



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARVIN VILLANUEVA y
IRODISTAN,

Petitioner,

G.R. No. 228980

Present:

- versus -

PEOPLE OF THE
PHILIPPINES,
Respondent.

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

Promulgated:

JAN 22 2024

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DECISION

KHO, JR., J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated October 28, 2016 and the Resolution³ dated January 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 35988, which affirmed with modification the Decision⁴ dated August

¹ Rollo, pp. 9–19.

² *Id.* at 22–31. Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

³ *Id.* at 33–34.

⁴ CA rollo, pp. 41–55. Penned by Presiding Judge Joselito dj. Vibandor of [REDACTED], Regional Trial Court, [REDACTED].

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28, 2013 of [REDACTED], Regional Trial Court, [REDACTED] (RTC) in Crim. Case No. 10-0985, finding petitioner Marvin Villanueva y Irodistan (Villanueva) guilty beyond reasonable doubt of violating Article III, Section 5(b)⁵ of Republic Act (RA) No. 7610.⁶

The Facts

This case stemmed from an Information⁷ filed before the RTC, charging Villanueva with the said crime, the accusatory portion of which reads:

The undersigned Asst. State Prosecutor accuses **MARVIN VILLANUEVA y IRODISTAN**, of the crime of **violation of Sec. 5 (b), RA 7610**, committed as follows:

That on or about the **25th day of November, 2010**, in the City of [REDACTED], Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did, then and there, willfully, unlawfully[,] and feloniously pull up the skirt and touch the buttocks of [AAA],⁸ a lascivious conduct constituting sexual abuse.

CONTRARY TO LAW.⁹ (Emphasis in the original)

⁵ **Section 5. Child Prostitution and Other Sexual Abuse.** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

....

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

....

⁶ Republic Act No. 7610 (1992) “An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes”.

⁷ RTC records, pp. 1–2.

⁸ The identity of the victim, as well as those of her immediate family or household members, and/or the accused, or any information which could establish or compromise the victim’s identity shall be withheld pursuant to RA 7610, entitled “An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes,” approved on June 17, 1992; RA 9262, entitled “An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, And For Other Purposes,” approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the “Rule On Violence Against Women And Their Children” (November 15, 2004). See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014) [Per J. Perlas-Bernabe, Second Division], citing *People v. Lomaque*, 710 Phil. 338, 342 (2013) [Per J. Del Castillo, Second Division]. See also Amended Administrative Circular No. 83-2015, entitled “Protocols And Procedures In The Promulgation, Publication, And Posting On The Websites Of Decisions, Final Resolutions, And Final Orders Using Fictitious Names/Personal Circumstances,” dated September 5, 2017.

⁹ RTC records, p. 1.

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Upon arraignment, Villanueva pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.¹⁰

The prosecution presented the following witnesses to establish the guilt of Villanueva: (a) the private complainant, AAA; (b) the private complainant's friend, BBB; (c) Traffic Enforcer Ronald Tolentino (Enforcer Tolentino); and (d) Police Officer III Wirrel P. Jualo (PO3 Jualo) and Police Officer I Anthony D. Antoyne (PO1 Antoyne).¹¹

The prosecution alleged that at around 4:00 p.m. of November 25, 2010, AAA—who was then 15 years old, being born on December 31, 1994, as evidenced by her Certificate of Live Birth,¹² together with her friend, BBB, and BBB's 11-year-old sister, CCC, were on their way home from school. They were ascending the nonworking escalator of the overpass in [REDACTED], [REDACTED], when suddenly, Villanueva stood behind AAA. BBB noticed Villanueva and told AAA to hurry. AAA then felt her skirt being lifted and her buttocks being touched by the person behind her. When AAA looked behind her, she saw Villanueva holding a mirror below her skirt. She confronted Villanueva, but the latter hurriedly left and ran towards the highway. AAA was shocked. BBB then shouted "*May manghihipo! Tulong, tulong! Magnanakaw!*" BBB was of the notion that Villanueva took AAA's cellphone. The bystanders tried to chase Villanueva upon hearing BBB's call for help. Enforcer Tolentino heard the commotion and apprehended Villanueva. Later, Villanueva was turned over to PO3 Jualo and PO1 Antoyne, who brought him to the police station for further investigation.¹³

In defense, Villanueva denied the allegation against him and offered a different version of the events. He averred that on the date of the incident, his mother directed him to buy *pancit*. Villanueva boarded a tricycle and got off in [REDACTED], [REDACTED]. At the foot of the nonworking escalator in [REDACTED] overpass, Villanueva saw a group of female students giving each other *beso-beso* (kiss on the cheeks). He climbed the escalator while holding his two cellular phones and when he was about two steps behind from AAA, he tried to overtake the latter from her left side. At this point, he heard someone shouting "Snatcher, snatcher!" Villanueva then put his two cellphones inside his pockets and hurriedly ran down the escalator for fear that the bystanders would mob him. He continued to run while the bystanders were chasing him. Villanueva asked Enforcer Tolentino for help, but the bystanders began to maul him. Enforcer Tolentino handcuffed him and requested for police assistance. Later, PO3 Jualo and PO1 Antoyne arrived and brought him to the police station.¹⁴

¹⁰ *Rollo*, p. 23.

