



Republic of the Philippines
SUPREME COURT
 Manila

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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN

Division Clerk of Court
 Third Division

SEP 14 2017

THIRD DIVISION

**PEOPLE OF THE
 PHILIPPINES,**

Plaintiff-Appellee,

- versus -

JOCELYN CARLIT y GAWAT,
 Accused-Appellant.

G.R. No. 227309

Present:

VELASCO, JR., J., Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

Promulgated:

August 16, 2017

Wilfredo V. Lapitan

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DECISION

VELASCO, JR., J.:

Nature of the Case

This treats the appeal from the August 20, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06510. The challenged ruling affirmed the conviction of accused-appellant Jocelyn G. Carlit (Carlit) for illegal sale of dangerous drugs, in violation of Section 5 of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Culled from the records are the following facts:

x x x PO3 Christian Carvajal was assigned at [the] Dagupan City Police Station when, on 26 February 2011, he was tasked to act as poseur buyer in the buy bust operation against Jocelyn Carlit in the squatters area in Mayombo District of the city. Their office received information that Carlit is engaged in illegal activities, hence, the buy bust operation. During their preparation, they recorded the buy bust money to be used in the police

¹ Rollo, pp. 2-12. Penned by Associate Justice Francisco P. Acosta, concurred in by Associate Justices Noel G. Tijam (Chairperson, 4th Division) and Eduardo B. Peralta.

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blotter. The police officer did not know whether there was coordination with the [Philippine Drug Enforcement Agency].

It was around 2:00 o'clock in the afternoon when he, with a civilian asset, went to conduct the buy bust at Highlander, Mayombo District, Dagupan City. They approached the Accused [herein accused-appellant] and personally bought shabu from her, handing the buy bust money consisting of five (5) 100-peso bills, while the Accused handed a sachet of shabu. After he got hold of the shabu, the police officer introduced himself as a police officer and arrested the Accused. The shabu was marked in the police station with the officer's initials and also recovered the buy bust money from the Accused. The officer declared that he did not know the Accused prior to the buy bust and confirmed the identity only through the asset. The officer said that the Accused and his supervising officer were both present when he prepared the confiscation receipt which was signed by a DOJ representative although there was no media. At the police station, the police blotter, request for laboratory examination and coordination with the PDEA as well as his affidavit were prepared. The police officer also narrated that he was the only one in sole possession of the specimen from its seizure up to the station where it was only shown to the investigator and thereafter brought by him to the crime laboratory, where it was received by PSI Myrna Malojo.

The specimen weighing 0.07 gram tested positive as methamphetamine hydrochloride according to PSI Myrna Malojo Todeño who received the same and who conducted the examination. She placed her findings in an Initial Laboratory Report and then the Final Chemistry Report No. D-023-11L. The officer identified the plastic sachet containing the specimen with her marking the same with "D-023-11L." The specimen was then handed to the evidence custodian PO2 Manuel.² (words in brackets added)

An information was therefore filed against Carlit, charging her with the illegal sale of dangerous drugs, specifically, methamphetamine hydrochloride or shabu. The accusatory portion of the information reads:

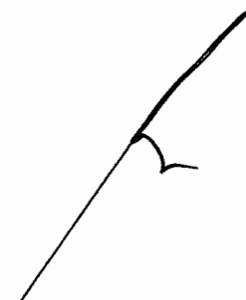
That on or about the 26th day of February 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOCELYN CARLIT y GAWAT, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride contained in one (1) heat sealed plastic sachet, weighing more or less 0.07 grams in exchange for P500.00 without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.³

The case was docketed as Criminal Case No. 2011-0115-D entitled *People of the Philippines vs. Jocelyn Carlit* and raffled to the Regional Trial Court, Branch 42 in Dagupan City (RTC).

² *Rollo*, pp. 3-4.

³ *Id.* at 2-3.



On arraignment, Carlit pleaded “not guilty” to the offense charged. The case proceeded to preliminary and pre-trial conferences, wherein the State and the defense had stipulated only on the identity of the accused as the person arraigned.⁴ Thereafter, trial on the merits ensued.

The prosecution offered the testimony of two witnesses to prove the culpability of the accused. The first to take the witness stand was PSI Myrna Malojo Todeño (PSI Todeño), the forensic chemist stationed at the Philippine National Police (PNP) Crime Laboratory. According to her, she was the one who received the suspected drug item at the crime laboratory, examined the specimen, and authored the initial and final chemistry reports declaring that the subject item tested positive for methamphetamine hydrochloride. She likewise testified that after conducting the examination, she turned over the items to their evidence custodian, one PO2 Manuel.

