

EN BANC

G.R. No. 224945 (*Girlie J. Lingad v. People of the Philippines*)

Promulgated:

October 11, 2022

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SEPARATE OPINION

LAZARO-JAVIER, J.:

I concur in the conclusion of the esteemed Senior Associate Justice Marvic Mario Victor F. Leonen that petitioner is guilty beyond reasonable doubt of Money Laundering as defined in the **original** version of Section 4 of Republic Act (RA) No. 9160, the *Anti-Money Laundering Act of 2001*. This law was enacted in 2001 and was the law in force at the time the Information was filed in **2002**.

RA 9160 was substantially amended several times by these statutes:

- **RA 11521** entitled “An Act Further Strengthening The Anti-Money Laundering Law, Amending For The Purpose Republic Act No. 9160, Otherwise Known As The ‘Anti-Money Laundering Act Of 2001,’” As Amended (approved January 29, 2021);
- **RA 10927** entitled “An Act Designating Casinos As Covered Persons Under Republic Act No. 9160, Otherwise Known As The “Anti-Money Laundering Act Of 2001,” As Amended (approved July 14, 2017);
- **RA 10365** entitled “An Act Further Strengthening The Anti-Money Laundering Law, Amending For The Purpose Republic Act No. 9160, Otherwise Known As The ‘Anti-Money Laundering Act Of 2001,’” As Amended (approved February 15, 2013);
- **RA 10167** entitled “An Act To Further Strengthen The Anti-Money Laundering Law, Amending For The Purpose Sections 10 And 11 Of Republic Act No. 9160, Otherwise Known As The ‘Anti-Money Laundering Act Of 2001,’” As Amended, And For Other Purposes (approved June 18, 2012); and
- **RA 9194** entitled “An Act Amending Republic Act No. 9160, Otherwise Known As The ‘Anti-Money Laundering Act Of 2001’” (approved March 7, 2003).

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Among these subsequent amendatory laws, however, only RA 9194 and RA 10365 amended Section 4 of RA 9160.

As originally enacted, Section 4 of RA 9160 read:

SECTION 4. Money Laundering Offense. Money Laundering Offense. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

This was the definition of money laundering until 2003 when RA 9194 was enacted amending Section 4 of RA 9160, in this wise:

“SEC. 4. Money Laundering Offense. — Money laundering is a crime whereby the proceeds of an unlawful activity *as herein defined* are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

“(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

“(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

“(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.”

In 2013, Section 4 was again amended by RA 10365 to read, as follows:

“SEC. 4. Money Laundering Offense. — Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:

“(a) transacts said monetary instrument or property;

“(b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;

“(c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;

“(d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);

“(e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and

“(f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

“Money laundering is also committed by any covered person who, knowing that a covered or suspicious transaction is required under this Act to be reported to the Anti-Money Laundering Council (AMLC), fails to do so.”

The definition in the amended Section 4 of RA 10365 is the prevailing definition of Money Laundering to date.

Note the permutations of the definition of money laundering in Section 4:

RA 9160	RA 9194	RA 10365
proceeds of an unlawful activity are transacted	proceeds of an unlawful activity <u>as herein defined</u> are transacted	<u>any monetary instrument or property represents, involves, or relates to the</u> proceeds of <u>any</u> unlawful activity
(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.	"(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.	" <u>(a) transacts said monetary instrument or property;</u>  " <u>(b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;</u>  " <u>(c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;</u>

The *Implementing Rules and Regulations* of RA 9160 and its amendments also went through several revisions – 2018, 2016, 2012, 2003.

