

In the Court of Appeal for the Northwest Territories

Citation: *R v Thomas*, 2024 NWTCA 3

Date: 2024 04 24

Docket: A1-AP-2021-000 008

Registry: Yellowknife, N.W.T.

Between:

His Majesty the King

Respondent

- and -

James George Thomas

Appellant

The Court:

**The Honourable Justice Suzanne Duncan
The Honourable Justice Bernette Ho
The Honourable Justice April Grosse**

Memorandum of Judgment

Appeal from the Conviction and Sentence by
The Honourable Justice A.M. Mahar
Conviction dated the 16th day of November, 2021
Sentence dated the 15th day of December, 2021
(2022 NWTSC 3; 2022 NWTSC 4; Docket: S-1-CR-2019-000020)

Memorandum of Judgment

The Court:

[1] The appellant was charged with the first-degree murder of Alex Norwegian. The victim died on a remote road on the K'atl'odeeche First Nation Reserve, Northwest Territories in the early morning of December 27, 2017.

[2] Following a five-week judge-alone trial, the appellant was convicted of second-degree murder and robbery. On the murder conviction, the appellant was sentenced to life imprisonment with no possibility of parole for ten years. The appellant was sentenced to ten years for the robbery, to be served concurrently to the murder sentence.

[3] The appellant appeals the second-degree murder conviction and the sentence imposed for robbery. He submits that a manslaughter conviction should be substituted and remitted to the trial judge for sentencing. He further submits that the robbery sentence should be reduced to six years.

[4] For the reasons outlined herein, we dismiss the conviction appeal, set aside the second-degree murder conviction, substitute a conviction for manslaughter, and remit the matter to the trial court to impose sentence.

[5] The appeal of the robbery sentence is dismissed.

Circumstances of the Offence

[6] The victim returned to Hay River in December 2017 to celebrate the holiday season with his family. While in Hay River, the victim was dealing crack cocaine. He used an area known as “the Portage” on Wilderness Lodge Road to conduct drug transactions from his car. This location was described by the trial judge as “quite isolated, being on a private gated road.”

[7] On December 26, 2017, the appellant drove Sasha Cayen and Tyler Cayen to the Portage. Sasha bought a gram of crack cocaine from the victim. The victim later called Sasha for help because his car was stuck in a snowbank. The appellant, together with Sasha and Tyler, returned to help remove the car. The victim gave Sasha a small quantity of drugs and a few dollars in exchange.

[8] The appellant, Sasha, and Tyler returned to the appellant's house where Levi Cayen joined them. There, a plan was made to rob the victim. Sasha would contact the victim to set up a drug buy to lure the victim to the Portage where they would rob him. The appellant and Levi traveled by skidoo to the Portage to carry out the robbery.

[9] The general sequence and timing of events were largely not in dispute. During the robbery, the appellant and Levi beat the victim and smashed all but one of the windows of the victim's car. They took the victim's jacket and phone. They allowed the victim to leave, and the victim returned

to his car, either on his own or with the assistance of one or more of Levi and the appellant. The victim started to drive away but the car came up against a snowbank and stopped. The appellant and Levi then left by skidoo and returned to the appellant's home. The trial judge found that the appellant and Levi saw the victim's car stop against the snowbank before they left.

[10] On their way to commit the robbery, the appellant and Levi "dummy-locked" the gate to the entrance of the Portage road so that it appeared to be locked but it was not in fact locked.

[11] In the Crown's closing, counsel took the position that—based on cell phone records—the robbery took place sometime between 2:25 and 3:45 am [Transcript 2176-2177]. At 3:00 am on December 27, 2017, the temperature was minus 22.6 degrees Celsius with a windchill factor of minus 32 degrees Celsius. The trial judge appears to have accepted the Crown's timeline.

[12] The trial judge found that around 4:00 am, Levi, at the direction of the appellant, called the police alerting them to a possible drunk driver near the Portage. The trial judge found the call was unclear. As the police were asking for more information, Levi cut the call off and the police did not investigate further.

[13] On December 28, 2017, a snowplough driver discovered the victim's severely beaten body in the driver's side seat of his car at the Portage with the car still up against the snowbank.

