



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**JOY BATISLAON**     y  
**BALICBALIC,**  
                    Petitioner,

**G.R. No. 256624**

Present:

LEONEN, *S.A.J.*, *Chairperson*,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., *and*  
KHO, JR., *JJ.*

– *versus* –

Promulgated:

JUL 26 2023

**PEOPLE        OF        THE**  
**PHILIPPINES,**  
                    Respondent.

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**DECISION**

**M. LOPEZ, J.:**

The job description of an accused as a grocery cashier does not automatically open a criminal liability for qualified theft absent convincing evidence of grave abuse of discretion anchored on the betrayal of special trust or high degree of confidence.

### Antecedents

Joy Batislaon (Joy) worked as a cashier at SM Hypermarket in Pasig City. On November 14, 2005 at around 1:40 p.m., Security Guard Ryan Pacheco (SG Pacheco) observed that Joy was not scanning some of the grocery items that Lourdes Gutierrez (Lourdes) bought. After the transaction, SG Pacheco invited Joy and Lourdes for an investigation. The security officers discovered that Joy did not scan items worth PHP 1,935.13 and that Lourdes is her aunt. The security officers then brought Joy and Lourdes to the police station.<sup>1</sup> The following day, Joy and Lourdes were charged with qualified theft before the Regional Trial Court (RTC), Branch 268, Pasig City docketed as Criminal Case No. 158414, to wit:

On or about November 14, 2015, in Pasig City and within the jurisdiction of this Honorable Court, the accused, Joy Batislaon y Balicbalic, being then a cashier of SM Hypermart Supercenter, enjoying the trust and confidence reposed upon her by her employer, with grave abuse of confidence, conspiring and confederating together with one Lourdes Gutierrez y Balicbalic, and both of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the owner, did then and there willfully, unlawfully and feloniously take, steal, and carry away grocery products in the total amount of Php1,935.13, belonging to SM Hypermart Supercenter represented by Rosalie Diaz y Villacorta, to the damage and prejudice of the complainant in the aforementioned amount of Php1,935.13.

Contrary to law.<sup>2</sup>

Joy and Lourdes pleaded not guilty. At the trial, the prosecution presented SG Pacheco, who testified that he was stationed in the front end checkout counter of the grocery at the time of the incident. SG Pacheco was in that particular area to monitor the movement of employees and goods to prevent pilferage. Thereat, SG Pacheco noticed that Joy let some grocery items of Lourdes pass without being scanned. SG Pacheco approached Lourdes and inspected the items. SG Pacheco ascertained that groceries amounting to PHP 1,935.13 were not scanned. The security officers also learned that Joy and Lourdes are relatives. The secretary of SM Hypermarket's Customer Relations Service Ms. Rosalie Diaz corroborated the narration of SG Pacheco.<sup>3</sup> On the other hand, Joy and Lourdes asserted their right to remain silent and not testify or present evidence.<sup>4</sup>

On August 24, 2018, the RTC held that the prosecution established that Joy and Lourdes conspired and unlawfully took grocery items belonging to SM Hypermarket. The RTC appreciated the qualifying circumstance of grave abuse of confidence against Joy being a cashier but not to Lourdes who is not related to the grocery store. Accordingly, the RTC convicted Joy of qualified theft while Lourdes is liable only for simple theft,<sup>5</sup> thus:

<sup>1</sup> *Rollo*, pp. 14-15, 68-70, 111-113.

<sup>2</sup> *Id.* at 68.

<sup>3</sup> *Id.* at 69-70, 118-120.

<sup>4</sup> *Id.* at 72.

<sup>5</sup> *Id.* at 68-75.

