



## The Facts

The Information filed against Tubera for violation of Section 5, Article II of RA 9165 reads:

That at about 7:45 o'clock in the evening of May 19, 2008, at Mabini Street, Ormoc City, and within the jurisdiction of this [H]onorable [C]ourt, the above-named accused: MARIO URBANO TUBERA, did then and there wilfully, unlawfully and feloniously sell one (1) pack heat-sealed transparent sachet filled with white crystalline substance, worth [P500.00] to Agent III Levi S. Ortiz of the PDEA, Region VIII, Palo, Leyte, who acted as the poseur-buyer during a buy-bust operation conducted by elements of the PDEA, Region VIII, Palo, Leyte led by Atty. Gil T. Pabilona, and when a laboratory examination was conducted on said sealed transparent sachet containing white crystalline substance with a weight of point zero eight gram (0.08) gram by a Forensic Chemical Officer at PNP, Regional Crime Laboratory Office 8, at Camp Kangleon, Palo, Leyte, the same gave POSITIVE results to the test for the presence of Methylamphetamine Hydrochloride, a dangerous drug, without the necessary license or permit to sell, a dangerous drug.<sup>5</sup>

During the arraignment, Tubera pleaded not guilty.<sup>6</sup> Thereafter, pre-trial and trial on the case ensued.<sup>7</sup> The CA summarized the version of the prosecution as follows:

On April 14, 2008, after persistent reports of the alleged drug trading activities of accused-appellant Mario Urbano Tubera, Investigating Agent III Levi S. Ortiz, of the Philippine Drug Enforcement Agency, filed a pre-operation report with his office at Regional Office VIII, Palo, Leyte for the conduct of surveillance, casing and buy-bust operation against accused-appellant.

After several surveillance and casing operations were conducted in Barangay Mabini, Ormoc City, it was confirmed by the operatives of the PDEA that indeed, accused-appellant was one of those individuals engaging in the illicit drug trade in the area.

Sometime around 7:45 P.M. on May 19, 2008, Investigating Agent III Levi S. Ortiz, acting as team leader and poseur-buyer, together with the other members of his team, arrived at Barangay Mabini, Ormoc City. There, they were met by their confidential informant who was to accompany agent Ortiz during the buy-bust operation.

After several minutes of casing the area, the confidential agent was able to spot accused-appellant. Together with agent Ortiz, the confidential agent then approached accused-appellant and engaged him in a conversation. During their talk, the confidential agent informed accused-appellant Mario Urbano Tubera of their desire to purchase *shabu*.

Suspicious about agent Ortiz however, accused-appellant asked from the confidential agent whether the former could be trusted. The confidential agent then answered in the affirmative.

<sup>5</sup> *Rollo*, p. 5. Records, p. 1.

<sup>6</sup> *CA rollo*, p. 28.

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

Wary, however, of agent Ortiz, accused-appellant beckoned the pair to follow him into the interior portion of the barangay. After walking some fifteen meters through a narrow footpath, accused-appellant pulled out from his pocket a plastic container. He then positioned himself into one of the dimly lit corners of the pathway and demanded from the pair, the money for the *shabu*. Agent Ortiz then handed accused-appellant Tubera the five hundred peso bill he had pre-marked and blotted at the PDEA office.

Upon receipt of the money, accused-appellant then pocketed it and opened the plastic container, which contained several packets containing white crystalline substance, and handed one packet to agent Ortiz.

While the whole transaction was going on, an unidentified person hovered around the group and acted as a lookout for accused-appellant. Several inhabitants, also of the area, were also keenly observing the transaction.

After agent Ortiz received the plastic packet, he immediately announced his identity and authority and arrested accused-appellant Mario Urbano Tubera. While he was arresting accused-appellant, however, the latter was able to toss the plastic container he was carrying to his lookout who immediately scampered away into the maze of houses inside the interior portion of the barangay.

After accused-appellant was secured, and the marked money was retrieved from his possession, the PDEA agents immediately left the area and proceeded to their office at Baras, Palo, Leyte. Enroute, the purchased packet as well as the marked money was in the possession of agent Ortiz.

At the PDEA Regional Office 8, the purchased packet was marked by agent Ortiz with the initial "MT". Photographs and an inventory were also made in the presence of an elected barangay official, a member of the media and accused-appellant.

Subsequently, the purchased packet, together with a letter request for its laboratory examination, was delivered by police officer Mataro and agent Ortiz to the PNP Regional Crime Laboratory Office 8 and Camp Ruperto Kangleon, Palo[,] Leyte.