The 2018 and 2016 versions of the *Implementing Rules and Regulations* are identical in their provisions on the *Prosecution of Money Laundering Cases*:

SECTION 4. Prosecution of Money Laundering Cases. —

4.1. Independent Proceedings.

**The prosecutions of ML and the associated unlawful activity shall proceed independently. Any person may be charged with and convicted of both ML and the associated unlawful activity.**

4.2. Separate and Distinct Elements.

**The elements of ML are separate and distinct from the elements of the associated unlawful activity. The elements of the unlawful activity, including the identity of the perpetrators and the details of the commission of the unlawful activity, need not be established by proof beyond reasonable doubt in the case for ML.**

4.3. Knowledge.

**The element of knowledge may be established by direct or circumstantial evidence. The deliberate non-performance of the preventive measures under the AMLA, this IRR, AMLC issuances, and SA's guidelines by a covered person's responsible directors, officers and employees shall be considered in determining knowledge of the commission of ML offenses. (emphasis supplied)**

The 2012 version of the *Implementing Rules and Regulations* on the foregoing provisions was slightly different in form from the 2016 and 2018 versions, but the substance of the provisions is the same:

RULE 6  
Prosecution of Money Laundering

RULE 6.a. Prosecution of Money Laundering. —

(1) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as defined under Section 3.i of the AMLA, as amended.

(2) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under the AMLA, as amended, without prejudice to the *ex-parte* application by the AMLC with the Court of Appeals for a freeze order with respect to the monetary instrument or property involved therein and resort to other remedies provided under the AMLA, as amended, the Rules of Court and other pertinent laws and rules.

....  
RULE 6.d. Trial for the money laundering offense shall proceed in accordance with the Code of Criminal Procedure or the Rules of Procedure of the Sandiganbayan, as the case may be.

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**RULE 6.e. Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA, as amended, to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances.**

**RULE 6.f. All the elements of every money laundering offense under Section 4 of the AMLA, as amended, must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity.**

**RULE 6.g. No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity. (emphasis supplied)**

The *Implementing Rules and Regulations* was revised twice in 2003 but both 2003 versions contained identical provisions as those above:

#### RULE 6

##### Prosecution of Money Laundering

RULE 6.1. Prosecution of Money Laundering. —

RULE 6.1.a. Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as defined under Rule 3(i) of the AMLA.

....

RULE 6.3. After due notice and hearing in the preliminary investigation proceedings before the Department of Justice, or the Ombudsman, as the case may be, and the latter should find probable cause of a money laundering offense, it shall file the necessary information before the Regional Trial Courts or the Sandiganbayan.

RULE 6.4. Trial for the money laundering offense shall proceed in accordance with the Code of Criminal Procedure or the Rules of Procedure of the Sandiganbayan, as the case may be.

**RULE 6.5. Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances.**

**RULE 6.6. All the elements of every money laundering offense under Section 4 of the AMLA must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity.**

**RULE 6.7. No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity. (emphasis supplied)**

The 2002 *Implementing Rules and Regulations* conceived the template that was carried over through to the latest version of these regulations:

RULE 6  
Prosecution of Money Laundering

RULE 6.1. Prosecution of Money Laundering. —

RULE 6.1.a. Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as defined under Rule 3(i) of the AMLA.

RULE 6.1.b. Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under the AMLA without prejudice to the issuance by the AMLC of a freeze order with respect to the deposit, investment or similar account involved therein and resort to other remedies provided under the AMLA.

....  
RULE 6.3. After due notice and hearing in the preliminary investigation proceedings before the Department of Justice, or the Ombudsman, as the case may be, and the latter should find probable cause of a money laundering offense, it shall file the necessary information before the Regional Trial Courts or the Sandiganbayan.

RULE 6.4. Trial for the money laundering offense shall proceed in accordance with the Code of Criminal Procedure or the Rules of Procedure of the Sandiganbayan, as the case may be.

**RULE 6.5. Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances.**

**RULE 6.6. All the elements of every money laundering offense under Section 4 of the AMLA must be proved by evidence beyond reasonable doubt, including the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity.**

**RULE 6.7. No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity. (emphasis supplied)**

Given the above-noted **permutations in the definition** of Section 4 of RA 9160 and the **identical guidelines** in the *Implementing Rules and Regulations* of RA 9160 on the prosecution of money laundering, I **most respectfully disagree** with the *ponencia* on **some** of the elements of money laundering that it has identified:

1. There is an unlawful activity – any act or omission, or a series or combination of acts or omissions, involving or directly related to offenses enumerated under Section 3 of the law;
2. The proceeds of the unlawful activity are transacted by the accused;
3. The accused knows that the proceeds involve or relate to the unlawful activity; and
4. The proceeds are made to appear to have originated from legitimate sources.

