

IN THE  
SUPREME COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,  
Plaintiff-Appellee,

v.

IGNACIO ALDAN LEON GUERRERO,  
Defendant-Appellant.

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SUPREME COURT NO. 2011-SCC-0014-CRM  
SUPERIOR COURT NO. 10-0076C

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OPINION

Cite as: 2013 MP 3

Decided March 21, 2013

Stephen P. Pixley, Saipan, MP, for Defendant-Appellant Ignacio Aldan Leon Guerrero  
James B. McAllister, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for  
Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: PERRY B. INOS, Associate Justice;<sup>1</sup> ROBERT C. NARAJA, Justice Pro Tem; DAVID A. WISEMAN, Justice Pro Tem.

PER CURIAM:

¶ 1 Appellant-Defendant Ignacio Aldan Leon Guerrero (“Leon Guerrero”) appeals his conviction for conspiracy to commit trafficking of a controlled substance. Specifically, Leon Guerrero claims: (1) the trial court erred by overruling objections to the testimony of a police officer during the trial; and (2) there was insufficient evidence to show an agreement between Leon Guerrero and co-defendant George T. Manglona (“Manglona”) to traffic methamphetamine hydrochloride, a controlled substance. For the following reasons, we AFFIRM Leon Guerrero’s conviction.

### I. Factual and Procedural Background

¶ 2 After receiving information suggesting Leon Guerrero and Manglona were dealing methamphetamine hydrochloride (colloquially referred to as “ice”), police arranged to have a confidential source, John Ngeskebei (“Ngeskebei”), purchase methamphetamine. On March 8, 2010, a team of police officers led by Detective Sean White (“Detective White”) fitted Ngeskebei with a device that can transmit, receive, and record audio. Tr. 23:9-11. Ngeskebei then drove his vehicle to Leon Guerrero’s house. Tr. 21:20. Detective White testified that he drove past Leon Guerrero’s house and saw Leon Guerrero leaning into the window of Ngeskebei’s vehicle. Tr. 22:17-22. A short time later, Ngeskebei delivered a Ziploc bag to the police. The police conducted a narcotics field test on the contents of the bag, described as crystalline in nature, and retained the evidence. Tr. 28:16-20. Leon Guerrero ultimately admitted to buying and selling methamphetamine. Tr. 147:6-13.

¶ 3 Because the police suspected Manglona was also selling drugs with Leon Guerrero, they conducted another operation on March 9, 2010, with the same buyer, Ngeskebei. Tr. 34:4-11. Ngeskebei went to Leon Guerrero’s house two times on March 9, 2010. On the second visit, Detective White testified that Manglona was at the house, Tr. 35:4-5, but admits he personally did not see Manglona, Tr. 35:16-17. Manglona got into Ngeskebei’s vehicle, Tr. 36:22, and they drove to Afetna, where Manglona exited the vehicle. Tr. 37:7-13. Another Detective, Steven Castro (“Detective Castro”), testified that immediately after dropping off Manglona, Ngeskebei returned to the police with drugs, which he turned over to the police. Tr. 510:9-20.

¶ 4 Based on the two drug purchases, the police obtained a search warrant for Leon Guerrero’s house, which they executed on March 10, 2012. Tr. 43:4-6. At Leon Guerrero’s house, police found drug paraphernalia including marijuana, methamphetamine, Ziploc bags, scales, plastic straws, and money. Tr. 46:4-5. Police also found Leon Guerrero’s wallet, Tr. 282:22–283:1, which contained Leon Guerrero’s

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<sup>1</sup> Though Justice Inos sat at oral argument as a Justice Pro Tem, he ascended to the appellate bench prior to publication of the opinion.

identification card, Tr. 283:2-4, methamphetamine, *id.*, and Manglona's identification card, Tr. 282:10-12. Leon Guerrero and Manglona were subsequently arrested and charged with: (1) possession of methamphetamine hydrochloride; (2) trafficking of methamphetamine hydrochloride; (3) conspiracy to commit trafficking of a controlled substance (methamphetamine hydrochloride); and (4) possession of marijuana.

