

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENHUR MAMARIL, APPELLANT.

G.R. No. 147607. January 22, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before us is a petition for review on certiorari of the decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 39, in Criminal Case No. L-5963, finding appellant Benhur Mamaril guilty beyond reasonable doubt of violation of Section 8[1] of Republic Act (RA) No. 6425, as amended by RA No. 7659.

The Information filed against appellant reads:

That on or about the 1st day of February, 1999 and sometime prior thereto, in the municipality of Lingayen, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, willfully, unlawfully and criminally [did] keep and possess crushed marijuana leaves contained in seventy eight (78) sachets with a total weight of two hundred thirty six and eighty three hundredth (236.83) grams and two (2) bricks of marijuana fruiting tops weighing one thousand six hundred grams, each brick weighing eight hundred (800) grams, with a total weight of one thousand eight hundred thirty six and eighty three hundredth (1,836.83) grams, a prohibited drug, without authority to possess the same.

CONTRARY to Sec. 8 of R.A. 6425, as amended by R.A. 7659, otherwise known as the Dangerous Drugs Act of 1972.[2]

When arraigned on October 8, 1999, appellant pleaded not guilty.[3] At the pre-trial conference held on October 18, 1999, the parties admitted the following facts:

- That the search was made in the house and premises of the parents of the accused where he (accused) also lives, at Ramos St., Lingayen, Pangasinan, on February 1, 1999 at about 2:30 o' clock in the afternoon;
- That the search was conducted by the elements of the PNP particularly SPO4 Faustino Ferrer, SPO1 Alfredo Rico and others;
- That the policemen brought along with them a camera;
- That the accused was in the balcony of the house when it was searched;
- The existence of the report of physical science report No. (DT-077-99) issued by the PNP Crime Laboratory through Chemist Theresa Ann Bugayong Cid;
- That accused was subjected to urine sample laboratory on February 2, 1999.[4]

Thereafter, trial ensued.

The Prosecution's Evidence

On January 25, 1999, the Intelligence Section PNCO of the Lingayen Police Station, represented by SPO2 Chito

S. Esmenda, applied[5] before the Regional Trial Court of Lingayen, Pangasinan, Branch 39, for a search warrant authorizing the search for marijuana, a prohibited drug, at the family residence of appellant Benhur Mamaril, situated at Ramos Street, Poblacion, Lingayen, Pangasinan. On said date, then presiding Executive Judge Eugenio G. Ramos (now retired) issued Search Warrant No. 99-51.[6]

On February 1, 1999, at about 2:30 p.m., the Chief of Police of the Lingayen Police Station, SPO3 Alfredo Rico, SPO4 Faustino Ferrer, Jr. and other police officers went to the residence of appellant and implemented Search Warrant No. 99-51. When they arrived at appellant's house, they saw appellant's mother under the house. They asked her where appellant was, and she told them that appellant was in the house, upstairs. When they went upstairs, they saw appellant coming out of the room. Upon seeing the policemen, appellant turned back and tried to run towards the back door. SPO3 Rico told appellant to stop, which appellant did. SPO3 Rico informed appellant that they had a search warrant to search the house premises. They showed appellant and his mother the search warrant. Appellant looked at the search warrant and did not say anything. Thereafter, the policemen searched the house. The search was witnessed by two members of the barangay council in said area, namely, Barangay Kagawad Leonardo Ramos and Barangay Tanod Valentino Quintos, whom the police brought with them.[7]

The searching team confiscated the following: (1) fifty-five (55) heat-sealed plastic sachets containing suspected marijuana leaves, which were found in a buri bag ("bayong") under appellant's house; (2) three heat-sealed plastic sachets containing suspected marijuana leaves and seeds contained in an eye-glass case; (3) twenty-two (22) heat-sealed plastic sachets containing suspected marijuana leaves and seeds taken under a pillow placed on a monobloc chair; and (4) two (2) bricks of suspected marijuana contained inside a white and gray bag found inside the closet of appellant's room. SPO3 Alfredo Rico took pictures[8] of the confiscated items and prepared a receipt[9] of the property seized. SPO4 Faustino Ferrer, Jr. prepared a certification[10] that the house was properly searched, which was signed by appellant and the barangay officials who witnessed the search. After the search, the police officers brought appellant and the confiscated articles to the Lingayen Police Station and turned them over to the desk officer.[11]