### Actus reus

The *actus reus* or criminal act of money laundering requires an **unlawful activity** that must **ultimately** be one of the crimes identified in Section 3(i) of RA 9160, whether of the original or amended versions. To be criminal, the act must refer to the **proceeds of any** unlawful activity. By **proceeds**, this would mean the **amount derived or realized from any** of the unlawful activities mentioned in Section 3(i).

Obviously, the **proceeds** are not invisible. The **proceeds** must have physical representations whether electronically or digitally or as physical objects. The law refers to the physical representations as either **monetary instrument or property**. The monetary instrument or property is **not just** any monetary instrument or property – it must **represent, involve, or relate to, the proceeds** of any unlawful activity.

Lastly, there must have been a **transaction** or an **attempt to transact**. This act must pertain to the **monetary instrument or property** that represents, involves, or relates to the proceeds of any unlawful activity. A **transaction** pertaining to the monetary instrument or property would be any act **establishing any right or obligation or giving rise to any contractual or legal relationship** between the parties thereto, in relation to or involving or representing the monetary instrument or property. A **transaction** also includes **any movement of funds (i.e., not any funds but funds that are the monetary instrument or property that represents, involves, or relates to the proceeds of any unlawful activity) by any means with a covered institution**.

I respectfully emphasize the use of the articles **an** and **any** in referring to the **unlawful activity**. It is **not the unlawful activity**, but **an** unlawful activity or **any** unlawful activity. This is **important** because the **use of these articles in the law itself** in defining money laundering will identify the

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essential allegations in the *Information* for money laundering **and** the elements that the prosecution will have to prove beyond reasonable doubt.

In this regard, it is **enough** that the prosecution alleges in the *Information* that the accused transacted or attempted to transact monetary instrument or property that represents, involves, or relates to the proceeds of **any of the unlawful activities** mentioned in Section 3(i), **without necessarily mentioning what this particular unlawful activity is**. Of course, there is the prosecutorial discretion to identify the **specific unlawful activity**, with specific reference to the name of the crime as referenced in Section 3(i), but this allegation and proof are **not necessary** to obtain a conviction for money laundering. This is **because** all the prosecution has to prove beyond reasonable doubt as the *actus reus* is that the accused **transacted with the monetary instrument or property that represents, involves, or relate to the proceeds of an unlawful activity** that falls under **any** of the named crimes in Section 3(i). **Whatever** crime may be **ultimately** proven is **superfluous** so long as it is **an unlawful activity** that by definition falls within Section 3(i).

My understanding of the *actus reus* of money laundering **jibes with the text of any of the versions** of Section 4. To repeat:

RA 9160	RA 9194	RA 10365
proceeds of an unlawful activity are transacted	proceeds of an unlawful activity <b>as herein defined</b> are transacted	<b><u>any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity</u></b>
(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.	"(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.	" <b><u>(a) transacts said monetary instrument or property;</u></b>  " <b><u>(b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;</u></b>  " <b><u>(c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;</u></b>

My understanding also **jibes perfectly** with the **contemporaneous construction** made by our **financing authorities and justice officials** on **how to prosecute money laundering cases**. To repeat what they said in the *Implementing Rules and Regulations*:

No element of ***the* unlawful activity**, however, including the identity of ***the* perpetrators** and ***the* details of *the actual* commission of**

**the unlawful activity** need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting **the unlawful activity**. (emphasis and underscoring supplied)

All that the prosecution has to allege and prove is that the **monetary instrument** or **property** relates to, involves, or represents the **proceeds of an or any unlawful activity**, and **not the unlawful activity**, which means a crime or **any** of the crimes listed in Section 3(i).

This understanding of the *actus reus* of money laundering, I humbly submit, is **consistent with the language of Section 4**, the **contemporaneous construction** given to it by the chief implementors of RA 9160, the **avoidance of an acquittal** on the basis of a strained and gratuitous burden imposed upon the prosecution, and the avoidance of **duplicative and potentially conflicting trials** of the same offense when the predicate crime is prosecuted separately and independently from the money laundering case.

