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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
The Honorable Perry H. Gravely, Circuit Court Judge
Appellate Case No. 2023-000366

THE STATE,.....RESPONDENT

v.

QUINTON MAURICE COLLINS,.....APPELLANT

INITIAL BRIEF OF RESPONDENT

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APPELLANT’S STATEMENT OF ISSUE ON APPEAL

Whether the court erred in determining incriminating cellular mapping evidence, were the State had the evidence for several years but only turned it over to defense counsel shortly before trial, since Rule 5 SCRCrimP, requires the prosecution to disclose evidence it intends to use its case-in-chief?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in allowing into evidence cellular mapping related to information gathered from cell phone records that was given to the Appellant four years earlier, mapping evidence Appellant had in his possession ten days before trial, thereby allowing sufficient time for an expert to review prior to trial?

2. Did cellular mapping not change the result of this trial since the phone records where the maps were derived from revealed Appellant was at the scene of the crime when it occurred; therefore, making any error harmless?

STATEMENT OF THE CASE

On May 10, 2022, Quinton Maurice Collins (Appellant) and Tychristian Ladson (co-defendant) were both indicted by the Pickens County Grand Jury for the offenses of murder and attempted armed robbery. On February 21, 2023, the case was called for trial. Both the Appellant and his co-defendant's trials were held simultaneously. Appearing before the Honorable Perry H. Gravely, was the Appellant with his trial counsel Kraig Alan Pringle, also appearing, was his co-defendant along with his counsel Ashaley Boatwright and Katelyn Williams. Representing the State of South Carolina were Assistant Solicitors Judith Munson, and Katryna Owens, of the Thirteenth Circuit Solicitors Office.

After four days of testimony both defendants were found guilty of both offenses. (T. p. 673 l. 5-12). After the announcement of the verdict the Appellant appeared before the trial judge. Due to the Appellant's prior offenses the State earlier served notice upon conviction that they were seeking a sentence of life without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code of Laws.¹ (T. p. 678 l. 3-6). Therefore, the trial judge sentenced Appellant to a term of incarceration for the remainder of his natural life for the offense of murder and twenty years' incarceration for attempted armed robbery. (T. pp. 681 l. 25- p. 682 l. 3)

¹ Notwithstanding any other provision of law, except in cases in which the death penalty is imposed for a most serious offense as defined by this section a person must be sentenced to a term of imprisonment for life without the possibility of parole. S.C. Code Ann. §15-25-45(A)(2015).

STATEMENT OF THE FACTS

On December 14, 2018, Ms. Stacy Regina Branham (victim) was working at B Pam's, a local store located on Northeast Main Street in Easley, South Carolina. (T. p. 60 l. 18-20). During her shift two masked men entered the store armed with handguns. It was later discovered that these men were the Appellant along with his co-defendant. As they entered the store they demanded money from the register. While one of the defendants attempted to retrieve the cash register the victim pulled out a handgun of her own and shot one of the assailants. (T. p. 102 l. 9-12; p. 131 l. 6-10; T. p. 131 l. 12-13). After she shot this individual the other assailant shot and killed her.

After shooting the victim both defendants ran out of the store and into a stolen silver Subaru. (T. p. 67 l. 10-14). When the robbery occurred Mr. William Looper was leaving a nearby restaurant with his wife. They saw the defendants jump into the silver Subaru and drive off. (T. p. 67 l. 18-19). Mr. Looper decided to follow them as his wife called 911. In order to protect himself and his wife Mr. Looper decided not to get too close to the defendants; therefore, he could not make out the entire license plate. However, he knew it was a vanity plate with the number one or "I" at the end. (T. p. 69 l. 16-20). During their chase a police officer pulled over Mr. Looper. Looper informed the law enforcement officer of the robbery and the direction the defendants were traveling. (T. p. 62 l. 22-25). The officer gave chase; however, he was not able to catch the defendants. A Be On the Lookout (BOLO) was released for the vehicle. (T. p. 63 l. 5-9) Appellant and co-defendant were eventually arrested and charged with the offenses of murder and attempted armed robbery.

