



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 219584**

Plaintiff-Appellee, Present:

- versus -

PLACIDO GOCO y OMBROG,
Accused-Appellant.

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, JJ.

Promulgated:
OCT 17 2016

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Placido Goco y Ombrog (Goco) assailing the Decision² dated June 30, 2014 of the Court of Appeals (CA) in CA-G.R. CR. No. 00737, which affirmed with modification the Decision³ dated July 23, 2007 of the Regional Trial Court of Catarman, Northern Samar, Branch 19 (RTC) in Criminal Case Nos. C-3520 and C-3521, finding Goco guilty of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

¹ See Notice of Appeal dated July 23, 2014; *rollo*, pp. 20-21.
² Id. at 4-19. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco concurring.
³ CA *rollo*, pp. 39-44. Penned by Judge Norma Megenio-Cardenas.
⁴ 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.

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The Facts

The instant case stemmed from two (2) Informations filed before the RTC accusing Goco of violating Sections 5⁵ and 11,⁶ Article II of RA 9165, viz.:

Criminal Case No. C-3520

The undersigned Provincial Prosecutor of Northern Samar accuses PLACIDO GOCO y OMBROG of the crime of VIOLATION OF SECTION 5 ARTICLE II OF REPUBLIC ACT 9165 (Sale of Dangerous Drugs), committed as follows:

That on or about the 25th day of June 2003, at about 9:30 o'clock in the morning, in Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to violate said provisions of law, while the joint team of the Philippine Drug Enforcement Agency (PDEA) and the Northern Samar Police Provincial Office (NSPPO) were conducting a buy-bust operation in said place, did then and there willfully, unlawfully and feloniously sale [sic], distribute and deliver to PO[2] Joel Emano the policeman who acted as poseur-buyer, One (1) sachet of Methamphetamine Hydrochloride known as "Shabu", a regulated drug, weighing 0.4 grams, valued at TWO HUNDRED PESOS (Php.200.00) without securing the necessary permit or license to do the same from any competent authority.

CONTRARY TO LAW.⁷

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⁵ The pertinent portions of Section 5, Article II of RA 9165 reads:

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

x x x x

⁶ The pertinent portions of Section 11, Article II of RA 9165 provides:

Section 11. Possession of Dangerous Drugs. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁷ Records (I.S. No. 2003-189), p. 27.

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Criminal Case No. C-3521

The undersigned Provincial Prosecutor of Northern Samar accuses PLACIDO GOCO Y OMBROG of the crime of VIOLATION OF SECTION 11 ARTICLE II OF REPUBLIC ACT 9165, otherwise known as DANGEROUS DRUG[S] ACT of 2002, committed as follows:

That on or about the 25th day of June 2003 at about 9:30 o'clock in the morning, in Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the said provisions of law, did then and there, willfully, unlawfully, and feloniously have in his possession, custody and control 3 sachets of metamphetamine hydrochloride locally known as "Shabu" with estimated weight of One point four (1.4) grams, a regulated drug without first securing the necessary permit or license to possess the same from competent authority.

CONTRARY TO LAW.⁸

The prosecution alleged that on June 24, 2003 PO2 Joel Emano,⁹ (PO2 Emano) a Philippine Drug Enforcement Agency (PDEA) agent, received a tip from a civilian informant that a shipment of *shabu* had arrived in Catarman and Goco was one of the recipients. He relayed the information to P/Insp. Arnel Gualvez, Chief of Police of Catarman station, who formed a team composed of PO2 Emano, SPO3 Rogelio Belga (SPO3 Belga), and SPO4 Jesus Cabagsang (SPO4 Cabagsang). PO2 Emano was designated as the poseur-buyer for the entrapment operation and was thus provided with marked money in the amount of ₱200.00. Later that evening, PO2 Emano and the informant surveilled Goco's drug activities.¹⁰