It is **enough** that there is allegation and proof beyond reasonable doubt that the monetary instrument or property in question has a **criminal origin** which ultimately is linked to or can be characterized by **any** of the predicate crimes under Section 3(i). Also, to avoid the anomaly of one trial court (i.e., the trial court hearing the money laundering prosecution) from prejudging the guilt or innocence of the accused (whether the same individual as the alleged money launderer or some other person) in the prosecution for the predicate crime, it is **enough** that the prosecution prove beyond a reasonable doubt, and the trial court in the money laundering case declare, that the monetary instrument or property was derived or realized from **an** unlawful activity found in Section 3(i).

Thus, there is **no need to establish proof that would obtain conviction** for a **specific** predicate crime. There is also **no need to allege a specific** predicate crime and **be bound** to prove it beyond a reasonable doubt, to the **exclusion of any other unlawful activity** as listed in Section 3(i). It is **enough** that the **unlawfulness** of the source of the proceeds is shown beyond reasonable doubt, that is, the **criminal act** and **criminal mind** involved in an unlawful activity.

Let me respectfully illustrate. Accused A is prosecuted for money laundering of the proceeds of an unlawful activity perpetrated by Accused B. The unlawful activity is **not mentioned** in the *Information*, but since **unlawful activity as defined in Section 3(i)** is alleged in the *Information*, the prosecution can present evidence to prove what this unlawful activity is. The thrust of the prosecution evidence in the money laundering case is **an** unlawful activity arising from **selling illegal drugs**. Meantime, Accused B is prosecuted for the sale of illegal drugs under Section 5 of RA 9165 as amended. The prosecution for this crime falters. This is because of the requirement that the **statutory witnesses under Section 21 of RA 9165 were not present** to witness the buy-bust operation itself and the photo-taking and

inventory of the drugs. Accused B is **acquitted**. In the money laundering case, it is **enough** that the prosecution proves beyond a reasonable doubt that the proceeds were derived or realized from **an unlawful activity**. Since the selling of drugs is unlawful, the *actus reus* is established, though this predicate crime itself was not proven beyond reasonable doubt **to obtain a conviction** in the criminal case against Accused B.

The focus therefore is on the **unlawfulness** of the **activity** from which the proceeds were derived or realized.

To respectfully illustrate further - Accused A is charged with money laundering. The proceeds were realized from **an unlawful activity** involving the **siphoning of money** from the bank's customers. Accused A and Accused B were charged with **qualified theft**. Eventually, the trial court **acquitted** them of **qualified theft** but found them **guilty** of **estafa**. The trial court in the money laundering prosecution **cannot acquit** them of this crime simply because there is no proof beyond a reasonable doubt of qualified theft. It is enough that Accused A is proven guilty of deriving or realizing proceeds **from an unlawful activity** that is **listed in Section 3(i)**, i.e., fraud. It does not matter that it is qualified theft or estafa. What is important is that the proceeds were from **an unlawful activity** that was proven beyond reasonable doubt.

Thus said, my understanding of the *actus reus* of money laundering unfortunately **conflicts** with the *ponencia's* position that "the **particular elements of that unlawful activity** must still be proven beyond a reasonable doubt."

As I have stressed, what the law requires as money laundering is that there was a transaction involving the **proceeds of an unlawful activity** or **any unlawful activity** as listed in Section 3(i), *whatever unlawful activity could ultimately be found against the accused*. The prosecution is **not tied** to allege and prove a **particular unlawful activity**, so as to be burdened to prove the elements of **that particular unlawful activity**. What the prosecution is duty-bound to allege and prove is **an unlawful activity** from **any of the unlawful activities** in Section 3(i), so long as **in the end**, the prosecution discharges its burden to prove **an unlawful activity** from the menu of unlawful activities.

