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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 21

MCKENZIE WILLIS,

Appellant.

20 Eagle Street
Albany, New York
February 12, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Raven Wood
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next matter on the calendar
2 is People v. Willis.

3 MS. ALTREUTER: May it please the court, Sylvia
4 Laura Altreuter of the Legal Aid Society, on behalf of
5 McKenzie Willis. I would like to request two minutes for
6 rebuttal?

7 CHIEF JUDGE WILSON: Yes.

8 MS. ALTREUTER: The misdemeanor complaint
9 charging Mr. Willis is facially insufficient and must be
10 dismissed.

11 JUDGE TROUTMAN: Does it matter that the
12 defendant waived being prosecuted by an information here?

13 MS. ALTREUTER: It matters in terms of the
14 analysis. But even under the less stringent standard of a
15 misdemeanor complaint, the - - - the complaint charging Mr.
16 Willis is still facially insufficient because one of the
17 elements, the element that makes this a crime and not a
18 noncriminal traffic infraction is not sufficient.

19 JUDGE TROUTMAN: And what is the purpose of a
20 complaint versus an information?

21 MS. ALTREUTER: The complaint initiates the
22 proceeding, but somebody can only be convicted on a
23 misdemeanor complaint with their own consent.

24 JUDGE GARCIA: But we still use the standard for
25 complaint where you've waived the information, right?

1 MS. ALTREUTER: That's correct.

2 JUDGE GARCIA: And that's, I think, facts of an
3 evidentiary character supporting or tending to support the
4 charges.

5 MS. ALTREUTER: Yes. And here there are not
6 sufficient evidentiary facts pled to establish that Mr.
7 Willis knew or should have known his license was suspended
8 the day he was arrested in 2018. The first problem with
9 the misdemeanor complaint is that there is no allegation
10 that Mr. Willis ever received the traffic summons that's
11 alleged to be the basis of his knowledge that his license
12 was suspended. The second problem is there's no - - -

13 JUDGE RIVERA: Why isn't there enough to infer
14 that he did receive them, and of course, if he wants to, or
15 if he went to trial, he wants to argue otherwise, that that
16 would be a defense? Perhaps.

17 MS. ALTREUTER: There's - - - in the - - - the
18 VTL is very complicated. There are lots of ways that
19 people can get sanctioned under the VTL. There are now
20 thousands of traffic cameras in New York City alone. There
21 are congestion pricing cameras, there are red light
22 cameras, there are speed cameras. There are - - - you get
23 tickets - - -

24 JUDGE HALLIGAN: But my - - - my read of the
25 rules, tell me if you disagree, is that the summons has to

1 be delivered by personal service or put on the - - - the
2 car windshield; is that right?

3 MS. ALTREUTER: That's - - - it's not totally
4 clear, I think. I think there's some confusion about how
5 exactly for what kinds of traffic infractions for what - -
6 -

7 JUDGE HALLIGAN: For the types of infractions at
8 issue here, you think it's not clear?

9 MS. ALTREUTER: I think it's not clear.

10 JUDGE HALLIGAN: And - - - and what would the
11 other means of delivery be, if not personal service or
12 affixing to the windshield?

13 MS. ALTREUTER: By mail would be the other
14 option. For example, I know people get certain kinds of
15 mail when you run through a red light, when you're speeding
16 in a school zone.

17 JUDGE TROUTMAN: Do you usually get a seat belt
18 summons by mail?

19 MS. ALTREUTER: I'm not - - -

20 JUDGE TROUTMAN: Isn't that one that's normally
21 delivered to the person in person?

22 MS. ALTREUTER: There's - - - that's not alleged
23 in the complaint that the officer who swore out this
24 misdemeanor complaint knew that Mr. Willis, knew he had a
25 suspended license because he had gotten a summons for

1 driving without a seat belt.

2 JUDGE CANNATARO: But you do concede that there
3 are some class of summonses that are handed directly to the
4 violator?

