



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **22 June 2020** which reads as follows:*

*“G.R. No. 228038 (Ricardo De Guzman y Balcueva v. People of the Philippines). – This is a Petition for Review on Certiorari<sup>1</sup> under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>2</sup> dated August 4, 2016 and the Resolution<sup>3</sup> dated October 28, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 34267. The assailed CA Decision affirmed with modification the Joint Decision<sup>4</sup> dated June 28, 2010 rendered by Branch 16, Regional Trial Court (RTC), Manila in Crim. Case Nos. 04-228384 and 04-228385 finding Ricardo De Guzman y Balcueva (petitioner) and his co-accused Aratuc Guiamadil y Pigiolo (Guiamadil) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.*

*The Antecedents*

The case stemmed from two separate Informations<sup>5</sup> filed before the RTC, Manila charging the petitioner with violation of Section 11, Article II of RA 9165. On motion of the prosecution, the two criminal cases were later consolidated. Upon arraignment, the petitioner and Guiamadil entered their respective pleas of not guilty to the offenses charged.

After the termination of the pre-trial, trial on the merits ensued.

<sup>1</sup> *Rollo*, pp. 14-33.

<sup>2</sup> *Id.* at 93-112; penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda (now a member of the Court) and Pedro B. Corales, concurring.

<sup>3</sup> *Id.* at 126-127.

<sup>4</sup> *Id.* at 54-60; penned by Presiding Judge Carmelita S. Manahan.

<sup>5</sup> Criminal Case Nos. 04-228384 and 04-228385 are for violation of Section 11, Article II of Republic Act No. (RA) 9165 or Illegal Possession of Dangerous Drugs. Records, pp. 2 and 11.

The prosecution established that on July 14, 2004, Police Inspector Oliver O. Lucero (P/Insp. Lucero) of Police Station 6, Sta. Ana Manila received a call from a concerned citizen, who reported that *shabu* was being sold by a certain "Datu" along Liwayway St. corner Sampaguita St., Sta. Ana, Manila.<sup>6</sup> In no time, P/Insp. Lucero formed a buy-bust team. At around 1:00 a.m. of July 14, 2004, the team proceeded to Liwayway St. corner Sampaguita St., Sta. Ana, Manila using a private car. Upon arrival thereat and while on board a tinted vehicle, the buy-bust team saw the petitioner and his co-accused Guiamadil standing beside a Meralco post. Police Officer II Jesus P. Menes (PO2 Menes) then noticed Guiamadil hand over a sachet to the petitioner. Suspecting that the petitioner and Guiamadil were in possession of prohibited drugs, the buy-bust team alighted from the vehicle and introduced themselves as police officers to the petitioner and Guiamadil.<sup>7</sup> PO2 Menes asked the petitioner to open his hand. Petitioner complied and the opened hand revealed one plastic sachet of white crystalline substance of suspected *shabu*. Immediately after confiscation of the plastic sachet, PO2 Leonardo Banda (PO2 Banda) arrested Guiamadil while PO2 Menes arrested the petitioner. When PO2 Banda frisked Guiamadil, he recovered another plastic sachet of white crystalline substance.<sup>8</sup> The police officers apprised the petitioner and Guiamadil their constitutional rights and brought them to Police Station 6 for investigation. In the police station, the items were marked as "RGB" and "AGB." PO2 Banda then brought the specimens to the crime laboratory where the contents of the seized plastic sachets were found positive for methamphetamine hydrochloride or *shabu*.<sup>9</sup>

The petitioner, who was then a rose vendor, interposed the defense of denial. He insisted that on July 14, 2004 at around 8:00 p.m., while he was on his way to a store to buy a cigarette, he chanced upon Guiamadil. They were talking with each other when the police officers in civilian clothes suddenly arrested them for alleged possession of illegal drugs. They then brought them to a police station where they were detained separately. The police officers ordered petitioner to undress in order to frisk him again; the police officers allegedly found a sachet of illegal drugs in his person. The petitioner denied having possession of the sachet and asserted that the police officers merely planted it.<sup>10</sup>

<sup>6</sup> *Rollo*, p. 55.

<sup>7</sup> *Id.* at 56.

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

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

<sup>10</sup> *Rollo*, p. 57.

As for Guiamadil, he jumped bail; thus, he was tried *in absentia*.

