PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO ARANETA Y ABELLA @ BOTONG AND MARILOU SANTOS Y TANTAY @ MALOU, ACCUSED-APPELLANTS.

G.R. No. 191064. October 20, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the August 29, 2008 Decision[1] of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 02308, which affirmed the March 12, 2004 Decision[2] of the Regional Trial Court, Branch 151, Pasig City (RTC), finding the accused guilty beyond reasonable doubt for violating Section 5 and Section 11 of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002."

Criminal informations were filed in the RTC against Rolando Araneta y Abella a.k.a. "Botong" for Violation of Section 8 and Section 16 of R.A. No. 6425 (Dangerous Drugs Act of 1972), as amended, in addition to the Information filed against him and co-accused Marilou Santos y Tantay a.k.a. "Malou" for Violation of Section 15, Article III in relation to Section 21, Article IV of R.A. 6425, as amended. In view of the enactment of R.A. No. 9165 (Comprehensive Drugs Act of 2002), the original informations were amended accordingly. The said Informations read:

> Criminal Case No. 11491-D
> People vs. Araneta & Santos
> (For Violation of Sec. 5 in relation to Sec. 26, Art. II, R.A. 9165)
>
> On or about July 5, 2002 in Pasig City, and within the jurisdiction of this Honorable Court, the above accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized to sell, dispense, transport or distribute any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Danilo S. Damasco, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing of (sic) eight (8) centigrams (0.08 gram), which was found positive to the test for metamphetamine hydrochloride, a dangerous drug, in violation of said law.
>
> Contrary to Law.
>
> Criminal Case No. 11492-D
> People vs. Araneta
> (For Violation of Sec. 11, Art. II, R.A. 9165)
>
> On or about July 5, 2002, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to use or possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing 1.22 grams of dried marijuana fruiting tops, which was found positive to the test for marijuana, a dangerous drug, and eight (8) heat-sealed transparent plastic sachets containing white crystalline substance with the following recorded net weight, to wit:

1) Exh. B1 RAA/070502 - 0.07 gram;
2) Exh. B2 RAA/070502 - 0.10 gram;
3) Exh. B3 RAA/070502 - 0.08 gram;
4) Exh. B4 RAA/070502 - 0.07 gram;
5) Exh. B5 RAA/070502 - 0.08 gram;
6) Exh. B6 RAA/070502 - 0.04 gram;
7) Exh. B7 RAA/070502 - 0.06 gram;
8) Exh. B8 RAA/070502 - 0.09 gram

or having a total weight of 0.59 gram, which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to Law.

The prosecution's evidence was summarized in the CA decision as follows:

> On July 5, 2002, between 3:00 and 3:30 o'clock in the morning, a confidential informant arrived at the Station Drug Enforcement Unit (SDEU) of the Pasig City Police Station to report to Officer-In-Charge SP04 Numeriano de Lara the alleged peddling of illegal drugs of live-in couple Botong and Malou, later identified as appellants Rolando Araneta y Abella and Marilou Santos y Tantay, at Barangay Putol, Rosario, Pasig City. SPO4 de Lara immediately formed a team composed of SPO2 Dante Zigapan who acted as the team leader, PO2 Danilo Damasco, PO1 Orig, and PO1 Bede Montefalcon, to confirm the veracity of the informant's report and conduct a buy-bust operation. Before dispatching the team, SPO4 de Lara briefed them as to the alleged illegal activities of the couple and gave their description.
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> SPO2 Zigapan designated PO2 Damasco as the poseur-buyer giving him a marked P100 bill to be used in the entrapment. The team proceeded to the target area on board two vehicles. SPO2 Zigapan, Montefalcon and the informant were in one vehicle while PO2 Damasco and PO1 Orig were together in the other vehicle.
>
> The team arrived at the target place around 4:10 in the morning. They positioned themselves some 20-30 meters from the alley where appellants were allegedly staying. SPO2 Zigapan gave instructions to the informant to locate the appellants. After several minutes, the informant came back and confirmed the presence of appellants at ROTC Street, Putol, Bgy. Rosario, Pasig City. Thereafter, the team proceeded to the said location.
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> PO2 Damasco and the informant went near the appellants who were standing just outside their house. The informant and appellants exchanged greetings. After a short conversation, Botong went inside their house. The informant introduced PO2 Damasco to Malou by saying, "I-score itong kaibigan ko. Baka meron ka dyan." Malou then asked PO2 Damasco, "I-score ka na ba." After Malou asked PO2 Damasco, "Magkano," the latter immediately gave her the marked P100 bill.
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> Malou called Botong and when the latter came out, Malou handed to him the marked money. Botong then gave Malou a plastic sachet which she handed to PO2 Damasco.
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> After examining the plastic sachet, PO2 Damasco immediately gave the pre-arranged signal to the other members of the team who thereafter rushed to the scene. PO2 Damasco arrested Malou while SPO2 Zigapan arrested Botong.
>
> SPO2 Zigapan recovered from Botong the marked P100 bill and after frisking him, the police officer found in Botong's pocket one plastic sachet of what looked like marijuana and eight plastic sachets containing white crystalline substance. PO2 Damasco immediately placed "RAA" and the date July 5, 2002 on the plastic sachet he brought from Malou and the plastic sachets confiscated by SPO2 Zigapan from Botong.
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> At the police station, PO2 Damasco prepared the written request for a laboratory examination of the

