

A05-1519

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Leonard Goodloe,

Appellant.

APPELLANT'S BRIEF

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Appellant.

PROCEDURAL HISTORY

July 22, 2004	Date of offense.
November 18, 2004	Indictment returned in Hennepin County District Court charging appellant with first-degree premeditated murder, in violation of Minn. Stats. §§609.185(a)(1) and 609.11, and felon in possession of a firearm, in violation of Minn. Stats. §§624.713, Subd. 1(b) and 609.11.
April 18-May 3, 2005	Jury trial. Judge Pamela Alexander presided.
May 3, 2005	Jury found appellant guilty as charged, and the trial court sentenced appellant to life in prison.
August 1, 2005	Notice of appeal filed.
August 31, 2005	Trial transcripts ordered.
November 7, 2005	Trial transcripts received.

LEGAL ISSUES

1. To meet its burden of proof on a charge of first-degree premeditated murder, the state must prove beyond a reasonable doubt that, after a defendant formed the intent to kill but before he committed the act, “some appreciable time” passed during which he considered, planned, and prepared for the killing. Because the evidence in this case showed, at most, that appellant formed the intent to kill and committed the act at virtually the same time, must his conviction for first-degree premeditated murder be reversed?

The jury found appellant guilty as charged.

Relevant authority:

In re Winship, 397 U.S. 358 (1970)

State v. Moore, 481 N.W.2d 355 (Minn. 1992)

State v. Moua, 678 N.W.2d 29 (Minn. 2004)

2. Did the trial court commit plain error affecting appellant’s substantial rights when it failed to properly instruct the jury on the element of premeditation?

The trial court did not consider this issue.

Relevant authority:

State v. Martin, 261 N.W.2d 341 (Minn. 1977)

State v. Moore, 481 N.W.2d 355 (Minn. 1992)

State v. Griller, 583 NW2d 736 (Minn. 1998)

State v. Ihle, 640 N.W.2d 910 (Minn. 2002)

3. Did the trial court commit plain error affecting appellant’s substantial rights when it failed to instruct the jury that if it had a reasonable doubt on the element of

premeditation, but found that the other elements had been proven, appellant was guilty of second-degree intentional murder?

The trial court did not consider this issue.

Relevant authority:

State v. Leinweber, 303 Minn. 414, 228 N.W.2d 120 (1975)

State v. Griller, 583 NW2d 736 (Minn. 1998)

State v. Dahlin, 695 N.W.2d 588 (Minn. 2005)

STATEMENT OF THE CASE

On May 3, 2005, a Hennepin County jury found appellant, Leonard Goodloe, guilty of first-degree premeditated murder in the shooting death of A [REDACTED] B [REDACTED] at Big Stop Foods on July 22, 2004. The jury also found appellant guilty of prohibited person in possession of a handgun, the only other charge submitted to the jury.¹ Appellant did not testify or present any defense witnesses. Judge Pamela Alexander presided at trial, and immediately following the jury's verdict, she sentenced appellant to life in prison.

¹ Appellant asked that this charge be severed from the murder charge for trial, but the court denied the request (T. 102). The jury was read a stipulation that appellant was "legally prohibited from possessing a handgun" (T. 643).

STATEMENT OF FACTS

On October 11, 2004, appellant ran a red light at the intersection of Plymouth and Lyndale in Minneapolis and broadsided another car (T. 383-384, 405-406). Police arrived at the intersection almost immediately. Minneapolis police officer David Ulberg positioned his squad car to prevent appellant from leaving the scene of the accident. Ulberg testified that appellant had a gun in his hand and was trying to “bail out of the passenger’s side window” (T. 384-385, 408). Ulberg heard the gun discharge inside appellant’s car, and he ordered appellant to drop his weapon. Appellant complied, and Ulberg removed him from the car and placed him under arrest (T. 385-386).

There were two handguns in plain view in appellant’s car: a Coonan .357 semi-automatic, which was cocked and loaded, and a 9mm Lorenson semiautomatic, which was also loaded (T. 387-390, 445-448, 462). The car was towed to the police garage and searched after a warrant was obtained (T. 451, 457). Six live rounds of ammunition were found in an eyeglass case in the trunk, and one discharged casing was found under the front passenger’s seat (T. 458-459, 476-477, 482).

