



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMETRIS GRAHAM,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 117, 2026
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF PROCEEDINGS

On June 18, 2025, Dametris Graham pled guilty to Possession of a Firearm by a Person Prohibited in the Superior Court. A3: D.I. 20; A9-26 (Plea Hearing). His sentencing was deferred to determine whether he should be sentenced under 11 *Del. C.* § 1448 as either a person with 1, or a person with 2, prior violent felony convictions, a fact that would determine if Graham faced 5 or, in the latter case, 10 minimum mandatory years of imprisonment. A13-14. After Graham's guilty plea, the Parties submitted their evidence and written legal arguments to the Judge. A32 (Graham's Submission); A76 (State's Submission). On February 18, 2026, agreeing with the State's position, the Judge found that Graham had 2 prior violent felony convictions and sentenced him to 15 years imprisonment at Level 5, suspended after the required minimum of 10 years for 1 year of probation. A137-140, 147; Exhibits A and B.

Graham filed a timely notice of appeal (A4: D.I. 26, 27). This is his opening brief on direct appeal.

SUMMARY OF ARGUMENT

1. The Superior Court erred by ruling the Pennsylvania statute of Delivery of Marijuana analogous to Delaware's post-2023 statute because Delaware law defining delivery of marijuana to include giving it to another person had previously been amended by the Delaware Marijuana Control Act to exclude adult sharing of marijuana without remuneration, whereas the Pennsylvania law at the time of Defendant's 2016 conviction still criminalized such conduct. Furthermore, the documents submitted by the State to the Superior Court failed to establish that the out of state conduct to which Defendant had pled guilty was to an element narrowed to exclude conduct now lawful in Delaware.
2. The Superior Court also erred because the documents provided by the State to prove that Defendant had committed a second prior violent felony subjecting him to an enhanced mandatory minimum penalty did not establish beyond a reasonable doubt that the out of state conviction was for conduct that would constitute a violent felony under Delaware law as amended in 2023 by the Delaware Marijuana Control Act.

STATEMENT OF FACTS

On June 18, 2025, Dametris Graham pled guilty to Possession of a Firearm by a Person Prohibited (“PFBPP”) with an agreement that his sentencing would be deferred for the State and Defense to present evidence and argument concerning whether Graham’s 2016 Pennsylvania conviction for Delivery of Marijuana triggered a 10-year minimum mandatory sentence under 11 *Del. C.* § 1448(e)(1)(c) as a second violent felony. A12-17, 38. The Parties agreed, and Graham admitted in his plea, that he had 1 prior Pennsylvania robbery conviction that would be considered a violent felony under Delaware law and, as such, he would face at least a 5-year minimum mandatory under 11 *Del. C.* § 1448(e)(1)(b). A16-17, 20, 23-24, 38. The Parties also agreed the judge would make the decision. A18-19.

The State submitted documents that showed that Dametris Graham pled guilty on August 1, 2016, to “Delivery of a Controlled Substance Marijuana” in the Delaware County Court of Common Pleas in Pennsylvania. A93. The offense date was January 5, 2015. A86, 95. He was sentenced the day of his plea. A97. The documents do not tell whether Graham admitted to delivery of marijuana by selling or by giving it to another person. A86-100.

I. THE SUPERIOR COURT ERRED BY FINDING THE PENNSYLVANIA CHARGE OF DELIVERY OF MARIJUANA THE SAME AS OR EQUIVALENT TO DELAWARE’S LAW AFTER THE PASSAGE OF THE DELAWARE MARIJUANA CONTROL ACT AND THAT THE STATE HAD PROVEN DEFENDANT’S PENNSYLVANIA CONDUCT TO WHICH HE PLED GUILTY CONSTITUED A VIOLENT FELONY UNDER CURRENT DELAWARE LAW.

