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Wilfredo V. Lapid
 WILFREDO V. LAPID
 Division Clerk of Court
 Third Division

MAY 08 2019

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

AUGUSTO REGALADO y G. R. No. 216632
LAYLAY,

Petitioner,

Present:

PERALTA, *J.*, Chairperson,
 LEONEN,
 REYES, A., JR.,
 HERNANDO, and
 CARANDANG,* *JJ.*

-versus-

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:
 March 13, 2019

Wilfredo V. Lapid

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DECISION

LEONEN, J.:

This resolves a Petition for Review on Certiorari¹ assailing the Court of Appeals January 29, 2015 Decision² in CA-G.R. CR No. 36216. The Court of Appeals upheld the Regional Trial Court November 23, 2011 Decision³ in Criminal Case No. 08-03 finding Augusto Regalado y Laylay (Regalado) guilty beyond reasonable doubt for violating Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On January 31, 2003, two (2) informations were filed before the Regional Trial Court, charging Regalado with two (2) counts of violating Article II, Section 11 of Republic Act No. 9165.⁴ The informations read:

* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

¹ *Rollo*, pp. 12–38. Filed under Rule 45 of the Rules of Court.

² *Id.* at 40–52. The Decision was penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan and Pedro B. Corales of the Sixteenth Division, Court of Appeals, Manila.

³ *Id.* at 78–89. The Decision was penned by Presiding Judge Antonina M. Calderon-Magtubo of Branch 94, Regional Trial Court, Boac, Marinduque.

⁴ *Id.* at 41.

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In Crim. Case No. 08-03:

That on or about the 17th day of December 2002, at around 2:00 o'clock (sic) in the afternoon, at barangay (sic) Sibuyao, municipality (sic) of Torrijos, province (sic) of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] wil[fully, unlawfully[,] [and] feloniously possess Cannabis Sativa (Marijuana) weighing not more than 300 grams, not being authorized by law to possess the same.

CONTRARY TO LAW.

In Crim. Case No. 09-03:

That on or about the 17th day of December 2002, at around 2:00 o'clock (sic) in the afternoon, at barangay (sic) Sibuyao, municipality (sic) of Torrijos, province (sic) of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] wil[fully, unlawfully[,] [and] feloniously possess Cannabis Sativa (Marijuana) weighing not more than 300 grams, not being authorized by law to possess the same.

*CONTRARY TO LAW.*⁵ (Emphasis in the original, citations omitted)

On arraignment, Regalado pleaded not guilty to the crimes charged. Trial then ensued.⁶

According to the prosecution, on December 17, 2002, a team of five (5) police officers led by Special Police Officer 2 Quirino Peñascosas (SPO2 Peñascosas), with designated poseur-buyer PO1 Dario Pedrigal (PO1 Pedrigal), PO2 Rodrigo Llante (PO2 Llante), PO1 Macrino Romeo Palma, and PO1 Manuelito Palma, conducted a buy-bust operation.⁷

At around 2:00 p.m. that day, PO1 Pedrigal went to Regalado's house while the rest of the team stayed about 200 meters behind him. There, PO1 Pedrigal asked Regalado's wife, Marilyn, "*Meron kayo ngayon, bibili ako?*"⁸ Marilyn informed him that her husband was not in the house and that she would ask her daughter to fetch him.⁹

When Regalado arrived, he immediately inquired where PO1 Pedrigal came from, to which he replied that he was from Marlangga. Regalado then

⁵ Id. at 41–42.

⁶ Id. at 42.

⁷ Id. at 42–43.

⁸ Id. at 43.

⁹ Id.

asked PO1 Pedrigal the quantity he sought to buy, to which the latter replied that he wanted two (2).¹⁰

Regalado went into his house, returning with a plastic sachet suspected to contain marijuana, which he then exchanged with PO1 Pedrigal's marked bills amounting to ₱200.00. Regalado took the money and put it in his pocket.

At this point, PO1 Pedrigal scratched his head—the pre-arranged signal signifying to the team that the transaction had been consummated. The rest of the team rushed to Regalado's house and identified themselves as police officers. They arrested Regalado after PO1 Pedrigal retrieved the marked money from his pocket.¹¹

Upon the arrest, PO1 Pedrigal asked Regalado, "*Meron pa itong kasamahan?*"¹² to which Regalado admitted having more, pointing to the roof of his house. He turned over to PO1 Pedrigal a milk box that allegedly had two (2) plastic sachets and four (4) sticks of marijuana. PO1 Pedrigal kept all the confiscated pieces of evidence.¹³

The police officers informed Regalado of his constitutional rights in Tagalog. Then, after informing Barangay Captain Isidro Palomares of what had transpired, they brought Regalado to the police station.¹⁴

