THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2023-00475

State of South Carolina, Respondent,

v.

Thomas L. Davis, Appellant.

FINIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On Christmas morning 2018, the Appellant was arrested in the livingroom of his home located at 21 Dulamo Road, Saint Helena's Island in rural Beaufort County. He was arrested without warrants and charged with Simple Assault and Resisting Arrest. A trial in 2020 ended in a mistrial. In 2023 in the Appellant's re-trial, he was acquitted of Simple Assault and convicted of misdemeanor Resisting Arrest. The Appellant challenged the legality of his warrantless misdemeanor arrests in his home under the Fourth Amendment's reasonableness standard. This Appeal follows.

STANDARD OF REVIEW

In criminal cases, this Court only reviews errors of law. State v. Gamble, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013). '[T]his Court reviews questions of law de novo.' State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)." State v. Lawrence, (S.C. Op. No. 28156 Jun 07, 2023).

FACTS

On a clear, brisk Christmas mid-morning in 2018 Fredricka Washington called 911 to report that the Appellant had taken some keys to a Jeep Compass parked in the Appellant's enclosed yard. Washington relayed to 911 that she was going to hurt someone and that the cops should take her to jail. Ms. Washington was audibly intoxicated on the 911 call, slurring her words, using profanity and needlessly rambling on and on non-sensibly. Four (4) uniformed deputies from the Beaufort County Sheriff's Office arrived shortly thereafter at 21 Dulamo Road on rural St. Helena's Island.

Mr. Davis, at the time was a sixty-five year old master plumber, who owed and lives at 21 Dulamo Road for most of his life. Mr. Davis also owns the adjacent parcels, 19 and 17 Dulamo Road. Mr. Davis' residence is behind a five foot tall enclosed fence and the home is on approximately five (5) acres and situated approximately 150 feet or so off the rural two-lane road. (ROA p. 164, l. 7-15). Further, fairly dense trees and Palmetto trees are lined just outside the fence. (See S-1 Ex. Video) The home has a small covered porch in front, form which entry may be made by the front door to the residence. (State's Ex. S-2, S-3 and S-7 Photos of 21 Dulamo Rd.)

Ms. Washington, a long-time acquaintance of Mr. Davis, talked to the deputies outside in his yard. She related the deputies that Mr. Davis had a set of car keys and she wanted the keys back, however, she did not want the Appellant arrested or charged with anything. Shortly thereafter, Mr. Davis came out into his yard to address the slew of deputies on his ancestral tenement that Christmas morn. Ms. Washington was "drunk and high" as described by Mr. Davis and further evidenced by listening to her rant and rail on the 911 recording. (St. Ex. S-1 911 audio).

The 2014 Jeep Compass was registered to Ms. Washington of 21 Dulamo Road according to DMV computer records. Mr. Davis attempted to explain to deputy Anderson that he had a "Bill

of Sale" executed by Ms. Washington in a safe deposit box at Regions Bank. (ROA p. 83, l. 6-11) Later into his interrogation, Mr. Davis relayed that he might have a copy of the Bill of Sale in his house. (ROA p. 165) Deputy Anderson then stated that he had given Mr. Davis a "lawful order" to give Ms. Washington the keys that she had thrown at Davis.

Deputy Anderson testified that Mr. Davis said he was "done' and then ran toward to his home, with Anderson giving chase. (ROA p. 100, l. 10-12) Mr. Davis testified that when Anderson would not hear him out, he said that he was "done" and walked back to his home. (ROA p.164-65, l. 16-4). Mr, Davis testified that due to degenerative aging and repetitive stress trauma that he could not run. (ROA p. 165, l. 6-16) Factually, it is of no moment for legal analysis whether the sixty-five year old Davis ran or walked into his home. Both the deputy and Mr. Davis generally agreed during their testimony that Mr. Davis was on his porch, Anderson was on the top step when he grabbed Mr. Davis' arm. Anderson testified that he was attempting to detain Mr. Davis for further investigation. Mr. Davis reiterated that he was "done" answering questions and attempted go inside his home.

