SUPREME COURT NO. 92779-1
COURT OF APPEALS NO. 72890-3-I

SUPREME COURT OF THE STATE OF WASHINGTON

WAYNE GODING,

Petitioner,

v.

CIVIL SERVICE COMMISSION of King County; KING COUNTY, a Municipal corporation; KING COUNTY SHERIFF'S OFFICE, a department of King County

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Respondents Civil Service Commission of King County, King County, and the King County Sheriff's Office ask for the relief stated in part II.

II. COURT OF APPEALS DECISION

In this published decision, *Wayne Goding v. Civil Service Commission of King County, King County, and the King County Sheriff's Office*, No. 72890-3-I, 2015 WL 9852179 (Dec. 14, 2015), the Court of Appeals reiterates how courts apply the arbitrary and capricious standard of review to Civil Service Commission decisions regarding employee discipline. When a county sheriff disciplines a deputy sheriff for misconduct, RCW 41.14.120 allows the deputy to appeal to the Commission. The Commission conducts a hearing to decide whether the discipline was in good faith for cause. If the Commission upholds the sheriff's decision, the deputy may appeal to superior court. Judicial review is severely limited, however, and focuses on whether the Commission's decision was arbitrary, capricious, or contrary to law.

After the King County Sheriff disciplined Deputy Wayne Goding for insubordination, he appealed to the Commission, which affirmed the Sheriff's decision following a three-day hearing. Goding appealed to superior court. But instead of conducting a limited review, the court re-

weighed the evidence, substituted its own judgment for that of the Commission, and reversed the Commission. The Sheriff's Office appealed to the Court of Appeals, arguing that the superior court misapplied the standard of review. The Court of Appeals agreed, reversed the superior court, and reinstated the Commission's decision.

The Court of Appeals' decision states no new law and is grounded on longstanding precedent governing the standard of review for administrative decisions. For this reason, there is no basis for review under RAP 13.4(b).

III. COUNTERSTATEMENT OF THE ISSUES

A. In *Perry v. City of Seattle*, 69 Wn.2d 816, 420 P.2d 704 (1966), this Court stated how courts apply the arbitrary and capricious standard of when reviewing Commission decisions. The principles stated in *Perry* include: (1) judicial review is limited to determining whether an opportunity to be heard was given and whether competent evidence supports the charge; (2) an administrative commission's decision is not arbitrary and capricious simply because a court might disagree with it, and (3) reviewing courts may not substitute their judgment for the independent judgment of the Commission. May a trial court disregard *Perry*, re-weigh the evidence, and overturn the Commission's decision simply because it views the decision as "unreasonable?"

B. A public employee may disobey orders that compel what can reasonably be construed as illegal. Following a three-day hearing, Goding failed to persuade the Commission that he reasonably believed the jail's directive to restrain a suspect was illegal. Does Goding's unsubstantiated illegality excuse raise an issue of substantial public importance warranting review under RAP 13.4(b)(4)?

IV. SUMMARY

As a shuttle deputy in the Warrants Unit of the King County Sheriff's Office, Deputy Wayne Goding transported inmates to and from the King County jail. He developed a contentious relationship with jail staff, and there was a perception that Goding resisted complying with jail policies and procedures. Goding's superiors counseled him a number of times that he had to abide by legitimate jail directives, but problems persisted. This caused the jail to restrict Goding's access to certain jail areas, and the Sheriff's Office reprimanded him after he engaged in a heated dispute with jail staff over his refusal to complete paperwork required in the booking process.

The incident in this case occurred on February 20, 2013, when Goding refused a jail sergeant's request to adhere to longstanding jail policy and restrain a felony suspect Goding was escorting through an unsecured area of the jail. In response, Goding's sergeant lodged a

complaint against him, and the Sheriff suspended Goding for one day and transferred him to a patrol position.

Goding appealed to the Civil Service Commission under RCW 41.14.120. He claimed he did not believe it was lawful to restrain the suspect because the suspect was no longer under arrest. The Sheriff's Office presented contrary evidence demonstrating that the suspect was indeed under arrest, that Goding did not reasonably believe it was unlawful to restrain him, that he was simply irritated that the jail had declined the suspect on medical grounds, and that his actions were motivated by defiance. After a three-day hearing where the Commission heard the testimony of seven witnesses and considered over 100 exhibits, the Commission found the Sheriff's discipline was in good faith for cause under RCW 41.14.140.

