

**APPELLANT'S RETURN TO RESPONDENT'S MOTION TO
STRIKE APPELLANT'S DESIGNATION OF MATTER**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

**RETURN TO RESPONDENT'S MOTION TO STRIKE
APPELLANT'S DESIGNATION OF MATTER**

Appellant respectfully files the following Return to Respondent's Motion to Strike Appellant's Designation of Matter. Respondent has alleged that certain aspects of the matter designated by Appellant were not before the trial judge and, therefore, were improperly designated matter.

Appellant filed the Initial Brief and Designation of Matter on August 12, 2015. Respondent has filed a Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210 (c), SCACR. Respondent claims that of the 14 exhibits listed, only three (3) were presented to the trial court. Appellant disagrees and argues that all matters designated were in front of the trial court. Appellant substantiates this position with the trial excerpts found below, which provide confirmation of compliance with SCACR Rule 210 (c).

RECEIVED
JUL 14 2016
SC Court of Appeals

1. Incident Report and Supplemental Incident Report prepared in connection with June 21, 2013 incident.

The following testimony was provided by Velma Jones during direct and cross-examination. Ms. Jones is speaking of the lunch incident which occurred on June 21, 2013. She references the Incident Report in question during three separate lines of questioning. She states that she had provided information of the June 21, 2013 Incident Report.

06. Q There was no mention of families moving away from your
07. table, was there?
08. A In -- not in my recollection. Not in my incident
09. report, no. Not that I remember. I would have to read it
10. again.

Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 90, 6-10

24. Q And then you couched it as him threatening Ken Baca;
25. is that right?
01. A He directly threatened Ken Baca.
02. Q What was the direct threat again?
03. A "My soul fixation is for that man to leave there in a
04. box -- I mean, with the stuff beside me carrying a box."
05. Q He said "my soul fixation"?
06. A To the best of my recollection. I can read my
07. statement through, if you want.

Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 91, 24-25 & p. 92, 1-7

20. Q Do you remember the incident report specifically
21. stating that you were not singled out?
22. A During the lunch?
23. Q Yes.
24. A No. I was not singled out during the lunch.
25. Q Okay. So tell me, then, if you weren't singled out,
01. he's not said anything mean to you, why are you scared?
02. A Because I turned him in, sir.
03. Q Did he know that?
04. A (Gestures.)
05. Q He didn't put you on trespass notice.
06. A No.
07. Q Do you believe he knew?
08. A Yes. I was at -- I was at the lunch.

Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 93, 20-25 & p. 94, 1-8

2) **Breach of Peace Warrant.**

Although these do not specifically say Breach of Peace Warrant. Velma testified that she knew he had been arrested. The content which she describes Courtney's rants indicates Breach of Peace and Price objected to including the Incident Report for same.

19. Q All right. And what did you do after that lunch?
20. A Well, we went back to work and went to HR, human
21. resources, and notified them of what happened during that
22. lunch.
23. Q All right. And what happened after that?
24. A To my knowledge, Mr. Mitchell was arrested, and I
25. don't know the specifics of what happened to Ray after he
01. was arrested. There was a lot of police presence on-site,
02. and they dismissed us early.

Direct by Mr. Price of Velma Jones, Trial Transcript, p 57, 19-25 & p. 58, 1-2

18. MR. SMITH: Thank you. I'd like to have the incident
19. report marked.
20. MR. PRICE: Your Honor, I'm going to object to this
21. incident report being introduced into evidence. I think
22. there might be a little information that we talked about
23. earlier.
24. THE COURT: Well, at this time, defense counsel wants
25. to put it in. I'm going to allow him to do it. Mark it.
01. (WHEREUPON, Defendant's Exhibit No. 6 was marked for
02. identification.)
03. THE COURT: Any objection to it being introduced?
04. You've already stated your objection. You moved to put it
05. in, right, Mr. Smith?
06. MR. SMITH: I did.
07. THE COURT: Okay. It's in evidence over the
08. solicitor's objection.

