

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02802-REB-MEH

JEREMY C. MYERS

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police department, in his individual capacity; and
City of LOVELAND, Colorado, a municipality.

Defendants.

PLAINTIFF'S AMENDED COMPLAINT AND JURY DEMAND

COMES NOW Plaintiff Jeremy Myers, by and through his attorney Randall R. Meyers, and respectfully alleges for his Amended Complaint and Jury Demand as follows:

INTRODUCTION

1. In the early morning hours of September 6, 2007, the Larimer County Drug Task Force (hereinafter "the LCDTF"), prompted by the actions of Defendant Brian Koopman of the Loveland Police department, descended on Plaintiffs' property with SWAT teams, tanks and snipers, resembling a small invasion. Their purpose was to rid the community of a large-scale methamphetamine production facility Koopman had sworn was being operated by Jeremy Myers in the attic of the building where Mr. Myers lived.

2. For several months before, Defendant Koopman had closely watched the property and the activities of Jeremy Myers. Koopman went to the expense and trouble of establishing

two surveillance cameras to capture the extensive criminal activity that he was sure was occurring on the property. He claims to have dug through the garbage dumpster located on the property on a regular basis, watched the vehicles that came and went, and walked around the building where Plaintiff Jeremy Myers lived. Of course, he also claimed to have a confidential informant who was providing "credible" support for his allegations. The name or any information about the informant interestingly has never been provided. Additionally, no evidence of any sale of drugs was uncovered.

3. Undaunted by the logical, non-criminal explanations for everything Koopman observed, and without any concrete evidence or proof of any criminal activity, he swore out an affidavit for the Court in order to obtain a no-knock search warrant. In spite of the appearance he created of having carefully assessed the situation, when the LCDTF and its SWAT teams stormed onto the location, they broke into a building not even at the address in the affidavit, a building Jeremy Myers did not own or occupy and to which he had no access or ability to enter. The building, part of the well-known Great Western sugar factory that had existed on the property years before, was the location of the sugar beet laboratory for the sugar factory operation. This information was readily available in the Larimer County records, indicating the building was one of the labs for the sugar factory. The "evidence" gathered in that building had been sitting in its exact location since 1985 when Great Western Sugar went bankrupt, covered with dust and untouched by anyone for decades prior to the search. The jar of white substance removed from the building was hailed as "a lot of dope" by one of the officers present, anxious to capture headlines in the local media. He at least achieved that goal, and Koopman and his team were more than glad to allow the media to develop front-page stories touting Jeremy

Myers' major meth lab and criminal activity.

4. Field tests (and that is a very generous description of the process used) were conducted on the gathered evidence. Rather than waiting for the Colorado Bureau of Investigations to conduct more accurate and complete tests, the Defendants raced with their strips of test paper to arrest Jeremy Myers and charge him with their pre-determined crimes. Even though the "attic" where the lab was claimed to exist was so small one officer at a time had great difficulty even entering in it, they were unconcerned. The attic of course had nothing in it that Koopman swore the confidential informant had indicated was there. But nothing mattered. Koopman and his associates were on a mission and they pursued it. Ultimately, the "jar of dope" touted on the front page of the local newspaper was proven to be free of illicit drugs, as certified by both the Colorado Bureau of Investigation and an independent laboratory.

5. This is an action for damages against Defendants for violating Plaintiff Jeremy Myers' rights under the Fourth and Fourteenth Amendments of the United States Constitution. Mr. Myers alleges that Defendants violated his Constitutional rights when, knowingly and with deliberate indifference to his Constitutional rights, they obtained an invalid search warrant without probable cause and with false statements in the affidavit, used excessive force to enter his premises – particularly since keys were offered four times to open the premises, and unlawfully and maliciously prosecuted him. Defendants' conduct violated Plaintiff's Constitutional rights to be free from unreasonable search and seizures, from malicious prosecution, and right to due process. Defendants' conduct under color of state law proximately caused the deprivation of Plaintiff's federally protected rights.

