



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 28, 2022, which reads as follows:

“G.R. No. 253563 (*People of the Philippines v. Danife Cruz y Garcia*).
— This resolves the appeal¹ filed by accused-appellant Danife Cruz y Garcia challenging the June 20, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10980, which affirmed the March 22, 2018 Judgment³ of the Regional Trial Court (RTC) of Taguig City, Branch 267 in Criminal Case No.18971-D-TG finding accused-appellant guilty of Illegal Sale of a Dangerous Drug, known as shabu, in violation of Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the Comprehensive Dangerous Act of 2002.

The Factual Antecedents

Accused-appellant was charged with violation of Sec. 5, 1st paragraph, Art. II of RA 9165 under the following Information:⁵

That on or about the 23rd day of January 2014, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer sixty two point eight six one one (62.8611) grams of Methamphetamine hydrochloride, commonly known as “Shabu,” a dangerous drug, in violation of the above-cited law.

¹ Rollo, pp. 25-27.

² CA rollo, pp. 132-153. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Rodil v. Zalameda and Jhosep Y. Lopez (now both Members of this Court).

³ Id. at 68-78. Penned by Judge Antonio M. Olivete.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁵ Records, pp. 1-2.

CONTRARY TO LAW.⁶

Upon arraignment, accused-appellant pleaded not guilty to the charge.⁷

The witnesses for the prosecution were Romeo Steve Conge (Conge), Intelligence Officer 1 Mabel Alejandro (Agent Alejandro), Agent Roy Castillo (Agent Castillo), Ding Bermudez (Bermudez), and Jerusalem Jordan (Jordan). The intended testimonies of Conge, Bermudez, and Jordan, being the forensic chemist, media representative, and elected public official, respectively, were stipulated upon by the parties that they did not have personal knowledge on the offense committed by accused-appellant and the illegal drug that was recovered from her. Agents Alejandro and Castillo testified in court.⁸ On the other hand, the defense presented accused-appellant and Abegail Garcia y Abreis (Abegail) as their witnesses.⁹

Version of the Prosecution

On January 23, 2014, at around 7:30 a.m., a confidential informant arrived at the office of the Philippine Drug Enforcement Agency (PDEA) in Camp Vicente Lim in Calamba City, Laguna to provide information about a certain “Boy” who was selling shabu in Bicutan, Taguig City. Agent Kathleen Diocampo (Agent Diocampo), the PDEA team leader of the said office, asked the informant whether he could introduce a female agent, who will act as poseur-buyer in a buy-bust operation to “Boy.” The informant agreed. He then told Agent Diocampo that “Boy” asked him to look for buyers of “shabu” worth ₱150,000.00.¹⁰

According to the informant, he had already made a prior arrangement with “Boy” on that same day. Agent Diocampo instructed him to call “Boy” to confirm the arrangement, and that he will introduce a “shabu” buyer to the latter. “Boy” told the informant that a certain “Danife,” who was later identified as herein accused-appellant, will meet with them. They agreed that the transaction would be held at around 8:00 p.m. on that day in Taguig City.¹¹

The informant informed Agent Diocampo that he knew accused-appellant because of past transactions he had conducted with her on behalf of “Boy.”¹²

Acting on the informant’s tip, Agent Diocampo organized a buy-bust team. She instructed the team to go to the area ahead of time for surveillance. Agent Alejandro was designated as the poseur-buyer, while Agents Castillo,

⁶ CA *rollo*, pp. 68-69.

⁷ Id. at 69.

⁸ Id.

⁹ Id. at 138.

¹⁰ Id. at 100.

¹¹ Id.

¹² Id.

Udollo and Asayton were designated as Agent Alejandro's back-up.¹³

The buy-bust team prepared the boodle money to be used in the transaction. One genuine ₱1,000.00-bill was marked with Agent Alejandro's initials "MCA" on its upper right portion and placed with the boodle money. The team agreed that Agent Alejandro will drop a handkerchief from the right back pocket of her pants to signal that the drug deal had been consummated.¹⁴

Before the team left their office, they sought clearance from the PDEA head office to operate outside their jurisdiction. Director Gladys F. Rosales granted them clearance. The team also coordinated with the head office regarding the intended buy-bust operation.¹⁵

The buy-bust team arrived at the target area in Lower Bicutan, Taguig City at around 7:30 p.m. The informant then called accused-appellant on his cellphone which was put on speaker mode. Accused-appellant told them to go to the 7-Eleven convenience store located in Lower Bicutan, Taguig City at around 8:00 p.m.¹⁶

