



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“G.R. No. 220752 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. NOVER BELARMA y LUCHAVEZ, accused-appellant). – This is an appeal from the Decision¹ dated February 25, 2015 of the Court of Appeals (CA) in CA-G.R. CEB CR. HC. No. 01738 which affirmed the Judgment² dated August 13, 2013 of Regional Trial Court (RTC) of Ormoc City, Branch 35, in Criminal Case Nos. R-ORM-07-00100-HC and R-ORM-07-00101-HC. The CA Decision sustained the conviction of Nover Belarma y Luchavez (Nover) for the crimes of: (1) Statutory Rape penalized under Article 266-A(d) of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353, in relation to R.A. No. 7610; and (2) Rape by Sexual Assault penalized under the second paragraph of Article 266-A of the RPC, as amended.

The Antecedent Facts

Two separate Informations were filed charging Nover with the crimes of statutory rape and rape by sexual assault, committed as follows:

Criminal Case No. R-ORM-07-00100-HC

That on or about the 21st day of May 2007 at around 8:30 o'clock [sic] in the evening at x x x Ormoc and within the jurisdiction of this Honorable Court, the above-named accused, NOVER BELARMA y Luchavez by means of force, threat and

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¹ *Rollo*, pp. 4-15. Penned by Associate Justice Gabriel T. Ingles with the concurrence of Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez (now a Member of this Court).

² *Id.* at 46-61. Penned by Acting Presiding Judge Rogelio R. Joboco.

intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of the victim AAA, a minor, 6 years of age, by inserting his penis into the victim's vagina which sustained several lacerations even if the hymen remains intact, Medical Certificate hereto attached, making the push and pull motion until he consummated his lustful desire, without her consent, against her will, and prejudicial to her development and well-being as a child.

In violation of Article 266-A(d) of RPC as amended by RA 8353 in relation to RA 7610.³

Criminal Case No. R-ORM-07-00101-HC

That on or about the 21st day of May 2007 at around 8:30 o'clock [sic] in the evening at x x x Ormoc City and within the jurisdiction of this Honorable Court, the above-named accused NOVER BELARMA y Luchavez, by means of force threat and intimidation, did then and there wilfully, unlawfully, and feloniously sexually assaulted the victim AAA, a minor, 6 years of age, by inserting his penis into the victim's mouth and consummated his lustful desire without her consent, against her will, and prejudicial to her development and well-being as a child.

In violation of Article 266-A, par. 2 of RPC as amended by RA 8353 in relation to RA 7610.⁴

Nover was arraigned on September 3, 2007 and pleaded not guilty to both charges. Trial on the merits ensued.⁵

Evidence for the Prosecution

The prosecution presented as its witnesses the victim, AAA,⁶ her father-BBB, Dr. Marilyn Pascual (Dr. Pascual), Police Officer (PO) 3 Nova Tan (PO3 Tan), and Makabayan Fiel.

BBB and Nover were co-workers for a construction company based in Ormoc City.⁷ Upon the advice of their employer, BBB brought his family, including AAA, to reside temporarily near the

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³ Id. at 5.

⁴ Id.

⁵ Id.

⁶ In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006); citing the Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed. The Court will instead use fictitious initials to represent her throughout the decision. The personal circumstances of the victim or any other information tending to establish or compromise her identity will likewise be withheld.

⁷ *Rollo*, pp. 5-6.

construction site in Ormoc City.⁸ AAA was only six (6) years old at that time.⁹

On the evening of May 21, 2007, Nover brought AAA to the comfort room located outside her family's temporary house.¹⁰ He undressed himself and AAA, then put his penis inside her mouth which made her cry. He then inserted his penis into her vagina causing her great pain.¹¹ He thereafter fled and left her in the comfort room.