After the BOLO was released the Greenville Sheriff's Department realized that the car was headed to Greenville so they thought it was possibly stolen out of Greenville County. (T. p. 251 l. 13-20). After some investigation they found out that only one Subaru was recently stolen out of

Greenville County. They discovered that a Subaru Forester was stolen in Greenville County in September of 2018, which was never recovered. (T. p. 251 l. 21-24). The Greenville Sheriff's Department later got a tip that the car was at an apartment complex in Greer. (T. p. 252 l. 17-20). Deputies went to the complex and did not find the vehicle. (T. p. 255 l. 6-8). They canvassed the area and were informed by some of the residences that a black male living in the complex was seen driving that particular vehicle. Officers went to the apartment and spoke to a relative of the co-defendant who told them the co-defendant did live there, law enforcement was then provided with the co-defendant's phone number. (T. p. 255 l. 11-15; p. 256 l. 1-6). They further canvassed the area and discovered the vehicle abandoned in a grassy field near another apartment complex. (T. p. 252 l. 22 – p. 253 l. 2). They swabbed the car for DNA and found both defendant's DNA on the steering wheel. (T. p. 126 l. 1-9).

During trial Mr. Thomas Cloer testified. Mr. Cloer stated that his Silver Subaru was stolen from his house in September of 2018. (T. p. 97 l. 23-25). Mr. Cloer's car had the license plate "Cloer 1." (T. p. 97 l. 6-7). He reported his car stolen that day, and never saw it again. (T. p. 98 l. 6-10). During his trial testimony Mr. Cloer stated that he did not know Appellant nor his co-defendant. (T. p. 98 l. 22 – p. 99 l. 4).

Mr. Ryan Collins also testified. He stated that he went to the Sphinx gas station in Greenville where he saw both defendants and felt something was not right. (T. p. 279 l. 1-7). As he left the gas station he saw a vehicle from North Carolina with vanity plates, he thought it to be "sketchy." (T. p. 279 l. 8-13). When Mr. Collins got home, he saw on Facebook this identical vehicle being involved in a murder and attempted armed robbery. Mr. Collins then contacted the Easley police department. (T. p. 279 l. 14-16). Due to this tip law enforcement was able to retrieve surveillance video from Sphinx revealing the co-defendant inside the gas station. (T. p. 2961 l. 21).

Mr. Darius Roberts also testified. He stated that he knew the co-defendant and that after watching the surveillance video of the murder, and attempted armed robbery he noticed the shoes of one of the assailants belonging to the co-defendant. (T. p. 361 l. 1-9). Mr. Roberts also recognized the description of the getaway vehicle because he rode in it once, in either November or December of that year. (T. p. 361 l. 20-25).

Investigator David Picone of the Greenville Sheriff's Department also testified. Investigator Picone stated that after discovering the getaway vehicle it was searched and they discovered a receipt from a local Dollar General. (T. p. 260 l. 7). Law enforcement went to this dollar general and even though they did not have any surveillance video they did find ski masks matching ones being worn by the assailants during the incident. (T. p. 260 l. 18-25). They purchased these masks for potential future evidence. (T. p. 261 l. 7-9).

Dr. William Strathern, a general surgeon from Allied Health also testified. Dr. Strathern stated that the Appellant came into his office on November 11, 2019. An x-ray revealed that Appellant had a bullet under his skin near his spine. (T. p. 332 l. 14-15; p. 333 l. 14-15). It was something that he could easily remove in his office, and he discussed removal with the Appellant. However, the Appellant did not wish to have it removed. (T. p. 334 l. 19-24). Appellant came to his office again on September 25, 2020, with Officer Jamie Newton. Dr. Strathern was presented a court order to conduct a surgical procedure to remove this bullet. (T. p. 335 l. 3; p. 553 l. 1-9). During the examination it was discovered that the bullet was removed and a scar was over where the bullet once was. (T. p. 336 l. 12-14). Dr. Strathern ordered another x-ray, both before and after x-rays were admitted into evidence without objection. The second x-ray revealed the bullet was definitely missing. (T. p. 335 l. 20-23; p. 553 l. 25 – p. 554 l. 1-2).

