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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAY 29 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PO2 JESSIE FLORES *y* DE LEON,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 222861

Present:

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

Promulgated:

April 23, 2018

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DECISION

GESMUNDO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated August 13, 2015 and Resolution[2] dated February 3, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR No. 36187. The CA affirmed with modification the May 28, 2013 Decision[3] of the Regional Trial Court, Quezon City, Branch 91 (*RTC*) finding PO2 Jessie Flores *y* De Leon (*petitioner*) guilty beyond reasonable doubt of Simple Robbery (extortion) as defined and penalized under Article 294 (5) of the Revised Penal Code *(RPC).*

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[1] *Rollo,* pp. 83-97; penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Myra V. Garcia-Fernandez, concurring.
[2] Id. at 107-108.
[3] Id. at 98-101; penned by Judge Lita S. Tolentino-Genilo.

The Antecedents

On June 29, 2000, petitioner was arrested via an entrapment operation conducted by the Presidential Anti-Organized Crime Task Force (*PAOCTF*) pursuant to a complaint lodged by private complainant Roderick France (*France*). The accusatory portion of the Information[4] dated July 3, 2000 reads:

> That on or about the 29th day of June 2000 in Quezon City, Philippines, the above-named accused taking advantage of his official position as a member of the Traffic Enforcement Group, Central Police Traffic Enforcement Office, with intent to gain and by means of intimidation, did then and there, willfully, unlawfully and feloniously rob Roderick S. France of ₱2,000.00 in cash in the following manner, to wit: on June 26, 2000, the driven taxi of Roderick S. France figured in a vehicular accident with a passenger jeepney and the said accused confiscated his Driver's License then issued a Traffic Violation Receipt indicating therein his alleged violations and demanded from him the amount of ₱2,000.00 as a condition for the return of his Driver's License thus creating fear in the mind of said Roderick S. France who was compelled to give to the said accused ₱2,000.00 in cash on June 29, 2000 to the damage and prejudice of the said offended party.
>
> CONTRARY TO LAW.[5]

Petitioner posted a bail bond of ₱100,000.00 for his conditional release.

Upon arraignment, petitioner entered a plea of "not guilty".

The prosecution presented the following witnesses: France, PO2 Aaron Ilao (*PO2 Ilao*) and PO2 Richard Menor (*PO2 Menor*) of the PAOCTF. The defense, on the other hand, presented petitioner, Robert Pancipanci (*Pancipanci*) and photographer Toto Ronaldo *(Ronaldo)* as its witnesses.

The facts, as found by the CA, are as follows:

> xxx. The People's version of the facts are as follows:
>
> On 26 June 2000, at around 6:00 o'clock in the evening, private complainant France figured in a vehicular collision with a passenger

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[4] Id. at 173-174.
[5] Id. at 173.

jeepney at the corner of E. Rodriguez and Aurora Blvd., Quezon City. Soon thereafter, a traffic enforcer arrived at the vicinity and prepared a sketch of the incident. Then, France and the jeepney driver proceeded to Station 10, Kamuning Police Station. At the station, appellant PO2 Flores investigated the incident. The jeepney driver was told to go home while France was asked to remain at the station. He was told to return to the station after two days and prepare the amount of ₱2,000.00 so he can get back his driver's license. Because France could not raise the said amount in two days, he was told by PO2 Flores to just return on the third day in the evening because he was on a night shift duty then. Subsequently, a Traffic Violation Receipt *(TVR)* No. 1022911 was issued and signed by PO2 Flores who told France that the same would serve as the latter's temporary driver's license. France became suspicious as he recalled that on a previous occasion when his driver's license was confiscated due to a traffic violation the same was claimed from the office of the Metro Manila Development Authority (*MMDA*) or City Hall and not from the officer who confiscated his license.

Sensing that something was not right, France went to the headquarters of the PAOCTF in Camp Crame to file a complaint against PO2 Flores. Meanwhile, France was asked to provide the amount of ₱2,000.00 which he heeded and four (4) 500-peso bills were dusted with ultraviolet fluorescent powder. Thereafter, France executed a *Sinumpaang Salaysay*.

