



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
  
 WILFREDO V. LABITAN  
 Division Clerk of Court  
 Third Division  
 JUN 23 2016

**THIRD DIVISION**

**PEOPLE OF THE  
 PHILIPPINES,**

**G.R. No. 204441**

**Petitioner,**

Present:

- versus -

VELASCO, JR., J.,  
 Chairperson,  
 PERALTA,\*  
 PEREZ,  
 MENDOZA,\*\* and  
 REYES, JJ.

**MICHAEL KURT JOHN  
 BULAWAN Y ANDALES,**  
**Respondent.**

Promulgated:

June 8, 2016

x

x

**DECISION**

**PEREZ, J.:**

Before the Court is an appeal assailing the Decision<sup>1</sup> dated 25 October 2012 of the Court of Appeals in CA-G.R. CR No. 00798-MIN, which affirmed with modification the Judgment<sup>2</sup> dated 24 August 2010 of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 25 in Criminal Case No. 2008-714, effectively finding (accused-appellant) Michael Kurt John Bulawan y Andales guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*.

\* On official leave

\*\* As per raffle dated 24 February 2016.

<sup>1</sup> Penned Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo A. Camello and Renato C. Francisco concurring; CA rollo, pp. 75-94.

<sup>2</sup> Penned by Presiding Judge Arthur L. Abundiente; id. at 32-42.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

That on November 10, 2008, at more or less 10:55 in the evening at Gusa National Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer to sell and give away to the arresting officer I01 Rodolfo S. de la Cerna, Jr., acting as poseur buyer, one (1) pack of dried marijuana fruiting tops with stalks wrapped in a magazine paper weighing 13.98 grams, which upon qualitative examinations conducted thereon, give positive result to the test for the presence of aforesaid dangerous drug.<sup>3</sup>

Upon arraignment, accused-appellant, duly assisted by counsel, pleaded not guilty to the charge.<sup>4</sup> Trial on the merits followed.

The prosecution relied on the testimony of I01 Rodolfo S. De La Cerna, Jr. (I01 de la Cerna) of the Philippine Drug Enforcement Agency (PDEA), who testified as follows:

*That he executed an Affidavit in connection with this case [Exh. "F"]. On November 10, 2008, at about 10:55 in the evening, he was along Gusa [N]ational Highway, particularly in front of "Starwood" acting as a poseur buyer for marijuana. That the said operation was headed by I01 Neil Pimentel and they were backed up by P03 Benjamin Jay Reycitez and I01 Gerald Pica. He was with their confidential informant who informed him that there was already a transaction negotiated earlier for the purchase of [P]1,000.00 worth of marijuana. They waited for the subject of the buy-bust for about five minutes. The accused arrived and he was introduced to him by their CI. After he was introduced, the accused handed to him the marijuana wrapped in a magazine paper. After the accused gave him the marijuana, he inspected it if to verify if it was indeed marijuana and after confirming it, he made a "miss-call" signal to their team leader who was inside the vehicle which was parked about 10 to 15 meters away from them. He then immediately announced that he is a PDEA agent and he informed the accused of the latter's violation. On questioning of the Court, he testified that there were only three of them, two [2] from the PDEA [he and Pimentel] and one [1] from the CAIDTF [Reycitez]. He ordered them to "appraise the rights" of the accused when the latter was already arrested. When asked by the Court why he was the only person who executed the Affidavit, he answered that he was the poseur buyer and that he was responsible for the arrest of the accused, and it was already dark, it was already 11:00 o'clock in the evening. He*

<sup>3</sup> Information; RTC Records, p. 3.

