

No. _____

OCTOBER TERM 2019

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD KNIGHT,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CAPITAL CASE

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April 20, 2020

CAPITAL CASE

QUESTION PRESENTED

1. Pursuant to the test of *Teague v. Lane*, is *Hurst v. Florida* retroactive to Petitioner, whose Florida capital sentence became final after the issuance of *Ring v. Arizona*?

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The opinion of the Eleventh Circuit Court of Appeals in this cause, reported as *Knight v. Secretary, Fla. Dep't. of Corrections*, 936 F.3d 1322 (11th Cir. 2019), is found in the accompanying Appendix as “Attachment A.” The order denying a timely petition for rehearing/rehearing en banc is found in the accompanying Appendix as “Attachment B.” The order denying federal habeas relief in the federal district court is non-published and is found in the accompanying Appendix as “Attachment C.” The Florida Supreme Court opinion affirming the state circuit court’s denial of postconviction relief and denying state habeas petition, reported as *Knight v. State*, 225 So.3d 661 (Fla. 2017), is found in the accompanying Appendix as “Attachment D.” The Florida Supreme Court affirming Knight’s convictions and death sentences, reported as *Knight v. State*, 76 So.3d 879 (Fla. 2011), is found in the accompanying Appendix as “Attachment E.”

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1254 (1). The Court of Appeals issued its decision on August 30, 2019. Petitioner thereafter sought rehearing, which was denied by the Court of Appeals on November 20, 2019. Justice Thomas extended the time in which to file the petition up to and including April 18, 2020, which was a Saturday. This petition is timely filed on this date. *See* Sup. Ct. R. 30.1.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . [and] to be confronted with the witnesses against him, to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

On June 29, 2000, Mr. Knight was apprehended in Coral Springs, Broward County, Florida, for questioning regarding the homicides of Odessia Stephens and Hanessia Mullings. Mr. Knight was formally arrested and subsequently indicted for their murders. He pled not guilty and demanded a jury trial.

Voir dire began March 13, 2006,¹ and opening statements were presented on April 03, 2006. Closing arguments took place on April 25, the next day Knight was found guilty on both counts of first-degree murder. The facts of the murders are generally set forth in the Florida Supreme Court's decisions. *See* Attachments D, E.

Mr. Knight filed a series of pretrial motions attacking the constitutionality of Florida's capital sentencing scheme, including a motion to declare Fla. Stat. §941.141 unconstitutional due to its failure to provide adequate guidance to the jury as to the finding of aggravating and mitigating circumstances (V62/689-90); a motion to declare §941.141, Fla. Stat. unconstitutional because only a bare majority of jurors was sufficient to "recommend" a sentence of death

¹ During voir dire, prospective jurors were repeatedly told that their role in terms of sentencing was merely advisory and that they were to return only a nonbinding recommendation to the court. *See, e.g.* V15/1488 ("the jury would reconvene for the purposes of rendering an advisory recommendation as to what sentence should be imposed"); V15/1489 ("The final—the final determination of the sentence . . . is up to me. . . . If you recommend the death penalty, the Court will give great weight and consideration to your recommendation").

(V62/691-92); and a motion to declare §941.141 unconstitutional for lack of adequate appellate review (V62/693-712). He also filed a motion entitled “Motion to Declare the Florida Death Penalty Statute Unconstitutional Based on the Clear Mandate of the United States Supreme Court Decision of *Ring v. Arizona*” (V62/802-24).² This motion argued, *inter alia*, that the “Florida capital sentencing statute was designed to deny the jury a role in making the findings of fact on which eligibility for a death sentence depends” and that under the extant statute, the jury’s finding of guilt at the guilt phase “will reflect no more than a finding of premeditated first-degree murder” and that “it is the Court, not the jury, who actually must make the necessary findings of fact” to determine Mr. Knight’s death eligibility (*Id.* at 803; 817). He also argued that the jury’s penalty phase verdict is “merely advisory” and thus cannot satisfy the fact-finding requirement of *Ring* and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (V62/819) (citing *Caldwell v. Mississippi*, 472 U.S. 320 (1985)). All these motions were denied.