Agent Alejandro and the informant proceeded to the meeting place on foot. The other members of the buy-bust team positioned themselves strategically so they can immediately respond to any eventuality. As Agent Alejandro and the informant were approaching the store, the latter told the former that accused-appellant was already waiting in front of the store.¹⁷

The informant introduced Agent Alejandro to accused-appellant as his friend who wanted to buy ₱150,000.00 worth of "shabu." Accused-appellant then asked about the money. Agent Alejandro opened the bag she was carrying to show her the money inside a brown paper bag. Satisfied, accused-appellant opened the pink purse she was holding and showed them a transparent plastic ice bag containing white crystalline substance that looked like "shabu." She then took out the suspected "shabu" from her purse and put it into Agent Alejandro's body bag. Accused-appellant asked for the payment. Agent Alejandro gave her the brown paper bag containing the buy-bust money. Before accused-appellant could discover that the payment consisted of boodle money, Agent Alejandro took out a handkerchief from her right back pocket and dropped it to the ground.¹⁸

Seeing the pre-arranged signal, the back-up officers rushed to where the transaction was taking place. Agent Castillo arrested accused-appellant and informed her of her rights. As he was putting handcuffs on her, she managed

¹³ Id. at 100-101.

¹⁴ Id. at 101.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 101-102.

to run away to the direction of another woman who was then in the store's vicinity. The two of them ran away together. The PDEA agents were able to catch up with accused-appellant and her companion, who was later identified as Abegail. Agent Castillo arrested and handcuffed them. The agents frisked them and were able to recover one heat-sealed transparent plastic sachet containing suspected "shabu" from Abegail.¹⁹

The buy-bust team waited for around 30 minutes in the area, in the event that "Boy" shows up but to no avail. Since the arrest of accused-appellant and Abegail was attracting onlookers because they were in a busy street with a lot of passersby, the buy-bust team decided to leave the area and return to their office at Camp Vicente Lim in Calamba City, Laguna.²⁰

Upon reaching their office, the members of the buy-bust team conducted an inventory of the seized items from accused-appellant and Abegail, in the presence of Bermudez who was a representative from the media, and *Barangay Kagawad* Jordan who was an elected public official. The illegal drug which accused-appellant sold to Agent Alejandro was marked with "MCA 1-23-14, while the illegal drug which was recovered from Abegail was marked with "MCA-1-1-23-14." Photographs were taken showing the presence of accused-appellant and the witnesses during the inventory. Photographs were also taken of the seized illegal drugs, the purse, and the buy-bust money. After the inventory, Agent Alejandro prepared the Request for Laboratory Examination of the confiscated illegal drugs, which were brought to the PDEA Laboratory for tests. Accused-appellant and Abegail were brought to Police Senior Inspector Dorothy Joy O. Callo, a medical doctor, to show that they did not sustain physical injuries during the arrest.²¹

After conducting laboratory tests on the suspected illegal drugs seized from accused-appellant and Abegail, Forensic Chemist Conge found them positive for the presence of methamphetamine hydrochloride or "shabu." He reduced his findings in Chemistry Report No. PDEA-4A-DD014-002 dated January 24, 2014.²²

Accused-appellant was thus charged with the crime of Illegal Sale of Dangerous Drugs, in violation of Sec. 5, 1st par., Art. II of RA 9165. On the other hand, Abegail was charged in a separate Information with Illegal Possession of Dangerous Drugs, in violation of Sec. 11, 2nd par., Art. II of RA 9165.²³

¹⁹ Id. at 102.

²⁰ Id.

²¹ Id. at 102-103.

²² Id. at 103.

²³ Id. at 137.

Version of the Defense

Accused-appellant denied the offense charged. She claimed that on January 23, 2014, she was in her house doing laundry when her sister, Abegail, sent her a text message asking if she could accompany her to the grocery store. She agreed and asked her cousin, Lean Joseph, to bring her to Abegail's place. They rode a motorcycle and upon arrival at Abegail's house, she knocked but no one answered. Thus, accused-appellant decided to go back home. As she was about to board the motorcycle, an individual suddenly held her shoulder and told her to go with him and his companions. Accused-appellant was then dragged from the motorcycle and forced to board a car. She was asked who her "amo" (boss) was, and she replied "sinong amo?" The car started moving and stopped along C5 road. After some time, a woman joined them and boarded Abegail beside accused-appellant. Accused-appellant and Abegail were then brought to an office in Calamba, Laguna where the persons who arrested them asked for money. As she and Abegail did not have money, both of them were detained.²⁴

