

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGARDO MALOLOT AND ELMER MALOLOT, APPELLANTS.

G.R. No. 174063. March 14, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Three informations — Criminal Case Nos. 98-627, for attempted murder; 98-628, for frustrated murder; and 98-629, for murder — were filed before the Regional Trial Court (RTC) of Misamis Oriental against herein brother-appellants Edgardo Malolot (Edgardo) and Elmer Malolot (Elmer). The victims in the cases are siblings and minors all.

The information in Criminal Case No. 98-627 (for Attempted Murder) alleged that:

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On June 23, 1998, at about 6:30 o'clock [sic] in the evening, at Barangay Himaya, El Salvador, Misamis Oriental which is within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill and with treachery, conspiring, confederating with and mutually helping each other and each armed with a bolo with which they previously provided themselves, did, then and there, willfully, unlawfully, and feloniously attack, assault, and hack with said bolos one Jovelyn Mabelin, 7 years old, thereby inflicting a wound on the right scapular area of said victim. Thus, the accused had commenced the commission of a felony directly by overt acts but did not perform all the acts of execution which would have produced the felony of murder because they thought that the victim was already dead.

The following aggravating circumstances attended the commission of the crime, namely:

1. The crime was committed in the dwelling of the victim;
2. The crime was committed with insult or in disregard of the respect due the victim on the account of [her] age.[1] (Underscoring in the original, emphasis supplied)

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The information in Criminal Case No. 98-628 (for Frustrated Murder) alleged that:

xxx xxx xxx

On June 23, 1998 at about 6:30 o'clock [sic] in the evening, at Barangay Himaya, El Salvador, Misamis Oriental which is within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and treachery, conspiring, confederating with and mutually helping each other and each armed with a bolo with which they previously provided themselves, did, then and there, willfully, unlawfully, and feloniously attack, assault, and hack with said bolos one Junbert[2] Mabelin, 4 years old, thus, inflicting multiple mortal wounds upon the person of said victim who, however, survived because of prompt medical treatment. Thus, the accused had performed all the acts of execution which would have produced the felony of murder if not for a

cause independent of their will, that is for the reason aforestated.

The following aggravating circumstances attended the commission of the crime, namely:

- The crime was committed in the dwelling of the victim;
- The crime was committed with insult or in disregard of the respect due the victim on account of his age.[3]
(Underscoring in the original; emphasis supplied)

xxx xxx xxx

The information in Criminal Case No. 98-629 (for Murder) alleged that:

xxx xxx xxx

On June 23, 1998, at about 6:30 o'clock (sic) in the evening, at Barangay Himaya, El Salvador, Misamis Oriental, which is within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, conspiring and confederating with and mutually helping each other and each armed with a bolo with which they previously provided themselves, did, then and there, willfully, unlawfully, and feloniously attack, assault, and hack with said bolos one Jonathan Mabelin, an infant, eleven (11) months old, thus, inflicting multiple mortal wounds upon the person of said victim which caused his death not long thereafter.

The following aggravating circumstances attended the commission of the crime, namely:

- The crime was committed in the dwelling of the victim;
- The crime was committed with insult or in disregard of the respect due the victim on account of his age.[4]
(Underscoring in the original; emphasis supplied)

xxx xxx xxx

The three cases were tried jointly:

From the records of the cases, the following version of the prosecution is culled:[5]

In the afternoon of June 23, 1998, while Bernadette Mabelin (Bernadette) was in the kitchen of her house, her eight-year-old daughter Juvy Mabelin (Juvy) and her playmate Teroy, appellant Elmer's son, startled her, drawing her to whip the kids.

The whipping spawned a heated argument between appellant Elmer's wife Myrna on one hand, and Bernadette and her husband Jerusalem Mabelin (Jerusalem) on the other.

