

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals  
Appeal from Richland County  
D. Craig Brown, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MELVIN JAMES WHITE,

PETITIONER

Opinion No. 2022-UP-450 (S.C. Ct. App. Filed December 14, 2022)

APPELLATE CASE NO. 2019-001854

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on January 20, 2023. App. 13.

### **QUESTION PRESENTED**

Whether the Court of Appeals erred in affirming the lower court's denial of petitioner's request for immunity from prosecution pursuant to the Protection of Persons and Property Act where evidence demonstrated the deceased angrily charged petitioner, petitioner was in reasonable fear of imminent death or great bodily harm, and because petitioner was at his home, he had no duty to retreat but could meet force with force?

## STATEMENT OF THE CASE

On March 16, 2016, a Richland County grand jury indicted petitioner for murder. R. 585. A hearing was held on June 3, 2019, on petitioner's motion for immunity pursuant to the Protection of Persons and Property Act<sup>1</sup> (the Act) before the Honorable Deandrea G. Benjamin. R. 1. Megan Eigenbrot and Zoe Bruck represented petitioner and April Sampson, deputy solicitor, represented the state. R. 1. On July 8, 2019 Judge Benjamin signed an order denying immunity. R. 122.

Petitioner was tried on October 23, 2019, before the Honorable D. Craig Brown and a jury. R. 378. Megan Eigenbrot and Zoe Bruck represented petitioner and April Sampson, deputy solicitor, and Jacqueline Li, assistant solicitor, represented the state. R. 378.

On October 24, 2019, the jury found petitioner not guilty of murder but guilty of voluntary manslaughter. R. 361, ll. 14-21. Judge Brown sentenced petitioner to thirty years' imprisonment. R. 376, ll. 11-14.

The Court of Appeals affirmed petitioner's convictions in *State v. White*, 2022-UP-450 (S.C. Ct. App. filed Dec. 14, 2022). Petitioner sought rehearing which was denied on January 20, 2023.

This petition for a writ of certiorari follows.

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<sup>1</sup> S.C. Code Ann. § 16-11-440(C).

## ARGUMENT

The Court of Appeals erred in affirming the lower court's denial of petitioner's request for immunity from prosecution pursuant to the Protection of Persons and Property Act where evidence demonstrated the deceased angrily charged petitioner, petitioner was in reasonable fear of imminent death or great bodily harm, and because petitioner was at his home, he had no duty to retreat but could meet force with force.

### **Relevant facts**

Petitioner and his girlfriend, Esther Caroline, lived together in a home close to Shop Road in Columbia. R. 15, ll. 9-12. Esther's twenty-five-year-old son, Antwan Caroline, stayed with them frequently. On the morning of November 28, 2015, Esther and Antwan had a disagreement because Esther discovered he had a young woman stay overnight and it was against Esther's rules for him to have young women spend the night in her home. R. 39, ll. 17-23. Esther and petitioner spent some of the day doing laundry, and petitioner drank beer throughout the day. R. 12-13.

Around two o'clock the next morning, petitioner woke up to the sound of knocking. Antwan was at the door. Esther refused to let Antwan in the home because he had again broken one of her house rules by coming home late. Instead, she walked outside on the porch to talk to Antwan. R. 13, l. 11-14, l. 14; 42, l. 11-43, l. 17.

Petitioner, still groggy from sleep, realized Esther was no longer in the house and walked outside to see what was happening, grabbing his shotgun, out of "habit." R. 14, l. 3-15, l. 8. Outside petitioner saw Esther and Antwan "fussing." Esther was upset, crying, and telling Antwan to go away and "go back where he c[a]me from." When Antwan noticed petitioner, he began coming towards petitioner and said, "what's up." Esther tried to stop Antwan saying, "no,

no, no.” R. 16, ll. 1-24. Antwan rushed towards petitioner and when he got close pushed his mother, Esther, to the ground and charged petitioner. Petitioner, in fear, fired his gun believing Antwan to be armed. Antwan was dead when paramedics arrived. R. 17, l. 13-18 l. 8; 21, ll. 21-24; 44, l. 25-45, l. 1; R. 220, 1-12.

Petitioner took the shotgun back inside his house, walked next door, and asked the neighbor to call 911. When officers arrived, petitioner was waiting at the residence and was arrested and transported to headquarters for questioning. R. 19-21.