Investigator Brandon Liner testified that he prepared search warrants for location data for the phone of both the Appellant and his co-defendant. (T. p. 139 l. 13-14; p. 140 l. 19 – p. 141 l. 3). These warrants were served on T-Mobile for the call records of both defendants. Once these records were obtained they were given to Lieutenant Brian Swafford of the Pickens County Sheriff's Department. They requested Lieutenant Swofford to run these records through a program called ZetX. (T. p. 421 l. 14-18). ZetX is a program in which a digital format of phone records is uploaded, and phone signals are mapped. (T. p. 422 l. 19-22). It was discovered that both phones were near the incident location at the time of the crime. (T. p. 436 l. 11-16).

ARGUMENTS

- 1. The trial court did not err in allowing into evidence cellular mapping related to information gathered from cell phone records that was provided to the Appellant four years earlier, this mapping evidence was also given to Appellant ten days before trial allowing sufficient time for an expert to review.**

Relevant Facts

During trial Mr. Ricardo Leal from T-Mobile testified that he was served search warrants for the records of the phones of both defendants. These records were from the dates of December 1 – 26, 2018. (T. p. 387 l. 13-15; p. 388 l. 17-19). The package provided was a complete record of the call detail. These records were provided to law enforcement in early 2019. (T. p. 387 l. 19-22). These phone records were introduced into evidence by the State without objection. (T. p. 387 l. 25 – p. 388 l. 3).

Later testifying was Lieutenant Brian Swafford of the Pickens County Sheriff Office. Lieutenant Swafford testified that he was contacted by the Easley Police Department on February 4, 2019. They requested Lieutenant Swafford use a program called ZetX in order to map the location of the cell towers that the defendant's phone calls pinged on the incident date. (T. p. 421 l. 14-18). This program is used in phone call detail records or advance timing records that are uploaded and maps the cell towers that cellular phone call used to transmit calls. During trial fifty-six documents from the cell phones of the defendants were introduced into evidence.

During pre-trial, trial counsel for the defendant's made a motion to suppress cellular mapping evidence. They argued that although the State had this information in their possession they only decided to release this mapping evidence ten days prior to trial. They argued that this was a violation of Rule 5 and these records should be suppressed. On February 17, 2023, a hearing was held before the trial judge. The Appellant argued regarding the lateness of these records being

provided. At the conclusion of the arguments the trial judge decided that since this motion was regarding the cellular mapping, which was provided, the motion to suppress was denied.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker*, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent as abuse of discretion. *State v. Davis*, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (1992). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017).

Discussion

Rule 5 of the South Carolina Rules of Criminal Procedure states, "Upon request of a defendant the prosecution shall permit defendant to inspect and copy any results or reports of physical or mental examinations and of scientific test or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution. Rule 5(a)(1)(D)SCRCrim.P. The Appellant argues that he was not provided with the mapping of the phone calls within a proper time so that an expert could have been hired to examine this evidence. Rule 5 never states a timeline as to when these documents should reviewed. This is because the trial court determines this on a case-by-case basis. The Respondent argues that ten days was ample time for an expert to be retained to view these mapping sheets since they were created from the phone records that were already provided to the Appellant four years earlier.