Goding appealed to superior court. The court mistakenly applied what amounted to a *de novo* standard of review, re-weighed the evidence, substituted its own judgment for that of the Commission, and ultimately reversed the Commission on grounds that its decision was arbitrary and capricious. The Sheriff's Office appealed to the Court of Appeals.

On appeal, the Sheriff argued that the superior court failed to properly apply this Court's analysis in *Perry v. City of Seattle*, 69 Wn.2d 816, 420 P.2d 704 (1966). The *Perry* decision makes clear that a

Commission's decision is not arbitrary or capricious where there is competent evidence to support the charge and the Commission duly considered the evidence. By re-weighing the evidence, discounting evidence that supported the charge, and substituting its judgment for that of the Commission, the Sheriff argued that the superior court's judgment was incorrect.

The Court of Appeals agreed, recognizing that judicial review under RCW 41.14.120 is quite limited. The court correctly applied *Perry* to the facts of the case, reversed the superior court, and reinstated the Commission's decision. While the court's decision contains a detailed discussion of the facts, it announces no new law. There is no basis for discretionary review under RAP 13.4(b).

V. STATEMENT OF THE CASE

1. TO REDUCE TENSIONS, THE SHERIFF'S OFFICE DIRECTS GODING TO FOLLOW JAIL POLICIES AND REQUESTS.

Goding worked as a shuttle deputy in the Criminal Warrants Unit of the Sheriff's Office for nearly two years before the "handcuffing" incident of February 20, 2013. CP 1156. During that two year period, tension developed between DAJD staff and Goding and his partner, Detective Matthews. CP 1156-57. There was a perception amongst jail

staff that Goding resisted complying with jail policies and requests. CP 557.

In response, beginning in March 2012, the Sheriff's Office directed Goding and others in the Warrants Unit that they had to follow jail staff directions unless a request was unsafe or illegal. CP 790. This directive emphasized that the shuttle deputies must be courteous with jail personnel and follow their directives, and if disputes developed, raise concerns with Sheriff's Office later rather than arguing with jail staff at the site. CP 790.

The directive did not resolve the tensions. In July 2012, DAJD Operations Captain Jerry Hardy complained to the Sheriff's Office that two of its officers – apparently Goding and his partner Matthews – were "souring" the relationship between the two agencies. CP 1157. Hardy explained that "the working relationship is nonexistent", and that the jail was considering restricting the deputies' access. CP 1157.

2. FOLLOWING A HEATED DISPUTE WITH JAIL STAFF, GODING IS REPRIMANDED FOR REFUSING TO FOLLOW JAIL POLICIES.

The jail did ultimately restrict Goding's access following another incident on August 7, 2012. CP 824; 1157. Goding refused a DAJD officer's request to complete a "Superform" sheet when booking an inmate. CP 1138; 1156. A DAJD sergeant intervened, but Goding still

refused to complete the form. Finally, Goding's own supervisor, Sheriff's Sergeant Porter, became involved. Porter had to ask Goding two times to complete the Superform, which he finally did. CP 1138. A number of witnesses characterized the incident as aggressive, heated, and "at least" unprofessional. CP 1138. Jail Captain Hardy, concerned about the potential for further conflict, limited the areas of the jail that Goding and his partner could access. CP 824.

The following day, Sheriff's Captain Hodgson wrote Goding and his partner stating that there was a "high level of concern" surrounding the continuing conflicts between them and jail staff. CP 825. He repeated the need for them to complete requested tasks without criticism or resistance. CP 824-25. Hodgson wrote that if concerns arose that were of an emergent, safety nature that could not wait, Goding could contact his sergeant immediately. *Id.* Short of that, however, he was to raise issues with his sergeant after the fact and not try to work them out with jail staff on his own. *Id.* Captain Hodgson repeated these expectations to Goding and his partner in a meeting on August 14, 2012. CP 718.