Deputy Anderson testified that when he grabbed Mr. Davis' arm from behind, Davis used one arm to push Anderson off of him.(ROA p. 87, l. 3-14) Anderson testified that he was initially repelled but quickly advanced upon Mr. Davis. Mr. Davis testified that he closed his front door and Anderson "kicked" it in. Anderson testified that when Mr. Davis shut the front door, he (Anderson) had his foot in the doorway, thus preventing the door to close. (ROA p. 88, l. 16-23). Ms. Washington again told the Deputies to leave Davis alone and don't arrest him. (ROA p. 108-09, l. 23-8) Anderson testified that he then fired his TASER weapon and hit Mr. Davis while Anderson was in the doorway and Mr. Davis was inside his living room. (ROA p. 89, l. 1-9; p. 103, l. 1-7). Anderson and at least one other deputy then wrestled Davis to the floor near the Christmas tree and

presents. This occurred in front of April Washington (Fredricka's daughter), her step-father and the two grandchildren. (ROA at p. 169). Mr. Davis testified that while in his livingroom he believed that Anderson had drawn his firearm and was preparing to shoot inside his residence. Davis testified that his grandchildren were near him and he took a defensive position to protect his young grandchildren from being possibly shot. (ROA p. 169, l. 1-25, p. 170, l. 1-9)

The entourage of deputies arrested Mr. Davis and charged him with Simple Assault (on Anderson) and Resisting Arrest. E.M.S. arrived later and attempted to removed the barbs from Mr. Davis' torso. E.M.S. transported Mr. Davis to Beaufort Memorial Hospital and after treatment he was reposed in the Beaufort County Detention Center. (ROA p. 92-93, l. 20-2). A jury trial was held. The jury acquitted Mr. Davis on the charge of Simple Assault and convicted him on the misdemeanor of Resisting Arrest. Judge Goldsmith sentenced Mr. Davis to six (6) months imprisonment. Mr. Davis applied for an appeal bond, but that request was denied by Judge Goldsmith and the Appellant was immediately taken to prison. Mr. Davis served approximately four and a half months at Kirkland Correctional Institute. This appeal follows.

ARGUMENTS

1. BECAUSE THE WARRANTLESS SEIZURE OF THE APPELLANT WAS UNREASONABLE, THE TRIAL COURT ERRED IN NOT DIRECTING A VERDICT OF ACQUITTAL ON THE CHARGES OF SIMPLE ASSAULT AND RESISTING ARREST.

"When it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (1961). "This right would be of little practical value if the State's agents could stand in a home's porch . .

. and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window." Florida v. Jardines, 596 U.S. 1 (2013). "Private residences are places in which an individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is one society recognizes as justifiable. Accordingly, searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances." United States v. Karo, 468 U.S. 705 (1984). The Fourth Amendment extends that same protection to outbuildings in the curtilage of the home. United States v. Dunn, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987); Rogers v. Pendleton, 249 F.3d 279, 287 (4th Cir.2001).

"The people's right under the Fourth Amendment to 'be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,' U.S. CONST. amend. IV, 'extends ... to ... the curtilage of the home,'..." State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017). "'Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement.'" State v. Wright , 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (citing Mincey v. Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408 2412, 57 L.Ed.2d 290, 298-99 (1978)); State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017).

"A law enforcement officer must have a warrant to enter a home for the purpose of conducting a search [or seizure]." State v. Counts, 413 S.C. 153, 163, 776 S.E.2d 59, 65 (2015) (stating "the Fourth Amendment requires the police to have a warrant in order to conduct a search"), unless an exception applies, See, State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (listing exceptions to the warrant requirement). See, generally, State v. Robinson, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014)(stating, "warrantless searches and seizures inside a man's home are

presumptively unreasonable absent a recognized exception to the warrant requirement."; See also, State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017). As will be illustrated, the only exception to the Fourth Amendment's warrant requirement before entering a home/curtilage without a warrant is for "true emergencies," that involve danger to life, limb or serious felony pursuits of dangerous or armed suspects.