Headed by PO2 Ilao, the PAOCTF team proceeded to Station 10, Kamuning Police Station together with France. When France entered the station, PO2 Flores asked him if he brought with him the money. After an hour, PO2 Flores called France to his table. He opened a drawer and told France to drop the money inside. PO2 Flores then counted the money inside the drawer using his left hand. As soon as France asked for his driver's license, the PAOCTF team suddenly materialized (sic) at the scene through PO2 Ilao's pre-arranged signal. They arrested PO2 Flores and confiscated the things inside his drawer including the marked money. The team subsequently proceeded to Camp Crame where PO2 Flores was turned over for ultraviolet examination. France was further asked to execute a "*Karagdagang Sinumpaang Salaysay*" regarding the incident. PO2 Menor also executed an affidavit in connection with the incident that lead to the arrest of Flores.

After the People rested its case, the trial court directed PO2 Flores to present his evidence. To exculpate himself from criminal liability, Flores interposed the defense of denial and "frame-up". He adduced his own testimony and the testimonies of Robert Pancipanci and photographer Toto Ronaldo which hewed to the following version of the facts:

On 26 June 2000, PO2 Flores received a report in his office that there was a vehicular collision in his area of assignment. Upon investigation, PO2 Flores determined that the accident was due to France's fault. He confiscated the driver's license of France, issued a citation ticket and told France that he could claim his driver's license from the Quezon

> City Redemption Center upon payment of the amount of ₱2,000.00. On 29 June 2000, PO2 Flores had no idea why France returned to his office in the evening. Because he had to interview Robert Pancipance at that time, France was told to wait. France was, however, persistent in giving him the TVR with the enclosed money. On the third attempt, France convinced him to receive the TVR and money but PO2 Flores refused to receive them. While PO2 Flores was at the comfort room, France took the chance to place the money inside PO2 Flores' drawer. When PO2 Flores returned, the operatives from the PAOCTF arrested him and brought him to Camp Crame.[6]

The Ruling of the RTC

In its May 28, 2013 decision, the RTC found petitioner guilty of simple robbery (extortion). It ruled that the prosecution established all the elements of the crime beyond reasonable doubt. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused is found GUILTY beyond reasonable doubt of the crime of SIMPLE ROBBERY (Extortion) under Article 294(5) of the Revised Penal Code and is hereby sentenced to a penalty of Two (2) Years, Ten (10) Months and Twenty One (21) Days as minimum to Six (6) Years and One (1) Month and Eleven (11) days as maximum.
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> SO ORDERED.[7]

Petitioner filed a motion for reconsideration but it was denied in the RTC's Order[8] dated July 11, 2013.

Aggrieved, petitioner appealed before the CA.

In his Brief,[9] petitioner averred that the RTC incorrectly convicted him of simple robbery by giving weight on pieces of evidence in violation of the Best Evidence Rule. He argued that the prosecution's exhibits were mere photocopies and the original pieces of the marked money were never even presented. He also assailed the failure of the prosecution to present the forensic chemist who made the laboratory report which found traces of ultraviolet powder on his index finger. He further argued that the RTC disregarded the testimonies of the defense witnesses which clearly showed that he did not extort any money from France. Moreover, he reiterated that

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[6] *Rollo*, pp. 84-87.
[7] Id. at 100-101.
[8] Id. at 102-105.
[9] Id. at 248-257.

his exoneration from the administrative case arising from the same set of facts should have been sufficient basis for the dismissal of the criminal case.

