24-5062

No. 20231080-SC

IN THE

SUPREME COURT OF THE UNITED STATES

Amanda Reynolds — PETITIONER
(Your Name)

vs.

Sandy City — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Utah Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES	
Amanda Reynolds, Petitioner, v. Sandy City, Respondent.	SCOTUS Case No.: _____ Utah Supreme Court Case No.: 2023085-CA Utah Court of Appeals Case No.: 20220946-CA District Court Case No.: 225400013 MD Justice Court Case No.: 205004396
AMENDED PETITION FOR A WRIT OF CERTIORARI	

QUESTIONS PRESENTED

There comes a point in time in the development of a State that its actors are compelled to evaluate its integrity in relation to both, its Constitution and the United States Constitution. For a State such as Utah, however youthful, anomalies of our American character, when revealed, are inexcusable – and all the more so where these deviations have almost criminally become the norm. This criminal case presents one such anomaly compelling this Honorable Court's review in its Supreme authority as a State actor for the grave purpose of aligning Utah's values – and its own - with those robustly more American.

Now, before this Honorable Court, stands an urgent and pressing opportunity to correct an improper holding of its lower courts and its own progeny. That opportunity is not merely a window, it is a doorway to duty. I, Amanda Reynolds, humbly pray that this Honorable Court grant certiorari to answer the questions presented herein below in the interests of justice and in favor of this nation's ever-striving perfection:

A. CONSTITUTIONALITY

1. Does Petitioner have standing under Utah's public interest doctrine and as excepted under the mootness doctrine upon the grounds that this issue is one capable of recurring yet evading review to challenge the constitutionality of Utah's Implied Consent Statute?

2. Since Petitioner does have standing, is Utah's Implied Consent Statute unconstitutional under the First, Fourth, Fifth and Sixth Amendments?

3. Is the unconstitutionality of Utah's Implied Consent Statute reconcilable under Birchfield v. North Dakota and simultaneously a warrant for Birchfield's reversal?

B. SUPPRESSION

1. Was Petitioner entitled to suppression of the evidence obtained in violation of the Fourth Amendment under the Exclusionary Rule? More specifically, does Utah's present case law violate federal law, especially Miranda, in holding that a DUI investigation does not become custodial for Miranda purposes at the moment the questioning turns from investigatory to accusatory in nature, thereby warranting suppression?

2. Did the Utah Highway Patrol Trooper's clear use of coercion and his failure to obtain an express waiver of Miranda mandate suppression of the evidence and dismissal?

2. Does Utah's permissive use of a Preliminary Breath Test under the civil Implied Consent Statute to establish probable cause in the criminal investigation violate the Fourth Amendment?

3. Since Utah's permissive use of a Preliminary Breath Test to establish probable cause does violate the Fourth Amendment, does the fifteen-minute constant observation rule set forth in Baker v. Washington apply to Preliminary Breath Tests (since it already applies to Intoxilyzer tests)?

4. Did the West Jordan District Court Order granting suppression of the evidence and dismissing the DUI charge, but otherwise failing to sanction the prosecution violate Defendant's rights under Brady v. Maryland?

5. Did West Jordan District Court's refusal to permit a jury trial for the criminal traffic violations violate Defendant's Seventh Amendment Rights?

6. At what point did the Petitioner-Defendant's right to counsel impute under federal law and, since Utah courts failed to recognize that right, how does Utah law violate the presently existing federal landscape?

LIST OF PARTIES

All parties appear on the caption of the case on the cover page.

RELATED CASES

1. Utah Supreme Court Case No.: 2023085-CA
2. Utah Court of Appeals Case No.: 20220946-CA
3. District Court Case No.: 225400013 MD (Judge Gardner)
4. Sandy City Justice Court Case No.: 205004396 (Judge Farr)

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The opinion of the highest state court to review the merits appears at **Appendix A** and is unpublished. Utah Supreme Court granted summary disposition of Petitioner's appeal of the Utah

Court of Appeals' Order, which granted summary disposition of Petitioner's appeal of the West Jordan District Court's Order Denying Defendant's various motion to suppress, dismiss, and to challenge the constitutionality of Utah's Implied Consent Statute.

