



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** which reads as follows:*

“G.R. No. 247275 (People of the Philippines, Plaintiff-Appellee, v. Danny Macadar y Saumay and Sairah Abdulgafor y Maurak, Accused, Danny Macadar y Saumay, Accused-Appellant).
- This appeal¹ seeks to set aside and reverse the Decision² dated 28 January 2019 of the Court of Appeals (CA) in CA G.R. CR-HC No. 01756-MIN, affirming the Consolidated Judgment³ dated 26 June 2017 rendered by Branch 40, Regional Trial Court (RTC) of Cagayan de Oro City, particularly in Criminal Case No. 2013-533. The RTC found Danny S. Macadar (appellant) and Sairah M. Abdulgafor (Sairah) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellant and Sairah were charged with illegal sale and illegal possession of *shabu* in three (3) separate Informations:

Crim. Case No. 2013-532

Accused Danny S. Macadar is charged in Crim. Case No. 2013-532 with violation of Section 11, Article II of R.A. 9165, under Information dated 24 April 2013, which states as follows:

That on or about the 22nd of April, 2013 at around 4:30 o'clock in the afternoon, at Barangay Barra, Municipality of Opol, Province of Misamis

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¹ See Notice of Appeal dated 20 February 2019; *rollo*, pp. 19-21.

² *Rollo*, pp. 4-18. Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Evalyn M. Arellano-Morales and Florencio M. Mamaug, Jr. of the Court of Appeals, Cagayan de Oro Station,

³ *CA rollo*, pp. 40-55; penned by RTC Judge Ma. Corazon B. Gaité-Llanderal.

Oriental and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody, and control, one (1) heat-sealed plastic packets containing white crystalline substance with a total weight of 0.10 grams; which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

Contrary to and in violation of Art. II Section 5 [sic] of RA 9165.

Crim. Case No. 2013-533

Accused Danny S. Macadar and Sairah M. Abdulgafor are charged in Crim. Case No. 2013-533 with violation of Section 5, Article II of R.A. 9165, under Information dated 24 April 2013, which states as follows:

That on or about the 22nd of April, 2013 at around 4:30 in the afternoon, at Barangay Barra, Municipality of Opol, Province of Misamis Oriental and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other, not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another, 0.62 grams of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride known as "shabu", a dangerous drug, after receipt of P2,500.00 bill buy bust money.

Contrary to and in violation of Art. II Section 5 of RA 9165.

Crim. Case No. 2013-534

Accused Sairah M. Abdulgafor is charged in Crim. Case No. 2013-534 with violation of Section 11, Article II of R.A. 9165, under Information dated 24 April 2013, which states as follows:

That on or about the 22nd of April, 2013 at around 4:30 o'clock in the afternoon, at Barangay Barra, Municipality of Opol, Province of Misamis Oriental and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his [sic] possession, custody, and control, one (1) heat-sealed plastic packets containing white

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crystalline substance with a total weight of 2.07 grams; which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

Contrary to and in violation of Art. II Section 11 of RA 9165.⁴

Upon arraignment, both accused pleaded not guilty to the crimes charged. After pre-trial terminated, trial on the merits ensued.

Version of the Prosecution

On 22 April 2013, at around 1:30 P.M., a confidential informant reported to the Philippine Drug Enforcement Unit (PDEA) – Region 10 that a certain “Danny” was engaged in the illegal sale of *shabu* in Vamenta Subdivision, Barra, Opol. The PDEA Regional Director then formed a team to conduct a buy-bust operation composed of IO2 Vincent Cecil Orcales (IO2 Orcales) as team leader, IO3 Rubietania Aguilar (IO3 Aguilar) as poseur-buyer, IO1 John Romy Echeveria (IO1 Echeveria) as arresting and seizing officer, and other members of the PDEA Special Enforcement Team (agents De la Cerna, Ancheta and Tacal) as backup officers. After the briefing, the team proceeded to the target area.

The informant and IO3 Aguilar went to the house of appellant while the rest of the team positioned themselves nearby. Upon being called by the informant, appellant came out of the house and invited the informant and IO3 Aguilar inside. The informant introduced IO3 Aguilar as the buyer, and when asked by appellant how much *shabu* she would buy, IO3 Aguilar replied Php2,500.00. Appellant told her that he only had Php500.00 worth of *shabu* on hand but that he knew someone who had available *shabu*. He then called Sairah, who came out from the second room in the house. Appellant and Sairah conversed briefly in Maranaw dialect. Thereafter, Sairah asked the money from IO3 Aguilar, who handed to her Php2,500.00 Sairah told them to wait and went back inside the second room.

