STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2025-000219

THE STATE, ...RESPONDENT

v.

CHRISTOPHER LONGSHORE, JR.,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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Whether the trial court erred in refusing to suppress jail calls that were obtained automatically in the course of jail business, not subject to any particularized suspicion?

STATEMENT OF THE CASE

During their August, 2023 term, a Greenwood County grand jury indicted Christopher Longshore, Jr. (Appellant) with murder and possession of a weapon during the commission of a violent crime for the shooting death of Keyiona Hill. (R. * Indictments). A jury trial on the charges was held January 27–31, 2025, before the Honorable Eugene C. Griffith. Elizabeth Thomas and Tristan Shaffer from the Eighth Circuit Public Defender's Office represented Appellant. Solicitor David Stumbo and Assistant Solicitors Demetri Andrews and Mary Driggers represented the State. (Tr. 2). The jury found Appellant guilty on both charges. (Tr. 915). The trial court sentenced Appellant to a total term of imprisonment of forty-five years (45); with forty (40) years for murder and five (5) years for the weapons charge, to be served consecutively. (Tr. 926). This appeal now follows.

STATEMENT OF FACTS

On the evening of July 8, 2022, Keyiona Hill was enjoying a night out with her friends at the Uptown Grill in downtown Greenwood when, at approximately 11:00 PM, she was fatally struck in the head by a bullet fired through the front door. Chantal Kennedy, a close friend of Hill, described hearing a sound like glass shattering, followed by a fast-moving object passing her face and a loud knocking sound. She then observed Hill standing motionless with a blank stare before collapsing to the floor. (Tr. 201–204). Witnesses, including armed security staff standing outside by the front door, reported that multiple gunshots were fired from the front passenger window of a red, burgundy sedan driving by the restaurant. (Tr. 246–247, 260–261, 294–296, 300–301).

Shortly after responding to the scene and beginning their investigation, law enforcement utilized Flock camera technology (essentially surveillance cameras that have automatic license plate readers) and detected a "sedan-type vehicle, . . . red or burgundy in color . . . moving away from the scene fairly close to the time frame of the incident"—specifically a 2015 Nissan Altima registered to Annbrell Jackson. (Tr. 278–283, 722). The following morning, law enforcement located this vehicle being driven by Mikasia Whitmore, who was taken into custody and questioned. (Tr. 722–728). Whitmore stated that she and Jackson were sharing that car that evening. Specifically, Whitmore had been driving the car that evening until she gave it back to Jackson around 10:00 PM and then Whitmore did not get the car back until 3:00 AM. Whitmore testified that she and Jackson were hanging out with Appellant and that Jackson and Appellant were in a relationship at the time. While at Appellant's house on Carolina Avenue, Whitmore stated that Jackson and Appellant left together with the car to go to Walmart. (Tr. 434–440). Finally, Whitmore noted that Appellant was wearing a "flowerly" shirt that evening. (Tr. 440, ll. 18–23).

While Whitmore was speaking to law enforcement, Jackson entered the police station and began giving her own statement. (Tr. 729). Jackson stated that she and Whitmore went together to a party in Greenwood, after which they met up with Appellant at his house. Jackson, Appellant, and another individual named Anthony White (referred to as "A.J.") left the house to go to Walmart—with Jackson driving, Appellant in the front passenger seat, and White in the back seat. (Tr. 624–627). While driving to Walmart, Jackson described the following: "[t]hey was giving me directions, so I just know, like, we came up on . . . this little hill thing and then that's when, like, the window just got rolled down and [Appellant] just started shooting." (Tr. 628, ll. 3–11). When they arrived at Walmart, Appellant placed a gun in the trunk and White left to meet up with a girlfriend. Jackson testified that at some point, she asked Appellant "why he did it," to which he responded: "'Yeah, I'm sorry, I didn't mean to do it. . . . I don't think that I killed anybody.'" Appellant also told Jackson that he was shooting at a security guard. (Tr. 630–631, 641).

Antonio White, who was in the backseat during the shooting, also testified—mostly corroborating Jackson's account, but he also claimed he was asleep when the shooting occurred and did not know who was shooting or whether the shots were coming from inside or outside the car. (Tr. 678–682, 695–698). Detective Matt Blackwell, the lead investigator, testified that Appellant was arrested the following day at a residence on Carolina Avenue, wearing a "blue in color floral shirt and shorts." (Tr. 731–732). During a recorded interview, Appellant denied involvement and claimed he had been at a different restaurant at the time of the shooting. (Tr. 734–737, 862). Investigators recovered his shirt which later tested positive for gunshot residue. (Tr. 568–569). While in jail, Appellant made recorded phone calls where he can be heard speaking about a female "eyewitness" to the offense and repeatedly imploring the call recipients to attempt to get in touch with her by talking to a "fat girl"—who could then give the phone number of the

"skinny girl." Investigators believed that this "eyewitness" or "skinny girl" in question was likely Jackson, the driver of the vehicle. (Tr. 774–777, 801–813, 821–827; State's Exs. 94–96 (Jail Calls)).