In December 2012, following an internal investigation, the Sheriff's Office issued Goding a written reprimand over the Superform incident. CP 1139. Goding did not accept responsibility his actions, but instead blamed the problems on jail personnel. CP 236-37.

3. GODING REFUSES A JAIL DIRECTIVE TO HANDCUFF A PRISONER.

The incident at issue in this case occurred on February 20, 2013, near the end of Goding's shift. CP 940. Sheriff's Sergeant Myers called Goding and his partner, Detective Matthews, and asked that the two of them go to Enumclaw to pick up a suspect and take him for booking into the King County jail in Kent (MRJC). CP 940. The suspect, Harlon Phipps, was wanted on a felony warrant for threatening to bomb or injure property. CP 888, 1158.

Sergeant Myers was familiar with Phipps, and knew that he had medical concerns that could create "issues" with booking him. CP 922. When Goding and Matthews arrived to take custody of Phipps, Myers instructed Matthews that if there were medical problems with booking him, he was to call Myers on his cell phone so that he could talk to the nurse to see what needed to be done to get Phipps booked. CP 922.

On arrival at the jail, health staff evaluated Phipps and found him too medically unstable to be booked, meaning that he would have to be transported to a medical facility for treatment. CP 642, 722. One nurse who evaluated Phipps stated that Goding and Matthews were irritated by the decision, and were pushy and persistent in seeking to change it. CP 643. Another nurse felt that Goding and Matthews were "kind of hostile"

(CP 649), and stated that there was a lot of "eye rolling" by Detective Goding. CP 720. Goding emphasized the seriousness of the charges against Phipps in an effort to get him booked. CP 643.

While still in the jail, Matthews phoned Sergeant Myers to tell him that the jail had declined Phipps for medical reasons. CP 922. Myers instructed Matthews to transport Phipps to Valley Medical Center and release him, and Matthews relayed this instruction to Goding. CP 723, 1158.

Goding had escorted thousands of prisoners into the Intake Transfer & Release section of the jail, and he had previously taken prisoners rejected for medical reasons out of the jail to medical facilities. CP 1159. In all of those instances, Goding had re-handcuffed the prisoner for the escort back through the Sally Port.[1] CP 1159. Once outside, he would generally receive further instruction about whether the suspect was to be kept in custody or released. CP 1159. On February 20, 2013, however, he received Myers' instruction to release Phipps at Valley Medical Center while they were still inside the jail. CP 1159.

[1]In his Petition for Review, at p. 3, Goding notes that Phipps was not restrained while inside the jail. This is not unusual. Inmates are unrestrained in the Intake, Transfer and Release section of the jail, but only after a pat down search to ensure they have no weapons. CP 365. An unarmed inmate leaving the jail through the unsecured Sally Port, however, could still gain access to an officer's weapon (CP 358, 723), thus justifying the jail's restraint policy.

Goding began escorting Phipps from the jail without chaining or handcuffing him. CP 723, 1158. A jail correction officer, Michael Ley, noticed that Phipps was not restrained and asked Goding to handcuff him. CP 560. Although Phipps was in Goding's custody and would remain in custody until his release at the hospital (CP 374-75; 923), Goding told Ley that the prisoner was no longer under arrest and that, in his view, it would be illegal to handcuff him. CP 723. Officer Ley explained to Goding that jail policy required that the prisoner be handcuffed while exiting, but Goding continued to argue that it would not be proper to handcuff Phipps. CP 723.

Officer Ley asked his sergeant, DAJD Sergeant Richardson, to intervene and explain the jail's policy to Goding. CP 351. Richardson told Goding that even those refused booking must be handcuffed on the way out. CP 351. This was necessary, Richardson explained, because the person had to pass through an unsecure jail area where officers could be handling weapons and other arrestees could be present. CP 358, 723. Goding replied that he would not handcuff Phipps unless "a sergeant" told him to. CP 723. To Richardson, this meant that his status as a jail sergeant wasn't good enough for Goding. CP 351-52; 723-24.

