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IN THE
COURT OF APPEALS OF INDIANA

No. 21A-CR-1315

CHRISTOPHER HARRIS, *Appellant-Defendant*, *v.* STATE OF INDIANA, *Appellee-Plaintiff*.	Appeal from the Marion Superior Court, No. 49D27-1908-F3-032941, The Honorable Angela Dow Davis, Judge, The Honorable Barbara Crawford, Senior Judge.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Whether Harris has established that the trial court erred in ruling on the admissibility of evidence.

II. Whether the evidence is sufficient to sustain Harris's convictions.

STATEMENT OF THE CASE

On August 20, 2019, the State charged Harris with Level 3 felony armed robbery, Level 5 felony battery, Level 6 felony criminal recklessness, and Level 4 felony unlawful possession of a firearm by a serious violent felon (App. Vol. II 28-29). On September 17, 2019, the State filed a habitual offender enhancement (App. Vol. II 72). The parties waived a jury trial, and the State dismissed the Level 4 felony firearm charge (App. Vol. II 156-61; Tr. Vol. II 71-72).

At the conclusion of the bench trial on August 25, 2020, the trial court found Harris guilty of robbery and battery but not guilty of criminal recklessness because "the facts in that [charge] should merge with Count II" (App. Vol. II 12; Tr. Vol. III 6). Harris requested a jury trial for the habitual offender allegation, and a jury was convened for the enhancement on September 3, 2020 (App. Vol. II 11; Tr. Vol. III 10, 16). The jury found that Harris was a habitual offender (App. Vol. II 11; Tr. Vol. III 126). On June 17, 2021, the trial court imposed an aggregate sentence of 27 years in the Department of Correction (App. Vol. II 21; Tr. Vol. III 156-57). On June 29, 2021, Harris filed a Notice of Appeal (Online Docket).

STATEMENT OF FACTS

In the summer of 2019, Harris was spending time with Autumn Summers and was in love with her (Tr. Vol. II 224; Exhibits at pdf p. 100-01, 104). Harris learned that Summers had previously been involved in a "flirtatious relationship" with Alex Roberts (Tr. Vol. II 102-03, 223-25). Roberts was a maintenance worker at Summers' apartment complex and would see her from time to time (Tr. Vol. II 101-02, 223). Harris made comments to Summers indicating that he was jealous of Roberts (Tr. Vol. II 226-27).

In August of 2019, Harris saw Roberts and asked if Roberts and Summers were "messing around" (Tr. Vol. II 105). Roberts told Harris no (Tr. Vol. II 105-06). About two weeks later, on August 17, 2019, Roberts stopped at his mailbox, and as he began to drive away, a maroon Chevrolet Suburban swerved in front of Roberts (Tr. Vol. II 106-07). Harris exited the passenger side of the Suburban and approached Roberts' vehicle (Tr. Vol. II 107-08). Roberts rolled down his window, and Harris put a "gun in [Roberts'] face" (Tr. Vol. II 108). Harris yelled, "[W]hy did you lie? I knew you was messing with her" (Tr. Vol. II 108). Harris fired a shot into the seat of Roberts' vehicle and "kept yelling" (Tr. Vol. II 109). Harris "swung the gun at [Roberts] and it went off" (Tr. Vol. II 110). Roberts was injured on "the left side of [his] head and back" and was not sure if the injury was from the gun hitting his head or if a bullet grazed his head (Tr. Vol. II 110). Harris directed Roberts to call Summers, and Roberts complied (Tr. Vol. II 112). Summers did not immediately answer, and Roberts dropped the phone (Tr. Vol. II 112).

Harris pointed his gun at Roberts' face and said, "[W]hat do you got on you? Give me everything you've got and give me that chain too" (Tr. Vol. II 112-13). Roberts was wearing a "necklace type chain" (Tr. Vol. II 113). Roberts handed over the items that Harris demanded, including a small amount of cash in Roberts' possession (Tr. Vol. II 112-13). Harris ordered Roberts to get out of the vehicle (Tr. Vol. II 113). Roberts exited his vehicle and walked toward the curb (Tr. Vol. II 113). Harris fired several shots into the front of Roberts' vehicle (Tr. Vol. II 114). Harris then reentered the maroon Suburban, which drove off (Tr. Vol. II 115).