The penalty phase testimony took place on May 22 and 23, 2006, and then continued until July 24, 2006, on which date the jury returned its advisory recommendations. Before deliberations began, the court instructed the jurors per the standard jury instructions that their duty was merely to “advise” the court as to punishment because the “final decision” was the court’s sole responsibility

² See *Ring v. Arizona*, 536 U.S. 584 (2002).

(V55/1145-46). The terms “advisory sentence” and “recommend” were repeated to the jury during the court’s instructions on several occasions (V55/1146, 1149, 1153, 1154, 1155).

The jurors were instructed to consider the following aggravating circumstances as to the murder of Odessia Stephens: (1) that Mr. Knight has been previously or contemporaneously convicted of another capital offense or a felony involving the threat of violence (only the contemporaneous conviction for the murder of Hanessia Mullings qualified); and (2) especially heinous, atrocious, or cruel (V55/1146-47). As to the murder of Hanessia Mullings, the jury was instructed on the following aggravating circumstances: (1) that Mr. Knight has been previously or contemporaneously convicted of another capital offense or a felony involving the threat of violence (only the contemporaneous conviction for the murder of Odessia Stephens qualified); (2) that the crime was committed for the purpose of avoiding or preventing a lawful arrest; and (3) especially heinous, atrocious, or cruel (V55/1147-48). Following the instructions, the jurors were told that they would be taken to the jury room “to render [their] advisory opinions” (V55/1157).

At 3:50 PM, the jury panel retired to the jury room to begin deliberations (V55/1158). Between 3:50 and 4:00 PM, the attorneys and court gathered the exhibits to provide to the deliberating jurors and, at 4:00PM a recess was taken

(V55/1162-63). At 4:49 PM, the jurors announced they had reached advisory recommendations (V55/1163), and both “verdict” forms simply indicated that the jury recommended and advised that the court impose the death penalty by a 12-0 vote on both murder counts (V55/1164-65). The forms revealed no other “findings” made by the jury.

In its written sentencing order, the court recognized its sole responsibility for making the necessary factual determinations to sentence Mr. Knight to death while affording the jury’s recommendations great weight (V37/3707). As to the murder of Odessia Stephens, the court found two aggravating circumstances: (1) the contemporaneous conviction for the murder of Hannesia Mullings, and (2) especially heinous, atrocious, or cruel (V37/3708-10). As to the murder of Hannesia Mullings, the court found three aggravating circumstances: (1) the contemporaneous conviction for the murder of Odessia Stephens, (2) especially heinous, atrocious or cruel, and (3) the victim was under the age of 12 (V37/3711-13). The court specifically rejected the avoiding arrest aggravating circumstance that had been submitted to the jury and argued by the State to the jury (V37/3711-12). The court found no statutory mitigation but did find eight (8) non-statutory mitigating factors (R. 3713-3727). Mr. Knight was sentenced to death on both counts (R. 3727-3729).

The Florida Supreme Court affirmed Mr. Knight's convictions and sentences of death on direct appeal. *Knight v. State*, 76 So. 3d 879 (Fla. 2011) [*Knight I*]. Mr. Knight's motion for rehearing was denied on December 15, 2011, and the mandate issued on Jan 3, 2012. This Court denied certiorari on May 14, 2012. *Knight v. Florida*, 132 S. Ct. 2398 (2012).

Knight timely filed a motion for postconviction relief pursuant to Fla. R. Crim. P. 3.851 (V. 3 PCR 404-533), and later amended it (V.5 PCR 884-966). An evidentiary hearing was conducted on March 27-28, 2014 (V. 20, 21). The court denied relief and Mr. Knight timely appealed to the Florida Supreme Court (V. 7 PCR 1283-1329; V. 8 PCR 1330-1331).

