

**U.S. District Court
Eastern District of Virginia - (Newport News)
CIVIL DOCKET FOR CASE #: 4:09-cv-00078-HCM-DEM**

Johnson v. The City of Hampton, Virginia et al
Assigned to: District Judge Henry C. Morgan, Jr
Referred to: Magistrate Judge Douglas E. Miller
Demand: \$9,999,000
Cause: 28:1331 Fed. Question: Civil Rights Violation

Date Filed: 06/15/2009
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Kirby Johnson

represented by **Verbena Maxine Askew**
The Verbena Askew Law Firm
70 W Mercury Blvd
Suite 201
Hampton, VA 23669

....et

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

The City of Hampton, Virginia

represented by **Jeffry Alden Sachs**
City of Hampton
22 Lincoln St
Hampton, VA 23669

ATTORNEY TO BE NOTICED

Defendant

Charles Jordan
Police Chief

represented by **Jeffry Alden Sachs**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Scott
C/o Hampton Police Department

represented by **Alan Brody Rashkind**
Furniss Davis Rashkind & Saunders PC
6160 Kempsville Circle
PO Box 12525
Norfolk, VA 23541-0525

LEAD ATTORNEY

Officers” and/or “Scott” “Jordan” and “Doe”), and in support of such Complaint avers as follows:

I. INTRODUCTION

1. The Plaintiff is a 21 year-old who is currently employed with Food Lion.
2. On or about July 7, 2007 in the afternoon, between the hours of 4:00p.m. and 5:00 p.m., the Plaintiff, an African-American, was driving with his cousin in the City of Hampton, Virginia. Plaintiff was travelling on Mallory Street, when suddenly, without a warrant, probable cause or reasonable articulable suspicion, and for no reason other than the color of his skin, the Plaintiff was pulled over by the Police Officers.
3. In broad day light, and in the presence of others, Officer Scott under the supervision of an unknown Officer removed Plaintiff and his cousin from the vehicle.
4. Officer Scott took Plaintiff out of the police cruiser and told him to take his shoes off.
5. Officer Scott then looked at the unknown officer and asked him “should I do it?”
6. The unknown officer, who appeared to be Officer Scott’s supervisor told him to do it.
7. Officer Scott took Plaintiff around the back of the police cruiser and put a flashlight down the front of his pants. Officer Scott then inserted a hard object in Plaintiff’s rectal cavity.
8. This brutal attack on the Plaintiff was the culmination of the Police Officers’ long-standing assault on the constitutional rights of the citizens of Hampton, Virginia. The Police Officers were permitted to engage in a rampage of widespread and persistent

race-based, unjustified, unreasonable and illegal searches and seizures, excessive force and false reporting, completely undeterred by the City of Hampton, Scott or the unknown officer.

9. The Police Officers' attack on the Plaintiff was allowed to happen because the Hampton City Police Department created a policy under which Hampton City Police force was deficiently trained in that they gave their express and tacit authorizations to widespread and pervasive unconstitutional conduct by Police Officers. Furthermore, the Hampton Police Department failed to adequately prohibit or discourage readily foreseeable unconstitutional conduct in light of the known exigencies of police duty.

10. Additionally, the unconstitutional conduct of the Police Officers was so widespread and pervasive that it had assumed the quality of a "custom or usage" of the Hampton Police Department, of which their policymakers had actual or constructive knowledge. The Hampton Police Department either intended that this "custom or usage" continue, or were deliberately indifferent to stopping or correcting it.

11. The City of Hampton and the Police Officers had actual or constructive knowledge of the widespread and persistent race-based, unjustified, unreasonable and illegal searches and seizures and excessive force by the Police Officers. Their response to this knowledge was so inadequate that it was allowed to continue and resulted in the brutal attack on the Plaintiff.

JURISDICTION

12. This Court has subject matter jurisdiction pursuant to (a) 28 U.S.C. Sections 1331 and 1343. This Court has supplemental subject matter jurisdiction of the pendent state claims under 28 U.S.C. Section 1367.