**Ms. Diaz [sic] testimony established that accused Joy was private complainant's cashier. The latter's duty therefore entails receiving cash payments from customers of the store. Naturally, by reason of her position, she enjoyed the trust and confidence of her employer. She gravely abused the said trust and confidence by conspiring with accused Lourdes in stealing the grocery items.**

The testimony of SG Pacheco was substantiated by the testimony of Ms. Diaz who confirmed that the grocery items amounting to [PHP] 1935.00 were found to have neither been scanned by accused Joy nor paid by accused Lourdes.

x x x x

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it xxx. The conduct of both accused during the commission of the crime charged is indicative of conspiracy. Each performed overt acts to ensure success of their intention to possess the grocery items without paying the value thereof. Their actions were in concert. Accused Joy did not scan the grocery items so that her co-accused Lourdes need not pay for it. x x x More telling is the fact that both accused are relatives.

In conspiracy, the act of one is the act of all. However, the qualifying circumstance of grave abuse of confidence cannot be applied to accused Lourdes as she is neither related nor connected with the private complainant. Thus, accused Lourdes shall be liable for the crime of theft only.

x x x x

WHEREFORE, the prosecution having established the guilt of accused Joy Batislaon y Balicbalic and Lourdes Gutierrez y Balicbalic beyond reasonable doubt for the crimes of Qualified Theft and Theft, respectively, the Court finds them GUILTY. They are hereby sentenced as follows:

- Accused Joy Batislaon y Balicbalic, for the crime of Qualified Theft, penalized under Articles 310 in relation to Art. 309 of the Revised Penal Code, as amended by Section 81 of Republic Act No. 10951, is hereby sentenced to suffer the indeterminate penalty of imprisonment of [s]ix (6) months and [o]ne (1) day of *prision correccional* as minimum to [e]ight (8) years, [o]ne (1) day of *prision mayor* as maximum.

- Accused Lourdes Gutierrez y Balicbalic, for the crime of Theft, penalized under Articles 309 of the Revised Penal Code, as amended by Section 81 of Republic Act No. 10951, is hereby sentenced to suffer the penalty of imprisonment of [s]ix (6) months.

- No pronouncement as to civil liability. Costs against both accused.<sup>6</sup>

Joy elevated the case to the Court of Appeals (CA) docketed as CA-G.R. CR No. 42322. Joy claimed that she neither deliberately failed to scan the grocery items nor acted in conspiracy with Lourdes. On July 27, 2020, the CA affirmed the RTC's ruling that Joy was guilty of qualified theft,<sup>7</sup> viz.:

In the case at bar, said elements were all alleged and proved through the positive testimony of the prosecution witnesses. First, it was proven that the grocery items amounting to One Thousand Nine Hundred Fifty-Three Pesos and Thirteen Centavos (PHP 1,953.13) were taken by Gutierrez since she was in

<sup>6</sup> *Id.* at 68–75. Penned by Presiding Judge Maria Cheryl B. Laqui-Ceguera.

<sup>7</sup> *Id.* at 32–45. Penned by Associate Justice Elihu A. Ybañez with the concurrence of Associate Justices Rafael Antonio M. Santos and Carlito B. Calpatura of the Thirteenth Division, Court of Appeals, Manila.

possession of the said goods when SG Pacheco invited her for interrogation. Second, the grocery items belong to SM Hypermarket. Third, the taking of said items was with intent to gain. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain. Fourth, the taking was obviously without the consent of SM Hypermarket as proven by the discrepancy between the amount of the rescanned items and the amount reflected in the receipt issued by the accused-appellant to Gutierrez. Fifth, the taking was done without the use of violence or intimidation against persons, nor of force upon things. **Sixth, there is grave abuse of confidence because the accused-appellant could not have committed the crime had she not been the cashier of SM Hypermarket which gave her the access to the payments of the customers.**

From the same set of evidence, the trial court correctly appreciated conspiracy. It has already been settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Here, conspiracy is inferred from the conduct of accused-appellant and co-accused Gutierrez as clearly recounted by SG Pacheco[.]

