STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-000036

The State, ...Respondent,

v.

Anthony Overman,.....Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly admitted Appellant's recorded jail call where the recording was relevant under Rule 402, SCRE, and its probative value was not substantially outweighed by the danger of unfair prejudice under rule 403, SCRE.

STATEMENT OF THE CASE

Anthony Ray Overman (Appellant) was indicted at the May, 2024 term of the grand jury for Greenville County for driving under suspension (2024-GS-23-002558); trafficking methamphetamine (2024-GS-23-002559); and possession of cocaine base (2024-GS-23-002560). He was represented by Assistant Public Defender Nekedia Alexis Heath of the Thirteenth Circuit Public Defender's Office and Respondent (the State) was represented by Assistant Solicitors Sydney Lauren Case and Kristen Alexandra Farmer of the Thirteenth Circuit Solicitor's Office. On December 4-5, 2024, the case proceeded to trial before the Honorable Jessica Ann Salvini and a jury. At the conclusion of trial, the jury found Appellant guilty on all charges. (Tr.p.198-p.199). He was sentenced by Judge Salvini to a mandatory minimum twenty-five years' imprisonment with credit for 150 days of credit for time served for trafficking methamphetamine, and concurrent terms of time served for possession of cocaine base and driving under suspension. (Tr.p.203; Sentence Orders). Appellant filed a notice of intent to appeal his convictions and sentence, and a brief in support of his appeal was filed by Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense. This Brief of Respondent follows.

STATEMENT OF FACTS

On December 4, 2024, the trial court convened a pretrial hearing on several motions, including Appellant's motion to exclude an audio recording of a telephone call he made from the

Greenville County Detention Center (GCDC) to an acquaintance, approximately one week after his arrest. (Tr.p.1). Appellant argued the jail call should be excluded under Rule 403, SCRE, because the probative value was outweighed by the prejudicial effect. He noted the conversation included his comment that "someone set him up," or something to that extent. Appellant further argued that since the conversation happened six or seven days after his arrest, it was irrelevant. The trial court first got confirmation from the solicitor that the State intended to introduce the jail call and then asked how it was relevant. The solicitor explained it was relevant to the issue of whether Appellant knew drugs were in the car, which went to whether he was in possession. She argued that where knowledge is an element of possession, the comment shows Appellant knew the drugs were in the car. The solicitor noted that all evidence is prejudicial, but that this particular evidence was extremely probative because it goes directly to an element of the crime. The trial court denied the pretrial motion but said Appellant could renew it before the recording was played during trial. (Tr.p.12, line 22-p.14, line 2).

After voir dire and jury selection, the jury was sworn and the trial judge gave preliminary jury instructions. These instructions included advising the jurors that: (1) the State had the burden of proof beyond a reasonable doubt; (2) their purpose was to determine the facts and any inferences to be drawn from the evidence; (3) it was their solemn responsibility to determine guilt or innocence based solely on the evidence presented in the trial; and (4) they must decide whether or not the testimony of a witness is believable. (Tr.p.52-p.58). The State did not make any reference to the jail call in its opening statement. (Tr.p.62-p.63).

As its first trial witness, the State called Charles Moore, the GCDC custodian of records of jail calls. He explained he was the administrator who manages accounts on the Securus phone system, which handles the recordings of jail calls made by GCDC inmates. Moore described how inmates enroll in the system using their voice and are assigned a six-digit account number, and then explained that each inmate creates a four-digit PIN in order to make phone calls. He testified that the inmates know they are being recorded due to audio prompts on the calls themselves as well as signs posted throughout the detention center telling inmates that all calls are subject to recording. Moore then authenticated the recording of Appellant's jail call and the State moved to admit it into evidence. Appellant said he had "no objection" and the jail call was admitted into evidence. (State's Exhibit 3: Jail Call – CD). The solicitor initially asked for permission to publish; however, after the trial court *granted* that permission, the State elected not to publish the jail call at that time. (Tr.p.66-p.69).