Getting wind of the incident, appellant Elmer accosted Jerusalem at the latter's yard and threatened him, telling him, "Brad, this bolo which is yours, I will use this in killing you,"[6] and almost simultaneously hacking Jerusalem's left forearm and fingers. Jerusalem retaliated by hacking Elmer on the left cheek with a bolo. In the meantime, Elmer's brother-co-appellant Edgardo repaired to the scene and boxed Jerusalem, drawing the latter to hack Edgardo on the forehead.

Jerusalem thereafter went up his house and got a scythe.[7] On his way back, Delia Malolot (Delia), the aunt of appellants who had heard the commotion, intercepted Jerusalem and brought him to the office of the barangay captain.

Edgardo later got a bolo from his house and on his return, seeing seven-year-old Jovelyn Mabelin (Jovelyn), another daughter of Jerusalem and Bernadette who was, together with her sister Juvy, fleeing the scene of the incident, boxed, kicked, and hacked Jovelyn on the shoulder. As Edgardo's bolo fell, Jovelyn and Juvy hastily

entered the nearby house of Concepcion Abragan (Concepcion) who brought them inside a room, covered them with a towel, and advised them to keep still.

Edgardo pursued Juvy and Jovelyn and tried to enter the house of Concepcion but the door was locked. Concepcion then told Edgardo to pray, telling him that he was being "possessed by a devil,"[8] to which Edgardo replied, "Since I was already wounded I might as well kill a person." [9] As Edgardo was trying to force his way inside Concepcion's house, Elmer's wife arrived and told him to spare the little girls.

Elmer, his wife, and Edgardo thereafter proceeded to Bernadette's and Jerusalem's house where Edgardo hacked the couple's four-year-old son Junbert outside the doorway, hitting Junbert's right eye. Still incensed, Elmer and Edgardo hacked Bernadette's 11-month-old son Jonathan who was by the rail of the doorway.

Elmer and Edgardo were later arrested as Jerusalem, Jovelyn, Junbert, and Jonathan were brought to a hospital.

Seven-year-old Jovelyn sustained a wound on her right shoulder blade.[10]

Eleven-month-old Jonathan died on arrival at the hospital. His death certificate showed that his body bore an "incised wound 11 cm. from nasal-facial area to zygomatic end with zygomatic bone fracture left [an] incised wound 11 cm. near circumferential area left shoulder with completely cut humeral head,"[11] and that the immediate cause of his death was "insanguination"[12] or loss of blood.

The right eye of four-year-old Junbert was permanently damaged,[13] and the doctor who treated him opined that he could have died were it not for the timely medical assistance.[14]

Elmer, denying the accusations, gave the following version:

As his wife and Bernadette were arguing, he intervened. Both women kept quiet. Jerusalem remarked, however, that he would break their heads[15] and soon hit him on his left face with a bolo. He retaliated by hitting the forearm of Jerusalem with a bolo. Edgardo tried to pacify him and Jerusalem, but the latter also hacked Edgardo on the forehead.

Jerusalem thereupon ran towards his house, and Edgardo pursued him (Jerusalem). He (Elmer) soon heard Bernadette shout that a child was hit and saw her descending the stairs of her house carrying a wounded child.

Policemen brought Elmer and Edgardo to a center for medical treatment after which they were brought to the municipal hall for preliminary investigation.[16]

On Edgardo's part,[17] he gave the following version:

In the evening of June 23, 1998, while he was inside his house, he heard a man and a woman shouting at each other. He thus proceeded to the site of the commotion and tried to pacify the quarrelling parties. He boxed Jerusalem in the chest, and in turn, Jerusalem hacked him with a bolo. Jerusalem thereafter left. In the meantime, he heard Bernadette shout that somebody was wounded. He then left for home and on his way, he met his father who gave him a bolo. He thereafter "went to the lawn of Concepcion Abragan and went wild"[18] because he was only pacifying the quarreling parties but ended up being hacked by Jerusalem.[19] Thus, in his rage, he cut Concepcion's talisay tree and destroyed the fence of her house, without "noticing" that he had wounded Jerusalem's children in the process.

