

AFTER RECESS

Further proceedings in the case at bar were had as follows:

GEORGE W. SMITH,

Being duly sworn on behalf of the Defendant testified as follows:

DIRECT-EXAMINATION BY JUDGE CLAIBORNE.

Q. Mr. Smith, what is your name? A. George W. Smith,

Q. What is your business, Mr. Smith? A. Engineer, sir.

Q. Where are you employed? A. Tenth and Mullanphy--
St. Louis Manufacturing Company.

Q. How long have you lived in the City of St. Louis?

A. I have lived here about thirty three years the
last time.

Q. Is Lee Smith your son? A. Yes sir.

Q. How old is he?

Objected to as incompetent; objection overruled.

Q. State the age of your son here? A. He will be
twenty seven in April, the 13th of April if I aint mistaken,
I wouldn't be positive.

Q. Born in St. Louis?

Objected to as immaterial; objection sustained.

Q. Well, is he living with you now? A. Yes sir.

Q. Has he lived with you ever since he was born?

A. Yes sir.

Q. Will you state now to the jury if you know the gener-
al reputation of this son of yours for morality? A. Well, I
must say that I've got a very good boy. I never heard that
boy use a smutty word--

Objected to as not being the way to prove
character.

THE COURT: Ask him what his general reputation is.

WITNESS: Well, it's a very good reputation, sir.

Q. Have you ever heard a word against your boy in your life until this charge was made?

Objected to.

THE COURT: It is a little leading, but it is competent for him to state whether or not he has ever heard anything wrong about him.

Q. BY JUDGE CLAIBORNE: Have you ever heard a word against your boy? A. I never did in my life, I never knowed him to be in any trouble.

Q. And he has lived with you all the time? A. Yes sir.

Q. Do you know how long he has been working for a living?

Objected to as incompetent and irrelevant.

Objection sustained.

Q. Do you know what your boy's reputation is, his general reputation for morality?

Objected to as having been already answered.

THE COURT: It was not answered by him in response to a question by his counsel. In replying to counsel I stated that witness might testify as to his general reputation, whereupon he proceeded to say that his reputation was good. You did not put that question.

Q. BY JUDGE CLAIBORNE: What is his general reputation as to morality?

Objected to unless witness knows it.

Q. Do you know it? A. I know it to be a fact.

Q. Well, what is it, good or bad? A. Well, I never knowed my boy to keep any bad company in bar-rooms.

Q. BY THE COURT: Just state, Mr. Witness, whether or not you know his reputation. You have stated that you did know it, now is that reputation for morality good or bad?

A. Good, sir.

CROSS-EXAMINATION BY MR.BISHOP.

Q. Where did you live during the years 1894 and 1895?

A. On Farrar Street, 1425 Farrar Street.

Q. Where was your son walking a beat during 1894 and 1895? A. Well, he walked--I think he has been about one year down in the lower part of the 4th District.

Q. In 1894 and 1895 I am asking you, sir, where he was walking? A. In the 4th District.

Q. Well, that's a pretty big district; he wasn't walking all of it, was he? A. No sir.

Q. Well, what part of it? A. Well, he walked from North Market to Chambers South and from 10th I think, I couldn't state whether it is below Broadway or not, I think it is somewheres in that neighborhood.

Q. You are well acquainted on that beat, are you?

A. Well, yes, I am pretty well acquainted?

Q. How many people do you know in that beat that your son walked? A. Well, I know a great many, I don't know the number.

Q. About how many? A. Well, I suppose, I know in fact a great many in the neighborhood, I couldn't hardly remember them.

Q. How many of them have you ever talked with? A. On that beat?

Q. Yes? A. Oh, I've talked with several people that I know in that end of town.

Q. In regard to the reputation of your son? A. Yes sir.

Q. Who were they? A. Well, I spoke to Mr.Standish for one.

Q. Where does he live? A. He lives on the Southeast corner of 9th and North Market.

Q. Now when did you talk to him? A. Oh, I've talked to him several times after the boy went down---

Q. After the boy had been suspended? A. No sir.

Q. Before? A. Before, yes sir.

Q. And he told you that his character for morality was good? A. That he thought I had a very nice boy.

Q. Did he tell you that he knew anything about his morals? A. Well, he said he was a very quiet fellow.

Q. Did he tell you anything about his morals? A. No sir.

Q. Then you don't know what Mr. Standish's opinion of his morals was? A. Well, I don't know, he didn't speak to me on that.