Shortly before Mr. Knight's oral argument in the Florida Supreme Court, this Court issued *Hurst v. Florida*, 136 S. Ct. 616 (2016), declaring Florida's capital sentencing statute unconstitutional. The Florida Supreme Court ordered supplemental briefing in Mr. Knight's case and oral argument took place as scheduled on February 2, 2016. In October 2016, the Florida Supreme Court issued *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), its decision on remand from this Court. Mr. Knight sought and was granted leave to file additional supplemental briefs.

On January 31, 2017, the Florida Supreme Court affirmed the denial of Mr. Knight's 3.851 motion and denied his Petition for Habeas Corpus. *Knight v. State*, 225 So. 3d 661 (Fla. 2017) [*Knight II*]. The court unanimously determined that Mr.

Knight's guilt phase claims were without merit but there was disagreement as to the sentencing issues, with Justices Quince and Perry dissenting from the affirmance of Mr. Knight's death sentences on the *Hurst*-related issues.³ A timely motion for rehearing was filed and denied on September 13, 2017. The Florida Supreme Court issued its mandate on September 29, 2017. The United States Supreme Court subsequently denied a petition for certiorari. *Knight v. Florida*, 138 S. Ct. 1285 (2018).

Mr. Knight thereafter timely filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 in the Southern District of Florida (DE:1). One of the issues raised was Mr. Knight's claim that the Florida Supreme Court's decision to apply *Hurst v. Florida* to him was due deference in federal court but that its harmless error analysis ran afoul of the Eighth and Fourteenth Amendments. In January 2018, the Respondent filed its answer, along with the state court record (DE:11, 12). Mr. Knight thereafter filed a reply to the Respondent's answer (DE:21). On April 30, 2018, the district court denied relief as well as a Certificate of Appealability (COA) (DE:23). Knight thereafter filed a motion to alter or amend

³Mr. Knight's sentence became final in 2012, when this Court denied certiorari from his direct appeal. Because his finality date was well beyond the date that *Ring* issued, the Florida Supreme Court determined that *Hurst v. Florida* did apply retroactively to his case. *Knight II* at 682. However, the Florida Supreme Court rejected Knight's argument that *Hurst v. Florida* error was structural and decided that the error was harmless beyond a reasonable doubt due to the 12-0 jury recommendations for death. *Knight II* at 682.

the district court's order pursuant to Fed. R. Civ. P. 59(e), (DE:24). The district court subsequently denied the motion but it did change course and grant a COA (DE:25). A timely notice of appeal was filed (DE:26).

Following briefing and oral argument, a panel of the Eleventh Circuit Court of Appeals affirmed the denial of habeas relief. *Knight v. Secretary, Fla. Dep't. of Corrections*, 936 F.3d 1322 (11th Cir. 2019) [*Knight III*]. The panel first rejected Mr. Knight's contention that the Eleventh Circuit honor the Florida Supreme Court's determination to retroactively apply *Hurst v. Florida* to him under its state law retroactivity test and review only the state court's harmless error analysis:

Before conducting that analysis here, we pause to explain why we cannot simply accept the Florida Supreme Court's decision to apply *Hurst* retroactively to Knight and review only its harmless-error analysis, as Knight urges us to do. Because the Florida Supreme Court had already decided to give him the benefit of *Hurst*, Knight says, the *Teague* retroactivity doctrine no longer has any bearing in his case. He is wrong. While states may fashion their own retroactivity doctrines as a matter of state law, those doctrines cannot displace *Teague* on the federal stage. Our ability to consider whether Florida applied *Hurst* correctly depends entirely on whether we apply *Hurst* ourselves. So far, neither the Supreme Court nor this Circuit has answered that question by analyzing *Hurst*'s retroactivity under *Teague*.

Knight III at 1331-32.