Branch 18 of the Misamis Oriental RTC convicted appellants by Decision[20] of October 16, 2001, disposing as follows:

WHEREFORE, based on the foregoing, the Court finds accused EDGARDO MALOLOT and ELMER MALOLOT GUILTY beyond reasonable doubt of the crime of ATTEMPTED MURDER in Criminal Case

No. 98-627, and there being no mitigating circumstance but with one aggravating circumstance (disrespect of age), and after applying the Indeterminate Sentence Law, the two accused are hereby sentenced to serve an imprisonment of FOUR (4) YEARS TWO (2) MONTHS AND ONE DAY of PRISION CORRECCIONAL MEDIUM, as the MINIMUM, to TEN (10) YEARS and ONE (1) DAY of PRISION MAYOR MAXIMUM, as the MAXIMUM. They are further directed to jointly and solidarily pay P20,000.00 as moral damages.

The Court likewise finds accused EDGARDO MALOLOT and ELMER MALOLOT GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER, in Criminal Case No. 98-628, and there being no mitigating circumstance but with two aggravating circumstances, namely: dwelling and disrespect of age, and after applying the indeterminate sentence law, the two accused are hereby sentenced to serve an imprisonment of TEN (10) YEARS and ONE (1) DAY OF PRISION MAYOR MAXIMUM, as the MINIMUM, to TWENTY (20) YEARS OF RECLUSION TEMPORAL MAXIMUM, as the MAXIMUM. They are jointly and solidarily directed to pay P40,000.00 as exemplary damages, plus another P40,000.00 as moral damages.

Furthermore, the Court finds the accused EDGARDO MALOLOT and ELMER MALOLOT GUILTY beyond reasonable doubt of the crime of MURDER, in Criminal Case No. 98-629, and there being no mitigating circumstance but with two aggravating circumstances, namely: dwelling and disrespect of age, accordingly the two accused are hereby sentenced to suffer the supreme penalty of death by lethal injection. They are jointly and solidarily directed to pay the actual and burial expenses in the amount of EIGHTY THOUSAND PESOS (P80,000.00) which was incurred by the parents of the three victims. Further directed to pay P75,000.00, as indemnity for the death of Jonathan; another P50,000.00 as moral damage; and P50,000.00 as exemplary damages.

Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record be forwarded to the Supreme Court for automatic review.

SO ORDERED.[21] (Emphasis in the original; underscoring supplied).

The records of the cases were forwarded for automatic review[22] to this Court which in turn forwarded them to the Court of Appeals for intermediate review[23] pursuant to *People v. Mateo*.[24]

In his brief,[25] Elmer raised the following as errors of the trial court:

I

... FINDING THAT THERE WAS A CONSPIRACY ON THE PART OF ACCUSED-APPELLANT ELMER MALOLOT AND HIS BROTHER EDGARDO MALOLOT IN THE COMMISSION OF THE CRIMES CHARGED.

II

... GIVING FULL FAITH AND CREDENCE TO THE INCONSISTENT TESTIMONY OF PROSECUTION WITNESS BERNADETTE MABELIN AND EN DISREGARDING THE DEFENSE INTERPOSED BY ACCUSED-APPELLANT ELMER MALOLOT.

III

... CONVICTING ACCUSED-APPELLANT ELMER MALOLOT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[26] (Emphasis in the original)

Edgardo raised the following errors of the trial court:

I

... GIVING FULL FAITH AND CREDENCE TO THE INCONSISTENT TESTIMONY OF PROSECUTION

WITNESS BERNADETTE MABELIN.