Redirect by Mr. Price of Velma Jones, Trial Transcript, p. 97, 18-25 & p. 98, 1-8

14. BY MR. PRICE:
15. Q And your statement to law enforcement that his
16. attorney brought up saying that you were -- about whether
17. or not you were singled out, can you explain that?
18. A Well, that was the lunch. So that was before this
19. incident in July. At the lunch, he was referring to Ken
20. Baca, my manager, Sharon Mayes, Reggie Owens, which is the

21. HR manager, he was very specific to them, and Dwight Inman,
22. who was at the table directly.
23. So at the lunch, he did not single me out as far as
24. discussions of what he was ranting about. It was . . .

Redirect by Mr. Price of Velma Jones, Trial Transcript, p. 101, 14-24

4) Statements given by Velma Jones.

All transcript testimony relating to the Incident Reports and Breach of Peace also support that Velma testified at trial that she had given statements.

See above: Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 90, 6-10;

See above: Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 91, 24-25 & p. 92, 1-7;

See above: Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 93, 20-25 & p. 94, 1-8; and,

See above: Redirect by Mr. Price of Velma Jones, Trial Transcript, p. 101, 14-24.

5) Intimidation of a Witness Warrant.

Officer Gregory Wood testified regarding his involvement and knowledge of the delivery of the package to UPS. The warrant for which Respondent claims was not mentioned in the hearing was obtained by Officer Wood.

14. Q You were working for UPS on that day, right, on the
15. day of the 26th of July?
16. A Yes, sir.
17. Q So basically, they paid you and you arrested
18. Mr. Mitchell, right?
19. A I did not arrest Mr. Mitchell
20. Q Did you get a warrant on him?
21. A I did.

Cross by Mr. Smith of Gregory Wood, Trial Transcript, p. 110, 14-21

11) Motion to Vacate Orders of Protection Transcript, p. 27-33, 51-52.

During the trial testimony of Velma Jones, she was asked a question regarding Appellant having knowledge as to where she currently lived. Her response from the Motion to Vacate hearing and the inclusion of that same statement in the trial follow:

09. Q Did he know where you lived?
10. A I know where his mother lives.

Examination by Mr. Smith of Velma Jones, Hearing on Motion to Vacate, p. 32, 9-10

17. Q Do you recall getting an order of protection hearing?
18. Do you remember that?
19. A Yes.
20. Q Do you remember testifying?
21. A (No verbal answer.)
22. Q Did he know – you don't remember what you responded
23. to me when I asked you that question?
24. A I don't understand the question.
25. Q When I asked you that question previously, what was
01. your answer?
02. A I do not remember, sir.
03. Q Do you recall saying, "I know where – I know where he
04. lives"?
05. A Yes, I knew where he lived.
06. Q That didn't answer my question.

Cross by Mr. Smith of Velma Jones, Trial Transcript, p. 70, 17-25 & P. 71, 1-6

13) Entire Motion to Stay Transcript

The testimony in the Motion to Stay Transcript is relevant as to our belief that there was no case against Mr. Mitchell and, therefore, no case in which Ms. Jones could be a witness. The Breach of Peace charge was not a legal arrest. There was no peace breached by the Appellant, for if there had been, those around the table would have either said something to the wrongdoer, or left the table. Ms. Jones was a witness to a non-case. The short transcript is best read as a whole.

It is with the above-referenced testimony and information that Appellant prays that this Honorable Court recognizes Appellant's compliance with Rule 210 (c); and, denies Respondent's Motion to Strike and allows the inclusion of the exhibits referenced in the

Designation of Matter so that he will be provided with what can best be described as equitable.

Respectfully submitted,



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Anderson, South Carolina
July 11, 2016.

1) Incident Report and Supplemental Incident Report prepared in connection with June 21, 2013 incident

GINA JONES - CROSS BY MR. SMITH

1 A Where are they?

2 Q Yeah.

3 A I have no idea. They were at the restaurant.

4 Q You recall doing the incident report?

5 A Yes.

6 Q There was no mention of families moving away from your
7 table, was there?

8 A In -- not in my recollection. Not in my incident
9 report, no. Not that I remember. I would have to read it
10 again.

