



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated October 3, 2022, which reads as follows:*

**“G.R. No. 253175 (*People of the Philippines v. Edward Cacho y Del Rosario*).** — Assailed in this appeal is the January 10, 2020 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 41667, affirming the November 15, 2017 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 72 Olongapo City, in Criminal Case Nos. 2016-729 and 2016-730, finding accused-appellant Edward Cacho y Del Rosario guilty of violation of Sections 11 and 12, Article II of Republic Act No. (RA) 9165,<sup>3</sup> otherwise known as “The Comprehensive Dangerous Drugs Act of 2002.”

**The Facts**

Accused-appellant was charged with violation of Sec. 11 and Sec. 12, Art. II of RA 9165, *viz.*:

For violation of Sec. 11, Art. II, RA 9165:

That on or about the 28<sup>th</sup> day of April 2016, at around 6:30 in the morning, at Barangay Consuelo Sur, Municipality of San Marcelino, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then willfully, unlawfully, and feloniously, have in his possession, custody, and control, five (5) heat-sealed transparent plastic sachet[s] with markings “A1-(FGM-P1)” containing 0.232 gram, “A2-(FGM-P2)” containing 1.203 gram, “(DBM-P1)” containing 0.412 [gram], “(DBM-P2)” containing 0.096 gram and “(DBM-

<sup>1</sup> *Rollo*, pp. 3-15. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Mariflor P. Punzalan and Eduardo B. Peralta, Jr.

<sup>2</sup> CA *rollo*, pp. 78-91. Penned by Presiding Judge Richard A. Paradeza.

<sup>3</sup> Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

P3)” containing 0.066 gram of Methamphetamine hydrochloride otherwise known as “shabu”, a dangerous drug, without any lawful authority, permit nor prescription to possess the same from the appropriate agency.

CONTRARY TO LAW.<sup>4</sup>

For violation of Sec. 12, Art. II, RA 9165:

That on or about the 28<sup>th</sup> day of April 2016, at around 6:30 in the morning, at Barangay Consuelo Sur, Municipality of San Marcelino, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then willfully, unlawfully, and feloniously, have in his effective possession, custody, and control the following items, to wit:

- One (1) eye glass case with markings “FGM-P3”;
- One (1) small rolled aluminum foil with markings “FGM-P5”;
- One (1) small piece of needle with markings “FGM-P6”;
- One (1) weighing scale with markings “FGM-P7”;
- One (1) piece coin purse color pink with markings “DBM-P7”;
- Three (3) pieces of disposable lighters with markings “DBM-P8”;
- Two (2) pieces of improvised burner “DBM-P9” and
- Three (3) pieces of used aluminum foil with markings “DBM-P10”

Which are equipment, instrument, apparatus, and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug in the body.

CONTRARY TO LAW.<sup>5</sup>

Accused-appellant denied the accusations against him and pleaded not guilty on both charges. Thereafter, trial on the merits ensued.<sup>6</sup>

The prosecution presented two witnesses - Police Officer 1 Fraidalyn G. Mertola (PO1 Mertola) and Police Officer 1 Desiree B. Magarzo (PO1 Magarzo). As the parties stipulated on the testimonies of Forensic Chemist, Police Senior Inspector Maria Cecilia Tang (PSI Tang), and Crime Laboratory Staff, Senior Police Officer 1 Pagudi (SPO1 Pagudi), their presentation to the witness stand was dispensed with. The defense, on the other hand, presented accused-appellant as it lone witness.

### **Version of the Prosecution**

On April 28, 2016, at around 4:30 a.m., Police Senior Inspector Geoffrey Javier (PSI Javier), convened the members of the San Marcelino Police for the execution of a search warrant on accused-appellant’s house in

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<sup>4</sup> Records, p. 43.

<sup>5</sup> Id. at 1-2.

<sup>6</sup> Id. at 122.