Ruling of the Regional Trial Court

In the course of the trial, Abegail manifested that she wanted to enter into a plea bargaining agreement with the prosecution by pleading guilty to the crime of Use of Dangerous Drugs under Sec. 15, Art. II of RA 9165. The prosecution manifested its conformity thereto.²⁵

In view thereof, the former plea of "not guilty" of Abegail was withdrawn. She was re-arraigned and pleaded "guilty" to the charge of Use of Dangerous Drugs under Sec. 15, Art. II of RA 9165.²⁶

In an Order²⁷ dated February 21, 2018, the trial court pronounced judgment on Abegail to undergo drug rehabilitation in a government rehabilitation center specifically at the Mega Drug Abuse Treatment and Rehabilitation Center (Mega DATRC) in Fort Magsaysay, Laur, Nueva Ecija for a minimum period of six months.²⁸

On the other hand, in its March 22, 2018 Decision, the RTC found accused-appellant guilty of the offense charged, the *fallo* of which reads:

WHEREFORE, based on the foregoing dissertation of the court, the court finds accused DANIFE CRUZ Y GARCIA **GUILTY** beyond reasonable doubt of Violation of Section 5, 1st par., Article II of RA 9165 under **CRIMINAL CASE NO. 18971-D-TG** and judgment is hereby rendered that

²⁴ Id. at 136.

²⁵ Id. at 138.

²⁶ Id.

²⁷ Records, pp. 180-181.

²⁸ CA *rollo*, p. 139.

she suffer the penalty of **LIFE IMPRISONMENT** and **Fine** in the amount of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

x x x x

SO ORDERED.²⁹

Ruling of the Court of Appeals

Aggrieved with the trial court's ruling, accused-appellant filed an appeal. However, in its June 20, 2019 Decision, the appellate court affirmed the findings of the RTC, the dispositive portion of which reads:

WHEREFORE, the trial court's Judgment dated March 22, 2018 is affirmed in toto.³⁰

SO ORDERED.

Not in agreement with the appellate court's findings, accused-appellant filed the instant appeal. The defense points out that: (i) the prosecution failed to establish the identities of the seller and buyer during the alleged buy-bust operation;³¹ (ii) the prosecution failed to establish an unbroken chain of custody of the allegedly seized drugs and the apprehending team failed to comply with the procedure set forth in Sec. 21, Art. II of RA 9165, as amended by RA 10640. She points out that the inventory was conducted in Camp Vicente Lim, Calamba City, Laguna and not at the nearest police station where accused-appellant was arrested. Moreover, the apprehending officers failed to immediately mark the allegedly seized illegal drugs at the place of arrest, in violation of the procedure laid down in Sec. 21 of RA 9165;³² (iii) the forensic chemist failed to show the precautionary steps he undertook in order to preserve the integrity and evidentiary value of the seized item;³³ (iv) the prosecution failed to prove that the purported seized illegal drugs were actually weighed during the purported physical inventory. It failed to explain how the weight reflected in the Information charging accused-appellant with Illegal Sale of Dangerous Drugs were arrived at. The defense points out that even the Memorandum³⁴ dated January 24, 2014 which requested the conduct of laboratory examination failed to state the exact quantity of the seized illegal drugs turned over for testing.³⁵

²⁹ Id. at 78.

³⁰ Id. at 152.

³¹ Id. at 50-51.

³² Id. at 57.

³³ Id. at 60.

³⁴ Id. at 64.

³⁵ Id. at 64.

Issue

The fundamental issue in the instant case is whether accused-appellant is guilty beyond reasonable doubt for the offense charged against her.

Our Ruling

The appeal is meritorious.

In dangerous drugs cases, We have consistently held that “the confiscated dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction” beyond reasonable doubt.³⁶ Thus, the identity of the dangerous drug must be established beyond reasonable doubt.³⁷ In *People v. Siu Ming Tat*,³⁸ We underscored that such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that which was seized from him/her.

However, settled is the rule that establishing the elements of the offense of Illegal Sale of Dangerous Drugs alone is insufficient to secure a conviction under RA 9165.³⁹ In view of the unique characteristics of dangerous drugs which render them not readily identifiable, it is likewise essential to show that the identity and integrity of the seized drugs have been preserved.⁴⁰ Thus, We explained in *People v. Veedor, Jr.*⁴¹ that:

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug’s unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. **Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.**⁴² (*Emphasis in the original*)

Section 21, Article II of RA 9165 provides for the procedural safeguards that the apprehending team should observe in the handling of seized illegal

³⁶ *People v. Flores*, G.R. No. 220464, June 10, 2019.

³⁷ *People v. Sultan*, G.R. No. 225210, August 7, 2019.

³⁸ G.R. No. 246577, July 13, 2020.