Sergeant Richardson learned that Detective Matthews, who was standing nearby, was still talking on the phone to Sheriff's Sergeant

Myers. CP 724. Goding stated that "whatever Sergeant Myers says to do, I'll do." CP 723. Richardson then got on the phone with Myers to explain the situation. Richardson did not relay Goding's alleged illegality concerns to Myers, and Goding was aware of this. CP 489.

Sergeant Myers agreed with Richardson that Goding should handcuff the prisoner, acknowledging that the jail's requirement had been in place for as long as he [Myers] had been with the Sheriff's Office. CP 353, 723. Richardson gave a "thumbs up" sign to Goding, and Goding proceeded to handcuff Phipps. CP 723. He placed the waist restraints on Phipps so loosely that they hung down to his knees, potentially allowing Phipps to simply step out of them. CP 355. Goding and Matthews then left the facility and transported Phipps to the hospital. CP 1159.

The following day, Sergeant Myers spoke with Goding about the incident. CP 923. Myers explained that Phipps was in their custody and would remain in their custody until released at the hospital, and that it was the jail's policy to restrain prisoners moving through the Sally Port area. CP 923. Myers asked Goding what he would have done if he, Myers, had not been available by telephone. CP 923. Goding replied that he would have just "done it anyways" – i.e. handcuffed Phipps. *See* CP 923. Myers then ended the conversation, directing Goding to "follow the direction

from ... jail staff and that if he had any issues with it, he would need to contact [him] afterwards." CP 923.

4. GODING RECEIVES A ONE-DAY SUSPENSION AND A TRANSFER TO PATROL FOR INSUBORDINATION.

In March 2013, Myers filed a complaint alleging insubordination against Goding with the Internal Investigations Unit (IIU) of the Sheriff's Office. CP 1034. The complaint asserted that Goding refused to restrain a prisoner at the direction of jail staff on February 20, 2013, thereby failing to obey a written directive from Captain Hodgson issued August 8, 2012. CP 1034. Following a *Loudermill*[2] hearing in September 2013, the King County Sheriff sustained the charges, issuing Goding a one day suspension and an immediate transfer to a patrol position. CP 1156.

5. THE CIVIL SERVICE COMMISSION UPHOLDS THE DISCIPLINE, AND THE SUPERIOR COURT REVERSES.

Goding appealed to the Civil Service Commission, and after a three-day hearing in January and February 2014, the Commission found that the Sheriff imposed the discipline in good faith for cause. CP 1163. The key issue was whether the King County Sheriff properly rejected Goding's defense that his refusal to handcuff Phipps was due to a legitimate concern over the lawfulness of his actions. CP 1159-60. In

[2] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

finding that Goding's illegality concern was not legitimate, the Commission relied on evidence showing that:

1. The jail's rule of restraining prisoners escorted through the unsecured Sally Port area was longstanding, consistently followed, justified for safety reasons, and lawful (CP 311-12; 358-59; 456-57; 374-75; 923, 888, 358 and 723);

2. Despite the jail's medical deferral, Phipps remained under arrest and in custody until his release at the hospital (CP 374-75; 923);

3. Goding had booked thousands of persons into the jail, and he admitted that he had never escorted a prisoner through the Sally Port unrestrained (CP 456-57);

4. When the jail declined Phipps for medical reasons, Goding was visibly irritated, "kind of hostile", persistent and pushy in an effort to change the jail's position, and rolled his eyes in apparent frustration (CP 643, 648-49, 720);

5. Jail staff at the scene viewed Goding's behavior during the incident as disrespectful (CP 723; 351-52);

6. Goding's prior discipline and history of resistance to jail policies tended to show that his intent in refusing to handcuff Phipps was defiance as opposed to a legitimate concern over the legality of his actions (CP 557, 1157, 1162);

7. When he did apply the restraints to Phipps, Goding did so in a loose and unsecure manner. Sergeant Richardson's direct observation of Goding left him with the impression that Goding was behaving defiantly and "just doing it for show" (CP 354), and

8. Goding's actions were not consistent with a genuine belief that handcuffing the prisoner (Phipps) would have been illegal. CP 1161. Had Sheriff's Sergeant Myers been unavailable, Goding admitted he would have just handcuffed Phipps anyway. CP 653. And Goding made no effort to communicate his alleged illegality concerns to Sheriff's Sergeant Myers while at the scene, despite knowing that Sergeant Richardson did not relay his alleged illegality concerns to Myers. CP 489.