11 Q Did anybody talk to anybody other than UPS people? Do
12 you know if there's any witnesses other than UPS people?

13 A Not to my knowledge.

14 Q And your position got elevated in May?

15 A May of this past year, yes, 2014.

16 Q How long -- prior to this incident, how long had you
17 been in your position?

18 A Three -- three years. Two and a half, three years, to
19 the best of my knowledge.

20 Q When you got back from the lunch, you felt it was your
21 duty to go to HR?

22 A Yes.

23 Q Why is that?

24 A Because that's the way we were trained.

25 Q Trained about what?

1 A About incidents in the workplace, incidents with
2 people, that basically we were trained if things were not
3 right or things that were said, that we were to report it
4 to HR and they handle it as they see fit.

5 Q So he got three months in a row employee of the month.
6 And you weren't going anywhere, right, in your job track or
7 whatever? It's been three years.

8 A Actually, I had transferred different -- different
9 jobs from different teams.

10 Q But now you're at a higher position?

11 A Yes.

12 Q And once again, at that lunch, no one felt a need to
13 say anything to him, but then you went back to HR and told
14 on him?

15 A We did not say anything to him. He was already
16 erratically -- he was acting erratic and agitated --
17 extraordinarily agitated enough. Why would any -- I mean,
18 personally, I think you're responsible for your own
19 actions. I'm not a babysitter. I'm not going to -- you
20 know, you're embarrassing yourself when you're doing these
21 things in public. That's your choice. But it was my
22 responsibility as a worker at UPS to report what
23 Mr. Mitchell said at that lunch.

24 Q And then you couched it as him threatening Ken Baca;
25 is that right?

1 A He directly threatened Ken Baca.

2 Q What was the direct threat again?

3 A "My soul fixation is for that man to leave there in a
4 box -- I mean, with the stuff beside me carrying a box."

5 Q He said "my soul fixation"?

6 A To the best of my recollection. I can read my
7 statement through, if you want.

8 Q And the text message was threatening, and it talked
9 about \$80,000 or what?

10 A No. The text message was out of the blue after I
11 hadn't heard anything, and -- at 12:30, 1:00 in the
12 morning, and he referenced himself as the shark, which is
13 not necessarily a friendly animal. It was menacing.

14 Q Did you know what he meant at all?

15 A Pardon?

16 Q Did you know what he meant at all?

17 A I mean, I knew -- I had no idea what the
18 attorney/\$80,000 thing is. I had nothing to do with any of
19 that. I knew what he meant by sending his belongings
20 because his stuff was at work from when he went out on
21 disability.

22 Q How do you know what his intent was?

23 A I only know the perception of what the package that
24 was given to me stated by Mr. Bailey that he was instructed
25 to give to me said to me. I have no idea what his

1 intention was. I know what the result of it was.

2 Q Did Courtney hand you that?

3 A No.

4 Q Do you know if that was the right package you were to
5 get?

6 A I do not know what transpired other than what was on
7 the video between Mr. Bailey and Mr. Mitchell.

8 Q Is Courtney a giving sort, give away three phones?

9 A Not to my knowledge.

10 Q What did you and your co-workers call Courtney?

11 A Ray.

12 Q Is that all?

13 A I did not refer to Ray other than anything but Ray. I
14 didn't call him Courtney. I called him Ray.

15 Q Was the leaf blower a bomb?

16 A Not to my knowledge.

17 Q Were the phones in any way mechanisms of bombs?

18 A Not to my knowledge.

19 Q So did anybody else think these things but you?

20 A I have no idea. When Mr. -- when Mr. Bailey -- when
21 we went in the room and the concealed weapons permit, I
22 laid it on the table, Mr. Bailey looked at me and said,
23 "Should I be afraid?" So he obviously was unsettled. When
24 I took the package downstairs to HR and -- which is
25 Mr. Owens, when he emptied out the package on his desk,

