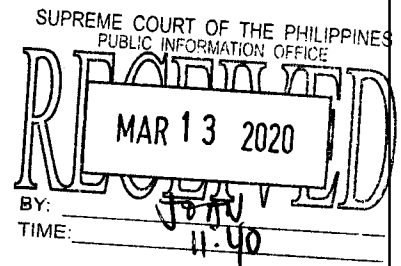




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 10, 2019 which reads as follows:

“G.R. No. 233335 - People of the Philippines v. Jubilee Tampus Y Sajulga

Before this Court is an appeal of the Decision¹ dated February 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01509, convicting Jubilee Tampus y Sajulga² (accused-appellant) of violation of Sections 5, 11, and 12 of Article II of Republic Act (R.A.) No. 9165.

The Antecedents

Three separate Informations were filed against accused-appellant for the crimes of illegal sale of dangerous drugs, illegal possession of dangerous drugs, and illegal possession of drug paraphernalia, to wit:

Criminal Case No. 15749³

That on or about December 1, 2011, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, [without] authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and give to its buyers one (1) sachet containing white crystalline substance known to be shabu weighing 0.10 [gram] in consideration of the amount of P500.00, Philippine Currency.

Contrary to and in Violation of Section 5, Article II of Republic Act 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

- over – fourteen (14) pages ...

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¹ Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring; *rollo*, pp. 3-26.

² Sometimes referred to as “Jubilee Tampus y Sajulga” in some parts of the *rollo*.

³ Records, Vol. 1, p. 1.

Criminal Case No. 15769⁴

That on or about December 1, 2011, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession custody and control one (1) pc. large size square shape heat sealed transparent plastic sachet containing white crystalline substance believe[d] to be shabu weighing 0.40 [gram] and three (3) pcs. medium size rectangular shape heat sealed transparent plastic sachet containing white crystalline substance believe(d) to be shabu weighing 0.10 [gram] each a dangerous drug.

Contrary to and in Violation [of] Section 11, Article II of Republic Act 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

Criminal Case No. 15770⁵

That on or about December 1, 2011, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession and under his control paraphernalia/instrument or equipment such as 1 pc. plastic sachet containing 3 pcs. rolled aluminum foil and 2 pcs. used lighter which he used and intended to use for administering or using methamphetamine hydrochloride or shabu which is a dangerous drug.

Contrary to and in Violation [of] Section 12, Article II of Republic Act 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant pleaded not guilty to all charges.⁶

It appears that at around 8:00 a.m., Agent Rubylyn Alfaro received a phone call, informing her that a certain "Juvang" of Purok 5, Saray, Iligan City, was selling illegal drugs. She then contacted the Regional Director, who instructed to form a team for a possible buy-bust operation.⁷

The team prepared the buy-bust money, marked as "MBC," to be used for the operation. Inspector Officer I Manuel Chacon, Jr. (IO1 Chacon) was designated as the poseur-buyer while Agent Samuel Salang II (Agent Salang) as the arresting officer.⁸

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⁴ Records, Vol. 2, p.1.

⁵ Records, Vol. 3, p.1.

⁶ *Rollo*, p. 6.

⁷ *Id.*

⁸ *Id.*

Upon reaching near the target area, IO1 Chacon and the confidential informant alighted from their vehicle and walked towards the house of the accused-appellant while the rest of the members of the team placed themselves in strategic positions.⁹

When they arrived at the house of accused-appellant, IO1 Chacon saw a woman, who is allegedly the girlfriend of accused-appellant. After a while, they saw the accused-appellant coming out of a room. The confidential informant introduced IO1 Chacon to accused-appellant and told the latter that IO1 Chacon wanted to buy *shabu*.¹⁰

Accused-appellant led the confidential informant and IO1 Chacon to his room. Inside, accused-appellant asked IO1 Chacon as to how much he wanted to buy, to which the latter responded that he wanted to buy *shabu* worth ₱500.00. IO1 Chacon handed the money to accused-appellant and in return gave him a sachet which he got from a dining plate.¹¹

