



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 28, 2022**, which reads as follows:

**“G.R. No. 249665 (People of the Philippines v. Lorenzo Dulay y Alura @ “Enzo”).** — For resolution is the instant Appeal<sup>1</sup> assailing the Decision<sup>2</sup> dated February 13, 2019 of the Court of Appeals (CA) in CA-GR CR HC. No. 09650 that affirmed the July 25, 2017 Decision of the Regional Trial Court of Manila (RTC), Branch 42, which found accused-appellant Lorenzo Dulay y Alura (*Dulay*) guilty beyond reasonable doubt of Violation of Sections 5 and 11, Article II, Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640.

On February 23, 2016, a confidential informant (CI) of the Manila Police District-Special Anti-Illegal Drugs Unit, Station 11 (*MPD-SAID*) reported to its Chief, Police Senior Inspector Leandro Gutierrez (*PSI Gutierrez*), the illegal drug activities along Muelle dela Industria in Binondo, Manila. Accordingly, PSI Gutierrez called his team to conduct a briefing on a possible buy-bust operation. PO3 Edwin Yao (*PO3 Yao*) was designated as the poseur-buyer, and it was agreed that he would remove his ball cap to signal the consummation of the transaction.<sup>3</sup>

After proper coordination with the Philippine Drug Enforcement Agency (*PDEA*), the buy-bust team put their plan into action. On February 24, 2016, at 5:30 in the afternoon, the team proceeded to the target area.<sup>4</sup> They did not wait long as Dulay arrived momentarily. When the CI pointed at Dulay, the latter approached him and said “*nandito na yung item ko, kuha na kayo.*” PO3 Yao, who was just standing beside the CI, replied that he is going to get ₱200.00 worth of shabu. After PO3 Yao handed the marked money to Dulay, the latter brought out from his right trouser pocket a plastic sachet containing white crystalline substance, and gave it to PO3 Yao. After PO3

<sup>1</sup> Notice of Appeal; CA *rollo*, p. 131.

<sup>2</sup> Penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ricardo R. Rosario (now a Member of the Court) and Nina G. Antonio-Valenzuela; *id.* at 114-130.

<sup>3</sup> *Rollo*, p. 5.

<sup>4</sup> *Id.* at 6

Yao demonstrated the pre-arranged signal, PO3 Ramil Olesco (*PO3 Olesco*) and the rest of the team ran towards Dulay. It was then that PO3 Yao introduced himself as a police officer and apprised Dulay of his constitutional rights. Subsequently, PO3 Yao ordered Dulay to empty his pockets. Dulay did as he was told and brought out from the same pocket another plastic sachet containing white crystalline substance. PO3 Yao confiscated the second plastic sachet and placed Dulay under arrest. Immediately thereafter, PO3 Yao marked the seized items with "LAD" and "LAD-1" representing Dulay's initials, in the presence of media representative Danny Robert Amoroso and Barangay Kagawad Tony Diaz. After that, PO3 Yao placed the seized articles inside the small pocket of his shoulder bag and brought them, as well as Dulay, to Gandara Police Station, where he again marked the seized items with "EY" representing his initials. He also prepared the Receipt of Property/Evidence Seized and had the prohibited items photographed. Next, PO3 Yao handed the seized items to PO3 Meynard Vargas (*PO3 Vargas*), the case investigator. Together, they brought the items seized to the MPD for examination.<sup>5</sup> After conducting quantitative and qualitative examinations, Police Chief Inspector Elisa Reyes Arturo (*PSI Arturo*) issued Chemistry Report No. D-170-16,<sup>6</sup> which showed that the contents of the two sachets were found to be positive for methamphetamine hydrochloride or *shabu*.<sup>7</sup>

Consequently, Dulay was charged in separate Informations dated March 2, 2016 for Violation of Sections 5 and 11, Article II, Republic Act No. 9165:

#### INFORMATION

The undersigned accuses LORENZO DULAY y ALURA a.k.a. "ENZO" of violation of Section 5, Article II of Republic Act 9165, committed as follows:

That on or about February 24, 2016, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur-buyer one (1) heat-sealed transparent plastic sachet marked as "LAD-EY" containing ZERO POINT ONE ONE FIVE (0.115) gram of white crystalline substance containing Methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug.

Contrary to law.

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#### INFORMATION

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<sup>5</sup> *Id.* at 6.  
<sup>6</sup> Records, p. 14.  
<sup>7</sup> *Rollo*, p. 7.