[14] Dr. Weinberg, a forensic pathologist, testified for the Crown. The victim had four lacerations to his head that resulted in significant bleeding. He suffered significant blunt force head injuries resulting in various internal trauma including bruising to the scalp, a skull fracture, and swelling of the brain. The victim had a diastatic fracture at the back of his head, which would have required a substantial amount of force. The victim would have been suffering from an "altered mental status" after sustaining the blunt head trauma. He also suffered various injuries to his extremities. Dr. Weinberg concluded that the cause of death was hypothermia. While Dr. Weinberg could not pinpoint the time of death and estimated the victim could have survived in the cold for many hours, he concluded he would have died within 24 hours.

Parties' Position at Trial

[15] The Crown's theory of the case was that the appellant participated in a series of acts that culminated in the act of leaving the victim. The Crown argued that the *mens rea* for murder was established because the appellant knew the victim was likely to die—given the victim's condition, that his car was stopped against the snowbank, and the weather—and left any way. The Crown argued the act of leaving was an unlawful act. The Crown also argued that the murder was committed while the victim was forcibly confined, thereby justifying a first-degree murder conviction under section 231(5) of the *Criminal Code*, RSC 1985, c C-46.

[16] The defence theory was that while the appellant was guilty of the robbery, he did not participate in the beating and was therefore not guilty of any homicide, whether manslaughter or murder. The defence position was Levi beat the victim. The defence also argued that the Crown failed to prove that the appellant had the subjective intention required for murder.

Reasons for Conviction

[17] The trial judge first considered second-degree murder before turning to whether the Crown had established forcible confinement for the purposes of section 231(5). His analysis of second-degree murder under section 229(a) is reproduced in its entirety below (*R v Thomas*, 2022 NWTSC 3) (emphasis added):

Second degree murder requires either an actual intention to kill or the intention to cause bodily harm that the accused knows is likely to cause death and the accused is reckless as to whether or not death ensues.

As I already said, I do not find that there was any actual intention to kill in this case. The bodily harm inflicted during the robbery in which the accused participated was very serious but not sufficient to allow me to draw the legal conclusion that the accused would have known it was likely to cause death.

What this case comes down to is the decision to leave Alex Norwegian at the Portage and its consequences, the consequences that flow from that decision. I suspect, and I am prepared to give the [appellant] the benefit of this suspicion, that he fully intended that Alex Norwegian would be able to leave the Portage and drive home. This was not a reasonable expectation and when this did not happen, [the appellant] made the decision to leave him there incapacitated, not dressed for the weather, in a car with no windows on a deserted road in the middle of the night in minus 20 temperatures.

At that point in this situation entirely caused by the actions of [the appellant] and Levi Cayen, this decision was the one which likely caused the death of Alex Norwegian. He was likely to die under those circumstances. I also find that [the appellant] had to be aware of this. The robbery, the injuries, the decision to leave, form a continuous string of actions all of which [the appellant] is responsible for, especially so the fatal decision to leave.

The mental element or guilty mind in this case falls very close to the line between manslaughter and murder. If Alex Norwegian had been able to drive away and lost consciousness further down the road out of sight, this would have been an extremely serious manslaughter with robbery, but that is not what happened here. I find that the first stage of the requirements for second degree murder is made out, that the [appellant] caused bodily harm to the victim, knowing that this was likely to result in his death. That knowledge was not complete until the decision to leave the Portage, but upon that decision being made, the knowledge was complete. I now move on to consider the issue of recklessness.

The requirement that the [appellant] be reckless as to whether or not death ensues is very seldom an issue in murder trials. Typically, the inflicting of the injury and the recklessness are one and the same. This case is somewhat different. It took a long time for the victim to die of exposure to the cold. If the [appellant] had simply

left and taken no further steps, then recklessness would be obvious in this case. Here, the [appellant] told Levi Cayen to take his snowmobile and drive to a convenience store to report a drunk driver in the hope that the victim would be found and saved.

The [appellant] did not go himself. He entrusted this potentially lifesaving task to the very drunk Levi Cayen who predictably made a mess of it when he made the call. After burning the clothes, [the appellant] took Tyler Cayen on a search of Lagoon Road looking for the victim's stash of drugs. It would have been a simple thing to drive to the Portage to check on the victim but he did not. If [the appellant] had made that call to the RCMP, if he had gone to check on the victim, I may have been willing to find that he was not reckless about the death that ensued, but he was reckless and the essential elements for second degree murder are made out.