VENUE

13. Venue is appropriate in this judicial district under 28 U.S.C. Section 1391(b) and (c) because Defendants and Plaintiffs reside here, and a substantial part of the events giving rise to this Complaint occurred here.

14. The amount in controversy exceeds Seventy Five Thousand Dollars, excluding interest and costs.

PARTIES

15. Plaintiff is a 21 year old African-American, a law abiding resident of Hampton, Virginia and a United States citizen.

16. Defendant Scott, at all times relevant to this Complaint was a sworn officer of the Hampton Police Department, acting under color of state law as a police officer of the City of Hampton, Virginia and acting within the course and within the scope of his employment. He is sued in his individual and official capacities.

17. The City of Hampton ,Virginia (“City of Hampton”) is a political subdivision of the Commonwealth of Virginia under the authority of Title 15.2 of Virginia Code and a “person” subject to suit within the meaning of 42 U.S.C. Section 1983. It may be served by serving its City Attorney, Cynthia Hudson, Esquire, at the Office of the City Attorney, Hampton, Virginia.

18. Defendant Jordan, at all relevant times to this Complaint was the Police Chief, acting under color of state law and in the course of and within the scope of his employment. He is sued in his official and individual capacities.

19. Defendant Bradford, at all relevant times to this Complaint was a sworn officer of the Hampton Police Department, acting under color of state law as a police officer of the City of Hampton, and acting within the course and within the scope of his employment. He is sued in his individual and official capacities.

20. Defendants John Doe, at all times relevant to this Complaint was a sworn officer of the Hampton Police Department, acting under color of state law as a police officer of the City of Hampton, and acting within the course and within the scope of his employment. He is sued in his individual and official capacities.

21. On or about July 7, 2007, between 4:00p.m. and 5:00 p.m., Plaintiff and his passenger, Ellis Hill ("Mr. Hill") were traveling in a 1988 Cadillac De Ville (the "Cadillac") in the City of Hampton.

22. The Cadillac was pulled over by a marked police car on Mallory Street in the City of Hampton. Both Plaintiff and Ellis Hill were ordered to get out of the Cadillac.

23. Plaintiff and Ellis Hill complied.

24. Five police cruisers came to the scene.

25. One unknown female officer pulled out her revolver and pointed it at Ellis Hill.

26. Officer Scott took Plaintiff out of his vehicle and placed him in the police cruiser.

27. Officer Scott took Plaintiff out of the police cruiser and told him to take his shoes off.

28. Plaintiff complied.

29. Officer Scott thereafter looked to an unknown officer, whom Plaintiff believed was his supervisor and asked "should I do it?" The supervising officer replied "yes".

30. Officer Scott took Plaintiff around the back of the police cruiser and put a flashlight down the front of his pants. Officer Scott then inserted a hard object in Plaintiff's rectal cavity.

31. Officer Scott, having found nothing during the cavity search, returned Plaintiff to the front of the Cadillac.

32. The female unknown officer looked at Officer Scott perform the cavity search and appeared uncomfortable.

33. The Plaintiff and Mr. Hill were at all times fully cooperative with the Officers.

34. Without requesting or being given the Plaintiff's permission, Officer Bradford and other unknown officers began to search the Cadillac.

35. At no time did Officer Scott or any other officer advise Plaintiff why he had been stopped. At no time during the stop did Officer Scott or any other officer ask Plaintiff to consent to a search of his vehicle or his person.

36. The Police Officers committed the aforementioned acts against the Plaintiff with the knowledge that they would be treated with impunity.

37. At no time did the Plaintiff give his permission or consent to any of the Police Officers to interrogate him, search or seize his person or his personal belongings.

38. At no time did Plaintiff provide any of the Police Officers with probable cause or any legal justification to interrogate him, search or seize his person or his personal belongings.

39. The Police Officers did not possess any search warrant to search the Plaintiff's person belongings, nor an arrest warrant to arrest Plaintiff.