The undersigned accuses LORENZO DULAY y ALURA a.k.a. "ENZO" of violation of Section 11(3), Article II of Republic Act 9165, committed as follows:

That on or about February 24, 2016, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heated-sealed transparent plastic sachet marked as "LAD-EY1" containing ZERO POINT ZERO SEVEN SEVEN (0.077) gram of white crystalline substance known as Methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug.

Contrary to law.<sup>8</sup>

In his defense, Dulay testified that on February 23, 2016, at 5:00 in the afternoon, he was at Muelle dela Industria waiting for his fellow porter and their driver to arrive. All of a sudden, men in civilian clothes arrived and arrested him. When Dulay asked why he was being arrested, the authorities told him that it was only for verification purposes because he was included in the watch list. Upon arrival at the police station, a policeman demanded from Dulay the amount of ₱50,000.00 in exchange for the dropping of charges against him. Dulay answered negatively to which the policeman retorted "*pano yan, tutuluyan na lang kita kasi nasa watch list ka.*" Just about then, Dulay was brought inside an office in the police station where he was booked. The next day, he was brought to the Prosecutor's Office for inquest proceedings.<sup>9</sup>

On July 25, 2017, the RTC rendered a Decision<sup>10</sup> finding Dulay guilty as charged, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

In Criminal Case No. 16-323572, the Court finds accused LORENZO ALURA DULAY guilty beyond reasonable doubt of violation of Sec. 5 in relation to Sec. 26, Art. II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00).

In Criminal Case No. 16-323573, the Court likewise finds accused LORENZO ALURA DULAY guilty beyond reasonable doubt of violation [of] Sec. 11(3), Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) month, as minimum, to fourteen (14) years and eight (8) months as maximum, and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00)

<sup>8</sup> Records, pp. 2, 4.

<sup>9</sup> Rollo, p. 7.

<sup>10</sup> *Id.* at 8.

The drugs subject matter of these cases are confiscated in favor of the Government, the same to be turned over to the proper government authority for disposal in accordance with the law and rules.

SO ORDERED.

Aggrieved, Dulay appealed his conviction to the CA by arguing that the testimony of PO3 Yao was marred with inconsistencies and that the items seized may have been tampered with because of the length of time that PO3 Yao held on to them. Dulay also claimed that the chain of custody was not established considering that the stipulated testimony of the chemist did not touch on how and to whom she turned over the seized drugs before it was brought to court and that there was no representative from the Department of Justice (*DOJ*) during the conduct of the inventory.<sup>11</sup>

On February 13, 2019, the CA rendered its Decision<sup>12</sup> affirming Dulay's conviction as follows:

WHEREFORE, the appeal is DENIED. The Decision dated July 25, 2017 of the Regional Trial Court, National Capital Judicial Region, Branch 42, Manila is AFFIRMED.

SO ORDERED.

The CA viewed Dulay's defenses of alibi and extortion with disfavor. According to the CA, the positive and categorical identification and declaration of PO3 Yao and PO3 Olesco who charged Dulay prevails over his negative and self-serving statement. The CA added that the police officers were merely performing their regular duties and there was no evidence of ill-motive on the part of the authorities to falsely implicate him in a very serious crime.<sup>13</sup>

The CA also found no gap in the prosecution's presentation of chain of custody. It said that:

Dulay contends that the fourth link in the chain of custody of the seized drugs was not established by the prosecution. According to him, the stipulated testimony of forensic chemist, PCI Arturo[,] did not specify how and to whom she turned over the seized drugs after laboratory examination.

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In this case, the fourth link in the chain of custody of the seized drugs was duly established by the stipulations entered into between the

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<sup>11</sup> CA rollo, p. 9.

<sup>12</sup> Rollo, pp. 114-130.

<sup>13</sup> CA rollo, p. 17.

Prosecution and the Defense during the initial presentation of the Prosecution's evidence:

13. That after examination on the contents of all the specimen evidence specifically enumerated above which are the evidence, the forensic chemist PCI Reyes-Arturo placed the same plastic sachet inside the self-sealing evidence container/bag, sealed and signaled (sic) the seal and made her markings on the seal and turned over the same FOR SAFE-KEEPING PURPOSES ONLY to the EVIDENCE CUSTODIAN of the MPD Crime Laboratory in the person of PO3 Jeffrey Herrera.

14. That earlier this morning[,] the witness retrieved the same evidence container/bag bearing the same markings and specimen evidence which refers to the very same specimen evidence subject of this case from the same EVIDENCE CUSTODIAN in the person of PO3 Herrera and thereafter brought the same evidence today intact and duly sealed in the same manner that she first turned it over to the evidence custodian in the person of PO3 Herrera.