Next, the State called Greenville County Sheriff's Office (GCSO) Deputy Steven Epps, to the stand. Epps was working in the Directed Patrol Unit, which focuses on "street-level crimes," on the day of Appellant's arrest. He described the events leading-up to the arrest, including: (1) seeing Appellant's dramatic reaction when he noticed Epps' parked patrol car as he drove by in a gold Honda; (2) pulling out behind Appellant, running his license plate through the CAD system, and following him to a convenience store; (3) discovering the year and body style of the car did not match the year and body style associated with the license plate; (4) parking behind Appellant's car and following him into the convenience store to make contact;

(5) asking Appellant for his ID and questions about the car; (6) checking the VIN number and discovering the car had not been reported stolen; (7) discovering Appellant's driver's license was suspended and the car was unregistered; (8) making arrangements to tow the car; and (9) conducting an inventory search of the car. (Tr.p.69-p.77).

Epps testified that during the inventory search Deputy McConnell found over 50 grams of methamphetamine and Deputy Frazile found a small amount of crack cocaine [cocaine base]. He explained they field tested the suspected drugs to confirm they were what they appeared to be, and then collected and sealed the substances and deposited them in a drop box with Property and Evidence. (Tr.p.77-p.80). Epps then authenticated his body-worn camera recording of the incident, which was admitted into evidence without objection and played for the jury while Epps narrated parts of the recording. (Tr.p.80-85).

The State asked Epps if he was familiar with the jail calls made in this case. He testified he was and had reviewed them prior to trial. The solicitor then asked to publish the previously admitted jail call to the jury. Appellant objected to "publishing the jail call or even making any reference to it under 403." He proceeded to advance the same argument made at the pretrial hearing, contending that the recording should be excluded because any probative value was outweighed by the prejudicial effect, and because the substance of the call was irrelevant due to the passage of time between the arrest and the call. The State responded with the same pretrial arguments, noting that while all evidence is prejudicial, this evidence was probative because it goes directly to an element of the crime. The solicitor pointed out that the jail call had already

been authenticated and admitted into evidence. The trial judge said she understood the jail call had already been admitted, but noted she had told Appellant's counsel she could renew her objection during the course of the trial and allowed the parties to state their positions. (Tr.p.85-p.86).

The trial court held a brief, on-the-record bench conference, noting it needed to hear the State's offer of proof because it had not yet heard the call. The solicitor explained the substance of the call. She said that during the conversation, some other guy says: "Did you get caught with three ounces?" and Appellant replies: "No. Two, two and a half." Appellant subsequently says: "That was somebody who sold [or told] on me." The solicitor argued that where the whole defense case was that he did not know the drugs were there because it wasn't his car, the jail call goes directly to an element of the crime. The trial court agreed and overruled Appellant's objection, finding the evidence would be admitted because it was not cumulative and goes to Appellant's knowledge. (Tr..p.87-p.88).

The jail call was then played for the jury in open court. It included the comments described by the solicitor above, which were made on either side of Appellant also saying: "Humbug! Ain't no way they just rolled up in the store and god damn pulled behind me and goddamn . . . yeah, you know what that was." (State's Exhibit 3: 4:01 to 4:24). The solicitor asked Epps if he know what a "humbug" is and Epps testified he had never heard that reference. She then asked what Appellant meant by "somebody told on me." Epps offered that his "best guess" was that Appellant thought someone he either: (1) bought dope from, (2) or was one of

his competitors, or (3) was someone he had done wrong, had snitched on him. Appellant objected and the objection was *sustained.* The trial court *struck* the testimony as pure speculation. (Tr.p.88). On redirect examination, Epps clarified that no one would have been allowed to drive the gold Honda after it was stopped because it had not been registered for three years, which meant it would be towed and inventoried no matter what. (Tr.p.103-p.104).

