STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Richland County
The Honorable Jocelyn J. Newman, Circuit Court Judge

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THE STATE, RESPONDENT,

v.

DEMETRICK DOCTOR, APPELLANT.

Appellate Case No. 2022-000554

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# INITIAL BRIEF OF RESPONDENT

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"Whether the trial court reversibly erred by failing to suppress Appellant's statement to police where Appellant was in custodial interrogation, where he recognized his *Miranda* warnings by shaking his head 'yes' and signing the acknowledgement form, yet where he refused to sign the waiver of his rights, repeatedly shook his head 'no' when asked if he would talk with police, and after interrogators read the waiver of rights aloud Appellant said, 'I don't want to' ?"

## RESPONDENT'S QUESTION PRESENTED

Was the trial court within its discretion to deny Appellant's motion to suppress the recorded interview where the trial court's finding of fact that Appellant did not provide a clear and unambiguous invocation of his right to remain silent is supported by ample evidence in the form Appellant's persistently ambiguous responses and gestures demonstrating an uncertainty as to whether he wanted to answer questions and whether he was capable of answering questions, and where his response to the waiver was not "I don't want to", but "*I don't know*" in tandem with a gesture of uncertainty with his hands?

## STATEMENT OF THE CASE

Demetrick Doctor (hereinafter "Appellant") was indicted for two counts of murder and one count of attempted murder (2020-GS-40-04195 & 4197). Appellant proceeded to a jury trial before the Honorable Judge Jocelyn Newman on April 18, 2022 through April 22, 2022. Appellant was represented by Assistant Public Defenders John Tate and Megan Eigenbrot. The State was represented by Assistant Solicitors Daniel Goldberg and Amanda Gaston of the Fifth Judicial Circuit Solicitor's Office. (Tr. p. 1; p. 16).

At the conclusion of the trial Appellant was found guilty of all three charges. (Tr. p. 720). Judge Newman sentenced Appellant to life without parole for all three of his convictions. (Tr. p. 733). This appeal now follows.

## STATEMENT OF FACTS

### *The Trial*

On or about October 2, 2019, Appellant got into an argument with Victim Justin Glenn (hereinafter "Victim Glenn") regarding a drug sale taking place on his property. Victim Justin Glenn pulled an assault rifle on Appellant, but was disarmed by Appellant before a shooting took place. However, Appellant was angered by Victim Glenn's threat. (Tr. p. 124; p. 589; p. 600-603; p. 612).

The following night, October 3, 2019, at approximately 11pm, a shooting took place on Ballenton Road in Richland County which resulted in the murder of Victims Glenn (aka Julio) and Christine Hayes (aka Jules), and severely injuring John Dickerson. (Tr. p. 174-177). Victim Glenn was murdered as a result of a shotgun wound to the head containing birdshot. Victim Hayes was murdered as a result of a shotgun wound to the head containing buckshot. Victim Dickerson suffered a gunshot across the face and head, resulting in a life threatening injury and the loss of

his vision. (Tr. p. 241-244). He was found injured near where three spent shell casings for .40 caliber gun were found and one .380 caliber shell casing was found. Two witnesses at the scene, Mr. Nathan Telford and Ms. Stacy Melton, saw Appellant armed with multiple firearms at the time of the shooting. Mr. Telford saw Appellant with two shotguns, and a handgun in his waist band. (Tr. 299-301). Ms. Melton saw Appellant with two guns in his hands; one was a sawed off shotgun and the other was a black handgun. (Tr. p. 341-342). They likewise identified him when presented with a photographic lineup. (Tr. p. 305-306; p. 344-346). Both witnesses also testified to hearing gun fire continue as soon as Appellant passed by them. (Tr. p. 317; p. 341).

The testimony from Mr. Telford and Ms. Melton also demonstrated important details regarding Appellant's mindset. Mr. Telford testified to Appellant stating that "he was looking for the one who gonna shoot me on spot. . . they threaten me all week long." Mr. Telford also testified that Appellant recognized him that night, and told him: "Telford, you all right" as if to assure him he was safe. (Tr. p. 294-298). Ms. Melton testified that Appellant appeared angry when she encountered him and recalled him saying something about "Meke killers". Ms. Melton's statement to police on the night of the shooting also indicated that "he was shooting all around", though she was not able to remember this at the time of trial. (Tr. p. 342-344; p. 360-362). Forensics found GSR on the inside of the recovered white Crown Victoria that was used at the scene, but no fingerprints or DNA were sufficiently recovered for purposes of identification.