¶ 5 At trial, the jury heard testimony from Detective White regarding the drug purchases. Defense counsel challenged Detective White's personal knowledge related to certain statements about the drug buys. The prosecution also presented the testimony of Detective Castro, who was part of the Drug Enforcement Task Force team during the drug purchases, as well as other individuals. Tr. 502:8-10. Ngeskebei took the stand but was unable or unwilling to testify to anything related to the prosecution of Leon Guerrero and Manglona, answering "I don't recall" to almost all questions.

¶ 6 The jury found Manglona not guilty on all charges. Leon Guerrero was found guilty of: (1) conspiracy to commit trafficking of methamphetamine hydrochloride, in violation of 6 CMC § 303(a); and (2) possession of marijuana, in violation of 6 CMC § 2142(a). Leon Guerrero appeals his conspiracy conviction.

## II. Jurisdiction

¶ 7 The Supreme Court has appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. 1 CMC § 3102(a). The trial court filed the Judgment of Conviction and Commitment Order on May 3, 2011. Leon Guerrero filed a timely notice of appeal on June 1, 2011.

## III. Standards of Review

¶ 8 Leon Guerrero raises two issues on appeal.<sup>2</sup> First, Leon Guerrero argues testimony by Detective White should have been excluded because it was not based on his personal knowledge. This Court reviews a trial court's admission of evidence for abuse of discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 17. This Court will not reverse a trial court decision due to the erroneous admission of evidence unless the error affects substantial rights of the defendant. *Commonwealth v. Palacios*, 4 NMI 330, 333 (1996). Second, Leon Guerrero claims there was insufficient evidence to support his conviction for conspiracy to commit trafficking of methamphetamine hydrochloride. "In considering the sufficiency of the evidence, the Court must 'consider the evidence in the light most favorable to the government and [then] determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Commonwealth v. Minto*, 2011 MP 14 ¶ 38 (quoting *Commonwealth v. Andrew*, 2007 MP 25 ¶ 4).

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<sup>2</sup> Though Leon Guerrero raised a third issue in his opening brief regarding the sufficiency of the record on appeal, he withdrew this challenge at oral argument.

## IV. Discussion

### A. Detective White's Personal Knowledge

¶ 9 “A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” *Commonwealth v. Wang Hong Yan*, 4 NMI 334, 338 (1996) (quoting NMI R. EVID. 602). Even if a piece of testimony should have been stricken for lack of personal knowledge, this Court will not reverse a conviction based on the erroneous admission of evidence unless the error affects substantial rights of the defendant. *Palacios*, 4 NMI at 333. Substantial rights are not affected if the erroneously admitted evidence is merely corroborative or cumulative of other evidence in the record. *Pangelinan v. Mangarero*, 1 NMI 387, 398-99 (1990). Thus, we must first decide whether objections to any of the challenged statements should have been sustained and, if so, whether the information contained in any objectionable statements was merely corroborative or cumulative of other evidence in the record.

#### 1. Whether Detective White Had Personal Knowledge

¶ 10 Leon Guerrero claims Detective White had no personal knowledge regarding the challenged statements because Detective White was not present during any of the drug transactions and could not see any of the transactions. Leon Guerrero Opening Br. 15. Leon Guerrero also points to statements by Detective White suggesting Detective White had no personal knowledge of the drug transactions. *Id.* at 15. (“[Detective White:] I never personally saw any transaction.” (quoting Tr. at 74:15)). In contrast, the Commonwealth argues Detective White had personal knowledge of all parts of his testimony.

¶ 11 Because analysis of this issue is fact-specific, we will separate our discussion between the various challenged statements. Leon Guerrero identifies four statements made by Detective White that he argues are objectionable because Detective White lacked personal knowledge.<sup>3</sup> The four allegedly objectionable statements made by Detective White (with contextual information as necessary) are as follows:

Q And, you just testified that [Ngeskebei] found Mr. Manglona at Mr. Ignacio Deleon Guerrero's house?

A Yes, sir.