Question Presented

Whether the Pennsylvania statute, 35 *P.S.* § 780-113(a)(3), or Defendant’s 2016 conviction for Delivery of Marijuana under it, is the same as or equivalent to the criminal offense of Delivery of Marijuana under 16 *Del. C.* § 4754 as it was amended in 2023, now that the Delaware Marijuana Control Act excluded “adult sharing” activities from the definition of “delivery” and narrowed that element of the Delaware crime identified as a “violent felony” under 11 *Del. C.* § 4201(c), thereby subjecting him to a minimum mandatory 10 years of prison pursuant to 11 *Del. C.* § 1448(e)(1)(c) for his current conviction for Possession of a Firearm by a Person Prohibited (“PFBPP”).¹

¹ A12-17, 32-36.

Scope of Review

Determining if a prior conviction constitutes a predicate violent felony for enhanced sentencing purposes following a conviction for PFBPP under 11 *Del. C.* § 1448(e) is a question of law subject to *de novo* review on appeal.²

Merits of Argument

Dametrus Graham pled guilty to PFBPP and admitted that he had a Pennsylvania felony conviction for Robbery that would qualify as a violent felony for purposes of sentencing under 11 *Del. C.* § 1448(e). He did not admit that he either had another violent felony conviction. The difference was that 1 violent felony would subject him to a 5-year minimum mandatory term of imprisonment, but 2 would subject him to a 10-year one.³

² *Butcher v. State*, 171 A.3d 537, 539 (Del. 2017).

³ 11 *Del. C.* § 1448(e)(1) provides for minimum mandatory penalties when a person is convicted of PFBPP if his prior criminal history contains convictions for felonies: “(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm, projectile weapon, or destructive weapon while so prohibited shall receive a minimum sentence of: a. Three years at Level V, if the person has previously been convicted of a violent felony; b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.”

The State argued below, and the Superior Court found, that the elements of Pennsylvania and Delaware’s delivery charges are “analogous” and that the Delaware Marijuana Control Act “does not invalidate” the Delaware offense because “it is still unlawful for a person to manufacture or deliver a controlled substance” and, as a result, Graham’s 2016 offense “remains classified as a violent felony.”⁴ This decision of the Superior Court’s ignores the change in the law which resulted in a category of delivery under the Pennsylvania statute not remaining a violent felony under Delaware law. The Judge was incorrect because the Act did, as a matter of law, invalidate the Delaware offense of delivery insofar as it had previously applied to marijuana gifted without remuneration to another person. Before the Act, delivery in Delaware was any transfer of marijuana to another person whether for sale or not. Afterwards, marijuana given or shared with another ceased to be a crime at all, much less a violent felony.

A. Until Delaware’s passage of the Delaware Marijuana Control Act in 2023, the definition of the element of delivery in Pennsylvania and Delaware and the caselaw interpreting it were identical.

In *Brown v. State*,⁵ the Delaware Supreme Court affirmed convictions for Possession with Intent to Deliver after the defendant testified that he shared his cocaine with friends who also shared their cocaine with him: “They give me some.

⁴ A139-140.

⁵ 49 A.3d 1158 (Del. 2012).

I give them some. That’s just the way it is.”⁶ At trial, in addition to reading the statutory definition of the word “deliver,” the trial judge instructed the jury that “delivery” included “*selling or giving the drug*” to someone.⁷ Reflecting on the state of the law as of 2012, the Delaware Supreme Court approved the trial judge’s supplemental instruction without reservation as a correct statement of the law:

[T]he term deliver has always been defined in the statute to include giving.⁸ This is not a case where the judge substantively changed the law in the jury instructions after the defendant testified; rather, the additional sentence explained the legal definition in plain English.⁹

What mattered was the transfer or attempted transfer of an illegal drug to another person, not whether it was done in exchange for cash or to make a profit or simply shared with that person.¹⁰

Pennsylvania law defines “delivery” identically to Delaware’s statute: “‘Deliver’ or ‘delivery’ means the actual, constructive, or attempted transfer from one person to another of a controlled substance, other drug, device or cosmetic

⁶ *Id.* at 1160.

⁷ *Brown v. State*, 49 A.3d at 1160 (bold added).