<sup>4</sup> Order dated 5 December 2008; id. at 21.

however testified that *it is not a normal procedure in the office that only one officer will execute an affidavit*. He further testified that *he did not prepare the buy bust money in the amount of [P]1,000.00 and that when he met the accused, he had no [P]1,000.00 with him and that he arrested the accused when the latter showed him the marijuana*. He then informed the accused of his rights and when the other members arrived, he conducted an inventory [Exhibit "G"] right at the place, and then proceeded to the Office where he made the markings "RDC". He prepared a laboratory request for examination [Exh. A] and he delivered the request including the specimen [Exhibit B] as well as the accused to the crime laboratory for examination. The result was positive [Exhibit "C" and Exhibit "D"]. He also took photographs of the accused [Exhibit "H"]. Finally, he identified the accused who answered with the name Michael Kurt John Bulawan.<sup>5</sup>

On cross examination, the witness testified that:

*Before he arrived at Gusam the CI had already contacted the accused and that he did not give any money to the accused. He did not also bring any money for the buy-bust operation and that the accused delivered the marijuana even without first receiving the money; that there was no pre-payment prior to the agreed time of delivery and that he did not promise the accused that he will pay after the delivery. He brought cellphone during the operation while the rest of the team brought with them their firearms and some documents. The mediemen arrived at the office, not at the place where the operation took place.*<sup>6</sup>

The defense, on the other hand, hinged their case on the testimony of accused-appellant, to wit:

*That on November 10, 2008 at about 10:00 o'clock in the evening, he was at his house preparing to sleep when he received a text message from his friend Joey Maalyao of Camella requesting him to go out from his house and inviting him to attend the birthday party of the classmate of his wife, a nursing student. He told Joey that he will not go out because he was tired as he had just took (sic) an exam. However, Joey insisted so he went out of his house and saw the service vehicle of Joey, a Tamaraw FX parked at about 500 meters away. His house is in the interior part. He then approached the vehicle and he became aware that there were companions inside the tinted vehicle and he asked Joey who were these persons and Joey answered that they were his cousins. There were about four of them inside the vehicle, one was the driver, one was at the passenger side and there were two at the back. Joey was seated at the front seat. When he was informed by Joey that they were his cousins, he went inside the vehicle. When the engine started, and was in the vicinity of Lapasan the men inside started to search him bodily and they got his*

<sup>5</sup> CA rollo, pp. 33-34.

<sup>6</sup> Id. at 34.

*went inside the vehicle. When the engine started, and was in the vicinity of Lapasan the men inside started to search him bodily and they got his cellphone, wallet, and coins. They held his neck and hands and told him it was an arrest. He then asked Joey was (sic) offense had him (sic) committed against him and why his companions were searching him and Joey told him to be considerate since he was just pressured by those men. One of the men beside him handed marijuana to him and to use it inside the vehicle. Then he was brought to the office and they took his picture in front of the vehicle of his friend. The man who took the picture, he identified later as I01 De la Cerna. That de la Cerna took out something from the vehicle owned by Joey and forced him to point them out. He was then handcuffed by de la Cerna and was forced again to point out to the items which were wrapped with a newspaper, then he was brought back to the office and was detained thereat. At about 2:00 o'clock dawn he was brought to the PNP Crime laboratory at Patag, and Joey was with them, then he was brought back to their office. He stayed in the office for three days. They parted ways with Joey when he was already committed at the BJMP in Lumbia. He was later informed that the PDEA agents did it to him in exchange for Joey because Joey was arrested in Carmen. He learned of this information from his friend who is a neighbor of Joey in Camella and who visited him at Lumbia.<sup>7</sup>*

After weighing the evidence, the RTC convicted accused-appellant of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165. The RTC found that although the identity of the alleged buyer, seller, and object were established, two elements of illegal sale of dangerous drugs were still missing – the consideration and the payment. As testified to by I01 de la Cerna himself, he did not bring any buy-bust money and that there was no payment of the alleged marijuana he received from accused-appellant.<sup>8</sup>

Nevertheless, the RTC found accused-appellant liable for possession of dangerous drugs, which crime is necessarily included in the offense charged. The RTC then disposed of the case in this manner:

**WHEREFORE**, premises considered, this Court finds the accused **MICHAEL KURT JOHN BULAWAN Y ANDALES GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under Section 11, Article II of R.A. 9165, the offense proved which is included in the offense charged in the Information, and hereby sentences him to suffer the penalty of imprisonment for twelve [12] years and one [1] day to thirteen [13] years, and to pay the Fine of Three Hundred Thousand Pesos [P300,000.00], without subsidiary penalty in case of insolvency.