Q. Now mention somebody else? A. Well, there's Mr. Wright for one.

Q. Did Mr. Wright say anything to you about the morals of Lee Smith? A. Yes sir.

Q. How did he happen to speak about his morals?

A. Well, we got to talking about his boys and my boy. I told him I thought I had a very good boy. He says: "Mr. Smith, I think you've got about as good a boy as there is in the City of St. Louis."

Q. Did he claim to know what your son was doing at night around the corners with boys? A. No sir.

Q. Didn't claim to know anything about that? A. No sir.

Q. Now who else? A. Well, I spoke with a great many. I forget now what the names of the people is, I know so many in that end of town, know a good many.

Q. Well, you didn't expect anybody to tell you that you had a bad boy, did you? A. Well, no, I didn't think they had any cause to say that I had a bad boy.

Q. You know people don't generally tell parents that their boys are bad? A. Well, hardly, very seldom, without you get to talking, sometimes we get to talking about one another's boys.

NANCY J. SMITH,

Being duly sworn on behalf of the Defendant testified as follows:

DIRECT-EXAMINATION BY JUDGE CLAIBORNE.

Q. Mrs. Smith, where do you live? A. 1425 Farrar Street.

Q. How long have you lived there? A. Fourteen years the last time. We lived there before some years ago, but he has lived in that neighborhood ever since he was born.

Q. Well, you have lived in this same house for fourteen years? A. Yes sir. You know we tore it down and built it over.

Q. Is this your son? A. Yes sir.

Q. Well, has he lived with you? A. Yes sir.

Q. In this city ever since he was born? A. Ever since he was born.

Q. Now will you tell that jury what his general reputation is as a moral boy, if you know it? Do you know his general reputation? A. Yes sir, I do.

Q. Among the people in your neighborhood? A. Yes sir.

Q. Is it good or bad? A. Good neighborhood.

Q. Is the boy's reputation good or bad? A. Good in the neighborhood.

Q. Has there ever been anything in the world said against your boy until this charge was made?

Objected to; objection sustained.

Q. He has ate and slept all his life in your house?

A. Always in my house.

Objected to; objection overruled.

Q. What has been his habit as to coming home after getting through with his work?

Objected to; objection sustained.

(CROSS-EXAMINATION WAIVED)

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LEE SMITH,

Being duly sworn in his own behalf testified as follows:

DIRECT-EXAMINATION BY JUDGE CLAIBORNE/

Q. Well, your name is Lee Smith? A. Yes sir.

Q. Well, Lee, how long have you been on the police force?

A. About four years.

Q. About when were you first appointed on the police force? A. July 1st., 1891.

Q. Been on the force then until the time that this trouble occurred? A. Yes sir.

Q. What was your business before you got on the police force? A. Up to the day that I got on I was a book-keeper.

Q. Where were you at? A. I was employed by the Eagle Machine Works on North Main Street.

Q. Before that where were you at?

Objected to, as to where he worked five or six years ago, as throwing no light on this case at all.

THE COURT: He may show that he resided in that part of the city where his witnesses have testified as to character.

Q. BY JUDGE CLAIBORNE: Well, where have you lived all your life? A. I have lived at 1425 Farrar Street nearly all my life, excepting about three or four years of my life.

Q. In the Northern part of this city? A. Northern part of this city, yes.

Q. That is the place testified to by all of these witnesses? A. Yes sir.

Q. Now, Lee, do you know this boy Henry Spreen? A. I know him, yes.

Q. Do you know Ed. Gilmore? A. I do.

Q. When did you first become acquainted with Spreen?

A. Well, shortly after I walked the beat.

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Q. How long did you know him before this charge was made against you? A. Well, I guess about eight months, may be nine.

Q. During that time had you ever had any trouble with him? A. I was always having trouble with him.

Q. He says in his examination that you ordered him twice to leave the corner. How many times did you order him to leave the corner there?

Objected to; objection overruled.