#### *Immunity hearing*

At the pretrial immunity hearing, petitioner testified that the first time he met Antwan police showed up at Esther’s apartment and arrested Antwan. Petitioner did not see Antwan again until he was released from prison. R. 7-10. The morning before the incident, petitioner noticed Antwan trying to sneak a young woman out of the house before his mother Esther noticed. R. 11, ll. 12-21. Antwan’s behavior had consistently been a problem, and Esther was upset with Antwan. Petitioner did not see Antwan for the remainder of the day. R. 12, ll. 1-11. Petitioner and Esther went to the laundromat and did their laundry and then came back to the house, and petitioner spent the remainder of the day in their yard having a few beers. R. 12, l. 12-13, l. 8.

Petitioner went to bed around ten o’clock that evening. Petitioner testified that he woke early that morning to the sound of knocking at the door and Esther shouting, “what have I told you about coming to my house all time of the night waking me up.” R. 13, ll. 9-20. Petitioner got out of bed to use the bathroom and realized neither Esther nor Antwan were inside the home. He put on clothes to go outside and sit, grabbing his shotgun out of “habit” because of the late hour and the nature of the area where they lived. R. 14, l. 25-15, l. 21.

Once outside he saw Esther and Antwan arguing in the street, and Esther was demanding Antwan leave their home. Petitioner said he was “shocked” at the scene between Esther and Antwan and was upset to see Esther so distraught. Antwan noticed petitioner and started towards petitioner. Meanwhile Esther was trying to stop Antwan, repeatedly telling Antwan “no.” R. 16, ll. 1-25. Antwan kept saying to petitioner, “what’s up,” which petitioner understood as an invitation to fight. R. 29, ll. 8-17. Antwan continued towards petitioner and when he got close to petitioner, Antwan shoved Esther to the ground. Petitioner went towards Esther, Antwan charged him, and petitioner fired his gun. R. 17, l. 13-18, l. 8. Petitioner testified he was “afraid” when Antwan charged him, and he did not know if Antwan had a weapon because he had one of his hands behind his back. R. 21, ll. 21-25; 29, l. 19-30, l. 6.

Esther Caroline was called as a witness for the state. Esther testified at the hearing that Antwan lived in the home with she and petitioner because he had just gotten out of prison and did not have his own place. R. 38, ll. 1-6. Yet, Antwan did not have his own key to the house and seemingly stayed elsewhere at times. R. 11, ll. 2-11; 53, ll. 12-18. Her testimony corroborated petitioner’s testimony regarding the difficulty she was having with her son because of his disregard of the rules of their home. Esther testified that the morning before the incident she had a discussion with Antwan and told him he was not to bring women to stay in her home overnight. R. 39, l. 17-40, l. 4. Esther admitted she would not let Antwan in the home early that morning and that she told him to leave. R. 42, l. 11-43, l. 13; 55, l. 22-57, l. 19; 58, ll. 7-11.

Esther alleged that earlier in the day petitioner threatened to kill Antwan if he ever came back in the house because petitioner was tired of him disrespecting Esther’s rules. R. 41, ll. 6-12. Esther testified that around two o’clock in the morning Antwan knocked on the front door. She went to the door and stated, “I asked you not to come to my house the time in the morning.”

R. 42, ll. 11-21. Esther also told Antwan to “go back where [he] was.” Antwan started talking to her, so Esther opened the door and went outside to talk to him in the yard. R. 43, ll. 4-17. Esther claimed when she noticed petitioner was in the yard he was about six feet away pointing a gun at Antwan, and Antwan asked, “so what are you going to do, are you going to shoot me or something,” and in response petitioner shot Antwan. R. 44, ll. 16-25. Esther denied that Antwan pushed her or charged petitioner. R. 45, ll. 18-24.

Petitioner’s attorneys argued petitioner was entitled to immunity under S.C. Code Ann. section 16-11-440(C). Attorney Bruck asserted petitioner had the right to self-defense and was without fault in bringing about the incident where petitioner walked outside his own home in the middle of the night to an argument between his girlfriend and her son. Counsel contended petitioner believed he was in imminent danger in that while outside Antwan charged him with his hands in back pocket and made the statement “what’s up,” in an aggressive tone. Antwan continued to approach petitioner despite seeing him holding a gun and then charged him. Lastly counsel argued a reasonably prudent man of ordinary firmness and courage would have also believed himself in imminent danger for the same reasons as above. R. 91-98.