*The Ruling of the RTC*

In the Joint Decision<sup>11</sup> dated June 28, 2010, the RTC found the petitioner and Guiamadil guilty beyond reasonable doubt of illegal possession of *shabu* and sentenced each of them to suffer the penalty of six (6) years, one (1) day, and eight (8) years, and to pay a fine of ₱100,000.00.<sup>12</sup>

Aggrieved, the petitioner appealed to the CA. He argued: (1) that the RTC erred in convicting him despite the prosecution's failure to prove with moral certainty the identity of the allegedly seized prohibited drugs;<sup>13</sup> (2) that the police officers blatantly disregarded the procedural requirements under RA 9165;<sup>14</sup> and (3) that the testimony of prosecution witness PO2 Banda was riddled with inconsistencies.<sup>15</sup>

On the other hand, the People through the Office of the Solicitor General (OSG) asserted that all the elements of illegal possession of *shabu* are present. The OSG stressed that the prosecution was able to establish an unbroken chain of custody over the plastic sachets of illegal drugs. It asseverated that the fact that no written inventory report was presented in evidence before the RTC did not result in an unbroken chain of custody.<sup>16</sup> Moreover, the OSG highlighted that the absence of photograph and the witnesses required under Section 21, Article II of RA 9165 are not fatal as they do not render the petitioner's arrest illegal and the evidence adduced against him inadmissible.<sup>17</sup>

*The Ruling of the CA*

On August 4, 2016, the CA denied the appeal for lack of merit. The CA ratiocinated that all the elements of the crime charged were proven beyond reasonable doubt.<sup>18</sup> The CA likewise ruled that noncompliance of Section 21, Article II of RA 9165 is not fatal and shall not render void and invalid the seizure and custody of the seized items

<sup>11</sup> *Id.* at 54-60.

<sup>12</sup> *Id.* at 60.

<sup>13</sup> *Id.* at 43.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 49.

<sup>16</sup> *Id.* at 73.

<sup>17</sup> *Id.* at 76.

<sup>18</sup> *Id.* at 107.

from the petitioner as long as the integrity and evidentiary value of the seized items are properly preserved.<sup>19</sup> As regards the penalty, the CA modified it and imposed upon the petitioner the imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of ₱300,000.00.<sup>20</sup>

The petitioner filed a Motion for Reconsideration,<sup>21</sup> which the CA denied in its assailed Resolution<sup>22</sup> dated October 28, 2016.

Hence, the instant petition.

The OSG filed its Comment<sup>23</sup> on August 31, 2017. In its Comment, the OSG reiterates that the prosecution was able to establish an unbroken chain of custody of the illegal drugs confiscated from the petitioner and Guiamadil.<sup>24</sup> Likewise, the OSG maintains that all the elements of the crime charged were proven by the prosecution beyond reasonable doubt.<sup>25</sup>

In the Resolution<sup>26</sup> dated October 17, 2018, the Court required the parties to submit their respective Memoranda within 30 days from notice thereof. On March 27, 2019, the respondent through the OSG filed its Memorandum.<sup>27</sup> On the other hand, the petitioner filed his Memorandum<sup>28</sup> on April 1, 2019.

### *Our Ruling*

The Court grants the petition.

The main issue in this case hinges on the determination of whether or not the elements of illegal possession of dangerous drugs were all satisfied and whether the integrity and evidentiary value of the sachet containing *shabu* were duly preserved by complying with the requirements provided under Section 21, Article II of RA 9165.

<sup>19</sup> *Id.* at 108.

<sup>20</sup> *Id.* at 111-112.

<sup>21</sup> *Id.* at 113-119.

<sup>22</sup> *Id.* at 126-127.

<sup>23</sup> *Id.* at 141-162.

<sup>24</sup> *Id.* at 149-150.

<sup>25</sup> *Id.* at 158.

<sup>26</sup> *Id.* at 226-227.

<sup>27</sup> *Id.* at 239-261.

<sup>28</sup> *Id.* at 267-280.

The petitioner was charged with the violation of Section 11, Article II of RA 9165. In any criminal prosecution, the accused is entitled to a right to be presumed innocent unless proven guilty beyond reasonable doubt. It is enshrined in our Constitution, under Section 14, paragraph 2, Article III, that the accused shall be presumed innocent until the contrary is proved. In addition, Section 2, Rule 133 of the Rules of Court specifically mandates that “[i]n a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt.”