On May 20, 2008, the PNP Regional Crime Laboratory Office 8 released Chemistry Report No. D-099-2008 finding the specimen submitted by the PDEA bearing the mark "MT" to be positive for the presence of methamphetamine (sic) hydrochloride, a dangerous drug.<sup>8</sup>

On the other hand, the CA summarized Tubera's version of the facts as follows:

In his defense, accused-appellant Mario Urbano Tubera together with his brother-in-law, Bobby Asis, took the witness stand and declared that around 7:45 P.M. on May 19, 2008, they were having a round of drinks inside the house of one of their friends in Barangay Mabini, District 4, Ormoc City, when elements from the Philippine Drug Enforcement Agency suddenly arrested accused-appellant. They insist that no buy-bust operation ever took place and that the PDEA officers merely ganged up on accused-

---

<sup>8</sup> *Rollo*, pp. 6-7.

appellant, pointed their guns at him and his brother-in-law, and then immediately brought accused-appellant inside their white van and then brought him to their office at Tacloban City. Accused-Appellant concludes that inside the office of the PDEA, he was surprised to see one sachet of shabu that was being inventoried and photographed by the officers as having been recovered from accused-appellant during an alleged buy-bust operation.<sup>9</sup>

### **Ruling of the RTC**

After trial on the merits, the RTC, in its Decision<sup>10</sup> dated March 30, 2011 convicted Tubera of the crime charged. The dispositive portion of the said Decision stated:

**WHEREFORE**, finding the evidence of the Prosecution satisfying that degree of moral certainty, accused MARIO URBANO TUBERA is found Guilty beyond reasonable doubt of having violated Section 5, Article II of Republic Act No. 9165 as set forth in the information filed in this case. He is therefore sentenced to pay a fine of ₱500,000.00 and to undergo life imprisonment pursuant to law. He is however, credited with his preventive imprisonment if he is entitled to any.

x x x x

SO ORDERED.<sup>11</sup>

The RTC held that the prosecution sufficiently established the elements of the crime charged.<sup>12</sup> As to compliance with Section 21 of RA 9165, the RTC held that although the marking, inventory, and photographing of the dangerous drugs were done at the police station, the integrity and evidentiary value of the seized items were preserved as Investigating Agent III Levi S. Ortiz (Agent Ortiz) had possession and control of the same from the time it was confiscated up to the time it was submitted to the laboratory for examination.<sup>13</sup> Thus, the failure to strictly comply with Section 21 was not fatal to the case.<sup>14</sup>

Aggrieved, Tubera appealed to the CA.

### **Ruling of the CA**

In the Assailed Decision, the CA affirmed the conviction of Tubera under Section 5 of RA 9165.<sup>15</sup> The CA gave more credence to the testimony of Investigating Agent Ortiz, which it considered as candid, simple, and straightforward.<sup>16</sup> As regards compliance with Section 21 of RA 9165, the CA held that the marking of the dangerous drugs at the police station does not

<sup>9</sup> Id. at 7-8.

<sup>10</sup> CA *rollo*, pp. 27-38.

<sup>11</sup> Id. at 37-38.

<sup>12</sup> Id. at 34.

<sup>13</sup> Id. at 35-36.

<sup>14</sup> Id. at 35.

<sup>15</sup> *Rollo*, p. 16.

<sup>16</sup> Id. at 12.



automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.<sup>17</sup> In this case, the CA found that every link in the chain of custody, from the purchase of the seized drug to its eventual surrender to the trial court was duly accounted for despite the procedural lapses.<sup>18</sup> Further, the CA stated that Tubera failed to rebut the presumption of regularity, considering that he failed to present any proof of ill motive on the part of the arresting officers.<sup>19</sup> The CA thus concluded that the element of *corpus delicti* in the prosecution for illegal sale of dangerous drugs was established beyond reasonable doubt.<sup>20</sup>

Hence, the instant appeal.

### Issue

Whether the RTC and the CA erred in convicting Tubera of the crimes charged.

### The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Tubera as the prosecution failed to prove his guilt beyond reasonable doubt.

Tubera was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. In order to convict a person of the crime charged, the prosecution must prove: 1) the identity of the buyer, the seller, and the object of the consideration, and 2) the delivery of the thing sold and the payment therefor.<sup>21</sup>

In *People v. Ilagan*,<sup>22</sup> the Court explained:

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of

---

<sup>17</sup> Id. at 14.

<sup>18</sup> Id. at 14-15.

<sup>19</sup> Id. at 13.

