



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 17 February 2021 which reads as follows:

“G.R. No. 239633 (*People of the Philippines v. Janet Felamar Quiam alias “Inday”*). – This Appeal¹ seeks to reverse and set aside the February 19, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR HC No. 01465-MIN. The CA affirmed the July 9, 2008 Judgment³ of the Regional Trial Court of Tacurong City, 12th Judicial Region, Branch 20 (RTC), in Criminal Case No. 2124, finding Janet Felamar Quiam alias “Inday” (*accused-appellant*) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

Antecedents

In an Information dated September 5, 2002, accused-appellant was charged with Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of R.A. No. 9165, to wit:

That in the morning of September 3, 2002, at Fernandez Subdivision, Barangay Poblacion, City of Tacurong, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously, have in her possession for sale Two (2) sachets containing a total weight of Point Two [(0.2)] grams [*sic*] of Methamphetamine Hydrochloride and sell and found to have sold One (1) of the Two (2) sachets containing Point One [(0.1)] gram of Methamphetamine Hydrochloride which is commonly known as *SHABU*[.] a regulated drug.

CONTRARY TO LAW.⁴

¹ *Rollo*, pp. 27-28.

² *Id.* at 3-26; penned by Associate Justice Walter S. Ong with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring.

³ *CA rollo*, pp. 59-79; penned by Judge Milanio M. Guerrero.

⁴ *Rollo*, p. 4.

During her arraignment on December 17, 2002, accused-appellant pleaded “not guilty” to the charge. Thus, trial on the merits ensued.⁵

Evidence of the Prosecution

The prosecution presented as witnesses Police Officer I Rudy Garabiles (*PO1 Garabiles*), Police Officer II Wilfredo Ollosa, Jr. (*PO2 Ollosa*), Police Officer II Harlem C. Salcepuedes (*PO2 Salcepuedes*), and Police Superintendent Salome Delos Reyes Jose (*P/Supt. Jose*).⁶

On September 3, 2002, at around 7:00 o'clock in the morning, PO2 Salcepuedes received a tip from a confidential informant that accused-appellant was selling prohibited drugs at 2nd Block, Fernandez Subdivision, Tacurong City. Acting on the information, Police Superintendent Norberto Batislaong (*P/Supt. Batislaong*) conducted a briefing for a possible buy-bust operation. A buy-bust team was thus formed comprised of PO2 Ollosa as the poseur-buyer, and PO1 Garabiles and PO2 Salcepuedes as arresting officers. PO2 Ollosa was given two (2) One Hundred Peso (₱100.00)-bills with his initials written on them, and a pre-arranged signal was also agreed upon.⁷

Thereafter, the buy-bust team proceeded to the target area and positioned themselves. They saw accused-appellant, whom they already knew from previous surveillance, standing on the road near her house. PO2 Ollosa approached accused-appellant and asked her if she had *shabu*. Accused-appellant answered in the affirmative and gave a sachet of suspected *shabu* from her pocket to PO2 Ollosa, who handed accused-appellant the marked money as payment. Upon consummation of the transaction, PO2 Ollosa executed the pre-arranged signal which caused PO1 Garabiles and PO2 Salcepuedes to rush to the scene to arrest accused-appellant. PO1 Garabiles frisked accused-appellant and recovered the marked money from her pocket. PO2 Salcepuedes also frisked accused-appellant and confiscated one (1) more sachet of suspected *shabu*. Afterwards, the buy-bust team brought accused-appellant to the police station. PO2 Ollosa remained in possession of the sachet of suspected *shabu* sold to him by accused-appellant.⁸

Upon their arrival at the police station, PO2 Ollosa handed the sachet of suspected *shabu* that he bought from accused-appellant to PO2 Salcepuedes who marked the sachet with his own initials. PO2 Salcepuedes

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

also marked the sachet he recovered from accused-appellant's pocket with his own initials. P/Supt. Batislaong prepared the request for laboratory examination and personally delivered the same, together with the two (2) sachets of suspected *shabu*, to the crime laboratory.⁹

At the crime laboratory, Police Senior Inspector Marco Donato Q. Ponce De Leon (*PSI Ponce De Leon*) conducted a qualitative examination on the contents of the two (2) sachets of suspected *shabu*. In the Chemistry Report No. D-SK-058-2002, PSI Ponce De Leon confirmed that the contents of the seized evidence were positive for methamphetamine hydrochloride or *shabu*.¹⁰