When Sairah returned, she handed to IO3 Aguilar a sachet of *shabu*. After leaving the house, IO3 Aguilar immediately made a “missed call” to IO1 Echeveria, to signify that the transaction had been consummated. The team then proceeded inside the house where they arrested appellant. Sairah tried to escape but she was chased and caught by the team in the adjacent house. IO3 Aguilar searched Sairah

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⁴ *Id.* at 40-41.

and recovered another sachet of *shabu* in her pants. After the search, they went back to the house of appellant. Appellant was frisked which yielded a small sachet of *shabu*. Agent Tacal then contacted *Barangay Kagawad* Baba, who later arrived together with a media representative. The PDEA team recovered three (3) other plastic sachets containing traces of *shabu* and one (1) electric heat sealer.

In the presence of *Barangay Kagawad* Baba, a media representative, appellant, and Sairah, the seized items were marked and inventoried. Aside from conducting the physical inventory, the team also took photographs at the crime scene. The team then brought appellant and Sairah to the PDEA office for further documentation and investigation. At the office, IO2 Orcales prepared the requests for laboratory examination, which he brought together with the confiscated sachets to the PNP Crime Laboratory for qualitative examination. Forensic Chemist Dina Unito (Unito) received the request and specimens. After examining the specimens, Unito found them positive for methamphetamine hydrochloride or *shabu*.

Version of the Defense

The defense presented the testimony of both appellant and Sairah. Sairah claimed that in the afternoon of 22 April 2013, she saw armed men outside her house. When they demanded entry, Sairah opened the door and the armed men went inside and searched her house. The men then brought something to her and asked her what it was, and when she told them it was salt, they continued to search her house. Thereafter, she was brought to the adjacent house owned by appellant, who was being mauled. A female media representative then approached her and asked why she was in appellant's house. Sairah was later brought to the PDEA office where they interrogated her about the people involved in drug pushing at Vamenta Subdivision. Sairah denied that she sold *shabu* or that she was found in possession of *shabu*.

Appellant testified that at 4:30 p.m. on 22 April 2013, he was asleep inside the house owned by his brother Alex in Barra, Opol. He was awakened when two (2) armed men went inside the room and ordered him to lie face down on the floor. They then handcuffed him and frisked his body, but did not recover anything from him. When he asked them why he was being handcuffed, they did not answer and continued to search the room. He was then brought outside the room where one (1) of the men punched him. Later, some persons came inside the house, including a handcuffed Sairah, who is the wife of his

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brother. Sairah and his brother lived in the house adjacent to the house where appellant was staying. A media representative then arrived and interviewed them. Thereafter, appellant and Sairah were brought to the PDEA office where they were detained in separate cells. Appellant denied that he sold *shabu* or that he was found in possession of *shabu*.

Ruling of the RTC

On 26 June 2017, the RTC rendered the Consolidated Judgment, the dispositive portion of which reads:

WHEREFORE, all the foregoing considered, the court rules as follows:

1. In **Crim. Case No. 2013-533**, the court finds accused **Danny S. Macadar and Sairah M. Abdulgafor** **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5, Article II, of R.A. 9165. They are hereby sentenced to suffer the penalty of **life imprisonment** and to pay a fine in the amount of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)** each, without subsidiary imprisonment in case of insolvency;
2. In **Crim. Case No. 2013-534**, the court **ACQUITS** accuse **Sairah M. Abdulga** for of the crime of Violation of Section 11, Article II of R.A. 9165, for failure of the prosecution to prove her guilt beyond reasonable doubt; and
3. In **Crim. Case No. 2013-532**, the court **ACQUITS** accused **Danny S. Macadar** of the crime of Violation of Section 11, Article II of R.A. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.⁵

The trial court found the testimony of the police officers worthy of full faith and credit, stressing that their testimony carries the presumption of regularity in the performance of official function. It quoted its previous ruling in its Resolution denying the Demurrer to Evidence, that the prosecution has sufficiently established the illegal sale of *shabu* through the testimony of the poseur buyer, IO3 Aguilar, who identified in open court the sachet of *shabu* that was the subject of the buy-bust operation. Moreover, the denial and negative assertions of the accused cannot prevail over the positive testimonies of credible witnesses.

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⁵ *Id.* at 54.