1 Sharon Mayes was in his office ---

2 MR. SMITH: Objection.

3 THE WITNESS: --- which was the manager, when the
4 concealed weapons permit ---

5 THE COURT: What's the ---

6 THE WITNESS: --- when she saw it, she said ---

7 THE COURT: Hang on ma'am.

8 What's the objection?

9 MR. SMITH: (Indiscernible.)

10 THE COURT: I'm sorry. Okay. No objection, right?

11 MR. SMITH: No.

12 THE COURT: Okay. Thank you.

13 Go ahead, ma'am.

14 THE WITNESS: When Ms. Mayes saw the concealed weapons
15 permit, her response was, "Oh, my God." So . . .

16 MR. SMITH: Objection.

17 THE COURT: What is your ---

18 MR. SMITH: Yes, sir.

19 BY MR. SMITH:

20 Q Do you remember the incident report specifically
21 stating that you were not singled out?

22 A During the lunch?

23 Q Yes.

24 A No. I was not singled out during the lunch.

25 Q Okay. So tell me, then, if you weren't singled out,

GINA JONES - DIRECT BY MR. PRICE

1 called names. He referred to his -- her as Sister Madea.

2 He referred to another ISR as ---

3 Q And, sorry, what is an ISR?

4 A Sorry. An inside sales rep. Another one of the reps
5 on the team that was at the lunch. He referred to him as
6 an Arabic -- he was referring to the way he was driving,
7 and what he drove, and it was a slur.

8 He was very loud and very boisterous in the
9 restaurant. People at other tables actually moved away
10 from us. It was embarrassing. Tried to maintain through
11 the lunch, but Ray just left. I didn't hear him say
12 anything. But it was scary. It was -- what he did during
13 the lunch was very irrational behavior, and some of the
14 things that he said I was obligated to alert my management
15 team because he threatened the life of one of my
16 management. So I had to. I'm sorry.

17 Q That's okay. Do you need a few seconds?

18 A I'm okay.

19 Q All right. And what did you do after that lunch?

20 A Well, we went back to work and went to HR, human
21 resources, and notified them of what happened during that
22 lunch.

23 Q All right. And what happened after that?

24 A To my knowledge, Mr. Mitchell was arrested, and I
25 don't know the specifics of what happened to Ray after he

1 was arrested. There was a lot of police presence on-site,
2 and they dismissed us early.

3 MR. SMITH: Objection, Your Honor. Can I approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held off the record.)

6 THE COURT: That's overruled. Go ahead.

7 BY MR. PRICE:

8 Q Ms. Jones, were you expected to testify against the
9 defendant regarding that lunch incident?

10 A Yes.

11 Q All right. And do you remember when this lunch
12 incident occurred?

13 A It was June -- I believe it was the 22nd, a month
14 prior to the package.

15 Q All right. Now let's jump forward to the package.
16 Can you tell me the events, what happened when you received
17 that package?

18 A Yes. Well, from the text message earlier that
19 morning, I had come in and notified that I had received --
20 I had contact from -- from Mr. Mitchell, was instructed to
21 just go back to the floor, business as usual. We had a
22 recognition meeting going on, and it was some cite, you
23 know, good-job stuff happening.

24 After the meeting, Mr. Bailey approached me and said,
25 "Gina, a gentleman just brought back my leaf blower from

1 A (Reviews document) Do you want me to read it or ---

2 Q No, ma'am. Just read it.

3 A (Reviews document) Do you want me to keep going?

4 Q Please.

5 A (Reviews document) How far do you want me to go, sir?

6 Q That's fine.

7 Do you make any reference to Mr. Mitchell's shots
8 fired?

9 A No.

10 MR. PRICE: Your Honor, may we approach real quick?

11 THE COURT: Yes, sir.

12 MR. PRICE: Thank you.

13 (WHEREUPON, a bench conference was held off the record.)