During trial, PSI Ponce De Leon was already assigned at Zamboanga Del Sur and could not be presented in court. Thus, another request was sent to the crime laboratory for the forensic examination of the drug specimen seized from accused-appellant. P/Supt. Jose conducted a second qualitative examination and also confirmed in Chemistry Report No. D-298-2003 that the contents of the sachets were positive for *shabu*.¹¹

Evidence of the Defense

The defense presented accused-appellant as its sole witness and claimed that the evidence adduced against her were planted by PO2 Ollosa, PO1 Garabiles, and PO2 Salcepuedes. Accused-appellant testified that in the morning of September 3, 2002 she left her house to go to the market. Accused-appellant flagged down a tricycle at the corner of 2nd Block, Fernandez Subdivision and Lapu Lapu Street. When the tricycle stopped, she saw PO2 Ollosa, PO1 Garabiles, and PO2 Salcepuedes inside, whom she all knew because she sees them at the police station where her husband is detained. The three (3) police officers alighted from the tricycle and approached accused-appellant. They asked accused-appellant to board the tricycle and brought her to the police station.¹²

At the police station, accused-appellant was brought inside the investigation room. A female police officer frisked her and asked accused-appellant to take her clothes off. Finding nothing, accused-appellant was told that she was being investigated for selling *shabu*. PO1 Garabiles then showed accused-appellant four (4) cellophanes, some of which contained white crystalline substance, and two (2) One Hundred Peso (₱100.00)-bills.

⁹ Id. at 5-6.

¹⁰ Id. at 6.

¹¹ Id.

¹² Id. at 6-7.

PO1 Garabiles told accused-appellant that the cellophanes and bills belonged to her, which she denied.¹³

The RTC Ruling

In its July 9, 2008 Judgment, the RTC found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs. The dispositive portion of the Judgment reads:

WHEREFORE, upon all the foregoing considerations, the court hereby sentences accused JANET FELAMAR QUIAM alias [*"Inday"*] as follows:

1. To suffer the penalty of life imprisonment; and
2. To pay the fine of five hundred thousand pesos (₱500,000.00)

TO PAY THE COSTS.

Her immediate confinement at the National Bilibid Prisons, Muntinlupa City, is ordered.

For being a detention prisoner, the entire period of her preventive imprisonment shall be credited in the service of sentence imposed on her provided that she voluntarily agreed in writing to abide with the same disciplinary rules imposed upon convicted prisoner, otherwise, with only four-fifths (4/5) thereof.

Meantime, the two (2) sachets of *shabu*, Exhibits "C-2" and "C-3" are ordered forfeited and confiscated in favor of the government and to be disposed of in accordance with law.

On the other hand, the buy bust money, Exhibits "B" and "B-1" are ordered returned to the Tacurong City Police Station upon its due application in writing.

IT IS SO ORDERED.¹⁴

The RTC ruled that the elements of illegal sale of dangerous drugs were duly established by the prosecution. PO2 Ollosa testified on the consummation of the transaction with accused-appellant for the *shabu* in exchange for ₱200.00. P/Supt. Jose thereafter confirmed that the contents of the sachet were positive for *shabu*. The RTC held that the positive testimonies of the police officers, who arrested accused-appellant *in*

¹³ Id. at 7.

¹⁴ CA *rollo*, pp. 78-79.

flagrante delicto, prevailed over the defense's denial which was self-serving and unsubstantiated. The RTC also held that accused-appellant's failure to file a case against the police officers, whom she claimed to have planted the evidence, militates against such claim.¹⁵

Accused-appellant appealed to the CA.

The CA Ruling

In its February 19, 2018 Decision, the CA affirmed the conviction of accused-appellant for the crime charged. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DENIED for lack of merit. The *Judgment* dated 09 July 2008 of the Regional Trial Court, 12th Judicial Region, Branch 20, Tacurong City, in Criminal Case No. 2124 is AFFIRMED.