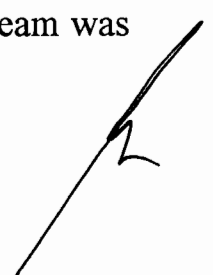
PO3 Christian Carvajal (Carvajal), the poseur-buyer, was the second and final prosecution witness presented. His testimony served as the basis of the narration of facts by the courts *a quo*. Coupled with the testimony of the forensic chemist, it was determined that Carvajal’s testimony was sufficient to establish the chain of custody and sustain a conviction since he was in sole possession of the specimen from its seizure up to when it was shown to the investigator at the police station, and thereafter when it was brought by him to the crime laboratory where it was received by PSI Todeño.

On the other hand Carlit, in her defense, testified that she was on her way to her mother’s house when she came across three (3) policemen, including Carvajal, who were looking for her. Before she was able to answer, the officers directed her to an alley that coincidentally leads to where she was going. Upon reaching her mother’s house, the police officers asked her sister Jocelyn to confirm her [Carlit’s] identity. But because Jocelyn would not answer without being told of the reason for the questioning, one of the police officers, one PO Decano, forced accused-appellant into the house where she was handcuffed. Carlit denied the allegation that she was selling shabu at the time she was arrested. Maria Fe De Vera, who allegedly witnessed the allegedly unlawful arrest of her sister-in-law, Carlit, corroborated the testimony of accused-appellant.

The Ruling of the RTC

After evaluating the evidence on record, the RTC held that the prosecution established with moral certainty that accused-appellant was caught *in flagrante delicto* in a legitimate buy-bust operation. The exchange of marked money for a sachet of shabu between PO3 Carvajal, on the one hand, and Carlit, on the other, constituted a violation of Section 5 of R.A. 9165, so the trial court ruled. Absent any finding that the buy-bust team was

⁴ CA Rollo, p. 29.



inspired by some improper motive in effecting the arrest, the RTC held that the testimony of PO3 Carvajal deserved full weight and credit.

Thus, unconvinced by the defense that Carlit had raised, the trial court found the accused-appellant guilty as charged in its September 20, 2013 Decision,⁵ the dispositive portion of which reads:

WHEREFORE, premises considered, the court hereby finds the accused GUILTY of the crime of Violation of Section 5 o[f] Art. II of RA 9165, beyond reasonable doubt, and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

Let the shabu subject matter of this case be disposed of in the manner provided by law.

SO ORDERED.⁶

Subsequently, the case was elevated to the CA.

The Ruling of the CA

In her brief, Carlit interposed the defense of denial. She claimed that she was illegally arrested, and that the shabu that she allegedly sold to PO3 Carvajal was not from her. She further questioned the chain of custody of the purported object of the sale, and points out that the buy-bust team failed to inventory, mark, and photograph the drugs in her presence, with a representative of the Department of Justice and a barangay official, immediately after her arrest.

On August 20, 2015, the CA rendered the assailed judgment denying Carlit's appeal, thusly:

WHEREFORE, the Appeal is hereby **DENIED** for lack of merit. The assailed Decision dated 20 September 2013 of the Regional Trial Court, Branch 42, Dagupan City, is **AFFIRMED** *in toto*.

SO ORDERED.⁷

The accused appealed this decision to this Court *via* Notice of Appeal dated September 21, 2015.

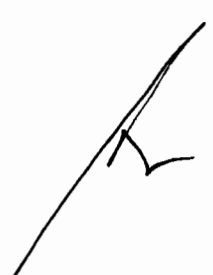
The Issue

The crux of the controversy ultimately boils down to the question of whether or not the courts *a quo* correctly convicted Carlit for illegal sale of dangerous drugs.

⁵ Id. at 28-41. Penned by Presiding Judge A. Florentino R. Dumlao, Jr.

⁶ Id. at 41.

⁷ *Rollo*, p. 12.



The Courts' Ruling

The appeal must be granted.

The prosecution failed to prove every link in the chain of custody

Section 5 of R.A. 9165 provides:

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.

In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous drugs, *viz*: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.⁸

Presenting in court the *corpus delicti* is not rote function, but a tedious undertaking. Much had already been said about the unique characteristic of narcotic substances – that they are not readily identifiable and prone to tampering, alteration, or substitution⁹ – which justifies the Court's imposition of a more exacting standard before they could be accepted as evidence, if only to render it improbable that the integrity or identity of the original item had been compromised. This is where the observance of the chain of custody comes in. As We have opined in *People v. Salvador (Salvador)*:

“The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established.” “‘Chain of Custody’ means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and

⁸ *People v. Rosauero*, G.R. No. 209588, February 18, 2015, 751 SCRA 204, 214.