Tr. 35:9-11.

Q And what date [Ngeskebei] did [sic] buy the alleged drugs from Mr. George Manglona?

A On the 9th.

Tr. 97:1-3.

Q And, did you continue your investigation of George Manglona at that point?

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<sup>3</sup> We will not address Leon Guerrero's hearsay challenge to these statements because a hearsay objection was not preserved below. NMI R. EVID. 103(a) (“Error may not be predicated upon a ruling which admits or excludes evidence unless . . . a timely objection or motion to strike appears of record, stating the specific ground of objection . . .”).

A Ah, we -- yes, because ah, Mr. Manglona stated that he had a gun and he would like to sell it.

Tr. 38:23 – 39:1.

Q Okay, and -- and what date did he [Ngeskebei] buy the alleged drugs from Mr. Deleon Guerrero?

A On the 8th.

Tr. 96:23-25.

¶ 12 The first two statements are related. Detective White testified that Ngeskebei found Manglona at Leon Guerrero’s house on March 9, 2010, Tr. 35:9-11, and that Manglona sold methamphetamine to Ngeskebei the same day, Tr. 97:1-3. Though White testified to these facts, the following testimony calls his personal knowledge of the facts into question:

A I saw [Ngeskebei] drive down the road, but I didn’t see him at [Leon Guerrero’s] house.

Tr. 35:16-17.

Q Did you see the -- ah, did you actually see Mr. Manglona and Mr. Ngeskebei leave the residence?

A Ah, no, I saw him on the road, I didn't see him leave, ah the other unit saw him.

Tr. 50:25 – 51:3.

These statements by Detective White suggest he did not have personal knowledge of Manglona’s presence at the house or of who sold methamphetamine to Ngeskebei. Since there was no testimony regarding any sensory perception of Ngeskebei or Manglona at Leon Guerrero’s house by Detective White, we hold Detective White did not have personal knowledge and that defense counsel’s objection should have been sustained.

¶ 13 Detective White also claimed Ngeskebei told White that Manglona offered to sell Ngeskebei a handgun. Tr. 38:23 – 39:1. The Commonwealth urges the Court to adopt the test for personal knowledge related to testimony about an out-of-court statement discussed by the Ninth Circuit in *United States v. Owens-El*, 889 F.2d 913 (9th Cir. 1989). The test has two analytical steps. First, the individual on the stand must have personal knowledge of the making of the out-of-court statement. *Id.* at 915. Second, the out-of-court declarant must have had personal knowledge “of the events on which he based his statement.” *Id.* Because the Commonwealth has no written or customary law on this subject, and *Owens-El* is based on the Federal Rule of Evidence 602, upon which the NMI Rules of Evidence are modeled, we adopt this test. *See Commonwealth v. Attao*, 2005 MP 8 ¶ 9 & n.7 (stating federal rules were “helpful” in interpreting the Commonwealth Rules of Criminal Procedure, and then relying wholly on federal cases to construe Commonwealth Rule of Criminal Procedure 11(e)(1)).

¶ 14 Applying the test, Detective White testified that Ngeskebei told him about Manglona’s offer. Because he apparently heard this statement directly from Ngeskebei, Detective White had personal

knowledge of Ngeskebei's statement. However, as to whether Ngeskebei had personal knowledge of the event on which he based the statement—i.e., the offer to sell the handgun—the prosecution failed to present testimony supporting this personal knowledge. Though the prosecution called Ngeskebei as a witness, he was unable or unwilling to testify regarding any of the events that transpired related to the prosecution of Manglona and Leon Guerrero. Because the prosecution did not provide any evidence regarding Ngeskebei's personal knowledge of Manglona's offer to sell a handgun, we hold that defense counsel's objection regarding this statement should have been sustained.