The Minneapolis Police Department’s crime lab processed the guns and ammunition for fingerprints, but found none (T. 451). The Coonan was also test-fired because a Coonan .357 was on the list of possible handguns used in the shooting death of Akeen Brown at Big Stop Foods on July 22, 2004. Firearms examiner Kristin Reynolds compared the test-fired casings with the discharged casings collected from the murder scene and concluded that both groups of casings were not only fired from a Coonan, but from this particular Coonan (T. 466-467, 475-476, 478-482).

When these findings were reported to Erika Christensen, a homicide detective working on A ██████ B ██████'s case, she assembled a six-person photo lineup, which included appellant's photograph. Of the seven eyewitnesses to the murder who were shown the display, only two eyewitnesses, L ██████ S ██████ and D ██████ W ██████, positively identified appellant as B ██████'s shooter (T. 542-543, 551, 555-556, 560-561).²

On the night of the shooting, A ██████ M ██████, S ██████ C ██████, and S ██████ W ██████ were working at Big Stop Foods. Around 9:00 p.m., B ██████, a regular customer, stopped by and chatted with M ██████ and C ██████. He left when C ██████ went outside to disperse some loiterers (T. 287-289, 348, 355). At about the same time, L ██████ and S ██████ S ██████ entered the store (T. 200-201).

As C ██████ stood outside with B ██████ and another customer, D ██████ W ██████, a car "stopped real fast" in front of the store (T. 397).³ The driver reached under his seat and got out, waving a gun. Everyone scattered, except W ██████ who stood there for a

² Two witnesses, S ██████ C ██████ and S ██████ S ██████, equivocally identified appellant from the photo display (T. 557-559, 562-563). Three witnesses, A ██████ M ██████, S ██████ W ██████, and S ██████ H ██████ (who lived across the street from Big Stop Foods and happened to be looking out of her window when the gunman pulled up in his car), made no identification (T. 396-398, 559, 575).

³ The state presented evidence that in July, appellant rented three cars from Premier Rental Car (T. 416-417). Appellant returned the first two cars because of mechanical problems and ended up with a 1999 Mitsubishi Galant, which he returned on July 23 (T. 417, 422-424, 426). The store's surveillance camera captured the gunman's car on a grainy black and white videotape. State's witness Craig Thane, a forensic video analyst with Target Corporation, digitally superimposed a photograph of the rental car onto the image of the car in the videotape, and he testified that he saw "no inconsistencies" between the two (T. 507-508, 511, 520-527).

moment, assessing the situation. W [REDACTED] said he ran when he saw the gunman run (T. 348-350, 355, 397, 430-435).

L [REDACTED] S [REDACTED] was standing at the counter by the front door when B [REDACTED] burst through the door, with the gunman close behind. The gunman asked twice where B [REDACTED] went, then continued through the store (T. 206, 245-246, 292). L [REDACTED] glanced at the men "for a little longer than a second" and took off when she saw the gun (T. 202-203, 220). A [REDACTED] M [REDACTED] was standing behind the counter and was about to tell B [REDACTED] not to run in the store when he saw the gun and ducked (T. 290-292). S [REDACTED] S [REDACTED] said they ran past her as she was paying for some diapers, and she fell to the floor when she heard gunshots (T. 244-246). S [REDACTED] W [REDACTED] was in back washing dishes when he heard shots, then saw a man with a gun run past him and out the front door (T. 315, 319, 336-337).

Minneapolis police officers Jessica Bartholomew and Scott Taylor were the first to respond to the 911 call of a shooting at Big Stop Foods (T. 176-177). When they arrived at the store, they were directed to the office in back, where they found B [REDACTED], dead from three gunshot wounds to the head (T. 181-182, 610-611, 628). Bartholomew said it looked like the office door had been forced open, and there were two bullet holes in the door (T. 183). Dr. A. Quinn Stroble, who performed the autopsy on B [REDACTED], said she could not say how far away the shooter was standing when he fired the shots and that it was possible two of the three bullets that struck B [REDACTED] were fired through the door (T. 610, 614-615, 617, 621-622). Seven shell casings were recovered from the office area

and processed for fingerprints, but no fingerprints were found (T. 182-183, 270-271, 282-283).