The Eleventh Circuit panel then went on to hold that *Hurst* announced a new rule under *Teague v. Lane*, 489 U.S. 288 (1989), rejecting Mr. Knight's argument that *Hurst*'s ruling was essentially dictated by *Ring v. Arizona*, 536 U.S. 584

(2002). *Knight III* at 1335-36. The panel further concluded that *Hurst* did not fall within either of the two exceptions to nonretroactivity under *Teague*. First, it determined that *Hurst*'s holding was an "extension" of *Ring*, which had already been determined to be a procedural, and not a substantive, ruling. *Knight III* at 1336-37. Second, it held that *Hurst* did not announce a "watershed rule" of criminal procedure. *Id.* at 1337. Because it held that *Hurst* was not retroactive to Mr. Knight, the Eleventh Circuit did not "consider whether the un-found and un-remediable error could be harmless." *Id.*

Mr. Knight unsuccessfully sought rehearing and rehearing en banc in the Eleventh Circuit. This petition follows.

REASONS FOR GRANTING THE WRIT

The Florida Supreme Court found that Sixth Amendment error occurred at Mr. Knight's penalty phase under *Hurst v. Florida*, 136 S.Ct. 616 (2016). *See Knight II* at 682 ("Knight argues that he was unconstitutionally sentenced to death because his penalty phase jury did not find all of the facts necessary to impose the death penalty. We agree."). It also found that Mr. Knight was entitled to the benefit of *Hurst*'s holding because his direct appeal was decided after this Court decided *Ring v. Arizona*. *Knight II* at 682 (citing *Mosley v. State*, 209 So.3d 1248,

1283-84 (Fla. 2016)). It did not, however, grant relief to Mr. Knight because it found the error harmless. *Knight II* at 683.⁴

Mr. Knight then brought his sentencing claim to federal court, arguing that while the Florida Supreme Court had already determined that constitutional error took place during his penalty phase, its harmless error analysis was contrary to and/or an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d)(1). The Eleventh Circuit panel did not reach the merits of this or any other interrelated sentencing issue because it determined, in a case of first impression, that *Hurst v. Florida* was not retroactive pursuant to *Teague*. *Knight III* at 1334-38.

⁴ Justices Quince and Perry dissented from the majority's decision as to the remedy for the Sixth Amendment violation that occurred at Mr. Knight's penalty phase. *See Knight II* at 684 (Quince, J., concurring in part and dissenting in part) ("Here, although the jury unanimously recommended a death sentence, we cannot know that the jury found each aggravating factor unanimously. Because one of the aggravators found by the trial court for each murder in this case—that the murder was especially heinous, atrocious or cruel—requires specific factual findings, *Hurst* requires that the jury, not the trial judge, make that determination. The jury made no such determination in Knight's case); *Id.* at 684-85 (Perry, Senior Justice, concurring in part and dissenting in part) ("Even though the jury unanimously recommended the death penalty, whether the jury unanimously found each aggravating factor remains unknown By ignoring the record and concluding that all aggravators were unanimously found by the jury, the majority is engaging in the exact type of conduct the United States Supreme Court cautioned against") (citing *Hurst v. Florida*, 136 S. Ct. at 622)).

Mr. Knight submits that certiorari review is warranted on the question whether *Hurst v. Florida* can be retroactively applied to his case, where finality of his convictions and sentences occurred post-*Ring*. The issue presented herein involves a question of exceptional importance, is not subject to any procedural barriers to merits determination and is worthy of the Court's review.

The Eleventh Circuit's determination that *Hurst v. Florida* was not retroactive under *Teague* is, at its essence, grounded on the premise that *Ring*'s holding did not "dictate" the later holding in *Hurst v. Florida* because *Ring* addressed Arizona's "judge only" capital sentencing statute whereas *Hurst v. Florida* addressed Florida's "hybrid" capital sentencing statute. *Knight III* at 1335-36. The panel, however, viewed the "dictated by" language in *Teague* in such a parsimonious way as to nearly eviscerate the phrase of all meaning. Searching for a way to distinguish a case in any way possible in order to defeat the "dictated to" analysis is an untenable way of applying *Teague*. Rather,

a federal court engages in a three-step process. First, it determines the date upon which the defendant's conviction became final. . . . **Second, it must 'surve[y] the legal landscape as it then existed,'** *Graham v. Collins*, [506 U.S. 461, 468 (1993)], and 'determine whether a state court considering [the defendant's] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [he] seeks was required by the Constitution.'