JURISDICTION AND VENUE

A 6. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and 42 U.S.C. §1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343 and 2201. Jurisdiction supporting Plaintiffs' claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

A 7. Venue is proper in this judicial district. All of the events alleged herein occurred within Larimer County, Colorado, and all of the parties are residents of Larimer County. At all pertinent times mentioned herein, Defendant Brian Koopman was employed in Larimer County, Colorado, and was acting under color of state law.

PARTIES

w 8. At all pertinent times mentioned herein, Plaintiff Jeremy Myers was a citizen of the United States of America and a resident of Larimer County, Colorado.

A 9. At all pertinent times mentioned herein, Defendant Brian Koopman is a citizen of the United States and resident of the State of Colorado, and was employed as a Detective with the Loveland, Colorado Police Department, was performing the traditional governmental function of law enforcement, and was acting within the scope of his duties and employment, under color and authority of state law, and in his official capacity as Detective. Koopman is sued in his individual capacity. PJB

10. Defendant City of Loveland is a municipality, a participant in the LCDTF, and is responsible for the supervision, training, official policies, customs, and actual practices of its agents, the police department, through the Chief of Police of Loveland. mfb

FACTUAL BACKGROUND

20 11. On or about the 5th of September, 2007, Defendant Koopman executed a sworn affidavit, seeking to obtain a No Knock Search Warrant of the premises at 1101 N. Madison Street, Loveland, Colorado (hereinafter "the Premises"). Prior to the submission of the affidavit, Officers Kurt Clow and Sarah Chartier, of the Fort Collins Police Department, reported that they attended a briefing on September 5, 2007, at the LCDTF, at which time the search warrant was discussed by members representing Fort Collins, Loveland, and Larimer County. {No participant present required Koopman to substantiate or prove the truth and accuracy of the allegations contained in the affidavit for the search warrant. } It was determined that the search warrant would be executed by the Larimer County Sheriff's Office SWAT team and the Loveland Police Department SWAT team.

21 12. Prior to September 5, 2007, Defendant Koopman, in coordination with the LCDTF, had video surveillance equipment installed to monitor the Premises. The first camera was installed sometime around the end of May 2007 and the second was installed sometime around mid August 2007.

22 13. The video surveillance gave Defendants the opportunity to watch the Premises for over three months and monitor the actions of Mr. Myers and anyone else on the Premises. It also enabled Defendants to monitor the vehicles that entered the Premises and to determine the nature of their activity.

23 14. Defendant Koopman, in his sworn affidavit for the No Knock Search Warrant, which was presented and discussed in a briefing conducted at the offices of the LCDTF, maliciously, intentionally and/or recklessly made false and misleading statements including the

following:

A. that virtually every imaginable item that could possibly be related to the production and possession of methamphetamine was located on the Premises;

B. that cameras, video recording or surveillance equipment were located in the Premises, which would be evidence of unlawful activities;

C. that an unnamed confidential informant indicated a methamphetamine lab existed in the attic of the Premises;

D. that at least two wireless cameras were located at the Premises facing the driveway and the Loveland Police Department;

E. that several dogs, possibly Rottweilers, were maintained on the Premises and were trained to attack anyone wearing a uniform;

F. that a concrete type shed with a metal grate catwalk was where Mr. Myers had been dumping waste product from the methamphetamine production;

G. that Mr. Myers had been dumping waste in an old molasses silo west of the Premises, which was accessible through a hole in the side about ten feet off the ground;

H. that the surveillance equipment enabled Defendant Koopman to watch Mr. Myers for several months walking around the property and driving a black Ford pickup;

I. that another individual named Shane McWhorter would take an SKS rifle equipped with a scope and hide inside the top of one of the outbuildings on the property and watch for police or other civilian traffic in the area while methamphetamine was being cooked inside the Premises;

J. that Defendant Koopman collected trash from a dumpster located near the

Premises on several occasions;

K. that he saw multiple vehicles making short term stops at the Premises throughout the day and night;

L. that Mr. Myers, according to the confidential informant, sometimes buries finished product in various places on the property as well as hides different components of his methamphetamine lab in different areas on the property to avoid detection or discovery by the police or other methamphetamine users; and

M. that he noted seeing several broken windows on the Premises, insinuating that the windows had been broken by Mr. Myers firing gun shots from inside the building.