5 MS. ALTREUTER: Yes.

6 JUDGE CANNATARO: Okay.

7 JUDGE HALLIGAN: And I would guess that wearing a
8 seat belt is one of them?

9 MS. ALTREUTER: That's not totally clear to me.
10 There are cameras everywhere; you can see on a camera
11 whether somebody is wearing a seat belt or not.

12 JUDGE CANNATARO: And you could be - - -

13 JUDGE HALLIGAN: Are you - - -

14 JUDGE CANNATARO: - - - summonsed, ticketed for
15 that by a camera violation? Is that what's going on in New
16 York right now?

17 MS. ALTREUTER: I don't know, and I think if that
18 were the basis for the officer's belief that Mr. Willis was
19 driving on a suspended license, that needed to be alleged
20 in the complaint.

21 JUDGE TROUTMAN: But even - - - there are
22 instances - - - cars are pulled over if an officer observes
23 someone without a seat belt, that's a reason to pull them
24 over.

25 MS. ALTREUTER: Yes.



1 JUDGE TROUTMAN: When you pull them over, they
2 get the ticket.

3 MS. ALTREUTER: Yes. And if that were alleged in
4 the complaint, that would be different.

5 JUDGE TROUTMAN: So every specific thing has to
6 be alleged?

7 MS. ALTREUTER: Yes. This was a very serious
8 case for Mr. Willis. These misdemeanor cases are very
9 serious. The only thing that - - -

10 JUDGE TROUTMAN: But what about the argument that
11 if he wanted the particularity that he's complaining of, he
12 should have proceeded to trial and been prosecuted under an
13 information?

14 MS. ALTREUTER: The only thing that is the
15 check - - -

16 JUDGE TROUTMAN: Because they serve two different
17 purposes.

18 MS. ALTREUTER: The only thing that is the check
19 on the prosecutor's ability to bring these cases is the
20 facial sufficiency of the instrument itself. Even for a
21 misdemeanor.

22 CHIEF JUDGE WILSON: Well, the - - - the
23 instrument attaches his driving record, right?

24 MS. ALTREUTER: Yes.

25 CHIEF JUDGE WILSON: And it has an address on it

1 and his name on it. And so Judge Rivera's question, why
2 can't we infer that he got at least one of those?

3 MS. ALTREUTER: There's no allegation, for
4 example, that a notice of suspension was mailed to that
5 address.

6 JUDGE CANNATARO: So you need an affidavit from
7 the person who did the mailing testifying to the act of
8 mailing it; is that the suggestion?

9 MS. ALTREUTER: That would be one way to do these
10 cases. Another way that many prosecutors do in these kinds
11 of cases that they allege that based on their training and
12 experience, they know that notice of suspension are mailed
13 to a person's last known address.

14 JUDGE CANNATARO: Given that there are a
15 multiplicity, possibly, of ways that these summonses get
16 delivered, why not go with the People's argument that this
17 can all be handled as a defense? You can say, I never got
18 the summons, and - - - and we can work out what the truth
19 of the matter is as part of the merits determination.

20 MS. ALTREUTER: That would have been one option,
21 but for this complaint to have been jurisdictionally
22 sufficient, for the court to have accepted Mr. Willis'
23 guilty plea, the instrument needed to allege every element
24 of every offense, and knowledge is not properly alleged
25 here.

1 CHIEF JUDGE WILSON: So if the complaint had
2 said, I know that the driving record that is attached here
3 is the - - - items that - - - items show up on this driving
4 record once they are mailed to the address shown there. If
5 the officer had said that in the complaint or something
6 like that, is that sufficient?

7 MS. ALTREUTER: That would be a different
8 situation. I think that would be better if they had
9 alleged that --

10 CHIEF JUDGE WILSON: Well, I didn't ask about
11 better. Would that be sufficient?

12 MS. ALTREUTER: If they had alleged that, based
13 on their analysis of the abstract, that these particular
14 traffic summonses would have been handed - - -

15 CHIEF JUDGE WILSON: No. No, I was asking
16 something different.

17 MS. ALTREUTER: Oh, sorry.

18 CHIEF JUDGE WILSON: Not these particular ones,
19 that it's a general practice, that these are mailed and
20 they don't appear on the abstract until they're mailed.

