



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

**DARREL JOHN PINGA y TOLENTINO alias "DJ,"**      **G.R. No. 245368**  
 Petitioner,      Present:

- versus -

**PEOPLE OF THE PHILIPPINES,**  
 Respondent.

PERLAS-BERNABE, S.A.J.,  
 Chairperson,  
 INTING,\*  
 M. LOPEZ,  
 ZALAMEDA,\*\* and  
 ROSARIO, JJ.

Promulgated:

**JUN 21 2021**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated August 28, 2018 and the Resolution<sup>3</sup> dated February 12, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40318, which affirmed the Judgment<sup>4</sup> dated February 28, 2017 of the Regional Trial Court of Pasig City, Branch 164 (RTC) in Crim. Case No. 20223-D-PSG finding petitioner Darrel John Pinga y Tolentino alias "DJ" (Pinga) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized

\* Designated additional member per Raffle dated May 26, 2021 in lieu of Associate Justice Amy C. Lazaro-Javier who recused from the case due to prior action in the Court of Appeals.

\*\* Designated additional member per Special Order No. 2823-R dated May 25, 2021 in lieu of Associate Justice Jhosep Y. Lopez who recused from the case due to prior action in the Court of Appeals.

<sup>1</sup> *Rollo*, pp. 11-34.

<sup>2</sup> *Id.* at 39-54. Penned by Associate Justice Rosmari D. Carandang (now member of the Court) with Associate Justices Amy C. Lazaro-Javier and Jhosep Y. Lopez (now members of the Court), concurring.

<sup>3</sup> *Id.* at 56. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Jhosep Y. Lopez and Geraldine C. Fiel-Macaraig, concurring.

<sup>4</sup> *Id.* at 94-100. Penned by Presiding Judge Jennifer Albano Pilar.

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under Section 11, Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

### The Facts

This case stemmed from an Information<sup>6</sup> filed before the RTC charging Pinga of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which reads:

On or about May 1, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control ten (10) heat-sealed transparent plastic sachets containing the following, to wit:

- |               |                   |
|---------------|-------------------|
| a) 0.30 gram; | f) 0.28 gram;     |
| b) 0.30 gram; | g) 0.30 gram;     |
| c) 0.29 gram; | h) 0.30 gram;     |
| d) 0.30 gram; | i) 0.29 gram; and |
| e) 0.30 gram; | j) 3.87 gram[s].  |

or with a total weight of 6.53 gram[s] of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>7</sup>

The prosecution alleged that at around 9:30 p.m. of April 30, 2015, the members of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station were instructed to conduct surveillance in Barangay Maybunga, Pasig City where the selling of illegal drugs was rampant. Police Officer (PO)1 Rodrigo Jose Nidoy, Jr. (PO1 Nidoy) and PO2 Marvin Santos (PO2 Santos) were assigned to monitor the area of Estella Maris and San Antonio Subdivision, Barangay Maybunga, Pasig City. On May 1, 2015, at around 12:30 a.m., PO1 Nidoy and PO2 Santos proceeded to conduct surveillance on board a motorcycle. While cruising along Yakal Street, they noticed a man, later on identified as petitioner Pinga, around four to five meters away, who was playing with a *balisong*<sup>8</sup> or fan knife. The officers approached Pinga who immediately hid the knife behind his back. PO1 Nidoy introduced himself as a police officer and questioned Pinga regarding his possession of the knife. Pinga responded that it was for self-defense. PO1 Nidoy asked Pinga to raise his hand, confiscated the knife,

<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,” approved on June 7, 2002.

<sup>6</sup> Records, pp. 1-2.

<sup>7</sup> Id.