Shortly after the incident, Roberts identified Harris from a photo array as the person who robbed and assaulted him (Tr. Vol. II 119-20). The evening of the incident, police stopped a maroon Suburban in a store parking lot and found Harris inside the vehicle (Tr. Vol. II 168-69). There was a handgun in between the middle console and the passenger seat of the vehicle (Tr. Vol. II 169). A firearms examiner determined that the cartridges found at the scene of the robbery were fired by the firearm found in the Suburban (Tr. Vol. II 188, 216). Harris was also in possession of Roberts' chain necklace (Tr. Vol. II 121, 188-89).

Summers subsequently realized that part of the conversation between Harris and Roberts during the robbery and battery had been recorded on a voicemail when Roberts had called her (Tr. 228; St. Ex. 5). Gunshots could be heard on the recording, and Harris also could be heard on the recording saying, "Get out of the truck" (Tr. Vol. II 116-17; St. Ex. 5). Harris later called Summers and told her

something "along the lines of I fucked up" (Tr. 229). Summers asked Harris what he did, and Harris told her to ask Roberts (Tr. Vol. II 229).

After Harris was arrested, he called Summers from the Marion County Jail (Tr. Vol. II 230; St. Ex. 85A). During the call, Harris expressed love for Summers and told her that he knew she loved him (St. Ex. 85A; Exhibits at pdf p. 100). Summers made it clear that she was not interested in a relationship with Harris and told him, "The damage has already been done" (Exhibits at pdf p. 101). Harris replied, "I ain't did damage to you, I did damage to your boyfriend" (Exhibits at pdf p. 101).

Following Harris's convictions for robbery and battery at a bench trial, a jury was convened for the habitual offender enhancement (Tr. Vol. III 16). A stipulation was entered into evidence that Harris had prior, unrelated felony convictions (Tr. Vol. III 102-03). Specifically, Harris was convicted and sentenced for Class B felony robbery in 2002 and was convicted and sentenced for Level 4 felony unlawful possession of a firearm by a serious violent felon in 2013 (Tr. Vol. II 103). Harris also stipulated that he was convicted of Class B felony robbery in the present case (Tr. Vol. III 104).

Harris testified that he committed the 2002 robbery when he was 19 years old and that he committed the 2013 firearm offense when he was 32 years old (Tr. Vol. III 105-06). Following this testimony, Harris informed the court during an offer to prove that he wished to offer evidence that around 30 days before he committed the current robbery in 2019, he was diagnosed with PTSD (Tr. Vol. III 109-10).

Harris stated that his therapist had prescribed medication that "was too strong" for him and that he "was supposed to go get [his] medicine adjusted" (Tr. Vol. III 110). Harris indicated that he "never had a chance to get [his] medicine adjusted because [he] got in trouble, which is the situation here" (Tr. Vol. III 110). The trial court ruled the evidence about Harris's PTSD and medication was inadmissible as follows:

> First of all, during the trial, you had the opportunity to present that evidence to that Court. Secondly, those are issues that are more relevant to sentencing, rather than what the jury has to decide today. I don't believe they're relevant and so I'm not going to allow that information.

(Tr. Vol. III 112).

Harris subsequently noted that he also wished to testify that although he pled guilty to robbery in 2002, he "really wasn't guilty of the situation" and was merely "in the wrong place at the wrong time" (Tr. Vol. III 114). The trial court ruled that this evidence was also inadmissible as it was an impermissible collateral attack on a prior conviction (Tr. Vol. III 114).

SUMMARY OF ARGUMENT

I. Harris's constitutional claims are waived. When the trial court was considering his offer to prove, Harris never identified any constitutional provisions to support the admission of the evidence. Because Harris did not raise any constitutional arguments in the trial court, he has waived these claims on appeal. Harris does not raise a claim of fundamental error, and therefore, any such claim is waived as well. Waiver notwithstanding, Harris has failed to establish any error.