As can be gleaned from the above-mentioned stipulations, after examination, PCI Arturo preserved the integrity of the seized drugs by placing the sachet in a sealed container and put her marking on the seal before turning the seized drugs to PO3 Herrera, the evidence custodian. PCI Arturo was the one who brought the said evidence in court.<sup>14</sup>

As regards the absence of a representative from the DOJ during the marking and inventory of the articles seized, the CA explained that it was not fatal to the prosecution's case as R.A. No. 10640, which amended Section 21 of R.A. No. 9165, merely requires the presence of an elected public official, and a representative of the National Prosecution Service or the media to witness the physical inventory and marking of the seized items. Considering that a barangay kagawad and a representative from the media were present during the conduct of the inventory, the apprehending police officers sufficiently complied with the law.<sup>15</sup>

Aggrieved, Dulay now seeks the reversal of his conviction before this Court.

In our November 13, 2019 Resolution,<sup>16</sup> We required the parties to submit their respective supplemental briefs. In its January 7, 2020 Manifestation and Motion,<sup>17</sup> the Office of the Solicitor General prayed that it will be adopting its Brief filed before the CA considering that no new issues material to the case have been raised. Similarly, in his June 7, 2021

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<sup>14</sup> *Id.* at 14-16.

<sup>15</sup> *Rollo*, p. 16.

<sup>16</sup> *Id.* at 26-27.

<sup>17</sup> *Id.* at 29-30.

Manifestation (In Lieu of a Supplemental Brief),<sup>18</sup> accused-appellant manifested that he will no longer file a supplemental brief to avoid repetition since he has exhaustively argued all the relevant issues in his brief filed before the CA.

Essentially, this Court is tasked to resolve whether the CA committed reversible error in affirming accused-appellant's guilt beyond reasonable doubt for the illegal sale and illegal possession of dangerous drugs.

We grant the appeal.

It is a well-established rule that an appeal in criminal cases throws the whole case open for review. Thus, the appellate court has the competence to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>19</sup>

To sustain a conviction for the offense of illegal sale or possession of dangerous drugs under R.A. No. 9165, as amended by R.A. No. 10640, it is of utmost importance to establish with moral certainty, the identity of the confiscated drug.<sup>20</sup> To remove any doubt or uncertainty on the identity and integrity of the seized drug, it must be shown that the substance illegally possessed or sold by the accused is the same substance offered and identified in court.<sup>21</sup> This requirement is known as the chain of custody rule under R.A. No. 9165, created to safeguard doubts concerning the identity of the seized drugs.<sup>22</sup>

As defined, chain of custody means 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 it is presented to the court.<sup>23</sup> Section 1 of R.A. No. 10640, amending Sec. 21, Article II of R.A. No. 9165 delineates the procedure in the preservation of *corpus delicti* as follows:

SEC. 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:

<sup>18</sup> *Id.* at 37-38.

<sup>19</sup> *People v. Estonilo*, G.R. No. 248694, October 14, 2020.

<sup>20</sup> See *People v. Pasiona*, G.R. No. 247820, October 14, 2020.

<sup>21</sup> *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

<sup>22</sup> *People v. Climaco*, 687 Phil. 593, 604 (2012).

<sup>23</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance 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 and custody over said items.

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(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification.

When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims they did. Thus, no conviction can ensue, as in this case.<sup>24</sup>

Time and again, we have stressed the importance of compliance with the chain of custody in the handling of the drugs seized. In *People v. Time*,<sup>25</sup> citing *People v. Omamos*,<sup>26</sup> We restated the four links that must be established in the chain of custody in a buy-bust operation, to wit:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

<sup>24</sup> *People v. Raul Del Rosario*, G.R. No. 235658, June 22, 2020; *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

<sup>25</sup> G.R. No. 254604, March 15, 2021.

<sup>26</sup> G.R. No. 223036, July 10, 2019, 908 SCRA 367, 378-379.

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

A closer examination of the records of the case will show that the RTC and the CA failed to take note of the gaps in the second and third links in the chain of custody of the seized prohibited drug.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.<sup>27</sup>

Here, it was PO3 Yao, as the apprehending officer, who seized the plastic sachets containing white crystalline substance from accused-appellant. After placing his markings on the drugs seized, he claimed to have turned them over to PO3 Vargas, the investigating officer, thus:

Prosecutor Gil Mendoza:

What happened next after you've done or completed with the marking at the police station?

PO3 Edwin Yao:

We brought the items to the MPD Crime Laboratory for examination.

Q: How about the recovered evidence, after the completion of the markings at the police station?

A: I turned over to the investigator and it was brought to the crime laboratory for examination.

Q: You turned over the custody of the evidence to the investigator?