At the police station, PO1 Pedrigal marked with initials "AR" the three (3) plastic sachets and four (4) sticks of suspected marijuana. He later turned them over, along with the marked money, to the investigator, PO2 Llante. PO2 Llante then brought the seized evidence, along with a Request for Laboratory Examination, to the Philippine National Police Crime Laboratory in Canlubang, Laguna to have them tested for the presence of illegal drugs.¹⁵

Police Chief Inspector Lorna Tria (Chief Inspector Tria), the forensic chemist, confirmed upon a laboratory examination that the confiscated items were indeed marijuana. The seven (7) specimens with the "AR" markings weighed 6.40 grams, 13.93 grams, 22.60 grams, 0.49 gram, 0.40 gram, 0.36 gram, and 0.47 gram.¹⁶ The specimens weighed a total of 44.65 grams. These results were evidenced by Chemistry Report No. D-2841-02.¹⁷

¹⁰ Id. at 43.

¹¹ Id.

¹² Id. at 44.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 44–45.

¹⁷ Id. at 45.

In his defense, Regalado alleged that on December 17, 2002, he was ploughing the field in his farm located about 100 meters from his house when his son, Alvin, told him to come home. There, he was met by a teenager who gave him ₱200.00, wanting to purchase marijuana.¹⁸

As soon as Regalado gave the teenager marijuana, he stated that five (5) police officers arrived and arrested him. PO1 Pedrigal recovered from him the ₱200.00, which the teenager had handed him. When asked about the rest of his stash, Regalado immediately divulged its hiding place and surrendered the marijuana “because he was scared.”¹⁹

Regalado denied handing the marijuana to PO1 Pedrigal and maintained that the latter took it from the teenager. He claimed that he signed the confiscation receipt despite not understanding it as he did not know how to read. He likewise testified that he was not informed of his constitutional rights.²⁰

In its November 23, 2011 Decision,²¹ the Regional Trial Court found Regalado guilty of violating Article II, Section 11 of Republic Act No. 9165 in Criminal Case No. 08-03. However, it acquitted him in Criminal Case No. 09-03, ruling that one cannot be convicted twice for the same act.²²

The dispositive portion of the November 23, 2011 Decision read:

WHEREFORE, premises considered, the accused Augusto Regalado y Laylay is hereby found guilty beyond reasonable doubt of (*sic*) violation of Section 11 of R.A. 9165 in Criminal Case No. 08-03. Applying the Indeterminate Sentence Law, he is hereby sentenced to imprisonment for a period of *12 years and one day as minimum to 14 years and eight months, as maximum* and is fined ₱300,000 without subsidiary imprisonment in case of insolvency. He is hereby acquitted in Criminal Case No. 09-03.

The property bond posted for his temporary liberty is hereby ordered cancelled.

Let the marijuana subject matter of these cases be disposed of in the manner provided by law.

SO ORDERED.²³ (Emphasis in the original)

On appeal, Regalado argued that the trial court erred when it appreciated the evidence despite the apprehending team’s failure to prove

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 78–89.

²² Id. at 46.

²³ Id. at 88.

the integrity and identity of the seized items under Section 21 of the Comprehensive Dangerous Drugs Act. He contended that the trial court erred in deviating from the established rule that by itself, the presumption of regularity in the performance of official duty should not prevail over his presumed innocence.²⁴

In its January 29, 2015 Decision,²⁵ the Court of Appeals denied the appeal and affirmed the trial court's Decision:

WHEREFORE, the appeal is **DENIED**. The assailed disposition of the RTC in Crim. Case No. 08-03 is **AFFIRMED**. Costs against the Accused-Appellant.

SO ORDERED.²⁶ (Emphasis in the original)

According to the Court of Appeals, the prosecution sufficiently proved and established the elements of the crime of illegal possession of marijuana.²⁷ It ruled that the prosecution's lapses were not fatal, since it had nonetheless preserved the integrity and evidentiary value of the confiscated items. This, it held, was enough to establish Regalado's guilt.²⁸

Thus, on March 27, 2015, Regalado filed this Petition for Review on Certiorari.²⁹

Petitioner argues that the Court of Appeals erred in affirming the trial court's finding of his guilt.³⁰ He contends that the prosecution had no basis to justify its failure to strictly comply with the requirements under Section 21. He maintains that there was no elected official, media representative, or Department of Justice representative present during the physical inventory of the seized items. Moreover, no photographs of the seized items were presented in court.³¹

Petitioner further claims that the seized items were not immediately marked after his arrest, casting doubt on their origin.³² He insists that there was no sufficient evidence to establish the chain of custody.³³

This Court adopted respondent's Brief³⁴ before the Court of Appeals as its Comment.³⁵

²⁴ Id. at 47.

