



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **April 12, 2023** which reads as follows:*

“G.R. No. 260886 (Romel Estrada Diaz a.k.a. “Hat,”* Petitioner v. People of the Philippines, Respondent). — This Court resolves the Petition for Review on *Certiorari*¹ assailing the Decision² and the Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 43885, which found Rommel Diaz a.k.a. “Hat” (*Diaz*) and Bernardo Santos (*Santos*) guilty of homicide under Article 249 of the Revised Penal Code.

The instant case stemmed from an Information charging Diaz and Santos with homicide, the accusatory portion of which states:

That on or about 10:30 o'clock in the evening of October 9, 2012 at Brgy. Estanza, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating and helping one another, with intent to kill, did then and there, unlawfully, feloniously, attack, and maul **DOMINADOR MENDOZA**, causing his untimely death, to the damage and prejudice of the heirs of Dominador Mendoza.

Contrary to Article 249 of the Revised Penal Code.⁴

During the arraignment, Diaz and Santos pleaded “not guilty” to the crime charged against them. After pre-trial was conducted, trial on the merits ensued.⁵

* Also referred to as Rommel Diaz in some parts of the *rollo*.

¹ *Rollo*, pp. 12–33.

² *Id.* at 35–48. The October 5, 2021 Decision in CA-G.R. CR No. 43885 was penned by Associate Justice Ronaldo Roberto B. Martin, and concurred in by Associate Justices Marlene Gonzales-Sison and Carlito B. Calpatura of the Seventh Division, Court of Appeals, Manila.

³ *Id.* at 50–52. The May 5, 2022 Resolution in CA-G.R. CR No. 43885 was penned by Associate Justice Ronaldo Roberto B. Martin, and concurred in by Associate Justices Marlene Gonzales-Sison and Carlito B. Calpatura of the Former Seventh Division, Court of Appeals, Manila.

⁴ *Id.* at 36.

⁵ *Id.*

The prosecution presented three witnesses: (1) Jun Austria (*Austria*), (2) Senior Police Officer 2 Ronaldo Aquino (*SPO2 Aquino*), and (3) Nurse Rey Orduna (*Orduna*).

Austria testified that at around 10:00 p.m. on October 9, 2012, he was on his way home with the victim, Dominador Mendoza (*Mendoza*), after their drinking session with Ong Cruz (*Cruz*).⁶

While Austria and Mendoza were walking, they sensed a motorcycle following them. When Austria turned around, he saw that it was about 10 meters away and he recognized Diaz and Santos aboard.⁷

Suddenly, Diaz alighted from the motorcycle and repeatedly punched Mendoza in the face until he fell on the ground. Austria recalled that Santos initially punched and held him down but that he was able to escape. Austria then saw Santos join Diaz in mauling Mendoza on his stomach and sides.⁸

Austria rushed to Mendoza's house to inform his children about the incident. However, when they returned to the place, Mendoza, Diaz, and Santos were no longer there. Thus, they went to Estanza Barangay Hall to seek help.⁹

SPO2 Aquino narrated that on October 9, 2012, he reported for duty and was informed that one Peter Ballesteros (*Ballesteros*) reported to the Lingayen Police Station that an injured man was brought to the Lingayen Community Hospital. SPO2 Aquino stated that he did not meet Ballesteros but learned of Mendoza's identity from Orduna who told him that Mendoza was mauled by two people.¹⁰

Thereafter, SPO2 Aquino spoke with the security guard on duty at the Jesus Nazarene Hospital earlier that day who claimed to have seen a man being dumped in front of the Lingayen Community Hospital's roadside. The security guard identified Ballesteros as the person who brought Mendoza inside the hospital.¹¹

SPO2 Aquino was able to take the antemortem statement of Mendoza who said that it was Santos and another person who mauled him, but SPO2 Aquino was unable to understand the name of the other person as Mendoza could no longer pronounce his name clearly. More, Mendoza was speaking in

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 37.

⁹ *Id.*

¹⁰ *Id.* at 37-38.