40. The Police Officer's physical and mental abuse, and humiliating search of the Plaintiff and his personal belongings was unreasonable and unsupported by any legal justification.

The Statements of Charge

41. Summaries of the Statements of Charge ("Statements") are set forth below. These Statements provide compelling proof the Police Officers' constitutional violations were so widespread and persistent that Jordan had actual or constructive knowledge of them. Jordan's response to this knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the conduct of the Police Officers.

42. Furthermore, the Statements provide compelling proof that the City of Hampton and Jordan created a policy under which the City of Hampton police force was deficiently trained, and that the training policy deficiencies included express and tacit authorizations of unconstitutional conduct as well as failures to adequately prohibit or discourage readily foreseeable unconstitutional conduct in light of known exigencies of police duty.

43. In addition, the Statements provide compelling proof that the constitutional violations by the Police Officers were so widespread and persistent that they assumed the quality of a "custom or usage" of the Hampton Police Department. The Hampton Police Department had actual or constructive knowledge of the "custom or usage" and either specifically intended that the "custom or usage" continue, or were deliberately indifferent to stopping or correcting the unconstitutional conduct.

44. First, the Statements contain a similarity of "facts" so remarkable as to defy credulity. The Statements have a pattern of stopping young African Americans for alleged equipment

violations or simply to question them long enough to have a K-9 unit brought to the scene to search the vehicles.

45. The only conclusion which can be drawn from the Statements is that the City of Hampton and Jordan had actual or constructive knowledge of the Police Officers' grave misconduct, and/or that the Hampton Police Department created a policy which the Police Officers were deficiently trained.

46. For example:

- a. On or about June 2, 2007, a vehicle driven by Mr. Willis was stopped by Hampton Police Officers for the officers described as "it appeared to have Dark tinted windows". They had one officer speak with the driver Mr. Willis, while the other officer spoke with the passenger, Mr. Bell. The Police Officers detained the two African Americans, while they called the K-9 unit. Officer Bradford brought the K-9 and walked it around the vehicle. Both occupants of Vehicle, passenger and driver were removed from the vehicle and placed in handcuffs and walked to the back of the police cruiser. No drugs were found in vehicle. The Police Officers frisked the two men. One officer told the other that he felt something in Mr. Bell's underwear and in his buttocks' area. One police officer, in broad day light in front of many people, placed Mr. Bell in restraints, placed him across the vehicle and pulled down his pants. The officer then took a knife and cut Mr. Bell's briefs to remove the alleged substance. The General District Court found there was no probable cause.
- b. On or about July 8, 2007, the day after Kirby Johnson had been stopped and had his cavity searched, Bernard Johnson, while driving a 1984 Pontiac Parrisenne was travelling with his brother Kirby Johnson on Mercury Boulevard, when Officer Scott and another officer stopped them. The other officer who was white and balding came up to the vehicle and asked Bernard Johnson if he possessed stolen property. Johnson replied no. The officers asked if they could search the vehicle. Bernard Johnson said no. Officer Scott went over to the passenger side of the vehicle and smiled at Kirby Johnson. Neither officer advised Bernard Johnson why he was being stopped. Bernard Johnson was not charged or given a summons. After driving off, Kirby and Bernard Johnson observed the K-9 dog unit coming.
- c. On or about April 2008, Kirby Johnson was travelling on Pembroke Avenue near a Sav-A-Lot store when he observed a police unit make a u-turn to follow him. The officer stopped him and asked Kirby what he was doing out this time of night. It was approximately 11:00 p.m to 12:00 mid night. The officer told him to get out of the vehicle and asked him when was the last

time he smoked marijuana. Another officer accompanying him was a balding white man. He appeared to be the same officer that was with Officer Scott on the previous occasion when Kirby Johnson was stopped. The officer searched Kirby Johnson. No contraband was found. The officer then asked him whether he had a gun; he further asked Kirby "when was the last time you had a gun?" Kirby Johnson was not charged with anything.