[18] With respect to the forcible confinement, the trial judge was satisfied that at some point the victim was forcibly confined but did not find beyond a reasonable doubt "that the forcible confinement was contemporaneous with the serious injuries inflicted on the victim...". The trial judge found the victim had been "fully released" and was "operating under his own volition when he drove into the snowbank". The trial judge concluded that "on the totality of the evidence, I do not find that the Crown has proven that the forcible confinement was sufficiently linked to the death of [the victim] to raise this case to first degree murder."

[19] The trial judge then stated that he viewed this case as falling just over the line between manslaughter and murder "...[b]ut the intention in this case that drives the conviction for murder is the decision to leave...".

[20] The trial judge augmented his reasons for conviction when sentencing the appellant, stating during his introductory remarks, "If at all necessary, my reasons today should be considered in conjunction with the reasons that I gave at the conclusion of the trial in which I discuss the facts in more detail": *R v Thomas*, 2022 NWTSC 4. An appellate court may look at the reasons for sentence as well as reasons for conviction to understand the basis for conviction: *R v BJT*, 2019 ONCA 694 at para 43, cited with approval in *R v Kaplan*, 2019 BCCA 356; *R v Fan*, 2021 ONCA 674 and *Chahinian c R*, 2022 QCCA 499. Therefore, we have considered the totality of the trial judge's reasons to understand the basis for the murder conviction.

[21] In his sentencing reasons, the trial judge further stated:

- "I found [the appellant] guilty [of] the offence of second degree murder essentially because of the decision to leave...".
- "[The injuries that the victim suffered] were not the cause of death. What caused the death was the decision to leave [the victim] in an obviously vulnerable condition in freezing temperatures."
- "The highly unusual aspect of this case is that these circumstances that [the appellant] took part in creating imposed on him a positive duty to act. Once [the

appellant] became aware that [the victim] might not be able to drive himself to safety, [the appellant] had a responsibility to make sure [the victim] was not left exposed to the elements.”

- “The factors that the Crown asks me to take into account in order to impose a greater period of ineligibility...are the factors that have led me to conclude that this duty rested on [the appellant] as a result of his behaviour during the robbery.”
- That his finding that the victim was forcibly confined at one point was a significantly aggravating factor on the robbery charge and also played “a part in creating the duty to assist.”

[22] The appellant was convicted of second-degree murder and robbery.

Conviction Appeal

Grounds of Appeal

[23] The appellant submits that the trial judge committed three errors of law in convicting him of second-degree murder. Specifically, the appellant submits that the trial judge:

- 1) erred in his assessment of the *actus reus* for murder, including by finding that the appellant had a positive duty to act and by finding that the act of leaving was an unlawful act;
- 2) erred by failing to apply the concurrence principle and convicting the appellant for murder even though the *mens rea* for murder did not coincide with the unlawful act that caused the victim’s death; and
- 3) erred in his consideration of *mens rea* for murder.

Analysis

[24] We are of the view that the trial judge erred in his consideration of the *actus reus*, which led in turn to an error in respect of the concurrence principle. Both are questions of law to be reviewed for correctness: *Housen v Nikolaisen*, 2002 SCC 33 at para 8.

The *actus reus*

[25] The Crown must prove two elements as part of the *actus reus* for murder: 1) an unlawful act; and 2) the unlawful act caused death: *R v Feng*, 2014 BCCA 71 at para 15; *R v Cabrera*, 2019 ABCA 184 at para 54, aff’d 2019 SCC 56.

[26] The trial judge made several findings of fact about what occurred at the Portage. None of the factual findings is under appeal. The trial judge found that neither the appellant nor Levi had an actual intention to kill the victim while they were beating and robbing him. The trial judge also found that the appellant would not have known that the injuries inflicted on the victim during the robbery were likely to cause death. Having arrived at these conclusions, the trial judge then

reasoned, “What this case comes down to is the decision to leave [the victim] at the Portage and its consequences...” He further stated:

...[the appellant] fully intended that [the victim] would be able to leave the Portage and drive home. This was not a reasonable expectation and when this did not happen, [the appellant] made the decision to leave him there incapacitated, not dressed for the weather, in a car with no windows on a deserted road in the middle of the night in minus 20 temperatures.