Upon receipt of the sachet, IO1 Chacon got out of the room after confirming the contents of the sachet as *shabu*. Later on, he gave the pre-arranged signal which is a "missed call" to Agent Salang. Thereafter, the rest of the team rushed to the house of accused-appellant.¹²

As they arrived thereat, the team announced that they are Philippine Drug Enforcement Agency (PDEA) agents. Accused-appellant then ran to his room. When the agents were able to chase him, accused-appellant was immediately handcuffed and was informed of his violation. The *Miranda* rights was likewise pronounced to him.¹³

In plain view, the team saw a table in the corner; and on it was a plate with sachets of *shabu* and drug paraphernalia consisting of lighters, foils, and plastics. They likewise observed a large plastic sachet containing white crystalline substance.¹⁴

The accused-appellant was thereafter frisked by Agent Salang. The latter found marked money in accused-appellant's pocket. After

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⁹ Id at 6-7.

¹⁰ Id at 7.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

the same was confiscated, the team contacted a media representative and barangay officials to witness the marking and inventory of items.¹⁵

However, while these were on-going, IO1 Chacon left accused-appellant's house because he wanted to secure the confidential informant. After doing so, he went back to the house to conduct the inventory.¹⁶

IO1 Chacon inventoried the item which he bought from the accused-appellant inside the latter's room while Agent Salang inventoried the items found in plain view in the presence of the media representative and barangay officials.¹⁷

After the inventory, the team left the house and proceeded to the police station. IO1 Chacon was in possession of the item subject of the sale while Agent Salang was in possession of the items he seized after the arrest. Upon reaching the station, both IO1 Chacon and Agent Salang proceeded to separately request for a crime laboratory testing of the items. The items were received by PO2 Asola, receiving officer assigned at the Philippine National Police (PNP) Crime Laboratory.¹⁸

After examination, the seized plastic sachets tested positive for the presence of methamphetamine hydrochloride in a Report issued by PSupt. Mary Leocy Mag-abo, the Chief of the PNP Crime Laboratory.¹⁹

In his defense, the accused-appellant denied the accusations against him. He narrated that he did not know Agent Salang and IO1 Chacon and he saw them only when they arrested him as they suspected him of killing a PDEA agent.²⁰

In a Judgment²¹ dated March 9, 2016, the Regional Trial Court of Iligan City, Branch 4 (RTC) found accused-appellant guilty of the crimes charged. The RTC ruled on the validity of the buy-bust operation and the legality of accused-appellant's arrest. In holding so, the RTC gave credence to the testimonies of the PDEA agents who conducted the operation over the bare assertion of the accused-appellant that no buy-bust operation was ever conducted. Consequently, the arrest of the accused-appellant was valid as he was caught *in flagrante delicto*. The *fallo* thereof reads:

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¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 8.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Penned by Judge Arthur Abundiente; supra note 3, at 172-188.

WHEREFORE, premises considered, this Court hereby finds that:

1. In Criminal Case No. 15749, accused JUBILEE TAMPOS y SAJULGA a.k.a. "Juvang" is GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT, and to pay a Fine in the amount of P500,000.00 without subsidiary imprisonment in case of non-payment of Fine.

2. In Criminal Case No. 15769, accused JUBILEE TAMPOS y SAJULGA a.k.a. "Juvang" is GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby sentences him to imprisonment ranging from Twelve [12] years and one [1] day to thirteen [13] years and to pay a Fine in the amount of Three Hundred Thousand Pesos [P300,000.00] without subsidiary imprisonment in case of non-payment of Fine.

3. In Criminal Case No. 15770, accused JUBILEE TAMPOS y SAJULGA a.k.a. "Juvang" is GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 12, Article II of R.A. 9165, and hereby sentences him to imprisonment ranging from six [6] months to seven [7] months and to pay a Fine in the amount of Ten Thousand Pesos [P 10,000.00] without subsidiary imprisonment in case of non-payment of Fine.