³⁹ *People v. Sioson*, G.R. No. 242686, July 7, 2020.

⁴⁰ *People v. Miranda*, G.R. No. 218126, July 10, 2019.

⁴¹ 834 Phil. 88 (2018); see also *People v. Patricio*, 836 Phil. 509, 519 (2018).

⁴² *People v. Veedor, Jr.*, supra at 97-98.

drugs in order to preserve their identity and integrity or evidentiary value. "As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case."⁴³

In the instant case, RA 9165 is the law applicable since the alleged crime herein was committed on January 23, 2014, prior to its amendment by RA 10640 on July 15, 2014. The pertinent provisions of Section 21 of RA No. 9165 state:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) **The apprehending team** having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (*Emphasis supplied*).

Similarly, the Implementing Rules and Regulations (IRR) further elaborate on the proper procedure to be followed in Section 21 (a) of RA 9165. It states:

(a) The apprehending office/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team,** whichever is practicable, in case of warrantless seizures; Provided, further that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved** by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (*Emphasis supplied*).

⁴³ *People v. Balles*, 843 Phil. 771, 782 (2018); see also *People v. Nepomuceno*, 840 Phil. 356, 366 (2018).

Upon review of the records, this Court finds that the buy-bust team failed to strictly comply with the prescribed procedure under Sec. 21, par. 1, Art. II of RA 9165. The prosecution failed to show that earnest efforts were made to procure the attendance of the DOJ witness.

Sec. 21, Art. II of RA 9165 and its IRR mandate that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media AND the DOJ, and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media.⁴⁴ The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”⁴⁵

In the instant case, since the alleged act of accused-appellant was committed prior to the amendment of RA 9165, the physical inventory and taking of photographs of the seized items must be witnessed by three necessary witnesses (*i.e.*, any elected public official and representatives from the media and the DOJ).

In *People v. Lim*,⁴⁶ the Court ruled that, in case any of the necessary witnesses are not available, the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were exerted to secure their attendance. The Court explained —

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

⁴⁴ *People v. Ramos*, G.R. No. 243944, March 15, 2021.

⁴⁵ *People v. Mejia*, G.R. No. 241778, June 15, 2020.

⁴⁶ *People v. Lim*, G.R. No. 231989, September 4, 2018.



Earnest effort[s] to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced**. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁴⁷ (Emphasis in the original; citations omitted)

In this case, the physical inventory and the taking of photographs of the seized items were witnessed by media representative Bermudez of Press People and *Barangay Kagawad* Jordan.⁴⁸ Since there was no representative from the DOJ at that time, the rule on witnesses was not complied with. Thus, it was incumbent upon the prosecution to justify the absence of the DOJ representative and convince the Court that earnest efforts were exerted to secure his or her presence. Unfortunately, records show that no justification was offered by the prosecution. Neither did it show that earnest efforts were exerted to secure the presence of the DOJ representative. During the testimony of Agent Castillo, he narrated:

Prosecutor Hubilla

(Q): You also testified that no representative from the DOJ was present?

A: Yes, sir.

Q: Why was there no representative from the DOJ present when you conducted the inventory?

⁴⁷ Id. at 621-622.

⁴⁸ TSN, October 5, 2016, p. 11.

A: I cannot recall why our team leader, although we exhausted some means to communicate, I cannot recall the reason why there's no DOJ representative that appeared on the actual inventory.⁴⁹

In view of the failure of the prosecution to provide a justifiable reason for the noncompliance with Sec. 21, Art. II of RA 9165 which created doubt as to the integrity and evidentiary value of the seized items, the Court is constrained to acquit accused-appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The June 20, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 10980 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Danife Cruz y Garcia is **ACQUITTED** based on reasonable doubt.

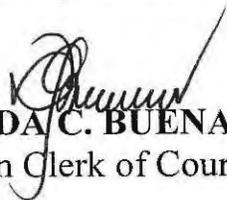
The Superintendent of the Correctional Institution for Women, Mandaluyong City, is **DIRECTED** to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another lawful cause, to inform the Court of the action taken hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

In view of the Resolution dated December 7, 2020 which noted the elevation of the complete records of CA-G.R. CR-HC No. 10980 by the Court of Appeals, Manila, the directive to elevate the same in the Resolution dated December 6, 2021 is **DISPENSED WITH**.

SO ORDERED." *Dimaampao, J., designated additional Member per Raffle dated September 13, 2022 vice Zalameda, J., who recused due to prior participation in the CA.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴⁹ Id. at 14.

The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 10980)

The Hon. Presiding Judge
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(Crim. Case No. 18971-D-TG)

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