ARGUMENT

I.

TO MEET ITS BURDEN OF PROOF ON A CHARGE OF FIRST-DEGREE PREMEDITATED MURDER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT, AFTER THE DEFENDANT FORMED THE INTENT TO KILL BUT BEFORE HE COMMITTED THE ACT, "SOME APPRECIABLE TIME" PASSED DURING WHICH HE CONSIDERED, PLANNED, AND PREPARED FOR THE KILLING. BECAUSE THE EVIDENCE IN THIS CASE SHOWED, AT MOST, THAT APPELLANT FORMED THE INTENT TO KILL AND COMMITTED THE ACT AT VIRTUALLY THE SAME TIME, HIS CONVICTION FOR FIRST-DEGREE PREMEDITATED MURDER MUST BE REVERSED.⁴

In a criminal case, the state must prove every element of a crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); State v. Jones, 347 N.W.2d 796, 800 (Minn. 1984). An appellate court must thoroughly review the record to determine whether the evidence, viewed in the light most favorable to the state, convinces the court that a rational jury could have found the defendant guilty beyond a reasonable doubt. State v. Bickham, 485 N.W.2d 923, 925 (Minn. 1992). When careful scrutiny of the record creates grave doubts as to the guilt of a defendant convicted of a criminal offense, as the record on premeditation does in this case, the interests of justice and the rights of the accused require the reviewing court to reverse the conviction. Burks v. United States, 437 U.S. 1, 16-17 (1978); State v. Lubenow, 310 N.W.2d 52, 55 (Minn. 1981).

⁴ At trial, appellant denied any involvement in the murder. However, for purposes of this appeal, appellant acknowledges the jury's verdict.

To be guilty of first-degree premeditated intentional murder, appellant must have killed B [REDACTED] with intent and premeditation. Minn. Stat. § 609.185(a)(1). A premeditated murder is a murder which is considered, planned, or prepared for. Minn. Stat. § 609.18. It implies a “‘cool mind’ that reflects before the act of killing.” State v. Moore, 481 N.W.2d 355, 361 n.3 (Minn. 1992). Premeditation--time and a cool reflective mind--is what distinguishes first-degree intentional murder from the lesser-included offense of second-degree intentional murder. The legislature intended that the line between these two offenses be “sufficiently distinct to justify punishing persons convicted of the different crimes differently.” Id. at 361. The statutory definition of premeditation was drafted with that goal in mind.⁵

In Moore, however, this court recognized that when it said in prior decisions that intent and premeditation could be formed “virtually instantaneously,” it had actually “blur[red]” the line separating first- and second-degree murder. Id. at 360. Determined to give effect to the legislature’s intent, this court restated the prosecutor’s burden as follows: “[T]he state must always prove that, after the defendant formed the intent to kill, *some appreciable time* passed during which the consideration, planning, preparation

⁵ The Advisory Committee Comment to Minn.Stat. Ann. § 609.18 (defining premeditation) states:

In 1959, Minn.Stat. § 619.08 was revised so that murder in the second degree, with certain exceptions, no longer carries a penalty of life imprisonment. With this change, substantial consequences in terms of possible punishment now turn on the meaning of the word ‘premeditation.’ The definition in recommended § 609.18 undertakes to give this distinction some substance. Heretofore it has been largely without meaning. All the time presently needed for premeditation or deliberation is that required to form the intent to kill.

or determination required by Minn. Stat. § 609.18 prior to the commission of the act took place.” Id. at 361 (emphasis added).

Citing Professor LaFave, this court listed three categories of evidence that help establish planning, preparation, or determination:

(1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, *planning activity*; (2) facts about the defendant’s prior relationship and conduct with the victim from which *motive* may be inferred; and (3) facts about the *nature of the killing* from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design.

Id. at 361 (emphasis in the original); State v. Moua, 678 N.W.2d 29, 40 (Minn. 2004).

Applying these three categories of evidence to the case at hand, this court cannot conclude the state met its burden of proving beyond a reasonable doubt that the shooting was premeditated.