His preventive detention starting December 1, 2011 shall be credited in full and shall be deducted from the term of his imprisonment, applying suppletorily the provision of Article 27 of the Revised Penal Code. Moreover, the said accused shall be entitled to good conduct time allowance, applying suppletorily the provision of Article 97 of the Revised Penal Code.

The illegal drugs and the drugs (sic) paraphernalia are hereby ordered confiscated it being an obnoxious substance to be destroyed in the manner prescribed by law.

Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that no man is above the law, and that crime does not pay. The pecuniary gain and benefit which one can enjoy from trading, selling or manufacturing or even by just merely possessing illegal drugs, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is arrested, prosecuted, convicted and penalized to the full extent of the law.

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SO ORDERED.²²

Consequently, accused-appellant filed an Appellant's Brief,²³ insisting that the seized items were products of the poisonous tree, considering the illegality of his arrest. In asserting so, the accused-appellant contended that the arresting officer has no knowledge of the alleged sale as he did not actually see the transaction which transpired between the accused-appellant and IO1 Chacon. The accused-appellant further assailed the non-compliance of the police officers with the chain of custody requirement under R.A. No. 9165 as one of the witnesses did not sign the Certificates of Inventory.

The People of the Philippines, through the Office of the Solicitor General filed its Appellee's Brief,²⁴ insisted that the conduct of the buy-bust operation was legitimate and accused-appellant's arrest as a result thereof is valid. The OSG maintained that the prosecution proved all the elements of the crimes as charged and that there was no break in the chain of custody as the integrity and evidentiary value of the seized drugs were preserved, considering the police officers' compliance with the requirements under Section 21, Article II of R.A. No. 9165.

In a Decision²⁵ dated February 28, 2017, the CA affirmed the ruling of the trial court. The CA reinforced the RTC's ruling that the arrest was valid as the accused-appellant was caught *in flagrante delicto*. Moreover, the CA explained that the chain of custody was unbroken as the police officers sufficiently expounded on each link to such chain. Thus:

WHEREFORE, the assailed Judgment dated March 9, 2016 of the Regional Trial Court of Iligan City, 12th Judicial Region, Branch 4, convicting appellant Jubilee Tampus y Sajulga for violation of Sections 5, 11, and 12, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 is AFFIRMED *in toto*.

SO ORDERED.²⁶

Hence, this appeal.

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²² Id.

²³ CA rollo, pp. 45-70.

²⁴ Id. at 83-112.

²⁵ Supra note 1.

²⁶ Id. at 25.

The Issue

Whether or not accused-appellant's guilt beyond reasonable doubt was established.

The Court's Ruling

In cases of illegal sale and illegal possession of dangerous drugs and illegal possession of drug paraphernalia, the identity and integrity of dangerous drugs and paraphernalia being the *corpus delicti* of the offense, must be duly preserved.²⁷ To achieve such purpose and to ensure that unnecessary doubts are removed, the chain of custody rule must be complied with.²⁸

Prior to its amendment, the chain of custody rule is found under Section 21, Article II of R.A. No. 9165, to wit:

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; x x x x

Simply put, the law requires that immediately after seizure and confiscation, the physical inventory and photograph of the seized items must be conducted in the presence of the accused or his representative. The law likewise demands the presence of three witnesses: (1) media representative; (2) DOJ representative; and (3)

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²⁷ *People of the Philippines v. Ismael*, 806 Phil. 21, 29 (2017).