<sup>8</sup> *Rollo*, p. 14.

informed him that his act constituted the crime of illegal possession of a deadly weapon, and then informed him of his constitutional rights. PO1 Nidoy then frisked Pinga and felt a bulge in his right front pocket. PO1 Nidoy ordered Pinga to empty his pockets, thus, revealing ten (10) plastic sachets containing white crystalline substance. Upon seeing the sachets, PO1 Nidoy informed Pinga that he was committing the crime of illegal possession of drugs and again informed him of his constitutional rights. Immediately after this arrest, and in the presence of petitioner, PO1 Nidoy marked the knife; he also marked the ten (10) plastic sachets with "1RJN/DJ 05/01/2015" to "10RJN/DJ 05/01/2015" and his signature. PO2 Santos called over Barangay Captain Mario Concepcion (Brgy. Capt. Concepcion) of Maybunga to witness the inventory of the seized evidence at the place of the arrest. Both Brgy. Capt. Concepcion and Pinga signed the inventory. Pinga was then brought to the police station. Thereat, PO1 Nidoy showed the marked plastic sachets to the investigator, PO3 Nelson Cruz. The latter then prepared the request for drug test of petitioner, request for laboratory examination of the plastic sachets, and the chain of custody form. Subsequently, the police officers brought Pinga to Rizal Medical Center for his physical examination. Later, they proceeded to the Eastern Police District Crime Laboratory in Mandaluyong City where PO1 Nidoy turned over the plastic sachets to Police Chief Inspector Rhea Fe DC Alviar (PCI Alviar), the forensic chemist. After qualitative examination, the contents tested positive for methamphetamine hydrochloride, a dangerous drug. PCI Alviar then prepared and signed Physical Sciences Report No. D-247-15E,<sup>9</sup> and resealed the specimen samples with masking tape and affixed her markings and signature thereon. The specimen remained in her custody until she brought the same to court for presentation.<sup>10</sup>

In his defense, Pinga denied the charges against him, claiming instead, that he was inside his house with his wife, Theresa Janina R. Orbeta (Theresa), and one of his children when somebody knocked on their door. As Theresa was about to answer the same, their door was kicked down and six (6) to eight (8) men entered their home, informing them that it was a buy-bust operation. Both Pinga and Theresa were handcuffed. The police officers searched their house but found nothing illegal. They uncuffed Theresa but brought Pinga to the motorpool where he was asked to give them his automated teller machine (ATM) card. Pinga told them that he did not have one and that he had no money. The police officers got angry and told him that cases would be filed against him. He was then brought to the Maybunga barangay hall where he was presented to the barangay captain. PO1 Nidoy brought out a fan knife and plastic sachets, and the barangay captain signed a document. That was the first time Pinga saw the plastic sachets of *shabu* which was later used as evidence against him. He was then brought to Rizal Medical Center for medical examination and then to Mandaluyong City for a drug test. Afterwards, he was brought back to the motorpool where he was temporarily detained. Two days

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<sup>9</sup> Records, p. 14.

<sup>10</sup> See *rollo*, pp. 40-42 and 94-96.

later, Pinga was brought for inquest where he first learned of the charges against him.<sup>11</sup>

In a Judgment<sup>12</sup> dated February 28, 2017, the RTC found Pinga **guilty** beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for a period of twenty (20) years and one (1) day and to pay a fine in the amount of ₱400,000.00.<sup>13</sup> The RTC found that Pinga was validly arrested while he was then committing a crime within view of the arresting officers. Likewise, the drugs were seized in a valid warrantless search incidental to a lawful arrest. The RTC further found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Pinga committed the crime of illegal possession of ten (10) plastic sachets containing methamphetamine hydrochloride, a dangerous drug, with a total amount of 6.53 grams, and that the chain of custody of the seized items had been substantially complied with. On the other hand, the RTC rejected Pinga's defense of denial against the overwhelming evidence of the prosecution.<sup>14</sup>

On appeal<sup>15</sup> to the CA, Pinga's conviction was **affirmed with modification** in a Decision<sup>16</sup> dated August 28, 2018, wherein the penalty imposed was adjusted to twenty (20) years and one (1) day to life imprisonment.<sup>17</sup> The CA upheld Pinga's arrest, as well as the subsequent search and seizure of the plastic sachets. Furthermore, it found that all the elements of the crime charged against Pinga were proven beyond reasonable doubt and that the integrity and evidentiary value of the seized items have been preserved due to the police officers' substantial compliance with the chain of custody rule.<sup>18</sup>

Pinga's motion for reconsideration<sup>19</sup> was denied in a Resolution<sup>20</sup> dated February 12, 2019. Hence, this petition seeking the reversal of petitioner's conviction.