- d. On or about February 20, 2009, at approximately 11:00 a.m., Bernard Johnson was traveling on Pembroke Avenue when he was stopped by a police cruiser. One officer asked for his license and registration. Bernard complied and also opened his glove compartment and allowed everything to fall out so that the officers could see what it contained. He sat in the vehicle waiting for the officer to run a check on his license. In the mean time a K-9 unit came to the scene. Officer Camacho was standing a couple of feet from the door on the driver's side of the vehicle where Bernard was seated. Another officer was standing near the passenger side of the vehicle. No one else was in the vehicle. Officer Camacho told Bernard that he looked nervous. Bernard replied that he was not. Officer Camacho pulled his gun and pointed it at Bernard Johnson. Bernard was subsequently handcuffed and placed him in the back of one of the police cruisers. He was searched and his car was searched. The police officers never asked permission to search Bernard's person nor his vehicle. Bernard was issued a summons for defective brake light.

47. The City of Hampton and Jordan's retention of the Police Officers, and/or failure to otherwise prevent their misconduct, reveals a response to that actual or constructive knowledge that was so inadequate as to show deliberate indifference to or tacit authorization of the conduct of the Police Officers.

The Policy and "Custom and Usage" of the Hampton Police Department

48. The policymakers of the Hampton Police Department, having the final authority to establish and implement their policies, created a policy under which the Hampton City police force was deficiently trained. The Hampton City Police Department's training policy deficiencies included express and/or tacit authorizations of unconstitutional conduct as well as failures to adequately prohibit or discourage readily foreseeable unconstitutional conduct in light of the known exigencies of police duty.

49. The unconstitutional conduct of the Police Officers was so widespread and persistent that it assumed the quality of the “custom or usage” of the Hampton Police Department.

50. The Hampton City Police Department had actual or constructive knowledge of the “custom or usage” and either specifically intended that the “custom or usage” continue, or were deliberately indifferent to stopping or correcting the unconstitutional conduct.

COUNT I

**(Officer Scott and Unknown Officers, Violation of Plaintiff’s
Fourth and Fourteenth Amended Rights)**

51. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. 42 U.S.C. Section 1983 provides that if a public entity acting under the color of state law by policy or practice subjects or causes to be subjected any person to a deprivation of rights, privileges, or immunities secured by the United States Constitution it shall be liable to that person for proper redress, including damages and attorney fees under 42 U.S.C. Section 1988.

53. The Plaintiff asserts Count I of this action against the Police Officers in their individual capacities as well as against the City of Hampton. Count I arises under 42 U.S. C. Section 1983.

54. At all times relevant to this Complaint, the Plaintiff had rights under the Fourth and Fourteenth Amendments to the United States Constitution not to have his person or property unlawfully searched, seized, detained in an unreasonable manner, not be deprived of his liberty without due process of law, and not to be summarily punished.

55. The Police Officers' unreasonable and illegal searches of the Plaintiff's person, automobile and personal property, undertaken without a warrant, probable cause, or reasonable suspicion, deprived him of his Fourth and Fourteenth Amendment rights to be secure in his person and effects against unreasonable searches and seizures.

56. Each of the Police Officer's actions and omissions were committed under color of state law, and were intentional, malicious, and exhibited a conscious disregard and/or reckless indifference to the Plaintiff's rights.

57. The aforementioned actions and omissions by the Police Officers were the cause in fact and the proximate cause of the violation of the Plaintiff's constitutional rights, physical and emotional injuries, loss of personal freedom, and loss of personal property, as set forth more fully above.

58. As a result of the above-referenced misconduct by the Defendants, the Plaintiff has suffered and will continue to suffer: severe physical and mental pain, suffering and emotional distress; permanent injury and disability; lack of enjoyment of life; loss of personal property; and/or medical and psychological expenses.

59. The award of punitive damages against each of the Police Officers is proper because the acts and omissions of the Police Officers were committed with evil motive or intent and/or reckless or callous indifference to the constitutional rights of the Plaintiff and furthermore, are necessary to punish him for his misconduct, and to deter similar misconduct.