21 MS. ALTREUTER: Even so the other problems with
22 the instrument - - -

23 CHIEF JUDGE WILSON: With that - - - oh, sorry.

24 MS. ALTREUTER: I would say no. I think that
25 that would not be sufficient.

1 CHIEF JUDGE WILSON: Not be sufficient. So what
2 - - - what more would you want then?

3 MS. ALTREUTER: So the easiest way I think, to do
4 this for the prosecutor's offices would be to allege the
5 notice of suspension itself, that it was mailed in the
6 ordinary course. But - - -

7 CHIEF JUDGE WILSON: Well, sorry, that's back to
8 Judge Cannataro's question that you need to have the person
9 who mailed it fill out an affidavit to that effect.

10 MS. ALTREUTER: I think for an information, that
11 is what you would need. But for the purpose of a
12 misdemeanor complaint, that can be based on hearsay.

13 JUDGE TROUTMAN: What about - - - how does the
14 presumption of regularity come into play with respect to
15 him getting it?

16 MS. ALTREUTER: The presumption of regularity
17 would have applied here if the prosecution had alleged that
18 the summons was handed to - - - like, would have been
19 handed to him in the ordinary course, then I think the
20 defenses that well, in this particular case, it didn't
21 actually happen. That wouldn't apply here. The
22 presumption of regularity would be - - - would have
23 attached. But here, there is not that allegation in the
24 complaint such that the presumption could attach. But to
25 go back to one of the earlier questions, the warning - - -

1 the officer does not articulate any basis for his knowledge
2 that the printed warning on the back of a summons was
3 actually there, which I think - - -

4 JUDGE HALLIGAN: Wait - - -

5 JUDGE TROUTMAN: So does the officer have to
6 allege every - - - with respect to the experience and
7 knowledge base from being a police officer, they have to
8 allege all of that in the complaint?

9 MS. ALTREUTER: For things that are not obvious,
10 I think this court had held in other cases that an officer
11 doesn't need to allege that they know something is a public
12 place, or that they know something is in public view, or
13 they know something is - - - for instance.

14 JUDGE CANNATARO: So what's the problem with the
15 allegation or the - - - the averment? Is that a word?
16 What's the problem with the varying - - - I know that this
17 information is on every summons.

18 MS. ALTREUTER: That they don't - - - that the
19 officer here doesn't articulate a basis for why he knows
20 that.

21 JUDGE CANNATARO: I'm a police officer. I've - -
22 - I've served thousands of summonses. I know that that
23 information is on every summons. That's not a sufficient -
24 - -

25 MS. ALTREUTER: That would have been sufficient



1 if the officer had said, I personally have served thousands
2 of these summons for these traffic infractions, that would
3 have been sufficient. But there is - - - we don't know
4 anything about this officer, and if they had alleged based
5 on their training and experience - - -

6 JUDGE TROUTMAN: We know he's an officer.

7 MS. ALTREUTER: An - - - being an officer wasn't
8 sufficient - - - isn't sufficient to establish that
9 something is a gravity knife.

10 JUDGE GARCIA: There was a way --

11 MS. ALTREUTER: They can't just say that. Sorry.

12 JUDGE GARCIA: There was a way to get more
13 information without going to trial. I mean, your client
14 waived prosecution by information, which is a much higher
15 standard - - - we've said it's much more stringent - - -
16 and pled to a complaint which he otherwise could not have
17 done without waiving, and now it seems that you want a
18 level of information that might be required by an
19 information proceeding, you know, if they had filed an
20 information but isn't for a complaint, and that was a
21 decision that was made at the police stage. It was a
22 waiver.

23 MS. ALTREUTER: Mr. Willis did waive the right to
24 be prosecuted based on nonhearsay information, and to be
25 subject to have an information subject to this higher

1 standard. But even under the lesser standard, this
2 complaint is still not facially sufficient, in the same way
3 that an officer has to - - -

4 JUDGE TROUTMAN: But do you agree, if he hadn't
5 waived, he would have gotten the specificity he is now
6 complaining of.