During the pre-trial hearing, the State brought to the trial court's attention that more discovery was released to the defendants on February 10, 2023. (pre-trial hearing T. p. 17 l. 8-9). These items were: 1) call detail records for both defendants; 2) advance records; 3) jail interview calls; 4) cell transfers from the co-defendant and Peter Stokes; and 5) defendant's timing advance records. (pre-trial hearing T. p. 17 l. 13-19). The State explained to the trial judge that in March or April of 2019 an exhaustive collection of call detail records and advanced timing records were provided for each defendant. (pre-trial hearing, T. p. 22 l. 15-18). The mapping were just demonstrative maps that come from the phone records already provided to the Appellant. As Lieutenant Swafford explained during his trial testimony, the mapping could be done without the ZetX program, however this program just makes it easier. (T. p. 422 l. 5-7). So, the records that the mapping came from were always in the possession of the Appellant.

During the motion the co-defendant's counsel argued that the lateness of the mapping being given to them caused them not to be able to get the funding to hire an expert to look at these maps, so they could be reviewed and verified. (Pre-trial hearing T. p. 19 l. 16-21). They never mentioned any attempts to contact an expert or any funding requests being provided to the trial judge. The Respondent argues that prior to any suppression, some type of effort must be exerted to have these cell maps reviewed by an expert. No such effort was ever revealed to the trial court, so there was no reason provided that obtaining an expert within the ten days prior to trial would be impossible. The Appellant revealed no prejudice so these items should not have been subject to suppression. Failure to comply with inconsequential ministerial requirements of the statute does not require suppression in the absence of prejudice to the defendant. *State v. Mollison*, 319 S.C. 41, 47, 459 S.E.2d 88, 92 (Ct. App. 1995).

Appellant also never requested a continuance, which would have been the best remedy since this case was not scheduled to be called for trial for another four days. Instead, Appellant immediately requested that the trial court suppress this evidence. If the Appellant seriously thought that an expert could review the mapping they should have requested a continuance in order to hire an expert and have that person review the mapping. Continuance was the most convenient remedy. *See, State v. Davis*, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992). If a continuance was requested and denied then the next possible remedy would be suppression. The Appellant went straight to suppression not even giving the trial court an opportunity to rule on a continuance that would have remedied the problem. A short continuance could have been ordered so an expert could have reviewed these maps. During this pre-trial hearing trial counsel for the co-defendant admitted they had an expert to analyze the phone records. (pre-trial hearing T. p. 28 l. 1-5). However, no evidence was revealed that they attempted to retain the same expert to review the maps. The Appellant did not want an expert to review these records, because, if Appellant hired an expert to review this mapping they would have come up with the identical results as Lieutenant Swafford. That phone records revealed Appellant was at the scene of the crime when it occurred.

There were no new call detail records nor any new additional discovery given to the defendants. (pre-trial hearing T. p. 20 l. 13-17). The mapping came from the identical discovery provided in 2019, four years prior to this case being called for trial. They could have easily had this same expert hired previously to review the mapping when it was received. There exists no violation of Rule 5 because there exists no prejudice against either defendant. During the pre-trial hearing the trial judge asked the co-defendant's counsel if there was any prejudice and co-defendant's counsel during her argument stated, "I don't, you know – and the brief review that we've been able to do in the time that it's been released **it doesn't appear to.**" (pre-trial motion

T. p. 19 l. 25 – p. 20 l. 4). Counsel for the co-defendant stated herself there doesn't appear to be any prejudice. Therefore, even if there was an error by the trial court this Court should not reverse because no harm was done to either defendant. Violation of Rule 5 is not reversible where there is no prejudice. *State v. Hughes*, 336 S.C. 585, 593, 521 S.E.2d 500, 504 (1999). For an error to require reversal the appellant must be sufficiently prejudiced by it. *State v. Thompson*, 276 S.C. 676, 281 S.E.2d 216, 219 (1981).

The Appellant argues that the trial court erred in allowing the cell phone mapping into evidence. The trial court committed no error, it did exactly what is within its power according to Rule 5, which states:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order it deems just under the circumstances.

Rule 5(d)(2) SCRCrim.P.

Since this was not new discovery but mapping evidence derived from the cell phone records already provided four years earlier, the court properly found that there was no prejudice and entered an order he deemed just under the circumstances.