COUNT II
(The City of Hampton's Violation of the Plaintiff's Fourth and Fourteenth Amendment Rights)

60. Plaintiffs incorporate by reference allegations set forth in Paragraphs 1 through 59 of their Complaint as if fully set forth herein.

61. The Plaintiff asserts Count II of this action against the City of Hampton. Count II arises under 42 U.S.C. Section 1983.

62. As set forth more fully above, prior to the egregious acts committed upon the Plaintiff, the Hampton Police Officers engaged in a pattern of unjustified, unreasonable and illegal searches and seizures, and excessive force. The Hampton Police recklessly disregarded or were deliberately indifferent to the probability of constitutional harm to the Plaintiff in that:

1. The Hampton Police Department and its as yet unknown final policymaker(s) created a policy under which their police force was deficiently trained, and which included express and tacit authorizations of unconstitutional conduct as well as failures to adequately prohibit or discourage readily foreseeable unconstitutional conduct in light of the known exigencies of police duty; and/or

2. The Hampton Police Department had actual or constructive knowledge of a "custom or usage" which arose from the wide spread and persistent unconstitutional conduct of the Police Officers and that the Hampton Police Department's policymakers either specifically intended that the "custom or usage" continue, or they were deliberately indifferent to stopping or correcting it.

63. The aforementioned actions and omissions by the Hampton Police Department were the cause in fact and the proximate cause of the violation of the

Plaintiff's constitutional rights, physical and emotional injuries, loss of personal freedom, and loss of personal property, as set forth more fully above. As a result of the above-referenced misconduct by the Hampton Police Department, the Plaintiff has suffered and will continue to suffer: severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; loss of personal property; and/or medical and psychological expenses.

COUNT III
Jordan's Violation of the Plaintiff's Fourth and
Fourteenth Amendment Rights

64. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. The Plaintiff asserts Count III of this action against Jordan in his individual and official capacity. Count III arises under 42 U.S.C. Section 1983.

66. At all times relevant to this Complaint, the Plaintiff had rights under the Fourth and Fourteenth Amendments to the United States Constitution not to have his person or property unlawfully searched, seized, detained in an unreasonable manner, not be deprived of his liberty without due process of law, and not to be summarily punished.

67. Jordan had actual or constructive knowledge the Police Officers were engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff.

68. Jordan had actual or constructive knowledge that the Police Officers were engaged in a pattern of unjustified, unreasonable and illegal searches and seizures,

excessive force and false reporting which posed a pervasive and unreasonable risk of constitutional injury to people like the Plaintiff.

69. Jordan's response to this knowledge was so inadequate as to show deliberate indifference or tacit authorization of the conduct of the Police Officers.

70. Jordan's inaction was the cause in fact and the proximate cause of the violation of the Plaintiff's constitutional rights, physical and emotional injuries, loss of personal freedom, and loss of personal property, as set forth more fully above. As a result of the inaction by Jordan, the Plaintiff has suffered and will continue to suffer: severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; loss of personal property; and/or medical and psychological expenses.

COUNT IV
False Imprisonment-The Police Officers

71. The Plaintiff realleges and incorporates herein all of the paragraphs set forth in above.

72. The conduct and actions of the Police Officers caused the Plaintiff to be unlawfully deprived of his personal liberty, by force or threat of force, without his consent, and with his knowledge.

73. The Plaintiff's false imprisonment was executed without a warrant and was done with actual malice, demonstrating ill will, improper motivation and/or an evil purpose on the part of the Police Officers.

74. The aforementioned actions and omissions by the Police Officers were the direct and proximate cause of the Plaintiff's physical and emotional injuries, loss of personal freedom, as set forth more fully above.

75. As a result of the above-referenced misconduct by the Police Officers, the Plaintiff has suffered and will continue to suffer, severe physical and mental pain, suffering an emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical and psychological expenses.

