Circuit Court for Baltimore County
Case No. C-03-CR-20-001574

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1658

September Term, 2022

JERMAINE STAGG

v.

STATE OF MARYLAND

Ripken,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: June 20, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Jermaine Stagg ("Appellant") was indicted in the Circuit Court for Baltimore County on multiple counts related to the sexual abuse of a minor. During trial, Appellant made a motion *in limine*. In the motion, Appellant asserted that evidence in a controlled call made by the victim to Appellant should be suppressed. The specific questions at issue related to potential abuse of another child in the household. Appellant contends the prejudicial nature of these questions substantially outweighs any probative value and was not harmless beyond a reasonable doubt. Appellant subsequently was convicted of assault in the second degree, sex offense in the third degree, and three counts of sexual abuse of a minor and was sentenced to 65 years of incarceration with 20 years suspended. Appellant timely noted this appeal.[1]

Appellant presents the following issue for our review:[2] Whether the circuit court abused its discretion when it denied Appellant's motion to redact questions in the controlled call focused on whether Appellant similarly sexually abused another child.

FACTUAL AND PROCEDURAL BACKGROUND

At the outset, the Crimes Against Children Unit of the Baltimore County Police Department received notice from Franklin Square Hospital of allegations that Appellant sexually abused his biological daughter, "S.", the half-sister of "K." who is the victim

[1] The jury rendered verdicts on the following offenses: three counts of sex abuse of a minor, one count of attempted rape in the second degree, three counts of sexual offense in the third degree, and second-degree assault.

[2] Rephrased from: Whether the trial court erred by refusing to redact from a recorded call content intimating Appellant committed similar crimes with another victim.

herein.[3] One month after the initial report additional allegations were provided that Appellant also sexually abused K. as per K.'s report to the Child Advocacy Center.[4] The additional allegations were provided to Detective David Maranto ("Det. Maranto"). The same day of K.'s report, Det. Maranto interviewed K. and spoke with K.'s mother. Subsequently, during a second interview, Det. Maranto "spoke with [K.]" about "making what's called a controlled call to [Appellant]." Det. Maranto explained that a controlled call is an investigative technique whereby a law enforcement officer "arrange[s] a phone call between a person . . . [and] the target of [the] investigation and that phone call is then recorded." Less than a month later, in January of 2020, K. conducted the controlled call from Det. Maranto's office. The conversation between K. and Appellant was both audio and video recorded.

At the beginning of the controlled call Appellant and K. generally discussed the new year, school, and her siblings. K. then addressed the alleged sexual abuse which was discussed throughout the remainder of the phone call.

[K]: You know, I address that negative energy. So, yeah, that why I was

[3] The victim in this case has been identified using the initial K. and the victim's half-sister has been identified as S. to protect their identities. The initials are random and not indicative of the individuals' legal names.

[4] A child advocacy center is a "child-centered facilit[y] created to provide a trauma-focused, evidence-based, and multidisciplinary response to child abuse victims through investigations, medical and mental health treatment, and victim services." *Prince George's County Dep't of Soc. Servs. v. Taharaka*, 254 Md. App. 155, 165 n.6 (2022) (quoting Nat'l Children's All., *Putting Standards into Practice: A Guide for Implementing the 2023 National Standards of Accreditation for Children's Advocacy Centers* 5 (2021), (https://perma.cc/T9NU-U9PJ)). "The Centers coordinate with local agencies to create a multidisciplinary team consisting of law enforcement, prosecutors, child protective services, medical and mental health professionals, and victim advocates." *Id*.

calling you. Like, I just wanted to talk about, you know, us and everything.

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[K.]: You know what I can't tell is, like, I had trouble, like, understanding our relationship. 'Cause I felt like, you know, the only reason we were close was because of what was going on.

[Appellant]: No. That's not true. That's not true.