At around 7:00 o'clock in the morning of June 25, 2003, PO2 Emano and the informant met Goco at the market of Barangay Narra, Catarman, where the informant introduced PO2 Emano as the buyer of the drugs. After ordering ₱200.00 worth of *shabu* from Goco, the latter instructed PO2 Emano to meet him in front of the Fajardo residence in Barangay Jose Abad Santos as he did not have the *shabu* at the time. PO2 Emano returned to the Catarman Police Station to plan the operation with the other team members, and they agreed that he would remove his hat to signify the consummated sale. Later that day, the buy-bust team proceeded to Barangay Jose Abad Santos. Upon their arrival at around 9:30 in the morning, they stationed themselves near the Fajardo residence. PO2 Emano met with Goco, who handed him a sachet containing a white crystalline substance in exchange for the buy-bust money. With the sale consummated, PO2 Emano gave the pre-arranged signal by removing his hat, prompting the back-up officers to rush in and arrest Goco. PO2 Emano read to Goco his constitutional rights and frisked him, which yielded three (3) more sachets of *shabu*, the buy-bust money, and cash amounting to ₱320.00. After the arrest, Goco and the

⁸ Records (I.S. No. 2003-188), p. 26.

⁹ "PO2 Joel Emano" in some parts of the records.

¹⁰ *Rollo*, pp. 4-5.

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seized drugs were transported to the police station for investigation. PO2 Emano turned over the seized items to the investigator who, in turn, handed them over to the PDEA Provincial Office. The items were then brought to the Crime Laboratory for examination, which were received by a certain PO1 Dennis Ecito (PO1 Ecito) and examined by P/Insp. Benjamin Aguirre Cruto, Jr., (P/Insp. Cruto). The items yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, an illegal drug.¹¹

In his defense, Goco denied selling or possessing the illegal drugs. He claimed that in the morning of June 25, 2003, he went to a quack doctor for treatment. After the said visit, he went to the house of Manuel Ching (Ching) to buy fish, but as the latter was leaving to buy fish feed, Goco accompanied him. They then walked to the house of a certain de Guzman and waited to hail a pedicab. While waiting, PO2 Emano and SPO3 Belga arrived on a motorcycle, parked in front of them, and alighted from the vehicle. SPO3 Belga held Goco's hand, while PO2 Emano frisked him. Goco was made to ride the motorcycle with PO2 Emano and SPO3 Belga, and was brought to the police station. Goco was then investigated and detained.¹²

Upon arraignment on October 10, 2003, Goco pleaded not guilty to both charges against him.¹³

The RTC Ruling

In a Decision¹⁴ dated July 23, 2007, the RTC found Goco guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years and ordered to pay a fine in the amount of ₱200,000.00 for each violation of Section 5 and Section 11, Article II of RA 9165.

The RTC held that the prosecution had established all the elements to secure convictions under Sections 5 and 11, Article II of RA 9165 for illegal sale and illegal possession of dangerous drugs, respectively. It observed that the sale of *shabu* between Goco and PO2 Emano was consummated, and when arrested, a search made on Goco's person yielded three (3) more sachets of *shabu*. The four (4) sachets of *shabu* were presented in court and identified by PO2 Emano as the same sachets taken from Goco. Further, it gave no credence to Goco's defense of alibi and denial, which paled in light of PO2 Emano's positive identification of Goco as the seller of *shabu*.¹⁵

Dissatisfied, Goco elevated his conviction before the CA.¹⁶

¹¹ Id. at 5-6.

¹² Id. at 7.

¹³ Records (I.S. No. 2003-189), p. 35.

¹⁴ CA *rollo*, pp. 39-44. Penned by Judge Norma Megenio-Cardenas.

¹⁵ Id. at 42-43.

¹⁶ Id. at 20-38.

The CA Ruling

In a Decision¹⁷ dated June 30, 2014, the CA affirmed Goco's conviction with modification, sentencing Goco to suffer the penalty of life imprisonment and ordering him to pay a fine in the amount of ₱500,000.00 for violating Section 5, Article II of RA 9165.