***The Jackson v. Denno Hearing***

Appellant made a pretrial motion under *Jackson v. Denno* to suppress his recorded interview with police. Thereto, the following pretrial testimony and evidence was provided to the court.

Investigator Bland testified that he, along with Sargent Dauway, were involved in taking a

statement and interview with Appellant on October 5, 2019. Appellant had been apprehended by the police department's fugitive team and was transported to headquarters for the interview. (Tr. p. 116-117). Appellant was in custody and not free to leave when brought to the interview room. He was coherent, did not appear to be under the influence of drugs or alcohol, and appeared to comprehend what the officers were talking to him about. He was read his *Miranda* rights and signed the form acknowledging his understanding of those rights. (Tr. p. 117-118). Investigator Bland testified that Appellant appeared to understand the rights read and presented to him; Appellant never expressly stated that he was not willing to waive his right, but he did not sign the formal waiver of rights form. (Tr. p. 119-120).

Appellant was not coerced or threatened, and he was not made any promises or offers of leniency in order to convince him to speak with law enforcement. (Tr. p. 119). Appellant ultimately chose to speak with Investigator Bland and Sgt. Dauway. He discussed with police the fact that he and Victim Glenn had gotten into an argument the day before that led to Victim Glenn attempting to point a rifle at him. Appellant disarmed Victim Glenn and did not return the rifle.[1] (Tr. p. 124). Appellant did not explicitly confess to the crime during his interview.

Investigator Bland testified that at no time did Appellant expressly state that he wished to stop talking and remain silent.[2] (Tr. p. 120). Investigator Bland endeavored to gain clarification, but Appellant would obfuscate. (Tr. p. 126-127). Investigator Bland testified that Appellant was essentially wasting their time and continuing to say the same things, while evading questions

[1] The entire recorded interview was entered as Court's Exhibit 3 and reviewed by the trial court. The pertinent contents of that recording are discussed in depth in Respondent's Argument. (*Infra*).
[2] Investigator Bland's testimony, the fully recorded interview, and the arguments of counsel also address the ambiguity regarding the desire for a lawyer. Respondent does not address this separate issue beyond a footnote reference as the issue is completely absent from Appellant's "Question Presented" and completely absent from the substantive facts and arguments presented in brief.

concerning the night of the shooting. (Tr. p. 127-128). As a result, Investigator Bland chose to end the interview with no expressed desire from Appellant to end their questioning, but because of Appellant's obfuscation.

Judge Newman adjourned the motion hearing, informing the parties that she would review the recorded interview in its entirety in advance of arguments from counsel the following day. (Tr. p. 138-140; Court's Exhibit 3). On April 19, 2022, the trial court heard argument from both parties concerning the *Jackson v. Denno* hearing. (Tr. p. 140). The parties agreed that the interview constituted a custodial interrogation requiring *Miranda* warnings, and that those warnings were given. *Pertinent to the issue on appeal*, Appellant argued that the interview should be suppressed because his body language suggested that Appellant did not want to talk and that he had declined to sign the waiver of rights. Counsel for Appellant asserted that "60 to 70 percent of the information conveyed in conversation" comes from body language and "Appellant shook his head almost immediately." (Tr. p. 142, lines 7-17). Appellant adds that such was consistent with Appellant not signing the waiver of rights. (Tr. p. 143). Appellant's arguments do not include any quotation from Appellant stating: "I don't want to".[3] (*Infra*).

In response the solicitor argued that, under the totality of the circumstances, the communications from Appellant were ambiguous and equivocal as to his desire to answer questions, and that as a result the officers were not under an obligation to cease questioning. The solicitor further argued that the officers were not being purposefully obtuse as they undertook the favorable practice of trying to establish clarity from Appellant in the face of the various ambiguous

[3] Such language is only uttered as the defense counsel's interpretation of Appellant's headshake. (See Tr. p. 151, line 15; p. 152, line 4).

responses they received.[4] (Tr. p. 146). The solicitor argued 1) that *Miranda* warnings were properly given, 2) Appellant understood them, 3) officers "did everything they could to give him an opportunity to state clearly and definitively . . . whether he wanted to talk to them" (Tr. p. 151), 4) Appellant gave no unequivocal indication that he was refusing to answer questions, and 5) he continued to engage with the police officer in the interview. For those reasons, the solicitor argued that the statements to police were knowingly, intelligently, and voluntarily given and there was no basis to suppress the interview. (Tr. p. 144-151).