⁸ Formerly 16 *Del. C.* § 4701(8), § 4701(9) provides that “‘Deliver’ or ‘delivery’ means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.”

⁹ *Brown v. State*, 49 A.3d at 1160.

¹⁰ *Id.* (“[T]he statutory definition of deliver does not require consideration as part of the transfer of the controlled substance. The supplement[al jury instruction] does not mislead the jury and reasonably informs the jurors that the term delivery cannot be limited to sale.”).

whether or not there is an agency relationship.”¹¹ Like Delaware before 2023, the Pennsylvania cases interpreting this element require there only be proof of “actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so.”¹² Delivery in Pennsylvania needs no proof that an exchange of money took place.¹³

B. The passage of the Delaware Marijuana Control Act narrowed Delaware’s definition of what constituted delivery to exclude the transfer of marijuana to another person without remuneration, an act that remains criminalized under the Pennsylvania statute found analogous by the Superior Court below.

However, in 2023, the General Assembly legislatively altered that longstanding understanding of what it meant to “deliver” the controlled substance of marijuana in a substantial and deliberate manner when it excluded the application of Chapter 47, Title 16 to the “marijuana-related conduct” of “adult sharing of marijuana between persons who are 21 years of age or older without

¹¹ 35 P.S. § 780-102; *compare* 16 Del. C. § 4701(9), footnote 8, *supra*.

¹² *Commonwealth v. Murphy*, 844 A.2d 1228, 1233-1234 (Pa. 2004) (A person “actually transfers drugs whenever he physically conveys drugs to another person.”)

¹³ *See Commonwealth v. Metzger*, 372 A.2d 20, 22 (Pa. Super. Ct. 1977), cited by *Commonwealth v. Cassell*, 2024 WL 4272698 (Pa. Super. Ct. Sept. 24, 2024) (affirming defendant’s conviction for sharing heroin with an acquaintance without remuneration who then overdoses and dies) (approving jury instruction: “The term deliver includes the actual or constructive transfer from one person to another of the controlled substance. It does not require the transfer to involve profit or the exchange of money. Rather, the transfer need only involve the conveyance of the controlled substance. A delivery may take place between two persons even though one of them may be acting as the agent for the other.” *Id.* at *3).

remuneration.”¹⁴ The definition of the element of “delivery” is found in Chapter 47 at § 4701(9). The Act took the conduct of adult sharing of marijuana from being a violent felony offense to being no crime at all by directing that “[t]he offenses and penalties provided for in this chapter do not apply to marijuana-related conduct,”¹⁵ in effect, redefining the element of delivery by narrowing its definition to excise from criminality giving or transferring marijuana to another person without remuneration.

The enactment of the Delaware Marijuana Control Act came with a strong statement of the policy behind decriminalization in the context of recreational use and possession of marijuana that included its decision to decriminalize conduct of transferring or sharing marijuana in a non-remunerative context by, among other things, recognizing the unfairness selective prosecutions of marijuana offenses have wrought on black persons who were heretofore 4-times as likely to be arrested despite a rate of use equaled by white persons as one of its several motivations for legalization of recreational marijuana use.¹⁶

¹⁴ See 84 Del. Laws, c. 24 § 1, enacting 16 *Del. C.* § 4750 (The Delaware Marijuana Control Act became law April 27, 2023); see also 84 Del. Laws, c. 15, § 1, enacting 16 *Del. C.* § 4764A (became law April 23, 2023).

¹⁵ 16 *Del. C.* § 4750.

¹⁶ 84 Del. Laws, c. 24 (Preamble) (“WHEREAS, the legalization and regulation of marijuana would address criminal justice concerns related to criminalization and prohibitions on the production, possession, and transportation of the substance, recognizing a Black individual is 4 times more likely to be arrested for marijuana possession than a white individual despite equal rates of use”).