There was also no prejudice because Appellant's trial counsel was able to perform a more than adequate cross-examination, raising questions as to the reliability of these phone records and mapping evidence. During cross-examination Appellant's trial counsel also got the State's witness to admit that the technology is not pinpoint accurate and not foolproof. (T. p. 460 l. 22-25). The witness also admitted that you can have overlapping towers on one phone from three different towers. (T. p. 464 l. 5-8). Further, there is a margin of error with this mapping that could be almost a mile. (T. p. 464 l. 17- 24). Appellant's trial counsel even got the State's witness to admit that a

phone at the courthouse could ping at the incident location. (T. p. 465 l. 12-15). Lastly, the State's witness admitted that you can only guesstimate where the phone might be. An area which could be miles, with the best technology you can only guess the area where the phone could be, it is not exact. (T. p. 466 l. 5-16). The Appellant was never prejudiced by the inclusion of the mapping evidence, since it came from the phone records provided to the Appellant earlier through discovery. It is clear that Appellant's counsel was prepared and conducted a very competent cross-examination of Lieutenant Swafford. The decision of the trial court in allowing the mapping into evidence was proper and should not be subject to reversal.

- 2. The mapping was from phone records previously given to Appellant's counsel, this was not new evidence, the cell phone records still revealed that the Appellant was at the crime scene at the time of the crime, so cellular mapping did not change the outcome of the trial. There was also other sufficient evidence proving Appellant committed this crime; therefore, any error that might have been committed by the trial court should be considered harmless.**

Relevant Facts

Appellant seeks a reversal of the decision of the trial court in allowing into evidence the cell phone mapping evidence that came from cell phone records previously provided to the Appellant four years earlier. Respondent argues that this mapping did not reveal any new evidence that was not already in the Appellant's possession and there was sufficient circumstantial evidence that was revealed that even without the mapping evidence the Appellant's guilt was proven beyond a reasonable doubt.

Standard of Review

Error is harmless when it could not reasonably have affected the result of trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573 (2018). The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promote the public respect for the criminal process by focusing

on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error. *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986).

Discussion

The Respondent does not concede that the trial court made any error in allowing the cell phone mapping into evidence. If this Court finds that any possible error might have occurred in the trial court's introduction of such evidence it should be considered harmless.

If the trial court erred in allowing the mapping evidence before the jury this evidence was only demonstrative, derived from phone records revealing possible locations of the Appellant at the time the crime occurred. Like all circumstantial evidence cases there must be evidence that creates a chain of facts and circumstances in which the existence of a separate fact may be inferred. Circumstantial evidence is "based on inference and not on personal knowledge or observation, and establishes "collateral facts from which the main fact may be inferred. *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (2013), quoting, *Black's Law Dictionary*, 636 (9th ed. 2009), quoting, *State v. Salisbury*, 343 S.C. 520, 524, 541 S.E.2d 247, 249 (2001) n. 1. (citations omitted). From all of the facts presented to the jury it was easy to determine that the Appellant committed this crime.

Right after the robbery, as they were trying to escape, defendants got into a silver Subaru. Unknown to them, they were immediately followed by an innocent bystander, Mr. William Looper. Mr. Looper testified that while following the defendants he could see their license plate. It was a vanity plate with four or five letters and a "1" or "I" at the end. (T. p. 69 l. 16-20). Months earlier Mr. Thomas Coler's Subaru was stolen, his license plate happened to read "Cloer1." Mr. Cloer testified that he reported his car stolen in September of 2018 and never saw it again. (T. p. 97 l. 23-24). He also testified that he never knew either defendant or gave them permission to drive his

vehicle. (T. p. 98 l. 22 – p. 99 l. 4). Both defendant's DNA were found on the steering wheel of this vehicle. (T. p. 126 l. 1-9).