The next day, on February 2, 1999, police officers Alfredo Rico, Alberto Santiago and Rodolfo Madrid brought the confiscated articles to the Crime Laboratory at Camp Florendo, San Fernando, La Union for examination. Appellant was also brought there for a drug test.[12]

Police Superintendent Ma. Theresa Ann Bugayong Cid, forensic chemist and head of the PNP Crime Laboratory, Regional Office I, Camp Florendo, Parian, San Fernando City, La Union, testified that on February 2, 1999, she received from the Chief of Police of Lingayen, Pangasinan, a request[13] for a drug test on the person of appellant Benhur Mamaril and a laboratory examination of the confiscated specimens.[14] After weighing the specimens and testing the same, Police Superintendent Cid issued a report[15] finding the specimens[16] to be "POSITIVE to the test for the presence of marijuana x x x." [17]

Moreover, Police Superintendent Cid affirmed the findings in her report[18] that the examination conducted on the urine sample of appellant was positive for the presence of methamphetamine hydrochloride known as "shabu." [19]

After the prosecution formally offered its testimonial and documentary exhibits on March 5, 2000, appellant, through his counsel, filed a motion with memorandum[20] contending that: (1) the exhibits of the prosecution are inadmissible in evidence under Section 2 and Section 3 (2) of Article III (Bill of Rights) of the 1987 Constitution as the search warrant, by virtue of which said exhibits were seized, was illegally issued, considering that the judge's examination of the complainant and his two witnesses was not in writing; and (2) said search warrant was

illegally or improperly implemented. Appellant prayed that all the exhibits of the prosecution be excluded as evidence or in the alternative, that the resolution of the admissibility of the same be deferred until such time that he has completed the presentation of his evidence in chief. On August 25, 2000, the prosecution opposed the motion, and the trial court denied appellant's motion.[21]The Defense's Evidence

Appellant Benhur Mamaril, 31, single, laborer, denied that he was residing at his parents' house at Ramos Street, Lingayen, Pangasinan since he has been residing at a rented house at Barangay Matic-matic, Sta. Barabara, Pangasinan since December 18, 1998. Appellant declared that on February 1, 1999, it was his brother and the latter's family who were residing with his mother at Ramos Street, but on said day, his brother and family were not in the house since they were at the fishpond.[22]

Appellant testified that on February 1, 1999, he was at his parents' house at Ramos Street, Lingayen, Pangasinan, because he and his live-in partner visited his mother on said day and arrived there at 10:00 a.m. At about 2:00 p.m. of February 1, 1999, while appellant was at the back of his parents' house, about seven to nine policemen, in civilian clothes, arrived. The policemen asked appellant to go upstairs and they immediately handcuffed him and brought him to the balcony of the house. He stayed at the balcony until the search was finished after more than 30 minutes. Thereafter, he was brought to the clinic of one Dr. Felix and a medical examination was conducted on him. Then he was brought to the municipal hall.[23]

Appellant testified that he saw the buri bag, the eye-glass case, and the gray and white bag containing suspected marijuana for the first time on the day of the search when he was at the balcony of their house. He also testified that he saw the Receipt of Property Seized for the first time while he was testifying in court. He admitted that the signature on the certification that the house was properly searched was his.[24]

Moreover, appellant testified that in the early morning of February 2, 1999, he was brought to the PNP Crime Laboratory in San Fernando, La Union where he gave his urine sample. Appellant insinuated that the confiscated items were only planted because he had a misunderstanding with some policemen in Lingayen. However, he admitted that the policemen who searched his parents' house did not threaten or harm him in any way and he had no misunderstanding with SPO3 Alfredo Rico.[25]

Atty. Enrico O. Castillo, Branch Clerk of Court, RTC-Branch 39, Lingayen, Pangasinan, was requested to testify on the available records regarding Search Warrant No. 99-51 on file in the trial court and to identify said documents. Atty. Castillo testified that he only had with him the application for search warrant, the supporting affidavits of PO3 Alberto Santiago and Diosdado Fernandez and the return of the search warrant.[26]

Atty. Enrico declared that before he assumed office as Branch Clerk of Court, the person supposed to be in custody of any transcript of the searching questions and answers made by Executive Judge Eugenio G. Ramos in connection with the application for Search Warrant No. 99-51 was Mrs. Liberata Ariston, who was then a legal researcher and at the same time OIC-Branch Clerk of Court. However, during the trial of this case, Mrs. Liberata Ariston was in the United States of America. Atty. Enrico averred that he asked Mrs. Liberata Ariston's daughter, Catherine Ramirez, who is a court stenographer, about said transcript, but it has not been found. Atty. Enrico testified that based on the records, there is no stenographic notes. He added that they tried their best to locate the subject transcript, but they could not find it.[27]The Trial Court's Decision

On January 23, 2001, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, the prosecution having established beyond reasonable doubt the guilt of the accused of the crime of possession of marijuana defined and penalized under Section 8 of RA 6425, as amended, this Court in the absence of any modifying circumstances, hereby sentences said accused to suffer the penalty of RECLUSION PERPETUA and to pay a fine of Five Hundred Thousand Pesos (P500,000), plus costs of this

suit.