### The Court's Ruling

The petition is meritorious.

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<sup>11</sup> See *id.* at 42 and 96-97.

<sup>12</sup> *Id.* at 94-100.

<sup>13</sup> *Id.* at 100.

<sup>14</sup> See *id.* at 97-100.

<sup>15</sup> See Notice of Appeal dated March 1, 2017; *CA rollo*, pp. 11-12.

<sup>16</sup> *Rollo*, pp. 39-54.

<sup>17</sup> *Id.* at 53.

<sup>18</sup> See *id.* at 44-53.

<sup>19</sup> See Motion for Reconsideration dated September 21, 2018; *CA rollo*, pp. 109-117.

<sup>20</sup> *Id.* at 56.

At the outset, the Court affirms the findings of both the RTC and the CA which upheld the validity of Pinga's arrest, as well as the search and seizure of the plastic sachets incidental thereto.

While Section 2,<sup>21</sup> Article III of the 1987 Constitution mandates that a search and seizure must be carried out by virtue of a judicial warrant predicated upon the existence of probable cause, there are exceptions thereto. One such recognized exception is a search incidental to a lawful arrest. In order to be valid, there must first be a lawful arrest before a search can be made — the process cannot be reversed.<sup>22</sup> However, a lawful arrest may be effected with or without a warrant. An example of a valid warrantless arrest is when an accused is caught *in flagrante delicto* pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure.<sup>23</sup> A valid *in flagrante delicto* arrest, on the other hand, requires the concurrence of two requisites: “(a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer.”<sup>24</sup>

As observed by both the RTC and the CA, at the time Pinga was arrested, he was committing a crime, *i.e.*, the illegal possession of a bladed weapon in violation of Presidential Decree No. 9, as amended, within the view and in the presence of both PO1 Nido and PO2 Santos. Having been caught *in flagrante delicto*, Pinga's arrest was lawful, thus, making the search incidental thereto valid. Consequently, the seized plastic sachets are admissible in evidence.

This notwithstanding, a judicious review of the records of the case reveals that there were unexplained lapses in complying with the witness requirement in the chain of custody rule which cast doubt on the integrity of the *corpus delicti* of the crime charged.

To convict an accused for the crime of Illegal Possession of Dangerous Drugs under RA 9165,<sup>25</sup> it is essential that the identity of the dangerous drug

<sup>21</sup> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

<sup>22</sup> See *Trinidad v. People*, G.R. No. 239957, February 18, 2019, citing *Sindac v. People*, 794 Phil. 421, 428 (2016).

<sup>23</sup> Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

x x x x

<sup>24</sup> See *Cruz v. People*, G.R. No. 238141, July 1, 2019.

<sup>25</sup> The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said

be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>26</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.<sup>27</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>28</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>29</sup>

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>30</sup> a representative from the media **and** the Department of Justice (DOJ), and any elected public official;<sup>31</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service<sup>32</sup> (NPS) **or** the media.<sup>33</sup> The law requires the presence of

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drug. (See *People v. Crispo*, 828 Phil. 416, 429 [2018]; *People v. Sanchez*, 827 Phil. 457, 465 [2018]; *People v. Magsano*, 826 Phil. 947, 958 [2018]; *People v. Manansala*, 826 Phil. 578, 586 [2018]; *People v. Miranda*, 824 Phil. 1042, 1050 [2018]; and *People v. Mamangon*, 824 Phil. 728, 735-736 [2018]; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

<sup>26</sup> See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* at 736. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

<sup>27</sup> See *People v. Gamboa*, 867 Phil. 548, 570 (2018), citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>28</sup> See *People v. Año*, 828 Phil. 439, 448 (2018); *People v. Crispo*, *supra*; *People v. Sanchez*, *supra*; *People v. Magsano*, *supra* at 959; *People v. Manansala*, *supra*; *People v. Miranda*, *supra* at 1051; and *People v. Mamangon*, *supra* at 736. See also *People v. Viterbo*, *supra*.

<sup>29</sup> Case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumalak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

<sup>30</sup> Entitled “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.’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, *Philippine Star Metro* section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; *World News* section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

<sup>31</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>32</sup> Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE,” otherwise known as the “Prosecution Service Act of 2010” [lapsed into law on April 8, 2010].)