¹¹ *Id.*

¹² RTC records, p. 16.

¹³ *Rollo*, pp. 23–24.

¹⁴ *Id.* at 24.

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The RTC Ruling

In a Decision¹⁵ dated August 28, 2013, the RTC found Villanueva guilty beyond reasonable doubt of the crime charged and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of eight years and one day of *prision mayor*, as minimum, to 17 years, four months, and one day of *reclusion temporal*, as maximum; and to pay AAA the amounts of PHP 10,000.00 as moral damages and PHP 5,000.00 as exemplary damages.¹⁶

In so ruling, the RTC gave full credence to the testimony of AAA and held that in cases of acts of lasciviousness, the testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Much more when such testimony was corroborated by an eyewitness, which, in this case, is BBB, AAA's friend.¹⁷

Further, the RTC found that all the elements of sexual abuse under Article III, Section 5(b) of RA No. 7610 was complied with when Villanueva lifted the skirt and touched the buttocks of AAA, who was a minor at the time of the incident. Relevantly, the lewd design can be inferred from the overt act of Villanueva. Hence, such act of lifting the skirt and touching the buttocks of the minor victim amounts to lascivious conduct.¹⁸

Aggrieved, Villanueva appealed¹⁹ to the CA.

The CA Ruling

In a Decision²⁰ dated October 28, 2016, the CA affirmed the RTC's ruling with modification as to the penalty, in that Villanueva was sentenced to suffer the penalty of imprisonment for an indeterminate period of 14 years and eight months of *reclusion temporal*, as minimum, to 20 years of *reclusion temporal*, as maximum, and to pay a fine in the amount of PHP 15,000.00. Villanueva was also ordered to pay AAA the amounts of PHP 20,000.00 as civil indemnity and PHP 15,000.00 as moral damages, subject to legal interest at the rate of 6% from the date of finality of the ruling until full payment.²¹

The CA agreed with the RTC that all the elements of sexual abuse under Article III, Section 5(b) of RA No. 7610 are present, considering that

¹⁵ CA rollo, pp. 41–55.

¹⁶ *Id.* at 54–55.

¹⁷ *Id.* at 49.

¹⁸ *Id.* at 54.

¹⁹ See "Brief for the Appellant," *id.* at 22–40.

²⁰ Rollo, pp. 22–31.

²¹ *Id.* at 30.

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Villanueva's act of intentionally touching AAA's buttocks amounted to a lascivious conduct. In addition, AAA was only 15 years old when the sexual abuse happened.²²

The CA also found no arbitrariness or oversight on the part of the RTC when it gave full credence to the testimony of AAA, as there was no proof that she was motivated by ill will to falsely testify against Villanueva. Hence, the defense of denial interposed by Villanueva cannot prevail over the positive testimony of AAA. Lastly, the CA agreed with the RTC when it found Villanueva guilty of the crime charged.²³

Villanueva moved for reconsideration,²⁴ which was, however, denied in a Resolution²⁵ dated January 4, 2017; hence, this Petition.²⁶

The Issue Before the Court

The issue for the Court's resolution is whether the CA correctly affirmed Villanueva's conviction for violation of Article III, Section 5(b) of RA No. 7610.

Villanueva argues that the CA erred in finding him guilty beyond reasonable doubt of the crime charged as there was no showing of lewd design. Villanueva further claims that the complaint holds no water since the incident took place at a crowded place in broad daylight and with his hands occupied, as he was holding his two cellphones.²⁷ He adds that the age of AAA at the time of incident is considered an age of conditional responsibility, and considering her educational attainment as a senior high school, AAA is capable of devious schemes such as lying and acting out to have been abused, even by an innocent person, such as Villanueva.²⁸

Villanueva also maintains that not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. Finally, Villanueva contends that the penalty is disproportionate to the crime allegedly committed and the surrounding circumstances of its commission. Hence, he prays for the reversal of his conviction.²⁹

²² *Id.* at 27–28.

²³ *Id.* at 29.