*Barangay* Consuelo Sur, San Marcelino, Zambales.<sup>7</sup> Present during the briefing were PSI Javier, Police Officer 2 Carlo Dumangas (PO2 Dumangas), PO1 Mertola, and PO1 Magarzo.<sup>8</sup> Pursuant to the search warrant, the team was tasked to look for any illegal drugs in the area. Prior to the conduct of the search, the team coordinated with the Philippine Drug Enforcement Agency (PDEA), and fetched the representatives of the Department of Justice (DOJ), the media, and the elected officials.<sup>9</sup>

The team then proceeded to accused-appellant's house.<sup>10</sup>

PO1 Mertola knocked at accused-appellant's front door, which was answered by accused-appellant and his wife.<sup>11</sup> PO2 Dumangas immediately introduced himself as a police officer and presented the search warrant to the accused-appellant, who received it. The search then commenced.<sup>12</sup>

The team found an improvised burner, disposable lighter, and used aluminum foil with traces of a crystalline substance which the team suspected as shabu, at the living room.<sup>13</sup> PO1 Magarzo, the assigned searcher, then went to the bedroom, where she found a pink coin purse containing three plastic sachets with whitish substance, two open transparent plastic sachets with traces of the same substance, and two used aluminum foils.<sup>14</sup> Further, upon searching the pile of clothes found on the floor, she found two transparent sachets with traces of the same crystalline substance. Finally, PO1 Magarzo found four more plastic sachets containing the same substance in the kitchen.<sup>15</sup> PO1 Mertola's efforts during the search yielded an eyeglass case containing two heat-sealed transparent sachets containing crystalline substance, a weighing scale, eight transparent plastic sachets with traces of the same crystalline substance, and one rolled aluminum foil.<sup>16</sup>

At the place subject of the search warrant, the team conducted the inventory of the items seized, in the presence of two *barangay kagawads*, the representatives of the media and the DOJ. PO2 Dumangas prepared the Receipt of Property Seized while photographs were taken.<sup>17</sup>

PO1 Mertola then delivered the specimen and the Request for Laboratory Examination to SPO1 Pagudi of the Olongapo City Crime Laboratory Office.<sup>18</sup> SPO1 Pagudi received the items and turned them over to

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<sup>7</sup> TSN, October 20, 2016, pp. 1-23.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> TSN, October 20, 2016, p. 7.

<sup>11</sup> *Rollo*, p. 57.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at 6.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 58.

<sup>18</sup> TSN, November 17, 2016, pp. 8.

PSI Tang.<sup>19</sup> The contents of all the plastic sachets and used aluminum foils seized yielded positive for methamphetamine hydrochloride.<sup>20</sup>

### Version of the Defense

Accused-appellant denied the accusations against him. According to him, on April 28, 2016, he and his wife were inside their house when two female police officers, PO1 Mertola and PO1 Magarzo, along with *barangay* officials, went to his house and presented a search warrant against him. The police then proceeded to search him and his wife, and conducted a thorough search of their house, but nothing illegal was found.<sup>21</sup>

### Ruling of the Regional Trial Court

In its November 15, 2017 Decision, the trial court gave more weight to the testimonies of the prosecution witnesses and disregarded accused-appellant's defense of denial. According to the trial court, accused-appellant failed to explain why the police officers would incriminate him of such a serious crime if the same were not true.<sup>22</sup> The decretal portion of the trial court's Decision reads:

IN THE LIGHT OF THE FOREGOING, the Court finds accused EDWARD CACHO y DEL ROSARIO GUILTY beyond reasonable doubt for Violation of [Section] 11 of Republic Act [No.] 9165 under Criminal Case Number 2016-729 and hereby sentences him to serve an imprisonment of TWELVE (12) years and ONE (1) day to TWENTY (20) years and to PAY a fine of Three Hundred (P300,000.00) Thousand Pesos. Likewise, the Court finds accused EDWARD CACHO y DEL ROSARIO GUILTY beyond reasonable doubt for Violation of Section 12 of Republic Act [No.] 9165 in Criminal Case No. 2016-730 and is hereby sentences [sic] him to serve an imprisonment of SIX (6) months and ONE (1) day to FOUR (4) years and to PAY a fine of Fifty Thousand Pesos (P50,000.00).