On July 8, 2019, Judge Benjamin signed an order denying petitioner immunity under § 16-11-440(C) of the Act. R. 122. The court found there was no testimony presented at the hearing, other than petitioner’s testimony that decedent pushed Esther and that petitioner was scared, that showed it was reasonable for petitioner to believe that deadly force was necessary to prevent great bodily injury or death. R. 117. Additionally, the court found decedent was unarmed and there was no evidence put forth to show why it was reasonable for petitioner to fear decedent could cause great bodily injury or death. R. 118.

The court found petitioner was unlawfully in possession of a gun because he was

previously convicted of a felony that precluded him from possessing a firearm or ammunition under federal law and was therefore not entitled to statutory immunity under the Act. R. 118-120. Further, the court found petitioner armed himself with a gun he could not lawfully possess when there was no need to defend himself. R. 120.

Lastly the court found petitioner could not prove the necessary elements of self-defense by a preponderance of the evidence and thus was not entitled to immunity. The court again found that other than petitioner's testimony there was no credible evidence that petitioner was in imminent danger or that a reasonable person would have believed they were. The court further found petitioner was at fault in bringing about the difficulty for two reasons he (1) unlawfully possessed a gun when he approached decedent and (2) pointed and presented the loaded gun at decedent and Esther. R. 120-122.

### **Discussion**

In its opinion affirming petitioner's conviction and sentence, the Court of Appeals found that "[b]ecause [petitioner] was at fault in bringing about the difficulty and failed to prove he had a reasonable fear of death or great bodily injury, the trial court did not err in finding he is not entitled to immunity under the [Protection of Persons and Property] Act." In affirming the lower court's decision to deny petitioner immunity from prosecution, the Court of Appeals cited and quoted the relevant statutory provisions and controlling case law but provided no explanation of how it applied the relevant statutes and case law to the facts presented.

Petitioner was entitled to immunity from prosecution pursuant to the Act where evidence demonstrated the deceased angrily charged petitioner, petitioner was in reasonable fear of imminent death or great bodily harm to himself and to another, and because petitioner was at his home, he had no duty to retreat but could meet force with force.

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly recognized “that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.” S.C. Code Ann. § 16-11-420(D). The General Assembly explained “that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420(E).

To effectuate its intent, the General Assembly created a statute providing for immunity from prosecution to “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” S.C. Code Ann. § 16-11-450(A). One of the provisions of the Act provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.” *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). During the pretrial hearing, a defendant must set out “a valid case of self-defense,” excluding the duty to retreat prong, “and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity.” *Id.* at 371, 752 S.E.2d at 266.

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of

losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. *State v. Hendrix*, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); *see also State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

The Court of Appeals affirmed a grant of immunity in *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014). In that case, Douglas and his friend, Charles Smith, had spent the day on the golf course drinking. *Id.* at 312, 768 S.E.2d at 236. After leaving the golf course, the two went to Douglas' home and continued drinking. *Id.* at 313, 768 S.E.2d at 236. Smith found a bottle of Douglas' anti-anxiety medicine and began teasing Douglas about it. *Id.* When Douglas got angry, Smith "snapped" and "went crazy." *Id.* Smith grabbed Douglas by his arms and threw him against the refrigerator. *Id.* When Douglas fell to the floor, Smith got on top of him and struck him in the eye. *Id.* at 314, 768 S.E.2d at 236. Although Douglas told Smith to leave, Smith refused, but did go into another room. *Id.* Douglas got a pistol from the nightstand. *Id.* Douglas, returning to the kitchen, again told Smith to leave. *Id.* Instead, Smith advanced toward Douglas. *Id.* Douglas lifted the pistol to scare Smith. *Id.* When Smith was two feet away, Douglas fired the pistol. *Id.* A bullet hit Smith, and he died within minutes. *Id.*