Because, in contrast to the Pennsylvania law defining and criminalizing delivery of marijuana, Delaware's delivery statute now is narrower and does not apply to and, therefore, does not criminalize giving marijuana to another person without remuneration, the Pennsylvania statute "is not the same as or equivalent to" the Delaware violent felony under 11 *Del. C.* § 4201(c) and should not subject a person previously convicted under it to the enhanced sentencing of 11 *Del. C.* § 1448(e)(1)(c) simply by reference to the statute.¹⁷ Something more in terms of proof was therefore required to establish and/or find that Graham's 2016 conviction in Pennsylvania would still be considered a violent felony in Delaware.

C. The *Shepard* documents¹⁸ relied upon by the Superior Court do not demonstrate that Defendant's conviction was for elemental conduct that is still unlawful under Delaware's current drug delivery law.

While statutes need not be identical for a finding that an offense is "the same as or equivalent to" an offense under Delaware law, what is required are documents showing an admission or a jury verdict proving the out of state conviction would be a qualifying crime under Delaware law.¹⁹ In this case, the documents presented to the Superior Court failed to fulfill this requirement.

¹⁷ *Cf. Butcher v. State*, 171 A.3d 537, 540 (Del. 2017) (holding repeal of law making possession of marijuana within 300 feet of a particular use a violent felony meant a prior conviction for that charge should not have been used to enhance defendant's sentence under § 1448(e)).

¹⁸ *See Shepard v. United States*, 544 U.S. 13 (2005).

¹⁹ *See Valentine v. State*, 2019 WL 1273689, at *2 (Del. March 20, 2019) (ORDER).

In determining the equivalency of an out of state conviction when an element's definition differs from Delaware's, a sentencing court may look "to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of."²⁰ In this case, the documents on which the Superior Court relied at Dametris Graham's sentencing establish only that the conduct forming the basis of his 2016 Pennsylvania conviction was a "delivery" of "marijuana" without any further relevant description.²¹ The paperwork the State supplied to the Superior Court did elaborate further and failed clarify that the conduct Graham pled guilty to in Pennsylvania conviction was narrowed beyond Pennsylvania definition so that it was not for the marijuana sharing or giving activity now decriminalized under Delaware law. Then, as now and at the time of Graham's sentencing before the Superior Court of Delaware below, the definition of the element of delivery in Pennsylvania included the sharing of marijuana without remuneration, conduct which had been, but was not by the time of Graham's conviction below, a criminal offense in Delaware. And the documents supplied to the Superior Court by the State did nothing to say otherwise. Because the documents did not do so in the context of a statute that proscribes a broader array of criminalized conduct than the Delaware

²⁰ *Valentine v. State*, 2019 WL 1273689, at *2, with quotations from *Mathis v. State*, 136 U.S. 500, 505-506 (2016).

²¹ A86-100.

offense provides for, the Superior Court erred in enhancing Graham’s minimum mandatory sentence based on them.²²

The recidivist criminal penalty under 11 *Del. C.* § 1448(e), such as the one Graham faced below, is determined as of the time a “the person commits the most recent offense for which enhanced punishment is sought.”²³ In *Daniels v. State*,²⁴ the Court reversed a recidivist DUI sentence that the trial court based on a New Jersey DUI conviction because the older the out-of-state offense included conduct broader than the conduct Delaware criminalized.²⁵ As of April of 2023, Delaware had, in effect, redefined “delivery” by excluding from its application the category of physical transferences of marijuana involving gifted or shared marijuana with another adult without remuneration. This narrowing of Delaware’s criminal offense of Delivery occurred well before Graham committed the August 19, 2024, crime of Possession of a Firearm by a Person Prohibited to which he pled guilty on June 18,

²² See *Butcher v. State*, 171 A.3d at 543 (Del. 2019), quoting *State v. Edgar*, 2016 WL 6195980, at * 5 (Del. Super. Ct. Oct. 21, 2016): “(Because Edgar’s Escape After Conviction did not constitute a violent felony under ‘the law as it stood’ at the time Edgar committed the Person Prohibited, the Superior Court held that it did not constitute a violent felony for enhanced sentencing purposes under Section 1448(e)(1).”

²³ *Butcher v. State*, 171 A.3d at 543.