The period of preventive imprisonment suffered by the accused shall be credited in full in service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.[28]

The Appeal

Appellant contends that the trial court made the following errors:

I

THE TRIAL COURT ERRED IN NOT DECLARING AS INADMISSIBLE IN EVIDENCE THE ARTICLES ALLEGEDLY SEIZED FROM ACCUSED-APPELLANT CONSIDERING THAT SEARCH WARRANT NO. 99-51 WAS ILLEGALLY ISSUED.

II

THE TRIAL COURT LIKEWISE ERRED IN NOT DECLARING AS TOTALLY INADMISSIBLE THE INVENTORIED ARTICLES IN THE RECEIPT OF SEIZED PROPERTY AND THE CORRESPONDING CERTIFICATION ISSUED THERETO (EXHS. "J" AND "I") SINCE THE ACCUSED-APPELLANT WAS NOT ASSISTED BY COUNSEL WHEN HE SIGNED THE SAME.

III

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[29]

Appellant prays for his acquittal on the ground that Search Warrant No. 99-51 was illegally issued considering that there was no evidence showing that the required searching questions and answers were made anent the application for said search warrant. Appellant pointed out that Branch Clerk of Court Enrico O. Castillo testified that based on the records, there was no transcript of stenographic notes of the proceedings in connection with the application for said search warrant. Appellant thus asserts that it cannot be said that the judge made searching questions upon the alleged applicant and his witnesses, which is in violation of Section 2, Article III of the Constitution and Section 5, Rule 126 of the Rules of Court.

Our Ruling

Appellant's contention is meritorious.

The right against unreasonable searches and seizures is guaranteed under Article III, Section 2, of the Constitution, thus:

Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Said Constitutional provision is implemented under Rule 126 of the Rules of Court, thus:

Sec. 4. Requisites for issuing search warrant. – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Sec. 5. Examination of complainant; record. -- The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

Under the above provisions, the issuance of a search warrant is justified only upon a finding of probable cause. Probable cause for a search has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[30] In determining the existence of probable cause, it is required that: (1) the judge must examine the complainant and his witnesses personally; (2) the examination must be under oath; and (3) the examination must be reduced in writing in the form of searching questions and answers.[31]

Atty. Enrico O. Castillo, Branch Clerk of Court, RTC-Branch 39 of Lingayen, Pangasinan, who was requested to testify on the available records kept in their office regarding Search Warrant No. 99-51, presented before the court only the application for search warrant[32] and the supporting affidavits[33] of PO3 Alberto Santiago and Diosdado Fernandez. Atty. Castillo could not produce the sworn statements of the complainant and his witnesses showing that the judge examined them in the form of searching questions and answers in writing as required by law. Atty. Castillo testified, thus:

xxx xxx xxx

Q

Would you admit that from the records available there is no transcript of the proceedings of a searching questions and answers made by the Executive Judge upon the complainant as well as the two (2) witnesses not only in connection with application for Search Warrant 99-51 but in all of those application covered by that record namely, 99-49, 99-50, 99-51, 99-52, 99-53 and 99-54?

A

Sir, based on the records there is no transcript of [s]tenographic notes.

Q

Did you not ask Catherine Ramirez, the daughter of then OIC-Mrs. Liberata Ariston about said transcript?

A

I asked her for several times, sir, and in fact I asked her again yesterday and she told me that she will try to find on (sic) the said transcript.

Q

But until now there is no transcript yet?

A

Yes, sir.

Q

Because according to the rules the transcript must be attached to the records of this case together with the application for search warrant as well as the supporting affidavit of the said application, but there is no records available to have it with you and there is no proof with you?

A

Because during the time I assumed the office, sir, the records in the store room which they placed is topsy turvy and all the records are scattered. So, we are having a hard time in scanning the records, sir.