[27] The trial judge’s underlying rationale for the second-degree murder conviction was apparent when he concluded:

The robbery, the injuries, the decision to leave, form a continuous string of actions all of which [the appellant] is responsible for, especially so the fatal decision to leave.

[28] In these circumstances, the act of leaving, however immoral, was not itself an unlawful act. The trial judge’s focus on the act of leaving is similar to the error identified in *R v Shevalev*, 2019 BCCA 296. In *Shevalev* the accused choked his father after a dispute. The father became unconscious. The accused laid his father on the bed and left without calling an ambulance or other form of assistance. The British Columbia Court of Appeal set aside the jury’s murder conviction because they found it was possible that the jury convicted the accused without being satisfied he had the requisite intent for murder when he applied the chokehold. The panel held that the chokehold was the “starting and ending point of the *actus reus*” and the jury had to be satisfied the accused had a murderous intent when he applied the chokehold, regardless of what happened afterwards.

[29] Here, based on the factual findings of the trial judge, the *actus reus* was complete once the victim returned to his vehicle and drove it “under his own volition”. We are not suggesting that the *actus reus* cannot be “a series of acts that might be termed a continuous transaction” as described in *R v Cooper*, [1993] 1 SCR 146, 78 CCC (3d) 289, and as was the Crown’s theory of the case at trial. But here, the trial judge wrongly extended the *actus reus* to include otherwise lawful acts that were not physical components of a crime given the trial judge’s factual findings: see *R v Rivera*, 2011 ONCA 225 at para 91, leave to appeal to SCC refused, 34270 (29 September 2011) cited with approval in *Shevalev* at para 77. A finding that an action is dangerous is not sufficient to establish an unlawful act: see *R v KT*, 2005 MBCA 78 at paras 13-14, leave to appeal to SCC refused, 31123 (22 June 2006).

[30] The trial judge compounded his error when he found that the *actus reus* for murder was also established on the basis that the appellant had a legal duty to act. As was made clear in *R v Bottineau*, [2006] OJ No 1864 (Ont SCJ) at paras 28-33 per Watt J (as he then was), aff’d 2011 ONCA 194, leave to appeal to SCC refused, 34491 (19 January 2012) (emphasis in original):

As a matter of general principle, a crime may be committed by an act or omission, *provided* the omission is by one and in circumstances in which the law imposes a duty to act. There can be *no* culpable omission in the absence of a legal duty to act.

See *Williams, Textbook of Criminal Law*, (2d Ed.) para. 7.3 Omissions, at pp. 148-9; and *Stuart, Canadian Criminal Law*, (4th Ed.) at pp. 91-2.

[31] Thus, the question is, did the appellant have a legal duty to act in the circumstances of this case? In our view the answer is no, and the trial judge erred when he concluded otherwise. The trial judge found the act of murder occurred when the appellant left the scene after the robbery, knowing the victim was injured, without a jacket in a car with smashed windows, up against a snowbank in temperatures of minus 22 degrees Celsius. However, no federal or provincial statute imposed a legal duty on the appellant “to make sure [the victim] was not left exposed to the elements”. This is not a situation where, for example, a statutory duty to provide the “necessaries of life” to an individual exists, see for example sections 215 and 218 of the *Criminal Code*.

The concurrence principle and *mens rea*

[32] The trial judge considered the bodily harm inflicted during the robbery was “very serious”. However, he could not, and did not, draw the conclusion that the appellant would have known that the bodily harm inflicted during the robbery was likely to cause death.

[33] The trial judge convicted the appellant of second-degree murder even though he found that the *mens rea* for murder did not coincide with the unlawful act, that is the robbery. While the law does not require that the guilty act and intent be completely concurrent, the law requires that they coincide at some point: *Cooper; Shevlev*. Having found that the trial judge erred in extending the *actus reus* to include the act of leaving, it follows that the concurrence principle was not satisfied, as required by *Cooper*.

Remedy

[34] During the Crown’s sentencing submissions the trial judge reiterated his finding that “up until the moment when [the appellant] decided to leave the scene, this was a manslaughter. There was nothing about the injuries to the deceased that would have caused [the appellant] to know that death was likely” [Transcript 2496/15-19]. In light of the errors identified above, we are therefore satisfied that although the appellant was not properly convicted of second-degree murder, he was properly convicted of the included offence of manslaughter. Under sections 686(1)(b)(i) and 686(3) of the *Criminal Code*, we therefore dismiss the appeal, set aside the second-degree murder conviction, substitute a conviction for manslaughter, and remit the matter of sentencing for manslaughter to the trial court: *Regina v Nantais*, [1966] 2 OR 246, [1966] 4 CCC 108 (CA).