Goding appealed to superior court, which reversed the Commission and ordered, in part, that Goding be reinstated to his prior position in the Warrants Unit. CP 1223. The Commission and the King County Sheriff's Office then appealed to the Court of Appeals.

6. THE COURT OF APPEALS APPLIES THE CORRECT STANDARD OF REVIEW, REVERSES THE SUPERIOR COURT, AND REINSTATES THE COMMISSION'S DECISION.

Relying heavily on this Court's analysis in *Perry v. City of Seattle*, 69 Wn.2d at 819-821, the Court of Appeals stated the proper standard of review and applied it to the facts. Judicial review of Commission

decisions under RCW 41.14.120 is severely limited and summary in nature. *Greig v. Meltzer*, 33 Wn. App. 223, 226, 653 P.2d 1346 (1982). The issue is whether the discipline was in good faith for cause. *Id.* The crucial question is whether there is evidence to support the Commission's conclusion. *Perry*, 69 Wn.2d at 821. While the reviewing court exercises independent judgment to determine whether the Commission's decision is arbitrary, capricious, or contrary to law, a decision is not arbitrary and capricious simply because a reviewing court may have decided the issue differently based on the record. *Id.* Reviewing courts cannot substitute their judgment for the independent judgment of the Commission. *Id.*

Applying these standards to facts, the Court of Appeals determined that Goding had an opportunity to be heard at the Commission hearing and that there was evidence to support the insubordination charge. Therefore, the Commission's decision was not arbitrary and capricious. The Court of Appeals reversed the superior court's decision and reinstated the Commission's decision.

VI. ARGUMENT

Goding contends review is warranted for two reasons. *See* Petition for Review, at 12. First, he claims review is justified under RAP 13.4(b)(1) because the Court of Appeals' decision conflicts with its decision in *Eiden v. Snohomish County Civil Service Comm'n*, 13 Wn.

App. 32, 533 P.2d 426 (1975). Second, he argues this case presents an issue of substantial public interest under RAP 13.4(b)(4). Neither basis for review is satisfied in this case.

A. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH ITS DECISION IN *EIDEN.*

Goding maintains that when a deputy appeals from a Commission decision, the reviewing court should re-weigh the evidence and conduct a trial *de novo* on appeal, all in a quest to determine what is "reasonable." Petition for Review, at 15-16. This flatly contradicts RCW 41.14.120 and this Court's decision in *Perry*. But Goding argues that his proposed analysis is required under the Court of Appeals' decision in *Eiden v. Snohomish County Civil Service Commission*, 13 Wn. App. 32, 533 P.2d 426 (1975), a decision he claims is inconsistent with the Court of Appeals' decision in this case. Petition for Review, at 12-15. Goding misinterprets the *Eiden* decision.

In *Eiden,* the Snohomish County Sheriff's Department terminated deputy James Eiden for answering a telephone using the name of another deputy. He appealed to the Civil Service Commission, which reduced the discipline to a demotion and suspension but made no findings of fact. Eiden appealed to superior court, which *did* enter findings and conclusions, reversed the Commission, and reinstated Eiden to his original

position. The Commission appealed to the Court of Appeals, assigning error to a number of the superior court's findings and conclusions. *Eiden*, 13 Wn. App. at 33-36.

The parties in *Eiden* disputed the significance of the superior court's findings, which it entered in its appellate capacity on review of the Civil Service Commission's decision. *See Eiden*, 13 Wn. App. at 40. The Commission argued that the superior court improperly entered findings because a "scintilla" of the evidence supported the Commission's decision, while respondent (Eiden) claimed that the trial court's findings were supported by substantial evidence and were therefore "verities" on appeal. *Id.*

The court did not adopt either contention, stating instead that "the trial court did not per se err in entering these findings but, in making our independent review of the record, *we must determine whether we agree with the trial court's findings,* not merely whether such findings are supported by substantial evidence." (italics added; footnote omitted) *Eiden*, 13 Wn. App. at 40.