14 BY MR. SMITH:

15 Q All of the things that you thought about the envelope,
16 not one single thing was true, was it? Nothing occurred.

17 A He sent me an envelope with a message, sir. The
18 message was is I have a gun, I know where you live, and I
19 know where your family lives.

20 Q And who else read this message but you?

21 A It was addressed to me.

22 Q When he left that lunch, what did he say?

23 A He didn't say anything to me. I didn't hear anything.

24 Q You know he said, "I love you guys"?

25 A That's what some of the other gentlemen said that he

1 said they heard. I didn't hear anything. I actually
2 didn't realize that he had left until I saw the truck tear
3 out of the driveway, because I asked my teammates, "Where
4 did he go?"

5 Q Do you think it's reasonable to think that a leaf
6 blower is a bomb?

7 A No. I think it's unreasonable to think that in any
8 normal given situation.

9 MR. SMITH: May I approach the witness, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. SMITH:

12 Q I'm showing you -- here, ma'am, is the incident
13 report. Could you read that last sentence right there?

14 A This one?

15 Q Yes.

16 A "Jones feels that Mitchell is not attempting to single
17 her out."

18 MR. SMITH: Thank you. I'd like to have the incident
19 report marked.

20 MR. PRICE: Your Honor, I'm going to object to this
21 incident report being introduced into evidence. I think
22 there might be a little information that we talked about
23 earlier.

24 THE COURT: Well, at this time, defense counsel wants
25 to put it in. I'm going to allow him to do it. Mark it.

1 And so I told Marie, "Let's do it."

2 BY MR. PRICE:

3 Q And going back to this incident, let's talk about the
4 time period after the lunch. Was the defendant fired from
5 UPS?

6 MR. SMITH: Objection as to relevance.

7 THE COURT: The relevancy of that, Solicitor?

8 MR. PRICE: Your Honor, just what we were talking
9 about before, the finished performance. Defense attorney
10 has brought us ---

11 THE COURT: No, sir. That's not relevant. That's
12 sustained.

13 MR. PRICE: All right.

14 BY MR. PRICE:

15 Q And your statement to law enforcement that his
16 attorney brought up saying that you were -- about whether
17 or not you were singled out, can you explain that?

18 A Well, that was the lunch. So that was before this
19 incident in July. At the lunch, he was referring to Ken
20 Baca, my manager, Sharon Mayes, Reggie Owens, which is the
21 HR manager, he was very specific to them, and Dwight Inman,
22 who was at the table directly.

23 So at the lunch, he did not single me out as far as
24 discussions of what he was ranting about. It was . . .

25 MR. PRICE: Thank you. No further questions, Your

5) Intimidation of a Witness Warrant

GREGORY WOOD - CROSS BY MR. SMITH

1 BY MR. SMITH:

2 Q Are you aware that after he's arrested, they stopped
3 that disability?

4 A Outside of my scope, sir.

5 Q So you're a detective?

6 A Since November 2014. I'm sorry. November 2013.

7 Q Do you know if anyone went to the restaurant to talk
8 to try to find the people that moved away based on
9 Mr. Mitchell's actions?

10 A I do not know. That was a separate case I was not
11 part of.

12 Q Did you comment on it?

13 A I don't recall making any comments on it.

14 Q You were working for UPS on that day, right, on the
15 day of the 26th of July?

16 A Yes, sir.

17 Q So basically, they paid you and you arrested
18 Mr. Mitchell, right?

19 A I did not arrest Mr. Mitchell.

20 Q Did you get a warrant on him?

21 A I did.

22 Q Did that cause his arrest?

23 A Yes. That would be no different than any other
24 special assignment, whether it's a bar downtown or anything
25 like that.

1 day.

2 The very specific things that Ray did to me was send
3 me the message that he knows where my family lives, he
4 knows where I live. Ray, in our previous discussions, knew
5 where I lived. His mother lived down the road. I visited
6 his mother's house, and it is something that I actually did
7 not reference. The lunches that we had as a group.
8 Mr. Mitchell did organize a barbecue at his mother's house,
9 and I did attend.