Q. Now state why you had ordered that boy away from the corner? A. On account of the numerous complaints.

Objected to; objection sustained.

Q. How many times did it become necessary for you to order this boy away?

Objected to; objection overruled.

Q. How many times did you order him away from the corner?

A. Well, I ordered him away every time, I saw him there, sometimes he would run before I got a chance to order him away.

Q. Now, Lee, state to the jury whether at any time you ever took this boy and another boy by the arm, one in either hand, to a lumber yard? A. I never did.

Q. Did you ever see these boys at the place that they mention in their testimony? A. I never did in that lumber yard. I have seen them at 10th and Madison and I run them off my beat, and after that, according to their statement, they went down there to Second and Clinton, which is not my beat.

Q. Do you know where this lumber yard is that they describe? A. I do.

Q. Were you ever in it in your life? A. Oh yes, I've been in it, passed through it when I was looking for thieves. I've hid myself there to watch them when they've been in

swimming, when my partner would have his day off, so I could get up close to them and arrest them for swimming and also for robbing freight cars.

Q. Did you ever see either one of these boys in this lumber yard? A. Not in that lumber yard I never have.

Q. Never did? A. No.

Q. Did you ever take any liberties at any time or place with this boy Henry Spreen? A. I did not.

Q. Did you see him on or about the third day of March of last year? A. Not that I remember of.

Q. Where were you on duty on the third day of March of last year? A. From Broadway to Tenth, North Market to Chambers.

Q. In March what time were you on duty, if you recollect, what time did you go on duty? A. From eleven o'clock in the day to eleven o'clock at night.

Q. How far is this lumber yard that this boy spoke of from your district? A. Three blocks from my beat.

Q. Did you at any time leave your beat during the month of March of last year at night? A. No sir, I did not, only in the search of a prisoner or anything like that, and I don't remember of leaving it at any time in March.

Q. Did you wear your overcoat during the winter months?

A. I did.

Q. What time are you required to or did you put on your overcoat? A. Well, that winter we put on our overcoats, I believe it was the 29th day of October we started to wear them, after we had discarded the blouse, we put on our dress coats first.

Q. I am not asking you about your dress coat now, but about your overcoat; what time did you wear your overcoat?

A. Well, I would wear that at various times. If it was a cold day I would put it on. If it wasn't cold, I would

wear the dress coat, which comes down about the same length as the overcoat, only it has a single row of buttons and the overcoat has a double row of buttons.

Q. These boys said you had on a coat with a double row of buttons---the overcoat has a double row? A. Yes sir.

Q. And the dress coat has a single row? A. Yes sir.

Q. And you wore the overcoat upon all cold occasions?

A. I wore the overcoat on all cold occasions, yes.

Q. Now you say you never saw this boy in this lumber yard that is mentioned? A. No.

Q. Or in no other place; that is, no other lumber yard?

A. I have seen him in day time in a lumber yard.

Q. On what occasion? A. Well, he had some lumber there, I run him away for stealing the lumber. It was one of the days that my partner was off duty.

Q. Well, when was that? A. Well, that was about the supper hour. You know the supper hour was from four to five and five to six.

Q. Well, what lumber yard was that? A. That was the lumber yard South, two or three blocks South of that, I believe Heller & Hoffman are the owners of that lumber yard.

Q. You never arrested this boy, did you? A. No, I never did; I threatened to arrest him several times if he didn't keep off the beat..

Q. BY MR.BISHOP: You threatened to? A. If he didn't keep off my beat.

Q. BY JUDGE CLAIBORNE: Now, Lee, this boy says that you took him by force, and the Gilmore boy, and took them in this lumber yard. Did anything of that sort occur? A. Never did.

Q. He says you marched them for two blocks through the public streets of the City of St.Louis. Did anything of that sort happen? A. No, never. There would have been such a crowd around me I couldn't have done it.

Q. Did you at any time have these two boys under any circumstances, one by either arm, and carry them anywhere?

A. No sir.

Q. Did you ever take these two boys out of any crowd of twelve or fourteen boys at any place or time? A. I never did. I have run them away from crowds, but I never took them the way they describe. I have run them away.