The prosecution, thru the Office of the Solicitor General (*OSG*), argued that all the elements of the crime charged were adequately established. The OSG further asserted that the dismissal of the administrative case should not affect the criminal case since only a summary hearing was conducted for the former while a full blown trial was done for the latter. It added that the photocopies of the exhibits were sufficient and admissible since they were public records. It also said in its brief that the testimonies of the prosecution witnesses were enough to prove the elements of the crime and that the presentation of the original marked money was no longer necessary.[10]

The Ruling of the CA

In its decision, the CA denied the appeal. It held that the best evidence rule admits of some exemptions which were present in this case. It stated that the Complaint Sheet dated June 28, 2000 and *Karagdagang Sinumpaang Salaysay* executed by France were public records under the custody of a public officer, hence, the presentation of the photocopies as evidence, was deemed sufficient. It further held that the said documents were identified by the private complainant during trial and he attested to the veracity of the contents thereof. With regard to the photocopy of the TVR, the CA ruled that the same should be admitted since petitioner himself admitted in his direct testimony that he indeed issued it. As to the marked money, the CA held that the non-presentation of tne original marked money did not create a hiatus in the evidence for the prosecution as the serial numbers were duly recorded in the memorandum prepared by the PAOCTF requesting the ultraviolet fluorescent powder dusting after the entrapment operation. The CA, however, modified the penalty after appreciating the aggravating circumstance of abuse of authority. The *fallo* of the decision reads:

> WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that PO2 Jessie Flores is sentenced to a penalty of Two (2) years, Four (4) months, and One (1) day as minimum to eight (8) years and One (1) day of *prision mayor* as maximum.

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[10] Id. at 275-290.

IT IS SO ORDERED.[11]

Upon denial of his motion for reconsideration,[12] petitioner is now before the Court *via* a petition for review on *certiorari* raising the following-

ASSIGNMENT OF ERRORS

THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION, WHICH AFFIRMED THE RTC ORDERS, IN THAT:

A.

THE COURT OF APPEALS GRIEVOUSLY ERRED AND ABUSED ITS PREROGATIVES WHEN IT AFFIRMED THE PETITIONER'S CONVICTION, DESPITE THAT IT IS GLARING FROM THE EVIDENCE ON RECORD THAT THE RESPONDENT MISERABLY FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

B.

THE COURT OF APPEALS COMMITTED A PALPABLE MISTAKE WHEN IT UNCEREMONIOUSLY OVERLOOKED THAT UNDER THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT, THE ISSUE ON THE ALLEGED TAKING OF THE PROPERTY SUBJECT OF THIS ACCUSATION CAN NO LONGER BE RE-LITIGATED IN THIS CRIMINAL ACTION.[13]

The Court's Ruling

The petition has no merit.

In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, not issues of fact. The factual findings of the RTC, especially when affirmed by the CA, are generally binding upon this Court. Though this rule admits of some exceptions,[14] the Court finds no compelling reason to disturb the factual findings of the lower court, as affirmed by the CA.

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[11] Id. at 97.
[12] Resolution dated February 3, 2016; *rollo*, pp. 107-108.
[13] *Rollo*, pp. 25-26.
[14] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182-183 (2016).

The prosecution sufficiently established all the elements of the crime charged.

Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC.[15] For the successful prosecution of this offense, the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.[16]

In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things.[17] As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same.[18] Intent to gain or *animus lucrandi*, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.[19]

In the present case, there is no doubt that the prosecution successfully established all the elements of the crime charged. France, the private complainant categorically testified that that petitioner demanded and eventually received from him the amount of Two Thousand Pesos (₱2,000.00) in exchange for the release of his driver's license. When the marked money was placed inside petitioner's drawer, who counted it afterwards, he was deemed to have taken possession of the money. This amount was unlawfully taken by petitioner from France with intent to gain and through intimidation. As aptly observed by the CA, petitioner was a police officer assigned as an investigator at the Traffic Sector of Kamuning Police Station whose main duties and responsibilities included conducting inquiries involving traffic law violations and making reports of his investigation. While petitioner had the authority to confiscate the driver's license of traffic violators, nowhere in the law is he authorized to keep an offender's license and receive any payment for its return.