<sup>20</sup> Id. at 15

<sup>21</sup> *People v. Opiana*, 750 Phil. 140, 147 (2015).

<sup>22</sup> G.R. No. 227021, December 5, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64800>>.



seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.

In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. **The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) x x x the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

This must be so because with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”

As stated, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means **that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team**. In this connection, this also means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation—a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly



emphasized that the prosecution should explain the reasons behind the procedural lapses.<sup>23</sup>

In *People v. Tomawis*,<sup>24</sup> the Court further held that the presence of the three witnesses is required at the time of the conduct of the physical inventory of the seized items at the place of seizure, *i.e.*, at the time of the warrantless arrest. The rationale for said requirement was discussed in this wise:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

**The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.** It is at this point in which the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.** If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, **the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”**<sup>25</sup>

The foregoing requirements must be strictly complied with. Although the last sentence of Section 21(1) provides that “noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures

<sup>23</sup> Id. Citations omitted. Emphasis and underscoring supplied.

<sup>24</sup> G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.

<sup>25</sup> Id. Citations omitted. Emphasis and underscoring supplied.



and custody over said items,”<sup>26</sup> the Court in *People v. Reyes*<sup>27</sup> explained that: 1) the procedural lapses and/or deviations committed by the police officers must first be recognized by the prosecution and 2) the said lapses and/or deviations must be justified or explained. Otherwise, the chain of custody, and therefore the very integrity and evidentiary value of the *corpus delicti* will be compromised, resulting in the acquittal of the accused.<sup>28</sup>

It bears emphasis that the prosecution bears the burden of proving strict compliance with the chain of custody because the accused has the constitutional right to be presumed innocent until the contrary is proved.<sup>29</sup> As a result of this presumption, an accused may not be convicted on the basis of the supposed presumption of regularity in the performance of duties simply because he or she is unable to present proof of ill motive and especially when there are irregularities committed by police officers in the seizure of the dangerous drugs and the arrest of the accused. In *People v. Malana*,<sup>30</sup> the Court explained:

[I]t was error for both the RTC and the CA to convict accused-appellant Malana by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.** Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. As the Court, in *People v. Catalan*, reminded the lower courts:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

<sup>26</sup> RA 9165 as amended by RA 10640, Sec. 1.

<sup>27</sup> 797 Phil. 671 (2016). Also cited in *People v. Malana*, G.R. No. 233747, December 5, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64809>>.

<sup>28</sup> Id.

<sup>29</sup> CONSTITUTION, Art. III, Sec. 14 (2). “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

<sup>30</sup> Supra note 27.





**Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.**<sup>31</sup>

In sum, police officers are mandated to strictly comply with the requirements and procedures mandated by Section 21 of RA 9165. This includes the requirement that: 1) the seized items be inventoried and photographed immediately after seizure or confiscation at the place of apprehension unless otherwise impracticable; (2) the physical inventory and photographing be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), also at the place of apprehension.<sup>32</sup> In all cases involving dangerous drugs, the prosecution always bears the burden of proving compliance with the said procedure.<sup>33</sup> Failure to strictly adhere to the procedure outlined under Section 21 will not only 1) render the saving clause under Section 21(a) inoperative, unless the prosecution recognizes the procedural lapses committed by the police officers and sufficiently justifies the same, but will also 2) prevent the presumption of regularity from arising.<sup>34</sup>

In the case at bar, the buy-bust team committed several procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drugs.

***First***, the marking and inventory were not done and the photographs were not taken at the place of apprehension and seizure and no explanation or justification was proffered as to why the same was impracticable. On cross examination, Agent Ortiz, who acted as team-leader and poseur buyer, testified:

Q: When you conducted the inventory of seized items[,] where particularly in Ormoc City did you conduct the same?

A: We conducted the same in our office.

Q: Where is your office located?

<sup>31</sup> Id. Citations omitted. Emphasis and underscoring supplied.

<sup>32</sup> *People v. Ilagan*, supra note 22, and *People v. Tomawis*, supra note 24.

<sup>33</sup> *People v. Malana*, supra note 27.

<sup>34</sup> *People v. Tomawis*, supra note 24.

A: In Palo.

Q: So you have not conducted an inventory right after the incident?

A: We proceeded immediately to our office.

Q: So it is very clear that no inventory was conducted here in Ormoc City?