Both the Indiana Supreme Court and the General Assembly have made clear that the only relevant evidence in a habitual offender proceeding is evidence that proves or disproves the defendant's prior felony convictions. Because Harris's proffered evidence was not relevant, and there is no constitutional right to admit irrelevant evidence, the trial court did not err in ruling the evidence was inadmissible.

II. The evidence is sufficient to sustain Harris's convictions for robbery and battery. Roberts identified Harris both from a photo array and at trial as the man who robbed and assaulted him with a firearm. Furthermore, Roberts' testimony was corroborated by the partial recording of the incident on Summers' voicemail, as well as Harris's jail-recorded phone call with Summers, and the physical evidence such as the gun that was found in the maroon Suburban that Harris was stopped in the day of the incident. Therefore, the evidence is sufficient to sustain Harris's convictions.

ARGUMENT

I.
Harris has failed to establish that the trial court erred in ruling on the admissibility of evidence.

"Trial courts have broad discretion whether to admit or exclude evidence." *Matter of K.R.*, 154 N.E.3d 818, 820 (Ind. 2020) (citing *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019)). A trial court's evidentiary decisions are reviewed for an abuse of discretion and will be reversed only when the decision is clearly against the logic and effect of the facts and circumstances before the court. *Nicholson v. State*, 963 N.E.2d 1096, 1099 (Ind. 2012). "A claim of error in the exclusion or admission of

evidence will not prevail on appeal unless the error affects the substantial rights of the moving party." *Id*. (quoting *McCarthy v. State*, 749 N.E.2d 528, 536 (Ind. 2001)). An appellate court "will uphold the trial court's ruling on the admission of evidence during trial if it is sustainable on any legal theory supported by the record, even if the trial court did not use that theory." *Tinker v. State*, 129 N.E.3d 251, 255 (Ind. Ct. App. 2019), *trans. denied*.

A. Harris's claims are waived.

As an initial matter, Harris's constitutional claims are waived. During the habitual offender phase of the proceedings, Harris stated to the court that "there are things that we think the jury should hear" (Tr. Vol. III 108). However, when discussing the matter with the trial court, Harris failed to cite any constitutional provision in support of his claim (Tr. Vol. III 108-12). "In order to preserve a claim of trial court error in the admission or exclusion of evidence, it is necessary at trial to state the objection together with the specific ground or grounds therefor at the time the evidence is first offered." *Mullins v. State*, 646 N.E.2d 40, 44 (Ind. 1995). Because Harris did not raise any constitutional arguments in the trial court, he has waived these claims on appeal. *See Gill v. State*, 730 N.E.2d 709, 711 (Ind. 2000) (a defendant may not raise an argument on appeal that was not made in the trial court); *Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) ("any grounds not raised in the trial court are not available on appeal"); *Cole v. State*, 28 N.E.3d 1126, 1135 (Ind. Ct. App. 2015) (defendant's arguments that the trial court's admonition to the jury violated his due process rights and denied him his right to present a defense

were waived because he failed to make an objection based on these grounds at trial.); *Saunders v. State*, 848 N.E.2d 1117, 1122 (Ind. Ct. App. 2006) (holding that the defendant waived his argument that excluded evidence violated his constitutional right to confront witnesses by failing to make that argument at trial), *trans. denied*.

B. Any claim of fundamental error is waived.

Harris does not raise a claim of fundamental error regarding the trial court's ruling, and thus, any such an allegation is waived as well. *Bowman v. State*, 51 N.E.3d 1174, 1179-80 (Ind. 2016) (because the appellant "failed to raise the issue of fundamental error in his initial appellate brief[,]" such a claim was "entirely waived"); *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (stating that because the defendant did not argue fundamental error in his appellant's brief, any claim of fundamental error was waived); Ind. App. Rule 46(A)(8)(a).