¹¹ *Id.*

Pangasinan. SPO2 Aquino translated his antemortem statement into English. Then, Mendoza, using his own blood, placed his thumb mark on his antemortem statement with only Santos' name indicated as his perpetrator. At the time, Mendoza was assisted by Police Officer 1 Calamiong (*PO1 Calamiong*).¹²

After, SPO2 Aquino and other police officers went to Mendoza's residence. There, he was able to interview Austria, who told him that it was Santos and Diaz who mauled Mendoza.¹³

Then, SPO2 Aquino narrated that he was on his way to conduct a hot pursuit operation against Diaz and Santos when they were informed that Mendoza died while undergoing treatment at the hospital.¹⁴

SPO2 Aquino was also present when Diaz and Santos were both arrested in their respective houses in Brgy. Malimpuec, Lingayen, Pangasinan around 11:30 p.m. to 12:00 midnight.¹⁵

Lastly, Orduna testified that he was working in the emergency room as a nurse in the Lingayen Community Hospital when Mendoza was admitted on October 9, 2012.¹⁶ He recalled that Mendoza told him that he was beaten up but Orduna only heard one name, that of Santos, as the perpetrator.¹⁷

Additionally, Orduna confirmed that although it was SPO2 Aquino who took Mendoza's antemortem statement, PO1 Calamiong was the one who assisted Mendoza in placing his bloody thumb mark thereon.¹⁸

According to the Autopsy Report/Post Mortem Examination on Mendoza, it was found that Mendoza's cause of death was due to "intracerebral hemorrhage 2° to severe head injury 2° multiple skull fractures."¹⁹

On the other hand, the defense presented Diaz and Santos who both denied the accusations against them.

For Diaz, he testified that he and Santos are relatives. He also alleged that he lived in the same barangay as Mendoza and Austria.²⁰

¹² *Id.* at 38-39.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 43.

²⁰ *Id.* at 39.

At around 10:00 p.m. on October 9, 2012, Diaz narrated that he was buying milk for his newborn child at a store in Brgy. Estanza, Lingayen, Pangasinan, when he saw Mendoza who appeared bloodied and bruised by the road. Diaz stated that he recognized Mendoza though it was night time because of a nearby street light.²¹

Diaz claimed that he helped Mendoza stand up. Meanwhile, Santos arrived and, together, they brought Mendoza to the hospital. Austria ran away.²²

According to Diaz, they failed to ask Mendoza who attacked him. They arrived at the Jesus Nazarene Hospital at around 11:30 p.m. and left Mendoza there. After that, Diaz headed home. He did not report the incident to the barangay because it was already midnight when he arrived home.²³

For his part, Santos claimed that on October 9, 2012, he was on his way home on his motorcycle when he saw Diaz asking for help. Santos also saw Mendoza covered in blood due to an apparent head injury.²⁴

Assisted by Diaz, Santos boarded Mendoza on his motorcycle. They first proceeded to the Lingayen Police Station but upon arrival, Santos claimed that a police officer turned them away and told them that drunk people were not allowed inside the station. At the time, he, Diaz, and Mendoza reeked of liquor.²⁵

After Diaz and Santos brought Mendoza to the Jesus Nazarene Hospital, a security guard helped them carry Mendoza to a wheelchair. Allegedly, Diaz and Santos were informed by a doctor that for Mendoza to be admitted, they had to pay a down payment of PHP 10,000.00. Diaz and Santos then told the doctor that since they were neighbors/lived in the same barangay, they will leave Mendoza at the hospital so they could inform his family about the incident.²⁶

However, on their way home, Diaz told Santos that he was feeling sleepy, so Santos dropped him off at his house. Then, Santos proceeded by himself to Mendoza's residence, but as no one came to the door, he went home.²⁷

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 40.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Both Diaz and Santos stated that they were surprised when they were arrested the following day of the incident or on October 10, 2012.²⁸

The Regional Trial Court (RTC) issued its Decision,²⁹ the dispositive portion of which states:

WHEREFORE, premises considered, accused **Bernardo Santos** and **Rommel Diaz** are hereby found **GUILTY** beyond reasonable doubt as principals of the crime of *Homicide* under Article 249 of the Revised Penal Code, and considering the mitigating circumstance of lack of intention to commit so grave a wrong under Article 13 (3) of the Revised Penal Code, are hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of *six (6) years and one (1) day of prision mayor, as minimum[,] to twelve (12) years and one (1) day of reclusion temporal, as maximum*, and ordered to **pay** the heirs of deceased victim Diosdado Mendoza the amounts of P[HP] 25,000.00 as temperate damages, P[HP] 75,000.00 as civil indemnity ex delicto, and P[HP] 75,000.00 as moral damages, all with interest rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.³⁰ (Emphasis in the original)

In convicting Diaz and Santos, the RTC found that the prosecution was able to establish all the elements of homicide.³¹

