Original

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

O'Connell, P.J., and Jansen and Riordan, JJ.

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	Supreme Court Docket No. 146212
vs.	Court of Appeals Docket No. 304875
JAMES EARLY HARRIS, JR., Defendant-Appellant.	Circuit Court Docket No. 10-034923-FH-4

BRIEF ON APPEAL – APPELLEE

* ORAL ARGUMENT REQUESTED *

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STATEMENT OF JURISDICTION

In an order dated March 27, 2013, this Court granted Defendant's application for leave to appeal the Court of Appeals' judgment dated September 27, 2012. Accordingly, jurisdiction is properly vested in this Court. See MCR 7.302(G)(3).

COUNTERSTATEMENT OF QUESTION INVOLVED

Legislative intent is derived from the words used in the statute. If the language is clear and unambiguous, the reviewing court cannot expand on what the Legislature clearly intended. Under MCL 750.213, extortion is committed when a defendant threatens a victim to do any act against the victim's will, but the Court of Appeals in *Fobb* and later followed in *Hubbard (After Remand)* held the Legislature intended "any act" to mean a serious demand or consequence. In the instant case, Defendant was convicted of extortion for threatening to silence the victim while waving a gun if the victim did not fix Defendant's truck in the rain or if he did not give Defendant $100, and the conviction was affirmed by the Court of Appeals. A plain reading of MCL 750.213 reveals the Legislature did not intend extortion to only apply to serious demands, and looking at the evidence in a light most favorable to the prosecution, a rational jury could have found Defendant threatened the victim to compel an act against his will. Therefore, did the Court of Appeals clearly err affirming Defendant's conviction for extortion?

Defendant-Appellant says "YES".
Plaintiff-Appellee says "NO".
Court of Appeals says "NO".

COUNTERSTATEMENT OF FACTS

The People find Defendant's Statement of Facts complete and correct. The People also rely on the Court of Appeals' recitation of the facts in its opinion:

> This case concerns events that took place on Cherry Street, in Saginaw, on September 11, 2010. That afternoon, Willie Lee Neal was at defendant's residence, 2030 Cherry, to fix the transmission on defendant's truck. Defendant had agreed to pay Neal $400; $210 had been paid in advance, the balance to be tendered upon completion. Around 5:00 p.m., Neal was working on the truck in the shared driveway between defendant's home and 2034 Cherry. Defendant's neighbor, Robbin Smith, a resident of 2034 Cherry, arrived home from work and greeted her mother and her aunt, both of whom were seated on the front porch.
>
> Rain started to fall, so Smith's mother invited Neal to sit on her covered porch. When Smith returned to the porch, she found defendant standing on the porch talking to Neal. Smith stated that defendant was using profanity toward Neal regarding unsatisfactory work on the truck. Neal stated that he would work on the truck when it stopped raining. Smith was offended by defendant's language and asked him to leave her porch; defendant left the porch but remained on the sidewalk in front of Smith's house, conversing with Neal. Smith testified that Neal "was calm throughout the whole situation."
>
> Smith stated that defendant then briefly entered his home and returned outside carrying a black handgun. Defendant admitted that he "always" carries a handgun on his property due to family members having been previously gunned down in the area. Defendant continued to speak to Neal, but Smith stated that defendant did not return to her porch, nor "actually point[ ] [the gun] at anybody." Smith then related the following exchange between Neal and defendant:
>
> **Q.** What did you hear [defendant] saying?
>
> **A.** He told Mr. Neal that if he didn't continue to work on his truck and fix it, he would silence him if he didn't give him, I want to say it was a hundred dollars, a hundred dollars back, and Mr. Neal told him if that's what he wanted to do, go ahead and do it because he didn't fear him or a gun because he served the higher power; if he was to kill him, God would handle this situation, and, his exact words, and then you wouldn't—you wouldn't see this yellow house anymore because you would spend the rest of your life in prison.