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> confiscated plastic sachets. Together with the request, the plastic sachets were brought by PO1 Orig to the crime laboratory. The laboratory tests gave a positive result of the presence of methampethamine hydrochloride or what is locally known as shabu on the contents of nine (9) sachets and marijuana on one (1) sachet.

The evidence for the accused was summarized by the CA as follows:

> Between 3:30 to 4:30 o'clock in the morning of July 5, 2006, accused Rolando Araneta together with his live-in partner and co-accused Marilou Santos were sleeping on the ground floor of their rented apartment, when they were suddenly awakened by a loud noise coming from the upstairs. Rolando immediately stood up and tried to go up the stairs. That was when he met a man who introduced himself as a policeman. The man likewise pointed a gun to him and told him not to move. He was then instructed to sit down, to which he acceded. Thereafter, the man went near the door of his house and opened the same. Suddenly, four (4) other policemen went inside. One of the policemen went inside the comfort room and looked for somebody. Later, he heard the said policeman utter, "Nobody is here." One of the policemen then approached Rolando and asked him the whereabouts of a certain Teng. Rolando answered that he did not know Teng and that there was no other person inside the house except for him and his wife Marilou.
>
> The police operatives searched his house. They however found nothing illegal inside his house. After the search, the police operatives invited Rolando and Marilou to come with them to the precinct to answer some questions. Thereat, the police operatives informed them that they are being charged for their involvement in illegal drug activities, which they vehemently denied. PO2 Damasco, however, told them that if they wanted to be released, Rolando and Marilou must pay P20,000.00 each. When Rolando declined to give said amount, the police operatives filed the instant cases against them. (TSN, June 23, 2003, pp. 2-8)
>
> In the early morning of July 5, 2003, accused-appellant Marilou Santos and her live-in partner Rolando were sleeping when they were awakened by a noise coming from the second floor of their house. Rolando tried to go upstairs to find out what happened, but he met a man who instantly poked a gun at him. Marilou tried to stand up but the policeman told her, "Stay there, don't move." Thereafter the police shoved them near the chair. He also asked Rolando the whereabouts of Teng but the former answered that nobody by the name of Teng lived there. While still poking the gun on them, the policeman opened the door of their house. Five (5) policemen then entered and conducted a search.
>
> After the search, the policemen brought them to the police station. Thereat, PO2 Damasco asked them several questions. Moments later, the policeman got something from the drawer and told them that those articles belong to them. Marilou denied that the said articles belong to them since the policemen did not recover anything from them during the search. Despite her denial, they were still charged with Violations of Sections 15, 16 and 8 of Republic Act 9165. After a while, PO2 Damasco demanded P20,000.00 from them in exchange for their release. As they were innocent, Marilou refused to give said amount, prompting the police operatives to formally charge them. (TSN, July 23, 2003, p. 3)
>
> In the early morning of July 5, 2002, Marian Rodriguez was outside the alley in ROTC, Rosario, Pasig City when she saw both accused going out of the alley accompanied by five (5) men. The accused and the five (5) men passed in front of Marian. She hesitated to follow the group. Since then Marian never saw the accused again. (TSN, September 10, 2003, pp. 3-4).