JURISDICTION

The highest state court decided my case on February 29, 2024. A copy of that decision appears at **Appendix B**. The jurisdiction of this Supremely Honorable Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Petitioner challenges the constitutionality of Utah's Implied Consent Statute, U.C.A. Section 41-6a-520, effective July 1, 2020, it further involves the propriety of Utah Code Ann. Section 78-2-2(3)(a) governing Supreme Court jurisdiction on appeal, and substantively involves Brady, Miranda, and the First, Fourth, Fifth and Sixth Amendments. This Petition discusses Federal Rules of Evidence and will involve the Utah Rules of Criminal and Appellate Procedure.

STATEMENT OF THE CASE

Petitioner was wrongfully arrested and charged with allegedly failing to stay in one lane, speeding, and driving under the influence of alcohol on July 2, 2020. At 11:27 PM, Utah Highway Patrol Trooper Lane Hooser is parked on the eastbound side of State Street in Sandy when he starts his vehicle and makes a U-turn to pursue me. During his three-minute pursuit, Trooper Hooser claims to have observed my vehicle touch the fog line of the roadway several times and travelling 48 miles per hour in an unmarked 40 mile per hour zone, resulting in a traffic stop. At 11:31:42 PM, Trooper Hooser begins the traffic stop. He would later testify that in those fifty-one seconds,

he could smell the odor of an alcoholic beverage coming from the vehicle. He also allegedly noted that I had slow and slurred speech and her eyes appeared bloodshot and glossy" (sic).

At 11:31:42 PM, Trooper Hooser begins speaking to me. He asks for me for my driver's license. In response, I hand him my passport and tell him that I also have my New York Driver's license. He asks me how long I've lived in Utah and then asks if I've thought about switching my driver's license over to a Utah Driver's license, explaining that I have three months to do so. Next, Trooper Hooser states, "[t]he reason that I'm pullin' you over is – is that you're bouncing line to line, umm, and then um [...] when you took off from that light back there you hit 48, the speed limit's 40. So, just makin' sure everything's alright with you this evening." Trooper Hooser then asks me where I'm coming from and where I'm trying to go.

Immediately after this exchange, at 11:32:33 PM, Trooper Hooser, in a heightened, hostile tone, accuses me of drinking and asks me how much I've had to drink. This moment, fifty-one seconds into the encounter, is the moment that I became in custody.

Even though I was in custody and was not administered Miranda – or any – warnings, I responded to Trooper Hooser, "A beer." Trooper Hooser would later testify at the underlying Suppression Hearing that, between 11:31:42 PM to 11:32:33, "[he] could smell the odor of an alcoholic beverage coming from the vehicle. [He] also noted that [Defendant] had slow and slurred speech and her eyes appeared bloodshot and glossy" (sic).

Put another way, Trooper Hooser testified that he made these observations from 11:31:41 to 11:32:33 PM. In just one minute after speaking to me, who spoke only a total of 27 words, Trooper Hooser testified that he could smell the odor of an alcoholic beverage coming from the vehicle. He also allegedly noted that I had slow and slurred speech and my eyes appeared bloodshot and glossy."

In response, Trooper Hooser says, "A beer? Just one? Everybody lies to me the first time so I always ask them again. From the time you woke up this morning till now, how much have you had to drink, total?" He then begins performing the Horizontal Gaze Nystagmus test, checking my eyes, while she is seated in her vehicle. After doing so, at 11:32:57 PM, he states, "I'll be right back with ya. Just so you know, when I get back, we're going to have to have you exit the car and arrange for some field sobriety tests. As long as you're telling me the truth about your one beer, we'll get you on your way as soon as we can, okay. Hang tight here, I'll be right back with ya." Later that evening, after my arrest, Trooper Hooser would tell me during our trip to the police station, "To be honest with ya, I knew you were going to jail based off your eyes alone."