7 MS. ALTREUTER: I don't know. I can't speak to
8 what would have happened if Mr. Willis - - -

9 JUDGE TROUTMAN: He could have - - - he would
10 have gone through the process, and he is entitled to the
11 heightened pleading requirements, if in fact, he were going
12 to trial and to be prosecuted on the information.

13 MS. ALTREUTER: Yes, that's correct. He would
14 have gone through the process. The third problem with the
15 complaint is that even crediting that Mr. Willis received
16 the summons, and even crediting the idea that all summonses
17 have this particular printed warning, the warning, as
18 written, does not - - - did not provide him notice that he
19 was - - - that his license was suspended the day that he
20 was driving. All of these suspensions are relatively close
21 in time, and the ticket doesn't say - - - isn't alleged to
22 say your license will be suspended on some particular date.

23 CHIEF JUDGE WILSON: Some of the - - - the first
24 one of these was several months before he was pulled over.

25 MS. ALTREUTER: I believe it was, the first

1 violation on his record was for disobeying a traffic
2 device, and that was in June, and he was pulled over in
3 October. So four months. But there are lots of things
4 that go wrong with the DMV, there are lots of things that
5 could have gone wrong here, and Mr. Willis was not put on
6 notice that his license was suspended when he was driving
7 at the time.

8 JUDGE RIVERA: Yeah, but that - - - that sort of
9 the - - - the speculation of what could have gone wrong,
10 and that is not necessarily a basis to say that it's
11 jurisdictionally defective.

12 MS. ALTREUTER: They're still needed under the
13 statute for there to be some reason to believe that Mr.
14 Willis knew, or should have known, his license was
15 suspended, and there are not sufficient reasons set out in
16 this complaint. Finally, I'll briefly address what some of
17 the questions have alluded to, which would be a standard
18 that this court could apply in all of these cases. There
19 are lots of ways that these complaints could be alleged.
20 They could be alleged, for example, that based on an
21 officer's training and experience, these, notice of
22 suspension are mailed to a person's last known address in
23 the regular course of business. That would be sufficient
24 for a misdemeanor complaint. They could attach the
25 affidavit that the court - - -

1 CHIEF JUDGE WILSON: Well, it sounded from
2 something you said earlier, you would want the officer to
3 say how the officer knew they were mailed?

4 MS. ALTREUTER: That could be based on their
5 training and experience, or it could be they worked at the
6 DMV in their own personal experience getting - - -

7 CHIEF JUDGE WILSON: Well, what would the
8 training and experience of an officer who's on the street
9 stopping cars be as to the mailing of the summonses?

10 MS. ALTREUTER: I think that would not be a basis
11 for - - -

12 CHIEF JUDGE WILSON: Okay. So that rule doesn't
13 work.

14 MS. ALTREUTER: I think, though, officers I
15 assume take classes on how other agencies function in terms
16 of enforcement. I mean, the officer here alleged that he
17 knows - - -

18 CHIEF JUDGE WILSON: Well, if you assume that,
19 why can't we assume that happened here?

20 MS. ALTREUTER: I take your point, but I still
21 think that the officer needed to allege if that were the
22 case, why they knew what was written on the ticket, why
23 they knew that the - - - somebody's license is suspended
24 four weeks after they failed to answer a ticket. I think -
25 - -

1 JUDGE HALLIGAN: Well, he says all such summonses
2 have printed on them, if you do not answer this ticket by
3 mail within fifteen days, your license will be suspended.
4 So you want more than that, but how would his training
5 expose him to what DMV does internally?

6 MS. ALTREUTER: I mean, if - - - if his training
7 did not expose him to how the DMV actually works, then this
8 entire complaint is completely insufficient.

9 JUDGE HALLIGAN: Okay. So let's assume that he
10 has an hour-long class, and somebody from DMV comes and
11 says, this is what we do. Would that be sufficient?