The CA held that the testimonies of PO2 Emano, SPO3 Belga, and SPO4 Cabagsang only differed on minor points but they were all consistent on material points, *i.e.*, that Goco sold the drugs to PO2 Emano on June 25, 2003, and three (3) more sachets of *shabu* were recovered from him. It gave no credence to Goco's defense of denial, and noted that he failed to adduce sufficient evidence to overcome the presumption of regularity accorded to police officers in the performance of their official duties.¹⁸

Undaunted, Goco filed the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Goco's conviction for illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.¹⁹ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²⁰

Goco was charged with illegal sale and illegal possession of dangerous drugs defined and penalized under Sections 5 and 11, Article II of RA 9165, respectively.

¹⁷ *Rollo*, pp. 4-19.

¹⁸ *Id.* at 8-17.

¹⁹ *People v. Dahil*, G.R. No. 212196, January 12, 2015, 745 SCRA 221, 233; citation omitted.

²⁰ *See People v. Comboy*, G.R. No. 218399, March 2, 2016; citation omitted.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must establish the following: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.²¹ What remains material for conviction is proof that the transaction took place, coupled with the presentation in court of the *corpus delicti*.²² On the other hand, in order to convict an accused for illegal possession of dangerous drugs, the prosecution must prove that: (a) the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²³

In both cases, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.²⁴

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.²⁵ Under the said section, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items** in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.²⁶ The Implementing Rules and Regulations (IRR) mirror the content of Section 21 of RA 9165 but adds that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and **that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**²⁷

As a general rule, the apprehending team must strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR. However, their failure to do so does not *ipso facto* render the seizure and custody over the items as void and invalid if: (a) there is justifiable ground for non-

²¹ *People v. Sorin*, G.R. No. 212635, March 25, 2015, 754 SCRA 594, 603; citation omitted.

²² *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 149; citation omitted.

²³ *People v. Bio*, G.R. No. 195850, February 16, 2015, 750 SCRA 572, 578; citation omitted.

²⁴ *People v. Viterbo*, G.R. No. 203434, July 23, 2014, 730 SCRA 672, 680; citations omitted.

²⁵ *People v. Sumili*, supra note 22, at 150-151.

²⁶ See Section 21 (1), Article II of RA 9165.

²⁷ See Section 21 (a), Article II of the IRR of RA 9165.

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compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.²⁸

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the moment of seizure, to receipt of the same by the forensic laboratory, to safekeeping, and finally to the presentation of the drugs or chemicals in court for destruction.²⁹ The chain of custody requirement is strictly applied when the evidence sought to be presented is not distinctive and not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard applies to evidence susceptible to alteration, tampering, contamination, and substitution or exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration, or tampering dictates the level of strictness in the application of the chain of custody rule.³⁰ One of the physical characteristics of *shabu* is that it is fungible in nature, and similar in appearance to substances used by people in their daily activities. As it is not readily distinguishable from other substances, and from other samples of *shabu*, the chain of custody requirement must be strictly complied with in order to render it improbable that the seized items are exchanged with another, or contaminated, or tampered with.³¹

After a judicious perusal of the records, the Court finds that the prosecution failed to show that the integrity and evidentiary value of the seized items were preserved, and that the police officers' non-compliance with Section 21 of RA 9165 and the IRR was justified. Resultantly, the integrity and identity of the items purportedly seized from Goco are put into question, militating against a finding of guilt beyond reasonable doubt.

In order to fulfill the chain of custody requirement, the prosecution must identify the persons who handled the seized items from seizure up until their presentation in court as evidence. **To do so, the prosecution must present testimonies about every link in the chain, in such a way that every person who touched the illegal drugs would describe how and from whom they were received, where they were and what happened to them while in his or her possession, the condition in which he or she received them, and their condition upon delivery. The witnesses must describe the precautions taken to ensure that there was no change in the condition of the illegal drugs and no opportunity for someone not in the chain to have possessed the said items. Also, crucial in proving**

²⁸ *People v. Viterbo*, supra note 24, at 683; citation omitted.

