



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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FIRST DIVISION

HILARIO COSME y TERENAL,  
*Petitioner,*

G.R. No. 261113

Present:

- versus -

GESMUNDO, C.J.,  
HERNANDO,\*  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, JJ.

PEOPLE OF THE PHILIPPINES,  
*Respondent.*

Promulgated:

NOV 04 2024

[Signature]

X ----- X

DECISION

ROSARIO, J.:

Licensed private security professionals of private security agencies are authorized to possess their service firearm in the performance of their duty by virtue of a Duty Detail Order (DDO) and, on such basis, are entitled to presume that their agency issued them a licensed firearm. Hence, even if it turns out that said firearm was unlicensed, criminal liability for illegal possession of firearm does not attach absent proof that the accused freely and voluntarily possessed it knowing it to be unlicensed. Where the accused security professional is licensed to exercise their profession and is equipped with a permit sanctioned by law, possession of the issued firearm under a belief in good faith that it is licensed is a valid defense in a case for illegal possession of firearm.

\* On official business.

This Petition for Review on *Certiorari* under Rule 45, Rules of Court assails the Court of Appeals (CA) Decision<sup>1</sup> and Resolution<sup>2</sup> which affirmed the Regional Trial Court (RTC) Decision<sup>3</sup> convicting Hilario Cosme y Terenal (Cosme) of violation of Section 28(a) of Republic Act No. 10591.<sup>4</sup>

## I

Cosme was charged with violation of Section 28(a) of Republic Act No. 10591 under an Information, the accusatory portion of which reads:

That on or about the 7<sup>th</sup> day of July, 2017 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, did then and there willfully, unlawfully, and feloniously have in his possession, custody and control one (1) Armscor shotgun 12 gauge with Serial No. 1058051 loaded with two (2) pcs of 12 gauge shotgun ammunition, without the corresponding license/ authority of law to possess the same.

Contrary to law.<sup>5</sup>

Upon arraignment, Cosme pleaded not guilty to the crime charged, after which trial on the merits ensued.

According to the evidence for the prosecution, it was just past midnight on July 7, 2017 when Police Officer II (PO2) Billy John Velasquez, who was on patrol, saw Cosme at the Soleum gasoline station carrying a shotgun on his shoulder. Questioned on his possession thereof, Cosme claimed to be the security guard of the gasoline station but was not wearing the prescribed uniform and was unable to present his authority to possess said firearm. Consequently, PO2 Velasquez arrested him, frisked him, and found two pieces of 12-gauge shotgun ammunition which he confiscated along with the firearm. After inquest proceedings, the present case was filed against Cosme.<sup>6</sup> The prosecution also presented a Certification from the Philippine National Police Firearms and Explosives Office (PNP-FEO) which states that Cosme “is not a licensed/registered firearm holder of caliber nor authorized to possess any kind of ammunition per verification from the databases of this office.”<sup>7</sup>

<sup>1</sup> *Rollo*, pp. 35–44. The February 26, 2021 Decision in CA-G.R. CR No. 44151 was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Emily R. Aliño-Geluz of the Tenth Division, Court of Appeals, Manila.

<sup>2</sup> *Id.* at 46–48. The May 24, 2022 Resolution in CA-G.R. CR No. 44151 was penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Emily R. Aliño-Geluz of the Special Former Tenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 67–73. The September 25, 2019 Decision in Criminal Case No. R-PSY-17-14645 CR was penned by Presiding Judge Albert T. Cansino of Branch 108, Regional Trial Court, Pasay City.

<sup>4</sup> Republic Act No. 10591 (2013), Comprehensive Firearms and Ammunition Regulation Act.

<sup>5</sup> *Rollo*, p. 67.

<sup>6</sup> *Id.* at 68.

<sup>7</sup> *Id.* at 56.