The Court likewise agrees with the courts *a quo* that petitioner employed intimidation to obtain the amount of ₱2,000.00 from France as the

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[15] *People v. Suela, et al.*, 424 Phil. 196, 232 (2002).
[16] *Sazon v Sandiganbayan*, 598 Phil. 35, 45 (2009).
[17] Id.
[18] Id. at 45-46.
[19] See *Matrido v. People of the Philippines*, 610 Phil. 203, 212 (2009).

act performed by the latter caused fear in the mind of the former and hindered the free exercise of his will. In the case of *People v. Alfeche, Jr.*,[20] the court held:

> But what is meant by the word intimidation? It is defined in Black's Law Dictionary as "unlawful coercion; extortion; duress; putting in fear". To take, or attempt to take, by intimidation means "willfully to take, or attempt to take, by putting in fear of bodily harm". As shown in United States vs. Osorio, **material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient.** In an appropriate case, the offender may be liable for either (a) robbery under paragraph 5 of Article 294 of the Revised Penal Code if the subject matter is personal property and there is intent to gain or *animus furandi*, or (b) grave coercion under Article 286 of said Code if such intent does not exist.[21]

Here, petitioner confiscated the driver's license of France after figuring in a vehicular accident. He then issued a TVR but demanded from France the amount of ₱2,000.00 for the return of his driver's license. When France could not produce the said amount, petitioner informed him to return on the evening of June 29, 2000 as he was then on night shift duty. For France whose daily living depends on his earnings from driving a taxi, the thought of not having his driver's license back and the possibility that he might not be able to drive a taxi and earn a living for his family prompted him to give the amount demanded. Petitioner succeeded in forcing France to choose between parting with his money or have his driver's license confiscated or cancelled.

Non-presentation of the original pieces of the marked money is not fatal to the cause of the prosecution.

Petitioner contends that a mere photocopy of the alleged marked money is inadmissible for not conforming to the basic rules of admissibility. Hence, he must be acquitted for failure of the prosecution to present the original pieces of marked money which is the property subject of this criminal offense.

The Court disagrees.

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[20] 286 Phil. 936 (1992).
[21] Id. at 948-949.

In *People v. Tandoy*,[22] the Court held that the best evidence rule applies only when the contents of the document are the subject of inquiry. Where the issue is only as to whether or not such document was actually executed, or exists, or in the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.[23]

In this case, the marked money was presented by the prosecution solely for the purpose of establishing its existence and not its contents. Therefore, other substitute evidence, like a xerox copy thereof, is admissible without the need of accounting for the original.[24] In contrast with *People v. Dismuke,*[25] where the accused was acquitted partly because of the dubious circumstances surrounding the marked money, the existence of the marked money in the case at bar was never questioned. It was not disputed that the four (4) pieces of ₱500 bills which were used as marked money, were produced and thereafter turned over to the police officer for dusting of fluorescent powder. The serial numbers of these marked money were duly recorded in the memorandum prepared by the PAOCTF in connection with the entrapment operation, and the same set of ₱500 bills bearing similar serial numbers was reflected in the request for laboratory examination after the conduct of the entrapment operation. More importantly, these four pieces of ₱500 bills were positively identified by the prosecution witnesses during the trial. As such, the absence of the original pieces of the marked money did not militate against the cause of the prosecution.

Presence of ultraviolet fluorescent powder is not an indispensible evidence to prove receipt of marked money

Petitioner also assails the failure of the prosecution to produce the forensic chemist who actually conducted the testing for fluorescent powder. This contention, however, deserves scant consideration.

The presence of ultraviolet fluorescent powder is not an indispensable evidence to prove that the appellant received the marked money. Moreover, there is no rule requiring that the police officers must apply fluorescent powder to the buy-bust money to prove the commission of the offense. In fact, the failure of the police operatives to use fluorescent powder on the boodle money is not an indication that the entrapment operation did not take place.[26] Both the courts *a quo* did not even give much weight on the

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[22] 270 Phil. 128 (1990).
[23] Id at 133.
[24] Id.
[25] 304 Phil. 207 (1994)
[26] *People v. Sy,* 608 Phil. 313, 329 (2009).

laboratory report. The CA instead stressed on the straightforward, candid and categorical testimony of France, corroborated by PO2 Ilao, as to how petitioner took the money of France in exchange for the latter's driver's license. The laboratory report is merely a corroborative evidence which is not material enough to alter the judgment either way.