²⁸ *People of the Philippines v. Tamaño*, 801 Phil. 981, 999 (2016).

any elected public official. The three-witness requirement negates the possibility of planting, switching or contamination of the evidence.²⁹

Although the letter of the law is mandatory, its Implementing Rules and Regulations appended a saving clause in case the procedure was not strictly followed, to wit:

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: (a) The apprehending officer/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;

In other words, the apprehending team's failure to faithfully comply with the procedural rules does not automatically render invalid the seizure and custody over the seized items as long as: (1) the integrity and the evidentiary value of the seized items are properly preserved; and (2) justifiable reasons must be proffered for such non-compliance. In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Sec. 21.³⁰

An examination of the records reveals that the chain of custody rule was not faithfully adhered to and that the application of the saving clause was not triggered.

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²⁹ *People of the Philippines v. Año*, G.R. No. 230070, March 14, 2018.

³⁰ *People of the Philippines v. De Vera*, G.R. No. 218914, July 30, 2018.

It is significant to note that when IO1 Chacon took the sachet from accused-appellant after the consummation of the sale, he stepped out of the room to secure the safety of the confidential informant. After which, he went back to the room to conduct the inventory of the seized item:

Q: And after that what happened next? (sic)

A: Alias Juvang asked me, how much shabu will I buy, sir.

Q: What did you tell him?

A: I told him I want to buy worth P500.00, sir, and I gave him the buy bust money, sir.

Q: You gave him the buy bust money?

A: Yes sir.

Q: So, after you gave the money to Alias Juvang what did Juvang do after that?

A: He got 1 sachet of white crystalline substance, sir in the dining plate and gave it to me.

x x x x

Q: So after you received the sachet of shabu from the accused, what happened next?

A: I examined the sachet of shabu, sir which I believed it was really a shabu and then we got out from the room and miscall Agent Salang, sir (sic)

x x x x

Q: So, after you give the miscall what transpired next? (sic)

A: The team rushed to the house of Alias Juvang, sir.

x x x x

Q: So when members of the team rushed to the area, what happened?

A: I was not able to see because I was going out and my other tasked (sic) is to secure the confidential informant, sir.

x x x x

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Q: So, after you secured the confidential informant, what did you do next?

A: After securing the confidential informant that was the time I went back to the house for the conduct of the inventory, sir.

Q: If you can still approximate (sic) how many minutes from the time you leave the house of the accused, Juvang up to the time you returned, how many minutes it will take you? (sic)

A: I cannot estimate how many minutes more or less, sir.

Q: Less than 10 minutes?

A: May be (sic) 10 to 15 minutes, sir.³¹

x x x x

From the foregoing, it is clear that from such time that he left the accused-appellant's room, the integrity of the seized item became questionable as there was no witness who could identify that the item subject of the inventory is indeed the same item recovered from the accused-appellant. The lapse of ten to fifteen minutes is sufficient to contaminate or switch the evidence.

Furthermore, it must be recalled that there were two Certificates of Inventory prepared by two different officers, IO1 Chacon for violation of Section 5 of R.A. No. 9165 concerning the item which he recovered from the accused-appellant; and Agent Salang for violation of Sections 11 and 12 of R.A. No. 9165 as the same deals with the items which he recovered after the conduct of the buy-bust operation:

x x x x

Q: In so far as you're concerned you conducted the inventory in so far as the sachet of shabu that you bought from the accused?

A: Yes, sir.

Q: And Salang conducted a separate the (sic) inventory in so far as those recovered items that he recovered from the accused, is that what you mean?

A: Yes, sir.³²

x x x x

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³¹ TSN, April 3, 2014, pp. 13-17.

³² TSN, April 3, 2004, p. 19.

However, in both instances, only one witness signed the inventory. In his testimony, IO1 Chacon narrated:

Q: When they arrested Juvang, that person Alias Juvang, did you confirm if it was the same person that you bought the sachet of shabu (sic)?

A: Yes, sir.

Q: So, you mean if that person that was arrested by your companion was the same person from whom you bought that sachet of shabu subject of this case for violation of Section 5?

A: Yes, sir.

Q: So, after that what happened inside when you returned back to the house of the accused?

A: When Kagawad came and media practitioner came to the house we conducted the inventory, sir.