²⁴ Not attached to the *rollo*.

²⁵ *Rollo*, pp. 33–34. Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

²⁶ *Id.* at 9–19.

²⁷ *Id.* at 13–14.

²⁸ *Id.* at 14.

²⁹ *Id.* at 15–19.

In its Comment,³⁰ respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that the CA did not err in affirming the conviction of Villanueva since there is moral certainty that he committed the crime of lascivious conduct constituting sexual abuse when he touched AAA's buttocks, who, at that time, was a minor. AAA also narrated in a straightforward and candid manner the details of how the lascivious conduct transpired. The OSG further argues that the existence of unchaste or lewd design can be inferred from the overt act of Villanueva. Accordingly, the findings of fact of the RTC, when affirmed on appeal, are accorded great weight and respect, just like in this case.³¹

In his Reply,³² Villanueva reiterates his contention that he did not commit the alleged act imputed on him, considering that he was holding his two cellphones in both hands at a crowded place in broad daylight. Hence, it is impossible for him to perform any act that can be construed as lascivious conduct. He further persists that the penalty is not commensurate to the gravity of the offense committed and the attending circumstances of its commission.³³

The Court's Ruling

The Petition has no merit.

Article III, Section 5(b) of RA No. 7610, provides:

Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

....

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;

....

³⁰ *Id.* at 57–66.

³¹ *Id.* at 59–64.

³² *Id.* at 75–78.

³³ *Id.* at 76–77.

The elements of sexual abuse under the said provision are as follows: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child, whether male or female, is below 18 years of age.³⁴

Relatedly, lascivious conduct is defined in Section 2(h) of the Implementing Rules and Regulations³⁵ (IRR) of RA No. 7610 as “the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or **buttocks**, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.”

In *People v. Tulagan*,³⁶ the Court, through Associate Justice Diosdado M. Peralta, held that the term “*other sexual abuse*” is a broad term that includes all other acts of sexual abuse other than prostitution, to wit:

The term “other sexual abuse,” on the other hand, is construed in relation to the definitions of “child abuse” under Section 3, Article I of R.A. No. 7610 and “sexual abuse” under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, “child abuse” refers to the maltreatment, **whether habitual or not**, of the child which includes sexual abuse, among other matters. In the latter provision, “sexual abuse” includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. Thus, **the term “other sexual abuse” is broad enough to include all other acts of sexual abuse other than prostitution. Accordingly, a single act of lascivious conduct is punished under Section 5(b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances.**³⁷ (Emphasis supplied)

Given the foregoing legal parameters, the Court finds that the prosecution has duly proven all the elements of lascivious conduct punishable under Article III, Section 5(b) of RA No. 7610. Notably, AAA’s minority was sufficiently established with the presentation of her Certificate of Live Birth. The RTC, as sustained by the CA, also found her testimony clear, candid, and categorical when she relayed that Villanueva lifted her skirt and touched her buttocks. Accordingly, the overt act of Villanueva is tantamount to a lascivious conduct.

³⁴ *Capueta v. People*, 883 Phil. 502, 510–511 (2020) [Per J. Delos Santos, Second Division].

³⁵ “Rules And Regulations On The Reporting And Investigation Of Child Abuse Cases” (1993).

³⁶ 849 Phil. 197 (2019) [*En Banc*].

³⁷ *Id.* at 256–257, citations omitted.

Moreover, Villanueva's defense that it was impossible for him to commit the alleged act, considering that he was holding his two cellphones in both hands at a crowded place in broad daylight, was not only unsubstantiated, but was also successfully belied by AAA and the other witnesses. AAA testified that she felt her skirt being lifted and her buttocks being touched by the person behind her. Moreover, BBB testified that Villanueva in fact approached AAA from behind and even warned the latter to hurry. The Court has repeatedly held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.³⁸

Relevantly, denial is inherently a weak defense, which cannot outweigh positive testimony. A categorical statement that has the earmarks of truth prevails over a bare denial, which can easily be fabricated and is inherently unreliable.³⁹ Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law,⁴⁰ as in this case. Hence, Villanueva's denial cannot prevail over the positive testimony of the private complainant.

On this score, the Court would like to clarify that the use of "*violation of Section 5 (b), Article III of RA 7610*" to name the offense of which Villanueva has been found guilty is inaccurate. To recall, the RTC convicted Villanueva of violation Article III, Section 5(b) of RA No. 7610. The same was essentially affirmed by the CA without any qualification. However, as clarified in *Tulagan*, when the victim of the lascivious act is a child at least 12 years old, the crime should be designated as "**Lascivious Conduct under Section 5(b) of RA 7610.**"⁴¹ Hence, the nomenclature of the offense of which Villanueva is convicted should be accordingly changed.