Sentence Appeal

Positions on Sentence

[35] The Crown and defence both sought a six-year sentence for the robbery charge to be served concurrently with the second-degree murder sentence. Since the parties were in agreement on the robbery sentence, the parties’ sentencing submissions focused exclusively on the parole ineligibility period for the second-degree murder conviction (the Crown sought 15 years while defence sought ten years).

[36] The Crown referred the trial judge to *R v Ryan*, 2015 ABCA 286 at para 57, leave to appeal to SCC refused, 36841 (26 May 2016) where Picard JA outlined a number of factors to be considered under section 745.4 of the *Criminal Code* when determining the parole ineligibility period. During the Crown's submissions the trial judge asked the Crown whether those factors ought to be attributed as aggravating to the murder or to the robbery, and the trial judge stated:

What I have a hard time with is taking the aggravating factors on the robbery, which, frankly, I would have given substantially more than six years for, and attaching those same aggravating factors to the death, which is somewhat discontinuous in time. [Transcript 2497/3-8]

[37] Neither the Crown nor defence counsel addressed the trial judge's comment that he "would have given substantially more than six years" for the robbery.

Circumstances of the Offence and the Offender

[38] In addition to the facts set out earlier, the following findings of the trial judge are relevant to the robbery sentence:

- The appellant was actively involved in planning the robbery.
- The appellant looked for old clothes to disguise himself and Levi.
- The appellant brought a rope and other weapons.
- The appellant drove the skidoo.
- After the robbery, the appellant took Tyler to find the victim's stash of drugs at a second location.
- The appellant and Levi "dummy-locked" the gate to avoid being disturbed in the act of robbing the victim.
- The appellant had been drinking but there was nothing to suggest he was anything more than slightly impaired.
- Levi Cayen caused most of the injuries to the victim.
- The appellant expected violence to take place during the robbery and knew that Levi was beating the victim, but he did not expect Levi to go as far as he did.
- The intention of the appellant was to attack the victim, steal whatever drugs and money he had on him, force him to reveal the location of his stash, and then let him go.
- The victim's coat was taken during the robbery and later burned. The taking of the coat was not done to harm the victim but was done in order to search it more thoroughly for drugs and cash. But the effect of taking the coat made the victim more vulnerable to the cold.

- The rope was used during an interrogation and for a time the victim was forcibly confined.
- The victim was allowed to leave the location of the robbery. He either got into the car by himself or was assisted back into the vehicle.

[39] At the time of the offence the appellant was 25 years old and the trial judge considered him “on the edge” of being a youthful first offender. He had a relatively short and minor criminal record, and none of the prior offences was an offence of violence. He was engaged at a low level in the drug trade. The trial judge had the benefit of a pre-sentence report that documented a life of hardship and tragic loss. The appellant was addicted to methamphetamine and had a long-term issue with alcohol. The trial judge found that there were significant *Gladue* factors present in this case.

[40] The appellant had limited education but was skilled in trades. He had supports in the community. The trial judge found that the appellant’s statements made at the hearing were an expression of remorse.

Reasons for Sentence

[41] With respect to the robbery, the trial judge stated:

On the charge of robbery, the sentence is ten years concurrent.

I have decided to – you can have a seat. I have decided to deviate from the suggestion by both the Crown and the defence. I feel that the robbery in this case was significantly aggravating and in fact led to the series of circumstances or led to the circumstances that ultimately led to the death. I believe that six years was not sufficient to recognize that. Given the life sentence, it has very little impact on [the appellant] but these things are important from a proportionality point of view.

Grounds of Appeal

[42] The appellant submits that the trial judge erred in imposing a ten-year sentence for the robbery conviction by:

- 1) failing to advise the parties that he planned to impose a harsher sentence than that proposed by the Crown, failing to reference case law in support of the harsher sentence, and relying on erroneous reasoning in imposing the harsher sentence by double-counting the aggravating consequences of the victim’s death; and
- 2) imposing a sentence that offends the principle of parity.