In deciding cases involving minuscule amounts of illegal drugs, as in the case at bar, courts are reminded to exercise a higher level of scrutiny.<sup>29</sup> The Court has mandated that there should be stricter compliance with the rules when the amount of the dangerous drug is minute due to the possibility that the seized item was tampered.<sup>30</sup> The Court is aware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.<sup>31</sup> The Court has repeatedly been issuing warnings to trial courts to exercise extra vigilance in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.<sup>32</sup>

Here, what is involved is a total of 0.041 gram of methamphetamine hydrochloride or *shabu*, an illegal drug. Thus, the Court has more reason to strictly apply the rules on chain of custody, markings, and inventory due to the possibility that the subject illegal drugs are products of planting or substitution and that they can easily be contaminated or tampered while being passed upon from one hand to another.

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.<sup>33</sup> To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from

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<sup>29</sup> *People v. Tumangong*, G.R. No. 227015, November 26, 2018, citing *People v. Caiz*, 70 Phil. 183, 209-210 (2016).

<sup>30</sup> *Id.*

<sup>31</sup> *People v. Bricero*, G.R. No. 218428, November 7, 2018, citing *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

<sup>32</sup> *Id.*, citing *Sales v. People*, 602 Phil. 1047, 1053 (2009).

<sup>33</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *United States v. Rawlins*, 606 F. 3d 73 (2010).

which to conclude that the evidence is what the party claims it to be.<sup>34</sup> In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be.<sup>35</sup> Specifically, in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.<sup>36</sup>

In prosecutions involving narcotics, the narcotic substance 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.<sup>37</sup>

In *People v. Guerrero*,<sup>38</sup> the Court cautioned:

“[B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.” Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded. (Emphasis and underscoring omitted.)

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>39</sup>

In cases involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti*, thus, its identity and integrity must be

<sup>34</sup> *Id.*

<sup>35</sup> *People v. Lim*, *supra* note 33.

<sup>36</sup> Citations omitted, *People v. Lim*, *supra* note 33.

<sup>37</sup> *People v. Malabanan*, G.R. No. 241950, April 10, 2019, citing *People v. Suan*, 627 Phil. 174, 188 (2010).

<sup>38</sup> G.R. No. 228881, February 6, 2019, citing *People v. Supat*, G.R. No. 217027, June 6, 2018, 865 SCRA 45.

<sup>39</sup> *People vs. Punzalan*, 773 Phil. 72, 90 (2015), citing *People v. Lagahit*, 746 Phil. 896, 907-908 (2014).

shown by the State to have been preserved.<sup>40</sup> Consequently, the prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of *corpus delicti*.<sup>41</sup> Hence, the necessity of observing the chain of custody requirement under Section 21, Article II of RA 9165, and its Implementing Rules and Regulations (IRR). These specific procedural requirements must be followed by the law enforcers and the prosecution must adduce evidence that they have been observed in proving the elements of the defined offense. The intention of the law is to prevent abuse by the law enforcers who have all the power and control during an operation.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002 which implements RA 9165, defines chain of custody as follows:

Section 1. *Definition of Terms.* — x x x

- b. "Chain of Custody" means the *duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage*, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such records of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and the time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition (Italics supplied.)

The purpose of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.<sup>42</sup> To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.<sup>43</sup> This includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would

<sup>40</sup> *Casona v. People*, 818 Phil. 76, 85 (2017).

<sup>41</sup> *Id.*

<sup>42</sup> See *People v. Alboka*, 826 Phil. 487, 502 (2018), citing *People v. Ismael*, 806 Phil. 21, 29 (2017); *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484, 497.

<sup>43</sup> *People v. Belmonte*, G.R. No. 224588, July 4, 2018, 871 SCRA 17, 42-43, citing *People v. Arposeple*, 821 Phil. 340, 367 (2017).

describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.<sup>44</sup> These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.<sup>45</sup>

In *People v. Sipin*,<sup>46</sup> the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>47</sup>

To ensure the establishment of the chain of custody, Section 21 (1), Article II of RA 9165 specifies that:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plants Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — x x x:

- (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;

Complementing the foregoing rule, Section 21 (a) of the IRR of RA 9165 provides:

<sup>44</sup> *Mallillin v. People*, 576 Phil. 576, 587 (2008), citing Evidence Law, Roger C. Park, David P. Leonard, Steven H. Goldberg, 1998, 610 Opperman Drive, St. Paul, Minnesota, p. 507.