A: Yes, mam.<sup>35</sup>

*Second*, although the police officers conducted surveillance and casing prior to the conduct of the instant buy-bust operation, the three required witnesses were not present at the time of the seizure and arrest and no explanation or justification was proffered as to why their presence could not be procured. Agent Ortiz stated during his direct examination that when he proceeded to the place where the buy-bust operation was to take place, he was only accompanied by his fellow agent and confidential informant.<sup>36</sup> On cross examination, Agent Ortiz testified:

Q: And you will agree with me Mr. Witness that the casing and surveillance was conducted on the very same day wherein you conducted the buy-bust operation, right?

A: Not necessarily, Mam. We conducted the surveillance before the conduct of the operation. But before that we also conducted surveillance in Mabini.

Q: You mean to tell us that prior [to] May 19, 2008 you have been conducting casing and surveillance against the accused?

A: Not [necessarily] the accused but drug personalities in Mabini.

Q: We are talking here about the subject person, the accused in this case Mr. Witness. So my question refers to your operation against him. So my previous question refers to your conduct of the buy bust operation against the accused and again I would like to ask if you will agree with me that the casing and surveillance operation against the accused was conducted at the very same day wherein you conducted your buy-bust operation?

A: As I've said, we were still conducting surveillance and would still come up as one of the [pushers] in that area so we have knowledge of him already.

x x x x

Q: So there's no other evidence aside from your testimony that you were with another person or you were with your co-agent at that time?

A: Yes, mam.

Q: And in fact when you alleged that the container which contained the other sachets of shabu which was in the possession of the accused at that

<sup>35</sup> TSN, August 19, 2009, p. 36.

<sup>36</sup> Id. at 13.



time was not even recovered because you were only the agent present when the transaction or the buy-bust operation was consummated?

A: Yes, mam.

x x x x

Q: You alleged that your inventory was witnessed by the Members of the Media and the Brgy. Officials?

A: Mam.

Q: You will agree with me that they were not around when the transaction transpired?

A: Yes, mam.<sup>37</sup>

***Finally***, no representative from the DOJ was present during the time of the arrest or even during the marking, inventory, and photographing of the seized drugs. Again, no explanation or justification was proffered as to why the presence of a DOJ representative could not be procured. During direct examination, Agent Ortiz stated:

Q: You said that you brought to the office the items you have recovered?

A: Yes, sir.

Q: What did you do with it?

A: We [made] an inventory of the items which we confiscated before the elected Barangay Officials, a representative of the media and the accused.<sup>38</sup>

Evidently, the police officers failed to strictly comply with the mandate of Section 21. The prosecution neither recognized, much less justified, the many lapses and irregularities affecting the chain of custody. Thus, the RTC and the CA gravely erred in relying on the saving clause under Section 21(1) and on the presumption of regularity in the performance of duties to justify the conviction of Tubera as both were rendered inapplicable by the irregularities committed by the members of the buy-bust team and their failure to explain or justify the same. The aforementioned procedural lapses cast reasonable doubt as to the identity and integrity of the drugs seized and consequently, reasonable doubt as to the guilt of accused-appellant Tubera. In view of the foregoing, Tubera must be acquitted because the prosecution failed to prove the *corpus delicti* of the offense charged.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 31, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 01341 is hereby **REVERSED** and **SET ASIDE**.

<sup>37</sup> Id. at 32-37.

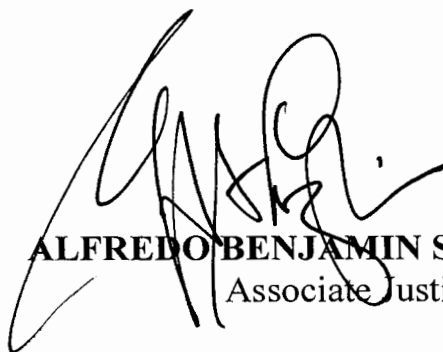
<sup>38</sup> Id. at 20-21.



Accordingly, accused-appellant MARIO URBANO TUBERA is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.


Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

**SO ORDERED.**

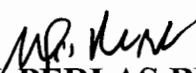


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



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

(On leave)  
**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.



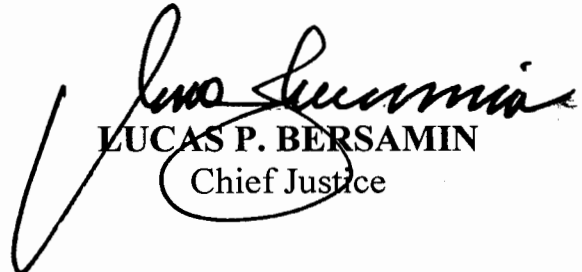
**ANTONIO T. CARPIO**

Associate Justice

Chairperson

**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