The five (5) heat-sealed transparent plastic sachet with markings "A1-(FGM-P1)" containing 0.232 gram, "A2-(FGM-P2)" containing 1.203 gram, "(DBM-P1)" containing 0.412 [gram], "(DBM-P2)" containing 0.096 gram of Methamphetamine Hydrochloride otherwise known as "shabu", a dangerous drug under Crim. Case No. 2016-729 and the One (1) eye glass with markings "FGM-P3"; One (1) small rolled aluminum foil with markings "FGM-P5"; One (1) small piece of needle with markings "FGM-P6"; One (1) weighing scale with markings "FGM-P7"; One (1) piece coin purse color pink with markings "DBM-P7"; Three (3) pieces of disposable lighter with markings "DBM-P8"; Two (2) pieces of improvised burner "DBM-P9" and Three (3) pieces of used aluminum foil with markings "DBM-P10", which are equipment, instrument, apparatus, and other paraphernalia for or intended for smoking, consuming, administering,

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<sup>19</sup> *Rollo*, p. 6.

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

<sup>21</sup> *Id.*

<sup>22</sup> *Records*, pp. 274-286.

injecting or introducing any dangerous drug in the body in Crim. Case No. 2016-730 are ordered confiscated and forfeited in favor of the government and forwarded to the Philippine Drug Enforcement Agency for proper disposition pursuant to Section 20 in relation to Section 21 of Republic Act [No.] 9165.

SO ORDERED.<sup>23</sup>

### **Ruling of the Court of Appeals**

Accused-appellant elevated his case before the CA, primarily arguing that the trial court gravely erred in finding him guilty beyond reasonable doubt of violation of Sec. 11 and Sec. 12, Art. II of RA 9165, despite the failure of the prosecution to establish the *corpus delicti* of the crimes charged, the illegality of the implementation of the search warrant, and the failure of the prosecution to show the police officers' compliance with Sec. 21(1), Art. II of RA 9165.

The appellate court agreed with the trial court's finding that accused-appellant had constructive possession over the confiscated sachets of shabu and drug paraphernalia. The CA found that the RTC correctly convicted accused-appellant, and found no cogent reason to modify its judgment.

Aggrieved, accused-appellant now appeals before Us, assigning the same errors he initially raised before the CA.

### **Issue**

The sole issue for this Court's resolution is whether the appellate court erred in finding the accused-appellant's conviction proper, considering that the prosecution failed to prove that Sec. 21(1), Art. II of RA 9165 has been complied with; and that the search warrant has been illegally implemented.

### **Our Ruling**

After a judicious study of the case, this Court resolves to dismiss the appeal for failure to sufficiently show that the appellate court committed any reversible error in the assailed Decision as to warrant the exercise of this Court's appellate jurisdiction.

Accused-appellant argues that the prosecution failed to establish that the accused-appellant had exclusive dominion and control over the room where the alleged drugs and paraphernalia were found.<sup>24</sup> There is no showing that the prosecution was able to clearly and categorically prove that he was the exclusive owner and sole occupant of the house, considering that the subject

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<sup>23</sup> CA rollo, pp. 90-91.

<sup>24</sup> CA rollo, p. 60.

room was also being occupied by his wife.<sup>25</sup> Further, accused-appellant forwards the following argument:

Based on the testimony of PO2 Magarzo, the alleged plastic sachets of shabu were found inside a pink coin [sic] purse, which would normally belong to a woman, tend[s] to show that the possession of the same cannot be attributed to the accused-appellant.<sup>26</sup>

Granting *arguendo* that accused-appellant has constructive possession of the shabu and paraphernalia recovered in the house, the same are inadmissible for being fruits of an illegally implemented search warrant.<sup>27</sup>

First, there was no showing that the accused-appellant was allowed to witness the search of the room where PO2 Magarzo allegedly recovered the plastic sachets of shabu and paraphernalia. Without any evidence to prove his presence during the conduct of the search, the logical conclusion is that the accused-appellant was deprived of the opportunity to personally witness the same. x x x

x x x x

Second, records are bereft of any showing that the police officers followed the two-witness requirement, in lieu of the accused-appellant's presence, as provided under Section 11, Rule 126 of the Rules of Court, x x x:

x x x x

Third, in an effort to cure the irregular implementation of the search warrant, the accused-appellant was made to write his name and sign the Search Warrant. Such document, with the accused-appellant's name and signature purportedly affixed therein, is highly suspicious since it is unusual for the accused-appellant to sign the very document which would incriminate him. Such circumstance of compelling the accused-appellant to sign the same, without a showing that he was informed of his right to remain silent by refusing to sign the same and to be assisted with counsel, is an indicium that the latter's constitutional right has been desecrated.<sup>28</sup>

We are not persuaded.