X X X X

FOR THESE REASONS, the appeal is DENIED. The Decision on 24 August 2018 by the Regional Trial Court, Branch 268 of Pasig City in Criminal Case No. 158414 is AFFIRMED. Accused-appellant Joy Batislaon y Balicbalic is found GUILTY beyond reasonable doubt of Qualified Theft as defined and penalized under Article 310 in relation to Article 309 of the Revised Penal Code and she is sentenced to the indeterminate penalty of imprisonment of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.<sup>8</sup>

Joy sought reconsideration but was denied.<sup>9</sup> Hence, this recourse. Joy invokes the possibility of human error to support her theory of acquittal, and maintains that her alleged failure to scan the grocery items is not equivalent to malice, which is required in qualified theft as an intentional felony. Joy reiterates that mere relationship with her co-accused Lourdes is insufficient proof of conspiracy.<sup>10</sup> In contrast, the People, through the Office of the Solicitor General, argues that the prosecution established all the elements of qualified theft.<sup>11</sup>

## Ruling

The Petition is partly meritorious.

Theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.<sup>12</sup> Grave abuse of trust is a

<sup>8</sup> *Id.* at 40–44. The May 25, 2021 Resolution was penned by Associate Justice Elihu A. Ybañez with the concurrence of Associate Justices Rafael Antonio M. Santos and Carlito B. Calpatura of the Former Thirteenth Division, Court of Appeals, Manila.

<sup>9</sup> *Id.* at 47–49.

<sup>10</sup> *Id.* at 13–23.

<sup>11</sup> *Id.* at 111–123.

<sup>12</sup> REVISED PENAL CODE, Art. 308 (1)

circumstance which aggravates and qualifies the commission of the crime of theft; hence, the imposition of a higher penalty is necessary.<sup>13</sup> The crime of qualified theft requires the confluence of the following elements, to wit: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the Revised Penal Code, i.e., with grave abuse of confidence.<sup>14</sup>

Here, the Court finds that the prosecution established only simple theft.<sup>15</sup> First, Joy took some groceries that Lourdes bought by not scanning them in the cash register. Second, the items belong to SM Hypermarket. Third, the absence of consent was shown in Joy's defiance of the procedure in scanning the goods before they are release to the customers. Fourth, the furtive taking of the groceries raised the reasonable presumption of intent to gain. Fifth, Joy got hold of the items in the performance of her duty as a cashier without force, violence or intimidation. Yet, the prosecution failed to establish the element of grave abuse of confidence.

The taking in qualified theft must be the result of a relation by reason of dependence, guardianship, or vigilance, between the accused and the offended party that has created a high degree of confidence between them.<sup>16</sup> Thus, grave abuse of confidence by a thieving employee should be contextualized not only by the relationship between the employer and employee, but also by the purpose for which the employee was given the employer's trust.<sup>17</sup> In *People v. Cahilig*,<sup>18</sup> the Court found that the victim reposed in the accused with high trust and confidence because he handles, manages, receives, and disburses funds. In *People v. Boquecosa*,<sup>19</sup> the accused committed qualified theft when she took pieces of jewelry, class ring collections, and cell card sales, without the consent of the pawnshop's owner. The accused's position as vault custodian entailed a high degree of trust. In *People v. Cruz*,<sup>20</sup> the accused accomplished the theft with grave abuse of confidence because he was entrusted to receive payments, issue receipts, and oversee all aspects pertaining to cash purchases and sale of merchandise of the business. The accused also had access to the lists of sales reports and the cash of the daily sales. In *People v. Sabado*,<sup>21</sup> the accused is guilty of qualified theft when he gravely exploited the trust of his employer. The Court considered the accused's exclusive management of the shop and access to the vault, to wit:

**Theft here became qualified because it was committed with grave abuse of confidence.** Grave abuse of confidence, as an element of theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the accused-appellant and the offended party that might

<sup>13</sup> *Id.*, Article 310. *See also People v. Mejares*, 823 Phil. 459, 470 (2018) [Per J. Leonen, Third Division].

<sup>14</sup> *People v. Bago*, 386 Phil. 310, 334–335 (2000) [Per J. Puno, First Division].