II

... CONVICTING ACCUSED-APPELLANT EDGARDO MALOLOT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

... CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[27] (Emphasis in the original)

By Decision[28] of May 23,2006, the Court of Appeals affirmed the conviction of Elmer and Edgardo, but added an award of exemplary damages for the Attempted Murder of Jovelyn. and reduced the civil indemnity for the death of Jonathan from P75,000 to P50,000. Thus the appellate court disposed:

WHEREFORE, the October 16, 2001 Decision of the Regional Trial Court of Misamis Oriental, 10[th] Judicial Region, Branch 18, Cagayan de Oro City is hereby AFFIRMED with MODIFICATION, as follows:

- In Crim. Case No. 98-627, the Accused-Appellants are to suffer the penalty of four (4) years, two (2) months and one (1) day of prision correccional maximum, as the minimum, to ten (10) years and one (1) day of prision mayor maximum, as the maximum. Additionally, they are jointly and solidarily held liable to pay the victim PhPl 0,000.00 as exemplary damages; and

- In Crim. Case No. 98-629 the amount of indemnity for the death of Jonathan is reduced to-P50,000.00.

SO ORDERED.[29] (Emphasis in the original)

The cases were thereupon returned to this Court.[30] The Solicitor General manifested[31] its intention not to file a Supplemental Brief and to adopt its Brief for the Appellee[32] filed before the Court of Appeals.

In their Supplemental Brief,[33] Elmer and Edgardo contended that:

THE GUILT OF THE ACCUSED-APPELLANT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[34]

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ASSUMING THAT THE ACCUSED-APPELLANTS ARE GUILTY, THEY SHOULD BE CONVICTED FOR ATTEMPTED HOMICIDE, FRUSTRATED HOMICIDE, AND HOMICIDE ONLY.[35]

xxx xxx xxx

ASSUMING FURTHER THAT TREACHERY WAS EMPLOYED IN THE COMMISSION OF THE CRIMES CHARGED, THE APPELLATE COURT ERRED IN APPLYING THE SAME TO BOTH OF THE ACCUSED-APPELLANTS.[36] (Underscore supplied)

Appellants assail Bernadette's credibility due to alleged inconsistencies in her testimony in that:

xxx [d]uring direct examination. [Bernadette] testified that after the two (2) accused hacked her two (2) sons, she immediately went to her elder sister. However on cross-examination, she testified that after seeing her two (2) sons being hacked by the two (2) accused, she immediately lost consciousness and regained the same only after the police arrived at the scene.[37]

Appellants also claim that Bernadette's testimony that Concepcion was present during the hacking of Jonathan and Junbert was contradicted by Concepcion who denied the same.[38]

Findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.[39] Appellants have not, however, cited material facts that might have been overlooked by the trial court to affect the outcome of the cases.

The inconsistencies in the testimony of Bernadette on what transpired after the hacking of her sons, and her testimony that Concepcion was present during the said hacking which was denied by Concepcion, do not diminish Bernadette's credibility, as they pertain to peripheral matters which do not dent the proven elements of the crimes.[40]

As for appellants' denial of the existence of conspiracy, while the finding of conspiracy with respect to the frustrated murder of Junbert is sustained, that with respect to the attempted murder of Jovelyn is not.

Elmer did not participate in hacking Jovelyn. From Concepcion's testimony, Elmer was in the same place where he happened to be when Edgardo boxed Jerusalem.[41] While Elmer did not restrain Edgardo, there is no sufficient evidence that Elmer, by his presence, provided moral assistance to Edgardo as the latter hacked Jovelyn.

Conspiracy requires the same degree of proof required to establish the crime — proof beyond reasonable doubt.[42] Mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[43]

To the Court, however, Edgardo's hacking of Junbert and the fatal hacking of Jonathan were motivated by his and Elmer's common unlawful purpose. The following circumstances indicate so:

- Elmer entered Bernadette and Jerusalem's house, together with Edgardo, shortly after the latter was frustrated from entering Concepcion's house where she hid Jovelyn and Juvy;[44]
- Elmer's hacking of Jonathan was simultaneous to or immediately after Edgardo's hacking of Junbert;[45] and
- Following the hacking of both Jonathan and Junbert, one of appellants remarked that they had already taken their revenge.[46]

On appellant's taking issue on the presence of treachery, the Court does not find well-taken the following contention of Elmer and Edgardo:

[T]he prosecution failed to present evidence that the accused-appellants have resolved to commit the crime prior to the moment of the commission of the crimes charged. There was no proof that the consummation of the alleged crimes was the result of meditation, calculation or reflection.