The RTC relied on Austria's testimony because he positively identified Diaz and Santos as the perpetrators of the crime against Mendoza. Austria was present on the day of the incident and was consistent in stating that he witnessed Diaz punch Mendoza in the face after alighting from the motorcycle. He also saw Santos help Diaz attack Mendoza on the day of the incident, proving that they acted in concert with one another.³²

The RTC found that the identities of Diaz and Santos were established by Mendoza's dying declaration to SPO2 Aquino, as the latter was able to speak to Mendoza while he was "at the state of life and death situation."³³

Mendoza also positively identified Santos as his perpetrator. Notwithstanding SPO2 Aquino's statement in his testimony that he could not clearly hear from Mendoza the name of the other assailant was Diaz, the RTC found the same sufficient in convicting Santos as it still corroborated Austria's testimony.³⁴

²⁸ *Id.* at 39.

²⁹ *Id.* at 67-80. The June 26, 2018 Decision in Criminal Case No. L-9666 was penned by Judge Walter O. Junia of Branch 39, Regional Trial Court, Lingayen, Pangasinan.

³⁰ *Id.* at 79-80.

³¹ *Id.* at 72.

³² *Id.* at 74-75.

³³ *Id.* at 76.

³⁴ *Id.*

Yet, the RTC ruled that the presence of the mitigating circumstance of lack of intention to commit so grave a wrong under Article 13(3) of the Revised Penal Code attended the commission of the crime as there was no evidence proffered by the prosecution that other physical harm was inflicted on Mendoza aside from the punches. Further, the act of Diaz and Santos in bringing Mendoza to the hospital showed that they had no intention to end his life.³⁵

Aggrieved, Diaz filed an Appeal with the CA. Santos no longer appealed his conviction.

The CA rendered its Decision,³⁶ the dispositive portion of which states:

WHEREFORE, premises considered, the appeal is **DENIED**. The *Decision* dated 26 June 2018 rendered by the Regional Trial Court, First Judicial Region, Lingayen, Pangasinan, Branch 39 in Criminal Case No. L-9666 is **AFFIRMED with MODIFICATION** as regards the amount of damages. Appellant Rommel Diaz is **ORDERED** to **PAY** the heirs of Dominador Mendoza the following sums: 1) civil indemnity in the amount of [PHP] 75,000.00; 2) Moral damages in the amount of [PHP] 75,000.00; 3) exemplary damages in the amount of [PHP] 75,000.00; and 4) temperate damages in the amount of [PHP] 50,000.00; all with legal interest at the rate of 6% per *annum* from the date of finality of this Decision until full payment.

SO ORDERED.³⁷ (Emphasis in the original)

In affirming Diaz's conviction, the CA likewise found that the elements of homicide were proven by the prosecution and that Diaz and Santos killed Mendoza without the attendance of any justifying circumstances.³⁸

The CA gave credence to Austria's testimony when he clearly and categorically stated that it was Diaz and Santos who followed them and conspired to maul Mendoza leading to his eventual death. The CA also noted that the defense did not present any evidence to show any improper motive on Austria's part to falsely testify against Diaz.³⁹

More, the CA found that Mendoza's dying declaration was properly appreciated by the RTC. SPO2 Aquino took note of Mendoza's statements while under circumstances that showed his impending death that he was impending his death. Nonetheless, the CA found that Austria was still able to positively identify Diaz and Santos as Mendoza's perpetrators, corroborating

³⁵ *Id.* at 79.

³⁶ *Id.* at 35–48. Dated October 5, 2021.

³⁷ *Id.* at 47.

³⁸ *Id.* at 42.

³⁹ *Id.* at 43.

Mendoza's dying declaration. Thus, Diaz and Santos' convictions were not made by the RTC solely on the basis of Mendoza's dying declaration.⁴⁰

However, the CA modified the amount of damages awarded to Mendoza's heirs by the RTC, increasing the amount of temperate damages from PHP 25,000.00 to PHP 50,000.00, ratiocinating as follows:

The Supreme Court also ruled that when no documentary evidence of burial or funeral expenses is presented in court, the amount of [PHP] 50,000.00 as temperate damages shall be awarded. Thus, the amount of damages to be awarded must be modified accordingly.⁴¹

Lastly, the CA added the amount of PHP 75,000.00 as exemplary damages in line with *People v. Jugueta (Jugueta)*⁴² to be awarded to Mendoza's heirs.⁴³

In a Resolution,⁴⁴ the CA denied Diaz's Motion for Reconsideration for lack of merit.⁴⁵

Hence, this Petition.