SO ORDERED.¹⁶

The CA upheld the finding of the RTC that all the elements of illegal sale and of dangerous drugs were adequately established by the prosecution. It applied the "objective test" in determining whether a valid buy-bust operation indeed occurred. According to the CA, the prosecution was able to clearly establish the details of the transaction and the procedure followed by the police officers in a buy-bust operation. After receiving the tip from the confidential informant who confirmed their previous surveillance against accused-appellant's drug-related activities, the police officers conducted a briefing and formed a buy-bust team. PO2 Ollosa, who was assigned as the poseur-buyer, identified accused-appellant as the person from whom he bought a sachet of *shabu* worth ₱200.00. Thereafter, PO1 Garabiles and PO2 Salcepuedes arrested accused-appellant and recovered from her the marked money and one (1) more sachet of *shabu*. The CA also held that a warrant of arrest was not necessary despite the surveillance conducted by the police officers against accused-appellant two (2) weeks before the actual buy-bust operation, since the police officers only confirmed the drug activities of accused-appellant after receiving the tip from the confidential informant. Thereafter, they conducted the buy-bust operation where accused-appellant was caught *in flagrante delicto*, which is one of the situations covered by a lawful warrantless arrest under Sec. 5(a), Rule 113 of the Rules of Court.¹⁷

¹⁵ *Id.* at 74-78.

¹⁶ *Rollo*, p. 25.

¹⁷ *Id.* at 11.

Hence, this appeal.

Issue

Accused-appellant submits the following grounds in support of her appeal:

I.

THE INCONSISTENCIES IN THE TESTIMONIES OF PROSECUTION WITNESSES BELIE THE EXISTENCE OF AN ACTUAL BUY-BUST OPERATION[;]

II.

THERE IS SERIOUS DOUBT AS TO THE INTEGRITY OF THE ALLEGED SACHET OF *SHABU* AS THE PROSECUTION FAILED TO SHOW FAITHFUL COMPLIANCE WITH THE REQUIREMENTS UNDER SEC. 21, [ART. II] OF R.A. [NO.] 9165.¹⁸

Accused-appellant maintains that the prosecution failed to establish the conduct of a valid buy-bust operation due to the inconsistent testimonies of the police officers regarding the duration of the transaction, the place where the transaction took place, and the execution of the pre-arranged signal. She claims that based on the testimony of PO2 Ollosa, the transaction was immediately consummated after he approached her. However, PO2 Salcepuedes testified that he and PO1 Garabiles waited for about fifteen (15) minutes for the transaction to finish. PO2 Ollosa also testified that the buy-bust operation occurred outside, while PO2 Salcepuedes narrated that the transaction took place at her residence. As to the pre-arranged signal, PO2 Ollosa stated that he took off his hat to signal the consummation of the transaction while PO1 Garabiles said that PO2 Ollosa did a downward motion with his hands. Accused-appellant also contends that there was noncompliance with the chain of custody since the alleged sachets of *shabu* recovered from her were not immediately marked after seizure. Moreover, the prosecution's failure to present the testimony of PSI Ponce De Leon, the first forensic chemist who conducted an examination upon the specimen, was fatal to the prosecution's case.¹⁹

¹⁸ CA *rollo*, p. 51.

¹⁹ *Id.* at 51-57.

Plaintiff-appellee, through the Office of the Solicitor General (*OSG*), counters that the alleged inconsistencies in the testimonies were immaterial because these did not alter the fact that the transaction took place as a result of a valid buy-bust operation. The *OSG* also asserts that the apprehending officers followed the procedure under Sec. 21, Art. II of R.A. No. 9165. Moreover, the integrity and evidentiary value of the seized evidence were also shown to have been preserved all throughout. The *OSG* claims that the seized sachets were initially marked at the crime scene in the presence of accused-appellant and were again inventoried at the police station in the presence of accused-appellant and other police officers.²⁰

The Court's Ruling

The appeal is impressed with merit.

To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.²¹ It is necessary to show that the sale transaction actually happened and that the procured object is properly presented as evidence in court and is shown to be the same drugs seized from the accused.²² This is because the drugs seized from the accused comprise the *corpus delicti* of the charge. It is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt and that it must be proven with certainty that the substance bought and seized during the buy-bust operation is exactly the same substance offered in evidence before the court.²³

In order to establish the identity of the drug with moral certainty, the prosecution must sufficiently account for each link in the chain of custody, from the moment the item was seized up to the time it is offered into evidence.²⁴ In *People v. Kamad*,²⁵ the Court identified the links in the chain of custody which must be established by the prosecution: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; (3) the turnover by the

²⁰ *Id.* at 101-107.