In his defense, Cosme testified that he is a security guard for G-Air Security Agency, detailed at the Soleum Gasoline Station. At the time he was apprehended, he was only wearing a security polo shirt and shorts because he forgot the key to his locker. He decided not to force open his locker upon the assurance of his supervisor that he would be the one to explain for him if he gets caught for not wearing the prescribed uniform. He was at the parking lot of the gas station when police officers arrived, frisked him, and confiscated his shotgun and ammunition. They told his agency to send a representative to the police station where he would be brought but nobody came. He claims to have been victimized by his agency because he was made to believe that the shotgun was licensed.<sup>8</sup> To corroborate his testimony, he presented his License to Exercise Security Profession (LESP) issued by the PNP Civil Security Group Office, his timecard, as well as a DDO,<sup>9</sup> which reads:

Duty Detail Order No. 2017

1. References:
  - a. Section 4, Rule VII of the Revised Implementing Rules and Regulations of [Republic Act No.] 5487, as amended; and
  - b. [Republic Act No.] 10591. Comprehensive Firearms and Ammunition Regulation Act.
2. Purpose of Details: Post Security Service Duties.
3. Duration/Inclusive Dates of Detail: From July 1 to July 31, 2017
4. The following security guard/s (SG) are hereby assigned to render post security service duties in places indicated and hereby issued agency/company owned firearms.

Name of Guard	Designation	Place of Guard Duty	Time of Duty	Firearms Information			
				Kind	Make Cal.	FAs Serial No.	Validity of FAs License
Cosme, Hilario T.	S/G	Soleum Gas Corp, EDSA Ave, ...	1800H-0600	Shotgun	Armscor .12 GA	1058051	
				NOTHING FOLLOWS <sup>10</sup>			

Cosme's sister, Cherry Joy T. Cosme, testified that she works at the Happy Hotpot Restaurant in Makati City as a security guard also under G-Air Security Agency whose manager, Bien Cosme Encarnacion, is their relative, and that said agency assured them that the firearms that it issued to them are licensed. She later learned of Cosme's arrest<sup>11</sup> and lamented the agency's treatment of her brother, saying "[p]inabayaan nga sya ng aming security agency gayung sila naman ang nag-isyu sa kanya ng baril na yun."<sup>12</sup>

<sup>8</sup> *Id.* at 69.

<sup>9</sup> Republic Act No. 10591 (2013), sec. 3(k). *Duty detail order* refers to a document issued by the juridical entity or employer wherein the details of the disposition of firearm is spelled-out, thus indicating the name of the employee, the firearm information, the specific duration and location of posting or assignment and the authorized bonded firearm custodian for the juridical entity to whom such firearm is turned over after the lapse of the order.

<sup>10</sup> *Id.* at 21-22.

<sup>11</sup> *Id.* at 69.

<sup>12</sup> *Id.* at 41.

In its Decision, the RTC found Cosme guilty beyond reasonable doubt of violation of the crime charged. The dispositive portion reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds accused, HILARIO COSME y TERENAL, GUILTY of violation of Section 28(a) of [Republic Act No.] 10591 and he is sentenced to suffer the penalty of imprisonment of [six] months and [one] day of prision correccional, as minimum, to [eight] years and [one] day of prision mayor, as maximum.

....

SO ORDERED.<sup>13</sup>

In affirming the conviction, the CA found that the prosecution was able to prove the existence of the firearm, that Cosme had possession thereof, coupled with the intent to possess, and that he had no license to possess the same. It held that the DDO and timecards cannot save him as the law is silent on whether possession of these documents will clear him from criminal liability. In any case, when he was accosted, he failed to show his DDO. Moreover, if it were true that the subject firearm was licensed, his security agency would have come to his rescue. The dispositive portion reads:

WHEREFORE, the instant appeal is hereby DENIED. The assailed September 25, 2019 Decision of the Pasay City Regional Trial Court, Branch 108, in Criminal Case No. R-PSY-17-14645-CR finding the herein accused-appellant Hilario Cosme y Terenal guilty beyond reasonable doubt of the crime of violation of Section 28 (a) of Republic Act 10591, otherwise known as the Comprehensive Firearms and Ammunition Regulation Act is AFFIRMED with the only MODIFICATION in that the penalty to be imposed upon the herein accused-appellant should be a minimum imprisonment of [six] years, eight months and [one] day of *prision mayor* to [nine] years and [four] months of *prision mayor* as maximum.