¶ 15 The final challenged statement involves Detective White's testimony that Ngeskebei purchased methamphetamine from Leon Guerrero on March 8, 2010. We hold Detective White had personal knowledge of this statement. White was present when Ngeskebei and Ngeskebei's vehicle were thoroughly searched for money and methamphetamine prior to approaching Leon Guerrero's house on March 8. Tr. 18:3 – 20:14. After finding no money or contraband, the police allowed Ngeskebei to approach the house in his vehicle. Thereafter, Detective White accidentally drove past Leon Guerrero's house and saw Leon Guerrero leaning into the window of Ngeskebei's car. Tr. 22:17-22. Detective White was also present a short time later when Ngeskebei returned with a bag containing a substance that tested presumptive positive for methamphetamine. Tr. 27:9 – 28:20. Based on these facts, we hold the trial court was correct in concluding Detective White had personal knowledge of Ngeskebei's purchase of methamphetamine from Leon Guerrero.

2. *Whether Erroneously Admitted Statements were Merely Corroborative or Cumulative*

¶ 16 As stated above, this Court will not reverse a conviction based on the erroneous admission of evidence unless the error affects substantial rights of the defendant. *Commonwealth v. Palacios*, 4 NMI 330, 333 (1996). Substantial rights are not affected if the erroneously admitted evidence is merely corroborative or cumulative of other evidence in the record. *Pangelinan v. Mangarero*, 1 NMI 387, 398-99 (1990).

¶ 17 Regarding Manglona's presence at Leon Guerrero's house on March 9, 2010, and his sale of methamphetamine to Ngeskebei, other evidence corroborates the testimony. Detective Castro made the following statements:

A It's a recorded control buy walk where we use ah, a cooperating source to buy evidence, drugs from ah, the -- the ah, seller, or from George Manglona.

Q Okay, and did that actually happen?

A Yes, sir.

Tr. 502:1-5.

A We conducted a buy-walk operation against George Manglona where we used Ngeskebei] to buy ah, fifty dollars worth of crystal meth. Um, on that day, we -- we met with the cooperating source at a prearranged location --

Tr. 502:18-22.

Q Did you search the informant after you completed the -- the buy operation?

A Yes. Always, ah before and after the operation we do the search.

...

Q And, did you find anything after the--

A Ah, no. After he relinquished the drugs to law enforcement, we did a search, we didn't find any.

Tr. 510:9-18.

¶ 18 Although defense counsel objected at trial to Detective Castro's statements on the basis of lack of foundation and lack of personal knowledge, the trial court overruled the objections and they were not renewed on appeal. Since the objections were not renewed, these statements are part of the evidence and are cumulative of Detective White's testimony. Additional cumulative evidence comes from the audio recording of the March 9, 2010 drug buy. This recording came from the recording device attached to Ngeskebei. Parts of the recording were played at trial and Detective Castro testified that he recognized the voices on the recording as those of Ngeskebei and Manglona, Tr. 549:16-20; 550:19 – 551:15. Because of this cumulative evidence, the trial court's failure to sustain counsel's objections to Detective White's testimony was harmless error.

¶ 19 Turning to Detective White's testimony regarding Manglona's offer to sell a gun to Ngeskebei, the Commonwealth points to no corroborative or cumulative evidence. Our independent review of the transcript also did not uncover any corroborative evidence related to Manglona's purported offer. Despite the lack of corroborative or cumulative evidence, however, the trial court's erroneous ruling as to this testimony does not justify reversal of Leon Guerrero's conviction. The erroneous admission of evidence regarding an offer made by Manglona did not make Leon Guerrero appear more or less culpable. Because the erroneous admission of testimony related to Manglona's purported offer to sell Ngeskebei a gun did not affect any substantial rights of Leon Guerrero, we hold that the erroneous admission was harmless error that does not justify reversal.

¶ 20 In sum, while the trial court should not have allowed some of Detective White's testimony, the erroneous admission of those statements does not justify reversal of Leon Guerrero's conviction.