Security staff from Uptown Grill testified that Appellant was involved in two prior altercations there. First, he was previously trespassed from the location for an unspecified incident. Second, a month prior to the shooting, Appellant had attempted to enter the restaurant with some friends when he was stopped by security, at which point he flashed a firearm from his waistband—causing security personnel to detain him until law enforcement arrested him and gave him a trespass notice. While being detained, Appellant threatened security staff. (Tr. 210–214, 250–251, 259–260, 263–264).[1]

At the end of trial, the jury convicted Appellant as indicted.

[1] To ease defense counsel's concerns regarding propensity evidence and Rule 403, the jury was only given a limited form of this narrative. Specifically, they were only told that there was an altercation regarding Appellant on June 9th, 2022, and that he was arrested and formally trespassed as a result. The transcript cites at 210–214 reflect the more detailed proffer presentation of this testimony that includes the alleged threats made by Appellant towards staff. Interestingly, while the first incident where Appellant was banned was not brought out in this initial limited presentation to the jury, defense counsel later elicited such testimony from the restaurant's owner on cross examination. (*See* Tr. 314–316, 321–322, 325–327).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 848 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). In the context of Fourth Amendment-based rulings, the appellate court will sustain the trial court's factual findings if there is any evidence to support them but reviews the trial court's legal conclusions *de novo*. *State v. Frasier*, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The trial court did not abuse its discretion in refusing to suppress jail calls where Appellant could have no legitimate expectation of privacy in his conversations since he was on notice that such calls were subject to monitoring and recording—and Appellant cannot rely on other Constitutional arguments not raised at trial

Appellant argues that the trial court committed reversible error in admitting into evidence three audio clips of jail phone calls in violation of Appellant's constitutional rights under the First, Fourth, Sixth, and Fourteenth Amendments of the United States Constitution as well as the right to privacy guaranteed by Article I, § 10 of the South Carolina Constitution. However, Appellant's chief Fourth Amendment argument fails because he could not have held any legitimate expectation of privacy in the contents of jail calls that he knew was subject to monitoring and recording. Even assuming Appellant maintained a subjective expectation of privacy, this is not a privacy expectation that our society would accept as reasonable. And since his other constitutional arguments were not raised before the trial court—meaning that they are not preserved for appellate review—the trial court did not abuse its discretion in denying Appellant's motion to suppress. This Court should affirm.

Relevant Facts:

Following jury selection, the parties began addressing various pre-trial issues with the court, including the calls at issue here. (Tr. 114). After discussing potential witness intimidation evidence, defense counsel began addressing the jail calls, arguing that such evidence should be generally inadmissible. Specifically, defense counsel compared the automatic recording and viewing of jail calls to a case involving the opening of letters, essentially arguing that "jail calls and the chats of today are the letters of the 1970s" and that

the indiscriminate viewing of these recorded calls is bad practice.[2] Appellant argued that solicitors consistently reviewed these recorded calls indiscriminately without being able to cite "particular security concerns about a particular person" and that such action was "the same thing as going through someone's mail[.]" (Tr. 140–141). The Court interjected, noting:

> I mean, playing devil's advocate, you seal a letter, you have an expectation a letter will remain unsealed [sic]. You make a phone call and *there's a recording saying you realize you're on a recorded line, and this recording can be used again.* And all that. There's a much, much, much *lower expectation of privacy* when you get all that told to you as opposed to drafting a letter, putting an envelope, sealing it shut. . . . but it never ceases to amaze me what people say after they know it's being recorded and everybody's heard. . . . You know, whatever they say. Gets replayed in courtroom all the time. And yet people still talk. They still talk.

(Tr. 141, ln. 23—Tr. 142, ln. 12) (emphasis added).