²⁵ Id. at 40-52.

²⁶ Id. at 51.

²⁷ Id. at 48.

²⁸ Id. at 49.

²⁹ Id. at 12-38.

³⁰ Id. at 18.

³¹ Id. at 19.

³² Id. at 23.

³³ Id. at 25.

Respondent asserts that PO1 Pedrigal's testimony demonstrated petitioner's culpability, which sufficiently proved his conviction. It notes that the police officers' testimonies were further bolstered since petitioner does not impute any ill motive on their part. Courts, it asserts, may render judgment based on a witness' testimony as long as it is credible and positive.³⁶

Respondent argues that noncompliance with Section 21 per se will not render the arrest illegal or the seized marijuana inadmissible, as the law itself provides an exception.³⁷ It points out that the "immediate confiscation" has no exact definition, and that marking in the nearest police station has been previously allowed by this Court.³⁸

Finally, respondent claims that petitioner's admission of possessing the seized marijuana rendered the issue of noncompliance with the chain of custody rule as moot.³⁹

For resolution is the lone issue of whether or not the absence of an elective official, a representative from the media, and a representative from the Department of Justice during the buy-bust operation, as well as the non-presentation of the photographs of the seized marijuana before the trial court warrants petitioner Augusto L. Regalado's acquittal.

This Court denies the Petition.

Generally, "the findings of fact by the trial court, when affirmed by the [Court of Appeals], are given great weight and credence on review."⁴⁰ This is because the trial court "is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand."⁴¹ Hence, this Court accords great respect to the trial court's findings,⁴² especially when affirmed by the Court of Appeals.⁴³ An

³⁴ Id. at 92–103.

³⁵ In its July 27, 2015 Resolution (*rollo*, pp. 104–105), this Court required respondent to comment on the Petition for Review. Respondent filed a Manifestation (*rollo*, pp. 124–127) on October 15, 2015 where it prayed that it be allowed to adopt its Brief filed before the Court of Appeals. This Court noted the Manifestation in its December 2, 2015 Resolution (*rollo*, pp. 129–130).

³⁶ *Rollo*, pp. 97–98.

³⁷ Id. at 99.

³⁸ Id. at 100.

³⁹ Id. at 100–101.

⁴⁰ *People v. Feliciano, Jr.*, 734 Phil. 499, 521 (2014) [Per J. Leonen, Third Division].

⁴¹ *Ditche v. Court of Appeals*, 384 Phil. 35, 46 (2000) [Per J. De Leon, Jr., Second Division].

⁴² *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, En Banc]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, En Banc].

⁴³ *People v. Baraoil*, 690 Phil. 368, 377 (2012) [Per J. Reyes, Second Division].

exception is when either or both of the lower courts “overlooked or misconstrued substantial facts which could have affected the outcome of the case.”⁴⁴

Here, the records show nothing that warrants a reversal of the Decisions of the Court of Appeals and the Regional Trial Court.

The allegations in both Informations, despite the buy-bust operation, charged petitioner with illegal *possession* of dangerous drugs, not sale. Hence, the trial court correctly acquitted him in Criminal Case No. 09-03, where the Information was worded exactly as that in Criminal Case No. 08-03, which charged him with illegal possession of dangerous drugs. Moreover, although the actual weight of the seized items (44.65 grams)⁴⁵ was not indicated in the Informations, this error was not fatal.

As for the conviction of illegal possession of dangerous drugs, the following elements must be established: “(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.”⁴⁶

Here, the testimonies of the law enforcers who conducted the buy-bust operation are clear and categorical. They recalled in detail the buy-bust operation and the steps they had taken to maintain the integrity of the seized marijuana.

Notably, the designated poseur-buyer, PO1 Pedrigal, clearly recounted in his testimony the transaction and petitioner’s possession of the seized marijuana:

[PROSECUTOR]: What happened when you reached the house of Augusto Regalado?

[PO1 PEDRIGAL]: When I reached the house of Augusto Regalado his wife named Marilyn confronted me, sir.

[PROSECUTOR]: What did she do or say when she confronted you?

[PO1 PEDRIGAL]: I told her, sir, (*sic*) “meron kayo ngayon, bibili ako”.

[PROSECUTOR]: What happened when you say (*sic*) those words?

[PO1 PEDRIGAL]: She told me that her husband is not in the house and she ordered her daughter to fetch him, sir.

⁴⁴ *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per J. Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per J. Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per J. Tinga, En Banc]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per J. Chico-Nazario, En Banc].

⁴⁵ *Rollo*, p. 45.

⁴⁶ *People v. Dela Cruz y De Guzman*, 744 Phil. 816, 825–826 (2014) [Per J. Leonen, Second Division].

[PROSECUTOR]: What happened regarding the order?