²⁴ *Daniels v. State*, 246 A.3d 557 (Del. 2021).

²⁵ *Id.* at 558-559 (New Jersey statute from 2012 criminalized both driving under the influence and permitting another to do so where the Delaware statute and the documents presented to the Delaware Court at sentencing did not establish which of the two types of conduct prohibited in New Jersey defendant engaged in.)

2025, and was sentenced on February 18, 2026. Because the *Shepard* documents relied upon by the Superior Court²⁶ below to find the existence of Graham’s second prior violent felony say nothing of whether his 2016 Pennsylvania conviction involved a category of criminal conduct that has been decriminalized in Delaware since the passage of the Marijuana Control Act, the Pennsylvania conviction for Delivery is not “the same as or equivalent”²⁷ to a Delaware violent felony pursuant to 11 *Del. C.* § 4201 for purposes of sentencing under 11 *Del. C.* § 1448(e)(1)(c), and Graham should not have been sentenced to 10 years of incarceration for having been convicted on two or more occasions of a violent felony.²⁸

²⁶ A86-100.

²⁷ See 11 *Del. C.* § 1448(e)(3): “[V]iolent felony’ means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.”

²⁸ *Cf. Valentine v. State*, 2019 WL 1178765, at *2 (Del. March 12, 2019).

II. THE STATE’S EVIDENCE OF DEFENDANT’S 2016 PENNSYLVANIA MARIJUANA DELIVERY CONVICTION DID NOT PROVE BEYOND A REASONABLE DOUBT HE HAD ENGAGED IN CONDUCT CONSTITUTING A VIOLENT FELONY UNDER CURRENT DELAWARE LAW.

Question Presented

Whether the evidence presented to the Superior Court by the State proved beyond a reasonable doubt that Defendant’s 2016 Pennsylvania conviction for Delivery of Marijuana was based on conduct that would constitute a “violent felony” pursuant to 11 *Del. C.* § 4201(c) subsequent to passage of the Delaware Marijuana Control Act, thereby subjecting Defendant to a minimum mandatory 10-year term of imprisonment under to 11 *Del. C.* § 1448(e)(1)(c) for his current conviction for Possession of a Firearm by a Person Prohibited.²⁹

Scope of Review

Whether a prior conviction constitutes a predicate violent felony for enhanced sentencing purposes following conviction for possession of a firearm by a person prohibited under 11 *Del. C.* § 1448(e) is a question of law subject *de novo* review on appeal.³⁰ Whether evidence is sufficient to sustain a fact or element that must be established beyond a reasonable doubt is reviewed *de novo*.³¹ On appeal, this Court

²⁹ A36-37.

³⁰ *Butcher v. State*, 171 A.3d 537, 539 (Del. 2017).

³¹ *Carter v. State*, 933 A.2d 774, 777 (Del. 2007).

looks at the evidence to determine whether, after viewing it in the light most favorable to the State, the factfinder, in this case a Superior Court Judge, could have found beyond a reasonable doubt that the Defendant's Pennsylvania Delivery of Marijuana conviction was for conduct that would still constitute a violent felony under current Delaware law.³²

Merits of Argument

Due process under the Fifth and Fourteenth Amendments of the United States Constitution commands that no person may lose their liberty unless a government has borne the burden of producing the evidence and convincing the factfinder trying the issue beyond a reasonable doubt.³³ The Fifth and Sixth Amendments of the United States Constitution require that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt”³⁴

³² *Cf. Jackson v. Virginia*, 443 U.S. 307 (1979); *cf. also Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

³³ *Speiser v. Randall*, 357 U.S. 513, 525-526 (1958); *In re Winship*, 397 U.S. 358, 363-364 (1970); *Erlinger v. United States*, 602 U.S. 821, 830-831 (2024) (“The Fifth Amendment further promises that the government may not deprive individuals of their liberty without due process of law. It is a promise that safeguards for criminal defendants those procedural protections well established at common law, including the ancient rule that the government must prove to a jury every one of its charges beyond a reasonable doubt.” Internal quotations omitted.)