²¹ *People v. Ismael*, 806 Phil. 21, 29 (2017).

²² *People v. Roales*, G.R. No. 233656, October 2, 2019.

²³ *People v. Roales*, *supra*.

²⁴ *Mallillin v. People*, 576 Phil. 576, 587 (2008).

²⁵ 624 Phil. 289 (2010).

investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.²⁶

In this case, there are glaring gaps in the chain of custody which significantly compromised the integrity and evidentiary value of the seized drugs.

First Link

The first link in the chain of custody pertains to seizure and marking. Marking is the act done by the apprehending officer or the poseur-buyer of affixing his initials or signature on the illicit drug and other seized items.²⁷ It is of utmost importance that the marking be done in the presence of the accused immediately upon arrest or at the nearest police station or office of the apprehending team.²⁸ The rationale behind such rule is that marking after seizure is the starting point in the custodial link. It is the reference point of the succeeding handlers of the seized evidence and it separates the marked evidence from the corpus of all other similar pieces of evidence from the time of seizure.²⁹

Here, it was not shown that the seized sachets of *shabu* were marked in the presence of accused-appellant. Although PO2 Salcepuedes recalled having marked the seized sachets of *shabu* with his initials,³⁰ nowhere in the records was it shown that the marking was made in the presence of accused-appellant or of the latter's representative. Thus, the Court is left to speculate on the manner as to how PO2 Salcepuedes had marked the seized sachets of *shabu*. The prosecution's failure to show that the apprehending officers complied with this requirement is fatal to its case because the identity and integrity of the seized drugs were not properly preserved from the very beginning.

Aside from properly marking the seized evidence at the place of arrest, the first link in the chain of custody encompasses the inventory and photographing of the seized evidence as described under Sec. 21, Art. II of R.A. No. 9165, which states:

²⁶ Id. at 304.

²⁷ *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

²⁸ *People v. Lumaya*, 827 Phil. 473, 485-486 (2018).

²⁹ *People v. Dahil*, 750 Phil. 212, 232 (2015).

³⁰ TSN, March 16, 2006, pp. 18-19.

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

X X X X.

Additionally, the Implementing Rules and Regulations (*IRR*) for Sec. 21(1), Art. II of R.A. No. 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

X X X X.

The Court finds that the buy-bust team had completely ignored the procedure outlined under Sec. 21, Art. II of R.A. No. 9165. The records are bereft of any evidence that an inventory of the seized items was conducted or that the confiscated drugs were photographed in the presence of accused-appellant. Notable also that testimony from the prosecution witnesses pertaining thereto was lacking. Consequently, none of the mandatory witnesses to the conduct of the inventory and photographing of the seized

evidence were present to authenticate the testimonies of the police officers. In fact, there was no indication that the buy-bust team exerted efforts to secure the attendance of the mandatory witnesses under Sec. 21, Art. II of R.A. No. 9165. The prosecution did not even recognize these procedural lapses in the handling and custody of the seized items by the apprehending officers.

It must be stressed that the step-by-step procedure outlined under R.A.No. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality.³¹ Strict compliance is enjoined to protect the rights of the accused and to preserve the integrity of the confiscated drugs and/or drug paraphernalia introduced as evidence in court.

The Court is aware that the exception to this rule is stated in Sec.21(a), Art. II of the IRR of R.A. No. 9165 which requires: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. None of these circumstances, however, are attendant in this case. To emphasize, the prosecution failed to even acknowledge the serious lapses committed by the police officers in handling the confiscated drugs. Thus, the saving clause under Sec. 21(a), Art. II of the IRR of R.A. No. 9165 is inapplicable to the instant case.

Second link

The second link pertains to the turnover of the seized drugs to the investigating officer for purposes of conducting proper investigation and for the preparation of the necessary documents of the developing criminal case.³² Here, it is unclear who conducted the investigation. The records failed to show or mention the police officer who conducted the investigation after accused-appellant was brought to the police station. The prosecution witnesses merely stated that accused-appellant and the seized evidence were brought to the investigation section of the police station.³³ However, an examination of the case records reveals that P/Supt. Batislaong had prepared the request for laboratory examination,³⁴ although nowhere was it stated that he conducted the investigation or if he handled the seized drug while in the course of accomplishing the necessary documents for its transfer to the crime laboratory. Thus, a gap exists on who had custody during and after the investigation and how the seized sachets of *shabu* were stored and preserved during such time.