12 MS. ALTREUTER: Yes, to establish the - - -

13 JUDGE HALLIGAN: And would he need to allege that
14 with specificity in your view - - -

15 JUDGE CANNATARO: He would have to allege that
16 as - - -

17 JUDGE HALLIGAN: - - - in a complaint?

18 JUDGE CANNATARO: - - - as the basis of his
19 knowledge?

20 MS. ALTREUTER: I don't think he would have to
21 say specifically, I took this one-hour class on this
22 specific day, but I think he would have to allege some
23 basis, based on their police officer's training.

24 JUDGE HALLIGAN: So saying I know is not enough.
25 He has to say I know for the following reason why?

1 MS. ALTREUTER: For this proposition, yes. Thank
2 you.

3 CHIEF JUDGE WILSON: Thank you.

4 MS. NOTCHICK: Your Honors, and may it please the
5 Court, Anna Notchick for the People. When judging the
6 accusatory instrument under the deferential standard
7 applicable to a misdemeanor complaint the accusatory
8 instrument here was facially sufficient. It established
9 reasonable cause - - -

10 JUDGE RIVERA: Don't we need to know the basis
11 for the officer's assertion?

12 MS. NOTCHICK: No, Your Honor, we don't. The
13 cases where this court has found that there is some
14 specialized knowledge of the officer that must be pled in a
15 complaint, have required a conclusion that the officer made
16 based on his experience and specialized knowledge of an
17 officer. Dumas was the marijuana case that - - - where the
18 officer determined that something was marijuana. Drayton
19 was a gravity knife case. Those required specialized
20 knowledge to understand that something was marijuana or was
21 a gravity knife.

22 There was no specialized knowledge needed here
23 for the officer to know what the summons said. A simple
24 reading of a summons would be enough, and we can infer that
25 the officer here read the summons because he said, I know



1 that all such summonses say, if you do not answer this
2 ticket by mail within fifteen days, your license will be
3 suspended. So there was no additional pleadings that - - -
4 that was based on his experience, and not - - -

5 JUDGE RIVERA: Is that because of the detail of
6 that particular phrase that you just used? It seems to
7 have particular information that one would infer. You
8 didn't just make that up. You must have seen that
9 somewhere.

10 MS. NOTCHICK: Yes, Your Honor. And - - - and we
11 can infer that because the standard that is used is that of
12 a misdemeanor complaint, which is much less stringent than
13 that of an information, and we can make reasonable
14 inferences from his - - - him saying, I know that all such
15 summonses say X, we can infer that he has read a summons
16 and knows what is printed on them. Further, the complaint
17 alleged that defendant's license was suspended for failure
18 to answer a summons. We can infer that defendant was
19 issued a summons, and a reasonable inference can be made
20 that he was personally served with that summons.

21 Common sense and everyday experience show us that
22 when someone is given a ticket or a summons that is
23 directly handed to them, and that is especially the case
24 when that summons is given for a traffic violation. Here,
25 we know that defendant's summonses were given for traffic

1 violations because we have his DMV abstract, which shows
2 that in June of 2018, defendant disobeyed traffic laws,
3 failed to wear a seat belt, and performed an improper right
4 turn, and that he was given a summons on each of those
5 occasions. Those are the type of traffic infractions that
6 defendant would have been pulled over and directly handed
7 the summons, so we can infer that he actually received the
8 summons, and once defendant received the summons - - -

9 JUDGE TROUTMAN: But counsel says you - - - you
10 can't just assume he personally received them in those
11 instances.

12 MS. NOTCHICK: We're not just assuming. We're
13 not assuming that, Your Honor. It's the reasonable
14 inference that can be drawn from the fact that these were
15 issued from traffic violations.

16 JUDGE TROUTMAN: You - - - you are looking at the
17 totality of the circumstances, and inferences can be made,
18 and that's how you come to that conclusion. Does it matter
19 that whether it's information or a complaint, and that the
20 defendant waived prosecution by an information?

21 MS. NOTCHICK: It does matter, Your Honor,
22 because prosecution by complaint is a much less stringent
23 standard than that of prosecution by information.
24 Defendant could have declined to waive prosecution by
25 complaint and had the People prosecute him by misdemeanor

1 information. But that's not what happened here, and so the
2 People did not need to provide nonhearsay allegations of
3 every element of the offense, just a more holistic approach
4 of whether there was reasonable cause to believe that the
5 defendant committed the charged crime.