In the present Petition, Diaz maintains his innocence and insists that Austria's positive identification of him as one of the assailants is unreliable. In his Petition, Diaz raises that during the incident, Austria abandoned Mendoza. Thus, his observations could have been distorted for he was overwhelmed with fear, anxiety, and stress at the time. Therefore, the RTC and CA's reliance on his testimony was erroneous.

More, Diaz points out that not all the requirements for appreciating a dying declaration are present in this case as it was not proven that the declarant, Mendoza, made the statements under the consciousness of impending death. Further, assuming that Mendoza's statement to SPO2 Aquino was a valid dying declaration, Diaz argues that it cannot serve as a basis to convict him as Mendoza only mentioned Santos' name as his assailant.

In relation to the foregoing, Diaz claimed that the RTC and the CA erred in finding that he and Santos acted in conspiracy in committing the crime.

⁴⁰ *Id.* at 44–45.

⁴¹ *Id.* at 47.

⁴² 783 Phil. 833 (2019) [Per J. Peralta. *En Banc*].

⁴³ *Rollo*, p. 47.

⁴⁴ *Id.* at 50–51. Dated May 5, 2022.

⁴⁵ *Id.* at 51.

The issue to be resolved is whether Romel Estrada Diaz a.k.a. "Hat" is guilty of homicide.

The Petition is denied.

Section 1, Rule 45 of the Rules of Court explicitly states that a petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth." In appeal by *certiorari*, therefore, only questions of law may be raised, because this Court is not a trier of facts and does not normally undertake the re-examination of evidence presented by the contending parties during the trial. While there are recognized exceptions to the rule, Diaz failed to establish an acceptable basis to warrant a review of the facts determined by the RTC and affirmed by the CA.

The elements of homicide are: (a) a person was killed; (b) the accused killed him without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide, were proven beyond reasonable doubt.⁴⁶

In the case at bar, all the elements were sufficiently proven by the prosecution warranting the affirmance of the rulings of the RTC and the CA. Here, Diaz and Santos killed Mendoza without the attendance of any qualifying circumstances.

Next, Austria's credibility as an eyewitness of Mendoza's homicide was questioned, but We find that the same was not affected by his reaction and behavior during and after the incident.

To reiterate, Austria was with Mendoza on the night that the crime was committed. They were merely walking home from a drinking session when they sensed that they were being followed by people on a motorcycle. More, Austria was able to recall that he identified Diaz and Santos as the people onboard the motorcycle due to a nearby streetlight.

Austria clearly described that he saw Diaz alight from the motorcycle to punch Mendoza repeatedly in the face until he fell on the ground. Initially, Austria was restricted by Santos but, Austria broke free from his grasp. It was then that he saw Santos help Diaz in beating Mendoza on the ground before he left the scene to ask for help from Mendoza's children.

⁴⁶ *People v. Alejandro*, 807 Phil. 221, 229 (2017) [Per J. Perlas-Bernabe, First Division].

Therefore, the CA correctly gave credence to Austria's consistent statements regarding the identity of Mendoza's assailants because of his familiarity with them and his proximity during the incident. Besides, Austria's statements were taken within a day from the incident of the crime, further diminishing any improper motive on his part in testifying against Diaz and Santos.

Furthermore, the RTC and the CA also correctly appreciated Mendoza's dying declaration as evidence against Diaz.

In *People v. Umapas*,⁴⁷ this Court held that:

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation.

Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third*, the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.⁴⁸ (Emphasis in the original and citations omitted)

Again, SPO2 Aquino's account of Mendoza's dying declaration only named Santos as one of his assailants. To recall, the name of the other assailant

⁴⁷ 807 Phil. 975 (2017) [Per J. Peralta, Second Division].

⁴⁸ *Id.* at 985-986.

was not properly understood by SPO2 Aquino as Mendoza communicated it to him in Pangasinan.

As testified by SPO2 Aquino:

Q: Now, in question No. 3, you asked the then victim who mauled you, and his answer was Bernardo Santos, is this correct Mr. Witness?

A: Actually sir, in his Question[,] he told me the name Bernardo Santos and another but however I could not clearly hear the name of the other one.

Q: So, whose name was given to you first when you asked this question, who mauled you by the victim, Mr. witness?

A: The name of Bernardo Santos was mentioned first, sir.

Q: After mentioning the first name[,] what next did he tell you [sic]?