---

<sup>7</sup> Id. at 34-35.

<sup>8</sup> Rollo, p. 63.



The accused shall be entitled to be credited in full of his preventive detention and the period of his actual incarceration shall be deducted from the number of years with which the accused is to serve his sentence.

**SO ORDERED.**<sup>9</sup>

Accused-appellant went before the Court of Appeals. After a review of the records, the appellate court found accused-appellant guilty of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

Citing *People v. Concepcion*,<sup>10</sup> the Court of Appeals held that Section 5, Article II of R.A. No. 9165 covers not only the sale of dangerous drugs but also the mere act of delivery after the offer to buy by the entrapping officer has been accepted by the seller.<sup>11</sup>

The Court of Appeals further held that, in convicting accused-appellant of Section 5, Article II of R.A. No. 9165, accused-appellant's right against double jeopardy was not violated. Citing *US v. Abijan*,<sup>12</sup> the appellate court held that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render judgment as the law and justice dictate, whether favorable or unfavorable to them, and whether they are assigned as errors or not.<sup>13</sup>

Thus, the Court of Appeals ruled:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 25, Cagayan de Oro in Criminal Case No. 2008-714 is AFFIRMED with MODIFICATION that accused-appellant MICHAEL KURT JOHN BULAWAN y ANDALES is found guilty of violating Section 5, Article II of Republic Act No. 9165 otherwise known as the Dangerous Drugs Act of 2002. He is hereby sentenced to suffer the penalty of life imprisonment, without eligibility of parole, and to pay the fine of Five Hundred Thousand Pesos (₱500,000.00).

**SO ORDERED.**<sup>14</sup>



---

<sup>9</sup> Id. at 66.  
<sup>10</sup> G.R. No. 178876, 27 June 2008  
<sup>11</sup> CA Decision; *CA rollo*, p. 93.  
<sup>12</sup> 1 Phil. 83, 85 (1902).  
<sup>13</sup> CA Decision; *CA rollo*, p. 92.  
<sup>14</sup> Id. at 93.

Accused-appellant is now before the Court, raising the following issues:<sup>15</sup>

## I.

THE COURT OF APPEALS ERRED IN RULING THAT A BUY-BUST OPERATION WAS ACTUALLY CONDUCTED.

## II.

THE COURT OF APPEALS ERRED IN RULING THAT THE CHAIN OF CUSTODY OF THE *CORPUS DELICTI* WAS ESTABLISHED SUFFICIENTLY.

## III.

THE COURT OF APPEALS ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES OF THE ARRESTING OFFICERS.

## IV.

THE COURT OF APPEALS ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.

## V.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT OF A CRIME NOT CHARGED IN THE INFORMATION.

In sum, accused-appellant argues that his guilt was not established beyond reasonable doubt, and that he cannot be convicted of delivery or possession of dangerous drugs when such was not charged in the Information.<sup>16</sup>

After a thorough review of the records, we acquit accused-appellant.

Accused-appellant is charged, particularly, with unlawfully selling and/or offering to sell or give away marijuana.<sup>17</sup>

For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165; the following

<sup>15</sup> Appellant's Supplemental Brief; *rollo*, p. 160.

<sup>16</sup> *Id.* at 167.

<sup>17</sup> Information; RTC Records, p. 3.

elements must be present: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.<sup>18</sup>

In the case at bar, it is readily apparent that no sale was consummated as the consideration, much less its receipt by accused-appellant, were not established. As testified on by I01 de la Cerna:

Pros. Borja:

To witness, proceeding.

Q You mentioned earlier that there was a negotiation for the purchase of ₱1,000.00 peso worth of marijuana, did you prepare money for that operation?

A No, sir.