Q: You conducted the inventory, who were those Barangay official and a certain media representative who arrived inside the house of the accused?

A: It was the late Barangay Kagawad, Ebale, sir.

Q: Rogelio Ebale?

A: Yes, sir.

Q: What about that media practitioner or representative?

A: I did not get his name, sir. I forgot, sir.³³

x x x x

Q: Was the Barangay Kagawad Ebale able to sign the Certificate of Inventory?

A: Yes, sir.

Q: What about the media man?

A: He was not able to sign it sir, because he walked away after the inventory was made, sir.³⁴

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³³ Id. at 17-18.

³⁴ Id. at 24.

More so, the identity of the media representative who allegedly witnessed the operation is uncertain. In the Certificate of Inventory³⁵ prepared by IO1 Chacon, there was no signature and name of the media representative as witness, while in the Certificate of Inventory³⁶ prepared by Agent Salang, the name "Rudy Apal" was written as a witness. However, when Rudy Apal testified in the RTC, he denied his participation in the buy-bust operation, to wit:

Q: I am showing to you these pictures already marked as Exhibits "K" to "K-5" and to be specific Mr. Witness may I refer to this picture already marked as Exhibit "K-3" PDEA Agent Patino when she was shown this picture positively identified this man wearing T-shirt colored orange with sling bag as Rudy Apal, will you still deny despite of the positive identification of the PDEA Agent that you are this person appearing in this picture?

A: I do not know, sir.

Q: So will you deny?

A: I do not know that, sir.

Q: Do you know Mr. Witness that you testified under oath so if you will be found out are not telling the truth you can be held liable to that?

A: I know, sir, but I am not telling a lie, sir.³⁷

x x x x

Noteworthy also is the fact that the alleged witnesses were invited only *after* the accused-appellant was frisked and items in his possession were confiscated and placed in the custody of the police officers.

On this note, it must be emphasized that the presence of the three witnesses must be obtained not only during the inventory but more importantly at the time of the warrantless arrest.³⁸ As explained in the case of *People of the Philippines v. Tomawis*, the importance of securing the witnesses at the time of the arrest goes into the preservation of the integrity of the seized items, *viz.*:

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of

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³⁵ Records, Vol.1, p. 13.

³⁶ Id. at 14.

³⁷ TSN, May 25, 2015, pp. 9-10.

³⁸ *People of the Philippines v. Tomawis*, G.R. No. 228890, April 18, 2018.

seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.³⁹

Considering the procedural blunders, the prosecution failed to prove the chain of custody requirement was complied with.

Neither can the prosecution find solace in the application of the saving clause, which would justify the deviation from the procedure provided by the law.

Significantly, no explanation was offered by the police officers as to their failure to secure a DOJ representative. Also, there was no justification as to why the witnesses were called in only after the buy-bust operation was consummated.

As the integrity and evidentiary value of the *corpus delicti* is compromised, the acquittal of the accused-appellant is deemed proper.

Laudable is the fight of the Government against drugs. Still and all, such war must be fought not against the dictates, but within the bounds of the law.

WHEREFORE, the appeal is hereby **GRANTED**. Accordingly, the Decision dated February 28, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01509 is **REVERSED** and **SET ASIDE**. The accused-appellant Jubilee Tampus y Sajulga is hereby **ACQUITTED**.

His immediate release from the National Penitentiary is hereby **ORDERED** unless there are other lawful causes warranting his continuing confinement thereat. The Director of the Bureau of Corrections is **DIRECTED** to implement the release of accused-appellant Jubilee Tampus Y Sajulga in accordance with this resolution, and to report on his compliance within ten (10) days from receipt.

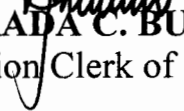
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³⁹ Id.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court for the
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The Hon. Presiding Judge
Regional Trial Court, Branch 4
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(Crim. Case Nos. 15749, 15769 & 15770)

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