A: He told me that this Bernardo Santos has another companion but he could not pronounce clearly the name of the other companion of Bernardo Santos, sir.

Q: There's a thumb mark it appears on this document, whose thumb mark is this, Mr. Witness?

A: The thumb mark of the victim, sir.

Q: What did he use in placing his thumb mark, Mr. Witness?

A: His own blood from his injuries, sir.⁴⁹

At the time SPO2 Aquino took Mendoza's statement, he was also simultaneously translating them from Pangasinan to English in writing. This statement was signed by Mendoza with his thumb mark using his own blood before he died.

However, as found by the CA, Diaz was not convicted solely on the basis of Mendoza's dying declaration but also of the other testimonies offered by the prosecution, particularly Austria's account which SPO2 Aquino's testimony corroborated.

Hence, Diaz's argument equally fails to persuade.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.⁵⁰ Here, Diaz and Santos are both liable as conspirators because their concerted actions, with Santos driving the motorcycle they used to follow Mendoza and Austria and Santos helping Diaz maul Mendoza, led to the accomplishment of the homicide.

⁴⁹ *Rollo*, pp. 76-77.

⁵⁰ ACT NO. 3815, art. 8.

Under Article 249 of the Revised Penal Code, the prescribed penalty for homicide is *reclusion temporal*.

In the RTC ruling as affirmed by the CA, the mitigating circumstance of *praeter intentionem* or lack of intention to commit so grave a wrong was appreciated.⁴⁹

Citing *Wacoy v. People*,⁵¹ the RTC appreciated the mitigating circumstance for Diaz and Santos given the absence of evidence to show that apart from beating Mendoza, he was harmed in other ways. More, Diaz and Santos brought the victim to the hospital showing that their purpose was only to inflict physical harm and not to end his life.⁵²

We disagree with the RTC's appreciation of the mitigating circumstance. Here, the Autopsy Report showed that the victim's cause of death was due to "intracerebral hemorrhage 2° to severe head injury 2° multiple skull fractures." The degree of the injury suffered by the victim is not supported by the RTC finding that Diaz only sought to inflict physical harm. The mere fact that they brought the victim to the hospital does not negate the number and nature of wounds they inflicted upon the victim.

Applying the Indeterminate Sentence Law and in the absence of any mitigating or aggravating circumstances, We modify Diaz's maximum term of imprisonment to *reclusion temporal* in its medium period and the minimum term of imprisonment of *prision mayor* in its medium period. Thus, Diaz is sentenced to suffer the indeterminate penalty of imprisonment of eight years and one day of *prision mayor*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum, for the crime of homicide.

Lastly, We affirm the award of temperate damages in the amount of PHP 50,000.00 to Mendoza's heirs, as well as the grant of civil indemnity in the amount of PHP 50,000.00, moral damages in the amount of PHP 50,000.00 and the increase of exemplary damages in the amount of PHP 50,000.00 in line with the pronouncements of *Jugueta*.⁵³

FOR THESE REASONS, the Petition is **DENIED**. The assailed October 5, 2021 Decision and the May 5, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 43885 are **AFFIRMED** with **MODIFICATIONS**. Rommel Diaz a.k.a. "Hat" is found **GUILTY** of homicide. He is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of

⁵¹ 761 Phil. 570 (2015) [Per J. Perlas-Bernabe, First Division].

⁵² *Rollo*, p. 79.

⁵³ *Supra* note 42, at 855.

reclusion temporal.

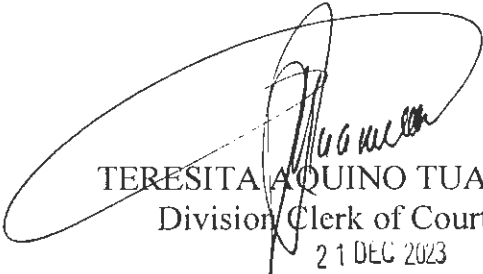
Further, Rommel Diaz a.k.a. "Hat" is **ORDERED** to **PAY** the heirs of Dominador Mendoza, the following amounts:

- 1) Temperate damages in the amount of PHP 50,000.00;
- 2) Civil indemnity in the amount of PHP 50,000.00;
- 3) Moral damages in the amount of PHP 50,000.00;
- 4) Exemplary damages in the amount of PHP 50,000.00.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED."

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court *12/20*
 21 DEC 2023

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*with a copy of the October 5, 2021 CA Decision
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