Lambrix v. Singletary, 520 U.S. 518, 527 (1997) (emphasis added).

In *Hurst v. Florida*, this Court framed its holding as follows: “In light of *Ring*, we hold that Hurst’s sentence violates the Sixth Amendment.” *Hurst v. Florida*, 136 S.Ct. at 622. In other words, this Court itself in *Hurst v. Florida* recognized its holding was squarely dictated by *Ring*. And the *Hurst v. Florida* Court recognized that the analysis it employed in *Ring* to Arizona’s capital sentencing statute applied equally to Florida’s capital sentencing scheme ***notwithstanding differences in the two***. *Id.* at 621-22 (“The analysis the *Ring* Court applied to Arizona’s sentencing scheme applies equally to Florida’s . . .”) (emphasis added). In fact, the Court explained that any “distinction” between Florida’s and Arizona’s capital sentencing statutes was “immaterial” with regard to the operation of the Sixth Amendment in each sentencing scheme. *Id.* at 622.

In determining that the ruling of *Hurst* was not “dictated by” *Ring* (but was rather an “extension” of *Ring*’s ruling), the Eleventh Circuit barely addresses the language in *Hurst* itself. But avoidance does not make the issue go away. *Hurst v. Florida*’s retroactivity “is tethered to *Ring*.” *Taylor v. Dunn*, 2018 WL 575670 at *69 (S.D. Ala. Jan. 25, 2018), *aff’d* sub nom. *Taylor v. Sec’y, Dep’t of Corrections*, 2018 WL 8058904 at *4 (11th Cir. Oct. 5, 2018) (“*Hurst* made clear that it was applying *Ring*”). *Accord Waldrop v. Comm., Ala. Dep’t. of Corr*, 711 Fed. Appx. 900, 923 n.6 (11th Cir. 2017) (“We discuss *Hurst* only to the extent it reflects an application and explication of the Supreme Court’s holding in *Ring*”); *Lambrix v.*

Sec'y, Dep't of Corrections, 872 F.3d 1170, 1175 (11th Cir. 2017) (“In *Hurst*, the U.S. Supreme Court applied its prior decisions in” *Ring* and *Apprendi*); *Ybarra v. Filson*, 869 F.3d 1016, 1030 (9th Cir. 2017) (noting that in *Hurst v. Florida*, the Supreme Court “once again” applied the principles set forth in *Apprendi* and in *Ring* to invalidate Florida’s capital sentencing scheme); *Garcia v. Davis*, 704 Fed. Appx. 316, 324 (5th Cir. 2017) (noting that in *Hurst v. Florida*, the Supreme Court “relied on its prior holding in *Ring*). See also Brief in Opposition of Florida, *Knight v. Florida*, U.S. Supreme Court Case No. 17-7099 (“The *Hurst v. Florida* decision emanated from the earlier Supreme Court decision in *Apprendi v. New Jersey*”).

Mr. Knight further submits that *Hurst v. Florida* falls within *Teague*’s first exception and that review of the Eleventh Circuit’s determination that *Hurst*’s holding was an “extension” of *Ring* and thus was a procedural, and not a substantive, ruling. *Knight III* at 1336-37. The Eleventh Circuit’s analysis rested primarily on the Court’s ruling in *Schriro v. Summerlin*, 542 U.S. 348 (2004), which held that *Ring* was not retroactive under *Teague* and was a procedural, as opposed to a substantive, ruling as to Arizona’s capital statute. *Knight III* at 1336-37.