Q. Did you at any time whilst you were on the police force put your hands upon either one of these boys? A. Oh yes, I have grabbed hold of them and asked them what they were doing around those corners, threatened to arrest them once or twice and they begged to be let go, said they would keep away, and they would keep away awhile and sometimes I would catch them again.

Q. Did you ever take them anywhere? A. Never, they always begged to be let go and I would let them go. Of course they was too small to arrest; I wanted to scare them away.

Q. Then you never did anything except to attempt to frighten these boys away from the corner? A. That's all.

Q. Was your attention frequently called to these boys?

A. It was.

Q. By whom?

Objected to; objection sustained.

CROSS-EXAMINATION BY MR. BISHOP.

Q. What time did you go on duty on that beat that you have described? A. What time of night or the time of day?

Q. Well, when--I will say when did you go on duty on that beat? A. Well, I went there the first day of July, 1894.

Q. And you remained on that beat until you were suspended by the Captain? A. Yes sir.

Q. Continuously--were you continuously on that beat?

A. I was excepting once or twice I was detailed away from there. Detailed at halls where they had a dance, detailed

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at a circus, political meeting, such as that; but my regular beat was always that beat.

Q. Where did Henry Spreen live? A. He lived at 2002 North Tenth.

Q. That was not on your beat? A. It was on my beat.

Q. Then why did you order him off of your beat if he lived on your beat? A. Why there was so many ladies had been complaining to me passing by there being insulted and rocks thrown at them.

Q. By him? A. By him and other fellows.

Q. I am talking about Henry Spreen now? A. I had him pointed out.

Q. Where are these numerous ladies that they don't appear here? A. Well, now, a police officer would have a fine time keeping track of all of them.

Q. Well, they always do it? A. I didn't.

Q. Don't you know that every police officer has a book for the express purpose of noting complaints that people lodge? A. No, I have my book here and I will show you that I never done it; it's in my pocket right here and I can show you that I never did put such complaints in my book. They were too numerous to mention.

Q. Now don't you know as a matter of fact that you can't find a lady on that beat that would substantiate your statement, and that if you could have done so you would have her here? A. I don't know whether I could find them or not, probably I could.

Q. You walked that beat and you knew every house on that beat, didn't you? A. Oh no, I didn't know every house on the beat.

Q. Didn't you know every house on the beat that you walked? A. No.

Q. Didn't you know every person that lived on that

beat that you walked for over a year? A. Oh no, a policeman couldn't do that, at least I couldn't, probably some of them might.

Q. You are not a first-class police officer then I suppose? A. I'll leave somebody else judge that, I never judge myself.

Q. Well, what right had you to order him off of your beat if he lived on your beat? A. He was lounging around, obstructing the sidewalk and annoying people that passed by there.

Q. Do you mean to say that that little fellow was obstructing the sidewalk? A. Not only himself alone, but he would get in a crowd.

Q. I am talking about Spreen now and nobody else?

A. When three or four get in a crowd he most assuredly is obstructing his share of it.

Q. Where did he obstruct? A. 10th and Madison, 9th and Chambers and 9th and Madison.

Q. You still have not answered my question why you told him you would arrest him if he didn't move off your beat when he lived on your beat? A. I told him if he didn't keep off of them corners, excepting in front of his house, I would arrest him; I told him he could stay right in front of his own house, I wouldn't try to run him away.

Q. Then you think a boy could stay in front of his house? A. If they behaved themselves they could stay there forever; good boys I always did leave stand on the corner.

Q. And that's the reason why you are against Henry Spreen and why you think he is against you? A. I never knew he was against me until he come up with that charge there against me at the station house.

Q. Don't you know this charge was preferred against you long before Henry Spreen was brought into it? A. It was preferred the same night, by Henry Spreen.

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Q. He was not the one who preferred the first charge against you, was he?

JUDGE CLAIBORNE: We object to that, this is the only charge.

THE COURT: I do not think the defendant was examined about that in his examination in chief.

Q. BY MR. BISHOP: Well, now, after you had told this boy that he couldn't play on your beat you say he left there and went somewhere else to play? A. Yes sir.