In its March 12, 2004 Decision, the RTC found the accused guilty beyond reasonable doubt and sentenced them accordingly, as follows:

> WHEREFORE, the Court renders judgment, as follows:
>
> 1) In Criminal Case No. 11491-D, the Court finds accused Rolando Araneta y Abella @ Botong and accused Marilou Santos y Tantay A Malou GUILTY beyond reasonable doubt of violation of Sec. 5 in relation to Sec.

> 26, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon them the penalty of LIFE IMPRISONMENT and to pay a fine P500, 000.00 each; and
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> 2) In Criminal Case No. 11492-D (which absorbed Criminal Case No. 11490-D), the Court finds accused Rolando Araneta y Abella @Botong GUILTY beyond reasonable doubt of violation of Sec. 11, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon him the penalty of imprisonment of from Twelve (12) years and One (1) day to Twenty (20) years and to pay a fine of P300, 000.00. Considering that the accused is a detention prisoner, he shall be credited with the period of his detention during his preventive imprisonment.
>
> Xxx xxx xxx
>
> SO ORDERED.

The RTC ruled that all the elements for the prosecution of the illegal sale of dangerous drugs were present during the buy-bust operation conducted by the police officers. These were: 1) the identity of the buyer and the seller; 2) the object of the sale and the consideration; and 3) the delivery of the thing sold and payment therefor.

Furthermore, the RTC held that the defense of denial, frame-up, forcible entry, and extortion could not prevail over the positive identification by the prosecution witnesses. It noted that accused Rolando Araneta was not candid enough to inform the court that no less than eight (8) criminal cases were previously filed against him in different courts for violation of the Dangerous Drugs Law. Nevertheless, out of eight (8) criminal cases filed against him, he admitted that one resulted in a conviction and two other cases were dismissed. The other cases were then still pending trial.

Aggrieved, the accused appealed to the CA arguing that: 1) the RTC erred in not finding that they were illegally arrested and, as such, the sachets of shabu allegedly recovered from them were inadmissible in evidence; and 2) the RTC erred in finding them guilty beyond reasonable doubt of the crime charged because the testimonies of the prosecution witnesses were replete with inconsistencies and contradictions.

On August 29, 2008, the CA rendered the subject decision affirming the decision of the RTC.

In arriving at said determination, the CA applied the "objective test" in buy-bust operations laid down in the case of People v. Doria, 301 SCRA 668, 698-699.[3] The CA ruled that the prosecution evidence met the standard for the "objective test" through the testimony of its witness, PO2 Danilo Damasco, who acted as poseur-buyer and who related how the informant introduced him to the accused; how the transaction was consummated through the exchange of marked money and the sachet of shabu; and how the accused was arrested by the entrapment team.

The CA noted that the accused were arrested in flagrante delicto and that other contraband materials were recovered from them during the ensuing search. It concluded that the corpus delicti was duly established.

Finally, the CA stated that the inconsistencies in the testimonies of the police officers were minor or inconsequential. The accused failed to adduce evidence to overthrow the presumption of regularity in the performance of duty in favor of the police officers. The accused likewise failed to show proof that the police officers did not properly perform their jobs or had ill motives against them. Moreover, their defense of denial and frame-up for extortion purposes was self-serving, negative evidence that was not entitled to be given greater weight than the declaration of credible witnesses who testified on affirmative matters.

In due time, the accused filed a motion for reconsideration stressing the inadmissibility of evidence due to their illegal arrest, and the inconsistency in the testimonies of prosecution witnesses. They also pointed out that the apprehending officers failed to establish that the corpus delicti (sachets of shabu or marijuana) were the very same ones sold by and seized from them. Additionally, they claimed that the apprehending team, who had initial

custody over the confiscated drug items, failed to make an inventory and to photograph the same in their presence.