³¹ *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

³² *People v. Dahil*, supra note 29, at 235.

³³ TSN, March 16, 2006, p. 7.

³⁴ *Rollo*, pp. 5-6.

Third link

The third link in the chain of custody is the turnover by the investigating officer of the seized drugs to the forensic chemist for laboratory examination. In this case, the prosecution witnesses did not mention who delivered the seized drugs to the crime laboratory, albeit records show that P/Supt. Batislaong delivered the request for laboratory examination.³⁵ Unfortunately, the prosecution failed to present P/Supt. Batislaong or the person at the crime laboratory who received the seized drug from him. This Court notes that there is also nothing in the testimonies of the prosecution witnesses that identified the person who received the request from P/Supt. Batislaong, although records indicate that a certain Senior Police Officer I Garcia Jasil (*SPO1 Jasil*) received the same.³⁶ Thus, this Court is forced to resort to guesswork whether P/Supt. Batislaong actually handled the seized evidence and how he and SPO1 Jasil handled the same while in their custody. There was also no evidence adduced on who exercised custody and possession of the seized *shabu* after it was examined and before its presentation in court.

The Court also notes the two (2) laboratory examinations conducted upon the seized contraband. The first was conducted by PSI Ponce De Leon who could not testify in court due to his assignment in Zamboanga Del Sur at the time of trial. Hence, a second qualitative examination, conducted by P/Supt. Jose, was done which yielded the same results. However, the records are bereft of information on how the seized items were handled by PSI Ponce De Leon before, during, and after his examination of the seized drugs. There was also no mention of the manner P/Supt. Jose handled the seized drugs while the same were in her custody.

Fourth link

As to the fourth link, which is the turnover and submission of the seized evidence from the forensic chemist to the court, the prosecution failed to present any testimonial or documentary evidence on how the sachets of *shabu* were stored and preserved while in the custody of P/Supt. Jose, and before its presentation in court. Nothing in the records show that precautions were taken by P/Supt. Jose to ensure that there was no change in the condition of the seized evidence and no opportunity for someone not in the chain to have possession thereof.³⁷

³⁵ Id.

³⁶ Records, p. 138.

³⁷ *People v. Gutierrez*, 614 Phil. 285, 294 (2009).

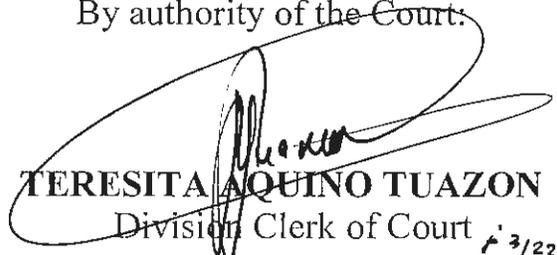
Clearly from the foregoing, the identity and integrity of the seized sachets of *shabu* were not preserved. The prosecution utterly failed to establish the identity of the *corpus delicti* with moral certainty which produces doubts as to whether the illicit drugs allegedly seized from accused-appellant were the same ones presented in court. This leaves reasonable doubt on the guilt of accused-appellant which necessarily binds this Court to acquit accused-appellant from the charges filed against her.

WHEREFORE, the appeal is **GRANTED**. The February 19, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 01465-MIN is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Janet Felamar Quiam alias "*Inday*." She is hereby **ACQUITTED** of the crime charged against her and is **ORDERED IMMEDIATELY RELEASED** from custody, unless she is being held for some other lawful cause. Let an entry of judgment be issued immediately.

The Director of the Bureau of Corrections is **ORDERED** to implement this Resolution and to inform this Court of the date of the actual release from confinement of Janet Felamar Quiam alias "*Inday*" within five (5) days from receipt hereof.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
23 MAR 2021 1:3/23

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Sto. Tomas, Davao Del Norte

THE SUPERINTENDENT (reg)
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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 20
Tacurong City
(Crim. Case No. 2124)

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