To sustain a finding of treachery, the means, method or form of attack must be shown to have been deliberately adopted by the appellant.[47](Underscoring in original)

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[48]

When an adult illegally attacks a child, treachery exists even if the mode of attack is not proved by the prosecution because a child of tender years could not be expected to put up a defense, hence, is at the mercy of the assailant.[49] That the victims of the Attempted Murder, Frustrated Murder and Murder — Jovelyn, Junbert and Jonathan, respectively — were minors at the time of the incident has been proven.[50]

The allegation in each of the three informations of disregard of the age of the victim cannot, however, be appreciated as an additional aggravating circumstance in the commission of the crimes as the same is absorbed in the qualifying circumstance of treachery.[51] That leaves dwelling in the frustrated murder of Junbert and the

murder of Jonathan as the aggravating circumstance in the commission thereof.

In view of the enactment on June 24, 2006 of Republic Act 9346 prohibiting the imposition of the death penalty, however, the imposable penalty for the murder of Jonathan is reduced to reclusion perpetua.[52]

WHEREFORE, the May 23, 2006 decision of the Court of Appeals is AFFIRMED with MODIFICATION as follows:

- In CRIMINAL CASE NO. 98-627, accused-appellant Elmer Malolot is ACQUITTED on the ground of reasonable doubt. The conviction of accused-appellant Edgardo Malolot for attempted murder is AFFIRMED. There being no aggravating nor mitigating circumstances, and applying the Indeterminate Sentence Law, Edgardo Malolot is sentenced to serve imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL MAXIMUM as MINIMUM, to NINE (9) YEARS of PRISION MAYOR MEDIUM as MAXIMUM. There being no aggravating circumstance, the award of P10,000.00 exemplary damages is DELETED.

- In CRIMINAL CASE NO. 98-628. the conviction beyond reasonable doubt of both accused-appellants Elmer Malolot and Edgardo Malolot for frustrated murder, as well as the penalty imposed by the trial court, is AFFIRMED. There being only one aggravating circumstance, that of dwelling, the award of P40,000.00 exemplary damages is REDUCED to P20,000.00.

- In CRIMINAL CASE NO. 98-629. the conviction beyond reasonable doubt of both accused-appellants Elmer Malolot and Edgardo Malolot for murder is AFFIRMED. In view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, and applying the Indeterminate Sentence Law, both accused-appellants are sentenced to serve imprisonment of TWENTY YEARS (20) of RECLUSION TEMPORAL MAXIMUM as MINIMUM, to FORTY (40) years of RECLUSION PERPETUA as MAXIMUM.

Following Section 3 of Republic Act No. 9346, both accused-appellants are not eligible for parole under the Indeterminate Sentence Law. There being only one aggravating circumstance, that of dwelling, the award of P50,000.00 exemplary damages is REDUCED to P25,000.00.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and Leonardo-de Castro, JJ., concur.

Nachura, J., no part. Signed pleadings as Solicitor General.

[1] Records (Criminal Case No. 98-627), p. 2.

[2] Sometimes spelled "Johnbert."

[3] Records (Criminal Case No. 98-628), p. 2.

[4] Records (Criminal Case No. 98-629), p. 2.

[5] TSN, February 21, 2000, pp. 4-32; TSN, February 22, 2000, pp. 33-58; TSN, April 25, 2000, pp. 2-43; TSN, August 1, 2000, pp. 2-37; TSN, August 3, 2000, pp. 38-67; September 27, 2000, pp. 2-9; TSN, September 28, 2000, pp. 10-33; TSN, November 23, 2000, pp. 34-48; TSN, June 5, 2001, pp. 68-75; TSN, August 22, 2001, pp. 59-84.