*B. Sufficiency of the Evidence to Support Conspiracy Conviction*

¶ 21 The jury convicted Leon Guerrero of conspiracy to traffic methamphetamine. Trafficking is defined as the "knowing[] or intentional[] . . . manufacture, deliver[y] or possess[ion] with intent to manufacture, deliver or dispense, [of] a controlled substance." 6 CMC § 2141(a). To show a conspiracy, the government had to provide evidence showing: (1) an agreement between Leon Guerrero and Manglona to traffic methamphetamine in violation of 6 CMC § 2141(a); and (2) an overt act in furtherance of the agreement. 6 CMC § 303(a). The only element of this offense Leon Guerrero challenges is his alleged agreement with Manglona to engage in trafficking.

### 1. Rule of Consistency

¶ 22 Before turning to the facts, we will first address Leon Guerrero’s argument that we should apply the “rule of consistency.” Historically, the rule of consistency compelled the acquittal of a defendant if all other alleged co-conspirators were acquitted. *People v. Palmer*, 15 P.3d 234, 235 (Cal. 2001). Though Leon Guerrero risked waiving the issue by raising it for the first time in his reply brief,<sup>4</sup> we will address, and reject, adoption of the rule of consistency. The Commonwealth is correct that federal courts have unanimously rejected the rule of consistency in the conspiracy context.<sup>5</sup> Given this unanimous rejection, Leon Guerrero’s brief misleads this Court by suggesting that federal courts still apply the rule of consistency. Even worse, the case Leon Guerrero’s counsel raised at oral argument purporting to show that the rule of consistency is still applicable in federal courts, *Getsy v. United States*, 456 F.3d 575 (6th Cir. 2006), was vacated and overturned en banc by *Getsy v. Mitchell*, 495 F.3d 295 (6th Cir. 2007) (en banc).<sup>6</sup>

¶ 23 Setting aside Leon Guerrero’s misrepresentation of the present applicability of the rule of consistency in federal courts, upon reviewing the rationales for and against the rule of consistency, we decline to follow it. The original rationale behind development of the rule of consistency in 1599 in England is that “one cannot conspire alone.” *Getsy*, 495 F.3d at 319 (Merritt, J., dissenting). Through the early 20th century, federal courts applied this rule, reasoning that because “conspiracy imports a corrupt agreement between not less than two with guilty knowledge on the part of each,” acquittal of one party to a conspiracy necessitates acquittal of the other alleged party to the conspiracy. *Morrison v. California*, 291 U.S. 82, 92 (1934). However, since the mid-20th century, both the federal courts and states such as California have rejected the rule of consistency because “[m]any reasons may explain apparently inconsistent verdicts,” such as:

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<sup>4</sup> See *J.G. Sablan Rock Quarry, Inc. v. Dep’t of Pub. Lands*, 2012 MP 2 ¶ 43 (Opinion, March 30, 2012) (“We likewise decline to address an issue raised for the first time in a reply brief because such action generally constitutes waiver of the issue and Sablan has made no showing that ‘justice and fairness require’ consideration of the issue.” (quoting *Bank of Saipan v. Superior Court*, 2002 MP 17 ¶¶ 20-21)).

<sup>5</sup> We have verified the accuracy of the following cases cited by the Commonwealth; they all recognize the federal courts’ rejection of the rule of consistency. *United States v. Bucuvalas*, 909 F.2d 593, 597 (1st Cir. 1990); *United States v. Garcia*, 882 F.2d 699, 704-705 (2d Cir.1989); *United States v. Tyson*, 653 F.3d 192, 207-208 (3rd Cir. 2011); *United States v. Thomas*, 900 F.2d 37, 40 (4th Cir. 1990); *United States v. Zuniga-Salinas*, 952 F.2d 876, 877 (5th Cir. 1992) (en banc); *United States v. Crayton*, 357 F.3d 560, 565-567 (6th Cir. 2004); *United States v. Patterson*, 348 F.3d 218, 224-225 (7th Cir. 2003); *United States v. Fuller*, 374 F.3d 617, 623 (8th Cir. 2004); *United States v. Ching Tang Lo*, 447 F.3d 1212, 1226 (9th Cir. 2006); *United States v. Nichols*, 374 F.3d 959, 970-71 (10th Cir. 2004) vacated on other grounds by *Nichols v. United States*, 543 U.S. 1113, 1116 (2005); *United States v. Andrews*, 850 F.2d 1557, 1561 (11th Cir. 1988); *United States v. Dakins*, 872 F.2d 1061, 1065-1066 (D.C. Cir. 1989).