Q

But did you not try your very best assisted by the Court personnel to locate said transcript, Mr. Witness?

A

Sir, we tried our best but based on the transcript I can not just read the said transcript.

Q

You mean to say you were able to [find] the stenographic notes?

A

No, sir. There are stenographic notes but they are not yet transcribed, sir.

Q

That is by a machine steno?

A

Yes, sir.

Q

Did you not ask the assistance of the co-stenographers in your sala who are using the machine steno to identify what cases does that stenographic notes (sic)?

A

Sir, I was assisted by some stenographers but we can (sic) not find the transcript of stenographic notes concerning Search Warrant No. 99-49 to 99-54.[34] (Underscoring ours)

Based on the above testimony and the other evidence on record, the prosecution failed to prove that Executive Judge Eugenio G. Ramos put into writing his examination of the applicant and his witnesses in the form of searching questions and answers before issuance of the search warrant. The records only show the existence of an application[35] for a search warrant and the affidavits[36] of the complainant's witnesses. In *Mata v. Bayona*,[37] we held:

Mere affidavits of the complainant and his witnesses are thus not sufficient. The examining Judge has to take depositions in writing of the complainant and the witnesses he may produce and to attach them to the record. Such written deposition is necessary in order that the Judge may be able to properly determine the existence or non-existence of the probable cause, to hold liable for perjury the person giving it if it will be found later that his declarations are false.

We, therefore, hold that the search warrant is tainted with illegality by the failure of the Judge to conform with the essential requisites of taking the depositions in writing and attaching them to the record, rendering the search warrant invalid.

We cannot give credit to the argument of the Solicitor General that the issuing judge examined under oath, in the form of searching questions and answers, the applicant SPO2 Chito S. Esmenda and his witnesses on January 25, 1999 as it is so stated in Search Warrant No. 99-51. Although it is possible that Judge Ramos examined the complainant and his witnesses in the form of searching questions and answers, the fact remains that there is no evidence that the examination was put into writing as required by law. Otherwise, the depositions in writing of the complainant and his witnesses would have been attached to the record, together with the affidavits that the witnesses submitted, as required by Section 5, Rule 126 of the Rules of Court. Consequently, we find untenable the assertion of the Solicitor General that the subject stenographic notes could not be found at the time Branch Clerk of Court Enrico Castillo testified before the trial court because of the confused state of the records in the latter's branch when he assumed office.

The Solicitor General also argues that appellant is deemed to have waived his right to question the legality of the search because he did not protest against it, and even admitted during his testimony that he was neither threatened nor maltreated by the policemen who searched their residence.

We disagree. The cases[38] cited by the Solicitor General involved a warrantless search. In this case, the police authorities presented a search warrant to appellant before his residence was searched. At that time, appellant could not determine if the search warrant was issued in accordance with the law. It was only during the trial of this case that appellant, through his counsel, had reason to believe that the search warrant was illegally issued causing appellant to file a motion with memorandum objecting to the admissibility of the evidence formally offered by the prosecution. In *People v. Burgos*,[39] we ruled:

Neither can it be presumed that there was a waiver, or that consent was given by the accused to be searched simply because he failed to object. To constitute a waiver, it must appear first that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and lastly, that said person had an actual intention to relinquish the right. (*Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (*Magoncia v. Palacio*, 80 Phil. 770). As pointed out by Justice Laurel in the case of *Pasion Vda. de Garcia v. Locsin* (supra):

x x x x x x x x

“x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer’s authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent, or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. (56 C.J., pp.1180, 1181).”

We apply the rule that: “courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights.” (Johnson v. Zerbst, 304 U.S. 458).

In this case, we construe the silence of appellant at the time the policemen showed him the search warrant as a demonstration of regard for the supremacy of the law. Moreover, appellant seasonably objected[40] on constitutional grounds to the admissibility of the evidence seized pursuant to said warrant during the trial of the case,[41] after the prosecution formally offered its evidence.[42] Under the circumstances, no intent to waive his rights can reasonably be inferred from his conduct before or during the trial.

No matter how incriminating the articles taken from the appellant may be, their seizure cannot validate an invalid warrant.[43] In *Mata v. Bayona*,[44] we ruled:

....[N]othing can justify the issuance of the search warrant but the fulfillment of the legal requisites. It might be well to point out what has been said in *Asian Surety & Insurance Co., Inc. vs. Herrera*:

‘It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.’