Q. Do you know where he went? A. From what he says here he went down there to Second and Clinton.

Q. Well, now, there were no people living down at Second and Clinton, were there? A. Yes, there are.

Q. How many dwelling houses are there down there occupied by people at Second and Clinton? A. Well, there's a party by the name of Trusey lives across the street, there's Martin, and Meyers, and there's a couple of other families there I believe, I don't know their names.

Q. Now, don't you know that down at Second and Clinton there are no dwelling houses at all? A. There are.

Q. You swear to that? A. I do.

Q. And all occupied by people? A. They was at that time, yes.

Q. Now where was it that this boy played? A. Well, now, according to his own statement he played there at Second and Clinton, I wasn't watching.

Q. I am asking you? A. Well, I don't know.

Q. You never were down there? A. No, my business wasn't down there at that time of night.

Q. You were not down there at all? A. Only during from four to five, when Stack would go to supper.

Q. Didn't you know this boy was working every day?

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A. I know that he works sometimes and then he gets fired out of his job.

Q. How do you know he gets fired out of his job?

A. Oh, I heard other boys talking about him working at a half dozen different places.

Q. Now tell me of your own knowledge the half dozen places he worked in while you were on that beat? A. Aultman Box Factory, the Stamping Company, Conrades, and I understand he worked on Broadway at a chair factory down there, I can't recall the name.

Objected to as immaterial; objection sustained.

Q. Now you only saw him in the evening, didn't you?

A. I saw him sometimes in day time.

Q. What time in the day? A. Well, different hours, he might be passing around.

Q. And you confess your inability to produce any witness here that ever saw him doing anything out of the way on the street?

Objected to; objection overruled.

A. I do not confess that I couldn't find a witness; I never made no effort to find any.

Q. You are sure you never went into this lumber yard with these boys? A. I am sure.

Q. And if you had done it you would admit it? A. Well, I suppose I would if I was that kind of a feller. I don't know what I would do if I was that kind of a feller, but I suppose a feller of that kind wouldn't think much of his word or anything else. I know if I done anything like that I would kill myself.

Q. You would? A. I would.

Q. You don't expect anybody to believe that, do you?

A. Well, I don't care whether anybody believes it, I'm just saying what I think.

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Q. You would do that and then kill yourself?

Objected to; objection sustained.

HERE THE DEFENDANT FINALLY RESTS.

HERE BOTH SIDES REST, THE FOREGOING BEING ALL THE
TESTIMONY IN THE CASE.

A motion to quash the indictment was overruled, as shown
in the foregoing record.

Whereupon the Court instructs the jury as follows:

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^{vs}
Lee Smith, defendant.

Gentlemen of the jury -

The defendant is charged with ~~the~~ an attempt to commit the offense, which our law designates as the detestable and abominable crime against nature.

The detestable and abominable crime against nature is committed by a man when he has carnal knowledge of the body of a person or a beast through or by means of the fundament or anus; and it is not material, whether the person assaulted consents, to the aforesaid carnal knowledge or not.

If the jury believe and judge from the evidence that at the city of St Louis, Missouri, and within three years before the finding of the indictment in this cause, the defendant Lee Smith, did make an assault upon one Henry Spreew, and did then and there feloniously and wickedly attempt to commit with and upon the said Spreew, the abominable and detestable crime against nature by attempting to have carnal knowledge of the said Spreew, by penetration of the fundament or anus thereof with the male organ or penis of the said Lee Smith, and that he the said Smith, in attempting said crime, then and there required or forcibly compelled said Spreew to unbutton his trousers, and expose his bare body, and that the said Smith did then and there lie upon the body of him the said Spreew, or that he the said Smith ~~did~~ then and there did any other acts which, in the opinion of the jury, were done by him toward the commission of the offense aforesaid; but if he the said Smith then and there failed in the perpetration of said offense, then you will find the defendant guilty of an attempt to commit the detestable and abominable crime against nature and assess his punishment at such a

penitentiary as the jury may deem proper to impose, but not less than two years.

Unless you so believe and find you will acquit the defendant.

In this connection the Court instructs you, that acts on the part of the defendant, to constitute the aforesaid attempt, must be such acts as were suited and apparently adopted to carrying into execution the purpose and design to accomplish the crime alleged. Whether the acts alleged in the indictment to have been done by the defendant and whether the acts testified to by the witnesses, were as a matter of fact done by him, and if so done by him, what purpose and intent he had in doing them, must be determined by the jury: and in judging of his intent, anything that defendant may have said and done at the time of the alleged offense and all the surrounding facts and circumstances may be considered.