Appellant continued to argue that phone calls are essentially the only reasonable form of communication in today's age since "nobody communicates through letters" anymore and that Appellant is forced to use the phones to keep in touch with his family/friends and to be able to help prepare his case for trial. At the end of this argument, Appellant asked for full exclusion of the calls, but noted they would otherwise object to specific portions of the calls. (Tr. 142–144). The Court responded, again noting the diminished expectation of privacy and rejected total exclusion of the calls by asking Appellant to move on to his specific objections:

> I don't think the exclusion of jail calls that . . . like I just said, *very little expectation of privacy.* It's similar on the internet and put stuff [sic] on Facebook or whatever. You put it out there, *you got no expectation of privacy,* just you're dumb enough to put it out there. So let me hear what you think may be unduly prejudicial, if that's your argument on that. *But there's a general rule, though.*

(Tr. 144, ll. 2–9) (emphasis added).

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[2] Appellant argues that defense counsel was likely referencing *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976). *See* Brief of Appellant at 4. However, defense counsel never referred to the case by name or cite.

Following some discussion between the parties regarding specific portions within the phone calls, Solicitor Stumbo revisited the court's point cited above:

> Well again, Judge, these are conversations that this defendant was a part of. . . . [W]e don't have a ton of state cases on it. State v. King is one, some others, but there are a couple federal cases that deal with the expectation of privacy issue. And I've never found a case that has generally found these calls from the jail to be inadmissible because of the exact reason you said, Judge. *They're told at the beginning of the calls that they're being recorded. So there is no expectation of privacy under the Fourth Amendment.*

(Tr. 146, ll. 12–21) (emphasis added). The parties then discussed the logistics of reviewing the phone calls and preparing them for presentation later in the trial, but Appellant made no further arguments regarding total exclusion of the phone calls at issue. (Tr. 147–152). Later, the calls were admitted as State Exhibits 94–96 subject to Appellant's prior objections, and counsel did not make additional argument. (Tr. 799–802). At no point during any discussion of the jail calls does Appellant cite the First, Sixth, or Fourteenth Amendments of the United States Constitution; or the right to privacy guaranteed by Article I, § 10 of the South Carolina Constitution—as an alternative basis for exclusion. Similarly, though the court and solicitor discuss the issue in terms of reasonable expectation of privacy (or lack thereof), Appellant never specifically cites the Fourth Amendment or this doctrine.

Regarding the notice specifically, the transcript reproduces the message at the beginning of each phone call as follows:

> Hold for acceptance. This is a prepaid call from [C. J.]. An inmate at the Greenwood County Detention Center, South Carolina. Carried by combined public communications. Three-way or call-waiting is not allowed and may automatically disconnect this call. *This call is subject to monitoring and recording.* If you are an attorney or designated legal counsel, contact inmatecell.com at (702) 931-3928 to have your number set to do not record. Please select from the following options. *If you consent to this call being recorded and to accept this call,* dial one now. To reject – *your call has been accepted.*

(Tr. 803, ll. 1–12; Tr. 813, ll. 5–16; Tr. 821, ll. 6–18) (emphasis added).

Discussion:

In order for a defendant to assert that the admitted evidence would be in violation of the Fourth Amendment as a warrantless search, "[t]hey must show that they have a legitimate expectation of privacy in the place searched." *State v. Cardwell*, 414 S.C. 416, 425, 778 S.E.2d 483, 488 (Ct. App. 2015), *aff'd as modified*, 425 S.C. 595, 824 S.E.2d 451 (2019) (quoting *State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004). "A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable." *Cardwell*, 414 S.C. at 425–26, 778 S.E.2d at 488 (citation omitted). "'The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure' by demonstrating he had an expectation of privacy in the area illegally searched." *State v. Robinson*, 410 S.C. 519, 528, 765 S.E.2d 564, 569 (2014) (quoting *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978)). As discussed below, because Appellant fails to demonstrate a legitimate expectation of privacy, his claim must fail—without having to consider the next steps of Fourth Amendment analysis.

A. Appellant Fails to Show He Had a Legitimate Expectation of Privacy

Even assuming Appellant maintained a subjective expectation of privacy in the contents of his jail calls, Appellant's claim that he has an expectation of privacy that society would recognize as reasonable—when he is on notice that his jail calls are subject to monitoring and recording—is at odds not only with common sense but also established Fourth Amendment precedent. First, current state law does not construe the Fourth Amendment so broadly. In support of his argument, Appellant cites *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976).