Q. So Mr. Neal took that as a threat to him—

A. Yes.

* * *

Q. Did you also take it as a threat?

A. Yes.

Q. The fact that the defendant told Mr. Neal he would silence him?

A. Yes.

Q. If he didn't either fix the truck or pay him a hundred dollars back?

A. Exactly.

Q. Did Mr. Neal get up and go start working on the truck?

A. No.

Q. Did Mr. Neal pay [defendant] the hundred dollars at that point?

A. No.

Q. What did Mr. Neal continue to do?

A. Sat there and ate his sandwich.

Smith told those on the porch that she intended to call 911. At 5:04 p.m., a 911 call was received from a land line at 2034 Cherry. At this time, Smith testified that defendant left her property, placed the handgun on the top step of his porch, and continued talking to Neal—"[h]e wasn't yelling. He was talking normal." Smith stated that defendant entered his home through the front door. Shortly thereafter, defendant was seen standing in the shared driveway holding a rifle.

Defendant walked halfway up the shared driveway toward the street carrying the rifle upright. Saginaw Police Officer Diane Meehalder stated that defendant was "creeping" alongside Smith's house. Other witnesses testified that defendant was merely standing or walking in the driveway carrying the rifle upright. Defendant testified that he merely removed the rifle from his truck to place it in

his home for the evening.

At this point, Officer Meehalder arrived in her police cruiser, without sirens or lights, and exited the car. Meehalder testified that she saw defendant in the driveway carrying the rifle and said "James, get down on the ground." Defendant, carrying the rifle, ran into his backyard and out of the sight of Meehalder and the other witnesses.

Defendant denied hearing any command from an officer while he stood in the driveway. He admitted that he walked into the backyard because he does not trust police officers, a distrust that stems from their alleged lack of response to a previous 911 call he had made regarding shots being fired at his home.

Officer Meehalder entered defendant's backyard, kicked open the back door, and was quickly joined by at least three fellow officers. They yelled for defendant to come out of the house. Defendant's wife and her uncle exited from the main floor. Defendant emerged from the basement stairwell, unarmed and cooperative, only "one to two" minutes after the officers' commands. Defendant was arrested, handcuffed, and placed in the back seat of a police cruiser parked on the street.

Three police officers then entered defendant's basement ostensibly to "secure" the residence. Meehalder did not accompany these officers. The officers retrieved two long guns, i.e., rifles, and a black handgun. Meehalder stated that she interviewed Neal, but no record of the interview exists outside of her testimony at trial.

Defendant was originally charged with six felonies: assault with a dangerous weapon (felonious assault), MCL 750.82; carrying a dangerous weapon with unlawful intent, MCL 750.226; assaulting, resisting or obstructing a police officer, MCL 750.81d(1); and three corresponding counts of felony-firearm, MCL 750.227b. After a preliminary examination, the felonious assault charge was amended to extortion, MCL 750.213, at the request of the prosecution. Defendant was bound over to circuit court on all counts.

A three-day jury trial was held between April 26, 2010 and April 28, 2010. The jury returned guilty verdicts on all counts. [53a-55a]

ARGUMENT

Legislative intent is derived from the words used in the statute. If the language is clear and unambiguous, the reviewing court cannot expand on what the Legislature clearly intended. Under MCL 750.213, extortion is committed when a defendant threatens a victim to do any act against the victim's will, but the Court of Appeals in *Fobb* and later followed in *Hubbard (After Remand)* held the Legislature intended "any act" to mean a serious demand or consequence. In the instant case, Defendant was convicted of extortion for threatening to silence the victim while waving a gun if the victim did not fix Defendant's truck in the rain or if he did not give Defendant $100, and the conviction was affirmed by the Court of Appeals. A plain reading of MCL 750.213 reveals the Legislature did not intend extortion to only apply to serious demands, and looking at the evidence in a light most favorable to the prosecution, a rational jury could have found Defendant threatened the victim to compel an act against his will. Therefore, the Court of Appeals did not clearly err affirming Defendant's conviction for extortion.