Both appellant and Sairah, however, were acquitted in the separate charges of illegal possession of dangerous drugs against them. Apparently, the sachets of *shabu* recovered from appellant and Sairah when they were frisked which were marked by IO3 Echeverri were not presented in court since these were destroyed by the fire that gutted the Hall of Justice of Cagayan de Oro City on 30 January 2015. Thus, IO3 Echeverria no longer had the opportunity to identify in court the sachets of *shabu* that were allegedly seized from appellant and Sairah. Absent this identification by IO3 Echeverria, the trial court concluded that the prosecution has not proven with “unwavering exactitude” that the sachets of *shabu*, which could no longer be presented in court, were the exact same sachets of *shabu* recovered from both the accused.

Ruling of the CA

The CA affirmed the RTC judgment, ruling that all the elements of illegal sale of dangerous drugs were proven by the prosecution: (1) identity of the buyer and the seller, the object and the consideration; and (2) delivery of the thing sold and the payment. The credible testimony of IO3 Aguilar clearly established that the illegal drugs or *shabu* worth Php2,500.00 was sold and delivered to the poseur-buyer, IO3 Aguilar, by the sellers, appellant and Sairah, who conspired with one another in selling the *shabu*.

In this case, appellant’s conspiracy with Sairah in the sale of illegal drugs was alleged in the Information. Moreover, conspiracy was clearly established when appellant informed the poseur-buyer during the buy-bust operation that he only had *shabu* worth Php500.00, thus prompting him to call Sairah to consummate the transaction for the sale of *shabu* worth Php2,500.00.

The CA also found that the PDEA agents complied with the proper procedure in the custody and disposition of the seized *shabu* and that the identity of the same had been duly preserved and its chain of custody was properly established by the prosecution. As regards appellant’s argument that IO3 Aguilar’s testimony was not corroborated since the prosecution failed to present the confidential informant, the CA ruled that the presentation of an informant as a witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. Besides, the informant is generally not presented in court for security reasons and to protect the informant’s identity in deference to his invaluable services to law enforcement. The CA also upheld the presumption of regularity in the

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performance of official duties by the police officers, especially since appellant failed to adduce evidence that the PDEA agents harbored ill motives as to falsely incriminate him and Sairah.

It is noted that only appellant appealed the case to the CA. Appellant's co-accused, Sairah, did not file an appellant's brief and her appeal for illegal sale of drugs was deemed abandoned and dismissed by the CA in a Minute Resolution dated 22 March 2018.⁶

Issue

Whether or not the CA erred in affirming appellant's conviction of illegal sale of dangerous drugs under RA 9165.

Ruling of Court

We find the appeal meritorious.

Appellant primarily anchors his appeal on the absence of a representative from the National Prosecution Service during the inventory, and arguing that the apprehending team failed to comply with the mandatory presence of the insulating witnesses during seizure and confiscation of drugs.

For a successful prosecution of an offense involving the illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁷ Moreover, the identity of the dangerous drugs, which constitute the *corpus delicti* of the offense, must be established beyond reasonable doubt to ensure that the dangerous drug presented in court against the accused is the exact same drug retrieved from him during the buy-bust operation.⁸ Failure to prove the identity and integrity of the *corpus delicti* will render the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, which warrants the acquittal of the accused.⁹

The Information on the illegal sale of dangerous drugs states that the crime was committed on 22 April 2013. Thus, the governing

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⁶ *Id.* at. 116.

⁷ *People v. Jaime*, G.R. No. 232083, 27 November 2019; *People v. Sagana*, G.R. No. 208471, 02 August 2017, 815 Phil. 356 (2017) [Per J. Leonen].

⁸ *People v. Sali* (Resolution), G.R. No. 236596, 29 January 2020 [Per CJ Peralta]; *Edangalino v. People*, G.R. No. 235110, 08 January 2020 [Per CJ Peralta].

⁹ *People v. Esguerra*, G.R. No. 243986, 22 January 2020 [Per J. Perlas-Bernabe].

law is Section 21 of RA 9165, prior to its amendment in 2014 by RA 10640.¹⁰ Section 21, paragraph 1 of RA 9165 reads:

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:

(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)

This provision is expounded in Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165, which provides:

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**

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¹⁰ 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". Effective 30 July 2014. Under RA 10640, the conduct of physical inventory and the photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

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)

Clearly, under the original provision of Section 21 of RA 9165 and its IRR, the apprehending officer/team is required to immediately conduct a physical inventory and photograph the confiscated drugs in the presence of: (1) accused or his counsel or representative; (2) a representative from the media; (3) a representative from the DOJ; and (4) any elected public official, who shall all be required to sign the copies of the inventory and be given a copy thereof. This means that the three (3) witnesses, aside from the accused, should already be physically present at the time of the conduct of the physical inventory of the seized items, which must be immediately done at the place of seizure and confiscation.¹¹ The presence of the three (3) witnesses, aside from the accused, was intended as a guarantee against planting of evidence and frame up and to avoid any taint of irregularity in the apprehension and incrimination proceedings.¹²

In case of deviation from compliance with the required witnesses under Section 21 of RA 9165, the prosecution must allege and prove that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reasons 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[s] 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

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¹¹ *People v. Dumanjug*, G.R. No. 235468, 01 July 2019 [Per J. Caguioa].