Testimony in open court is given more weight than statements in affidavits

In his attempt to discredit France, petitioner pointed to the inconsistency of his statements between his *Karagdagang Sinumpaang Salaysay* and his testimony in open court, particularly on how the marked money found its way to his drawer.

The argument fails to convince.

The Court has held that discrepancies between a sworn statement and testimony in court will not instantly result in the acquittal of the accused.[27] In *Kummer v. People,*[28] the Court explained that:

> It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.[29]

Applying these principles to the present case, the Court finds that as between France's testimony given in open court and the affidavits executed before the PAOCTF, the former prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.[30]

In appreciating the facts of the case, the RTC gave credence to the testimonies of the prosecution witnesses. It found the testimony France to be candid and straightforward, and his assertions categorical. As we have ruled in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the

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[27] *People v. Minangga, et al.,* 388 Phil. 353, 362 (2000).
[28] 717 Phil. 670 (2013)
[29] Id. at 679.
[30] Id.

witnesses of both parties, as well as observed their demeanor and the manner in which they testified during trial.[31] Since there is no showing that that the RTC overlooked or misinterpreted some material facts or that it gravely abused its discretion, We see no reason to disturb and interfere with its assessment of the facts and credibility of the witnesses.[32]

Exoneration in an administrative case does not automatically cause the dismissal of the criminal case

Lastly, petitioner insists that his exoneration from the administrative case arising out of the same act is already sufficient basis for his acquittal in the present case based on the doctrine of conclusiveness of judgment.

We disagree.

It is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa.*[33] Given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other.[34] Hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or *vice versa*.[35]

The case of *Constantino vs. Sandiganbayan,*[36] which petitioner heavily relies on, finds no application in the case at bar. In *Constantino,* the Court dismissed the criminal action due to his exoneration in the administrative case because the same crucial evidence was presented and evaluated in both proceedings, and there was a categorical finding that the act from which the liability was based did not actually exist. It should also be noted that it was the Court who dismissed the administrative complaint against Constantino and Lindong, and reversed the ruling of the Office of the Ombudsman. Thus:

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[31] *People v. Bautista*, 665 Phil. 815, 826 (2011), citing *People v. Combate*, 653 Phil. 487 (2010).
[32] Id.
[33] *Paredes, et al. v. Court of Appeals, et al.,* 555 Phil. 538, 549 (2007).
[34] *Jaca v. People*, 702 Phil. 210, 250 (2013).
[35] Id.
[36] 559 Phil. 622 (2007).

> It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. However, the dismissal by the Court of the administrative case against Constantino based on the same subject matter and after examining the same crucial evidence operates to dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.[37]

In the case at bar, the administrative case for grave misconduct[38] filed against petitioner and the present case for simple robbery are separate and distinct cases, and are independent from each other. The administrative and criminal proceedings may involve similar facts but each requires a different quantum of evidence.[39] In addition, the administrative proceeding conducted was before the PNP-IAS and was summary in nature. In contrast, in the instant criminal case, the RTC conducted a full blown trial and the prosecution was required to proffer proof beyond reasonable doubt to secure petitioner's conviction. Furthermore, the proceedings included witnesses who were key figures in the events leading to petitioner's arrest. Witnesses of both parties were cross examined by their respective counsels creating a clearer picture of what transpired, which allowed the trial judge to have a better appreciation of the attendant facts and determination of whether the prosecution proved the crime charged beyond reasonable doubt.

In fine, the Court is convinced from the evidence on record that the prosecution has overcome the constitutional presumption of innocence in favor of the petitioner with proof beyond reasonable doubt of his guilt. He must, therefore, suffer the penalty prescribed by law for abusing his power and blemishing the name of public service.

WHEREFORE, the petition is **DENIED**. The August 13, 2015 Decision and February 3, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36187 are **AFFIRMED**.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

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[37] Id. at 645.
[38] *Rollo*, pp. 169-170.
[39] *Paredes v. Court of Appeals, et al.*, 555 Phil. 538, 549 (2007).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
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, Third Division

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.

ANTONIO T. CARPIO
Acting Chief Justice

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Division Clerk of Court
Third Division

MAY 29 2018