<sup>6</sup> Counsel is reminded that “[a] lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” MODEL RULES OF PROF’L CONDUCT R. 3.3(a)(1).

lenience, compromise, differing evidence as to different defendants, or, possibly, that two juries simply viewed similar evidence differently. If substantial evidence supports a jury verdict as to one defendant, that verdict may stand despite an apparently inconsistent verdict as to another defendant.

*Palmer*, 15 P.3d at 235. We agree with this reasoning and hold that acquittal of all alleged co-conspirators does not compel acquittal of a defendant charged with conspiracy.

## 2. *Sufficiency of Evidence for Conspiracy*

¶ 24 This Court recently addressed conspiracy and the sufficiency of the evidence standard in detail in *Commonwealth v. Minto*, 2011 MP 14. In *Minto*, we noted, “[i]n considering the sufficiency of the evidence, the Court must ‘consider the evidence in the light most favorable to the government and [then] determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* ¶ 38 (quoting *Commonwealth v. Andrew*, 2007 MP 25 ¶ 4). Regarding conspiracy, we stated, “[b]ecause most conspiracies are clandestine in nature, the prosecution is seldom able to present direct evidence of the agreement.” *Id.* ¶ 41 (quoting *United States v. Iriarte-Ortega*, 127 F.3d 1200, 1200 (9th Cir. 1997)). We continued, “[a]s such, ‘most conspiracy convictions are based on circumstantial evidence, and [courts] allow juries to draw inferences as to the existence of an agreement from the defendants’ conduct.’” *Id.* (quoting *Iriarte-Ortega*, 127 F.3d at 1200).

¶ 25 Turning to the evidence presented at trial, the jury heard evidence that both Leon Guerrero and Manglona sold methamphetamine to the same individual, Ngeskebei. Tr. 22:17-22 (Leon Guerrero); 28:16-20 (Leon Guerrero); 147:6-13 (Leon Guerrero); 502:18-22 (Manglona); 510:9-20 (Manglona). These sales both originated at a single location: Leon Guerrero’s residence. A search of Leon Guerrero’s residence resulted in the discovery of ample evidence suggesting a drug trafficking operation, including marijuana, methamphetamine hydrochloride, Ziploc bags, scales, plastic straws, and money. Tr. 46:4-5. Finally, Leon Guerrero’s wallet contained methamphetamine, Tr. 283:1-4, as well as both Leon Guerrero’s, *id.*, and Manglona’s, Tr. 282:10-12, identification cards. From these facts, reviewed in the light most favorable to the Commonwealth, *Minto*, 2011 MP 14 ¶ 38, we hold the jury could reasonably infer that Leon Guerrero and Manglona had at least a tacit agreement to traffic methamphetamine. Therefore, even though the prosecution might have had a stronger case had they been able to present evidence showing an explicit agreement between Leon Guerrero and Manglona, we hold that a “reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Minto*, 2011 MP 14 ¶ 38 (internal quotation marks and citation omitted).

## V. Conclusion

¶ 26 For the foregoing reasons, we AFFIRM Leon Guerrero’s conviction for conspiracy to traffic methamphetamine hydrochloride.

SO ORDERED this 21st day of March, 2013.

/s/

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PERRY B. INOS  
Associate Justice

/s/

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ROBERT C. NARAJA  
Justice Pro Tem

/s/

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DAVID A. WISEMAN  
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**JUDGMENT**

¶ 1 Appellant-Defendant Ignacio Aldan Leon Guerrero (“Leon Guerrero”) appeals his conviction for conspiracy to commit trafficking of a controlled substance. For the reasons stated in the accompanying opinion, the Supreme Court AFFIRMS Leon Guerrero’s conviction.

ENTERED this 21st day of March, 2012.

/s/

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DEANNA M. MANGLONA  
Clerk of the Supreme Court