[K.]: But, like, you know, how - - it's just - - you know, it bothers me every day 'cause it's just, like, it was wrong. It wasn't - - like, it was just wrong altogether. And it's just, like, you know that, I know that. You know, it's hard dealing with every day. . . . Was it more than just, like, a physical relationship for you? 'Cause I feel, like, whenever I get down, like, that's the only reason that we were so close and that's the only reason you and I had a relationship.

[Appellant]: We were always - - we was always - - always close.

[K.]: The reason why I was just - -

[Appellant]: Regardless.

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[K.]: But that's my point, because I just feel as though, like we were only close because of, like - -

[Appellant]: We've been close forever, forever.

[K.]: No. it doesn't seem like that. We were only close until after - - it was just, like, I blame myself for what happened, like I don't live - -

[Appellant]: You can't blame - - don't blame yourself - -

[K.]: - - like that. I don't understand - - having trouble - -

[Appellant]: - - For that.

[K.]: - - with the fact that we were in a sexual relationship, like, that's what's bothering me. Every day. I can't get through that. At all. You know, and it's just, like, when I want to go - - you know, it's like I can't talk to anyone about it. I'm just fighting shit by myself and it's, like [audible crying] It's hard to deal with, 'cause it's like I - - I don't - - I don't feel as though, like, whenever I'm in a relationship, I don't feel wanted unless it's sexual. I don't feel like anybody cares - -

[Appellant]: Are you serious?

[K.]: Uh-huh.

[Appellant]: You think about - - you feel about people don't love you - - like it's sexual?

[K.]: Because that's what it felt like with you.

[Appellant]: No, you - - no, you shouldn't feel that way. [K.], you're a great person, you all. You tell me. There was some thing I learned from you, like [inaudible] and you're so strong. . . .

[K.]: That's not what I'm saying - - . . .

[Appellant]: I get what you're saying. I get what you're saying. You feel as though people - - you don't feel wanted unless it's something sexual or you think it's like - - everything about - - nothing sexual, it's - - it's something different.

[K.]: Because that's what it felt like with you. It's - -

[Appellant]: What do you mean - - no. No.

[K.]: I just feel, like, we wouldn't be as close - -

[Appellant]: What do you mean - -

[K.]: - - if it wasn't for us to - - because that's just - -

[Appellant]: What?

[K.]: - - that's just what it was. Like, that's how I'm feeling. And, you know - -

[Appellant]: [K.], what are you talking about? Um, um - -

[K.]: I'm saying, like, that's how it was for me. I always felt like as though, like, we would have to - -

[Appellant]: Where are you? Where are you? Where are you?

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[Appellant]: Are you still trying to commit suicide and stuff?

[K.]: You know, I though about it for awhile, and that's why I wanted to hold this conversation, because it's, like - - I'm trying to just make sure that - - I'm just trying to get everything out, because it's just, like, I'm tired of holding everything in.

[Appellant]: Well - -

[K.]: And, it's just, like, knowing that we had sex and knowing that we shouldn't have done it, and it's - - it's hard for me, like - - it's hard for me to deal with. I just - - I can't talk to anybody about it. Like, I just have to sit and think about what was happening, when it was happening. And it's just, like, it's bothering me now. It didn't bother me then but it's bothering me now. [audible crying]

[Appellant]: I need to see you. We need to just, like, sit down and talk, like, face to face. You hear me?

[K.]: I have to think about it.

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[K.]: But honestly, like, I - - you know, I - - I was - - I just want to know, like, do you feel bad about anything that happened between us?

[Appellant]: Yes. I feel bad about every fucking thing. Every fucking thing. Because it - - I was around people that really gave a fuck about me. I don't have nothing now. . . .

[K.]: That's, like - - I was way too young to be dealing with that.

[Appellant]: I just can't believe.

[K.]: And it's just, like - -

[Appellant]: I can't believe it.

[K.]: I was way too young for that. *Did anything ever happen - -*

[Appellant]: And the argument and the fighting - - say what?