The same Trooper begins his Field Sobriety Testing at 11:35:25 PM and places me under arrest at 11:42 PM. Within those seven minutes, he claims to have performed the Standardized Field Sobriety Testing, including the: (1) Horizontal Gaze Nystagmus Test, the (2) Nine-Step Walk and Turn Test and, (3) the One Leg Stand Test.

After my arrest, Trooper Hooser read to me the Implied Consent Statute, which had been newly enacted the day before. In his misinterpretation of my refusal to an Intoxilyzer related to the Implied Consent law, Trooper Hooser then applied for a blood draw warrant. I requested to speak to an attorney, but was informed I would not be able to speak to an attorney at any time despite my request. Though I was not charged with a refusal under the Implied Consent Statute, nothing prevented the prosecution from doing so, since I did refuse under the statute. My Miranda rights were not read until the custodial interrogation was over, long after my arrest and placement in handcuffs.

Following my arrest, without my consent and without a valid warrant, Trooper Hooser transported me to the station for a blood draw. Trooper Hooser failed to properly maintain chain

of custody of my blood following our interaction, thus resulting in the spoliation of the evidence. This blood draw was taken in violation of my First, Fourth, Fifth and Sixth Amendment rights. This fact is supported where the Officer's Preliminary Breath Test returned a reading lower than the subsequent blood draw. Defendant's BAC could not have risen while in custody.

During the pendency of the underlying actions, Petitioner made several motions to dismiss, to suppress, and Brady motions. The prosecution destroyed the blood evidence during the pendency of the criminal case in West Jordan District Court, and the DUI charge was dismissed, but the prosecution was not sanctioned for this spoliation of evidence and the matter proceeded to a bench trial with respect to the traffic violations even where I never waived my right to a jury.

PROCEDURAL HISTORY

This case proceeded to trial in Sandy City Justice Court where I was ultimately wrongly found guilty of all charges by a jury of four peers on April 21, 2022. I appealed via trial de novo in West Jordan District Court. On August 22, 2023, Judge Gardner issued an Order dismissing the DUI charge due to spoliation of the evidence pursuant to a Brady/Giglio motion. On October 16, 2023, the matter proceeded to a bench trial with respect to the "criminal" traffic violations and I was found guilty by Judge Gardner of the alleged traffic violations without ever having raised my right to a jury trial.

During the pendency of both underlying actions, I filed various motions including: a motion to dismiss based upon the facial deficiency of the charging instrument; a motion to compel and/or dismiss under Brady/Giglio; a motion to suppress the evidence, and, finally a motion challenging the constitutionality of Utah's Implied Consent Statute and a motion challenging the constitutionality of Utah's Justice Court establishment statutes.

In West Jordan District Court, following a September 12, 2022 hearing and by way of an Order dated October 21, 2022, Judge Gardner denied all motions except reserved judgment on the Brady/Giglio motion until the blood drawn could be independently tested by me. After this Order was issued, the blood was destroyed by the Utah Bureau of Investigation. I then re-filed my Brady/Giglio motion, which Judge Gardner ultimately granted, issuing an Order dismissing the DUI charge against me based upon the destruction of the blood evidence. However, that Order did not dismiss the criminal traffic violations (allegedly failing to stay in one lane and alleged speeding), and did not sanction the prosecution for the evidence's destruction.

I appealed that Order to the Utah Court of Appeals and the Utah Court of Appeals issued an order granting summary disposition on November 27, 2023 upon the grounds that the Order was "final" and, therefore, the Court did not have jurisdiction. The Utah Court of Appeals held it did not have jurisdiction where "[t]he decision of the district court [in a case originating in a justice court] is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Section 78A-7-118(11). Accordingly, it held that where the district court does not rule on the constitutionality of a statute or ordinance, "the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof." Id. citing State v. Hinson, 966 P.2d 273, 277 (Utah Ct. App. 1998).