24 D 15. Had Defendant Koopman or other agents representing the LCDTF correctly and accurately reviewed the video surveillance tapes that were maintained for more than three months, Defendants would have known or have been able to determine numerous mistruths, errors or inconsistencies in the affidavit, including but not limited to the following:

A. Mr. Myers never once was seen bringing onto the Premises any of the items listed in the Affidavit.

B. There were no video cameras placed by Mr. Myers on the Premises.

C. There were no dogs on the property at any time or any sign of their presence.

D. Mr. Myers never went to the concrete shed identified in subparagraph 16 F above, which was a considerable distance from the Premises.

E. Defendant Koopman never once saw Mr. Myers dumping anything in the old molasses silo west of the Premises, because either no such silo existed or the structure confused by Defendant Koopman as a silo could not be accessed by Mr. Myers, given the location and size

of the hole in the structure.

F. Mr. Myers had moved out of the Premises over a month before September 6, 2007, and had not lived there during that time.

G. Shane McWhorter nor anyone else was ever seen "inside the top of" one of the outbuildings on the property. Mr. Myers did not even know a Shane McWhorter.

H. The numerous individuals who drove onto or nearby the Premises from time to time and at all hours of the day either were one of the following: trespassers unknown to Mr. Myers who came and dumped trash in the dumpster searched by Defendant Koopman, thieves or vandals who came on the property to do damage, or were employees of Amalgamated Sugar or Omnitrax Railroad, service agents for the Motorola cell tower located near the Premises, a renter of the Amalgamated Sugar property, employees of Ridex, a sandwich vender, a uniform delivery truck, or an unknown water contractor for Amalgamated Sugar, all of whom used the same driveway.

I. Defendant Koopman never saw Mr. Myers bury finished product in various places on the property or hide different components of his methamphetamine lab in different areas on the property to avoid detection or discovery by the police or other methamphetamine users, and

J. Defendant Koopman never saw broken windows on the Premises other than one on the front of the building that was obviously not broken by any kind of gunshot.

25 P 16. Relying on the false and malicious statements of the Affidavit and the unsupported representations of a claimed confidential informant, even though there was no probable cause nor any basis for a reasonable belief that probable cause existed, Defendant Koopman, supported by the members of the LCDTF, obtained a No Knock Search Warrant from

Judge Gilmore on September 5, 2007, at 9:35 a.m., almost instantly after requesting the warrant and on the same morning he met with the LCDTF.

26 17. On the morning of September 6, 2007, the LCDTF and Loveland and Larimer County SWAT teams, under the direction and supervision of Defendant Koopman, began execution of the no knock search warrant.

27 D 18. Prior to the SWAT teams entering the Premises, James B. Myers and Clifford L. Miller talked with Defendant Koopman and informed Koopman that they had keys to the Premises and would provide them to Koopman to enable entry into the Premises. Koopman refused the keys and the SWAT teams used excessive force to gain entry, employing the tank that was present and tear gas. Entry and interior doors were damaged, windows were broken, and personal property inside the Premises was damaged, destroyed or taken away.

28 D 19. Even though the search warrant authorized a search to include "the yard and curtilage thereof, and any and all outbuildings and vehicles" and even though Defendants' Affidavit attested that items were buried on the property and located in various locations, the search was limited in scope, inconsistent, and included a building not owned by Plaintiffs and to which they had no access (hereinafter referred to as "the White Building").

29 w/o 20. Upon information and belief, the White Building is owned or at least controlled by Amalgamated Sugar, which owns or controls the property north and to the west of the Premises. All of the windows in the building were either boarded up or had metal bars, or both, so as to make access to the interior virtually impossible for a considerable period of time prior to Mr. Myers' occupancy of the Premises. The west end door was locked with a lock controlled by Amalgamated Sugar and for which Mr. Myers had no key or ability to open. That building had

served as the sugar beet laboratory during the time when Great Western Sugar owned it, as is evidenced by public records recorded in the Larimer County Clerks records. The White Building contained items left in there since 1985 by Great Western when it ran its sugar processing operation. Many of the items were used for chemical analysis and testing. Mr. Myers was never inside that building.