A. INTRODUCTION

Defendant contends the evidence was insufficient to convict him of extortion. Even though the prosecution sufficiently established he had threatened the victim with physical injury, the evidence failed to show the compulsion to repair the truck was a serious consequence or detriment to the victim or that the victim was compelled to repair Defendant's truck against his will. (DB 9, 24)[1] However, at common law, to commit extortion did not require that the taking of money or thing of value be of serious consequence to the victim, and a plain reading of the statute reveals the Legislature did not intend that the compelled act be a serious or detrimental consequence to the victim. Overall, the evidence adequately proved

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[1] "DB" refers to Defendant's Brief dated June 24, 2013.

that Defendant threatened the victim to compel him to do an act against his will, and the Court of Appeals correctly upheld Defendant's conviction.

B. STANDARD OF REVIEW

Statutory interpretation is a question of law this Court reviews de novo. *People v Lown*, 488 Mich 242, 254; 794 NW2d 9 (2011). "In examining the sufficiency of the evidence, 'this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.'" *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012), quoting *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). The Court will not interfere with the jury's role of determining the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 516; 489 NW2d 748 (1992), amended in part 441 Mich 1201 (1992). The jury, not the appellate court, determines what inferences may be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Flick*, 487 Mich 1, 24-25; 790 NW2d 295 (2010).

C. THE PEOPLE'S RESPONSE

1. The clear and unambiguous language of MCL 750.213 reflects the Legislature did not intend the statute to only apply to serious demands.

The goal of statutory interpretation is to give effect to the intent of the Legislature. *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011). "The most reliable indicator of the Legislature's intent is the words in the statute." *Id.*

> If the language is clear and unambiguous, "no further construction is necessary or allowed to expand what the Legislature clearly intended to cover." Stated another way, "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." [*People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003) (citations omitted).]

Accordingly, "where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999) (citation omitted). See also *People v Likine*, 492 Mich 367, 387; 823 NW2d 50 (2012), and *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). "Criminal statutes must be strictly construed . . . and may not be extended beyond their plain terms by judicial construction." *People v Flynn*, 330 Mich 130, 138; 47 NW2d 47 (1951) (citations omitted).

> In addition to these basic rules of statutory interpretation, this Court must also adhere to the traditional rules concerning abrogation of the common law. The common law remains in force unless it is modified. We must presume that the Legislature "know[s] of the existence of the common law when it acts." Accordingly, this Court has explained that "[t]he abrogative effect of a statutory scheme is a question of legislative intent" and that "legislative amendment of the common law is not lightly presumed." While the Legislature has the authority to modify the common law, it must do so by speaking in "'no uncertain terms.'" Moreover, this Court has held that "statutes in derogation of the common law must be strictly construed" and shall "not be extended by implication to abrogate established rules of common law." [*People v Moreno*, 491 Mich 38, 46; 814 NW2d 624 (2012) (footnotes omitted).]

"At common law, extortion was the unlawful taking by a public officer, under color of his office, of any money or thing of value that was not due to him, or more than was due, or before it was due." *People v Krist*, 97 Mich App 669, 674; 296

NW2d 139 (1980) (citations omitted). See MCL 750.214. Common-law extortion was then expanded by MCL 750.213. See *People v Adams*, 34 Mich App 546, 574 n 42; 192 NW2d 19 (1971).

> Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing *any act* against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars. [MCL 750.213 (emphasis added).]

The underlying purpose of the statute was to close loopholes in common-law robbery. *Krist, supra* at 675. Thus, MCL 750.213 "punishes for the malicious threat with the intent to extort", *People v Percin*, 330 Mich 94, 100; 47 NW2d 29 (1951), as well as "punishes coercive behavior directed against individuals." *People v Pena*, 224 Mich App 650, 658; 569 NW2d 871 (1997).