<sup>45</sup> *Id.*

<sup>46</sup> G.R. No. 224290, June 11, 2018, 866 SCRA 73.

<sup>47</sup> *Id.* at 86, citing *People v. Amaro*, 786 Phil. 139, 148 (2016) and *People v. Mammad*, 769 Phil. 782, 790 (2015).



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.* — x x x:

- (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. (Emphasis supplied.)

On August 7, 2014, RA 10640<sup>48</sup> became effective amending RA 9165 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.* — x x x

- (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 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: x x x; (Emphasis supplied.)

<sup>48</sup> An Act to Further Strengthen the Anti-Drug Campaign of the Government Amending For The Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

From the foregoing rules, it is evident that as part of the chain of custody, the law requires that the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure, although jurisprudence recognized that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>49</sup> Moreover, the law directs that the inventory and photography be done in the presence of the accused 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 Department of Justice (DOJ), *and* any elected public official;<sup>50</sup> or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.<sup>51</sup>

Before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>52</sup>

Here, the prosecution utterly failed to prove the *corpus delicti* of the offense charged. Evidently, the prosecution failed to show and prove the first element of illegal possession of dangerous drugs that the petitioner is in possession of an item or object which is identified to be a prohibited drug. The police officers ignored the requirements provided under Section 21, Article II of RA 9165. They violated the chain of custody by failing to conduct an inventory and photography of the seized drugs as required by the law. Not a single document was presented by the prosecution showing that the buy-bust team conducted an inventory and photography of the illegal drugs allegedly confiscated from the petitioner. No certificate of inventory was presented to prove that the buy-bust team complied with Section 21, Article II of RA 9165 and to avoid any suspicion whether the petitioner was indeed in possession of an object identified as dangerous drugs.

<sup>49</sup> *People v. Alconde*, G.R. No. 238117, February 4, 2019, citing *People v. Mamalumpon*, 767 Phil. 845, 855 (2015).

<sup>50</sup> Section 21(1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>51</sup> Section 21(1), Article II of RA 9165, as amended by RA 10640.

<sup>52</sup> *People vs. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 318.

Likewise, there is no statement from the testimonies of the members of the buy-bust team that an inventory and photography was conducted in the presence of the required witnesses. Worse, the prosecution did not even bother to explain why an inventory and photography of the seized evidence was not made. Indeed, the very identity of the subject *shabu* cannot be established with certainty by the testimony alone of the members of the buy-bust team. The prosecution utterly failed to prove the first link in the chain of custody. Indubitably, the element of the identity of the drugs as object of the illegal possession was put into serious doubt.

There is no doubt that the petitioner should be acquitted.

By failing to follow even the simplest inventory and photography requirements under Section 21, Article II of RA 9165 and the submission of chain of custody form, the police officers cannot be presumed to have regularly exercised their duties during the entire operation. The blatant violations committed by the agents of the law cannot be countenanced. Otherwise, the Court will be giving the law enforcers a license to abuse their power and authority, defeating the purpose of the law, violating human rights, and eroding the justice system in this country.

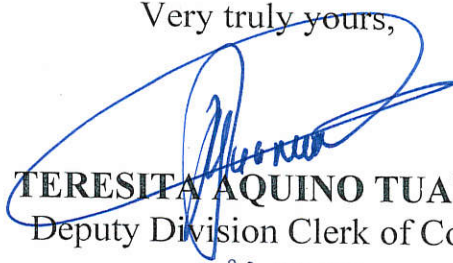
All told, considering that no inventory and photography were ever conducted, no proof of chain of custody was forwarded, and that the prosecution evidence utterly failed to overcome the presumption of innocence of the petitioner, the Court cannot, but acquit him on the ground of reasonable doubt.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated August 4, 2016 and the Resolution dated October 28, 2016 of the Court of Appeals in CA-G.R. CR No. 34267 are **REVERSED** and **SET ASIDE**.

Petitioner Ricardo De Guzman y Balcueva is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in the offense charged. Let entry of judgment be issued immediately.

**SO ORDERED.**" (GAERLAN, J., designated as additional member, per Special Order No. 2780 dated May 11, 2020, on leave).

Very truly yours,



**TERESITA AQUINO TUAZON**  
Deputy Division Clerk of Court *auc 829*  
28 AUG 2020

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