After a while, at around 8:30 p.m., BBB went down from the second floor of the site to eat. He came across his son who told him that AAA was still somewhere outside. He started looking for AAA who soon appeared walking towards him while crying and holding her vagina. BBB immediately asked her what was wrong and she told him how "Kuya Nover" forced himself upon her in the comfort room.¹²

BBB went to Nover's house to confront him but he could not be found.¹³ The following day, BBB reported the incident to the police.¹⁴ PO3 Tan prepared AAA's affidavit and afterwards endorsed her to an officer of the Department Social Welfare and Development who assisted in helping AAA get a medical examination.¹⁵

Dr. Pascual, the Municipal Health Officer III of the Ormoc City Health Office, testified on the results of AAA's medical examination. As stated in the Medical Certificate issued by her office, there were lacerations in AAA's hymen at the "1 o'clock, 11 o'clock, 9 o'clock, 10 o'clock, 2 o'clock and 3 o'clock position [which] means that there were tears and abrasion in the area and that the victim was raped and the foreign object manipulated in those areas."¹⁶ Further examination revealed that the specimen taken from AAA's vaginal canal tested positive for human spermatozoa which was conclusive that AAA was sexually abused.¹⁷

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⁸ CA rollo, p. 38.

⁹ Rollo, p. 6.

¹⁰ CA rollo, p. 50.

¹¹ Rollo, p. 6.

¹² Id.

¹³ CA rollo, p. 41.

¹⁴ Id.

¹⁵ CA rollo, p.48.

¹⁶ Id.

¹⁷ Id.

Evidence for the Defense

The defense presented as its witnesses Nover and his father, Rodolfo Belarma (Rodolfo).

Nover asserted his defenses of alibi and denial. He claimed that on May 21, 2007, at around 8:30 p.m., he was at home watching television with his parents, wife, siblings, and co-worker Oscar Bustamante. He was thus surprised when he returned to Brgy., Bliss to get scaffolding that there were police officers who arrested him. He also surmised that BBB charged him for allegedly assaulting to AAA because BBB and Rodolfo had some kind of atrocity in work.¹⁸

Rodolfo testified to corroborate the claim that on the night of the incident Nover was in their house watching television with their family until they went to bed at around 9:00 p.m. However, contrary to Nover's assertion, he posited that Nover was charged for assaulting AAA because Nover and BBB were the ones involved in some altercation at work.¹⁹

RTC Ruling

The RTC issued its Judgment²⁰ dated August 13, 2013 convicting Nover of both statutory rape and rape by sexual assault:

WHEREFORE, PREMISES CONSIDERED, the prosecution having proven the guilt of the accused beyond reasonable doubt in both Criminal Case No. R-ORM-07-00100-HC and Criminal Case No. R-ORM-07-00101-HC, judgment is hereby rendered as follows:

1. In Criminal Case No. R-ORM-07-00100-HC, this Court finds the accused, NOVER BELARMA y Luchavez, guilty beyond reasonable doubt of the offense of Statutory Rape by having carnal knowledge of AAA who is below 12 years of age at the time of the commission of the offense as defined and penalized under letter (d) paragraph 1 of Article 266-A of R.A. 8353 with the qualifying circumstance under number 5 of Art. 266-B of Republic Act 8353 that the victim is a child below seven years old as charged in the Information and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; and to indemnify the victim, "AAA," the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.

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¹⁸ *Rollo*, p. 6.

¹⁹ *Id.*

²⁰ *CA rollo*, pp. 46-61.

2. In Criminal Case No. R-ORM-07-00101-HC, this Court finds the accused, NOVER BELARMA y Luchavez, guilty beyond reasonable doubt of the offense of Rape by Sexual Assault as defined and penalized under paragraph 2 of Article 266-A of Republic Act 8353 with the qualifying circumstance under number 5 of Article 266-B of Republic Act 8353 that the victim is under 7 years of age as charged in the Information and hereby sentences him to suffer the indeterminate penalty of *six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum* and to indemnify the offended party, "AAA," civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P30,000.00.