Thus, in issuing a search warrant the Judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumption of regularity are to be invoked in aid of the process when an officer undertakes to justify it.

We, therefore, find that the requirement mandated by the law that the examination of the complainant and his witnesses must be under oath and reduced to writing in the form of searching questions and answers was not complied with, rendering the search warrant invalid. Consequently, the evidence seized pursuant to said illegal search warrant cannot be used in evidence against appellant in accordance with Section 3 (2),[45] Article III of the Constitution.

It is unnecessary to discuss the other issues raised by appellant in seeking to exclude the evidence seized pursuant to said illegal search warrant.

Without the aforesaid illegally obtained evidence, there is no sufficient basis to sustain the conviction of appellant.

WHEREFORE, the decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 39, in Criminal Case No. L-5963, is REVERSED and SET ASIDE. Judgment is hereby rendered declaring Search Warrant No. 99-51 NULL and VOID and the search and seizure made at appellant’s residence illegal. For lack of evidence to establish appellant’s guilt beyond reasonable doubt, appellant BENHUR MAMARIL is hereby ACQUITTED and ordered RELEASED from confinement unless he is being held for some other legal grounds.

The Director of the Bureau of Corrections is ORDERED to IMPLEMENT without delay this Decision and to INFORM this Court, within ten (10) days from receipt hereof, of the date appellant was actually released from confinement.

The confiscated marijuana is ORDERED forfeited in favor of the State and the trial court is hereby directed to deliver or cause its delivery to the Dangerous Drugs Board for proper disposition.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Carpio, JJ., concur.

[1] RA No. 6425, as amended, Sec. 8. Possession or Use of Prohibited Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person, who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of section 20 hereof.

[2] Records, p. 1.

[3] Records, p. 34.

[4] Pre-trial Order, Records, p. 45.

[5] Application for Search Warrant, Records, p. 92.

[6] Exh. "G," Records, p. 76.

[7] TSN, February 14, 2000, pp. 2-10; February 21, 2000, p. 7.

[8] Exhs. "K" to "K-6," Records, pp. 12-13.

[9] Exh. "H," Records, p. 4.

[10] Exh. "I," Records, p. 5.

[11] TSN, February 14, 2000. pp. 11, 14, 23-24; February 21, 2000, pp. 10-14.

[12] TSN, February 14, 2000, pp. 24-25.

[13] Records, p. 10.

[14] TSN, November 5, 1999, pp. 2, 5-13.

[15] Exh. "E," Records, p. 17.

[16] Exh. "E-3," Records, p. 17.

[17] Exh. "E-6," Records, p. 17; TSN, November 5, 1999, p. 13.

[18] Exh. "F," Records, p. 18.

[19] TSN, November 18, 1999, pp. 7-9.

[20] Records, p. 84.

[21] Records, p. 98.

[22] TSN, October 10, 2000, pp. 13-14, 28-29.

[23] TSN, October 10, 2000, pp. 13-17.

[24] TSN, October 10, 2000, pp. 16-18.

[25] TSN, October 10, 2000, pp. 19-21, 25-27.

[26] TSN, October 10, 2000, pp. 2-4.

[27] TSN, October 10, 2000, pp. 7-10.

[28] Rollo, p. 27.

[29] Rollo, pp. 43-44.

[30] Pendon v. Court of Appeals, 191 SCRA 429, 437 (1990), citing *Marinas v. Sioco*, 104 SCRA 403, 432 (1981); *Ponsica v. Ignalaga*, 152 SCRA 647, 664 (1987).

[31] Pendon v. Court of Appeals, *supra*.

[32] Exh. "1," Records, p. 92.

[33] Exhs. "2" to "3," Records, pp. 93-94.

[34] TSN, October 10, 2000, pp. 8-9.

[35] Exh. "1," Records, p. 92.

[36] Exhs. "2" to "3," Records, pp. 93-94.

[37] 128 SCRA 388, 391 (1984).

[38] *People v. Montilla*, 285 SCRA 703 (1998); *People v. Aruta*, 288 SCRA 626 (1998).

[39] 144 SCRA 1 (1986).

[40] Through a Motion with Memorandum, Records, p. 84.

[41] *Demaisip v. Court of Appeals*, 193 SCRA 373 (1991).

[42] Rules of Court, Rule 132, Sec. 36.

[43] *Pendon v. Court of Appeals*, *supra*, note 30, at 441.

[44] *Supra*, note 36, at 393.

[45] The Constitution, Article III, Section 3 (2). Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

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