In its closing argument, the state told the jury that appellant must have planned the act because he arrived at the store with a loaded gun (T. 675). However, this inference does not necessarily follow from the state’s own evidence. The state presented evidence that three months after the shooting, police seized two fully loaded guns and spare ammunition from appellant’s car. Thus, the presence of a loaded gun in appellant’s car on the night of the murder was less evidence of planning that it was of a pattern of conduct: the ongoing, illegal possession of a firearm. The state also failed to show that the meeting between appellant and B [REDACTED] was prearranged, further undercutting the inference that appellant armed himself in preparation for the shooting.

If there was a motive for the shooting, the state never proved it. The state's case against appellant began when he pulled up in front of Big Stop Foods and ended when he ran out of the store. How appellant and B [REDACTED] were connected or why appellant would want to kill him was never answered. While motive is not an element of first-degree premeditated murder, its presence "strengthens a finding that defendant deliberated over his actions." Moore, 481 N.W.2d at 362. Finally, there was nothing "so particular and exacting" about the way B [REDACTED] was killed "that the defendant must have intentionally killed according to a preconceived design." Id. at 361. B [REDACTED] was shot to death with a semiautomatic handgun, which automatically chambers the next bullet until the magazine is empty (T. 471).

The state in this case may have shown an intentional act, but not a planned one. The lack of "some appreciable time" between the formation of intent and commission of the act left the state with no choice but to argue in closing that the facts immediately preceding the shooting established both intent and premeditation (T. 675-676). Under the pre-Moore line of cases, where intent and premeditation could be formed "virtually instantaneously," the state might have met its burden. Under Moore, however, it did not. Appellant's conviction for first-degree premeditated murder must therefore be reversed.

II.

THE TRIAL COURT COMMITTED PLAIN ERROR AFFECTING APPELLANT'S SUBSTANTIAL RIGHTS WHEN IT FAILED TO PROPERLY INSTRUCT THE JURY ON THE ELEMENT OF PREMEDITATION.

The trial court instructed appellant's jury on the elements of first-degree premeditated murder using CRIMJIG 11.02, the pattern instruction for this offense (T. 708-709). Although defense counsel did not object to the definition of premeditation, this court may nevertheless reverse a conviction if "the instruction[] [was] misleading or confusing on fundamental points of law." State v. Ihle, 640 N.W.2d 910, 916 (Minn. 2002). Because the pattern instruction given to appellant's jury contained a material misstatement of the law on premeditation, his conviction must be reversed and a new trial ordered.

CRIMJIG 11.02 defines premeditation as follows:

Premeditation means that the defendant considered, planned, prepared for, or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary that premeditation exist for any specific length of time. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill, is not premeditated.

The last time this court was asked to consider whether the pattern instruction accurately stated the law on premeditation was in 1977. In State v. Martin, 261 N.W.2d 341, 345 (Minn. 1977), this court found "no error" in the instruction, noting that "[t]he first sentence of the instruction almost literally follows the statutory definition of

premeditation [and] [t]he remainder of the instruction follows the language of previous cases.” Although the pattern instruction was never revised to incorporate the holding in Moore, it is, in the end, the trial court’s sole responsibility to accurately instruct the jury on the applicable law. See Ihle, 640 N.W.2d 916.

Defense counsel’s failure to object to the trial court’s instruction does not prevent this court from assessing the impact the instruction had on appellant’s jury. Under the plain error rule, this court “may consider a plain error not previously brought to the attention of the district court if the error affects substantial rights.” Id. at 916; State v. Griller, 583 N.W.2d 736, 740 (Minn. 1998). Even in the absence of an objection, this court will grant a new trial “to insure fairness and integrity of the judicial proceedings.” Id.

Because the pattern instruction minimizes the state’s burden of proof on premeditation, it was error for the court to use the instruction without first modifying it to incorporate this court’s holding in Moore. Under the pre-Moore line of cases, the state was not required to establish the passage of any appreciable time between a defendant’s formation of intent to kill and commission of the act itself. Premeditation meant “thought of beforehand for any length of time, no matter how short.” State v. Swain, 269 N.W.2d 707, 713 n.8 (1978). Although Moore specifically rejected the idea that intent and premeditation could be formed “virtually instantaneously,” the pattern instruction does not reflect this substantive shift in the court’s thinking. As the instruction currently reads, no space of time is too short to allow for premeditation.