In *People v Fobb*, 145 Mich App 786, 792-793; 378 NW2d 600 (1985), the Court of Appeals held that the Legislature did not intend to punish an act only resulting in a minor consequence or demand to the victim. *Fobb*'s interpretation of MCL 750.213 was followed in *People v Hubbard (After Remand)*, 217 Mich App 459, 485-486; 552 NW2d 493 (1996), overruled on other grounds 491 Mich 575 (2012). But in *People v Mihelsic*, 468 Mich 908, 909; 661 NW2d 561 (2003), Chief Justice Corrigan filed a dissent, joined by Justices Weaver and Young, concluding the holding in *Fobb* was in error.

> This appeal centers on the Court of Appeals decision in *People v Fobb*, 145 Mich App 786; 378 NW2d 600 (1985), which held that the

> Legislature did not intend for the extortion statute to proscribe threats demanding minor things without serious consequences to the victim. This assertion in *Fobb* has no basis in the plain language of MCL 750.213.
>
> The statutory language makes it a crime to maliciously threaten harm to another with intent to compel the person to do an act against his will. The statute does not contain the requirement that the compelled act be "serious." The Legislature could have included such a limitation, but did not. Because the *Fobb* Court improperly read a nonexisting element into the extortion statute, *Fobb* was wrongly decided.

In *People v Lively*, 470 Mich 248; 680 NW2d 878 (2004), this Court reviewed a Court of Appeals' decision interpreting the elements of perjury in light of the perjury statute's plain language. The defendant was convicted of committing perjury in a divorce proceeding.[2] *Id.* at 249-250. The conviction was reversed by the Court of Appeals because the trial court failed to instruct the jury that the false statement must have been of a material matter. *Id.* at 250. In its analysis, this Court reviewed the definition of "any":

> The commonly understood word "any" generally casts a wide net and encompasses a wide range of things. "Any" has been defined as:
>
> > 1. one, a, an, or some; one or more without specification or identification. 2. whatever or whichever it may be. 3. in whatever quantity or number, great or small; some. 4. every; all . . . . [Random House Webster's College Dictionary (2d ed, 1997).]

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[2] MCL 750.423 states:

> Any person authorized by any statute of this state to take an oath, or any person of whom an oath shall be required by law, who shall wilfully swear falsely, *in regard to any matter or thing*, respecting which such oath is authorized or required, shall be guilty of perjury, a felony, punishable by imprisonment in the state prison not more than 15 years. [Emphasis added.]

> Thus, it is reasonable to conclude that the Legislature intended for perjury to consist of a willfully false statement concerning *every* matter or thing for which an oath is authorized or required, because it did not limit the matters or things in question on the basis of their materiality. [*Id.* at 253-254 (emphasis in original).]

Accordingly, the Court reversed the Court of Appeals and held that the language in the perjury statute did not refer to any element of materiality and

> that the Legislature intended that a willfully false statement about *any* matter or thing concerning which an oath was authorized or required falls within the statutory definition of perjury and thus may be charged as perjury if a prosecutor so chooses. [*Id.* at 254 (emphasis in original and footnote omitted).]

A straight-forward reading of MCL 750.213 shows that a person commits extortion when he threatens the victim with the intent to compel the victim to do *any* act against his will. Nowhere in MCL 750.213 does the Legislature require that the act be serious or significant. No such requirement existed in common law, and the Legislature did not limit MCL 750.213 to only include serious demands. Instead, the Legislature intended extortion to consist of a threat to compel a person from doing *any* act against his or her will, regardless of the seriousness of that act. Just like in *Lively*, the Legislature did not intend "any" to mean something less than its definition. *Fobb* erroneously expanded the Legislature's intent when it held "any act" means something more than minor or insignificant. The Legislature could have easily used language such as "any material or serious act" when it drafted the statute to apply only to serious demands. Based on the plain language of the statute, the *Fobb* Court erred in its holding, and the holding was wrongly followed in *Hubbard (After Remand)*.