COUNT V
(Battery- The Police Officers)

76. The Plaintiff realleges and incorporates herein all of the paragraphs set forth above.

77. The conduct and actions of the Police Officers constituted an intentional, nonconsensual touching of the Plaintiff's body that was harmful and offensive to him.

78. The Police Officers' intentional, nonconsensual touching of the Plaintiff was done with actual malice, demonstrating ill will, improper motivation and/or an evil purpose.

79. The aforementioned actions and omissions by the Police Officers were the direct and proximate cause of the Plaintiff's physical and emotional injuries.

80. As a result of the above-referenced misconduct by the Defendants, the Plaintiff has suffered and will continue to suffer: severe physical and mental pain, suffering and emotional distress; permanent injury and disability; loss of enjoyment of life; and/or medical and psychological expenses.

COUNT VI
(Intentional; Infliction of Emotional Distress- The Police Officers)

81. The Plaintiff realleges and incorporates herein all of the paragraphs set forth above.

82. The Police Officers' conduct as described herein was extreme and outrageous, beyond the bounds of decency in society and in deliberate disregard of a high degree of probability that emotional; distress would result to Plaintiff.

83. The Police Officers' conduct was done with actual; malice, demonstrating ill will; improper motivation and/or an evil purpose.

84. As a result of the aforesaid acts of the Defendants, the Plaintiff has suffered and will continue to suffer severe and extreme emotional; distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

1) Against the Officer Scott, Officer Bradford and other Unknown Police Officers, under Count I, in the amount of Ten Million Dollars (\$10,000,000.00) and 00/00 in compensatory damages and \$350,000.00 in punitive damages for violations of the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. Section 1983; that Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorneys and expert fees pursuant to 42 U.S.C. Section 1988(b) and (c), against Officer Scott and Police Officers; and that the Plaintiff be awarded any other further and general relief to which it may appear he is entitled.

2) Against the City of Hampton under Count II, in the amount of Fifteen Million Dollars (\$15,000,000.00) and 00/00 in compensatory damages for violations of the United States Constitution as made actionable by the Civil Rights Act of 1871, 42 U.S.C. Section 1983; That the Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorneys and expert fees pursuant to 42 U.S.C. Section

1988(b) and (c), against the City of Hampton; and that the Plaintiff be awarded any other further and other and general relief to which it may appear he is entitled.

3) Against Jordan under Count III in compensatory damages in an amount not less than Ten Million Dollars (\$10,000,000.00) and 00/00 and punitive damages in an amount not less than \$350,000.00; that Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees pursuant to 42 U.S.C. Section 1988 (b) and (c), against Jordan; and the Plaintiff be awarded any other further and general relief to which it may appear he is entitled.

4) Against Police Officers under Count IV in compensatory damages in an amount not less than Ten Million Dollars (\$10,000,000.00) and 00/00 and punitive damages in an amount not less than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; that Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees pursuant to 42 U.S.C. Section 1988 (b) and (c); against Police Officers; and the Plaintiff be awarded any other further and general relief to which it may appear he is entitled.

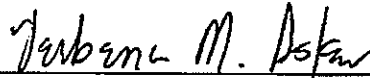
5) Against Police Officers under Count V in compensatory damages in an amount not less than Ten Million Dollars (\$10,000,000.00) and 00/00 and punitive damages in an amount not less than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; that Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees pursuant to 42 U.S.C. Section 1988 (b) and (c) against Police Officers; and the Plaintiff be awarded any other further and general relief to which it may appear he is entitled.

6) Against Police Officers under Count VI in compensatory damages in an amount not less than Ten Million Dollars (\$10,000,000.00) and 00/00 and punitive damages in an amount not less than Three Hundred and Fifty Thousand Dollars (\$350,000.00) and 00/00; that Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees pursuant to 42 U.S.C. Section 1988(b) and (c) against Police Officers; and the Plaintiff be awarded any other and further and general relief to which it may appear he is entitled.

Dated: June 15, 2009

A JURY TRIAL IS DEMANDED

Kirby Johnson



Verbena M. Askew, Esquire (VSB# 19511)
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