⁹ *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 634.

custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.”

There are links that must be established in the chain of custody in a buy-bust situation, namely: **“first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.”**¹⁰ (emphasis added)

The aforecited doctrine was likewise served as basis for the CA in sustaining Carlit’s conviction. Ironically, however, Our teaching in *Salvador* was grossly misapplied in this case.

We have consistently held in drug cases that every link of the chain of custody must be proved. It is quite regrettable though that the prosecution fell short of satisfying this standard when it opted to present only two witnesses herein, PO3 Carvajal and PSI Malojo Todeño.


To refresh, the substance of PO3 Carvajal’s testimony was that he was the poseur-buyer who received the sachet containing the dangerous drug from Carlit, and that he was the only arresting officer who handled the same until it was turned over to PSI Todeño at the PNP Crime Laboratory.

PSI Todeño confirmed receiving the narcotic substance from PO3 Carvajal for testing, and added that her specimen was then handed to one PO2 Manuel, the evidence custodian, for safekeeping.

This is where the chain breaks.

Clear in *Salvador* is that the final link of the chain must be on how the drug item seized came into the court’s physical custody. Unfortunately, PO2 Manuel was never presented as witness in this case. Needless to say, the probability of the integrity and identity of the *corpus delicti* being compromised is present in every single time the prohibited item is being stored or transported, be it from the PNP crime laboratory directly to the court or otherwise. It was therefore imperative for the prosecution to have presented as witness PO2 Manuel, and anyone else for that matter who may have handled the drug after him. For during the interim time - from when the specimen was placed under his custody until the time it was brought to court – the threat of tampering, alteration, or substitution of the *corpus delicti* still existed.

¹⁰ G.R. No. 190621, February 10, 2014, 715 SCRA 617, 635.



Without PO2 Manuel's testimony, there is no guarantee that the *corpus delicti* of the offense had been preserved. This alone is sufficient to warrant accused-appellant Carlit's acquittal in the extant case. In consonance with Our teaching in *People v. Barba*:

x x x x A conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.¹¹

Moreover, the arresting officers failed to observe the procedural guidelines laid down in Paragraph 1, Section 21 of R.A. 9165, as amended by R.A. 10640,¹² which 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 person/s 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.** (Emphasis supplied)

While there have been cases where the Court convicted an accused despite non-compliance with Section 21 of RA 9165, these instances of non-

¹¹ G.R. No. 182420, July 23, 2009, 593 SCRA 711, 717.

¹² AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

compliance must be for **justifiable grounds**. Thus, the Court explained in *People v. Bartolini* that:

There have been cases when the Court relaxed the application of Section 21 and held that the subsequent marking at the police station is valid. **However, this non-compliance is not fatal only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly preserved.** And while the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. **In this case, however, the prosecution offered no explanation at all for the noncompliance with Section 21, more particularly that relating to the immediate marking of the seized items. This non-explanation creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Bartolini.**¹³ (Emphasis supplied)

Similarly, the Court ruled in *People v. Cayas* that:

While recent jurisprudence has subscribed to the provision in the Implementing Rules and Regulations (IRR) of R.A. 9165 providing that noncompliance with the prescribed procedure is not fatal to the prosecution's case, we find it proper to define and set the parameters on when strict compliance can be excused.

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds,** and **(2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – with moral certainty – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.¹⁴ (Emphasis supplied)

In the case at bar, PO3 Carvajal testified that he marked the alleged shabu at the police station, instead of doing so immediately at the place where the arrest was effected as required by law. Moreover, the arresting officers failed to strictly observe Section 21 of R.A. 9165 that requires that “an elected public official and a representative of the National Prosecution Service or the media” be present during the inventory, and be given a copy of the report of the seized items. Such failure of the police officers to secure the presence of a representative from the media or a barangay official raises serious doubts on whether the chain of custody was actually unbroken.

¹³ G.R. No. 215192, July 27, 2016, 798 SCRA 711, 722-723.

¹⁴ G.R. No. 206888, July 4, 2016, 469.