In the service of his sentence, the accused being a detention prisoner is entitled to be credited with the full time during which he had undergone preventive imprisonment if he voluntarily agree [sic] in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited with only 4/5 thereof, in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.²¹

The RTC appreciated AAA's testimony as clear, credible, and sufficient to sustain Nover's conviction. AAA positively identified Nover as the perpetrator of the crime and vividly narrated his acts done against her. AAA's minor mistake in not being able to remember the year when the incident occurred did not discredit her testimony and is not an essential element of the crime. Moreover, AAA's medical findings were never rebutted by the defense and are conclusive that she was sexually abused.²²

The RTC noted that defense witness Rodolfo was not a disinterested witness. As a father, he would naturally testify to try and exonerate his son from the charges. This was fatal to the defense's position since an alibi must be sufficiently supported in order to be credible.²³

Aggrieved, Nover appealed the RTC Decision to the CA and filed his Brief for the Accused-Appellant dated February 3, 2014.²⁴ The People of the Philippines, represented by the Office of the Solicitor General (OSG), likewise filed the Brief for the Plaintiff-Appellee dated July 21, 2014.²⁵

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²¹ Id. at 60-61.

²² Id. at 54-55.

²³ Id. at 56.

²⁴ CA *rollo*, pp. 33-45.

²⁵ Id. At 81-96.

CA Ruling

The CA issued its Decision²⁶ dated February 25, 2015 denying Nover's appeal and affirming his conviction:

WHEREFORE, the appeal is hereby DENIED. The Judgment dated August 13, 2013 of the Regional Trial Court of Ormoc City, Branch 35 in Criminal Case Nos. R-ORM-07-00100-HC and R-ORM-07-00101-HC is hereby AFFIRMED in its entirety.

SO ORDERED.²⁷

The CA affirmed that AAA's testimony was direct and credible. It held that Nover's defenses of denial and alibi were weak and cannot prevail over AAA's positive identification of him as the perpetrator of the crime. Further, the inconsistent testimonies of AAA and BBB on certain matters were trivial and inconsequential, and thus did not diminish AAA's credibility.²⁸

Issue

The issue in this case is whether or not the CA committed reversible error in affirming Nover's conviction for statutory rape and rape by sexual assault.

Ruling of the Court

The appeal is denied. This Court affirms the convictions with modification on the penalties imposed.

Both parties filed Manifestations before this Court that they will adopt their respective appeal briefs filed with the CA in lieu of Supplemental Briefs.²⁹

Nover argued on appeal that the prosecution failed to prove his guilt beyond reasonable doubt because AAA's testimony was not credible. He alleged that AAA's testimony was inconsistent with BBB's. AAA testified that after she told BBB about the incident, BBB went to Nover's house and punched him. On the other hand, BBB

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²⁶ *Rollo*, pp. 4-15.

²⁷ *Id.* at 15.

²⁸ *Id.* at 12-14.

²⁹ *Rollo*, pp. 26-28, 32-34.

testified that he went to Nover's house but could not find him there.³⁰ He also claimed that AAA's testimony was not straightforward since the prosecution needed to ask leading questions to her to elicit the facts.³¹

It was also argued that there could not have been sexual intercourse since Dr. Pascual gave an opinion during her testimony that the lacerations in AAA's hymen could have been caused by a finger instead of a male organ.

At the outset, this Court rejects Nover's arguments assailing AAA's credibility as a witness. It is settled that the determination of the credibility of witnesses is left to the trial court considering it is in the best position to determine the truthfulness of witnesses and observe their demeanour and bodily movements during trial. Absent any substantial or compelling reasons, the reviewing court is generally bound by the trial court's findings. This principle is stringently applied if the CA concurs with the trial court's findings.³²

There is no compelling reason in this case to disturb the RTC's appreciation of AAA's testimony as clear, straightforward, and credible, more so since this was affirmed by the CA. AAA's testimony was also corroborated by medical findings which the defense failed to refute and the testimonies of other witnesses.

It is also established that when offended parties are young and immature girls, courts are more inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also the shame and embarrassment which they would be exposed by the trial, if the matter about which they testified were not true.³³ A young girl would not usually concoct a tale of defloration; publicly admit having been raped; allow the examination of her private parts; and undergo all the trouble, inconvenience, trauma, and scandal of a public trial, had she not been truly raped and moved to protect and preserve her honor, and obtain justice for the wicked acts committed against her.³⁴ AAA was only 10 years old when she was presented as a witness during trial and was such kind of witness whose testimony is given credence by the court.