²⁹ See *Sanchez v. People*, G.R. No. 204589, November 19, 2014, 741 SCRA 294, 317, citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

³⁰ *People v. Guzon*, 719 Phil. 441, 453-454 (2013), citing *Mallillin v. People*, 576 Phil. 576, 587-588 (2008).

³¹ See *People v. Abetong*, G.R. No. 209785, June 4, 2014, 725 SCRA 304, 314.

the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.³²

In this instance, the prosecution failed to show who handled the seized items after PO2 Emano took hold of them, how their custody was transferred to another, who marked the seized sachets of drugs, and when and how they were marked.

PO2 Emano's testimony as the poseur-buyer, as well as the initial link in the chain of custody, is sparse on the matters of marking of the seized items and the transfer of custody:

[Prosecutor Leo C. Francisco (Pros. Francisco)]: Now, you said that you arrested [Goco] together with the members of the group after arresting him what did you do?

[PO2 Emano]: After arresting him we noticed a pack of marlboro on his waist we took it from his waist and we still found another three (3) more sachets of *shabu*, the marked money and another ₱320.00 aside from the marked money.

Q: Then what did you do after that?

A: **We brought him to the police station for investigation; we turned over him to the investigation room and I do not know what happened there.**

x x x x

Q: Now, when [Goco] was brought to the investigation section was there an investigation conducted upon him?

A: **I don't know, because I just brought him to the investigation section after his arrest then I left.**

x x x x

Q: What did you do with the *shabu* which you confiscated from the accused?

A: **The chief of police turned over it to the Provincial Director of the PDEA and turned it over to the Crime Laboratory in Palo, Leyte.**³³

x x x x (Emphases and underscoring supplied)

Similarly, the testimony of SPO3 Belga exhibited a dearth of information as to who had custody over the illegal drugs after PO2 Emano seized the same from Goco, and whether the same were even marked:

[Pros. Francisco]: You mentioned of that *shabu*, where did you recovered [sic] that *shabu*?

[SPO3 Belga]: It was only [PO2 Emano] and the investigator who recovered it at the police station.

³² See *People v. Flores*, G.R. No. 201365, August 3, 2015, citations omitted.

³³ TSN, October 12, 2005, pp. 12-13 and 15.

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x x x x

Q: Where were you when that transaction transpired?

A: In Barangay Abad Santos.

Q: Did you witness?

A: Yes, sir, because of the short distance.

Q: Who were involved?

A: [PO2 Emano]

Q: Of course there were also other persons and who was that?

A: **[SPO4 Cabagsang]**

Q: Who buy-bust the item?

A: [PO2 Emano]

Q: From whom?

A: [Goco]

x x x x

Q: Now, after this [Goco] was brought to the PNP what happened there?

A: We took him to the investigator.

x x x x

[Court]: [Were you] actually involved in the actual buy-bust?

A: Yes, sir. Your Honor.

Q: So, you acted as what?

A: Team Leader.

Q: Aside from being a team leader what other role, did you act as a poseur-buyer?

A: No, Your Honor.

Q: What was your role?

A: To arrest.

Q: Did you actually see the actual buy-bust?

A: Yes, Your Honor.

Q: What did you see?

A: What I saw was [PO2 Emano] stopped a person and inform him [*sic*] by saying "we are arresting you and we are policemen and you are in possession of *shabu*." ³⁴ (Emphasis and underscoring supplied)

Meanwhile, SPO4 Cabagsang denied any involvement in the buy-bust operation, despite being tagged by both SPO3 Belga³⁵ and PO2 Emano³⁶ as a member of the buy-bust team:

[Pros. Francisco]: How about you were you not a member of the team who conducted the buy-bust operation? [*sic*]

[SPO4 Cabagsang]: **No, I am not a member of the team but I just stay in the Office.** [*sic*]

x x x x

Q: In view of the apprehension of [Goco] what did you do?