All others aspects of the assailed Decision stand.

SO ORDERED.<sup>14</sup>

In his Motion for Reconsideration,<sup>15</sup> Cosme argued that since licensed juridical entities are allowed by the law to own and register firearms, reliance on the PNP-FEO Certification as basis to conclude that he has no authority to possess the subject firearm is misplaced. According to Cosme, there is no need for him to have a license in his name as the firearm is owned by the security agency. Instead, it is the DDO which clothes him with authority to possess the firearm and ammunition during the performance of his duties as a security guard. Even if he was not able to immediately present his DDO, the law is silent and does not punish the failure to immediately show said document. Finally, he contends that he should not bear the brunt of his employer's

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<sup>13</sup> *Id.* at 73.

<sup>14</sup> *Id.* at 43-44.

<sup>15</sup> *Id.* at 88-92.

abandonment, and that as a security guard, he did not aid in the proliferation of illegal firearms, and thus, did not violate the policy of the State espoused in Section 2, Republic Act No. 10591. However, the CA denied his motion for raising the same factual and legal issues it had already passed upon.

Hence, this Petition arguing that the prosecution failed to sufficiently establish the second element of the crime of illegal possession of firearms, i.e., that the accused who possessed or owned the same does not have the corresponding license for it. According to Cosme, the silence of Republic Act No. 10591 as to whether the DDO and timecards would absolve him from criminal liability should be interpreted in his favor. Further, it is his employer, G-Air Security Agency, that should secure the license.<sup>16</sup>

In their Comment, the People, through the Office of the Solicitor General (OSG), aver that although it is unfair that Cosme is left to suffer for the illegal possession of firearms that was simply issued to him as part of his job, he nonetheless possessed and carried a firearm and ammunition without the requisite license. Said license, according to the OSG, should have come from his employer and a copy thereof should have been in his possession considering that the DDO itself states that “[t]he issued firearms to the guards are licensed and a copy must be in the possession of the guards.”<sup>17</sup>

## II

Cosme was convicted for unlawful possession of firearms and ammunition under Section 28(a) of Republic Act No. 10591 which states:

SEC. 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* – The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prisión mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

....

The *corpus delicti* in the crime of illegal possession of firearm is the lack of license **or permit** on the part of the accused to possess or carry the firearm since possession *per se* is not prohibited by law. To establish the *corpus delicti*, the prosecution bears the burden of proving that: (a) the firearm exists; and (b) the accused who owned or possessed it does not have the corresponding license **or permit** to possess or carry the same.<sup>18</sup>

<sup>16</sup> *Id.* at 22–23.

<sup>17</sup> *Id.* at 82–83.

<sup>18</sup> *Peralta v. People*, 817 Phil. 554, 562 (2017) [Per J. Perlas-Bernabe, Second Division].

The phrase “or permit” is vital because the possessor of the firearm may not necessarily be the licensee. The non-licensee is only expected to bear a permit sanctioned by law such as the DDO. Under the 1983 Implementing Rules and Regulations (IRR) of Presidential Decree No. 1866,<sup>19</sup> private security agency (PSA) guards were authorized to carry firearms on work premises as long as they were authorized by a DDO.<sup>20</sup> More recently, the 2018 Revised IRR of Republic Act No. 10591 provides that the DDO serves as the authority of the personnel to carry his issued firearm within the specific duration and location of posting or assignment.<sup>21</sup>

Prior to its repeal in 2022 by Republic Act No. 11917,<sup>22</sup> PSAs and their private security professionals (PSPs) were governed by Republic Act No. 5487<sup>23</sup> whose revised IRR commands PSAs to issue to the PSP concerned an appropriate DDO using PNP SAGSD<sup>24</sup> Form No. 12-94.<sup>25</sup> While Cosme’s DDO substantially complies with the prescribed form, glaringly absent is the subject firearm’s license number. Nonetheless, any error or omission in the DDO is not the responsibility of PSPs but that of their security agency for it is the latter which the law tasks to issue the appropriate permit.