Mr. Ryan Collins testified that he saw both defendants in the stolen car at the gas station. (T. p. 280 l. 3). During trial he identified both defendants as the people inside the stolen car. (T. p. 280 l. 12-13). Mr. Darius Rhodes told law enforcement that after seeing the surveillance video of the incident he knew those were the shoes the co-defendant wore. Mr. Rhodes also recognized the description of the car that law enforcement was seeking because he rode in it once. (T. p. 361 l. 20-25). Mr. Rhodes testified that he rode in this car around November or December with the co-defendant. (T. 362 l. 12-16). In watching the video, he also recognized the co-defendant from his skin complexion and height. (T. p. 364 l. 12-18).

On the surveillance video of the actual incident, it was apparent the Appellant was shot by the victim while reaching for the cash register. Testimony from Dr. William Strathern stated that Appellant came into his office on November 11, 2019. (T. p. 332 l. 14-15). Appellant was at his office to have a bullet removed from under his skin. (T. p. 332 l. 20). Dr. Strathern testified that the x-ray revealed what looked to be a bullet or at least a metal fragment that felt like a firm mass below Appellant's skin at the upper back near the middle. (T. p. 333 l. 14-15; p. 334 l. 6-11). Dr. Strathern also testified Appellant once again came into his office on September 25, 2020. (T. p. 335 l. 3). Appellant went to Dr. Strathern with Officer Jamie Newton of the Easley Police Department. Officer Newton possessed a court order for a surgical procedure to get a projectile out of the Appellant's back. (T. p. 553 l. 1-9). When Dr. Strathern examined the Appellant, there was a scar over where the bullet had been. It was definitely missing. (T. p. 336 l. 12-14). In looking at the two x-rays of the first visit and the second, Exhibit's 26 and 27, the difference was the bullet was missing from the second x-ray. (T. p. 335 l. 20-23). Officer Newton testified that they were

going to take the bullet to South Carolina Law Enforcement Division (SLED) to have the projectile analyzed to compare it with the gun that was fired by the victim which was recovered at the crime scene and already test-fired at SLED. (T. p. 553 l. 5-9; p. 553 l. 12-13). The surveillance video revealed victim shot one of the assailants, and that a bullet was discovered in the back of the Appellant. They just needed that bullet to compare with the firearm so that they knew it was fired by the victim. But no comparison could be made because between the first visit and this one the Appellant had the bullet removed. This revealed an awareness of the Appellant that this projectile was the bullet fired by the victim. This removal reveals that Appellant did not wish this bullet to be compared to the gun fired by the victim.

All of this evidence was revealed before the phone records were ever discussed. The phone records revealed that the Appellant was near the crime scene when it occurred. The mapping was just demonstrative evidence in order to make it easier for the jury to understand where both defendants were located on incident date. The mapping was not needed in order to obtain a conviction, it just assisted the jury to understand cell tower locations and what phone was pinging off what tower that day. Harmless error analyses are fact-intensive inquiries and are not governed by a definite set of rules, rather appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case. *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 910 (2015)(citations omitted). Since this mapping was not necessary for a conviction, any error that might have occurred in allowing it into evidence should be considered harmless. In some cases, the properly admitted evidence of guilt is so overwhelming, . . . that it is clear beyond a reasonable doubt that the improper use of the admission was harmless error. *State v. Young*, 420 S.C. 608, 626, 803 S.E.2d 888, 897 (Ct. App. 2017), *quoting*, *Schneble v. Florida*, 405 U.S. 427, 430, 92 S.Ct. 1056 (1972).

As stated above the Respondent does not concede that any error occurred, and we are steadfast that the trial court ruled properly in allowing the cellular phone mapping into evidence. However, Respondent will argue that this evidence did not change the outcome of this trial. Since the outcome was not affected by this evidence if this Court finds that any error occurred, it must be considered harmless.

CONCLUSION

The trial court made the proper decision regarding this matter so the Respondent respectfully requests this Court affirm the decision of the trial court.

Respectfully submitted,

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