After hearing the arguments of counsel, the trial court noted that she ultimately wound up where she started in her interpretation of the video recording: "the defendant is equivocating and trying to equivocate to his benefit." The trial court considered the argument regarding body language offered by the defense, but noted that it cuts both ways. Under the totality of the circumstances, the shake of the head is accompanied by gestures with the hand that suggests "I don't know." The record shows that the trial court even mimicked the gesture to which she was referring. Judge Newman concluded that when you add that to the head shake, and consider the verbal comments made by Appellant, the result is an ambiguous circumstance and an absence of a clear invocation of his rights. (Tr. p. 153-154). The trial court juxtaposed Appellant's "communications" to "a defendant sitting still and vigorously shaking [his] head or something that would be clear to law enforcement that he is declining to answer questions". (Tr. p. 153, line 24 through p. 154, line 2). The trial court further noted that, in conformance with the suggestion of

[4] The solicitor cited to *Davis v. United States*, 512 U.S. 452, 461, 114 S. Ct. 2350, 2356, 129 L. Ed. 2d 362 (1994) which deals more precisely with the invocation of the right to an attorney, but the Supreme Court's suggestion is clearly applicable to invoking the right to remain silent as well, if ambiguity exists to that *Miranda* issue. The solicitor also noted that Appellant's behavior during the interview seemed intentional, and that he was ultimately "play[ing] games of sorts as if he was being somewhat intentionally vague". (Tr. p. 144; p. 149; p. 151).

the Supreme Court, the officers undertook the volitional but commendable practice of trying to clarify Appellant's responses and reach an unambiguous answer, but their efforts were to no avail.

## STANDARD OF REVIEW

"The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to constitute an abuse of discretion." *State v. Franklin*, 390 S.C. 535, 539, 702 S.E.2d 568, 570–71 (Ct. App. 2010) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "An appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* "When reviewing a trial court's ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." *Id.* (citing *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). In criminal cases, appellate courts are bound by fact findings in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law. *State v. Asbury*, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

## ARGUMENT

### I. The proper standard of review is one of abuse of discretion.

Appellant has requested that this Court implement a new standard of review so as to treat this issue as a mixed question of law and fact and apply *de novo* review to the "the ultimate legal conclusion". (See Brief of Appellant, p. 3-4). Appellant attempts to liken this case to our Supreme Court's recent 4th Amendment search and seizure analysis, and whether that analysis should be mirrored in considering the voluntariness of statements. See *State v. Frasier*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022), reh'g denied (Nov. 17, 2022); See *State v. Brewer*, 438 S.C. 37, 44,

882 S.E.2d 156, 160 n.1 (2022), cert. denied (June 20, 2023), cert. denied, No. 22-885, 2023 WL 4065710 (U.S.S.C. June 20, 2023). However, *Brewer* left the issue unaddressed and there does not exist any precedent directing this Court to undertake a new standard of review in this type of matter. On appeal, the trial judge's ruling as to the voluntariness of the confession will not be disturbed unless so erroneous as to constitute an abuse of discretion. *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004).

However, such a shift in the standard of review, if applied in this case, would ultimately be without practical substance. The *only disputed issue* before the court was the factual consideration of whether Appellant's various responses were equivocal or unequivocal as to his unwillingness to answer questions; in determining that fact courts are instructed to consider all of the facts and circumstances thereto. *State v. Aleksey*, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000) ("Before law enforcement officers are required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation."); *Id.* ("[T]he conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion."). Interpreting the meaning behind communications is a factual matter, and legal questions such as whether custodial interrogation took place or whether *Miranda* warnings were sufficient, are not in dispute. Compare *State v. Rogers*, 405 S.C. 554, 564, 748 S.E.2d 265, 270 (Ct. App. 2013) (The meaning of the defendant's statement was a factual matter for the jury in determining whether it constituted a confession); Compare *Parrish v. Allison*, 376 S.C. 308, 323, 656 S.E.2d 382, 390 (Ct. App. 2007) ("The resolution of conflicting meanings is reserved for the jury.").

As such, the narrow issue in dispute is: is there any evidence supporting the trial court's finding of fact that Appellant did not give a clear invocation of his right to remain silent? The

standard of review for addressing that issue is one of abuse of discretion for lack of any evidence within the record to support the trial court's findings. Respondent's arguments thereto, demonstrate that the findings of the trial court were well supported by the evidence and circumstances presented.

## II. The trial court correctly denied Appellant's motion to suppress because Appellant did not provide an unequivocal assertion of his right to remain silent, or similarly, unequivocally demand that the interviewing officers cease asking questions.