The State proceeded to call the two other GCSO Deputies—Harry McConnell and Pierre Frazile—who participated in the stop, conducted the inventory search of Appellant's car, and discovered the suspected methamphetamine and cocaine base. They confirmed the car was going to be towed once they learned it was unregistered and that Appellant had a suspended license. With the help of video recordings from their body-worn cameras, which were admitted into evidence without objection, McConnell and Frazile described the inventory search and what they discovered during that search. (Tr.p.107-p.139).

Next, Kathy Lance—property and evidence office manager for the GCSO Department of Public Safety—provided chain-of-custody evidence regarding the items seized and later released for forensic testing. (Tr.p.139-p.148). Finally, Kristen McCall—forensic chemist for the Department of Public Safety—was admitted as an expert in drug chemistry. She generally described how substances are chemically tested for the presence of drugs. McCall then described the testing and measuring she did in this case and her conclusions that the substances totaled 53.37 grams of methamphetamine and .24 grams of cocaine base. (Tr.p.149-p.157).

At the conclusion of McCall's testimony, the State rested. Appellant moved for a directed verdict, arguing in part that the State failed to prove he knowingly possessed or knowingly intended to possess the illegal drugs. The solicitor responded by arguing there was plenty of evidence Appellant was in possession of the drugs and knew they were in the car, based in part on the jail call that was played. The trial court agreed and the motion was denied. (Tr.p157-p.160). The trial court questioned Appellant regarding his right to testify. (Tr.p.167-p.169). Appellant elected not to testify, rested, and renewed his prior motions. The motions were again denied, and the parties proceeded to closing arguments. (Trial Tr.p.169-p.170).

During the State's close, the solicitor described the elements of each charge, recognized that knowledge was crucial to a determination of whether someone had constructive possession, and argued that Appellant's comments to Deputy Frazile during the search proved he knew about the drugs in the car. The solicitor went on to argue that in addition to Appellant's statement, the jail call further proved his knowledge about the drugs. The State then replayed the jail call for the jury. The solicitor argued the comment: "Somebody sold on me" or "somebody told on me" amounted to Appellant's admission that he knew the drugs were in the car. (Tr.p.171-p.179). In Appellant's close, counsel provided an alternative explanation for his comments on the jail call. Despite a lack of any evidence to support it, counsel gave her own definition of the term "humbug" as being something "silly." She argued Appellant was simply saying the police pulled him over for something silly—driving without a license, which he conveyed to his friend by saying "they got me on a humbug." Counsel argued that when he said: "somebody told [or sold]

on me," he meant somebody told the police he was driving under suspension and driving with a tag that did not match the vehicle—a humbug— and not that he knew there were drugs in the car. (Tr.p.179-p.184).

After closing arguments, the trial court charged the jurors on the law, specifically instructing that if any testimony was ordered stricken from the record, they must disregard it. (Tr.p.186, lines 5-9). The trial court then charged on: the respective duties of the judge and jury; the burden of proof; the presumption of innocence; reasonable doubt; direct and circumstantial evidence; that statements and arguments of attorneys are not evidence; credibility of witnesses; expert witnesses; criminal intent; and the elements of the offenses, including the requirement that Appellant had knowledge of the presence of the drugs. Neither Appellant nor the State took exception to the charge. (Tr.p.184-p.195). Shortly thereafter, the jury sent out a note asking for the definition of constructive possession. With consent of the parties, the trial court brought the jury out and recharged both actual and constructive possession, including the knowledge requirement. (Tr.p.196-p.197). Ultimately, the jury found Appellant guilty of all charges. (Tr.p.198-p.199). He was sentenced by Judge Salvini to a mandatory minimum twenty-five years' imprisonment with 150 days credit for time served for trafficking methamphetamine, and concurrent terms of time served for possession of cocaine base and driving under suspension. (Tr.p.203; Sentence Orders).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); *see also State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) ("The trial court will only be reversed when there is no evidence to support the ruling below.").

ARGUMENT

I.

The trial court properly admitted Appellant's recorded jail call because the recording was relevant under Rule 402, SCRE, and its probative value was not substantially outweighed by the danger of unfair prejudice under rule 403, SCRE.