30 A 21. Defendants collected various items and samples during the search, including items from the White Building, which were all sent to the Colorado Bureau of Investigation for analysis.

31 w/o 22. Officers Brubaker and Lintz with the LCDTF reported to the local newspaper, the Loveland Reporter-Herald, "that's a lot of dope" referring to a large Mason jar that they claimed was full of as much as 1800 amphetamine hits. The article appeared on the front page of the newspaper.

32 w/o 23. Mr. Myers, prior to the search on September 6, 2007, had started his excavating business, Buck Antler Excavating LLC, and had been operating it from the Premises. As a direct result of the expenses and costs incurred by him as a result of the search and his subsequent arrest, Mr. Myers was forced to sell his equipment and abandon his business to pay for the expenses and attorney fees he was forced to incur.

33 24. After the search was completed, Defendant Koopman submitted a sworn affidavit in support of a warrantless arrest of Mr. Myers. Relying on the false statements of his Affidavit and the unsupported assumptions that the materials seized were part of a methamphetamine production process, which ultimately proved to be false, and in spite of the fact that there was never any evidence of sale or manufacture of any illegal substance and even though there was no

probable cause nor any basis for a reasonable belief that probable cause existed, Defendant Koopman obtained a warrantless arrest determination. Mr. Myers, through his attorney, arranged to appear at the Loveland Police department to surrender and post bond and be released. Mr. Myers appeared on Friday, September 7, 2007 pursuant to the agreement arranged by his attorney and Defendant Koopman and had pre-arranged with a bondsman to post bond.

34 25. When Defendant Koopman was notified of Mr. Myer's arrival, Defendant Koopman informed the officer on duty that Mr. Myers could not post bond as Koopman was filing additional charges and that Mr. Myers should be taken into custody, contrary to the terms of the agreement.

35 w/o 26. Mr. Myers was detained in the Larimer County Detention Center until the following Monday, when two bonds were posted for his release.

36 A 27. Several procedural hearings were held between September 7, 2007 and November 15, 2007.

37 28. The results from the Colorado Bureau of Investigation of the testing of all items taken from the Premises and the White Building during the search came back negative, establishing there was no presence of a controlled substance. Defendant Koopman had specifically requested the CBI testing. Those results were available October 3, 2007 and sent to Defendant Koopman. At the status review hearing on October 15, 2007, Deputy District Attorney Lynch provided a copy of the results to Mr. Myers' attorney, indicating he had reviewed them. Nothing was done to dismiss the charges against Mr. Myers at that time. After multiple delayed hearings, a preliminary hearing was held on November 5, 2007, where Defendant Koopman still maliciously testified about his unsubstantiated belief of wrongdoing by

Plaintiff, even though Deputy District Attorney Roy had in his file the same results from the Colorado Bureau of Investigation that were provided by Deputy District Attorney Lynch on October 15, 2007. Only after the results were forced out in open Court did the district attorney drop all charges against Mr. Myers at a subsequent hearing on November 15, 2007.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth and Fourteenth Amendment Violation – Malicious Prosecution)

(Plaintiff Mr. Myers and Against Defendants in Their Capacities as Identified in the Caption)

66 29. Plaintiff incorporates by this reference all other paragraphs of this Complaint and Jury Demand as if those allegations were set out explicitly herein.

61 ^{Defendant stated} 30. At all times relevant to the allegations in this Complaint, Defendants acted under color of state law in their actions and inactions which occurred at all times relevant to this action.

62 A 31. Defendants are persons under 42 U.S.C. § 1983.

63 ^{stated a legal conclusion} 32. Plaintiff had a constitutionally protected right to be secure in his person against malicious prosecution.

64 D 33. Defendants maliciously, recklessly, knowingly, intentionally, willfully, wantonly, and with deliberate indifference pursued a malicious prosecution against Mr. Myers, acting without knowledge that there was any substantial probability that Mr. Myers had committed any criminal activity.