10 Q Ma'am, did he know -- does he know where you live?

11 MR. PRICE: Objection, Your Honor. That's
12 speculation.

13 THE COURT: Overruled. You can ask.

14 THE WITNESS: His statement to me was, "Yes, I know
15 where Wright School Road is."

16 BY MR. SMITH:

17 Q Do you recall getting an order of protection hearing?
18 Do you remember that?

19 A Yes.

20 Q Do you remember testifying?

21 A (No verbal answer.)

22 Q Did he know -- you don't remember what you responded
23 to me when I asked you that question?

24 A I don't understand the question.

25 Q When I asked you that question previously, what was

1 your answer?

2 A I do not remember, sir.

3 Q Do you recall saying, "I know where -- I know where he
4 lives"?

5 A Yes. I knew where he lived.

6 Q That didn't answer my question.

7 A I visited his house.

8 Q That didn't answer my question, though, did it?

9 A I guess not. This question that you're asking me now?

10 Q Yes, ma'am. The nursery card, where is that from?

11 A Whitten's in Anderson.

12 Q Where do you live, county?

13 A Currently?

14 Q Yes.

15 A Brooksville, Florida.

16 Q Where did you live at the time of this incident?

17 A Anderson County.

18 Q How far away from that nursery did you live?

19 A At the time of the incident?

20 Q Yes.

21 A 15, 30 -- 20, 30 miles.

22 Q So you're not trying to tell us that because you lived
23 next to it, what, ten years prior to that?

24 A Yes.

25 Q And that's part of the message?

1 A. Sir?

2 Q. Negative to you.

3 A. About what?

4 Q. Anything. He doesn't like the way you dress, your
5 hair, anything.

6 A. To me, about me, or to me about other people?

7 Q. To you, about you.

8 A. No.

9 Q. Did he know where you lived?

10 A. I know where his mother lives.

11 Q. Do he know where you lived?

12 A. He told me he was aware of the area where I lived. It
13 was right down from his mother's.

14 Q. Did he have a vehicle?

15 A. Yes.

16 Q. Did you ever see him on your street?

17 A. No.

18 Q. Did he ever tell you his intent?

19 A. Like, I plan on killing you?

20 Q. On anything.

21 A. At the lunch he indicated his intent.

22 Q. What was that?

23 A. His fixation was to carry my manager out in a box.

24 Q. Well, you just said he corrected himself.

25 A. I'm sorry. 'With hisself and beside me in a box' is

**FORM 7
PROOF OF SERVICE
RESPONSE TO MOTION TO STRIKE APPELLANT'S DESIGNATION OF MATTER
FOR FAILURE TO COMPLY WITH RULE 210 (C), SCACR**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

Keith Ralph Kelly, Circuit Court Judge

RECEIVED
JUL 14 2016
SC Court of Appeals

Appellant Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.


Courtney Ray Mitchell,

Appellant.

PROOF OF SERVICE

I certify that I have served a Form 8, a Response to Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210 (c), SCACR and a Form 7 on The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211 and Office of the Attorney General, Attn: Jennifer Ellis Roberts, Assistant Attorney General, PO Box 1154 Columbia SC 29211 by depositing a copy in the United States Mail, postage prepaid, on July 11, 2016 to the addresses listed above.

July 11, 2016



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FORM 8
LETTER TO THE APPELLATE COURT CLERK
RESPONSE TO MOTION TO STRIKE APPELLANT'S DESIGNATION OF MATTER
FOR FAILURE TO COMPLY WITH RULE 210 (C), SCACR

July 11, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

RECEIVED
JUL 14 2016
SC Court of Appeals

RE: The State of South Carolina v. Courtney Ray Mitchell
Appellate Case No.: 2015-000517

Dear Ms. Kitchings:

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) Appellant's Response to Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210 (c), SCACR; and,
- (2) Proof of Service for same.

Sincerely,



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