Alas, since Cosme was not in uniform and was unable to present his DDO when apprehended, it was reasonable for the police officer to presume that he was not authorized to carry the subject firearm. The IRRs of Republic Acts Nos. 5487 and 11917 consider it a less grave offense<sup>26</sup> for PSPs to not have a DDO in their possession while on duty and to use an inappropriate uniform. The same is also a violation of the Code of Conduct which commands PSPs to carry their LESP and DDO during their tour of duty.<sup>27</sup>

Cosme’s faux pas ultimately led to the filing of the present case. In affirming his conviction, the CA ruled that the presentation of the DDO,

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<sup>19</sup> Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition of Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.

<sup>20</sup> Implementing Rules and Regulations of Presidential Decree No. 1866 (1983), sec. 6(h)(1). “Guards of security agencies and public or private corporations or firms are not authorized to carry firearms except while on proper uniform, and they are properly authorized by a duty detail issued by the Chief Security Officer concerned. The carrying of firearms is limited only from the premises of the office of such agencies, corporations or firms to their place of work and return.”

<sup>21</sup> Revised Implementing Rules and Regulations of Republic Act No. 10591 (2018), Rule II, sec. 7.9. “Private security agencies, private detective agencies, company security forces, government guard units and other duly licensed or accredited private security service providers detailing their security personnel on actual duty shall issue the appropriate duty detail order (DDO) to the concerned security personnel. This will serve as the authority of the personnel to carry his issued firearm within the specific duration and location of posting or assignment.”

<sup>22</sup> The Private Security Services Industry Act.

<sup>23</sup> The Private Security Agency Law.

<sup>24</sup> Security Agency and Guard Supervision Division, now the Supervisory Office for Security and Investigation Agencies (SOSIA).

<sup>25</sup> Revised Implementing Rules and Regulations of Republic Act No. 5487 (2003), Rule VII, sec. 4.

<sup>26</sup> Revised Implementing Rules and Regulations of Republic Act No. 5487 (2003), Rule XVII, Part 2, sec. 3(b); Implementing Rules and Regulations of Republic Act No. 11917 (2022), sec. 342.

<sup>27</sup> Revised Implementing Rules and Regulations of Republic Act No. 5487 (2003), Rule X(C)(a); Implementing Rules and Regulations of Republic Act No. 11917 (2022), sec. 236.

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belated or not, would not exonerate him considering that the law is silent on whether possession of such document would clear him of criminal liability. It further held that were it true that the subject firearm was licensed, his security agency would have come to his rescue. The CA, however, ignored his sister's claim that their employer had abandoned them. Why the agency did not come to Cosme's aid despite its manager being allegedly related to him is beyond Us, but its despicable indifference to Cosme's plight indicates that it may have something to hide and that aiding him may not be in its best interest.

This begs the question as to whether it was Cosme's burden to prove the existence of a valid license in favor of his employer in addition to the DDO that it had issued to him. Phrased differently, may a PSP be held guilty of illegal possession of firearm for failure to prove the existence of a valid license in favor of the security agency over the weapon it issued?

Similar to the case at bench, the accused security guard in *Cuenca v. People*<sup>28</sup> was unable to show the apprehending officer a license to possess his firearm, the same being allegedly in the office of his employer to which said firearm belonged. It turned out that the agency did not bear a license for said firearm and that it was still in the process of securing one. The Court *En Banc*, speaking through Chief Justice Roberto Concepcion, pronounced:

The trial court and the Court of Appeals convicted appellant herein, despite his protests of good faith, upon the ground that the crime of illegal possession of a firearm and ammunition is ... *malum prohibitum*... It should be noted, however, that the Bataan Veterans Security Agency is duly licensed to operate as such. Consequently, it may legally engage the service of competent persons to discharge the duties of special watchmen and security guards, and provide them, as such, with the corresponding firearms and ammunitions. *The agency is thus supposed to obtain the license necessary therefor. Had it done so, there would be no question about the absence of any criminal liability on the part of appellant herein for the possession of the firearm and ammunition in question, even though the license were not in his name, but in that of the agency or its owner and operator, Jose Forbes.* Hence, the query boils down to whether or not appellant is guilty of the crime charged owing to the failure of Jose Forbes to comply with his duty to obtain such license, before he got said firearm and ammunition and delivered the same to his aforementioned employee.

[T]he answer must be in the negative. The reason is that *appellant was entitled to assume that his employer had the requisite license to possess said firearm and ammunition* and to turn them over to him while he was on duty as one of the regular security guards of the Bataan Veterans Security Agency, the same being a duly licensed security agency. As such, those dealing with it, either as clients or as employees thereof, are entitled to presume, in the absence of indicia to the contrary — and there were none in the present case — that it has complied with pertinent laws, rules and regulations. *What is more, Jose Forbes had told appellant that the firearm and ammunition in question were duly licensed, and, as an employee of the*

<sup>28</sup> 144 Phil. 457 (1970) [Per C.J. Concepcion, *En Banc*].

*agency, appellant could not be expected to demand from his employer proof of the veracity of the latter's assertion before relying thereon.*

.....

Needless to say, this decision must be deemed restricted in its application to duly licensed security agencies and to regular security guards thereof. Moreover, the owner, manager and/or operator of the security agency, who failed to secure the requisite license... should be prosecuted for illegal possession of firearms...<sup>29</sup> (Emphasis supplied)

Although *Cuenca* was promulgated under the old law on unlawful possession of firearms, We see no reason why it should not operate here. As applied, Cosme was entitled to rely on the statement in the DDO that “[t]he issued firearms to the guards are licensed” and could not be expected to demand from his employer proof of said statement’s veracity before relying thereon. Admittedly, he did not have a copy of the firearms license allegedly issued to his employer despite the specific instruction in the DDO that he bear such copy. Nonetheless, as the putative licensee, the security agency should have provided him with a copy of its firearms license when it issued the DDO. At any rate, it is clear under the IRRs of Presidential Decree No. 1866 and Republic Act No. 10591 that PSPs derive their authority to carry firearms not from their employer’s license but from the DDO itself. The issuance of a DDO presupposes the existence of a valid license over the firearm/s stated therein, as shown by the phrase “[t]he issued firearms to the guards are licensed” which is standard wording in any DDO using PNP SAGSD Form No. 12-94.

Of course, it is not enough that a PSP be covered by a DDO. At the time they possessed the firearm, they should be licensed to exercise their profession and should have possessed it within the premises and period specified in their DDO, which, in this case, permitted Cosme to carry the firearm during his post-security service duties at Soleum Gas Station from July 1 to 31, 2017 from 6:00 p.m. to 6:00 a.m. It is undisputed that Cosme was a licensed PSP as shown by his LESP and that on the date and at the time and place he was apprehended, i.e., July 7, 2017 at 12:10 a.m. at Soleum Gas Station, he was acting well within the authority granted to him under the DDO.

As a rule, when the crime is punished by a special law, intent to commit the crime is not necessary. It is sufficient that the offender intended to perpetrate the act prohibited by the special law.<sup>30</sup> The act prohibited by the law is not the mere possession of a firearm, but the possession of one **unlawfully**, i.e., without a license or a permit sanctioned by law. Since Cosme had a valid permit sanctioned under Republic Act No. 10591 and its IRR, it could not be said that he was perpetrating the act prohibited by law.

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<sup>29</sup> *Id.* at 460–461.

<sup>30</sup> *People v. De Gracia*, 304 Phil. 118, 130 (1994) [Per J. Regalado, Second Division].