[PO1 PEDRIGAL]: I waited for several minutes and her daughter arrived followed by Augusto Regalado and I asked him “meron kayo ngayon?[]”

[PROSECUTOR]: And what happened when you uttered those words to him?

[PO1 PEDRIGAL]: He asked me “taga saan ka”? and I told him, from Marlangga and he asked me how many and I told him only two (2).

[PROSECUTOR]: When you told him only two (2), what happened next?

[PO1 PEDRIGAL]: So, he entered the house while I waited outside near the door and when he came out he was holding a plastic sachet and he handed it to me and in exchange I handed to him money in different denominations in the amount of Two Hundred Pesos (P200.00).

[PROSECUTOR]: What transpired next after you handed to him the P200.00?

[PO1 PEDRIGAL]: He accepted the marked money from me and he handed to me the plastic sachet and he put the money in his pocket and after that I made a signal to my co-policemen and then I shouted “*pulis ako*” and then I retrieved the marked money from his pocket and we arrested Augusto Regalado.

[PROSECUTOR]: After you retrieved the marked money and arrested Augusto Regalado, what happened next?

[PO1 PEDRIGAL]: Upon his arrest, we asked him if “meron pa itong kasamahan?” and he readily admitted and pointed to the roof of the house. So, we requested him to get the same and he readily did so.

[PROSECUTOR]: What actually was sold to you and what actually did he produce after he was arrested?

[PO1 PEDRIGAL]: What he sold to me was a plastic sachet containing marijuana and what he retrieved from the roof are two (2) plastic sachets of marijuana and four (4) sticks of marijuana.⁴⁷

PO1 Pedrigal testified that he had kept the seized items until they were marked at the police station where they conducted the inventory. The seized items were then turned over to PO2 Llante, who also testified bringing the items to the crime laboratory for examination. This was confirmed by Chief Inspector Tria, the forensic chemist who prepared the report stating that the seized items were marijuana.⁴⁸

What sustains petitioner’s conviction is his damning admission in open court that the police officers had found the three (3) plastic sachets and four (4) sticks of marijuana in his possession during his arrest on December 17, 2002. He admitted telling the law enforcers where he had hidden the rest of the marijuana because he was scared.⁴⁹

⁴⁷ *Rollo*, pp. 95–97.


⁴⁸ *Id.* at 49–50.

⁴⁹ *Id.* at 86.

Ultimately, petitioner's free and conscious possession of the dangerous drug has been established, warranting his conviction.

However, this Court laments the prosecution's apparent nonchalance in observing the procedure for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia under Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640. It provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, 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 and custody over said items.
 - (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
 - (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be
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provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

These requirements under Section 21 were summarized in *Lescano v. People*:⁵⁰

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be “immediately after seizure and confiscation.” As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.”

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.⁵¹

In *People v. Que*,⁵² this Court explained how Republic Act No. 10640 relaxed the requirements under Section 21(1):

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive “and” indicated that Section 21 required the presence of all of the following, in addition to “the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel”:

First, a representative from the media;

Second, a representative from the Department of Justice; and

Third, any elected public official.

⁵⁰ 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

⁵¹ Id. at 475.

⁵² G.R. No. 212994, January 31, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900>> [Per J. Leonen, Third Division].

As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive “or,” *i.e.*, “with an elected public official and a representative of the National Prosecution Service *or* the media.” Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.⁵³ (Emphasis in the original, citations omitted)

Here, none of the three (3) people required by Section 21(1), as originally worded,⁵⁴ was present during the physical inventory of the seized items.

Moreover, this Court has held that the prosecution has “the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21 (1) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so.”⁵⁵


Yet, not only did the prosecution fail to establish that earnest efforts were employed in securing the presence of the three (3) witnesses; it did not even bother to offer any justification for the law enforcers’ deviation from the law’s requirements. Since preliminaries do not appear on record, this Court cannot speculate why the law enforcers neglected the simple rules in the conduct of a buy-bust operation. Nonetheless, police officers are reminded that lapses like this—absent any justifiable ground—cast doubt on the integrity of the seized items and can be fatal to the prosecution’s cause.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals January 29, 2015 Decision in CA-G.R. CR No. 36216 is **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson

⁵³ Id.

⁵⁴ The buy-bust operation was conducted in 2002.

⁵⁵ *People v. Umipang*, 686 Phil. 1024, 1053 (2012) [Per J. Sereno, Second Division].

Reyes
ANDRES B. REYES, JR.
Associate Justice

[Signature]
RAMON PAUL L. HERNANDO
Associate Justice

[Signature]
ROSLARD D. CARANDANG
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.

[Signature]
DIOSDADO M. PERALTA
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.

[Signature]
LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY
[Signature]
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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