I argued that the Court of Appeals did have jurisdiction over the appeal because the district court rejected my challenge to the constitutionality of Utah's Implied Consent Statute. However, the Court of Appeals found that the district court did not rule on the constitutionality of the statute. Rather, it determined that I lacked standing to challenge the constitutionality of the statute because I was not charged with a violation of the statute and did not give my consent to testing. The Court

of Appeals went on to hold that the district court did not rule on the Implied Consent Statute's constitutionality that it lacked jurisdiction over my appeal.

Ultimately, the matter proceeded to trial on October 16, 2023 as to the traffic violations issued. I was found guilty after a bench trial. I never waived my right to a jury trial. At trial, the Utah Highway Patrol Trooper insufficiently identified me, the defendant, who was also serving as my attorney. The identification, which was insufficient anyway, was based upon the unduly suggestive circumstances requiring me to serve as my own attorney and make myself known to the officer, who otherwise did not recognize or identify me properly.

REASONS TO GRANT THIS PETITION

I. The Motion to Challenge the Constitutionality of Utah's Implied Consent Statute

A. Petitioner Has Standing and Public Standing to Challenge Constitutionality.

Both the West Jordan District Court and the Sandy City Justice Courts improperly denied my motion to challenge the constitutionality of Utah's Implied Consent Statute without addressing the substance of the motion upon the grounds that I allegedly did not have standing to challenge the statute since I was not charged with a violation of the statute. I do have standing and my motion should have been granted. The Court also improperly redirected me to the Driver's License Division to challenge the constitutionality of the statute, which is, self-explanatorily, an improper venue for redressing that issue.

Respecting standing, Utah affords the benefit of a theory of alternate standing in the interests of the public good. See, Jenkins v. State, 585 P.2d 442 (Utah 1978); see also, Gregory v. Shurtleff, 299 P.3d 1098 (Utah 2013). Accordingly, since the law was misapplied, thereby causing me harm I do have standing and public standing. I could have no better standing to challenge this law.

The Court of Appeals denied it had jurisdiction to hear the issue because the District Court did not rule on constitutionality, only on standing. However, my claim to standing was asserted in the substance of the motion to challenge the statute's constitutionality. The issue of standing as to my right to challenge constitutionality was, therefore, the issue imputing jurisdiction onto the Court of Appeals.

Finally, the Court of Appeals initially indicated that it would not hear my first petition since there was no "final order and decision", but once a final order and decision was rendered, it then rejected my appeal on the basis that the lower Court's decision was final, thus giving rise to the issue of whether Utah's Appellate Rules of Procedure are so inherently inconsistent as to warrant being stricken.

B. Utah's Implied Consent Statute Violates the Constitution of the United States.

Returning now to the substance of the unconstitutionality of Utah's Implied Consent Law, the City raised no argument or objection against the substance of the motion. That is, I contend, because there is no viable one.

As effected July 1, 2020, Utah's Implied Consent Statute, or more formally, "Implied consent to chemical tests for alcohol or drug—Number of tests—Refusal—Warning, report" is codified under U.C.A. 1953 Section 41-61-520. It is unconstitutional. Consent cannot be implied by law. It is not ontological. The statute is also unconstitutional in its practical application as demonstrated by the "Implied Consent Admonitions" peace offers must administer thereunder. Even if consent could be implied by law, which it cannot, then Utah's Implied Consent Statute, as written and as applied, is still unconstitutional under the First, Fourth, Fifth and Sixth Amendments.

At its core, the word consent stems from Middle English: from Old French consente (noun), consentir (verb), from Latin consentire, from con- meaning 'together' + sentire 'feel'. It is not, therefore, unilateral. It cannot be implied by law. Accordingly, it must be struck down and, in this case, any evidence obtained from the fruits of the Implied Consent poisonous tree must be precluded under the Exclusionary Rule to the Fourth Amendment. The Fourth Amendment provides that a search must be reasonable. The absence of consent renders a search unreasonable. Therefore, the Implied Consent Law, which coerces consent, renders a search unreasonable. Therefore, a warrant must be obtained to conduct the desired search.