As correctly pointed out by the trial court and the appellate court, the prosecution was able to establish all the elements of the crimes of Illegal Possession<sup>29</sup> of Dangerous Drugs and Illegal Possession of

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<sup>25</sup> Id.

<sup>26</sup> Id. at 61.

<sup>27</sup> Id.

<sup>28</sup> Id. at 62-64.

<sup>29</sup> For illegal possession of dangerous drugs, the following elements must be established: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs (*People v. Buesca*, G.R. No. 237850, September 16, 2020).

Drug Paraphernalia.<sup>30</sup>

First, the conclusion that accused-appellant is in constructive possession of the seized drugs and drug paraphernalia is correct. The argument interposed by accused-appellant that since there are other family members, *i.e.*, his wife who live in the same house, thus it is possible that the seized drug and drug paraphernalia are owned by her. The argument has no merit. In *Santos v. People*,<sup>31</sup> the Court explained the possession as contemplated in cases for the violation of RA 9165:

This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. **The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.**

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. **Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs are in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.**<sup>32</sup> (Emphases in the original)

We share the same view that accused-appellant failed to establish his lack of knowledge of the existence of the seized items in his home. It bears stressing that the place subject of the search warrant was accused-appellant's current residence. Further, accused-appellant did not make a case of the illicit drugs found in his bedroom over which he exercises dominion and control.

Next, accused-appellant insists on the illegality of the implementation of the search warrant. He narrates and argues that he was not able to see the actual search as he was allegedly asked to stay in the dining room. However,

<sup>30</sup> The elements of illegal possession of drug paraphernalia are (1) possession or control by the accused of any equipment, apparatus, or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. (*Cuico v. People*, G.R. No. 232293, December 9, 2020).

<sup>31</sup> G.R. No. 242656, August 14, 2019.

<sup>32</sup> *Id.*

as correctly observed by the appellate court, such narration is contrary to his statements in his Judicial Affidavit,<sup>33</sup> wherein he was able to recount the search conducted by the police officers, starting from their small *sari-sari* store, their tricycle, and then their room. Accused-appellant even narrated that the police officers asked them to wake their children up from their sleep.<sup>34</sup>

Assuming that accused-appellant was indeed unable to witness the actual search, he nonetheless admitted in his Judicial Affidavit<sup>35</sup> that the police officers implementing the search warrant were accompanied by two *barangay kagawads* and residents of the same locality. This was further proven by the Certificate of Legally, Peacefully and Orderly Execution of Search Warrant, which was signed by all witnesses to the search.<sup>36</sup> Sec. 8, Rule 126 of the Rules of Court provides:

SEC. 8. *Search of house, room, or premises, to be made in presence of two witnesses*— No search of a house, room or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his [or her] family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Applying the foregoing rule, accused-appellant failed to adduce evidence that the witnesses who accompanied the police officers in executing the search warrant in his residence do not meet the requirements set by law to effect a valid search. Further, accused-appellant did not produce any evidence to rebut the narration of the police officers that the rules for a valid search have been complied with.

Lastly, accused-appellant tries to bolster his appeal by arguing that the police officers failed to comply with Sec. 21 of RA 9165 on the chain of custody rule, specifically the requirement that the required witnesses shall be presented in court to verify that they actually witnessed the inventory.

To sustain a conviction for violation of RA 9165, it is of utmost importance to establish with moral certainty the identity of the confiscated drug.<sup>37</sup> To remove any doubt or uncertainty on the identity and integrity of the confiscated dangerous drug, the prosecution must be able to show that the drug confiscated is the same substance offered and identified in court.<sup>38</sup> Chain of custody refers to the duly recorded authorized movements and custody of the seized drugs at each stage, from the moment of confiscation, to the receipt in the forensic laboratory for examination, until they are presented in court. The safeguards provided by the Implementing Rules and Regulations (IRR) of RA 9165 are as follows:

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<sup>33</sup> Records, pp. 203-204.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id. at 62.