Q You mean when you met the accused, there was no ₱1,000.00 with you?

A No, sir.

Q And you arrested him after he showed to you the marijuana?

A After he gave to me the marijuana sir.<sup>19</sup>

xxx

xxx

xxx

Court:

Q Did you bring the money at that time?

A No, Ma'am.

Q You mean you are supposed to conduct a buybust operation, you did not bring any money to be given to the accused?

A It is agreed upon to conduct delivery.

Q What you are trying to tell this Court therefore, is that the accused delivered drugs without receiving first the money?

A Yes, sir.<sup>20</sup>

<sup>18</sup> *People v. Gaspar*, 669 Phil. 122, 135 (2011).

<sup>19</sup> TSN of IO1 Dela Cerna, 21 May 2009; *rollo*, p.76.

<sup>20</sup> *Id.* at 85.

xxx

xxx

xxx

Court:

To witness.

Q There was no pre-payment prior to the agreed time of delivery?

A No Your Honor.

Q You did not also promise him that you will pay it only after the delivery?

A No, Your Honor.<sup>21</sup>

In *People v. Dasigan*,<sup>22</sup> where the marked money was shown to therein accused-appellant but was not actually given to her as she was immediately arrested when the shabu was handed over to the poseur-buyer, the Court acquitted said accused-appellant of the crime of illegal sale of dangerous drugs. Citing *People v. Hong Yen E*,<sup>23</sup> the Court held therein that it is material in illegal sale of dangerous drugs that the sale actually took place, and what consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money. While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.

In the case at bar, there is more reason to acquit accused-appellant of the crime of illegal sale of dangerous drugs as the prosecution was not able to prove that there was even a consideration for the supposed transaction.

The prosecution claimed that that there was prior negotiation between the confidential informant and accused-appellant. The prosecution, however, failed to adduce any evidence of such prior negotiation. In fact, nothing can be gained from the records and from the testimonies of the witnesses as to how the supposed confidential informant conducted the alleged negotiation with accused-appellant.

Repeatedly, this Court has reminded the prosecution of its duty to present a complete picture of the buy-bust operation – “from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or

---

<sup>21</sup> Id. at 86.

<sup>22</sup> G.R. No. 206229, 4 February 2015.

<sup>23</sup> 701 Phil. 280, 285 (2013).





payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale.”<sup>24</sup>

In the present case, no information was presented by the prosecution on the prior negotiation between the confidential informant and accused-appellant. Moreover, the testimony of I01 de la Cerna failed to show any kind of confirmation of the alleged prior negotiation. Thus, there is no proof of the offer to purchase dangerous drugs, as well as the promise of the consideration.

Also, the Court finds that the prosecution failed to establish the identity and integrity of the *corpus delicti* of the offense charged.

In *People v. Torres*,<sup>25</sup> we held that the identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of R. A. No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized, to wit:

SECTION 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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.<sup>26</sup>

However, this Court has also said that while the chain of custody should ideally be perfect, in reality it is not “as it is almost always impossible to obtain an unbroken chain.” The most important factor is the

<sup>24</sup> *People v. Dela Cruz*, 666 Phil. 593, 606 (2011).

<sup>25</sup> 710 Phil. 398 (2013).

<sup>26</sup> *Id.* at 408-409.

preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.<sup>27</sup>

In the case at bar, the chain of custody of the seized alleged marijuana was not sufficiently established, thereby casting doubt on the identity and integrity of the supposed evidence.

The foregoing is I01 dela Cerna's testimony on the handling of the seized alleged marijuana:<sup>28</sup>

Q And you mentioned about marijuana, if that marijuana be shown to you, will you be able to identify it?

A Yes, sir.

Q Which I am showing to you this marijuana leaves wrapped in a magazine paper, is this the one you said delivered to you?

A Yes, sir.

Q And why do you say that this is the one?

A I put marking on it.

Q Where did you place the marking?

A At the left portion sir.

Q Where did you make the marking?