Defendant argues the Legislature did not intend MCL 750.213 to apply to

minor demands since the twenty-year maximum sentence is so severe. (DB 18, 20) *Fobb* was partly hinged on the statute's punishment, finding the Legislature did not intend the statute to apply to minor acts in the face of such a severe penalty. *Fobb, supra* at 791-792. In reaching its holding, the Court of Appeals relied on *People v Morgan*, 50 Tenn 262, 265 (1871), which found Tennessee's extortion statute only applied to material and serious demands because of the severe punishment the statute required.[3] In *Lively*, though, the perjury statute prescribed a penalty of 15 years. Yet, this Court still found the Legislature intended the statute to apply to *any* matter or thing, regardless of its materiality. Therefore, the Legislature's intent in MCL 750.213 cannot be ascertained by the statute's penalty.

Defendant further asserts that overruling *Fobb* would lead "to the potential of significant punishment for relatively minimal or commonplace incidents." (DB 19) In *Lively*, the dissent found the decision of the majority gave the prosecutor "unfettered discretion to charge a party or witness with perjury for any discrepancy made under oath, no matter how trivial." *Lively, supra* at 262. But the majority found that many safeguards curbed any prosecutorial abuse. *Id.* at 254 n 6. The Court quoted *People v Chavis*, 468 Mich 84, 94 n 6; 658 NW2d 469 (2003):

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[3] The statute provided:

> If any person, either verbally or by written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent thereby to extort any money, property or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall, on conviction, be punished by imprisonment in the penitentiary, not less than two, nor more than five years. [*Fobb, supra* at 792, quoting *Morgan, supra* at 264.]

> It is invariably the case that the prosecutor always has great discretion in deciding whether to file charges. Such executive branch power is an established part of our constitutional structure. Any apprehension that the prosecutor may abuse this power should be tempered, in part, by the knowledge that there are significant systemic protections afforded defendants, including the defendant's right to a preliminary examination and right to a jury trial. Moreover, there are other protections against the misuse of power that spring from daily scrutiny by the media as well as from periodic elections, which call all office holders to account to their constituents.

Here, those precautions easily still apply.

2. The evidence adequately showed Defendant's threat compelled the victim to do an act against his will.

The elements of extortion are:

(1) A communication.

(2) A threatening accusation of a crime or offense or injury to the person or property or immediate family member of another.

(3) With the intent to extort money or pecuniary advantage as to compel the person so threatened to do or refrain from doing an act against his will.

See *Krist, supra.*

The trial court instructed the jury as follows.

> First, that the defendant threatened to injure Willie Lee Neal. That is that the defendant threatened to silence Willie Lee Neal if he didn't finish the repairs to defendant's vehicle, or to pay the defendant $100.
>
> Second, that the defendant made this threat by saying it. A gesture alone is not enough.
>
> Third, that the defendant made the threat willfully, without just cause or excuse, and with the intent to make the person threatened to do or not do something against the persons [sic] will. [50a]

The victim entered into an agreement with Defendant to repair Defendant's

transmission. Defendant paid the victim $210 to begin repairs and agreed to pay the victim $200 when the work was completed. (43a, 53a) The victim was working on Defendant's truck in Defendant's driveway. (23a, 43a, 53a) The weather became rainy. Maryann Richards invited the victim to sit on Defendant's neighbor's porch to get out of the rain. (23a, 37a, 53a) Robbin Smith observed Defendant upset and waving a black pistol because the victim was not fixing the vehicle in the rain. (24a, 25a, 53a) The victim told Defendant that he would resume fixing the truck once the rain stopped. (24a, 53a) Defendant told the victim that if the victim did not continue working on the truck or did not give Defendant $100, then Defendant would silence him. (25a, 54a) Smith interpreted Defendant's words as a threat. (26a, 54a)