<sup>37</sup> *People v. del Rosario*, G.R. No. 235658, June 22, 2020.

<sup>38</sup> Id.

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:

- (a) The apprehending officer/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. 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, Further, that non-compliance 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 of and custody over said items.

We find that the prosecution established its compliance with Sec. 21. The testimony of PO1 Magarzo shows:

Q: After the coordination what did you do next?

A: After fetching the DOJ representative as well as the media representative, we left the police station and we coordinated with the barangay officials of Consuelo Sur.

Q: What time did you [leave] for Consuelo Sur?

A: We [left] the station around 5:55 in the morning.

Q: And it took you how long to reach Consuelo Sur?

A: 10 to 15 minutes sir.

Q: At Consuelo Sur, you proceeded to where the barangay official there?

A: Yes sir.

Q: Who were the barangay official if you remember?

A: Kagawad Manuel and I cannot recall the other kagawad sir.

Q: How many barangay officials?

A: Two sir.

Q: And after coordinating with them, what did you do next?

A: We proceeded to the house of Edward Cacho sir.<sup>39</sup>

Clearly, the required witnesses have been procured by the police officers even prior to the inventory. Further, according to the testimony of the prosecution's witness, the inventory was conducted in the kitchen of accused-appellant, immediately after the search.<sup>40</sup>

Thereafter, when the inventory report and the photography have been conducted, PO1 Magarzo and the team proceeded to the police station then to the crime laboratory. It was PO1 Magarzo who had possession of the seized items and who physically delivered the items to the crime laboratory for examination.<sup>41</sup> Since the investigator never had custody over the confiscated items, there was no need for his identification in the chain of custody. The prosecution in this case has successfully established an unbroken chain of custody. Starting from the confiscation of the illegal drugs, it was PO1 Magarzo who was in possession of the seized items, then he delivered them to PSI Tang of the laboratory, who examined the same. The same drugs were then presented in court as evidence.<sup>42</sup>

This Court has recognized in a long line of cases that while a perfect chain of custody establishing each link and transfer of the seized drug from one hand to another, backed up by testimonies of each handling officer is ideal, such scenario is almost impossible to achieve.<sup>43</sup> Thus, testimonies of the prosecution witnesses is sufficient if it is able to establish in detail that earnest effort to coordinate with and secure the presence of the necessary witnesses was made.<sup>44</sup>

Given the increasing number of poorly built-up drug-related cases in the courts' docket, the chain of custody rule, all the more, should be enforced as a mandatory policy. While greater efforts have been put in place in combating the drug menace, the safeguards afforded to the accused as provided by the laws and no less than the Constitution must be strictly observed. An accused in a criminal case shall be presumed innocent until the contrary is proven.<sup>45</sup> The prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge the burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict.<sup>46</sup>

All told, the Court finds no error in the findings and conclusions reached by trial court as affirmed by the appellate court convicting accused-

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<sup>39</sup> TSN, March 9, 2017, pp. 4-5.

<sup>40</sup> TSN, May 11, 2017, pp. 3-4.

<sup>41</sup> Id. at 7-9.

<sup>42</sup> *Rollo*, pp. 5-6.

<sup>43</sup> *Tolentino v. People*, G.R. No. 227217, February 12, 2020.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> *People v. Lumikid*, G.R. No. 242695, June 23, 2020.

appellant guilty beyond reasonable doubt for violation of Sec. 11 and Sec. 12, Art. II of RA 9165.

**WHEREFORE**, the appeal is **DISMISSED**. The January 10, 2020 Decision of the Court of Appeals in CA-G.R. CR No. 41667 is **AFFIRMED**.

**SO ORDERED.**"

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *of 10113*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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OCT 14 2022

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The Hon. Presiding Judge  
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(Crim. Case Nos. 2016-729 & 2016-730)

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