A: Nothing. (witness is shaking his head) ³⁷

x x x x (Emphasis and underscoring supplied.)

³⁴ TSN, December 7, 2005, pp. 4-7.

³⁵ TSN, December 7, 2005, pp. 3 and 5-6.

³⁶ TSN, October 12, 2005, pp. 7-8.

³⁷ TSN, March 6, 2006, pp. 4-5.

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While the records support PO2 Emano's claim³⁸ that P/Supt. Isaias Bañez Tonog (P/Supt. Tonog) turned over the seized items to the PDEA Regional Office, where the items were received by PO1 Ecito, who in turn, delivered the items with the request for examination to the PNP Crime Laboratory, where these were examined by P/Insp. Cruto,³⁹ the crucial link between PO2 Emano and P/Supt. Tonog was, however, left unexplained by the testimonies nor accounted for by any evidence on record. Moreover, there is an unignorable hiatus of detail on how the four (4) sachets of illegal drugs were marked, who marked them, and when they were marked.

Verily, marking the drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody as it is the starting point in the custodial link. The marking upon seizure serves a twin purpose, **first** is to give the succeeding handlers of the specimen a reference, and **second** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting", or contamination of evidence.⁴⁰ The police officers' failure to mark the seized items may lead to the acquittal of the accused based on reasonable doubt.⁴¹

Taken together, the lapses committed by the police officers in accounting for the procedure laid out in Section 21 of RA 9165 and the IRR, more so their questionable handling of the seized drugs cast serious doubt on the integrity and evidentiary value of the seized items. As the said drugs presented before the court as evidence constitute the *corpus delicti* of the offenses charged, it must be proven with moral certainty that these are the same items seized from Goco during the buy-bust operation and the ensuing search. As the prosecution failed to do so, Goco must be acquitted on the ground of reasonable doubt.⁴²

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 30, 2014 of the Court of Appeals in CA-G.R. CR. No. 00737 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Placido Goco y Ombrog is **ACQUITTED** of the crimes for violation of Sections 5 and 11, Article II of Republic Act No. 9165 as charged. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

³⁸ TSN, October 12, 2005, p. 15.

³⁹ Records (I.S. No. 2003-189), pp. 14-19.

⁴⁰ See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328-329.

⁴¹ See *People v. Dacuma*, G.R. No. 205889, February 4, 2015, 750 SCRA 65, 75, citing *People v. Sabdula*, 733 Phil. 85, 94-95 (2014).

⁴² See *People v. Viterbo*, G.R. No. 203434, July 23, 2014, *supra* note 24, at 688-690.

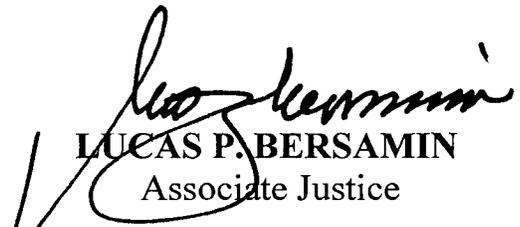
SO ORDERED.

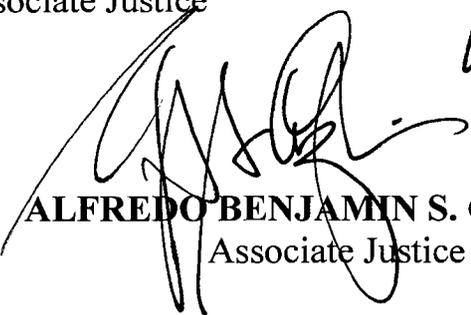

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
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.


MARIA LOURDES P. A. SERENO
Chief Justice