[K.]: *Did anything ever happen with [S.]?*

[Appellant]: *What do you mean?*

[K.]: *Like the - - anything that we did?*

[Appellant]: *No.*

[K.]: *With [S.]?*

[Appellant]: *Why would you say that?*

[K.]: Because *I've always wanted to know*.

[Appellant]: *Hell no. Hell no.*

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[Appellant]: *So what did you - - what's your plans for today?*

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[K.]: Like, I just feel gross in my own body, to be honest. I don't - -I just want to know why you were okay with doing it to me.

[Appellant]: I'm not.

[K.]: I keep trying to see, like - -

[Appellant]: So what do you - - what do you want me to do? What do you want to do, [K.]? What do you want to do? What do you want to do?

[K.]: I want you to apologize. I want you to let - - let me know that you know that you were wrong. . . . I can't keep knowing that, you know, that - - and you know - - you feel as though like everything is okay and, you know, what we doing was good and - -

[Appellant]: Everything is not okay, what everything went through that house, everything is not okay. That's not okay.

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[K.]: No. Do you know that it was wrong? Do you know that having sex with me was wrong?

[Appellant]: Yes. Yes. Everything, yes, everything was wrong.

(emphasis added).

At trial, the State laid the foundation for the call during Det. Maranto's testimony and then indicated that the defense's motion to redact the controlled call warranted a

hearing.[5] After the court dismissed the jury from the courtroom, defense counsel argued that a portion of the call wherein K. asks Appellant if he ever engaged in the same conduct with S. should be redacted. Defense counsel asserted that by not redacting the disputed portion of the call, the recording would bring "in the issue of . . . the other allegations" regarding S. noting that those allegations had been severed for trial.[6] By not redacting, defense counsel contended that the disputed portion would allow the jury to speculate about the possible sexual abuse of another individual, which is what lead to the severance.

The State argued that K.'s questions about Appellant's potential abuse of S. were "particularly probative" because Appellant's answer indicates that he "clearly knows what [K.] is referencing and immediately responds[.]" The State further contended that the questions were not prejudicial because "there is no accusation. It's a question. The Defendant responds no and then, they move on. And I think it's also relevant that the Defendant immediately changes the topic[.]"

[5] Prior to trial, Appellant filed a motion to suppress the entirety of the controlled call on multiple grounds, which included an argument asserting that statements within the call were highly prejudicial and substantially outweighed any of its probative nature. During the hearing on the motion, the topic of redactions within the call was raised, and the State explained that it would be making some redactions for trial. The circuit court indicated it would not make a ruling on redactions in the call until the State noted what it intended to redact. Thereafter, the court rejected Appellant's arguments on the merits and held that the call was admissible. The denial of the motion to suppress is not at issue in the present appeal. The audio recording of the controlled call admitted during the trial was redacted in part based on previous agreements between the State and Appellant's defense counsel; these redactions are likewise not before us.

[6] At the time of the indictment, the charged offenses included Appellant's alleged conduct with K. and with S. Prior to trial, the offenses related to Appellant's conduct with S. were severed.

Following argument, the court denied the motion, finding that the "probative value outweighs the prejudice." In so holding, the court explained that Appellant "knows what the topic is and answers the question. And when the question is, did anything ever happen with [S.] . . . Like what we did[?] And then, he seems to know what that is." Following the denial of the motion, the audio recording of the call was played for the jury at the close of direct examination of K. The case was subsequently submitted to the jury, and Appellant was convicted of assault in the second degree, sex offense in the third degree, and three counts of sexual abuse of a minor.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED THE MOTION TO REDACT THE IDENTIFIED SECTION FROM THE CONTROLLED CALL.