Appellant began his interview with an equivocal response to Investigator Bland's simple and direct question of whether he was willing to answer any questions from law enforcement after being arrested and brought to the police station on October 5, 2019. Upon multiple efforts to gain clarity on Appellant's response, Appellant compounded his ambiguities and at times expressly encouraged police officers to continue speaking with him as to why he had been arrested. The trial court reviewed the testimony of Investigator Bland offered during the motion hearing, watched the entirety of Appellant's interview, heard the arguments of counsel, and ultimately found that under the totality of the circumstances Appellant's responses and hand-gestures were not an unambiguous assertion of his right to remain silent that would have compelled law enforcement officers to cease questioning. Moreover, even if the court's findings of fact as to the ambiguity of Appellant's responses could be deemed an abuse of discretion, it would constitute harmless error[5] given the existence of two separate witnesses who saw Petitioner armed with multiple firearms matching the nature of the murder weapons, and shared communications with Appellant that reflected his mood, intent, and ability to assure the safety of one those witnesses. For these reasons, as discussed below, Appellant's convictions and sentences should be affirmed.

[5] Harmless error applies, even in the context of constitutional rights. (See Footnote 9, *Infra*).

The controlling authority for the precise issue on appeal emanates from the Supreme Court's decision in *Michigan v. Mosley*. Therein the Court found that:

> [a] reasonable and faithful interpretation of the *Miranda* opinion must rest on the intention of the Court in that case to adopt "fully effective means ... to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored...." 384 U.S., at 479, 86 S.Ct., at 1630. The critical safeguard identified in the passage at issue is a person's "right to cut off questioning." *Id.*, at 474, 86 S.Ct., at 1627. Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his "right to cut off questioning" was "scrupulously honored".

423 U.S. at 102–104, 96 S.Ct. 321 (quoting *Miranda v. Arizona*, 384 U.S. 436, 478, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694 (1966)). *Mosley* created a set of five factors that are used to address a myriad of issues that might arise concerning *Miranda* and a defendant's right to remain silent. However, the issue here is limited strictly to the question of whether the right to remain silent was ever actually unambiguously invoked. To that issue, "[b]efore law enforcement officers are required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation." *Aleksey*, 343 S.C. 20, 31, 538 S.E.2d 248, 253 (2000) (citing *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). Stated another way, "[l]aw enforcement officers are not required to terminate an interrogation unless there is an unambiguous invocation of the right to remain silent." *State v. Reed*, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). Here, Appellant did not provide such an unambiguous invocation of his rights, and that fact is proven at numerous instances throughout the beginning of his interview.

After being read his *Miranda* rights by Investigator Bland, Appellant began an

exceptionally long obfuscation of his desire and intent to answer questions by police. The first, comes at the very outset of the interview, wherein Investigator Bland explicitly asks if Appellant is willing to answer questions. Appellant's response is a *minimal* and uncertain shake of the head accompanied by a raising of his hands palms up, which is generally and genuinely interpreted to convey uncertainty.[6] (See Court's Exhibit 3, Camera 1, at 20:13:12). The officers were understandably left without an understanding of what Appellant meant from this reaction, and Investigator Bland sought to have Appellant clarify by asking: "Gotta get a verbal Yes, No?" Despite being explicitly presented with this ***binary*** choice from Investigator Bland, Appellant again obfuscated by saying: "probably not." (Camera 2, at 20:13:17). The ambiguous response was repeated as a question by Sargent Dauway immediately after, and Appellant again responded with a headshake and hand-gesture similar to his initial answer to Investigator Bland; he then adds "[unintelligible][7]. . ., said yall looking for me." He then lowered his head and turned his palms facing outward, instead of upward. The meaning of his gestures could be interpreted to convey: 1) general uncertainty, 2) uncertainty as to why they were looking for him, 3) a defensive posture of surrender, or 4) a defensive posture similar to claiming innocence. Again, the ambiguity is prevalent. (Camera 1 & 2, 20:13:18 through 20:13:31).

Appellant's responses thus far in the interview are enough to demonstrate the persistent ambiguity and lack of explicit assertion of his rights that would defeat his arguments on appeal. However, more would come.

Moments later Appellant is read the contents of the waiver form and is presented with an opportunity to sign it. (Camera 1, 20:13:35 through 20:14:04). Appellant says: "I ain't gonna sign

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[6] While Court's Exhibit 3, Camera 1, provides better video recording of all of Appellant's hand gestures, Camera 2 provides clearer and louder audio.