On August 24, 2009, the CA issued a resolution[4] denying their motion for reconsideration. The CA ruled, among others, that the issues on the corpus delicti and the alleged failure of the apprehending team to make an inventory and to photograph the shabu and marijuana in the presence of the accused were new issues not raised in their appeal brief.

In their recourse to this Court, the accused presented only one

> ISSUE
>
> WHETHER OR NOT THE ACCUSED-APPELLANTS ARE GUILTY BEYOND REASONABLE DOUBT FOR VIOLATING SECTIONS 5 AND 11 OF ARTICLE II OF R.A. No. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DRUGS ACT OF 2002.

The accused argue that the evidence adduced by the prosecution was not able to establish without a doubt, that the dangerous drugs presented in court were the very same ones allegedly sold by them. They insist that the police officers failed to strictly abide by the requirements of the law as regards the proper custody of dangerous drugs seized in the course of the alleged buy-bust operation.

The prosecution stands firm by its position that the arrest of the accused and seizure of the shabu and marijuana were lawful and that the testimonies of the prosecution witnesses were truthful. In the absence of any credible evidence to the contrary, the police officers are presumed to have regularly performed their official duty. More importantly, all the elements necessary for the prosecution of the illegal sale of drugs are present, to wit: 1) the identity of the buyer and the seller, the object and consideration; and 2) the delivery of the thing sold and payment therefor.

The prosecution asserts that the accused cannot raise for the first time on appeal the issue on the alleged failure of the law enforcers to comply strictly with Section 21 of Republic Act No. 9165. At any rate, the prosecution believes that it has shown that the chain of custody of the seized items was not broken.

THE COURT'S RULING:

After due consideration, the Court finds the evidence on record sufficient enough to sustain the verdict of conviction. It is morally convinced that the accused are guilty beyond reasonable doubt of the offense charged against them. The rule is that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight are given high respect if not conclusive effect, unless the trial court ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.[5] In this case, the CA found no such inculpatory facts and circumstances and this Court has not stumbled upon any either.

Doubtless, the prosecution was able to establish all the necessary elements required in the prosecution for illegal sale of dangerous drugs, namely: 1) the identity of the buyer and seller; 2) the identity of the object of the sale and the consideration; and 3) the delivery of the thing sold upon payment.

PO2 Danilo Damasco, (PO2 Damasco) the poseur-buyer, clearly and convincingly narrated in detail the entrapment operation they had conducted that led to the arrest of the accused and the seizure of the dangerous drugs. He related on the witness stand that upon receiving information from a confidential informant about the illegal sale of dangerous drugs by the accused, they immediately formed an entrapment team to conduct a buy-bust operation. Upon reaching the area in the early morning of July 5, 2002, he and the confidential informant approached the accused. After a brief introduction and short conversation, accused Botong went inside their house

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while accused Malou received the marked money from the poseur-buyer. Malou then called Botong who thereafter came out of the house. Malou gave the marked money to Botong who, in turn, gave Malou a plastic sachet containing a white crystalline substance. The plastic sachet was then handed over to PO2 Damasco who examined it and immediately gave the pre-arranged signal to arrest the accused. During the arrest, the marked money was recovered from Rolando and so were several other plastic sachets containing white crystalline substances together with a plastic sachet containing marijuana. Subsequently, the accused were brought to the police station and the seized items were later brought to the Police Crime Laboratory Office for examination.

The testimony of PO2 Damasco was corroborated by SPO2 Zipagan, the entrapment team leader, and SPO4 Numeriano De Lara, the entrapment team organizer.

Contrary to the posture of the accused, the testimony of PO2 Damasco was clear, consistent and convincing. As correctly assessed by the CA, his testimony passed the "objective test" in buy-bust operations.

> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[6] [Emphasis supplied]

The Court looked into the accused's defense of denial and accusations of frame-up, planting of evidence, forcible entry and extortion by the police officers but found them inherently weak. Aside from their bare allegations, the accused had nothing more to show that the apprehending police officers did not properly perform their duties or that they had ill motives against them. They failed to substantiate their argument that they were framed-up for extortion purposes.

Absent any convincing countervailing evidence, the presumption is that the members of the buy-bust team performed their duties in a regular manner. It was certainly a job well done. Hence, the Court gives full faith and credit to the testimonies of the prosecution witnesses.

The Court also holds that the seized items were admissible. A search warrant or warrant of arrest was not needed because it was a buy-bust operation and the accused were caught in flagrante delicto in possession of, and selling, dangerous drugs to the poseur-buyer. It was definitely legal for the buy-bust team to arrest, and search, them on the spot because a buy-bust operation is a justifiable mode of apprehending drug pushers. A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In this jurisdiction, the operation is legal and has been proven to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[7]

> In People v. Villamin, involving an accused arrested after he sold drugs during a buy-bust operation, the Court ruled that it was a circumstance where a warrantless arrest is justified under Rule 113, Sec. 5(a) of the Rules of Court. The same ruling applies to the instant case. When carried out with due regard for constitutional and

> legal safeguards, it is a judicially sanctioned method of apprehending those involved in illegal drug activities. It is a valid form of entrapment, as the idea to commit a crime comes not from the police officers but from the accused himself. The accused is caught in the act and must be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.
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> The illegal drugs seized were not the "fruit of the poisonous tree" as the defense would like this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Sec. 13 of the Rules of Court, which pertinently provides:
>
> A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was likewise not needed to conduct it.[8]

It should also be noted that after the RTC rendered a guilty verdict, the accused filed a motion for reconsideration based on two (2) grounds, to wit: 1) inadmissibility of the seized items; and 2) credibility of the prosecution witnesses. In the CA, they reiterated said grounds. After an unfavorable decision and ruling, the accused added two (2) new arguments in their motion for reconsideration, to wit: 1) the apprehending officers failed to establish that the corpus delicti (sachets of shabu or marijuana) were the very same ones sold by and seized from them; and 2) the apprehending team who had initial custody over the confiscated drug items failed to make an inventory and to photograph the same in their presence.

The Court totally agrees with the ruling of the CA that the issues on the corpus delicti and the compliance with Section 21 of RA No. 9165 were issues that were not raised by the accused in their appellants' brief, and were only presented in their motion for reconsideration from the decision of the CA.

Hence, the Court cannot act, much less, rule on said new points. To do so would violate basic rules on fair play and due process. Thus:

> We point out the defense's failure to contest the admissibility of the seized items as evidence during trial as this was the initial point in objecting to illegally seized evidence. At the trial, the seized shabu was duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellant manifest or even hint that there were lapses in the safekeeping of seized items that affected their admissibility, integrity and evidentiary value. In People v. Hernandez, we held that objection to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.[9]

WHEREFORE, the August 29, 2008 Decision of the Court of Appeals, in CA-G.R. CR-H.C. No. 02308, is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Leonardo-De Castro,[*] and Peralta, JJ., concur.

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[*] Designated as an additional member in lieu of Justice Roberto A. Abad, per Special Order No. 905 dated October 5, 2010.

[1] CA rollo, pp. 2-13. Penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justice Estella M. Perlas-Bernabe and Associate Justice Ramon M. Bato, Jr., concurring.

[2] Id. at 22-28.

[3] "We therefore stress that the "objective" test in buy bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement."

[4] CA rollo, pp. 176-177.

[5] People v. Darlene Quigod Miranda, G.R. No. 186419, April 23, 2010.

[6] People v. Joey Tion y Cabaddu, G.R. No. 172092, December 16, 2009, 608 SCRA 299; citing People v. Doria, 361 Phil. 595 (1999).

[7] Supra note 5.

[8] People v. Elizabeth Marcelino y Reyes, G.R. No. 189278, July 26, 2010.

[9] People of the Philippines v. Sitti Domado, G.R. No. 172971, June 16, 2010.

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