The Court of Appeals found that

> [w]hile Neal may have initially agreed to work on the truck, the evidence establishes that he did not want to work on the truck when defendant ordered him to do so. Not only did Neal communicate his refusal to continue working, he felt so strongly about his decision that he referenced his willingness to face God rather than capitulate to defendant's demands even at the threat of being "silenced" at gunpoint. Hence, there was sufficient evidence that the act defendant ordered Neal to perform was against Neal's will. [57a]

As the Court of Appeals correctly stated, Defendant ordered the victim to perform an act against the victim's will—that is, to repair Defendant's transmission in the rain or to pay $100. Defendant wanted the victim to work on his vehicle in the middle of the rain; the victim clearly did not. The agreement between Defendant and the victim was not to repair the transmission in the rain or to give $100 if Defendant did not like the victim's progress in making repairs. So,

Defendant threatened the victim to do an act against his will. Most important here is that the jury found the act of fixing Defendant's truck in the rain sufficient to convict Defendant of extortion. If the jury had believed the compelled act did not rise to a crime, then it would have acquitted Defendant of extortion. This Court cannot interfere with the jury's determination of the inferences it drew from the evidence and the weight to which it accorded those inferences. *Flick, supra.* Looking at the evidence in a light most favorable to the prosecution, a rational jury could have found the elements of extortion were proven beyond a reasonable doubt.

Even viewed pursuant to *Fobb* and *Hubbard (After Remand),* the evidence clearly showed Defendant's threat resulted in a serious detriment to the victim. Fixing a truck in the rain is not the norm unless under dire situations. Defendant's threat to work in wet conditions logically increased the hazard in completing the task, and clearly the victim wished not to get wet as evidenced by the victim ceasing repairs to get out of the rain. The combination of working in wet conditions and the certainty of getting wet while lying under the vehicle was a dire situation to the victim. In addition, demanding the return of $100 was of serious consequence. Such action fell under the very definition of extortion, "the unlawful extraction of money by means of a threat". *Adams, supra.* Accordingly, the jury rightfully determined the victim was compelled to do a serious act to convict Defendant.

Moreover, Defendant's actions showed that any consequence to the victim was more than just minor. Defendant was upset and waved a gun around to either get the victim to resume the repairs or give $100. He told the victim he would

silence him, and the victim interpreted that to mean he would kill him—precipitated over fixing Defendant's truck in the rain. If the consequence was not so minor, then Defendant would have not used such extreme measures of waving a gun and threatening to "silence" the victim to compel the victim.

D. CONCLUSION

The Court of Appeals properly found the plain language of MCL 750.213 did not require that the compelled act be serious or of significant value. (57a) Such a requirement was never intended by the Legislature in looking at a plain reading of the statute. Additionally, the Court correctly held that in looking at the evidence in a light most favorable to the prosecution, a rational jury could have found the elements of extortion were proved beyond a reasonable doubt. (57a) Defendant clearly threatened the victim to fix the truck or to give him money against his will.

SUMMARY AND RELIEF SOUGHT

WHEREFORE, the People respectfully request that this Honorable Court overrule *Fobb* and *Hubbard (After Remand)* in so far as requiring the demand of the victim be serious and find the Court of Appeals did not clearly err in affirming Defendant's conviction for extortion.

Respectfully submitted,

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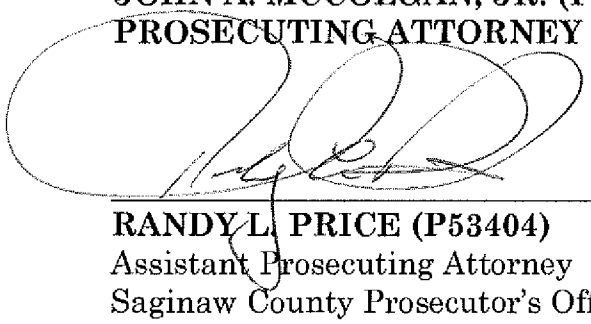
PROSECUTING ATTORNEY



Dated: July 25, 2013

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