Moreover, while there was physical possession of the firearm, there was no *animus possidendi* of an unlicensed firearm. In *People v. De Gracia*,<sup>31</sup> We explained that *animus possidendi* or intent to possess is a state of mind which may be determined on a case-by-case basis, taking into consideration the prior and contemporaneous acts of the accused and surrounding circumstances.<sup>32</sup> Here, Cosme was conspicuously carrying a shotgun on his shoulder while performing his duty at the gas station under the honest belief that his security agency had a license for it, as stated in his DDO. It is unnatural for an innocent person to wield a weapon in such a publicly accessible space, in plain view of civilians and law enforcement officers alike, if one knew it to be unlicensed.

True, We held in *De Gracia* that for one to be found guilty of illegal possession of firearm, “it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.”<sup>33</sup> However, as suggested by the statement itself, the good faith defense is only unavailing where the accused had no license or authority to possess the firearm in the first place. Thus, where the accused had the proper authority, possession of the firearm under a belief in good faith that it is licensed is a valid defense. While Cosme failed to present his DDO when apprehended, the same did not mean that he had no authority to possess the subject firearm as indeed he had. At most, he may only be administratively liable for not having said DDO in his possession.

Though the evidence does not show whether G-Air Security Agency held a license for the subject firearm, it is clear that Cosme was a duly licensed PSP, that a DDO was issued to him, that he possessed his service firearm at the place and during the time period specified in the DDO, and that there was no proof that he possessed the same knowing it to be unlicensed. It must be added that his possession of ammunition is necessarily included in the license to possess firearm.<sup>34</sup> Since it was valid for Cosme to presume that his service firearm was covered by a license in favor of his employer, it follows that he was likewise entitled to presume that he was authorized to carry ammunition appropriate to said firearm. It cannot therefore be said that the prosecution was able to prove his guilt beyond reasonable doubt.

**ACCORDINGLY**, the Petition is **GRANTED**. The February 26, 2021 Decision and May 24, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 44151 are **REVERSED** and **SET ASIDE**. Petitioner Hilario Cosme y Terenal is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

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<sup>31</sup> 304 Phil. 118 (1994) [Per J. Regalado, Second Division].

<sup>32</sup> *Id.* at 131.

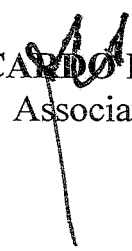
<sup>33</sup> *Id.* at 130.

<sup>34</sup> Republic Act No. 10591 (2013), sec. 12.

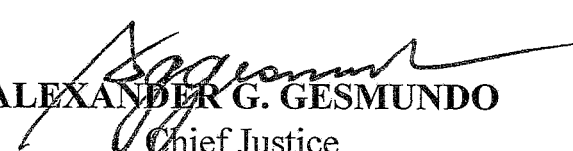
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Let a copy of this Decision be furnished to the Secretary of Justice, the Police General of the Philippine National Police, the Chief of the PNP Supervisory Office for Security and Investigation Agencies, and the Chief of the PNP Firearms and Explosives Office for their information.

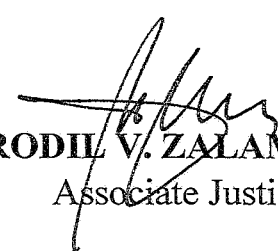
**SO ORDERED.**

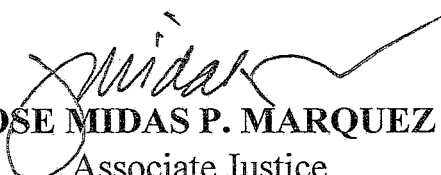
  
**RICARDO R. ROSARIO**  
Associate Justice

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

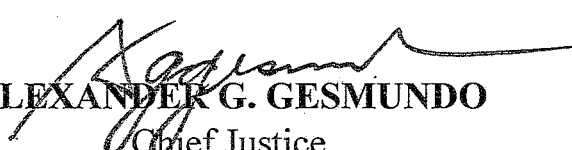
On official business  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

### **CERTIFICATION**

Pursuant to Article VIII, Section 13 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice