

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Clifton Newman, Circuit Court Judge

RECEIVED

AUG 28 2018

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

WILLIAM CRAIG CAUGHMAN,

APPELLANT

APPELLATE CASE NO 2015-001867

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err in denying Appellant's motion to suppress, where law enforcement lacked jurisdiction to execute a search warrant on Appellant's property because the multi-jurisdiction agreement was invalid?

- II. Did the trial court err by improperly considering Appellant's alleged alcohol use, where witnesses offered conflicting statements on whether Appellant had been drinking hours before a motor vehicle accident, where there was no testimony that Appellant had any alcohol with his evening meal prior to the accident, and where the trial court suggested immediately prior to sentencing that things might have been different if Appellant had not been drinking?

STATEMENT OF THE CASE

Appellant was indicted during the May 2013 term of the Lexington County grand jury for hit and run resulting in death. R. 777. His case was called to trial on May 20, 2013 before the Honorable Clifton Newman and a jury. Laura Suzanne Mayes and Robert E McNair, III appeared on behalf of the State, and Wayne Floyd represented Appellant.¹

At the conclusion of the four-day trial, the jury found Petitioner guilty as indicted. R. 556, ll. 9 – 15.

Judge Newman sentenced Appellant to twenty years' imprisonment and gave him credit for time served. R. 574, ll. 18 – 21.

On June 17, 2016, a motion was filed by counsel for Appellant to reconstruct the record following the revelation that multiple portions of the trial transcript were missing, including arguments by both parties regarding the validity of a multi-jurisdictional police taskforce agreement, closing arguments by both sides, and various other portions of the trial transcript. R. 634.

The State filed a Return to the motion on July 12, 2016. R. 652. The Motion was granted on August 11, 2016. R. 657.

A reconstruction attempt was held on September 16, 2016. Defense counsel and Assistant Solicitor L. Suzanne Mayes testified. R. 658. A follow-up hearing was held on May 1, 2017 in order to finalize the reconstruction proceedings.

An Order signed by Judge Newman on May 26, 2017 was filed with the Lexington County Clerk of Court on or about June 19, 2017. R. 765 – 776.

¹ Richard Breibart previously represented Appellant. R. 152, l. 25 – R. 153, l. 1.

This appeal follows.

ARGUMENT

Relevant Facts

On February 21, 2010, Tobias Morris was struck by another vehicle and knocked from his motorcycle while on or near 12th Street in Cayce, South Carolina. R. p. 113 l. 6 – R. 115, l. 10. Morris was coherent and able to speak with law enforcement at the hospital. R. 433, ll. 8 – 18. He was treated at Lexington Medical Center but passed away on his scheduled release date. R. 93, ll. 9 – 23.

Lawrence Gilbert called Crimestoppers and alleged that Appellant was the individual who had hit the decedent. R. 298, l. 2 – R. 306, l. 20. Gilbert claimed that Appellant told him that “he had messed up or he had screwed up or something.” R. 300, ll. 7 – 10. Id.

The tip was received by SLED and provided to the Cayce Department of Public Safety. R. 399, l. 23 – R. 400, l. 9. According to restaurant owner Peter Koutrakos, Appellant had spent fifteen dollars at the Hard Knocks Grill on Knox-Abbott Drive in Cayce on February 21, 2010. R. 319, l. 15 – R. 325, l. 21.

Appellant was interviewed at the Cayce Police Department by Edward Pereira, a detective, on May 5, 2010. R. 412, ll. 5 – 19; R. 156 – 246. A search warrant was obtained for Appellant’s property in order to try and locate evidence allegedly located to the accident involving Morris. R. 346, ll. 18 – 24. On May 5, 2010, Jeffrey Simmons, a Lieutenant with the Cayce Police Department, executed the search warrant on Appellant’s property in West Columbia:

The search warrant was obtained by one of the other detectives and was brought to us while we stayed at that scene, and we executed the search warrant after we had it signed and the Magistrate saw probable cause to issue the search warrant.

R. 347, ll. 15 – 24.

It is unclear whether Simmons participated in obtaining the search warrant: Simmons indicated that he and Jason Merrill obtained the search warrant, but he also testified that “[t]he search warrant was obtained by one of the other detectives and brought to us while we stayed at the scene.” R. 347, ll. 15 – 22. Although Merrill never testified, the trial court notified the jury pre-trial that “Investigator James Merrill” of Cayce Public Safety may be called as a witness. R. 10, ll. 24 – 25. Simmons, also an employee of the City of Cayce Police Department, was tasked with taking photographs of Appellant’s property during the execution of the search warrant. R. 348, ll. 15 – 24.

Rick Collins, the Magistrate who issued and signed the search warrant, testified *in camera*. R. 364, ll. 5 – 12. Defense counsel objected to Collins’ testimony due to the fact that he was employed by the Solicitor’s office at the time of trial. R. 364, ll. 14 – 16. Collins was a Lexington County Magistrate in 2010 at the time of the incidents described above. R. 366, ll. 4 – 9. The trial judge allowed Collins’ testimony outside the presence of the jury. R. 365, ll. 16 – 18.

After the intrusion upon Appellant’s property in West Columbia by two employees of the City of Cayce Department of Public Safety, other members of law enforcement went to Appellant’s employer and asked if they could interview him. R. 410, ll. 11 – 18. During the interview, one officer, a detective with the Cayce Department of Public Safety suggested that he had a video from the restaurant, even though that was untrue. R. 431, l. 25 – R. 432, l. 19. The detective admitted that it is “accepted procedure for the police to lie” and use deception. R. 437, ll. 15 – 18. Appellant was arrested May 17, 2010. R. 427, ll. 4 – 17.

At trial, counsel for Appellant objected to the admission of photographs and other evidence that was obtained during the execution of the search warrant. R. 349, ll. 3 – 6. Outside

the presence of the jury, counsel argued that Simmons would not have jurisdiction outside the City of Cayce. R. 350, ll. 21 – 24.

During an *in camera* examination, Simmons indicated that he and Jason Merrill obtained the search warrant from a Lexington County magistrate. R. 351, ll. 5 – 15. Simmons also testified that a “metro agreement with West Columbia” allowed him to “operate in West Columbia’s jurisdiction with full authority that is in Cayce.” Id. Simmons recalled that the “Chief of West Columbia” and the Chief of Cayce signed the agreement, and that the document also contained the names of agents from both municipalities on it. R. 352, ll. 17 – 24.

Mike Robinson, a SLED employee, testified that he assisted the Cayce Department of Public Safety in Appellant’s case. R. 353, l. 22 – R. 356, l. 17. After Robinson became aware of a tip, he traveled to Appellant’s property with Simmons. Id. Robinson was not involved with obtaining the search warrant, and he left while the search warrant was being executed. R. 357, l. 6 – R. 358 l. 11; R. 359, ll. 14 - 17. He did not personally seize any items. R. 359, l. 25 – R. 360, l. 1.

The agreement was not available at the time of the above testimony. R. 360, ll. 20 – 25.

As defense counsel argued:

We haven’t been provided any jurisdiction agreement, and if there was an agreement that was ongoing as between the counties and municipalities, it requires approval of the governing bodies of those entities.

Since we have not obtained a document as to that, we are raising the issue. We have no document nor anything to show an approval or the governing bodies.

So we have nothing to prove there was jurisdiction to seize whatever was taken.

R. 361, ll. 1 – 9.

The trial judge then cited S.C. Code Ann. § 23-20-50, which at the time read:

(A) An agreement entered into pursuant to this chapter on behalf of a law enforcement authority must be approved by the appropriate state, county, or local law enforcement authority's chief executive officer. A state law enforcement authority must provide a copy of the agreement to the Governor and the Executive Director of the State Budget and Control Board no later than one business day after executing the agreement. An agreement entered into with a local law enforcement authority pursuant to this chapter must be approved by the governing body of each jurisdiction. For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction.

(B) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of South Carolina as the law enforcement agency contracting for the services.

2000 South Carolina Laws Act 382 (S.B. 1321).²

After brief discussion, the trial judge held the issue in abeyance and allowed the parties to research it over the lunch break. R. 363, ll. 10 – 14.

Edward Pereira, the detective with Cayce Department of Public Safety then testified *in camera*. R. 368, l. 20 – R. 374, ll. 18. He testified about the agreement, a copy of which was entered into evidence. R. 371, l. 20 – R. 372, l. 20; R. 576 – 579. On cross-examination, Pereira admitted that the agreement did not list specific kinds of cases to which it pertained. R. 374, ll. 11 – 17. Furthermore, Pereira admitted that the document was not signed by the Mayor of the City of Cayce or the Lexington County Council. Id.

Defense counsel requested a continuing objection, and the trial judge acquiesced. R. 375, ll. 1 – 3. Simmons resumed his testimony before the jury. R. 375, ll. 4 – 6. He testified about photographs that he took and evidence that was seized from Appellant's property. R. 375, l. 9 – R. 377, l. 4.

The State then rested. R. 511, l. 23. Defense counsel argued again for suppression:

Specifically at this time we would move [on] behalf of the Defendant to suppress all evidence seized at the Defendant's residence pursuant to the search warrant. It

² S.C. Code Ann. § 23-20-50 was repealed by 2016 Act No. 222, § 2, effective June 3, 2016.

is our position that the search warrant is invalid in this case because it was issued actually in Cayce and it was executed in West Columbia in Lexington County.

R. 519, ll. 17 – 22.

In response, the trial judge sought to differentiate between State v. Burgess and the matter *sub judice* by suggesting that Burgess was a multi-jurisdictional drug enforcement case whereas Appellant's matter involved "an agreement that would pertain to traffic enforcement." R. 520, ll. 3 – 14.³ The trial judge thereby denied counsel's motion. R. 520 ll. 17 – 18.

Closing statements were not transcribed "due to difficulty in hearing them." R. 538, ll. 23 – 25. Partially due to his belief that Appellant had been drinking, the trial judge sentenced Appellant to twenty years on the hit and run charge. R. 574, ll. 3 – 21.

Following sentencing, counsel for Appellant moved for a new trial and sought reconsideration of the sentence. R. 581 – 583. Those were denied following the submission of written memoranda and a hearing on May 21, 2015. R. 585 – 633. Detailed discussion of the traffic enforcement agreement, among other things, took place. R. 585 – 633.

³ As was the case throughout the trial transcript, argument and testimony was not audible on the record and therefore not transcribed.

I. The trial judge erred in denying Appellant's motion to suppress, where law enforcement lacked jurisdiction to execute a search warrant on Appellant's property because the multi-jurisdiction agreement was invalid.

The multi-jurisdiction agreement

On December 1, 2006, county and city law enforcement agencies entered into an "Eleventh Judicial Circuit Selective Traffic Enforcement Unit Agreement." R. 576 – 579. The agreement was made between the following entities:

[T]he Lexington, Saluda, Edgefield and McCormick County Law Enforcement Agencies, including the South Carolina Highway Patrol, the Batesburg-Leesville Police Department, the **Cayce Department of Public Safety**, the Chapin Police Department, the Gaston Police Department, the Irmo Police Department, the Lexington Police Department, the Pine Ridge Police Department, the South Congaree Police Department, the Springdale Police Department, the **West Columbia Police Department**, the Columbia Metropolitan Police Department, the Saluda Police Department, the Ridge Spring Police Department, the Edgefield Police Department, the Johnston Police Department, the Trenton Police Department, the McCormick Police Department, the Lexington County Sheriff's Office, the Saluda County Sheriff's Office, the Edgefield County Sheriff's Office, and the McCormick County Sheriff's Office, collectively as the participating agencies.

Id. (emphasis added).

The agreement, signed by Donald V. Myers as Eleventh Judicial Circuit Solicitor and some of the Chiefs of Police from the aforementioned law enforcement agencies, cited S.C. Code Ann. §23-1-210 and discussed the temporary transfer of law enforcement officers pursuant to written agreement.⁴ Id. The agreement directed chief executive officer of the participating agencies to assign an officer to serve as that agency's respective commander of the Selective

⁴ The agreement was to remain "in full force and effect until a replacement agreement or termination is entered by the participating parties" which seems to contravene the temporary description offered by the statute.

Traffic Enforcement Unit. Id. The “Selective Traffic Unit Officers” were assigned the following responsibilities:

- a. To gather and compile data relating to traffic enforcement;
- b. To devise plans for joint traffic enforcement actions, including coordination with court and detention services;
- c. To conduct briefings immediately preceding each joint traffic enforcement action to disseminate information from the plan;
- d. To conduct joint enforcement actions and engage in public education efforts as necessary in order to effectively reduce traffic violations in the 11th Judicial Circuit;
- e. To prepare after action reports and evaluate the success of each event.

Id.

Notably, the agreement also attempted to confer additional authority on each officer:

Pursuant to 23-1-210 and 23-1-215, Code of Laws of South Carolina (1976), as amended, and other applicable provisions of law, all state, county, and municipal officers will have the power and authority ordinarily granted to a law enforcement officer in their own jurisdiction **while participating in joint traffic enforcement actions in other jurisdictions**. It is the intent of the parties that to the fullest extent permitted by the law of this State, officers, deputies, and agents assigned under this agreement and so transferred shall be vested with authority, jurisdiction, rights, immunities and privileges to include the authority to execute criminal process and the power of arrest as any other duly commissioned officer, deputy, or agent of any other party.

Id.

Boswell and Burgess

Two recent cases from the South Carolina Supreme Court include lengthy discussion about multi-jurisdiction agreements. Both cases held that multi-jurisdictional agreements which had not been approved by town and county councils could not extend authority for law enforcement to work outside of their ordinary jurisdiction.

State v. Boswell

In Boswell, a member of the Lexington County Sheriff’s Department, Joe Quig, investigated Defendant, peered into the windows and inspected the outside of an abandoned

home in nearby Calhoun County. 391 S.C. at 595, 707 S.E.2d at 266. After coming to the conclusion that some of the belongings he spotted belonged to an individual who had filed a complaint with the Lexington County Sheriff's Department following an alleged burglary, Quig procured a search warrant for the home. Id.

Quig and other Lexington County officers set up surveillance outside the home after "clear[ing]" it with a sheriff in Calhoun County. While conducting surveillance one evening, a Lexington County Officer observed the Defendant drive up to the house. Id. at 596, 707 S.E.2d at 267. The officer observed a knife and crowbar so he tackled, handcuffed, and detained the Defendant. Id. Boswell was arrested for "[b]eing at the location nude, masturbating, also throwing weapons, and not following law enforcement that was fully identified." Id. Boswell was also then arrested for the burglary and transported from Calhoun County to the Lexington County Sheriff's Department. Id. Boswell would go on to confess. Id.

At trial, counsel for Boswell sought to suppress his confession on the ground that it was the product "of an unlawful arrest made without legal authority by Lexington County law enforcement made without legal authority by Lexington County law enforcement officers acting outside their territorial jurisdiction." The State offered a 1999 "multi-jurisdictional agreement" which had been entered into by the Calhoun County and Lexington County Sheriffs' Departments that "purported to confer the authority of officers to arrest in the other county's jurisdiction." Id. The agreement in Boswell also incorporated S.C. Code Ann. § 23-1-210 as well as § 17-13-45, which govern agreements involving the temporary transfer of law enforcement officers. 391 S.C. at 600, 707 S.E.2d at 269.

At Boswell's trial, the judge denied counsel's motion to suppress. Id. The judge found that "the Lexington County deputies did act consistently with the standard required by the

statute.” Id. On appeal, the South Carolina Supreme Court held that the officers lacked authority to effectuate an arrest pursuant to the multi-jurisdictional agreement and therefore reversed Boswell’s convictions.

The Court in Boswell analyzed S.C. Code Ann. § 23-20-50, even though that section was not explicitly listed in the multi-jurisdictional agreement: “Given this statute was in effect at the time of Boswell’s arrest, we must assess the validity of the 1999 agreement.” Id. at 602, 707 S.E.2d at 270. The Court construed subsection A of S.C. Code Ann. § 23-20-50 as “requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity.” Id. (footnote omitted). “Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority.” Id.

Because the 1999 agreement in Boswell had not been voted on by the Lexington County Council, the Court found it to be invalid. Id. Therefore, it could not have operated to authorize the Lexington County officers to arrest Boswell in Calhoun County. Id.

Furthermore, the Boswell Court found that the terms of the 1999 agreement did not cover the actions of the Lexington County officers as the employment of officers from adjacent jurisdictions was to occur “only in the event of emergency situations or when one jurisdiction specifically requested the assistance of officers from the adjacent jurisdiction.” Id. at 603, 707 S.E.2d at 270.

In 2000, the General Assembly promulgated section 23-20-50 to require County approval of multi-jurisdictional agreements. Given this statute was in effect at the time of Appellant’s arrest, just as in Boswell, this court should assess the validity of the agreement. Statutes governing multi-jurisdictional agreements must be strictly complied with to ensure the validity of the agreement. Id. at 602, 707 S.E.2d at 270 (recognizing the significance of territorial

jurisdiction and concluding that a “more stringent approach needs to be followed in order to confer this type of authority”).

State v. Burgess

A few years after Boswell, the South Carolina Supreme Court decided State v. Burgess, another instance of the Court holding that a multi-jurisdictional agreement was invalid because it was not approved by town or county councils. 408 S.C. 421, 759 S.E.2d 407 (2014). The Court analyzed the legislative history of applicable statutes and concluded:

Specifically, section 23-1-210 was enacted in 1981 to address the temporary transfer of law enforcement officers to another jurisdiction, section 23-1-215 was enacted in 1987 to expressly address crimes that occur in multiple jurisdictions, and section 23-20-50 was enacted in 2000 to authorize in 2000 to authorize law enforcement to assist other jurisdictions with certain public safety concerns. Notably, the drafters of these agreements appear to recognize this interrelationship as the agreements usually include a reference to all of these sections.

Id. at 435-6, 759 S.E.2d at 415. (footnote omitted).

The Court held that the agreement in Burgess was invalid, because “Town Council and County Council were the only entities authorized to enter into this multi-jurisdictional agreement.” Id. at 438, 759 S.E.2d at 416.

Discussion

In order for the 2006 agreement to confer authority, it must have been valid and the terms must have covered the factual scenario presented in Appellant’s case. State v. Boswell, 391 S.C. 592, 600, 707 S.E.2d 265, 269. Because the agreement was invalid, officers lacked the jurisdiction to enter Appellant’s property, take photographs, and seize evidence.

The Legislature intended for these multi-jurisdictional agreements to be in place for the purpose of emergency situations. See S.C. Code Ann. § 23-20-30 (2007) (recognizing need for

the agreements for public safety functions, which include “traditional public safety activities which are performed over a specified time period for a patrol services, crowd control and traffic control, and other emergency service situations”).

Therefore, the officers were not authorized to search Appellant’s property.

II. The trial court erred by improperly considering Appellant's alleged alcohol use, where witnesses offered conflicting statements on whether Appellant had been drinking hours before a motor vehicle accident, where there was no testimony that Appellant had any alcohol with his evening meal prior to the accident, and where the trial court suggested immediately prior to sentencing that things might have been different if Appellant had not been drinking.

As mentioned, Appellant was sentenced to twenty years' incarceration. Immediately prior to sentencing, the trial court remarked on the situation:

This is a sad situation for the family of Mr. Morris as well as for your family. This was a well-known incident. Mr. Morris was well liked and respected. **Maybe if you had not been drinking** and did not leave the scene after the accident things would be different.

(Portion inaudible)

We know you had been drinking earlier on that day.

R. 574, ll. 3 – 10 (emphasis added).

Prior to the beginning of Appellant's trial, counsel moved to prevent the State from "put[ting] up evidence of alcohol use prior to this incident." R. 256, l. 24 – R. 257, l. 12. He reasoned that the jury should not be allowed to hear it due to its high prejudicial nature and low probative value. Id. The trial court indicated that it would not grant the motion. Id.

Charles Campbell testified that he and Appellant had been drinking beer at Campbell's house during the afternoon of February 21, 2010. R. 277, l. 11 – R. 279, l. 15. Campbell did not elaborate on the amount of alcohol consumed but revealed that he and Appellant used a wrecker to dislodge a tree stump. Id. According to Campbell, Appellant left his house "as it got dark." Id.

Lawrence Gilbert was also present at Campbell's house on February 21, 2010. R. 298, l. 19 – R. 300, l. 3. Gilbert indicated that although he see alcohol at the house, he did not remember anyone drinking it. Id.

After Appellant left Campbell's home, he drove to the Hard Knox Grill in Cayce, South Carolina. Peter Koutrakos, the previous owner, testified regarding Appellant's purchase the evening of the accident: "I mean, it was rung up by the night bartenders so it could be anything there, but I can't determine exactly what was ordered." R. 322, l. 12 – R. 325, l. 21. Appellant's bill was generated around 10:00 p.m. and was for nine dollars and fifty cents. Id. A tip was added to bring the total to fifteen dollars.

A trial judge is allowed broad discretion in sentencing within statutory limits. Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997); Garrett v. State, 320 S.C. 353, 465 S.E.2d 349 (1995). See also State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976)(trial judge is given wide discretion in determining what sentence should be imposed). A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant. Brooks, 325 S.C. at 272, 481 S.E.2d at 713. Absent partiality, prejudice, oppression, or corrupt motive, appellate courts in South Carolina lack jurisdiction to disturb a sentence that is within the limit prescribed by statute. Stockton v. Leeke, 269 S.C. 459, 237 S.E.2d 896 (1977); Franklin, 267 S.C. at 246, 226 S.E.2d at 898. See also Garrett, 320 S.C. at 356, 465 S.E.2d at 350 ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute itself violates the constitutional injunction, Article I, Sec. 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive."); State v. Bolin, 209 S.C. 108, 39 S.E.2d 197 (1946)(length of prison sentence

rests in sound discretion of trial court unless partiality, prejudice, oppression or corrupt motive is shown).

However, at sentencing, a judge has an obligation to consider information material to punishment. Hayden v. State, 283 S.C. 121, 322 S.E.2d 14 (1984). In Townsend v. Burke, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) the Supreme Court made it clear that a sentence cannot be predicated on false information. State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

The statement by the trial judge reveals he improperly considered Appellant's alleged drinking in sentencing Appellant. This was error, because the conclusion was not based upon evidence in the record that Petitioner had any alcohol since sunset. Appellant's bill was generated at 10:00 p.m., meaning a few hours had passed since any witnesses linked him to alcohol use.

Candidly, nine dollars and fifty cents will not purchase a lot of alcohol at a restaurant. Regardless, there was no evidence in the record that Appellant had been drinking at any point after he left his friend's house. Appellant went home, drove to dinner, and then left dinner. The only testimony regarding alleged alcohol use was from much earlier in the day. Therefore, the trial court improperly considered irrelevant alcohol use and thereby predicated Appellant's sentence on false information. Appellant was prejudiced by assumptions, and his resulting sentence should be reversed.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse his conviction.

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 28, 2018.



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