A: Yes, sir.<sup>28</sup>

While PO3 Yao named PO3 Vargas as the one who received the drugs seized, there was, nevertheless, dearth of evidence of how the said items were subsequently stored, preserved, labeled, and recorded by the investigator. The

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<sup>27</sup> *People v. Hementiza*, 807 Phil. 1017, 1034 (2017).

<sup>28</sup> Cross-examination of PO3 Edwin Yao, Transcript of Stenographic Notes dated November 3, 2016.

lack of explanation on this crucial matter created doubt as to the integrity and identity of the *corpus delicti*.

Then comes the third link in the chain of custody.

From the investigating officer, the dangerous drugs will be delivered to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.<sup>29</sup>

Here, PO3 Yao testified that he was with PO3 Vargas when they went to the crime laboratory and he was firm in his testimony that it was PO3 Vargas who carried the seized items and turned them over to the forensic authority, viz.:

Q: You now have the request for laboratory examination, what did you do?

A: I brought it to the crime lab.

Q: What did you bring to the crime lab?

A: After the documents were completed, we turned it over to the crime lab.

Q: How were you able to bring the evidence when you said that you turned over it to the investigator the evidence?

A: The investigator was with me when we go to the crime lab.

Q: You went to the crime lab?

A: Together with the investigator.

Q: Because you have the request for laboratory examination?

A: Yes, sir.

Q: How about the two sachets?

A: We brought it to the crime lab.

Q: Who was in possession of the two sachets in going to the crime lab?

A: The investigator, sir.

Q: Are you sure?

A: Yes, sir.

Q: You mean to say Mr. Witness, in going to the crime lab you don't have in possession of the two sachets?

A: It was in the possession of the investigator.

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Q: In going to the crime laboratory examination, who was in custody of those sachets?

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<sup>29</sup> Rollo, p. 7.

A: The investigator, sir.

Q: And who turned over to the forensic chemist?

A: PO3 Meynard Vargas, sir.

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Q: You turned over the sachets to the chemist?

A: It was Meynard Vargas, I turned over it to him.

xxx.<sup>30</sup>

However, he changed his narration of facts when he was confronted with the Chain of Custody Form and claimed that it was him who delivered the seized items to the crime laboratory as shown by his name appearing therein. As can be gleaned from his narration, there was a transfer of custody of the prohibited items seized between PO3 Yao and PO3 Vargas. With the apparent change of custody of the seized items from one person to another, it cannot be clearly identified as to who between PO3 Yao or PO3 Vargas actually handled the confiscated items. Indeed, the chance of being compromised is present in every change of custody, storage, movement, or transportation of the prohibited items<sup>31</sup> and without sufficient explanation of how these persons handled the drugs to preserve the items' identity and integrity, the Court is in serious doubt as to whether the drugs seized were indeed those brought in court.

Furthermore, the Court cannot consider PO3 Yao's conflicting statements as minor inconsistencies as they touch upon substantial and significant matters, *i.e.*, they involve the very integrity and identity of the *corpus delicti* in this case.<sup>32</sup>

Also, it bears stressing that what makes the observance of the chain of custody even more crucial is that the *shabu* allegedly sold by accused-appellant was only 0.115 gram and the extra plastic sachet that he had in his possession weighed 0.077 gram.<sup>33</sup> While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21 of R.A. No. 9165 as amended by R.A. No. 10640.<sup>34</sup> In *Malillin v. People*,<sup>35</sup> We said that the likelihood of tampering, loss or mistake, with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives<sup>36</sup> as in this case.

<sup>30</sup> Cross-examination of PO3 Edwin Yao, Transcript of Stenographic Notes dated November 3, 2016.

<sup>31</sup> *People v. Alon-alon*, G.R. No. 237803, November 27, 2019.

<sup>32</sup> See *People v. Wisco*, G.R. No. 237977, August 19, 2019.

<sup>33</sup> Records, p. 14.

<sup>34</sup> *People v. Dela Cruz*, G.R. No. 237776, June 29, 2020.

<sup>35</sup> G.R. No. 172953, 576 Phil. 576 (2008).

<sup>36</sup> *Id.* at 588.

Thus, the procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of accused-appellant's guilt beyond reasonable doubt, as the integrity and evidentiary value of the *corpus delicti* has been compromised. Withal, accused-appellant's acquittal is only proper.

**WHEREFORE**, the appeal is **GRANTED**. The February 13, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09650 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Lorenzo Dulay y Alura @ "Enzo". He is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

Let a copy of this Resolution be furnished to the Director-General of the Bureau of Corrections for immediate implementation. The Director-General of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Resolution. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgement be issued immediately.

**SO ORDERED."**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

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(Crim. Case No. 16-323572-73)

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The Superintendent  
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