Standard of Review

[43] An appellate court may only intervene where a sentencing judge has committed an error of law or an error in principle that has an impact on sentence, or the sentence is demonstrably unfit: *R v Lacasse*, 2015 SCC 64 at para 11.

[44] In a contested sentencing hearing, a trial judge should provide notice and/or an opportunity for further submissions if the sentencing judge is of a mind to impose a harsher sentence than that sought by the Crown: *R v Nahanee*, 2022 SCC 37 at para 43. There are three types of errors in principle that would warrant appellate intervention: (1) the failure to provide notice and/or further submissions impacted the sentence; (2) if the sentencing judge failed to provide reasons, or provided unclear or insufficient reasons, for imposing the harsher sentence; and (3) if the sentencing judge provided erroneous reasons for imposing the harsher sentence: *Nahanee* at para 59.

Analysis

[45] The appellant argues that the sentencing judge made all three types of errors identified in *Nahanee*. We disagree. In our view the trial judge did not commit an error of law or an error in principle as described in *Nahanee*. Nor do we find that the sentence imposed for the robbery was demonstrably unfit.

[46] The trial judge made it clear during the Crown's submissions that he considered a six-year sentence inadequate for the robbery. The trial judge stated he had difficulty applying the factors outlined in *Ryan* to the murder conviction as suggested by the Crown. Rather, he considered the factors to be aggravating on the robbery conviction, stating, "I would have given substantially more than six years" [Transcript 2497/ 3-7] and "I believe this was an extremely high-end robbery in terms of culpability" [Transcript 2497/16-18]. Both the Crown and defence counsel had an opportunity to address the trial judge's comment during their submissions but failed to do so.

[47] Assuming that the trial judge's comments are regarded as the type of vague expression that is inadequate to provide notice (*Nahanee* at para 45), we do not find that any of the three types of errors were committed.

[48] First, the appellant has failed to point to any information that the sentencing judge did not have that would have impacted the sentence: *Nahanee* at para 59i.

[49] Second, reading the record as a whole, and taking a functional approach when reviewing the sufficiency of the reasons, the trial judge provided adequate reasons for imposing the harsher sentence: *Nahanee* at para 59ii. It is clear that the factors the Crown emphasized in arguing for the 15-year parole ineligibility were viewed by the trial judge as aggravating on the robbery: the appellant's central role in planning the robbery; luring the victim to an isolated location on the pretext of a drug buy; the anticipation of violence; bringing weapons and rope; looking for old clothes to disguise themselves; forcibly confining the victim to obtain information about the victim's drug stash; the robbery was for the purpose of profit; and the serious injuries caused to the victim during the robbery.

[50] Third, we do not view the trial judge as having provided erroneous reasons: *Nahanee* at para 59iii. The trial judge ultimately rejected the Crown's submission that a 15-year period of parole ineligibility was appropriate. While the trial judge considered the circumstances around the robbery to have ultimately contributed to the victim's death, he did not rely on the factors from

Ryan for the purposes of sentencing on the second-degree murder conviction. Therefore, we do not agree that the trial judge “double-counted” aggravating factors.

[51] Though his reference was brief, the trial judge noted the proportionality principle and determined a six-year sentence did not sufficiently recognize the significant aggravating factors in this case. Robbery is a serious offence, with a maximum punishment of life imprisonment. Sentencing judges are thus left with a wide discretion in any given case. While a ten-year sentence is in the high end of the range, it is not out of step with cases where a victim is lured to a location to be robbed and there is planned violence: see for example *R v Wright*, 2002 ABCA 170 (12-year sentence for offender who lured taxi driver to location where taxi driver was severely beaten and left for dead). Reading the record as a whole, the trial judge’s underlying reason for the imposition of a ten-year sentence is clear, and we do not consider this sentence to be demonstrably unfit.

[52] As a result, the sentence appeal is dismissed.

Appeal heard on October 24, 2023

Memorandum filed at Yellowknife, NWT
this 24th day of April, 2024

Authorized to sign for: Duncan J.A.

Ho J.A.

Grosse J.A.

Appearances:

B. MacPherson

B. Green

for the Respondent

R. Clements

for the Appellant

**IN THE COURT OF APPEAL
FOR THE NORTHWEST TERRITORIES**

Between:

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- and -

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MEMORANDUM OF JUDGMENT