6 And there was. As soon as defendant would have
7 received that summons, when it was personally given to him,
8 he had reason to know that his license would be suspended
9 if he did not answer the summons. The summons, as the
10 officer alleged, had printed on it, if you do not answer
11 the summons within fifteen days, your license will be
12 suspended. So once - - -

13 JUDGE SINGAS: What about the order of protection
14 cases that your adversary relies on? I'm thinking of
15 People v McCowan, which we said basically an order of
16 protection was issued and the defendant was aware of it.
17 But that doesn't necessarily mean that he was aware of the
18 contents of the order of protection. Isn't that analogous
19 to this situation?

20 MS. NOTCHICK: No, Your Honor, we do not believe
21 so because defendant was specifically aware of the fact
22 that if he did not answer that summons, his license would
23 be suspended, that he may not have ever actually received
24 that - - - that notice of suspension is not relevant to
25 that analysis, because as soon as he did not respond, he

1 had reason to know his license was suspended, and we do
 2 believe that is different than the order of protection
 3 cases. Further, the fact that this possibly could have
 4 been mailed or affixed to defendant's car, defendant could
 5 still have reason to know his license was suspended, even
 6 if it was - - - the summons was issued for those
 7 different - - - in those different manners, because if it
 8 was mailed to him, whether or not he actually received that
 9 mail is a defense to be raised at trial, and many of the
 10 claims that defendant makes now are defenses to be raised
 11 at trial, rather than challenges to the sufficiency of the
 12 accusatory instrument.

13 Turning quickly to remedy. Even if this court
 14 were to determine that the accusatory instrument is not
 15 sufficient, it should decline to dismiss the accusatory
 16 instrument and should instead remand defendant's case to
 17 criminal court. Where the People do not agree that
 18 dismissal is appropriate, and there is a penological
 19 purpose in sending the case back to criminal court, this
 20 court should decline to dismiss an accusatory instrument.
 21 Here, the People do not agree that dismissal is
 22 appropriate, and there is a penological purpose in sending
 23 the case back, because the future degree of an aggravated
 24 unlicensed operation of a motor vehicle charge could be
 25 affected by a conviction here. I'm - - - I'm happy to



1 address any additional questions, but if there are no
2 further questions, we ask that you affirm. Thank you.

3 CHIEF JUDGE WILSON: Thank you.

4 MS. ALTREUTER: I'll address two points by the
5 prosecution. First, is that I think the order of
6 protection cases apply here, because just because a summons
7 was issued for these traffic infractions does not
8 necessarily mean that Mr. Willis received them. And the
9 other point I'll address is the penological purpose for
10 remanding this case. This - - - what Mr. Willis was
11 arrested in 2018, it would only have a penological purpose
12 in heightening his subsequent aggravated unlicensed driving
13 if he were to have been arrested in the eighteen months
14 following; it's now seven years later. There's no purpose
15 in remanding this case. The fines in this case, there was
16 a \$200 fine and \$88 surcharge - - -

17 CHIEF JUDGE WILSON: What date does the eighteen
18 months run from, the date of conviction or the date of
19 infraction?

20 MS. ALTREUTER: The date of the offense, so that
21 is long since passed. But back to the penological purpose,
22 this was now seven years ago. This was a \$200 fine and an
23 \$88 surcharge that Mr. Willis was unable to pay, and civil
24 judgment was entered. There would be no purpose in
25 remanding this case to - - -

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JUDGE TROUTMAN: But isn't there a purpose of having people be licensed drivers upon our roads as they're supposed to? Isn't that a public purpose?

MS. ALTREUTER: That would be a public purpose, but the point has been made. Mr. Willis spent months going to court for these cases. He's had a misdemeanor conviction and a criminal record because of this case for now, seven years. There is no purpose in having him return to court and face criminal prosecution again on this case.

CHIEF JUDGE WILSON: Thank you.

MS. ALTREUTER: Thank you.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Raven Wood, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. McKenzie Willis, No. 21 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Raven Wood

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