Appellant argues the trial court erred in allowing his jail call into evidence because the content revealed a voice referring to the street term "humbug," which is an expression indicating someone targeted Appellant or set him up, which in turn constituted prejudicial information that suggested guilt in connection with the drug charges. He contends the solicitor's goal was to connect him to the charges via interpretation of the word "humbug" to mean "knowledge" or "intent," in order to establish his association with the drugs and/or his ownership and possession of those drugs. Appellant argues prejudice resulted because the inference of "humbug" implied

"being set up" and that "somebody sold [or told] on me," was a link to guilt, and complains that an officer at trial stated that a "humbug" means "appellant [thought] that someone that either he bought the dope from or one of his competitors or somebody he's done wrong [had] snitched on him." (Tr.p.15-22). He further argues the mere mention of the word "humbug," which is a street word, signaled a certain familiarity that he might have had with drug activities. For all of these reasons, Appellant argues the jail call should have been excluded because the probative value was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE. (Brief of Appellant, p.4-p.6). The State disagrees and submits Appellant's argument is without merit and should be denied and dismissed for several reasons.

First, where the complained-of testimony from Deputy Epps about the meaning of the term "humbug" was stricken from the record by the trial court (Tr.p.88, lines 17-25), and where the jury was specifically instructed that it must disregard any testimony that was stricken from the record, (Tr.p.186, lines 5-9), the use of the term "humbug" without any definition or context from the State beyond the jail call itself, could not have had the prejudicial impact argued by Appellant.[1] More importantly, to the extent the term "humbug" and Appellant's related comment

[1] Appellant's entire challenge to the jail call is also arguably unpreserved for appellate review because, despite moving for exclusion pretrial, when the State moved to introduce the jail call into evidence during records custodian Moore's testimony, and the trial court asked if there was any objection, Appellant said: "No objection, Your Honor." The trial court ruled: "It will be so admitted," and the court reporter noted that "State's Exhibit Number 3 was admitted into evidence." The solicitor initially asked for permission to publish; however, after the trial court *granted* that permission, the State elected not to publish the jail call at that time. (Tr.p.66-p.69). It was not until Deputy Epps was subsequently testifying and the State sought to publish the jail call that Appellant attempted to renew his objection.

Under well-established precedent, this was too late and the argument is not preserved for review. *Cf. State v. Dicapua,* 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape

that "somebody told on me" were prejudicial, the trial court properly exercised its discretion to admit the evidence because it was relevant under Rule 402, SCRE, and its probative value was not substantially outweighed by the danger of unfair prejudice under rule 403, SCRE. Under this Court's standard of review, Appellant's convictions and sentence should be affirmed.

Law / Analysis

Our appellate courts give great deference when reviewing the evidentiary rulings of the trial court. *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019); *State v. Davis*, 437 S.C. 93, 96, 876 S.E.2d 321, 322 (Ct. App. 2022). Indeed, the admission or exclusion of evidence is left to the sound discretion of the trial judge. *State v. Wallace*, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023); *State v. Phillips*, 430 S.C. 319, 340, 844 S.E.2d 651, 662 (2020); *State v. Swaringen*, 446 S.C. 16, 26, 916 S.E.2d 343, 349 (Ct. App. 2025); *State v. Edwards*, 373 S.C. 230, 234, 644 S.E.2d 66, 68 (Ct. App. 2007). The trial court's ruling on the admissibility of evidence will not be reversed on appeal absent abuse of discretion or the commission of legal error which results in prejudice to the defendant. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); *State v. Adams,* 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003).

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came in the form of a motion *in limine* to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."). Accordingly, Appellant's pretrial objection to the admission of the jail call evidence was expressly waived, and the issue cannot properly be raised or reviewed on appeal. *See Burke v. AnMed Health,* 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); *see also State v. Carlson,* 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); *State v. Burton,* 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal.").