Notably, PO3 Carvajal did not offer any explanation for these lapses. Rather, he admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring Carlit to the police station. To Our mind, this does not constitute justifiable ground for skirting the statutory requirements under Section 21 of R.A. 9165. We are therefore constrained to rule as We did in *Bartolini*, viz:

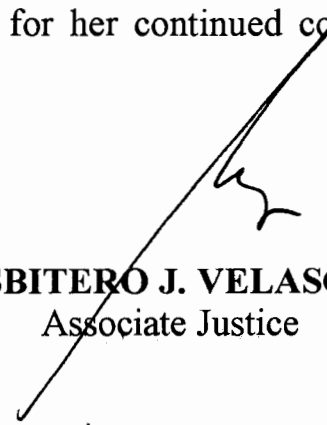
The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody – from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.¹⁵ (Emphasis supplied)

Plainly, there was a failure of the prosecution to prove that the chain of custody was unbroken due to (1) its failure to offer the testimony of the evidence custodian, and (2) non-compliance with Paragraph 1, Section 21 of RA 9165, as amended, without justifiable reason. As such, the guilt of the accused-appellant was not proven beyond reasonable doubt, warranting her acquittal of the crime charged.

WHEREFORE, the instant appeal is **GRANTED**. The Decision dated August 20, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06510 is hereby **REVERSED** and **SET ASIDE**.

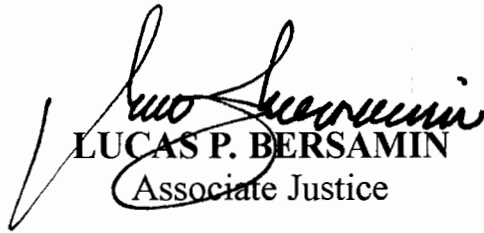
Accordingly, accused-appellant Jocelyn Carlit y Gawat is **ACQUITTED** on reasonable doubt. The Director of the Bureau of Corrections is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of her release or reason for her continued confinement within five (5) days from notice.

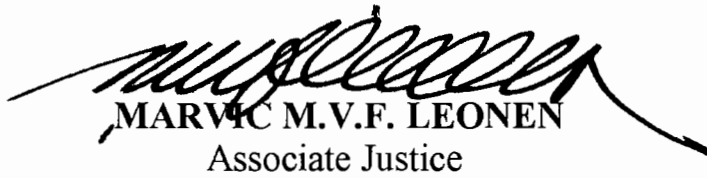
SO ORDERED.

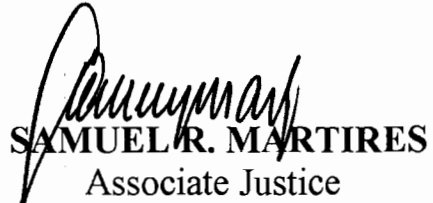

PRESBITERO J. VELASCO, JR.
Associate Justice

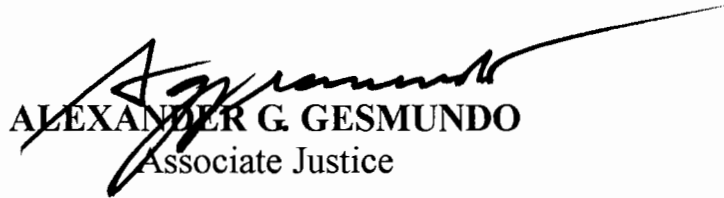
¹⁵ Supra note 13, at 724.

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice

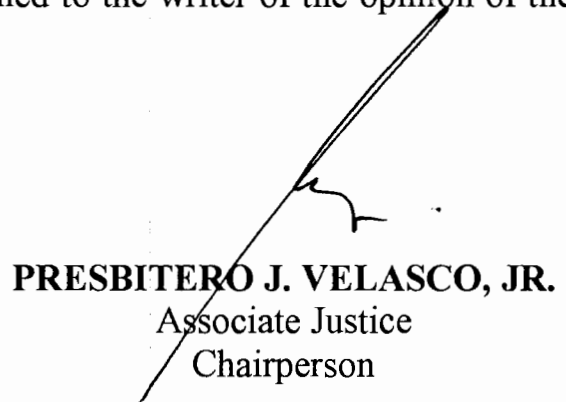

MARVIC M.V.F. LEONEN
 Associate Justice


SAMUEL R. MARTIRES
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

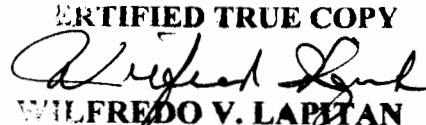
ATTESTATION

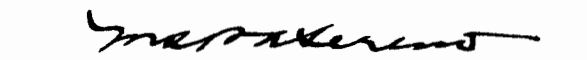
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 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.

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WILFREDO V. LAPID
 Division Clerk of Court
 Third Division
 SEP 14 2017


MARIA LOURDES P. A. SERENO
 Chief Justice