A At the office sir.

That is all that was said as regards the handling of the seized item. The prosecution failed to prove that the identity and integrity of the seized item was preserved – whether it was kept by I01 dela Cerna from the time accused-appellant allegedly handed it to him until the time he marked it in the office, whether I01 dela Cerna turned it over to his superior as is the usual procedure, whether it was returned to I01 dela Cerna for it to be brought to the crime laboratory, whether the specimen was intact when the crime laboratory received it, whether the crime laboratory officers marked and sealed the seized item after it was tested, and whether the proper officers observed the mandated precautions in preserving the identity and integrity of the seized item until it was presented in open court.

<sup>27</sup> *People v. Loks*, G.R. No. 203433, 27 November 2013, 711 SCRA 187, 196.

<sup>28</sup> TSN, 21 May 2009; *rollo*, p. 78.

On the contrary, what we can deduce from I01 dela Cerna's testimony is the fact that the seized item was not placed in a plastic container and sealed upon confiscation. As sworn to by PSI Erma Condino Salvacion, the forensic chemist who conducted the laboratory test on the seized item, what she tested were "suspected Marijuana leaves wrapped in a magazine paper with markings 'RDC-D'."<sup>29</sup> Also, when the said item was presented in open court for identification, it was still wrapped in magazine paper.<sup>30</sup>

In *People v. Habana*,<sup>31</sup> as reiterated in *People v. Martinez, et al.*,<sup>32</sup> we ruled that:

Usually, the police officer who seizes the suspected substance turns it over a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

**If the substance is not in a plastic container, the officer should put it in one and seal the same.** In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

**If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.** (Emphasis supplied.)

In the case at bar, as the seized substance was not sealed, the prosecution should have presented all the officers who handled said evidence from the time it left the person of the accused to the time it was presented in open court. The prosecution did not.

<sup>29</sup> Affidavit of PSI Erma Condino Salvacion; RTC Records, p. 59.

<sup>30</sup> TSN, 21 May 2009; *rollo*, p. 78

<sup>31</sup> 628 Phil. 334, 341-342 (2010).

<sup>32</sup> 652 Phil. 347, 371 (2010).

Time and again, this Court has held that “the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. x x x A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.”<sup>33</sup>

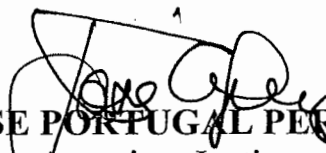
On a final note, in *People v. Maongco*<sup>34</sup> we clarified that possession is necessarily included in the sale of dangerous drugs. Thus:

Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs. The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs.<sup>35</sup>

In the present case, however, as the prosecution failed to establish every link in the chain of custody of the subject dangerous drugs, thus compromising its identity and integrity, accused-appellant cannot be held liable for illegal possession of dangerous drugs.

**WHEREFORE**, premises considered, we **GRANT** the appeal. The Court **ACQUITS** accused-appellant Michael Kurt John Bulawan y Andales and **ORDERS** his immediate release from detention, unless he is detained for another lawful cause.

**SO ORDERED.**


  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>33</sup> *People v. Salonga*, G.R. No. 194948, 2 September 2013, 704 SCRA 536, 548, citing *People v. De Guzman y Danzil*, 630 Phil. 637, 654 (2010).

<sup>34</sup> G.R. No. 196966, 23 October 2013, 708 SCRA 547.

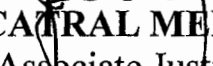
<sup>35</sup> *Id.* at 567.

**WE CONCUR:**




**PRESBITERO J. VELASCO, JR.**  
Chairperson

Official Leave  
**DIOSDADO M. PERALTA**  
Associate Justice




**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

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

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



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

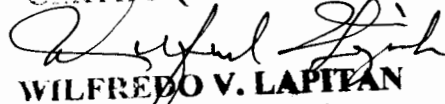
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



**ANTONIO T. CARPIO**  
Acting Chief Justice

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

**JUN 23 2016**