<sup>33</sup> Section 21 (1), Article II of RA 9165, as amended by RA 10640

these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>34</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.<sup>35</sup> Nonetheless, anent the **witness requirement**, non-compliance *may* be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>36</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>37</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation, and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>38</sup>

Notably, the seizure of the ten (10) plastic sachets of methamphetamine hydrochloride occurred on May 1, 2015, or after the amendment introduced by RA 10640. Consequently, the applicable law now requires the presence of the following witnesses: (a) an elected public official; and (b) a representative of the NPS or the media. While the inventory shows the presence of Brgy. Capt. Concepcion, an elected public official, it is clear that there was neither a representative from the NPS nor the media, a fact admitted to by the arresting officer himself in his testimony.<sup>39</sup> Therefore, there was a deviation from the required witnesses rule.

Undoubtedly, the instant case differs from the usual drugs cases wherein the seizure of the drug was done through the conduct of a pre-arranged buy-bust operation. There was no sufficient time to make prior arrangements to comply with the requirements under Section 21 of the law. In fact, what is clear from the records is that upon the unplanned and spontaneous discovery and confiscation of the drug from Pinga, the arresting officers, specifically PO2 Santos, tried to substantially comply with the chain of custody rule by requesting the presence of Brgy. Capt. Concepcion.

<sup>34</sup> *People v. Miranda*, supra at 1054-1055. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

<sup>35</sup> See *People v. Miranda*, id. at 1059. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, supra at 1038.

<sup>36</sup> See *People v. Manansala*, supra at 591.

<sup>37</sup> See *People v. Gamboa*, supra at 569, citing *People v. Umipang*, supra at 1053.

<sup>38</sup> See *People v. Crispo*, supra at 436.

<sup>39</sup> TSN, June 28, 2016, pp. 6 and 21. See also *rollo*, p. 47.

However, as earlier stated, it is incumbent upon the prosecution to account for the absence of any of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, PO1 Nido explained that they were unable to call representatives from the DOJ and the media because the arrest and the inventory were made in the early morning of May 1, 2015 and that they could not coordinate with the media because they only chanced upon the arrest of Pinga.<sup>40</sup> However, in *People v. Lim*,<sup>41</sup> the Court held that the fact that the arrest occurred late in the evening was not, by itself, sufficient justification to exempt the presence of the required witnesses under the law. The prosecution must still detail the earnest efforts actually exerted to coordinate with and secure the presence of the required witnesses.<sup>42</sup> In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Pinga were compromised, which consequently warrants his acquittal.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated August 28, 2018 and the Resolution dated February 12, 2019 of the Court of Appeals in CA-G.R. CR No. 40318 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Darrel John Pinga y Tolentino alias "DJ" is **ACQUITTED** of the crime charged.

Let entry of judgment be issued immediately.

**SO ORDERED.**

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

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<sup>40</sup> See id.

<sup>41</sup> See G.R. No. 231989, September 4, 2018.

<sup>42</sup> See id.

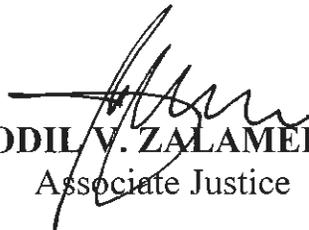
**WE CONCUR:**



**HENRI JEAN PAUL B. INTING**  
Associate Justice



**MARIO V. LOPEZ**  
Associate Justice



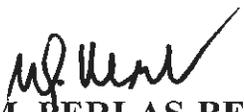
**RODIL V. ZALAMEDA**  
Associate Justice



**RICARDO B. ROSARIO**  
Associate Justice

**A T T E S T A T I O N**

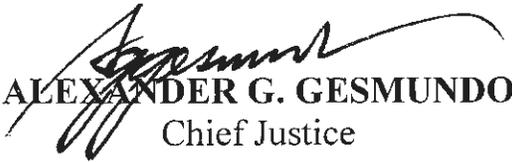
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

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.



**ALEXANDER G. GESMUNDO**  
Chief Justice