Thirteen years ago, this court, in an effort to more clearly distinguish first-degree premeditated murder from second-degree intentional murder, transformed the state's burden on the time component of premeditation. The error here was therefore plain. See Ihle, 640 N.W.2d at 917 (concluding that "the error of instructing a jury on the elements of obstructing legal process without including the parameters established 13 years ago in *Krawsky* renders the error clear and obvious.").

Finally, the error affected appellant's substantial rights. Noticeably lacking from the state's case was evidence that any appreciable time passed between appellant's formation of the intent to kill and the shooting (See Argument I). Instead, the evidence showed that the events unfolded as "instantaneous[ly] as the successive thoughts of the mind." Swain, 269 N.W.2d at 713. Because the instruction diminished the state's burden of proof on the element of premeditation, there can be little doubt it had a significant impact on the jury's verdict. This court must therefore reverse appellant's conviction and order a new trial.

III.

THE TRIAL COURT COMMITTED PLAIN ERROR AFFECTING APPELLANT'S SUBSTANTIAL RIGHTS WHEN IT FAILED TO INSTRUCT THE JURY THAT IF IT HAD A REASONABLE DOUBT ON THE ELEMENT OF PREMEDITATION, BUT FOUND THAT THE OTHER ELEMENTS HAD BEEN PROVEN, APPELLANT WAS GUILTY OF SECOND-DEGREE INTENTIONAL MURDER.

The jury in this case received a truncated version of CRIMJIG 11.02, the pattern jury instruction on first-degree premeditated murder. The court instructed the jury on the elements of first-degree premeditated murder, but did not read the final paragraph of the instruction (T. 708-709). The record is silent on why that paragraph, which reads as follows, was deleted:

If you have a reasonable doubt that there was premeditation, but you find that all the other elements have been proven, then the defendant is guilty of murder in the second degree. The crime of murder in the second degree differs from murder in the first degree only in that the killing was done with intent to kill another person but not with premeditation. If you find that any element other than premeditation has not been proven beyond a reasonable doubt, the defendant is not guilty of murder.

CRIMJIG 11.02.

The comment to CRIMJIG 11.02 explains why the lesser included offense of second-degree murder is included in the pattern jury instruction on first-degree premeditated murder:

The charge as to the lesser offense of murder in the second degree has been included, because under the decision in *State v. Hyleck*, supra, it seems there are few cases in which murder in the second degree is not a lesser-included offense. When the killing is alleged to have been done by another at the instigation of the defendant, it is possible that only a charge of murder in the first degree would be appropriate. See *State v. Thompson*, 273 Minn. 1, 139 N.W.2d 490 (1966), cert. denied 385 U.S. 817, 87 S.Ct. 39, 17 L.Ed.2d 56 (1966).

Recently, this court, quoting the above comment, reiterated that “cases in which premeditation exists as a matter of law--thereby precluding the submission of a lesser-included offense instruction on second-degree intentional murder--will be rare.” State v. Dahlin, 695 N.W.2d 588, 601 n.3 (Minn. 2005). In Dahlin, the trial court refused defense counsel’s request for a lesser-included instruction on second-degree intentional murder where the charge was first-degree premeditated murder. In reversing the conviction and remanding for a new trial, this court stated,

By not giving the lesser-included offense instruction of second-degree intentional murder, the trial court forced the jury to choose between convicting him of premeditated murder and acquitting him of a crime for which the evidence clearly suggested he was responsible--at least to some degree. Such either-or framing of guilt or innocence is appropriate only in exceptional cases.

Id. at 601.