The situation that the deputies faced at 21 Dulamo Road on Christmas morning 2018 involved neither danger to life, limb, pursuit of a dangerous or armed felony suspect. In fact, the call did not even involve a crime at all, it was a mere civil property dispute between Ms. Washington and Mr. Davis. Ms. Washington was clear that she did not want Mr. Davis arrested. (Ex. 911 audio). Deputy Anderson admitted that he was trained in what a "claim and delivery" action in magistrate's court was. Deputy Anderson had no power to "lawful[ly] order" a return or transfer of personal property, that must be done by a claim and delivery action. (ROA p. 94, l. 6-19) It is clear from the facts, that deputy Anderson was not going to let an African-American senior citizen disobey his "lawful order." In this case, the State's exercise of power was wholly unreasonable, if not criminal in itself with respect to the warrantless search and misdemeanor arrest of Mr. Davis in his livingroom.

What were the exigent circumstances that a cadre of armed sheriff's deputies needed to address when they descended, *en masse*, upon 21 Dulamo Road that Christmas morning? Was it an armed and dangerous felon? No. Was there an allegation of a felony being committed at all? No. Was there "hot pursuit" of a dangerous or any felon for that matter? No. Was there any danger to life and limb? No. The only true danger in this factual situation was the threat of serious harm to Mr. Davis' grandchildren who he crouched to protect from TASER fire from Deputy Anderson. Was

there an allegation of any crime at all? No. Was there an exigent overwhelming need to preserve evidence of a serious crime? No. This situation was a petty civil dispute over some keys (personal property) that the Sheriff's Office was without lawful authority to decide.

"It is clear that a physical intrusion or trespass by a government official constitutes a search within the meaning of the Fourth Amendment."); United States v. Perea-Rey , 680 F.3d 1179, 1185 (9th Cir. 2012) ("Warrantless trespasses by the government into the home or its curtilage are Fourth Amendment searches."); State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017). It is axiomatic that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. United States District Court, 407 U. S. 297, 313 (1972). "And a principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter the home for purposes of search or arrest." Johnson v. United States, 333 U. S. 10, 13-14 (1948) . It is not surprising, therefore, that the Court has recognized, as "a `basic principle of Fourth Amendment law[,]' that searches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U. S. 573, 586; See also, Coolidge v. New Hampshire, 403 U. S. 443, 474-475 (1971) ("a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable, unless the police can show . . . the presence of `exigent circumstances").

Consistently with these long-recognized principles, the Court decided in Payton v. New York, supra, that warrantless felony arrests in the home are prohibited by the Fourth Amendment, absent probable cause and exigent circumstances. Id., at 583-590. At the same time, the Court declined to consider the scope of any exception for exigent circumstances that might justify warrantless home arrests, thereby leaving to the lower courts the initial application of the

exigent-circumstances exception. Id.

Prior decisions of the Supreme Court, however, have emphasized that exceptions to the warrant requirement are "few in number and carefully delineated," United States v. United States District Court, supra, at 318, and that the police "bear a heavy burden" when attempting to demonstrate an urgent need that might justify warrantless searches or arrests. Indeed, the Court has recognized only a few such emergency conditions, See, e. g., United States v. Santana, 427 U. S. 38, 42-43 (1976) (hot pursuit of a fleeing felon); Warden v. Hayden, 387 U. S. 294, 298-299 (1967) (same); Schmerber v. California, 384 U. S. 757, 770-771 (1966) (destruction of evidence); Michigan v. Tyler, 436 U. S. 499, 509 (1978) (ongoing fire), and has actually applied only the "hot pursuit" doctrine to felony arrests in the home, See, Santana, supra.

In Peyton v. New York, supra at 596 the Supreme Court stated:

> "Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries."

Further, in Welsh v. Wisconsin, 466 U.S. 740, 742 (1984), reaffirming Peyton, the Court held, "absent probable cause and exigent circumstances, warrantless arrests in the home are prohibited by the Fouth Amendment." Even if one were to conclude that urgent circumstances might justify a forced entry without a warrant, no such emergency was present in this case. The Welsh Court quoted extensively from Justice Jackson's concurrence in McDonald v. United States, 355 U.S. 451, 459-460 (1948):

> "This method of law enforcement displays a shocking lack of all

> sense of proportion. Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress as well as the hazards of the method of attempting to reach it. . . . It is to me a shocking proposition that private homes, even quarters in a tenement, may be indiscriminately invaded at the discretion of any suspicious police officer engaged in following up offenses that involve no violence or threats of it."