The court ultimately affirmed the superior court, finding that there was no persuasive evidence that deputy Eiden's use of another deputy's name in a single phone call established that he was incompetent. *See Eiden,* 13 Wn. App. at 41. The discipline was therefore not in good faith

for cause and was contrary to law. *Eiden*, 13 Wn. App. at 42.

Goding maintains that the *Eiden* court's statement – "we must determine whether we agree with the trial court's findings" – applies with equal force when courts review a *Commission's* findings and conclusions entered following a contested hearing. He is wrong.

The superior court's findings in *Eiden* were made in an appellate capacity and were not entitled to deference by the Court of Appeals. *See Greig*, 33 Wn. App. at 226 (although trial court entered findings, our review remains that of the record considered by the trial court and not the findings of the superior court). Because the *Eiden* court was reviewing the superior court's non-binding findings rather than the Commission's findings, it was acceptable for the court to determine whether it agreed with the superior court's findings.

But when the Commission does enter detailed findings and conclusions on all disputed issues following a hearing, as it did in this case (CP 1156-1163), those findings are entitled to deference under RCW 41.14.120 and *Perry*. The court does not consider the weight or sufficiency of the evidence or re-try the case on appeal. *Perry*, 69 Wn.2d at 819. Judicial review is limited to whether the employee had an opportunity to be heard and whether competent evidence supports the charge. *Perry*, 69 Wn.2d at 821.

Eiden's analysis governs the atypical scenario where a Commission enters no findings but the reviewing court makes a series of non-binding findings and conclusions. This case addresses the standard situation where the Commission does enter findings. The decisions are distinguishable on that basis and do not conflict.

B. GODING'S UNSUBSTANTIATED ILLEGALITY ARGUMENT DOES NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE UNDER RAP 13.4(b).

Goding seeks to reargue a point rejected by both the Commission and the Court of Appeals - that that his refusal to restrain Phipps in the jail was due to a genuine concern over the lawfulness of his actions. Petition for Review, at 18-20. Goding argues that the Court of Appeals' decision upholding the Commission could deter law enforcement officers from considering the propriety of the orders they are given. *Id.*

Goding's concerns are unfounded. This Court has stated that it is permissible for a public employee to disobey orders that are criminal, unsafe, or that compel what can reasonably be construed as illegal. *Lowry v. State,* 102 Wn.2d 58, 62, 684 P.2d 678 (1984). Goding had every opportunity to persuade the Commission that he *reasonably* believed Phipps was not under arrest and that it would be illegal to restrain him. He simply failed to carry his burden of proof. CP 1160. Because the

evidence did not show that Goding reasonably believe he was being asked to do anything unlawful, the *Lowry* decision does not apply.

VII. CONCLUSION

Sheriff deputies who are disciplined for misconduct have a right to a full hearing before the Civil Service Commission under RCW 41.14.120, and Goding had his hearing in this case. Displeased with the Commission's decision, Goding asks this Court to discard decades of precedent and transform appeals from Commission decisions into *de novo* mini trials, where contested factual issues are re-tried in superior court and the Courts of Appeals. There is no legal or policy justification for his position. The Court of Appeals' decision is correct and made no new law. This Court should therefore deny Goding's Petition for Review.

RESPECTFULLY SUBMITTED this 14th day of March, 2016.

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CERTIFICATE OF FILING AND SERVICE

On the 14th day of March, 2016, I filed the foregoing via email to supreme@courts.wa.gov and served the same via email pursuant to the January 21, 2015 agreement of the parties to the following counsel of record and assistants:

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I further certify that a copy of the same was served by hand-delivering to ABC-Legal Messengers, Inc. to be served on the Court of Appeals, Division I at 600 University St, Seattle, WA 98101.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

By: _____
LUCIA TAM
Legal Secretary

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Good afternoon Clerk of the Court,

Attached for filing is the "Respondents' Answer to Petition for Review" with Certificate of Filing and Service. Thank you.

Case name: **Wayne Goding v. King County Sheriff's Office**
Case number: **Supreme Court No. 92779-1, Court of Appeals No. 72890-3-I**
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