¹² *People v. Ramos*, G.R. No. 236455, 19 February 2020 [Per CJ Peralta].

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.¹³

In this case, although the marking and inventory of the seized items were done at the place of the arrest, only the accused, a *barangay kagawad* and a media representative were present. No representative from the DOJ witnessed the inventory. The prosecution offered no explanation or justification for the absence of the DOJ representative. Further, it was only after the seizure of the illegal drugs that the apprehending team contacted the *barangay kagawad*, who later arrived with a media representative. As testified by IO3 Aguilar, after appellant Danny was frisked, agent Tacal contacted Kagawad Baba, who later arrived with a media representative. Thereafter, the team conducted the inventory and photographing in the area.

The presence of the required witnesses provided under Section 21 of RA 9165 is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation.¹⁴

Clearly, the apprehending team failed to follow the procedure laid down in Section 21(1), Article II of RA 9165, without the presence of any of the justifying grounds therefor. It should be emphasized that the prosecution has the burden of proving a valid cause for noncompliance with the procedure provided under Section 21 of RA 9165. In this case, there was no genuine and sufficient attempt to comply with the requirements of Section 21 of RA 9165.

Lastly, the unjustified non-compliance with the required procedure under Section 21 of RA 9165 and the IRR renders inoperative the presumption of regularity in the performance of official duties by the police officers.¹⁵ The presumption applies when

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¹³ *People v. Lim*, G.R. No. 231989, 04 September 2018, citing *People v. Sipin*, G.R. No. 224290, 11 June 2018 [Per J. (now CJ) Peralta].

¹⁴ *People v. Merando*, G.R. No. 232620, 05 August 2019 [Per J. Leonen].

¹⁵ *People v. Jodan*, G.R. No. 234773, 03 June 2019 [Per J. (now CJ) Peralta].

there is nothing on record to show that the law enforcers deviated from the conduct of official duty required by law,¹⁶ which is not the case here.

There being no justifiable reason in this case for the non-compliance of Section 21 of RA 9165, the Court is constrained to acquit accused-appellant on account of the prosecution's failure to prove his guilt beyond reasonable doubt.

Additionally, appellant's co-accused in this case, Sairah, must also be acquitted although she failed to appeal the RTC judgment before the CA. Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, provides:

Section 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter.** (Emphasis supplied)

Accordingly, a favorable judgment, as in this case, shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another, the conviction became final and executory.¹⁷ Thus, the acquittal of appellant Danny Macadar from the crime charged is likewise applicable to his co-accused, Sairah Abdulgafor.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 28 January 2019 of the Court of Appeals in CA G.R. CR-HC No. 01756-MIN, affirming the Consolidated Judgment of Branch 40, Regional Trial Court of Cagayan de Oro City in Criminal Case No. 2013-533, is **REVERSED** and **SET ASIDE**. Accused-appellant **DANNY MACADAR y SAUMAY** and his co-accused **SAIRAH ABDULGAFOR y MAURAK** are **ACQUITTED** on the ground of reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. 9165. They are **ORDERED IMMEDIATELY RELEASED** from detention unless they are detained for any other lawful cause.

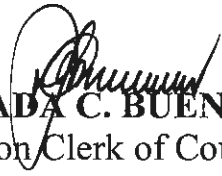
The Superintendent of the Davao Prison and Penal Farm is **DIRECTED** to report to this Court the action taken hereon within five (5) days from receipt.

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¹⁶ *People v. Andrada*, G.R. No. 232299, 20 June 2018 [Per J. (now CJ) Peralta].

¹⁷ *People v. Bernardo*, G.R. No. 242696, 11 November 2020 [Per J. Perlas-Bernabe]; *People v. Lumaya*, G.R. No. 231983, 07 March 2018 [Per J. Perlas-Bernabe].

SO ORDERED.”**By authority of the Court:**


LIBRADA C. BUENA
Division Clerk of Court
5/5/21

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01756-MIN)

The Hon. Presiding Judge
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9000 Cagayan de Oro City
(Crim. Case No. 2013-533)

The Superintendent
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