C. Waiver notwithstanding, Harris has failed to establish any error.

Waiver aside, Harris has failed to establish any error in the trial court's ruling. During his testimony for the habitual offender phase, Harris acknowledged that he was convicted of robbery in 2002 and unlawful possession of a firearm by a serious violent felon in 2013 (Tr. Vol. III 106). He also acknowledged his conviction for robbery in 2019, and during his subsequent offer to prove, Harris indicated that he wished to testify that around 30 days before his most recent armed robbery conviction, he was diagnosed with PTSD (Tr. Vol. III 106, 110). Harris stated that the medication his therapist prescribed "was too strong" for him and that he "never

had a chance to get [his] medicine adjusted because [he] got in trouble, which is this situation here" (Tr. Vol. III 110). The trial court ruled the evidence was not relevant stating,

> First of all, during the trial, you had the opportunity to present that evidence to that Court. Secondly, those are issues that are more relevant to sentencing, rather than what the jury has to decide today. I don't believe they're relevant and so I'm not going to allow that information.

(Tr. Vol. III 112).

1. Article 1, Section 19

In challenging the trial court's decision, Harris first relies upon Article 1, Section 19 of the Indiana Constitution, which states, "In all criminal cases whatever, the jury shall have the right to determine the law and the facts." Our Supreme Court previously considered a similar challenge in *Taylor v. State*, 511 N.E.2d 1036 (Ind. 1987). In that case, Taylor argued that based on Article 1, Section 19, the trial court should have permitted him "to testify about why he did not deserve to be considered a habitual criminal at that phase of trial." *Id.* at 1040. During his offer to prove, Taylor testified that "he never hurt anyone, never robbed, raped, or pulled a weapon on anyone. He said that while he stole things, he did not feel he was a habitual criminal." *Id.* Our Supreme Court held, "Though the trial court may consider the testimony for sentencing, Article 1, Section 19 of the Indiana Constitution does not require that this evidence go to the jury." *Id.* Rather, "The only relevant evidence in a habitual offender proceeding is evidence that proves or disproves the defendant's prior felony convictions." *Id.*; *see also Thomas v. State*, 451

N.E.2d 651, 653-54 (Ind. 1983) (trial court did not err by precluding defendant from presenting to the jury evidence regarding "his positive character traits, opportunities for rehabilitation, and his work record" during habitual offender phase); *Williams v. State*, 431 N.E.2d 793, 795-96 (Ind. 1982) (the "only issue" "in an habitual criminal hearing" "is whether or not appellant has, in fact, been found guilty and sentenced as required under the statute of prior offenses.").

In attempting to undermine *Taylor*, Harris points to *Seay v. State*, 698 N.E.2d 732 (Ind. 1998) and *Hollowell v. State*, 753 N.E.2d 612, 617 (Ind. 2001) (Appellant's Br. 15-16). The Indiana Supreme Court in *Seay* held that under Article 1, Section 19, it was error for the trial court to instruct the jury during the habitual offender phase "that the jury was the judge of only the facts and not the law." *Seay*, 698 N.E.2d at 733, 737 (stating "The jury was judge of both the law and facts as to that issue and it was error to instruct the jury otherwise").

In *Hollowell*, the Court reviewed a defendant's claim that the trial court erred in admitting a chronological case summary for one of the defendant's prior convictions. *Hollowell*, 753 N.E.2d at 616-17. The defendant claimed that "the case chronology was unnecessary because he stipulated to the prior convictions." *Id*. at 616. However, the Indiana Supreme Court found that the CCS was admissible because "the facts regarding the predicate convictions are relevant to the jury's decision whether or not to find a defendant to be a habitual offender." *Id*.

Contrary to Harris's argument, neither *Seay* nor *Hollowell* conflict with *Taylor* (Appellant's Br. 15 n.3). In fact, the CCS at issue in *Hollowell* is the kind of

information that would be relevant evidence under *Taylor* because it "proves or disproves the defendant's prior felony convictions." *Taylor*, 511 N.E.2d at 1040; *Hollowell*, 753 N.E.2d at 617 ("evidence of his prior convictions was still relevant even after Defendant's stipulation").

Additionally, the Indiana Supreme Court later revisited its decision in *Seay* and disavowed the Court's reliance on Article 1, Section 19 for its holding in *Seay*. Specifically, the Court stated,

> "We need not and should not have identified the Indiana Constitution as additional support for the holding and consider those comments to be obiter dicta. The authority given by the Legislature to determine both habitual offender status [under Indiana Code Section 35-50-2-8] and the law and the facts [under Indiana Code Section 35-27-2-2(5)] provides the basis for the holding in *Seay*, independent of the State Constitution.

