law; that in the context of dangerous drugs cases, this case puts to rest any attack on the reasonableness and practicality of the mandatory provisions of R.A. No. 9165. As sufficiently detailed above, the prosecution was able to demonstrate full compliance with the inventory and witness requirements, as well as establish the chain of custody of the seized substances. The Court thus commends the officers in charge for remaining steadfast in their mandate to enforce the law as it is, and not as they think it should be.

**WHEREFORE**, in view of the foregoing, the Petition is hereby **DENIED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated April 30, 2018 of the Court of Appeals in CA-G.R. CR No. 39753 and **AFFIRMS** the said Decision finding petitioner Jesus Concepcion y Tabor a.k.a. "Bakla/Bong" **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165. Accordingly, he is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and a fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:

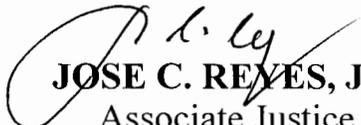


**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

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<sup>26</sup> G.R. No. 231989, September 4, 2018.

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

  
**JOSE C. REYES, JR.**  
 Associate Justice

  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

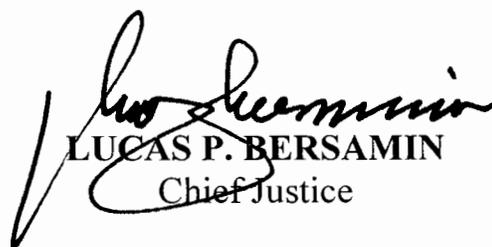
**ATTESTATION**

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, Second Division

**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 P. BERSAMIN**  
 Chief Justice