This Honorable United States Supreme Court entertained the unconstitutionality of Implied Consent Laws across the United States. Most recently, in Birchfield v. North Dakota, the United States Supreme Court majority held that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving arrests, but not warrantless blood tests. See, Birchfield v. North Dakota, 136 S. Ct. 2160 (2016). In Birchfield, the United States Supreme Court granted cert to review three cases involving implied consent laws. None of the defendants or appellants challenged the laws under the First Amendment, as I do here.

Justice Alito, writing for the majority, noted "Because founding era guidance was lacking, the Court determined "whether to exempt [the] search from the warrant requirement 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, in the other, the degree to which it is needed for the promotion of legitimate governmental interests." Id. Unfortunately, the Birchfield dissenters failed to direct Justice Alito to the United States Constitution for "founding era guidance." The guidance lies within the Declaration of Independence.

The Declaration of Independence states,

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from **the consent of the governed,** --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."
> Id. (emphasis added).

The consent of the governed, therefore, can never be consent imputed to the governed such as that consent coerced by Utah's Implied Consent Law, or, potentially, any Implied Consent Statute. Speaking now solely to Utah's Implied Consent law, however, as set forth in my motion-in-chief, under the Federal Rules of Evidence, particularly Rule 801(a), a "statement" is "(1) an oral or written assertion or (2) non-verbal conduct of a person if it is intended by the person as an assertion." See, F.R.E. Rule 801. Rule 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Id. Because consent, express or allegedly implied, is a statement, the "declarant" cannot be the law. The declarant must be the individual imparting the inference or statement, not a statute. The Implied Consent Statute's violations of the Fourth, Fifth, and Sixth Amendments are self-explanatory and will be set forth in Petitioner's brief more fully in support.

II. The Motion to Suppress The Evidence Should Have Be Granted And The Prosecution Should Have Been Sanctioned.

The West Jordan District Court improperly denied my motion to suppress the evidence by holding that Trooper Hooser's stop was justified at its inception under State v. Lopez and Terry v. Ohio. See, State v. Lopez, 873 P.2d 1127 (UT 1994). It further held that Trooper Hooser's investigation was lawful under Miranda v. Arizona, State v. Morris, Salt Lake City v. Carner and State v. Fullerton. See, respectively, Miranda v. Arizona, 384 U.S. 436 (1966); State v. Morris,

2011 UT 40 (Utah 2011); Salt Lake City v. Carner. 664 P.2d 1168 (Utah 2011); State v. Fullerton, 2018 UT 49 (Utah 2018).

Contrarily, I argued properly that the stop was not justified at its inception since at the time of the initial pursuit, Trooper Hooser did not have reasonable suspicion to begin following me. Further, I argued that the moment at which Miranda should have been administered was fifty-one seconds into the stop when Trooper Hooser began his custodial investigation of me. Since Miranda was never properly administered, the evidence should have been excluded. The West Jordan District Court disagreed, deferring to State v. Levin, a case in which a 90-minute stop of a vehicle was held reasonable. However, I was not arguing that the detention was too long, I was arguing that the detention was too short to be held reasonable and, thus, Levin, does not apply. Id., 2007 UT App. 65 (UT 2007). Finally, the Court failed to acknowledge that Trooper Hooser states that he would have arrested me based off my eyes alone, which flies in the face of the totality of the circumstances standard upon which officers are required to base probable cause.

III. Dismissal of the DUI Charge Only Was Not A Sufficiently Drastic Sanction for the Prosecution's Destruction of Blood Evidence in a Criminal Prosecution.

The West Jordan District Court properly suppressed the blood evidence in this case and dismissed the DUI charge, but failed to adequately sanction the prosecution's negligence and/or bad faith, malicious destruction of evidence in kind under Brady v. Maryland. Initially, the Court denied my motion to suppress the evidence by holding that Trooper Hooser's stop was justified at its inception under State v. Lopez and Terry v. Ohio. It further held that Trooper Hooser's investigation was lawful under Miranda v. Arizona, State v. Morris, Salt Lake City v. Carner and State v. Fullerton. Contrarily, I argued properly that the stop was not justified at its inception since at the time of the initial pursuit, Trooper Hooser did not have reasonable suspicion to begin following me.