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³⁰ CA rollo, p. 41.

³¹ Id. at 42-43.

³² *People v. Banzuela*, 723 Phil. 797, 814 (2013).

³³ *People v. Nachor*, 652 Phil. 756, 760 (2010); *People v. Magayon*, 640 Phil. 121, 135 (2010).

³⁴ *People of the Philippines v. Chingh*, 661 Phil. 208, 218 (2011).

This Court rejects Nover's arguments that AAA's credibility as a witness was affected by the fact that the prosecution asked leading questions to elicit information. Section 20 of the Rule on Examination of Child Witness³⁵ explicitly allows leading questions to be asked to child witnesses such AAA:

Sec. 20. *Leading questions.* – The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

Nover Is Guilty of Statutory Rape

Statutory rape is penalized under Article 266-A(1)(d) of the RPC, as amended:

Article 266-A. *Rape: When and How Committed.* – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

To be convicted of statutory rape, the following elements must concur: (1) the offender had carnal knowledge of the victim; and (2) the victim is below twelve (12) years old.³⁶

Sexual intercourse with a woman below twelve (12) years of age is punishable as rape under the law. Any proof of force, threat, intimidation, or consent becomes immaterial. The law presumes the absence of free consent because a woman of such tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act.³⁷ A conviction will lie once sexual intercourse is proven.³⁸

In this case, the CA correctly held that the prosecution sufficiently established the elements of the crime of statutory rape.

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³⁵ A.M. No. 004-07-SC, November 21, 2000.

³⁶ *People v. Bagsic*, 822 Phil. 784, 797 (2017).

³⁷ *People v. Banzuela*, supra note 32 at 817.

³⁸ *People v. Magayon*, supra note 33 at 133.

Firstly, the prosecution presented AAA's birth certificate which indicated that she was born on August 25, 2000. This is conclusive proof that she was only six (6) years and nine (9) months old when she was raped on May 21, 2007.

Secondly, AAA's testimony was clear and credible, and sufficiently proved Nover's acts of forcing himself upon her to have sexual intercourse. The element of carnal knowledge was established through the following testimony:

Q Do you know the accused in this case in the person of Nover Belarma?

A Yes, I knew him, sir.

Q Why do you know Nover?

A He told me his name.

Q Does he live near your house?

A Yes, sir.

Q What can you say about Nover, is he a good person?

A The witness is nodding, so it means "no". Shake her head.

Q Why did you shake your head?

A He is "lain mana siya"

Q Did he do something bad to you?

A Yes[,] he did, sir.

Q What did he do to you?

A He brought me to the comfort room.

Q Comfort room of what?

A The last comfort room.

Q Where is this comfort room located?

A It is located inside.

Q Is it near your house or inside your house?

A It is located outside our house.

Q What did he do to you?

A He raped me sir.

Q When you said he raped you, what exactly did he do to you?

A He undressed me.

Q And thereafter what did he do to you?

A He also undressed himself.

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Q Thereafter what happened?
A He raped me.

x x x x

Q Were you able to see his penis at that time?
A Yes, sir.

Q What did he do with his penis?
A He inserted it in my mouth.

Q What was your reaction?
A I was afraid.

Q Did you not cry?
A I cried, sir.

Q What did he do next?
A My father called me.

Q How about inserting his penis to your vagina, did he do that?
A Yes, sir.

Q Is that [before] he put his penis inside your mouth or after?
A He inserted first his penis on my mouth.

Q What did you feel when he inserted his penis to your vagina?
A I felt pain.

Q Where is that portion of your body that you felt pain?
A My vagina.³⁹

AAA's testimony was corroborated by the medical findings which established that she was sexually abused. It was also supported by the testimonies of BBB and PO3 Tan who testified on their interactions with her after she confided with them.

The CA correctly rejected Nover's defenses of denial and alibi. Denial and alibi are inherently weak and self-serving defenses which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.⁴⁰ Nover's denial and alibi were unsubstantiated by clear and convincing evidence and cannot prevail over AAA's straightforward and credible testimony.

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³⁹ *Rollo*, pp. 52-54.