Appellant contends that the circuit court erred when it denied the motion to redact K.'s question about Appellant's possible abuse of S. from the controlled call. Appellant asserts that the questions "created a *danger* of unfair prejudice from any insinuation that Appellant had sex with [S.][,]" his biological daughter, and that because the probative value of the questions was low, "that danger substantially outweighed it."[7] Specifically, Appellant argues that other portions of the call prove that Appellant understood that K. was

[7] Appellant also asserts in a singular sentence that the court applied an arbitrary standard when it stated that the "probative value outweighs the prejudice." We find that this language does not constitute an arbitrary standard, as the record is clear that the trial court weighed the probative value and any prejudicial nature of the questions. In finding that the "probative value outweighs the prejudice[,]" the trial court communicated that the prejudice does not meet the threshold necessary to redact the questions. *See* Md. Rule 5-403 ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]").

addressing the alleged sexual abuse, such that the probative value of the questions at issue was reduced. Appellant further contends that the questions themselves, even without answers, created a danger of unfair prejudice due to the insinuation that Appellant sexually abused his biological daughter, S., as well as K.

The State disputes Appellant's characterization of the questions during the controlled call and argues that the portion of the call at issue demonstrated that Appellant understood K. was alleging that Appellant engaged in sexual activity with K. and that Appellant implicitly acknowledged the truth of that assertion. Thus, the State argues that the trial court properly exercised its discretion in finding that the probative value of the questions was not substantially outweighed by the danger of unfair prejudice to Appellant and in declining to redact the identified section of the controlled call.

A. Standard of Review

The review of a circuit court's decision to permit the introduction of evidence requires a two-step process utilizing two different standards of review. *See Williams v. State*, 457 Md. 551, 563 (2018); *see also Montague v. State*, 471 Md. 657, 673 (2020). The process begins with this Court performing a de novo review of the evidence at issue to determine whether it is relevant. *Williams*, 457 Md. at 563. Upon a finding that the evidence is relevant, "we consider whether the trial court abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial." *Montague*, 471 Md. at 673.

An abuse of discretion exists when the ruling "is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems

minimally acceptable[,]'" *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)), such that "no reasonable person would take the view adopted by the circuit court." *Williams*, 457 Md. at 563. Of note, an abuse of discretion does not exist "simply because the appellate court would not have made the same ruling." *North v. North*, 102 Md. App. 1, 14 (1994).

Under the Maryland Rules, evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The Supreme Court of Maryland has consistently explained that the threshold for having "any tendency" to make "any fact" more or less probable is a "very low bar to meet." *Montague*, 471 Md. at 674 (quoting *Williams*, 457 Md. at 564) (internal quotation marks omitted). To determine whether evidence is relevant, we consider whether "it is related logically to a matter at issue in the case, *i.e.*, one that is properly provable in the case." *Snyder v. State*, 361 Md. 580, 591 (2000). In so doing, we cannot consider the evidence in isolation. "Instead, the test of relevance is whether, in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable." *Id.* at 592.

"Relevant evidence inherently has probative value." *Newman v. State*, 236 Md. App. 533, 558 (2018). As such, all evidence found to be relevant is admissible, unless "otherwise provided by constitutions, statutes, or [the Maryland] rules, or by decisional law not inconsistent" with the Maryland Rules. Md. Rule 5-402. One of the rules that permits a court to exclude relevant evidence is Rule 5-403, which proclaims that "evidence may be excluded if its probative value is *substantially* outweighed by the danger of unfair

prejudice," among other concerns. Md. Rule 5-403 (emphasis added). Thus, when this discretion is conferred on the trial court, the "judgment may be informed not only by assessing an evidentiary item's twin tendencies, but by placing the result of the assessment alongside similar assessments of evidentiary alternatives." *Old Chief v. United States*, 519 U.S. 172, 184–85 (1997). Even then, "evidence is never excluded merely because it is prejudicial." *Sykes v. State*, 253 Md. App. 78, 100 (2021) (quoting *White v. State*, 250 Md. App. 604, 645 (2021)) (internal brackets omitted); *see also Mack v. State*, 244 Md. App. 549, 592 (2020) (noting "the analytic necessity of keeping ones focus on the full phrase 'unfair prejudice' rather than the unadorned word 'prejudice' alone").