As for the imposable penalty, Article III, Section 5(b) of RA No. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of any modifying circumstances, the maximum term of the sentence shall be taken from the medium period of the prescribed penalty. Moreover, notwithstanding that RA No. 7610 is a special law, Villanueva may still enjoy the benefits of the Indeterminate Sentence Law.⁴²

Here, there being no aggravating or mitigating circumstance, the CA unerringly imposed the indeterminate penalty of 14 years and 8 months of *reclusion temporal*, as minimum, to 20 years of *reclusion temporal*, as

³⁸ *People v. Sanico*, 741 Phil. 356, 374 (2014) [Per J. Reyes, First Division].

³⁹ *People v. Moreno*, 872 Phil. 17, 28 (2020) [Per J. Hernando, Second Division].

⁴⁰ *People v. Molejon*, 830 Phil. 519, 534 (2018) [Per J. Tijam, First Division].

⁴¹ *People v. Tulagan*, 849 Phil. 197, 228 (2019) [*En Banc*] (Emphasis supplied).

⁴² *Id.*

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maximum, for violation of lascivious conduct under Article III, Section 5(b) of RA No. 7610, the same being within the range of the indeterminate sentence imposable upon him.

The Court likewise adjusts Villanueva's civil liability *ex delicto* to PHP 50,000.00 each as civil indemnity, moral damages, and exemplary damages pursuant to *Tulagan*, all with legal interest at the rate of 6% per annum from the date of finality of this Decision until full payment.⁴³

In addition, the Court further imposes a fine in the amount of PHP 15,000.00, in accordance with Section 31(f)⁴⁴ of RA No. 7610, in furtherance of the law's objective to provide special protection to children and to assist in the rehabilitation of child victims.⁴⁵

Finally, the Court is not unmindful of Villanueva's claim that the penalty imposed is disproportionate to the crime committed and the surrounding circumstances of its commission. However, the Court is duty bound to apply the law in full force and impose the proper penalty for the crime committed by Villanueva. Nevertheless, considering the severe penalty imposed against Villanueva, which is clearly excessive in relation to the attendant circumstances, the Court invokes Article 5⁴⁶ of the RPC and submits to the Chief Executive, through the Department of Justice, for study and consideration the mitigation of the penalty imposed on Villanueva.

ACCORDINGLY, the Petition is **DENIED**. The Decision dated October 28, 2016 and the Resolution dated January 4, 2017 of the Court of Appeals in CA-G.R. CR No. 35988 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner Marvin Villanueva y Irodistan is found **GUILTY** beyond reasonable doubt of the crime of lascivious conduct under Article III, Section 5(b) of Republic Act No. 7610. He is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of 14 years and

⁴³ See *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per Acting C.J. Leonen, *En Banc*].

⁴⁴ SEC. 31. *Common Penal Provisions*. —

....

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

⁴⁵ *Trocio v. People*, G.R. No. 252791, August 23, 2022 [Per J. Inting, Third Division].

⁴⁶ REV. PEN. CODE, art. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties*. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

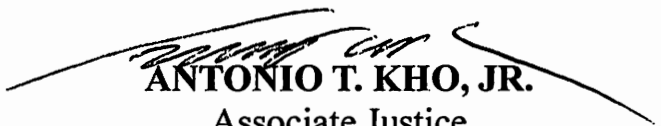
In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

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eight months of *reclusion temporal*, as minimum, to 20 years of *reclusion temporal*, as maximum; and to pay a fine in the amount of PHP 15,000.00. Moreover, he is ordered to pay private complainant AAA the amounts of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages. All monetary awards shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until full payment.

Pursuant to Article 5 of the Revised Penal Code, the Court **TRANSMITS** the case to the Chief Executive, through the Department of Justice, for study and consideration of the mitigation of the penalty of petitioner Marvin Villanueva y Irodistan.

SO ORDERED.



ANTONIO T. KHO, JR.

Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN

Senior Associate Justice
Chairperson



AMY C. LAZARO-JAVIER

Associate Justice



MARIO V. LOPEZ

Associate Justice



JHOSEP Y. LOPEZ

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.

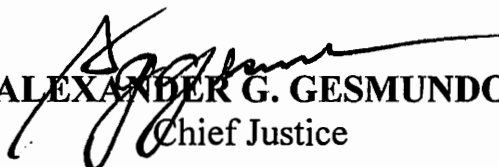


MARVIC M.V.F. LEONEN

Senior Associate Justice
Chairperson, Second Division

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

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