⁴⁰ *People v. Nachor*, supra note 33 at 775.

Nover Is Guilty of Rape Through Sexual Assault

Rape by sexual assault is penalized under the second paragraph of Article 266-A of the RPC, as amended:

Article 266-A. *Rape: When and How Committed.* – Rape is committed:

x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Based on the foregoing, this Court enumerated the following elements of rape by sexual assault:

1. That the offender commits an act of sexual assault;
2. That the act of sexual assault is committed by any of the following means:
 - a. By inserting his penis into another person's mouth or anal orifice; or
 - b. By inserting any instrument or object into the genital or anal orifice of another person;
3. That the act of sexual assault is accomplished under any of the following circumstances:
 - a. By using force and intimidation;
 - b. When the woman is deprived of reason or otherwise unconscious; or
 - c. By means of fraudulent machination or grave abuse of authority; or
 - d. When the woman is under 12 years of age or demented.

All the foregoing elements were established by the prosecution in this case.⁴¹

The first and second elements were established through AAA's testimony, as quoted above, that Nover intentionally inserted his penis into AAA's mouth after undressing her which made the latter cry. The third element was established through AAA's birth certificate proving

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⁴¹ *People v. Bagsic*, supra note 36 at 800. Emphasis and underscoring supplied.

that she was only six (6) years and nine (9) months old one the date of the incident.

This Court finds no convincing reason to disturb the findings of the RTC and CA which were duly supported by the evidence on record.

Penalties

Statutory rape is penalized under Article 266-B of the RPC, as amended, as follows:

Article 266-B. *Penalty.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

5) When the victim is a child below seven (7) years old;

In this case, since AAA was only six (6) years and nine (9) months old when she was raped, Nover should have been imposed the death penalty. However, as the imposition of the death penalty was prohibited by R.A. No. 9346, this Court modifies the penalty imposed to *reclusion perpetua* without eligibility of parole.

This Court modifies the amount of damages awarded to AAA consistent with the guidelines established in *People v. Jugueta*.⁴² The amount of civil indemnity is increased from ₱75,000.00 to ₱100,000.00. Moral damages are increased from ₱75,000.00 to ₱100,000.00. Exemplary damages are increased from ₱30,000.00 to ₱100,000.00.

Rape through sexual assault is likewise penalized under Article 266-B of the RPC, as amended, as follows:

Article 266-B. *Penalty.* – x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

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⁴² 783 Phil. 806 (2016).

x x x x

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

In *People v. Tulagan*,⁴³ this Court established that the impossible penalty for the crime of sexual assault under paragraph 2, Article 266-A of the RPC, when committed against a victim who is below twelve (12) years old or is demented, should be in relation to Section 5(b), Article III of R.A. No. 7610, and is therefore *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty is that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. The minimum term shall be within the range of the penalty next lower in degree, *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

This Court thus modifies the penalty imposed on Nover to the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

This Court also increases the damages awarded to AAA pursuant to *Tulagan*. The Court awards civil indemnity of ₱50,000.00, moral damages of ₱50,000.00, and exemplary damages of ₱50,000.00. All damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of the judgment until fully paid.

WHEREFORE, the appeal is denied. The Decision dated February 25, 2015 of the Court of Appeals in CA-G.R. CEB CR. HC. No. 01738 is **AFFIRMED** with **MODIFICATION**.

In Criminal Case No. R-ORM-07-00100-HC, accused-appellant Nover Belarma y Luchavez is **GUILTY** beyond reasonable doubt of the crime of statutory rape and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In Criminal Case No. R-ORM-07-00101-HC, accused-appellant Nover Belarma y Luchavez is **GUILTY** beyond reasonable doubt of

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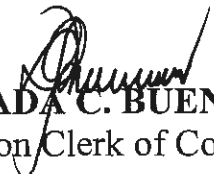
⁴³ G.R. No. 227363, March 12, 2019.

rape through sexual assault, in relation to Section 5(b), Article III of Republic Act No. 7610, and sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

The amounts of damages awarded shall have an interest of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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R-ORM-07-00101-HC)

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