Walden v. State, 895 N.E.2d 1182, 1185 (Ind. 2008). Thus, Article 1, Section 19 does not support Harris's claim.

Furthermore, following *Walden*, the legislature later made clear its agreement with *Taylor* by adding the following provision to the habitual offender statute:

> The role of the jury is to determine whether the defendant has been convicted of the unrelated felonies. The state or defendant may not conduct any additional interrogation or questioning of the jury during the habitual offender part of the trial.

Ind. Code § 35-50-2-8(h) *See* P.L. 158-2013, § 661 (revising subsection (h) of the habitual offender statute). Therefore, even if Harris had raised an objection based on Article 1, Section 19, it would have been properly rejected by the trial court. *Taylor*, 511 N.E.2d at 1040 (rejecting defendant's Article 1, Section 19 claim and

holding, "The only relevant evidence in a habitual offender proceeding is evidence that proves or disproves the defendant's prior felony convictions.").

2. Article 1, Section 13

Next, Harris briefly claims that the trial court's ruling violated Article 1, Section 13 of the Indiana Constitution (Appellant's Br. 16). That section provides: "In all criminal prosecutions, the accused shall have the right ... to be heard by himself and counsel...." As discussed above, Harris's reliance upon this section is waived because Harris failed to raise any objection on this basis in the trial court, and thus, never gave the trial court the opportunity to consider his claim under this provision. *N.W. v. State*, 834 N.E.2d 159, 162 n.2 (Ind. Ct. App. 2005) ("N.W.'s failure to object on Indiana Constitutional grounds at trial results in waiver on appeal."), *trans. denied*.

Further, even if Harris had not waived this claim it would not prevail. Although Harris indicates that the trial court "[p]rohibit[ed]" him "from testifying" in the habitual offender proceeding, the trial court did not preclude him from testifying, but rather required only that any testimony be relevant to the matter at issue, namely, whether he had been convicted of the unrelated felonies. I.C. § 35-50-2-8(h); *Taylor*, 511 N.E.2d at 1040. "If the substantive law renders the evidence irrelevant—which is what the [habitual offender] statute does to [Harris's proffered evidence]—there is no right under Article I, Section 13 to present it." *Sanchez v. State*, 749 N.E.2d 509, 521 (Ind. 2001). Thus, even if Harris had raised a claim on this basis in the trial court, it would have been properly rejected.

3. Various federal constitutional provisions

The final waived claim is an allegation that the trial court denied Harris's right to present a defense (Appellant's Br. 17). Although not raised in the trial court, Harris relies on appeal on either the "Due Process Clause of the Fourteenth Amendment or the Compulsory Process or Confrontation clauses of the Sixth Amendment" (Appellant's Br. 17). While a defendant's right to present a defense "is of the utmost importance, it is not absolute." *Jacobs v. State*, 22 N.E.3d 1286, 1288 (Ind. 2015) (quoting *Parker v. State*, 965 N.E.2d 50, 53 (Ind. Ct. App 2012), *trans. denied*). "The accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id*. (citation omitted).

"One of the rules of evidence is the requirement of relevance." *Sanchez*, 749 N.E.2d at 521 (citing Ind. Evidence Rule 401). Here, because the evidence that Harris wished to present was not relevant to the question of "whether the defendant has been convicted of the unrelated felonies[,]" there was no violation of Harris's right to present a defense. I.C. § 35-50-2-8(h); *see Sanchez*, 749 N.E.2d at 521 ("the statute, by definition with elements different than the concurrence would like, renders the evidence irrelevant").

II.
The evidence is sufficient to sustain Harris's convictions.

When a defendant challenges the sufficiency of the evidence supporting a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Appellate

courts consider only the probative evidence and reasonable inferences drawn therefrom that support the verdict. *Id*. A reviewing court will affirm a conviction unless no reasonable trier of fact could have found the elements of the crime beyond a reasonable doubt. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). It is not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Sallee v. State*, 51 N.E.3d 130, 133 (Ind. 2016) (citation omitted).