The rule clearly requires that the prejudice be "unfair" and that the "unfair prejudice" substantially outweighs the probative value of the evidence. *See Mack*, 244 Md. App. at 591; Md. Rule 5-403. The "probative value [of evidence] is substantially outweighed by unfair prejudice when the evidence 'tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.'" *Montague*, 471 Md. at 674 (quoting *State v. Heath*, 464 Md. 445, 464 (2019)); *see also Newman*, 236 Md. App. at 550.

Thus, "prejudicial evidence is not excluded under Rule 5-403 only because it hurts one party's case." *Montague*, 471 Md. at 674. This is because "[i]n a larger sense, all competent and trustworthy evidence offered against a defendant is prejudicial. If it were not, there would be no purpose in offering it." *Newman*, 236 Md. App. at 549 (quoting *Oesby v. State*, 142 Md. App. 144, 165–66 (2002), *cert. denied*, 369 Md. 181 (2002)) (emphasis omitted).

B. Relevant Evidence

It is through K.'s questions about S. that Appellant's answers demonstrate that Appellant understood K. was discussing his previous sexual activity perpetrated against her and thus he implicitly acknowledged that K.'s sexual abuse allegations were true. We, therefore, agree with the trial court, that when viewing the questions and Appellant's answers within the context of the entirety of the call, the questions do make it more probable that Appellant sexually abused K. This satisfies the low threshold necessary to establish the relevance of the questions at issue.

The relevance of the questions is further illustrated by the differences in substance and form of Appellant's response to K.'s allegations that Appellant engaged in sexual activity with her compared to the questions wherein K. asked Appellant if he did "anything we did" with S. For example, when K. said:

> [T]he fact that we were in a sexual relationship, like that's what's bothering me. Every day. . . . It's hard to deal with, 'cause it's like I - - I don't - - I don't feel as though, like, whenever I'm in a relationship, I don't feel wanted unless it's sexual. I don't feel like anybody cares[.]"

Appellant did not accept or deny the accusation, but instead asked if K. was "serious" and then said "No, you - - no, you shouldn't feel that way. [K.], you're a great person, you a[re].

In contrast, when K. asked if "anything ever happen[ed] with [S.]" and then elaborated, "like the - - anything that we did[,]" Appellant did not ask what she meant, instead he immediately said no, further exclaiming "Hell no. Hell no." By responding to the question with a denial, Appellant acknowledged that he understood K. to be referencing

the sexual activity related to K. In explicitly denying that anything like "[what] we did" occurred with S., Appellant's answers could reasonably be interpreted as an acknowledgment, or minimally a failure to deny, that he had sexually abused K.

Thus, K.'s questions asking Appellant if he engaged in the same behavior with S. as he did with her, and Appellant's subsequent answers tend to make the allegation that Appellant engaged in sexual activity with K. more probable.

C. Probative Versus Prejudicial

Having determined that the questions at issue are relevant, we must consider whether the trial court abused its discretion when it ruled that the probative value of the evidence was not substantially outweighed by unfair prejudice. *See Montague*, 471 Md. at 673. Based on the contents of the call and the reasoning relied on by the trial court, we conclude that the trial court did not abuse its discretion when it found that the questions were more probative than prejudicial. The trial court explained that the probative value of Appellant "seem[ing] to know" exactly what K. meant when she said "what we did" outweighed the prejudice of any insinuation that Appellant potentially also sexually abused S.

1. Probative value

Appellant does not dispute that the questions are probative, instead he asserts that the trial court abused its discretion when balancing the probative value against the danger of prejudice engendered by the questions because the probative value of the questions was low due to "plentiful evidence" within the call "capable of proving" that Appellant understood K. was discussing the alleged sexual abuse that occurred related to K. We agree

with Appellant that the controlled call included other references showing that Appellant likely understood K. to be discussing sexual activity.