According to this court, the exceptional case, one in which “either-or framing” may be justified, is murder “done by another at the instigation of defendant.” Id. at 601 n.3. In all other cases where the charge is first-degree premeditated murder, a trial court’s failure to instruct on second-degree intentional murder denies a defendant an “important procedural safeguard” and possibly violates due process. Id. at 597. Quoting the U.S. Supreme Court’s decision in Keeble v. United States, this court said:

[I]f the prosecution has not established beyond a reasonable doubt every element of the offense charged, and if no lesser offense instruction is offered, the jury must, as a theoretical matter, return a verdict of acquittal. But a defendant is entitled to a lesser offense instruction--in this context or any other--precisely because he should not be exposed to the substantial risk that the jury’s practice will diverge from theory. Where one of the elements of the offense charged

remains in doubt, but the defendant is plainly guilty of *some* offense, the jury is likely to resolve its doubt in favor of conviction.

Dahlin, 695 N.W.2d at 596. See also State v. Leinweber, 303 Minn. 414, 419-420, 228 N.W.2d 120, 124 (1975).

Although appellant's case was not one of those rare cases justifying either-or framing of guilt or innocence, his jury was given only two verdict forms on the murder charge: guilty of first-degree murder or not guilty. Even if appellant's jury harbored reasonable doubts about whether the killing was premeditated, it could not ignore the eyewitness testimony identifying appellant as the shooter and evidence linking him to the murder weapon. The trial court's failure to give the entire pattern instruction exposed appellant to the substantial risk that his jury would return a harsher verdict than the evidence supported.

It is the trial court's "preeminent" duty in a murder case to determine which lesser degrees of homicide to submit, and "[n]either the prosecution nor the defense can limit the submission of such lesser degrees as the trial court determines should be submitted." Leinweber, 303 Minn. at 421, 228 N.W.2d at 125; see State v. Pankratz, 238 Minn. 517, 57 N.W.2d 635 (1953) (holding that a defendant has no right to demand that the court submit only the degree of the crime charged in the indictment if the evidence supports a verdict on the lesser included offense.) However, because defense counsel did not object to the court's instruction, he must establish that the court's omission was plain error which affected his substantial rights. Griller, 583 N.W.2d at 740. Appellant readily meets this test.

The trial court's failure to read the entire pattern instruction was error because appellant's case was not one of those "rare" cases "in which premeditation exists as a matter of law--thereby precluding the submission of a lesser-included offense instruction." The evidence warranted an instruction on second-degree intentional murder, and the trial court was required to give it. Dahlin, 695 N.W.2d at 597, 601 n.3.

For the reasons stated above, the error was "plain." See Ihle, 640 N.W.2d at 917 (defining plain error as "clear" or "obvious" error). Dahlin was not the first time this court addressed the necessity of instructing the jury on second-degree intentional murder (in all but the rarest of cases) when a defendant is charged with first-degree premeditated murder. In State v. Hyleck, 286 Minn. 126, 140, 175 N.W.2d 163, 172 (1970), cited in the Comment to CRIMJIG 11.02, this court said, "We have repeatedly stated that premeditation is not a coefficient of time and can never be presumed from a given state of facts."

As previously argued, the state's evidence on premeditation was far from strong,⁶ but the trial court's truncated instruction forced the jury to choose between convicting appellant on the instruction given or acquitting him outright. Because a reasonable jury could conclude that appellant was "plainly guilty of some offense," it was not likely to vote for acquittal. The court's instruction affected appellant's substantial rights and

⁶ Under Dahlin, even if this court determines that the evidence was sufficient to support appellant's conviction for first-degree premeditated murder, it still must determine "whether a possibility exists that the jury could have returned a verdict of guilty on *only* the requested lesser-included offense instruction. If so, the defendant is prejudiced and the court's failure to give the instruction is reversible error." Id. at 599 n.2 (emphasis in the original).

undermined the “the integrity and fairness of the judicial proceeding” for the simple reason that but for the omission, appellant’s jury may well have acquitted him of first-degree premeditated murder and convicted him of intentional second-degree murder. Appellant is therefore entitled to a new trial.

CONCLUSION

Appellant's conviction for first-degree murder must be reversed outright because the state failed to prove premeditation beyond a reasonable doubt. If this court concludes that the state met its burden of proof on all elements of the crime, appellant must be granted a new trial where his jury is properly instructed on the definition of premeditation and is given the entire pattern instruction on first-degree murder, which includes the lesser included offense of second-degree intentional murder.

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Respectfully submitted,

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