<sup>15</sup> *People v. Euraba*, G.R. No. 220762 [Notice], April 18, 2018.

<sup>16</sup> *People v. Cahilig*, 740 Phil. 200, 209–210 (2014) [Per J. Carpio, Second Division].

<sup>17</sup> *Tejolan v. People*, G.R. No. 218972 [Notice], June 30, 2021.

<sup>18</sup> *Supra* note 16 at 210.

<sup>19</sup> 767 Phil. 445, 454 (2015) [Per J. Perez, First Division].

<sup>20</sup> 786 Phil. 609, 621 (2016) [Per J. Perez, Third Division].

<sup>21</sup> 813 Phil. 221 (2017) [Per J. Tijam, Third Division].

create a high degree of confidence between them which the accused-appellant abused. Accused-appellant, as established by the prosecution, is an employee of the Pawnshop. **Accused-appellant could not have committed the crime had he not been holding the position of the trusted employee which gave him not only sole access to the Pawnshop's vault but also control of the premises.** The relevant portion of the RTC's disquisition reads:

Based on the extant records[,] it appears that accused Luther Sabado was a trusted employee of Diamond Pawnshop. **In fact, the following circumstances show the trust and confidence reposed on him by the shop owners, to wit: he manages the shop alone; he has the keys to the locks of the shop; and he has access to the vault and knows the combination of the same[.]**

The management of Diamond Pawnshop clearly had reposed its trust and confidence in the accused-appellant, **and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of his employer.**<sup>22</sup> (Emphasis supplied)

In *Homol v. People*,<sup>23</sup> the Court clarified that when the gravity of exploitation of trust is not proven, the crime is only simple theft and the abuse of confidence shall be treated as a generic aggravating circumstance. In that case, it was not proven that the employer had special trust in the accused. The minuscule amounts involved and the fact that the employer allowed the accused to resign without any question discounted the existence of high degree of confidence between them, thus:

Here, it was not proven that Dr. Robillos had special trust, or high degree of confidence in Arlene. The allegation in the Information that Arlene is a "*secretary/collector*" of Dr. Robillos does not by itself, without more, create the relation of confidence and intimacy required in qualified theft. More telling are the minuscule amounts involved and the fact that Dr. Robillos allowed Arlene to resign without any question, discount the existence of a high degree of confidence between them. **The prosecution, likewise, failed to substantiate the gravity how Arlene betrayed Dr. Robillos' supposed special trust to qualify, or facilitate the taking of the money. Dr. Robillos principally hired Arlene as a clinic secretary while her task as a collector is foreign to her usual duties. The circumstances do not show that Arlene's job was instrumental in facilitating the taking of the money[.]**

At most, the abuse of confidence shall be considered as a generic aggravating circumstance since the gravity of exploitation of trust was not proven. Indeed, abuse of confidence is inherent in qualified theft but not in simple theft since the circumstance is not included in the definition of the crime. Under Article 14 of the RPC, abuse of confidence exists only when the offended party has trusted the offender who later abuses such trust by committing the crime. The abuse of confidence must be a means of facilitating the commission of the crime. the culprit taking advantage of the offended party's belief that the former would not abuse said confidence. The confidence between the offender and the offended party must be immediate and personal. As discussed above, Arlene took advantage of her position as a secretary or collector in committing theft but the gravity of exploitation of trust was not proven.<sup>24</sup> (Emphasis supplied)

<sup>22</sup> *Id.* at 228–229.

<sup>23</sup> G.R. No. 191039, August 22, 2022 [Per J. M. Lopez, Second Division].