Undergirding the *Teague* analysis performed in *Schriro* was the notion that the Sixth Amendment holding in *Ring*—which addressed the particularities of the

Arizona capital sentencing statute—was “procedural” in the sense that it determined only that a fact essential to the imposition of the death penalty in Arizona must be made by a jury, not a judge. *Schriro*, 542 U.S. at 354. *Ring* was a Sixth Amendment right-to-jury-trial case, and that is what the *Schriro* Court addressed in terms of its retroactivity under *Teague*. *Schriro*, 542 U.S. at 353 (“Rules that allocate decisionmaking authority in this fashion are prototypical procedural rules, a conclusion we have reached in numerous other contexts”).

But unlike the Arizona statute at issue in *Ring*, this Court in *Hurst* determined that “[u]nder [Florida] state law, the maximum sentence a capital felon may receive on the basis of the conviction alone is life imprisonment.” *Hurst v. Florida*, 136 S. Ct. at 620. At the time it reviewed Mr. Knight’s case, the Florida Supreme Court had construed Florida’s statute and found that it identified (and *always had* identified) “**elements**” of “**capital murder**” that a jury must find to “**essentially convict**.” The Florida Supreme Court further recognized that these “**elements**” of the substantive crime of “**capital murder**” were longstanding and appeared in the statute. *See Hurst v. State*, 202 So.3d 40, 53 (Fla. 2016). In other words, Florida’s substantive law in effect at the time of Mr. Knight’s trial established that in order to convict a defendant of *capital first-degree murder*, the “elements” of the substantive crime of “capital murder” must be found unanimously by a jury beyond a reasonable doubt. If no such determinations are

made, “the maximum sentence a capital felon may receive on the basis of the conviction alone is life imprisonment.” *Hurst v. Florida*, 136 S. Ct. at 620.⁵

Given this correct view of the legal landscape, it is clear that the narrow *Teague* holding in *Schriro* is inapposite. Unlike the Arizona statute at issue in *Ring*, the Florida capital statute *does* define the elements of capital murder that must be found beyond a reasonable doubt by the jury before a death sentence may be authorized and, if those elements are not found, the statute only allows a maximum sentence of life imprisonment. This brings Florida’s statute into the arena of substantive law as opposed to a mere procedural rule: “A decision that modifies the elements of an offense is normally substantive rather than procedural. New elements alter the range of conduct the statute punishes, rendering some formerly unlawful conduct lawful or vice versa.” *Schriro*, 542 U.S. at 354 (citation

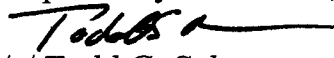
⁵ Mr. Knight acknowledges that in *State v. Poole*, 2020 WL 370302 (Fla. Jan. 20, 2020), the Florida Supreme Court has recently receded from various portions of its decision in *Hurst v. State*, disagreeing with labeling the findings that a Florida capital jury must make before a court is authorized to impose a death sentence “elements” of the greater offense of capital first degree murder rather than “selection findings.” *Poole*, 2020 WL 370302 at *10. But it is how the statute operates that implicates the Sixth Amendment, not the labels. *See Ring v. Arizona*, 536 U.S. 584, 610 (2002) (Scalia, J., concurring) (“I believe that the fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to the imposition of the level of punishment that the defendant receives—whether the statute calls them elements of the offense, sentencing factors, or Mary Jane—must be found by the jury beyond a reasonable doubt”). The facts that a Florida penalty phase jury must find before a court is authorized to impose a death sentence under Florida’s capital sentencing statute are the same now as they were when this Court decided *Hurst v. Florida*. And they have always been the same since the statute’s enactment.

omitted) . As the Court in *Schriro* explained: “This Court’s holding that, *because Arizona* has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as *this Court’s* making a certain fact essential to the death penalty. The former was a procedural holding; the latter would be substantive.” *Id.* But in any event, Mr. Knight’s conviction and sentence were final after *Ring*, thus taking it out of *Schriro*’s purview. Certiorari review is warranted to review the decision of the Court of Appeals.

CONCLUSION

For the reasons set forth above, Petitioner Richard Knight respectfully prays that the Court will issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

Respectfully submitted,



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