There, our Supreme Court held that the photocopying of incriminating handwritten letters of a pre-trial detainee by a detective not working for "any legitimate jail purpose" was a violation of that detainee's constitutional rights. *Id.* at 498–503, 224 S.E.2d at 668–71. The Court noted that "jail security" did not provide a wholesale justification for the search/reading of the letters and that the detective's own testimony that he was reading the letters to gather incriminating evidence refuted "the idea that the search was for any legitimate jail purpose." *Id.* at 499–500, 224 S.E.2d at 669. The Court also rejected the State's argument that the defendant had consented to the reading of his mail in this manner when all detainees were required to sign a card allowing searches of prison mail as a part of the booking/reception process. *Id.* at 502–03, 224 S.E.2d at 670. The Court discussed precedent governing jail searches (including the First Amendment) and cited the basic Fourth Amendment principle that warrantless searches are generally unlawful, but it did not discuss the issue in the reasonable expectation of privacy framework. *Id.* at 499–502, 224 S.E.2d at 669–70.

As the trial court correctly surmised, letters are simply different than jail calls. Writing a letter, putting it into an envelope, and sealing it is different than entering the jail's phone booth, placing a phone call, being directly warned that your conversation is subject to monitoring/recording, and then proceeding with the call despite said warning. Additionally, the cited case from the 1970s does not address the modern expectation of privacy framework that now governs Fourth Amendment claims. Instead, it discusses the issue in terms of general constitutional principles, often relying on old and abrogated caselaw—likely making it out of date with modern standards governing motions to suppress.[3] Both the trial court and the

[3] For example, one modern case has specifically recognized the standalone nature of *Ellefson* compared to the majority of jurisdictions. *See Busby v. Dretke*, 359 F.3d 708, 716, n. 5 & 6 (5th Cir. 2004). With regards to the outdated authority on which *Ellefson* relies on in its analysis,

solicitor correctly identified that this issue was governed by the legitimate expectation of privacy framework, not *Ellefson*. Again, even assuming Appellant maintained a subjective expectation of privacy (which is questionable based on the recorded notice), society would not recognize this expectation as reasonable because of the clear notice given before proceeding with the call.[4]

Notably, most federal appellate courts that have addressed this specific scenario have failed to adopt such an expansive view of the Fourth Amendment. *See United States v. Novak*, 531 F.3d 99, 101–04 (1st Cir. 2008) (holding that a "telephone call can be monitored and recorded without violating the Fourth Amendment so long as one participant in the call consents to the monitoring."); *United States v. Friedman*, 300 F.3d 111, 123 (2d Cir. 2002) (holding that pre-trial detainee has no reasonable expectation of privacy in contents of jail calls when they receive notice of monitoring/recording); *United States v. Sababu*, 891 F.2d 1308, 1328–30 (7th Cir. 1989) (no reasonable expectation of privacy for person calling federal inmate); *United States v. Van Poyck*, 77 F.3d 285, 291 (9th Cir. 1996) (holding that any subjective expectation of privacy in such calls is objectively unreasonable); *United States v. Gangi*, 57 F. App'x 809, 814–15 (10th Cir. 2003) (same).

Finally, many states that have considered this issue have also decided similarly. *See*

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compare Procunier v. Martinez, 416 U.S. 396, 413 (1974) (invalidating indiscriminate censorship of prison mail on First Amendment grounds and holding that censorship justified only upon satisfaction of two-prong test) *with Thornburgh v. Abbott*, 490 U.S. 401, 407–414 (1989) (rejecting a strict application of *Martinez* and holding that regulations regarding censorship of outgoing prison mail are subject to reasonableness standard).

[4] There is also another practical reason to distinguish the communications at issue here. In this case, Appellant is using the jail's phone system as a tool to get to the "eyewitness" to his offense in order to influence/intimidate them. This is a crime, meaning that this is not the sort of communication that should be protected by any claimed right to privacy—and this very well could be the type of outgoing communication jail officials should be privy to as a matter of public safety.

State v. Brantley, 914 S.E.2d 807, 809–10 (Ga. 2025); *People v. Diaz*, 122 N.E.3d 61, 64–66 (N.Y. 2019); *Jackson v. State*, 263 So.3d 1003, 1010–11 (Miss. Ct. App. 2018); *Com. v. Rosa*, 9 N.E.3d 832, 841 (Mass. 2014); *State v. Gilliland*, 276 P.3d 165, 177–78 (Kan. 2012); *State v. Guess*, 104 So.3d 41, 50–51 (La. Ct. App. 2012); *State v. Johnson*, 229 P.3d 523, 530 (N.M. 2010); *State v. Avery*, 211 P.3d 1154, 1157–59 (Alaska Ct. App. 2009); *Lemond v. State*, 878 N.E.2d 384, 392 (Ind. Ct. App. 2007); *People v. Windham*, 51 Cal. Rptr. 3d 884, 890–891 (Cal. 2006); *People v. Lee*, 93 P.3d 544, 548 (Colo. App. 2003); *State v. Fox*, 493 N.W.2d 829, 831–32 (Iowa 1992); *People v. DeGeer*, 363 N.W.2d 37, 37–38 (Mich. Ct. App. 1985).