<sup>24</sup> *Id.*

Similarly in *Viray v. People*,<sup>25</sup> a house caretaker was convicted only of simple theft for breaking into his employer's home to steal several valuables. The Court found that the employer denied the accused access to the house, which refuted the degree of trust and confidence between them, thus:

This Court is inclined to agree with the CA that the taking committed by petitioner cannot be qualified by the breaking of the door, as it was not alleged in the Information. However, we disagree from its finding that the same breaking of the door constitutes the qualifying element of grave abuse of confidence to sentence petitioner Viray to suffer the penalty for qualified theft. **Instead, We are one with the RTC that private complainant did not repose on Viray's "confidence" that the latter could have abused to commit qualified theft.**

The very fact that petitioner "forced open" the main door and screen because he was denied access to private complainant's house negates the presence of such confidence in him by private complainant. Without ready access to the interior of the house and the properties that were the subject of the taking, **it cannot be said that private complaint had a "firm trust" on petitioner or that she "relied on his discretion" and that the same trust reposed on him facilitated Viray's taking of the personal properties justifying his conviction of qualified theft.**

**To warrant the conviction and, hence, imposition of the penalty for qualified theft, there must be an allegation in the information and proof that there existed between the offended party and the accused such high degree of confidence or that the stolen goods have been entrusted to the custody or vigilance of the accused.** In other words, where the accused had never been vested physical access to, or material possession of, the stolen goods, it may not be said that he or she exploited such access or material possession thereby committing such grave abuse of confidence in taking the property.<sup>26</sup> (Emphasis supplied)

The Court in *People v. Maglaya*<sup>27</sup> likewise refused to impose the penalty prescribed for qualified theft when the accused was not given material possession or access to the property. The Court determined that the accused did not act with grave abuse of confidence despite his duties involving the handling and receiving of money from his employer's customers, *viz.*:

**Although appellant had taken advantage of his position in committing the crime aforementioned, We do not believe he had acted with grave abuse of confidence and can be convicted of qualified theft,** because his employer had never given him the possession of the machines involved in the present case or allowed him to take hold of them, and it does not appear that the former had any especial confidence in him. Indeed, the delivery of the machines to the prospective customers was entrusted, not to appellant, but to another employee.<sup>28</sup> (Emphasis supplied)

Consistent with case law, the Court finds that Joy's work as a cashier does not instantly make her criminally liable for qualified theft absent proof of grave abuse

<sup>25</sup> 720 Phil. 841 (2013) [Per J. Velasco, Jr., Third Division].

<sup>26</sup> *Id.* at 852-853.

<sup>27</sup> 141 Phil. 278 (1969) [Per C.J. Concepcion, *En Banc*].

<sup>28</sup> *Id.* at 285.

of confidence anchored on the betrayal of special trust. The fact that Joy handles grocery items does not mean that her job entails a high degree of confidence. A grocery cashier does not have exclusive access, management and discretion over the employer's properties and funds. Common practice even suggests different layers of monitoring. A bagger or another personnel checks and tallies the items with the receipt after the cashier scanned the goods. A supervisor had to intervene and enter codes in the cash register in case of errors in scanning the items. A cashier cannot decide alone how to deal with customers' concern as to the items bought. Roving guards are always watchful of the movement of employees, customers, and goods in the grocery store. This is in addition to hidden cameras installed in the store premises. Given such level of scrutiny and vigilance on the part of the employer, it can hardly be said that SM Hypermarket had a firm trust on Joy or that she can rely on her discretion in handling its properties. To be sure, SG Pacheco testified that he is assigned in the front end checkout counter to prevent pilferage on the part of the employees. SG Pacheco readily invited Joy to an investigation after the dubious transaction involving miniscule amount, to wit:

Q: Where were you assigned at that time?

A: At the front-end checkout counter.

x x x x

Q: **And will you tell the court of your relevant duties and functions while you were assigned at that particular area in the supermarket?**

A: "Magmonitor po ng items at mga empleyado sir."

Q: **What do you monitor about the items and the employees?**

A: "Yong mga magnanakaw po sa mga empleyado sir."

x x x x

Q: **How did you notice that the items presented or taken by the customer were not scanned by the cashier?**

A: "Don po ako nakatayo sa harap mismo don po sa POS."

Q: What's that POS?