65 D 34. Defendant Koopman and the LCDTF acted maliciously, recklessly, knowingly, intentionally, willfully and wantonly by preparing or endorsing an affidavit containing false statements in support of his malicious prosecution of Mr. Myers, thereby misleading a judicial

officer into issuing the arrest warrant for Mr. Myers without probable cause.

U 35. The actions of Defendants as described herein, while acting under color of state law, intentionally deprived Mr. Myers of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from malicious prosecution as guaranteed by the Fourth Amendment to the Constitution of the United States of America, in that Mr. Myers was unlawfully and maliciously prosecuted by Defendants without probable cause to believe he had committed any offense.

67 D 36. Defendants maliciously, intentionally, knowingly, and recklessly pursued a malicious prosecution against Mr. Myers without any reasonable justification or probable cause.

68 D 37. Those facts which constitute Defendants' malicious actions, inactions and intent to commit malicious prosecution are as follows:

a. For a 3 to 4 month period the property which was the subject of the search was under video surveillance by Koopman and the LCDTF. A review of the video shows nothing of what was alleged to be the facts as contained in the affidavit for a warrant. This would have been knowledge within the possession of Koopman prior to instituting the search.

b. At the time of the search a key to the premises was offered to Koopman by three different people; all offers were refused and the SWAT teams then broke into the buildings causing damage, even though review of their surveillance would have shown that Plaintiff had not been living on the premises for over a month.

c. A jar containing a white substance was recovered from one of the buildings and touted to the press as "a lot of dope". Yet the jar, physically, was rusted and covered with dust, a clear indication that it hadn't been touched in years. The jar was retrieved from a

building that did not belong to Plaintiff, his father, or Great Western Salvage, Ltd., a company owned by Plaintiff's father that holds title to other buildings in the vicinity. Larimer County records would reflect ownership of the buildings. The "white substance" was sugar -- found in an abandoned sugar lab!

d. This building was locked and boarded and barred up and was not accessible by the Plaintiff. Koopman and other LCDTF participants had to break into the building, as shown on the surveillance video.

e. The affidavit for search warrant prepared by Koopman contained information about a meth lab being operated in the attic of the main structure. This information was from the alleged confidential informant and no evidence existed to support it. During the search it came to Koopman's and other LCDTF member's attention that the attic access was so small that a LCDTF search member could barely squeeze through the opening.

f. Once the case became known to Plaintiff he arranged to turn himself in to Defendant Koopman. The bond was preset by agreement with Defendant Koopman. Plaintiff and his attorney arrived at the Loveland Police Department only to be advised that two additional charges were added by Defendant Koopman based strictly on information Koopman already possessed through the investigation and could have presented to the district attorney at the time of the original filing. This malicious action caused Plaintiff to be detained in jail for the entire weekend, a cause known by Koopman to be the result of his malicious and intentional actions.

g. At the time of Plaintiff's preliminary hearing Koopman was aware that an environmental hygienist had been hired by Plaintiff to conduct chemical testing at the premises to determine the presence of Meth. The Hygienist found no presence except for one small

isolated location, on furniture brought into the premises by another individual, and it was his opinion that no meth was or ever had been manufactured on the premises. Upon further information and belief, Defendant Koopman was aware of the negative CBI results at the time of the preliminary hearing and lied under oath as to that fact.

h. At the time of the search Koopman and other LCDTF members conducted seven field tests of items and substances, all showing false positives. Subsequent to the search LCDTF Commander, Lt. Craig Dodd, commented that the results of field strip tests always were accurate as to their results. In this instance all seven field tests proved false, a statistically impossible number given the frequent use and reliability of the test strips. Defendant Koopman fabricated the results maliciously or the strips were intentionally and/or improperly used to achieve a malicious pre-determined goal.

i. The video surveillance showed all statements made in the affidavit for search warrant to be false and this fact was known to Koopman and other LCDTF members prior to the search. The video failed to show the Rottweilers as alleged; failed to show Plaintiff burying meth and its byproducts and the equipment as alleged; and failed to show firearm use as alleged. Defendants maliciously ignored the best evidence in existence, intentionally pursuing a malicious course of action to achieve a result completely contrary to that evidence.

j. Koopman maliciously and intentionally failed to reference the video surveillance in the affidavit for search, precisely because it showed none of the allegations in the affidavit.

k. Koopman, after Plaintiff filed this 1983 action, fabricated yet a second "confidential informant" with information that Plaintiff was tipped off to the search and hid or

destroyed the evidence – none of this activity showed on the video surveillance, knowledge Koopman would have had before he endorsed a second alleged confidential informant. This malicious fabrication was done intentionally to support the previous malicious actions of Defendants.