Further, I argued that the moment at which Miranda should have been administered was fifty-one seconds into the stop, when Trooper Hooser began his custodial investigation of me. Since Miranda was never properly administered, the evidence should have been excluded. Trooper Hooser's conduct with respect to his duty to discharge Miranda Warnings was so egregious that it constituted a clear violation of Miranda; yet, the Court failed to suppress the evidence obtained as a result of the constitutional violation. Instead, the West Jordan District Court deferred to State v. Levin, a case in which a 90-minute stop of a vehicle was held reasonable. However, I was not arguing that the detention was too long, I was arguing that the detention was too short to be held reasonable. Therefore, contrary to the West Jordan District Court holding, Levin did not apply.

IV. The Baker Motion to Suppress Should Have Been Granted.

Utah Courts have applied Washington precedent to establish a fifteen-minute observation rule prior to admission of any evidence in a DUI case. See, State v. Baker, 355 P.2d 806, 806-810 (Wash. 1960). In my Baker motion to suppress the evidence, I argued that the toxicology and blood evidence should have been suppressed since Utah Highway Patrol's Trooper Hooser violated my Fourth Amendment rights when he administered the Preliminary Breath Test ("PBT") prematurely, prior to the fifteen-minute constant observation requirement as set forth in Baker, 355 P.2d at 806. The City, in opposition, argued that the portable breath tests are inadmissible for purposes of establishing guilt, such that Baker did not apply. The Court agreed with the City, holding that Baker does not apply to Preliminary Breath Tests (citing State v. Rose, 2015 UT App. 49, State v. Weaver, 2007 UT App. 292, Salt Lake City v. Struhs, 2004 UT App. 489 (Utah 2004)).

Though Baker has never been held to apply to Preliminary Breath Tests, Baker's holding derives from the reasonableness standard set forth in the Fourth Amendment. Since that standard requires officers to have constantly observed a defendant for fifteen minutes prior to administering

an Intoxilyzer test since the Intoxilyzer is used as evidence against the defendant, and since a Preliminary Breath Test provides the same evidence as an Intoxilyzer, there is no justifiable reason to prelude its application from Preliminary Breath Tests as well, particularly where the officer's reasonableness remains the touchstone rubric for analysis.

Moreover, where the PBT is used to establish probable cause, as the City argued, the search executed by employment of the PBT prior to the establishment of probable cause necessarily violates the Defendant's Fourth Amendment rights. The Preliminary Breath Test evidence should be deemed inadmissible at trial since it allegedly pertains only to the Implied Consent Statute while simultaneously being employed by law enforcement to establish probable cause in the criminal matter. That conundrum violates an arrestee's Fourth Amendment rights where evidence is presumptively and absolutely excluded that, as in this case, tends to and likely would exonerate the arrested individual, most especially because that PBT evidence contraindicated the Toxicology Report here, and where, as here, there lies the claim that the Toxicology Report was tainted by virtue of the mishandled evidence.

Furthermore, Trooper Hooser's questionable decision to pursue a blood draw warrant was based upon his misapplication of the Implied Consent Statute. Trooper Hooser misinterpreted my refusal of the breath test related to the Implied Consent Admonitions as a refusal to perform the Intoxilyzer pursuant to a search warrant. In this case, Trooper Hooser had no reasonable suspicion to search for any substance other than alcohol, rendering a blood draw improper, especially where the blood draw was the most intrusive test to obtain evidence by the City. The West Jordan District Court disagreed. See, State v. Wallace, 2002 UT App. 295 (Utah 2002); see also, Missouri v. McNeely, 569 U.S. 141, 152 (U.S. 2013). Accordingly, a writ of certiorari should be granted to evaluate the propriety of this argument since no prior Court has done so and since the use of

Preliminary Breath Testing to establish probable cause throughout Utah and throughout this country is pervasive and ubiquitous.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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DATED this 28th day of May, 2024
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