Accordingly, because Appellant cannot show a legitimate expectation of privacy in the contents of his recorded jail calls, his chief Fourth Amendment claim must fail.

B. Appellant's Other Constitutional Arguments Are Not Preserved for Review

Appellant also alleges other Constitutional violations on appeal, specifically violations of the First, Sixth, and Fourteenth Amendments of the United States Constitution as well as the right to privacy guaranteed by Article I, § 10 of the South Carolina Constitution. However, these issues are not preserved for this Court's review because Appellant failed to articulate any of these grounds for exclusion before the trial court. "[I]n order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." *State v. Carmack*, 388 S.C. 190, 200, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003)). "Arguments raised for the first time on appeal are not preserved for our review." *Id.* (citing *Knight v. Waggoner*, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004)). Furthermore, a "party must have a contemporaneous and specific objection to preserve an issue for appellate review" and "the failure to do so amounts to a waiver of the alleged error." *Moses v. State*, 442 S.C. 263, 268–69,12 898 S.E.2d 174 (Ct. App. 2024) (quoting

State v. Sheppard, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) and *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010)) (cleaned up, emphasis added). "This rule also applies to constitutional arguments." *Sheppard*, 391 S.C. at 421, 706 S.E.2d at 19 (citing *State v. Owens*, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008)).

In this case, Appellant discussed the issue to the court relying on his indirect reference to *Ellefson*, but he did not directly articulate any specific constitutional grounds for exclusion, including the Fourth Amendment. The only reason the Fourth Amendment argument is preserved is because the trial court explicitly discussed the issue in terms of the Fourth Amendment and ruled accordingly. But nowhere during this discussion does Appellant make a specific argument under the First, Sixth, or Fourteenth Amendments of the United States Constitution, and there is absolutely no reference to the state right to privacy guaranteed by Article I, § 10 of the South Carolina Constitution. Additionally, Appellant cannot rely on the vague discussion of the other constitutional arguments relied on in *Ellefson* when he did not provide the court any meaningful way to consider them, especially when he did not even refer to the case by name or citation, and did not provide a copy of the case for the court's consideration. It is thus unreasonable to assume that the trial court had all these other constitutional arguments in mind when it made its ruling.

Appellant had the opportunity to articulate these other constitutional arguments in more detail but chose not to do so. When the calls were later admitted into evidence, Appellant only relied on his pre-trial arguments. Accordingly, these other arguments are not preserved for this Court's review.

C. Harmless Error

Even assuming any of these constitutional arguments have merit, an erroneous admission of these jail calls would be harmless. Error is harmless when it could not have reasonably affected

the result of the trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573–74 (2018) (quoting *State v. Byers*, 392 S.C. 438, 447–48, 710 S.E.2d 55, 60 (2011)). Many constitutional errors are subject to harmless error analysis. *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013). In this case, the jail calls were not crucial to the state's case. While highly probative of consciousness of guilt in showing that Appellant attempted to manipulate the testimony of one of the State's key witnesses, such evidence was not necessary to convict Appellant of murdering Keyiona Hill or that he possessed a weapon during said shooting. First, there was the direct testimony of Appellant's girlfriend at the time—Annbrell Jackson—who stated that Appellant rolled down the window and began shooting as they were driving past Uptown Grill, and that later Appellant made incriminating statements to her regarding the shooting.

Next, Jackson's account was corroborated by her friend Mikasia Whitmore who testified regarding the series of events leading to Jackson leaving with Appellant in her car and Jackson later telling Whitmore what had happened. Also, surveillance in the form of Flock camera images and videos from Walmart showed Jackson's vehicle driving in the vicinity of the shooting scene right after the shooting and then parking at Walmart, at which point showed Appellant getting out and placing what Jackson described as a gun in the trunk of her car. Finally, Appellant's clothing tested positive for GSR, and he gave a fictitious account to law enforcement claiming he was at another restaurant during the night of the shooting. The phone call witness manipulation evidence was thus merely cumulative to the strong evidence already connecting Appellant to the crime. All of this information was before the jury—giving them plenty of evidence to find Appellant guilty beyond a reasonable doubt. Thus, any error in the admission of the calls would be harmless and could not have reasonably affected the result of the trial.

This Court should affirm.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, convictions, and sentences of the lower court be affirmed.

Respectfully submitted,

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