The previous good character of the defendant if proved to your satisfaction, is a fact in the case which you should consider in passing upon the guilt or innocence of the defendant, for the law presumes that one whose character is good is less likely to commit a crime, than one whose character is not good.

But if, all the evidence in this case, including that which has been given touching previous good character of the defendant, shows him to be guilty, then his previous good character cannot justify or excuse the offense.

The jury are the sole judges of the credibility of the witnesses, and the weight to be given to their testimony, and in determining such weight and credibility, they may consider the manner of any witness upon the stand, any interest he may have in the case or in its results, and all the facts and conditions surrounding him and his testimony, and if the jury believe and find, that any witness has wilfully and knowingly testified falsely to any material fact in the case, you may, in your discretion, reject the whole or any part of such witnesses testimony, and in this connection the courts instructs that the defendant is a competent witness in his own behalf, but the fact that he is a witness in his own behalf, and the interest he has at stake in the case, may be considered in determining his credibility.

The law presumes the defendant to be innocent, and this presumption continues, until it has been overcome by evidence, which proves his guilt to your satisfaction and beyond a reasonable doubt and to a moral certainty; and the burden of proving his guilt, rests with the State. Unless his guilt has thus been made to appear, your duty is to acquit; but if it has been made thus clearly to appear, your duty is, and the law demands his conviction.

By the term reasonable doubt is not meant a mere guess or possibility of innocence, but a real substantial doubt arising out of the testimony or from the lack of testimony.

To all of which the defendant then ^{and} there excepted.

Whereupon the jury returned the following verdict, to wit;

Verdict

St. Louis Criminal Court
January Term 1896

State of Missouri } on indictment for attempt to
vs } commit the detestable and abominable
Lee Smith } crime against nature.

Do, the jury in the above entitled
cause, find the defendant guilty of attempt
to commit the detestable and abominable crime
against nature as charged in the indictment
and assess the punishment at imprison-
ment in the penitentiary for the term of
two years.

J. H. Sommerich
Foreman.

And, thereupon, the defendant filed a
motion to set aside the verdict and for
a new trial in the following words,
to-wit: *uuu uuu uuu*

State of Missouri }
vs. }
Lee Smith }

Now comes the Defendant by his Attorneys and prays the court, to set aside the verdict of the jury in the above entitled cause, and grant him a new trial, for reasons, as follows:

1. The verdict is against the law.
2. The verdict is against the law, and the evidence.
3. The verdict is against the weight of the evidence.
4. Improper, irrelevant and illegal evidence was permitted to go to the jury, against objections of counsel for defendant.
5. The Court erred in its instructions to the jury.
6. The State was allowed to produce a witness whose name was not endorsed upon the back of the indictment as the law requires - and who had not even been subpoenaed by the State and said witness was allowed to sit in the Court room and hear the testimony of the prosecuting witnesses for the State.

Clairborne & Andersen
Attys for def.

And subsequently, however, on the
third day of March 1896, the defendant
by his Attorney filed his motion
in arrest of judgment in the
following words, to wit: —

In the St Louis Criminal Court Div. No 2

The State of Missouri }
vs
Lee Smith }

Now comes Lee Smith the said
defendant, and moves the Court to arrest the
Judgment in this cause, for the following
reasons.


1st The indictment is insufficient
in law and does not charge any offense
against the defendant.

2nd The verdict of the jury is in-
sufficient and wrong.

Claiborne & Anderson
Attys for Wft.

Each of which said motions, having been heard ^{and} considered, were by the Court overruled, to which decision of the Court in overruling said motions, the defendant, at the time duly excepted.

And subsequently, to wit, on the 8th day of April A.D. 1896, the defendant by his Counsel presented this bill of exceptions ^{and} prayed that the same be signed, sealed ^{and} made a part of the record of this case which is accordingly done this 8th day of April A.D. 1896.

Thomas B. Harney 
Judge, St. Louis Criminal
Court, Division no. one.

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