However, a distinction arises in that the portion of the call Appellant sought to redact includes the only unambiguous affirmative statement Appellant made showing his understanding, and seeming acknowledgment, of the truth of the accusation that he previously engaged in sexual activity with K. *See Carter v. State*, 374 Md. 693, 717 (2003) (explaining the relational nature of probative value). In the portions of the call that Appellant identifies as capable of proving that he understood K. to be referencing sexual activity, Appellant provides answers to K.'s questions that are vague or broad, and potentially susceptible to other interpretations. Those answers by Appellant include:

- "We've always been close"
- "Are you serious? . . . No, . . . you shouldn't feel that way. [K.], you're a great person"
- "I need to see you"
- "I'm not"
- "[W]hat do you want me to do [K.]? You tell me what you want me to do."
- "Yes. Yes. Everything, yes, everything was wrong."

Notably, at trial, Appellant provided another interpretation of these responses during the controlled call, explaining that he didn't deny the accusations because he was confused by the accusations and was concerned that K. was going to attempt to commit suicide, so he did not want to "upset" or "trigger her."

Thus, Appellant's noncommittal answers and the unambiguous portion of the call Appellant sought to redact do not constitute cumulative evidence, or alternative means of proving the same point. *See Old Chief*, 519 U.S. at 183. As such, the probative value of the questions at issue is not reduced due to the lack of a "less risky" alternative addressing the

same point. *Id*. (noting that when a "less risky alternative proof going to the same point" exists "a judge applying [the probative versus prejudicial balancing test] could reasonably apply some discount to the probative value of an item of evidence").

Further, in asserting that the other identified portions of the call render the probative value of the questions at issue less valuable, Appellant discounts the requirement that the State must meet both the burden of proof and the burden of persuasion. *See Newman*, 236 Md. App. at 554. As this Court has explained before, "[r]elevant evidence is necessary not only to meet the threshold burden of production, but also to meet the far greater burden of ultimate persuasion." *Id*. As such, in a case such as this where the evidence presented to the jury is primarily in the form of testimony from K. and Appellant, where the witnesses are testifying to two different sets of facts and credibility is at issue, the value of evidence making the allegations more probable or less probable increases significantly.

2. Danger of prejudice

We turn to the trial court's weighing of the probative value and any resulting prejudice. Appellant contends that the questions created a "danger of unfair prejudice" (emphasis omitted) that outweighed the low probative value of the questions due to an "insinuation that [he] had sex with his biological daughter." Such an insinuation, Appellant asserts, invokes the same danger as "other crimes evidence[.]" Yet, as the trial court stated in its holding, K. was asking a question, it was not an accusation coming from S. Nor did K. push Appellant to continue down this line of questioning. Instead, K. merely asked the question and clarified what she meant when she asked "[d]id anything ever happen with [S.]" and Appellant immediately responded "No. . . .Why would you say that? . . . Hell no.

Hell no." before abruptly changing the topic. At no point did K.'s question, albeit a question about offensive conduct, become an accusation or suggestion that Appellant sexually abused anyone but her.

While the questions may establish *some* prejudice in that K. is asking if Appellant sexually abused another individual, specifically her half-sister, the question does not constitute an admission or accusation that Appellant had done so. Thus, on balance, the danger of any prejudice is not so unfair that it substantially outweighs the significant probative value of the questions and Appellant's answers, which represent the only unambiguous confirmation of Appellant's understanding, and at least plausibly his acceptance, of K.'s claims. *See Burris v. State*, 435 Md. 370, 392 (2013) ("In balancing probative value against prejudice we keep in mind that the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5–403." (internal quotation marks and citation omitted)). In rejecting Appellant's motion to redact the questions at issue, we do not find that "no reasonable person would take the view adopted by the [trial] court." *Williams*, 457 Md. at 563.

Thus, we conclude that the trial court did not abuse its discretion when it denied Appellant's motion to redact K.'s questions during a recorded call with Appellant regarding the potential sexual abuse of another child.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

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