The court held Douglas proved by a preponderance of the evidence that he reasonably

believed shooting Smith was necessary to prevent great bodily injury to himself, and that he acted in self-defense. *Id.* at 319, 768 S.E.2d at 239. The court noted that Douglas was injured in the altercation prior to the fatal shot, and that in light of Smith’s lack of serious injury, Douglas’ belief that Smith was about to inflict serious bodily injury upon him if he did not act to protect himself was reasonable. *Id.* at 320, 768 S.E.2d at 240. The court also considered evidence that several years prior to the shooting, Smith assaulted Douglas by slamming him against a wall and choking him. *Id.* According to the court, Douglas was not at fault in brining on the difficulty where “Smith’s violent behavior was an unreasonable reaction to a reasonable demand for Smith to return [Douglas]’s medicine.” *Id.* at 321, 768 S.E.2d at 240. Further, the court found that after Smith attacked Douglas and Douglas retreated to his bedroom, his “reappearance at the kitchen’s threshold with a loaded pistol by his side was lawful, as he had a right to defend his home and demand that Smith leave.” *Id.*

In *State v. Jones*, this Court affirmed a grant of immunity and held one who uses deadly force in response to an attack in his or her own home by a cohabitant can seek immunity under the Act, provided the person can establish reasonable fear of the attacker. 416 S.C. 283, 786 S.E.2d 132 (2016). In that case, Jones killed her boyfriend in the home they shared. *Id.* at 287, 786 S.E.2d at 134. One evening Jones and Lee were involved in a physical altercation. *Id.* Jones left the home and returned when she had “cooled down.” *Id.* at 288, 786 S.E.2d at 134. While Jones gathered her things, Lee yelled at her and followed her around. *Id.* at 288, 786 S.E.2d at 135. Jones grabbed a knife for protection. *Id.* Lee grabbed Jones, shook her, and told her it was over. *Id.* Believing Lee was going to hit her again, Jones grabbed the knife out of her shirt and stabbed Lee once in the chest. *Id.* Although Jones initially left Lee, she and a friend shortly returned to the residence and took Lee for help. *Id.* However, Lee later died at the hospital. *Id.*

This Court found there was “nothing in the record to suggest that Jones was at fault in bringing on the difficulty” because she attempted to leave the apartment before the first altercation, returned to the apartment to gather her belongings, and called her friends to pick her up. *Id.* at 301-302, 786 S.E.2d at 142. Jones told police that she believed Lee “was going to hit her again and that had she not acted as she did, then she would have been killed.” *Id.* at 302, 786 S.E.2d at 142. Next, this Court held Jones’ belief that she was in imminent danger of losing her life or sustaining great bodily injury was reasonable considering Lee punched her earlier in the night and he grabbed Jones and shook her immediately prior to the stabbing. *Id.* Finally, this Court held that Jones had no duty to retreat pursuant to the Act because she was attacked in her home. *Id.*

In *State v. Cervantes-Pavon*, this Court remanded the case to the circuit court for a new hearing to determine immunity and held: (1) the fact that the victim was unarmed was relevant under the Act but that it did not automatically prohibit immunity under the Act; (2) the fact the defendant armed himself did not, in and of itself, make him the aggressor in a confrontation for purposes of determining if he was entitled to immunity; (3) just because conflicting evidence as to immunity exists does not automatically require the court to deny immunity. 426 S.C. 442, 827 S.E.2d 564 (2019). In that case, Cervantes-Pavon was convicted of the murder of his unarmed coworker on a construction worksite.

Considering the immunity statute’s incorporation of the elements of self-defense save the duty to retreat, an examination of South Carolina’s self-defense jurisprudence is instructive. An individual who provokes or initiates an assault may not assert self-defense. *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). “Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.” *Id.*

“[T]he mere unlawful possession of a firearm, with nothing more, does not automatically bar a self-defense charge.” *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). In *Slater*, this Court determined the defendant was not entitled to a charge on self-defense because he was not without fault in bringing on the difficulty where the defendant was “in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement.” *Id.* at 71, 644 S.E.2d at 53.

In *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008), this Court held a defendant’s statement that it was either “her or me” after the defendant took the gun from the victim established that the defendant believed he was in imminent danger. This Court determined this belief was reasonable in light of the defendant’s testimony that in the preceding weeks the victim had been acting jealous, had followed him, and told him that if she caught him with another woman it was “going to be messy.” *Id.*

An individual has the right to act on appearances. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000); *see also State v. Jackson*, 277 S.C. 271, 87 S.E.2d 681 (1955). This Court held the trial judge erred in failing to instruct the jury that the defendant had the right to act on appearances concerning one of the shootings. *Starnes*, 340 S.C. at 320, 531 S.E.2d at 912. Additionally, “words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense” from *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951).