To convict Harris of Level 3 felony robbery as charged, the State was required to prove that he knowingly took property from Roberts by force while armed with a deadly weapon. I.C. § 35-42-5-1(a)(1); (App. Vol. II 28). For Level 5 felony battery, the State was required to prove that Harris knowingly touched Roberts in a rude, insolent, or angry manner with a deadly weapon. I.C. § 35-42-2-1; (App. Vol. II 28).

Roberts identified Harris both from a photo array and at trial as the man who robbed and assaulted him with a firearm (Tr. Vol. II 105-10, 119-20). Furthermore, Roberts' testimony was corroborated by the partial recording of the incident on Summers' voicemail, as well as Harris's jail-recorded phone call with Summers, and the physical evidence such as the gun that was found in the maroon Suburban that Harris was stopped in the day of the incident (Tr. Vol. II 116-17, 121, 188, 168-69, 216; St. Ex. 5, 85A, Exhibits at pdf p. 101). Therefore, the evidence is sufficient to sustain Harris's convictions.

In challenging his convictions, Harris points to purported inconsistencies concerning Roberts' testimony and the other evidence admitted at trial (Appellant's Br. 18-19). However, it is the factfinders' prerogative to resolve any conflicts in the

evidence and decide "what to believe and disbelieve." *Cohen v. State*, 714 N.E.2d 1168, 1179 (Ind. 1999). Harris's argument is merely an invitation for this Court to usurp the factfinder's role, which should be rejected. *See Feyka v. State*, 972 N.E.2d 387, 393-94 (Ind. Ct. App. 2012) (while there was "conflicting testimony and some inconsistencies" in the victim's statements, and the victim was not able to immediately identify the defendant at trial, the evidence was sufficient to sustain the defendant's conviction), *trans. denied*.

Harris also claims that the State should have offered more evidence (Appellant's Br. 20). However, it is well settled that the uncorroborated testimony of a single witness is sufficient to sustain a conviction. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). Furthermore, Roberts' testimony was not uncorroborated, as discussed above.

Finally, Harris's reliance upon *Webb v. State*, 147 N.E.3d 378 (Ind. Ct. App. 2020) is unpersuasive (Appellant's Br. 21). In *Webb*, neither of the two eyewitnesses was familiar with the defendant before the alleged crime, neither identified the defendant in a photo array, and the victim did not know the identity of the defendant until it was told to him by a detective. *Id*. at 382. Furthermore, the victim failed to identify the defendant in court. *Id*. at 385. In contrast, Roberts had met Harris before Harris assaulted and robbed him, and Roberts identified Harris from a photo array, as well as in court (Tr. Vol. II 105-10, 119-20). Therefore, Harris's

convictions should be affirmed.[1]

CONCLUSION

For the foregoing reasons, the State respectfully requests that the trial court's judgment be affirmed.

Respectfully submitted:

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Counsel for Appellee

[1] As Harris notes, the sentencing documents indicate that the trial court imposed a separate conviction and sentence for the habitual offender finding (Appellant's Br. 6 n.2; App. Vol. II 21-23). Although trial courts often list the habitual offender finding and sentence separately from the other convictions and sentences, it has been held that this is an incorrect procedure. Instead, because a habitual offender finding does not constitute a separate crime, nor result in a separate sentence, this Court has directed that trial courts should attach the habitual offender enhancement to a specific felony conviction. *Hill v. State*, 157 N.E.3d 1225, 1231 (Ind. Ct. App. 2020) (affirming defendant's sentence but remanding with instructions to attach the habitual offender enhancement to the felony conviction with the highest sentence, resulting in no change to the defendant's aggregate sentence). Therefore, the State does not oppose a limited remand on this basis.

CERTIFICATE OF SERVICE

I certify that on January 28, 2022, the foregoing document was electronically filed using the Indiana E-filing System (IEFS). I also certify that on January 28, 2022, the foregoing document was served upon the following person via IEFS:

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