The Welsh opinion held that, "[t]he [exigent circumstances] exception is narrowly drawn to cover cases of real, and not contrived emergencies,"(Quoting, State .v Gertin, 190 Conn. 440,453, 461 A.2d 963,970 (1983)(Internal citations omitted). "[W]e note that it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor." Welsh 466 U.S. at 754. The Court went on further to hold"

> "We therefore conclude that the common-sense approach utilized by most lower courts is required by the Fourth Amendment prohibition on "unreasonable searches and seizures," and hold that an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, see *Payton*, application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed." Id.

The warrantless seizure (arrest) of the Appellant in his livingroom was shocking an abuse of police powers. The warrantless arrest was likewise shockingly disproportional when applied to a petit misdemeanor and therefore, unreasonable under the proscriptions of the Fourth Amendment.

2. BECAUSE THE WARRANTLESS ENTRY BY THE STATE INTO THE CURTILAGE AND HOME OF THE APPELLANT WAS UNREASONABLE, THE TRIAL COURT ERRED IN NOT DIRECTING A VERDICT OF ACQUITTAL ON THE CHARGES OF SIMPLE ASSAULT AND RESISTING ARREST.

The rulings in Florida v. Jardines, 569 U.S. 1 (2013) are specifically applicable to the facts of this case in three (3) respects. First, Jardines, held that, "[a]t the Fourth Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." (Quoting, Silverman v. United States, 365 U. S. 505, 511(1961). Second, the area "immediately surrounding and associated with the home"—the curtilage—is "part of the home itself for Fourth Amendment purposes." (Quoting, Oliver v. United States, 466 U. S. 170, 180 (1984). State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017) is likewise on all fours with Jardines. Third, A police officer not armed with a warrant may approach a home in hopes of speaking to its occupants, because that is "no more than any private citizen might do." (Quoting, Kentucky v. King, 563 U.S. 452 (2011).

In Jardines, the Court explained that a license to enter in hopes of speaking to the occupant is limited in scope. In her concurring opinion, Justice Kagan said this about exceeding the scope of a visitor: "Has your 'visitor' trespassed on your property, exceeded the license you have granted to members of the public to, say, drop off the mail or distribute campaign flyers? Yes he has." It is clear that the deputies were there conducting and investigation (the search and questioning) of Mr. Davis as they claim. Mr. Davis had a reasonable expectation of privacy on his curtilage, State v. Bash, 419 S.C. 263, 797 S.E.2d 721 (S.C. 2017) and had a right to withdraw to his home. See also, Jardines, Id.

That social license was exceeded by the power of the State. That social license was revoked by Mr. Davis when he told Deputy Anderson he was, "done" and walked (or ran away) to his home. See, Florida v. Jardines, supra. Mr. Davis had a right to refuse to answer questions and right to not participate in an "investigation" that initially occurred on his curtilage and then breached the

threshold of his home and into his livingroom. Mr. Davis demanded that the deputies return with a warrant before seizing and searching him.

The misdemeanor simple assault charge was contrived by Deputy Anderson. Anderson, himself, created the so-called exigency of assault on his person. This charge was made simply to justify the unwarranted use of force against Mr. Davis in his livingroom. The jury rejected the State's leveling of the simple assault, finding Mr. Davis not guilty of assault. This case not only implicates the "core" of the Fourth Amendment's reasonableness requirement, but far exceeds the bounds of reasonableness. See, Welsh v. Wisconsin, supra. The deputy's action far exceeded a proportional response exercised by the power of the State *vis-a-vis* a citizen's in his home, curtilage and personal security. The Trial Court should have directed a verdict of acquittal on both simple assault and resisting arrest due to the Constitutional violations committed by the State and its abuse of power against the Appellant.