A: "Bale don po lumalabas yong items kung nascan or hinde don makikita."

x x x x

ATTY. ARCEGA: POS means point of sale.

x x x x

Q: How long did you watch them?

A: 8 to 10 minutes sir.

Q: After they concluded the transaction what did you do?

A: "Bale inimitahan ko po sa opisina sir."<sup>29</sup>

Inarguably, there is no evidence that Joy could not have committed the crime had she not been holding the position of a cashier. Again, the abuse of special trust must be grave to aggravate and qualify the commission of the crime of theft. On this point, the Court is convinced that Joy took advantage of her position in committing

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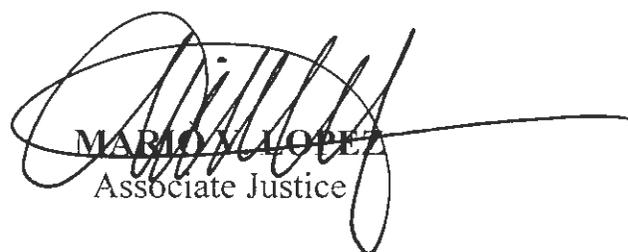
<sup>29</sup> Rollo, pp. 118-120.

the crime but not on the level of grave abuse of confidence. Thus, the crime is only of simple theft attended with generic aggravating circumstance of abuse of confidence. Joy's argument that she did not act with malice is unsophisticated. As the CA aptly observed, the sheer number of items that Joy did not scan speaks volume against her theory of negligence or human error. Finally, the totality of circumstances proved that Joy and Lourdes conspired to commit the crime of theft. Lourdes went to the grocery store, selected items, and lined up at the counter where Joy is assigned. Thereafter, Joy did not scan some of the goods, allowing Lourdes to take them without paying for their value. Verily, conspiracy exists where the accused acted in concert showing unity of purpose and execution. In this case, Joy and Lourdes performed specific acts with such closeness and coordination indicating common design to commit the felony.<sup>30</sup>

Under Republic Act No. 10951,<sup>31</sup> the penalty for simple theft is *arresto mayor* to its full extent if the value of the property stolen is over PHP 500.00 but does not exceed PHP 5,000.00.<sup>32</sup> The Indeterminate Sentence Law is inapplicable as this penalty does not exceed one year. With the presence of the generic aggravating circumstance of abuse of confidence, the impossible penalty must be within the maximum period of the prescribed penalty which ranges from four (4) months and one (1) day to six (6) months. This Court imposes upon Joy the straight penalty of six (6) months. There is no civil liability since the stolen items were returned to the private complainant.

**ACCORDINGLY**, the Petition is **DENIED**. The Decision dated July 27, 2020 and Resolution dated May 25, 2021 of the Court of Appeals in CA-G.R. CR No. 42322 are **AFFIRMED** with **MODIFICATION** in that petitioner Joy Batislaon y Balicbalic is found guilty of simple theft and is sentenced to suffer the penalty of imprisonment of six (6) months.

**SO ORDERED.**

  
MARIO LOPEZ  
Associate Justice

<sup>30</sup> *People v. Arnado*, G.R. Nos. 250100-02, March 21, 2022, < <https://sc.judiciary.gov.ph/250100-02-people-of-the-philippines-vs-rommel-c-arnado/> > [Per J. Zalameda, Second Division].

<sup>31</sup> An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as Amended. Approved: August 29, 2017.

<sup>32</sup> Republic Act No. 10951, Section 81, paragraph 5.

**WE CONCUR:**



**MARVIC M. V. F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**JHOSEP V. LOPEZ**  
*Associate Justice*



**ANTONIO T. KHO, JR.**  
*Associate Justice*

**ATTESTATION**

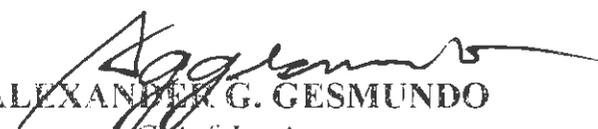
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*