[7] The initial words sound like "the end of the day".

it, cause you just now said uh 'I agree to answer questions, ***and I don't know***." (Camera 2, 20:14:04 through 20:14:12)(emphasis added). Appellant has misheard the recording, and contrary to Appellant's repeated arguments, *he **does not** say "**I don't want to.**"* (emphasis added). In support of Respondent's description of the recorded audio, at the moment he says "I don't know" Appellant again turns his hand up in the questioning/uncertainty manner, similar to his previous gestures. (Camera 1, 20:14:10 through 20:14:12). Moreover, immediately after saying "I don't know" Appellant stated that he was willing to have the officers continue speaking and listen to comments, "but I *probably don't know if I can answer questions.*" This response encapsulates 1) an invitation for police to continue speaking with him, 2) a reference to his *inability* to respond to questions (as opposed to an explicit *unwillingness*), and 3) a verbal and nonverbal equivocation on that inability, to boot. (Cameras 1 & 2, 20:14:14 through 20:14:22). Appellant's obfuscations would only continue from there.[8]

Frankly, an argument of this nature is almost self-serving as to its own conclusion. When the parties are left with no alternative but to engage in an argument over the interpretation of Appellant's hand gestures, the degree or manner in which he shook his head, and the meaning behind his verbal statements, the question of "was Appellant clear in invoking his right?" has already been answered in the negative. Nevertheless, a thorough review of the circumstances and Appellant's various verbal and nonverbal gestures demonstrates that Appellant at no time gave an unequivocal invocation of his right to remain silent, or an equivalent demand for questioning to end. In fact, portions of his responses encouraged the officers to continue talking to him and merely expressed concern that he would not be able to answer their questions.

[8] The trial court articulated that Appellant appeared to be equivocating to his own benefit. Such constitutes essentially a credibility finding, further solidifying the factual nature of the issue.

The law does not require police to "scrupulously honor" any vague or ambiguous hesitancies of a defendant to speak as being tantamount to an invocation of the right to remain silent. What must be scrupulously honored is the right to remain silent *once asserted.* The Supreme Court has given further explanation to this distinction in its decision in *Berghuis v. Thompkins* by stating:

> There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoid[s] difficulties of proof and ... provide[s] guidance to officers" on how to proceed in the face of ambiguity. *Davis*, 512 U.S., at 458–459, 114 S.Ct. 2350. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression "if they guess wrong." *Id.*, at 461, 114 S.Ct. 2350. Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity.

560 U.S. 370, 381–82, 130 S. Ct. 2250, 2260, 176 L. Ed. 2d 1098 (2010). The case at hand presents the quintessential concern the Supreme Court envisioned if unambiguous invocation was not to be required: an officer would have to guess, and choose between doing his duty and being unnecessarily deferential to unasserted constitutional rights. Notwithstanding all of the aforementioned ambiguous communications from Appellant, and the other ambiguous communications that would follow, there can be no clearer demonstration of the officer's desire to scrupulously honor Appellant's Fifth Amendment rights than when Sargent Dauway loudly informs Appellant that he is being read his *Miranda* warnings because it is his constitutional right, and that he is trying to determine whether Appellant is willing to have a conversation with them about the details of his charges and the events thereto. (Camera 1 & 2, 20:17:16 through 20:18:39). At which time, Appellant *still* did not invoke his rights.

The trial court's conclusion was correct. Under the totality of the circumstances Appellant's verbal and nonverbal communications did not constitute an unequivocal assertion of his right to remain silent and the officers were under no obligation to end the interview. There are numerous facts that support this conclusion, including the hand gestures that the trial court explicitly mentioned as important to her findings.[9] The trial court is entitled to deference for its factual conclusion that Appellant's communications were not clear. There is no abuse of discretion and Appellant's convictions and sentences should be affirmed.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

(Signature block on following page)

[9] In the alternative, any finding of error would be harmless given the fact that the jury heard from two different witnesses who accurately identified Appellant, placed him at the scene while heavily armed with shotguns, heard incriminating commentary from Appellant that would insinuate he was committing the shooting, and heard shooting continue after he passed by them. As Appellant's interview did not provide an outright confession to the crime, only substantive background about a dispute the prior day with Victim Glenn, the admitted interview would not have been so material and prejudicial as to have reasonably affected the result of the trial. See generally *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 909 (2015) (Harmless error analysis is a fact-intensive inquiry not bound by definitive rules and courts must determine the materiality and prejudicial character of the error in relation to the entire case in order to determine if it reasonably affected the outcome of the trial.).

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