3. BECAUSE THE STATE ENTERED THE APPELLANT'S HOME WITHOUT A WARRANT AND WITHOUT "EXIGENT CIRCUMSTANCES," THE APPELLANT HAD THE RIGHT TO USE REASONABLE FORCE TO REPEL THE GOVERNMENT'S ARMED FORCES FROM BREACHING ENTRY INTO HIS HOME.

As Justice Kagan pointed out in Jardines, when a visitor exceeds the scope of their social license, that visitor becomes a trespasser. This concept especially applies to armed agents of the government when entering a man's home without permission or a warrant. "When 'the Government obtains information by physically intruding' on persons, houses, papers, or effects, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred." Jardines 569 U.S. at

Section II (Quoting United States v. Jones, 565 U.S. 400 (2012). That principle renders this case a straightforward one. As Jardines held:

> "The officers were gathering information in an area belonging to Jardines and immediately surrounding his house—in the curtilage of the house, which we have held enjoys protection as part of the home itself. And they gathered that information by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner."

Mr. Davis told the deputies that he was "done" and walked or ran away to his house from his enclosed front yard.[1] That holding above was based upon common law property rights and reasonable expectation of privacy of a homeowner on his homestead, such as Mr. Davis. "It is clear that a physical intrusion or trespass by a government official constitutes a search within the meaning of the Fourth Amendment."); United States v. Perea-Rey, 680 F.3d 1179, 1185(9th Cir. 2012)("Warrantless trespasses by the government into the home or its curtilage are Fourth Amendment searches.").

The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the

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[1] The State argued that Mr. Davis "escalated the situation" by saying that he is "done' and retreats away into his home. If anything, Mr. Davis' assertions of his rights is the anthesis of escalation, but rather is more akin to "de-escalation" of a situation under these facts. Davis told the deputies to go back and get a warrant.

circumstances." Rye, 375 S.C. at 124, 651 S.E.2d at 323.

Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Id. Rather, the defense of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. "The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was `defending himself from imminent attack on his own premises.'" State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25).

The defense of habitation makes no distinction as to whether one is attempting to expel a burglar or unwarranted agent of the government. Because of the Fourth Amendment's reasonableness requirement, one could argue that the defense of habitation applies more forcefully to armed government agents acting *ultra vires* without a warrant, especially in the circumstances of this case. The defense of habitation has its roots in antiquity. As William Pitt, first Earl of Chatham argued against warrantless searches and seizures for a cider tax to the British Parliament in 1763:

> "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter -- all his force dares not cross the threshold of the ruined tenement!"

As Justice Scalia wrote in the opinion of Jardines:

> "'[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave.'" 2 Wils. K. B., at 291, 95 Eng. Rep., at 817. As it is undisputed that

> the detectives had all four of their feet and all four of their companion's firmly planted on the constitutionally protected extension of Jardines' home, the only question is whether he had given his leave (even implicitly) for them to do so. He had not."

(Quoting, Entick v. Carrington, 2 Wils. K. B. 275, 95 Eng. Rep. 807 (K. B. 1765), "a case 'undoubtedly familiar' to 'every American statesman' at the time of the Founding,'" Jarines (Quoting, Boyd v. United States, 116 U.S. 616, 626 (1886). It is clear from the fatcs of this case that the government became no more that a trespasser, the government action was unreasonable and greatly disproportionate to the situation, especially since the deputies were investigating a petit civil dispute that Christmas morning on the Appellant's homestead.

CONCLUSION

In order for the Fourth Amendment and the common law of South Carolina to mean anything, the Trial Court should have dismissed both charges against the Appellant at the directed verdict stage of the trial. Further, the conviction of the Appellant on the Resisting Arrest count must be Reversed.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

I, Jared S. Newman certify that I have pursuant to Rule 211 of the SCACR, Appellant's Final Briefs in is compliance with Rules of the Appellate Court.

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PROOF OF SERVICE

I, Jared S. Newman certify that I have pursuant to Rule 262 of the SCRAProc. Served opposing counsel with (1) two copies of Appellant's Final Brief; and (2) Record on Appeal; on September 6, 2024 at her A.I.S. E-Mail address as follows:

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