The proof also has **nothing to do with proof that must amount to a conviction** had this predicate crime been tried alongside money laundering. It is enough that there is **proof beyond a reasonable doubt** of the **unlawfulness** of the source of the proceeds, that is, the **criminal act** and **criminal mind** involved in an unlawful activity, though for some reason, a judgment of **conviction cannot be obtained** for such unlawful activity.

### *Mens rea*

I also humbly submit that there is only one criminal mental element or *mens rea* in a money laundering prosecution. This is the *scienter*, or criminal **knowledge** of the **unlawfulness** of the source of the proceeds. This requisite

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knowledge does not require the accused to have been a participant in an unlawful activity or any of the unlawful activities. The accused does not have to share in or be responsible for the criminal act and mental elements of an unlawful activity. The only knowledge demanded of the prosecution to prove is the accused's **knowledge** that any monetary instrument or property represents, involves, or relates to the proceeds of an **unlawful** activity.

In this regard, there is no need to prove that *the proceeds are made to appear to have originated from legitimate sources*.

For this is not even required by any of the versions of Section 4 of RA 9160. So long as the accused **knows** that any monetary instrument or property represents, involves, or relates to the proceeds of an **unlawful** activity, that is **enough**. The **transactions** the accused does involving the monetary instrument or property do **not have to be characterized** as evincing the **specific intent** of the accused to **make** the monetary instrument or property **appear** to be clean. If the accused has engaged in **transactions** as defined by RA 9160, and **intended** to do these acts in the sense of **voluntarily** executing them, **even without the specific intention** to achieve the particular result of making the proceeds look clean, provided the other elements are present, the accused has committed money laundering.

#### *Application to the present case*

The *ponencia* correctly affirmed the conviction of petitioner for money laundering. She **derived proceeds from an unlawful activity** that under Section 3(i) could either be qualified theft or fraud. The prosecution theorized its case on the basis of qualified theft, a particular criminal activity listed in Section 3(i). That is all right. The choice is part of its prosecutorial discretion. But, as I have explained, this is unnecessary. In any event, it is clear that the proceeds were realized from an unlawful activity. Petitioner **transacted monetary instruments** relating to the proceeds of her unlawful activity. She **knew** of course that the monetary instruments related to the proceeds of her unlawful activity. She was after all the sole perpetrator of her unlawful activity.

In **transacting** the monetary instruments, did she **specifically intend** to clean the proceeds? Or was she transacting to elude detection until such time that she was able to put the proceeds under her control, regardless of whether the proceeds would appear clean or remain obviously dirty? Was she sophisticated enough to harbor the **specific intention** of making the proceeds come out clean? What motivation did she have to make the proceeds appear clean when she was ready to fly to the United States?

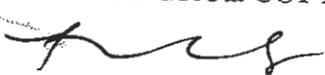
None of these concerns, however, should matter. Whether she **specifically intended** to make the proceeds appear to be clean is **irrelevant**. It is **not an element** of money laundering.

To conclude, the prosecution need not be required to prove to a moral certainty the **particular** elements of **that unlawful activity**. As I have stressed, the proof is to the **unlawfulness** of the origin of the proceeds, and therefore, **any unlawful activity** under Section 3(i) will do, **no** specific reference to an unlawful activity at the outset is necessary, and **any unlawful activity** to which the proceeds have been derived as determined at the end of the trial would **suffice**. Additionally, the proof does not have to amount to a conviction for a specified unlawful activity. It is enough that the **unlawfulness** of the origin of the proceeds is established beyond reasonable doubt by proving the criminal act and mental elements constituting the unlawfulness, regardless of the presence of circumstances or defenses meriting an acquittal if the unlawful activity were being tried on its own.

Too, there is no need for the prosecution to establish that *the proceeds are made to appear to have originated from legitimate sources*. This imposes a burden upon the prosecution that the law does not require. It is therefore unfair as it is unnecessary.

  
AMY Q. LAZARO-JAVIER  
Associate Justice

CERTIFIED TRUE COPY

  
MARIA LUISA M. SANTILLA  
Deputy Clerk of Court and  
Executive Officer  
OCC-En Banc, Supreme Court