1. Even after the case was dismissed for lack of evidence, Defendant Koopman continued his malicious course of action by trying to find some basis for pursuing his prosecution of Plaintiff. He shopped around and submitted the same evidence to the CSU crime lab in Pueblo, Colorado, claiming he had obtained another search warrant seeking to try to establish that the evidence proved an intent to produce illegal explosives. Plaintiff was not served with any notice of such a search warrant, and notwithstanding the claims of Koopman, it is believed this is a fabrication by the Detective as well. Defendant's actions, in fact, were contrary to a Court order that preserved the evidence and ordered its return to Plaintiff. Defendant's last ditch effort was, again, fruitless. Finally, Defendants have most recently attempted to regain possession of the evidence, through the Fort Collins Police Department ("for inventory purposes") even though they had previously requested its destruction, presumably so that it could not be available for any further analysis. This course of conduct can only be driven by malicious intent.

D 38. Defendants caused Plaintiff continued confinement and prosecution notwithstanding the volume of evidence that began to accumulate from virtually the inception of the case that plainly showed Koopman to be wrong.

A 39. The charges brought against Plaintiff terminated in favor of Plaintiff by their dismissal.

D 40. There was no probable cause to support the original arrest of Plaintiff, nor his confinement or prosecution. The affidavit prepared and submitted by Koopman contained knowingly false and misleading information. The Court failed to adopt the proper legal standard regarding the use of confidential informant information in that there was no independent corroboration of the information given by the informant.

D 41. Defendant, as set forth herein, acted with malice in that Defendant Koopman possessed knowledge and information that:

a. the information given by his confidential informant and used as the basis for the search warrant was false.

b. during the search itself evidence was obtained by Koopman to show the CI's claims to be false and that "probable cause" was nonexistent.

c. the creation of the second CI was an ignorant and malicious attempt to cover his tracks and provide a defense to this federal action and a justification for his earlier behavior.

d. the quest for "explosives" was an equally ignorant and malicious attempt to justify his uneducated, unprofessional, and dishonest attempt at a drug investigation. Koopman needed to salvage something from this botched investigation even if he had to use an "the ends justifies the means" approach.

9 42. Plaintiff has sustained damages as a result of Defendants' actions and inactions.

RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For compensatory and consequential damages for actual damages suffered, including, but not limited to, damages to property, past and future pecuniary and non-pecuniary

losses, emotional distress, suffering, loss of reputation, humiliation, public ridicule and scorn, inconvenience, mental anguish, loss of economic opportunity, and loss of enjoyment of life, in an amount to be determined at trial;

2. For all economic losses on all claims allowed by law;
3. For punitive damages on all claims allowed by law and in an amount to be determined at trial;
4. For attorneys' fees, pursuant to 42 U.S.C. § 1988;
5. For costs of suit incurred herein;
6. Pre- and post-judgment interest at the lawful rate; and
7. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

COME NOW the Plaintiff, by and through his attorney, and hereby demands a trial by jury on all issues so triable in the above-captioned matter.

Respectfully submitted this 2nd day of March, 2011.

*A duly signed original is on file at the office of
Randall R. Meyers*

/s/ Randall R. Meyers
Randall R. Meyers, #009854
315 W. Oak St., Suite 100
Fort Collins, CO 80521
(970) 472-0140

Plaintiff's address:

Jeremy Myers, 500 35th St. SW, Loveland, CO 80537

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 2nd day of March 2011, I electronically filed the foregoing Amended Complaint and Jury Demand with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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And I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the non-participants name:

N/A

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