In *Starnes*, one of the potential drug buyers, Wellborn, pointed a gun at the defendant, cursed him, and questioned where he was going. *Id.* This Court held the defendant was not entitled to a charge on the right to act on appearances concerning Wellborn because his claim to self-defense arose from an actual threat. *Id.* However, concerning the shooting of the other potential buyer, Champlin, the Court held the defendant was entitled to an appearances charge. *Id.* at 321, 531

S.E.2d at 912. The pertinent fact noted by the Court was that “[i]mmediately prior to the shooting, [the defendant] observed Champlin hold a gun to [another]’s head and threaten to shoot him, apparently because the intended drug deal, which [the defendant] had arranged, had gone awry.” *Id.* The Court held the defendant was entitled to an act on appearances charge even though the defendant did not testify that he thought he saw a weapon in Champlin’s hand at the time of the shooting. *Id.*

Examining the evidence in the proper light shows petitioner established his right to statutory immunity from prosecution by a preponderance of the evidence. The evidence does not support the Court of Appeals’ finding that petitioner was at fault in bringing about the difficulty. Antwan showed up in the middle of the night and started the trouble with his mother. Petitioner was woken up by their argument and, out of habit, grabbed his gun due to the neighborhood where they lived. Additionally, petitioner had seen prior difficulties between Antwan and Esther, as well as Antwan’s prior arrest. The evidence does not support the Court of Appeals’ finding that petitioner failed to prove he had a reasonable fear of death or great bodily injury to himself or another where evidence demonstrated Antwan was engaged in a verbal and physical altercation with Esther and angrily charged petitioner.

Petitioner’s status as a convicted felon did not preclude him from lawfully arming himself in self-defense. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). The trial court used *Slater* to support its finding that petitioner was acting unlawfully however the facts in *Slater* differ significantly from the facts of this case. Unlike in *Slater*, where the defendant was in a public place, a high school, *petitioner was at his own home in his yard*. Additionally, petitioner was not arming himself in the home to go out and look for a fight with Antwan. Petitioner testified that he grabbed his gun out of habit

due to the inherent danger of the area where they resided, the lateness of the hour, and his prior experiences with Antwan.

Petitioner established his right to statutory immunity from prosecution by a preponderance of the evidence. Petitioner testified that he was afraid of what Antwan would do because he shoved Esther, his own mother, and angrily charged at petitioner. The evidence presented at the pretrial hearing demonstrated prior difficulty between Antwan and petitioner. Petitioner had an uneasy opinion regarding Antwan because Antwan was arrested the first time they met. It was uncontested that Antwan had been seriously disregarding the rules that Esther, petitioner's girlfriend, had set in order for him to be able to stay with them in the home. Just the morning before, Antwan had broken Esther's well-established rule that he should not bring women to stay in the house overnight.

Petitioner was not at fault in bringing about the difficulty in the situation where the evidence showed Antwan came to the home very late, two o'clock in the morning, and woke up petitioner and Esther trying to get in the home. Esther would not let Antwan inside the home, and the two began arguing outside. Petitioner, as was his habit, grabbed his gun and went outside where he found Esther and decedent having an argument.

The evidence did not support the Court of Appeals' finding that petitioner failed to prove he had a reasonable fear of death or great bodily injury. Petitioner's fear was reasonable considering his past experiences with Antwan, the time of day, and the fact that Antwan shoved Esther and charged angrily at petitioner. Petitioner was reasonable in acting on the appearance that Antwan was armed and, in order to protect himself, and Esther, petitioner shot his gun, one time, to stop Antwan. Notably, petitioner did not flee the scene after the incident. Rather, he stayed, waited on police, and willingly gave a statement early that morning. Finally, petitioner

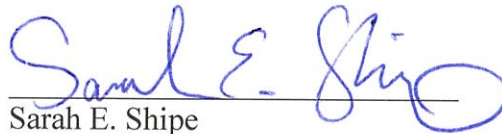
had no duty to retreat because he was at his residence when the incident occurred.

Petitioner respectfully requests this Court grant certiorari in this case to consider how the trial judge's ruling was not supported by the evidence presented and was contrary to controlling case law.

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.

Respectfully Submitted,



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This 8th day of February, 2023.