An abuse of discretion occurs when the ruling lacks evidentiary support or is controlled by an error of law. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *McDonald*, 343 S.C. at 325, 540 S.E.2d at 467.

The trial court—when ruling on the admission or exclusion of evidence—must think through the objection that has been made, the arguments of the attorneys, and the law—particularly the applicable evidentiary rules—and must thoughtfully apply the correct law to the information and evidence before it. *Wallace*, 440 S.C. at 541-43, 892 S.E.2d at 312-13; *Morris v. BB&T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 3097 (2023). If the record reflects the trial court "exercise[ed] its discretion according to law," the appellate court will almost always affirm the ruling. *Wallace*, 440 S.C. at 543, 892 S.E.2d at 313; *Morris*, 438 S.C. at 585-86, 885 S.E.2d at 396; *see also State v. Gibbs*, 438 S.C. 542, 551-53, 885 S.E.2d 378, 383-84 (2023) (discussing in detail a trial court's exercise of discretion in ruling on the admissibility of evidence).

A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court's decision regarding Rule 403, SCRE, pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. *State v. Aleksey,* 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000); *State v. Hamilton*, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Generally, all relevant evidence is admissible. Rule 402, SCRE; *State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE; *State v. King,* 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *Saltz* 346 S.C. at 127, 551 S.E.2d at 247; *State v. Cooley,* 342 S.C. 63, 536 S.E.2d 666 (2000). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." *Id.* at 529, 732 S.E.2d at 229. "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." *State v. Hamilton*, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Our supreme court has explained that when balancing the danger of unfair prejudice against the probative value of evidence, the determination must be based on the entire record and will turn on the facts of each case. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 27-28 (2014).

Considering the record in this case, the trial court did not err in determining the probative value of admitting the jail calls was *not* substantially outweighed by the prejudicial effect of

admitting the evidence. As explained by the solicitor at trial, the statements Appellant made in the jail call were probative of his knowledge that the drugs were in the car—which was critically important where Appellant's defense was that it was *not* his car and therefore he *did not know* there were drugs in the car. Thus, not only was Appellant challenging knowledge, but he was also challenging his criminal intent, which rendered the jail call even more probative. Undoubtedly, the challenged evidence was prejudicial, as most evidence introduced by the prosecution in a drug case rightfully would be. "Unfair prejudice, however, does not include damage that occurs to a defendant's case because of the 'legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.'" *United States v. Guerrero-Cortez*, 110 F.3d 647, 652 (8th Cir. 1997); see also *Lee*, 399 S.C. at 527, 732 S.E.2d at 228. Here, the trial court aptly recognized the issues of knowledge and criminal intent were all central in the case. Appellant's statement, made only one week after his arrest, suggesting he was somehow targeted by police because someone "told [or sold] on him" was highly probative of that knowledge and intent. Consequently, the trial court did not err in finding the probative value of the jail call was *not* substantially outweighed by the danger of unfair prejudice. Whatever prejudicial effect the evidence may have had was outweighed by its probative value, since it helped to prove intent and knowledge. For these reasons, Appellant's argument should be denied and dismissed, and his convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the trial court's decision to admit Appellant's jail calls into evidence, and his convictions, be affirmed.

Respectfully submitted,

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Columbia, South Carolina
April 21, 2026

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APPEAL FROM GREENVILLE COUNTY
Jessica A. Salvini, Circuit Court Judge

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The State, ...Respondent,

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Anthony Ray Overman, ...Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Initial Brief of Respondent* and *Designation of Matter*, both dated April 21, 2026, on Appellant by sending an electronic copy via email to Wanda H. Carter, counsel of record for Appellant, at the address listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 21st day of April, 2026.

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Subject: The State v. Anthony Overman (2025-000036)
Attachments: OVERMAN Anthony - Initial Brief of Respondent.pdf

Good afternoon, Ms. Carter,

Attached please find the Initial Brief of Respondent and Designation of Matter in The State v. Anthony Overman (2025-000036). This brief will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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