- [6] TSN, August 3, 2000, p. 46.
- [7] Id. at 65.
- [8] TSN, September 28, 2000, p. 15.
- [9] Ibid.
- [10] Records (Criminal Case No. 98-629), p. 21; vide TSN, April 25, 2000, p. 11.
- [11] Id. at 18; vide, TSN, April 25, 2000, pp. 6-10.
- [12] Vide Records (Criminal Case No. 98-629), p. 18; TSN, April 25, 2000, p. 9.
- [13] Vide TSN, September 27, 2000, pp. 4-9.
- [14] Records (Criminal Case No. 98-629), p. 20.
- [15] TSN, February 21, 2001, p. 6.
- [16] Vide TSN, February 21, 2001, p. 9, TSN, February 22, 2001, p. 24.
- [17] TSN, February 27, 2001, pp. 3-12.
- [18] TSN, February 27, 2001, p. 8.
- [19] Ibid.
- [20] Records (Criminal Case No. 98-629), pp. 68-87.
- [21] Id. at 86-87.
- [22] CA rollo, pp. 2, 55.
- [23] Rollo, p. 3.
- [24] G.R. Nos. 147768-87, July 7, 2004, 433 SCRA 640.
- [25] CA rollo, pp. 67-90.
- [26] Id. at 81-82.
- [27] Id. at 174-175.
- [28] Penned by Court of Appeals Associate Justice Normandie B. Pizarro, with the concurrences of Associate Justices Edgardo A. Camello and Ramon R. Garcia. Id. at 271-294.
- [29] Id. at 293.
- [30] Rollo, p. 1.
- [31] Id. at 32-35.
- [32] CA rollo, pp. 116-149.
- [33] Rollo, pp. 36-43.
- [34] Id. at 36.
- [35] Id. at 39.

[36] Id. at 40.

[37] CA rollo, pp. 84-85, 189. Vide TSN, February 21, 2000, pp. 17-18; TSN, February 22, 2000, pp. 35-38.

[38] CA rollo, pp. 84-86, 189-191. Vide, TSN, April 25, 2000, pp. 30- 31; TSN, September 28, 2000, 28-29.

[39] Vide *People v. Gamiao*, 310 Phil. 252, 261 (1995).

[40] Vide *People v. Del Valle*, 423 Phil. 541, 551 (2001).

[41] TSN, September 28, 2000, pp. 19-21.

[42] Vide *People v. Lacao, Sr.*, G.R. No. 95320, September 4, 1991, 201 SCRA 317, 329.

[43] Vide *People v. Gonzales*, G.R. No. 128282, April 30, 2001, 357 SCRA 460, 474.

[44] TSN, February 21, 2000, pp. 13; TSN, September 28, 2000, pp. 28-33;

[45] TSN, April 25, 2000, pp. 39-40.

[46] TSN, February 21, 2000, pp. 17-18.

[47] Rollo, p. 40.

[48] 2[nd] paragraph of Article 14 (16) of the REVISED PENAL CODE.

[49] Vide *People v. Fallorina*, 468 Phil. 816, 840 (2004); *People v. Ostia*, 446 Phil. 181, 196 (2003); *People v. Ganohon*, G.R. Nos. 74670-74, April 30, 2001, 196 SCRA 431, 446; *People v. Sancholes*, 338 Phil. 242, 258-259 (1997); *People v. Retubado*, G.R. No. 58585, June 20, 1988, 162 SCRA 276, 286.

[50] Vide records (Crim. Case No. 98-627), pp. 236-238.

[51] Vide *People v. Retubado*, G.R. No. 58585, June 20, 1988, 162 SCRA 276, 286; *People v. Limaco*, 88 Phil. 35, 41-42.

[52] Vide Republic Act No. 9346, Section 2.

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