³⁴ *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Any other fact that triggers an enhanced a sentence must be proven beyond a reasonable doubt to the satisfaction of a jury.³⁵

In this case, the Parties submitted the question of whether Graham's 2016 Pennsylvania conviction for delivery of marijuana would be a violent felony under Delaware's law following the passage of The Delaware Marijuana Control Act. Graham's written submission below argued that the State failed to establish to a jury that fact beyond a reasonable doubt through the introduction of *Shepard* documents and, therefore, he should be sentenced under the less onerous single violent felony conviction provision of 11 *Del. C.* § 1448(e).³⁶ But the Superior Court ruled that Graham had waived his right to have a jury make that finding when he submitted the determination for decision by the Judge.³⁷ Graham does not now challenge that portion of the Superior Court's decision on appeal where the Judge ruled that he had "waived his right for the issue to be determined by a jury."³⁸

Rather, Graham maintains here that under *Erlinger* the documentary evidence the State presented to the Judge must contain enough facts to prove beyond a reasonable doubt the sentencing-enhancing fact that his Pennsylvania conviction

³⁵ *Erlinger v. United States*, 602 U.S. 821, 840 n.3.

³⁶ A36

³⁷ A140: 16-20 (The Court: "Even if Erlinger is applicable, Mr. Graham waived his right for the issue to be determined by a jury by jointly requesting this Court to determine whether Mr. Graham has one or two prior violent predicate felonies.").

³⁸ *Id.*

was for conduct that was a violent felony under Delaware law at the time of his plea and sentencing.³⁹ The Superior Court’s trial ruling misses the mark by characterizing that question “as a legal question within the Court’s purview”⁴⁰ when in reality it includes a factual determination of what Graham actually did out of state and whether that is a crime here. The question presented was “fact-laden” and, therefore, required proof beyond a reasonable doubt be submitted to the trier of fact under *Erlinger*⁴¹—whether the trial be to judge or a jury. In this case, Graham correctly argued that the *Shepard* documents did prove beyond a reasonable doubt that he committed a crime still illegal under Delaware’s amended law.

When the Superior Court failed to address the question of whether the documents submitted following the plea proved Graham had delivered marijuana in 2016 by selling or, alternatively, by giving it to another, it violated the guidance of this Court in the *Daniels* case: “[W]here, as here, the prior conviction is under a statute that is divisible into conduct that violates [the Delaware DUI statute] and conduct that doesn’t, the sentencing court must determine, with benefit of *Shepard* documents, if necessary, whether the prior conviction was under the section of the

³⁹ A36

⁴⁰ A140: 11-13

⁴¹ *Erlinger*, 602 U.S. at 834.

[out of state] statute that is similar to [the Delaware DUI statute].”⁴² This the Superior Court did not do.

In fact, the documents proving Graham’s Pennsylvania drug conviction provided no evidence (and no factual or legal basis) upon which the Superior Court below could support a decision that Graham had engaged in still-prohibited conduct under Delaware law rather than the alternative sharing conduct now decriminalized in Delaware but still a crime in Pennsylvania. Because of the lack of *any* evidence in that regard, the Superior Court could not have found the State established the narrower conduct element necessary for Graham’s sentence enhancement beyond a reasonable doubt.⁴³

⁴² *Daniels v. State*, 246 A.3d at 563.

⁴³ *Cf. Mathis v. United States*, 579 U.S. at 512 (discussing the concern “non-elemental” facts being considered for purposes of enhanced sentencing, the Court cautioned “inaccuracies should not come back to haunt the defendant many years down the road by triggering a lengthy mandatory sentence”).

CONCLUSION

Based on the foregoing reasons and authorities, the Appellant Dametris Graham's sentence pursuant to 11 *Del. C.* § 1448(e)(1)(c), requiring a 10-year minimum mandatory term of incarceration should be vacated and the case remanded for resentencing under the 5-year minimum mandatory pursuant to § 1448(e)(1)(b).

Respectfully submitted,

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