STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal Case No. 2024AP002230-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

PETER JOSEPH IDELL,

Defendant-Appellant.

On Appeal from the Final Orders Entered in the Circuit Court for Milwaukee County, The Honorable Kori L. Ashley and The Honorable Raphael F. Ramos, Presiding

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Did the circuit court properly deny Mr. Idell's postconviction motion, without a hearing, which alleged his trial counsel provided ineffective assistance of counsel for failing to object to an alleged unlawful extension of the traffic stop before entering a guilty plea?

Trial court answer: The trial court found that Mr. Idell's motion did not present sufficient facts to raise a question of fact, and deemed what facts Mr. Idell did allege to be conclusory in nature, thus insufficient to warrant a hearing.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

a. Facts of the Case

On March 31, 2019, at approximately 7:41 pm, Officer Lete Carlson conducted a traffic stop of Peter Idell after observing Mr. Idell's vehicle license plates to have expired Illinois registration. (R. 82:2). Officer Carlson briefly conversed with Idell, during which she encountered an odor of intoxicants emanating from Idell. *Id*. Officer Carlson returned to her squad car and told the dispatcher that she would be conducting an OWI investigation. She subsequently called for backup. *Id*. Officer Carlson also ran a registration check of Mr. Idell's driving record and discovered a prior drunk driving conviction. *Id*.

Approximately 12 minutes later, Officer Jacob Roth arrived on scene as the backup police officer (R. 28:6). Officer Carlson allowed Officer Roth to take over the OWI investigation, and informed Officer Roth that there would likely be "indicators" of intoxication. (R. 28:7). While conducting his investigation, Officer Roth observed an odor of intoxicants emanating from Mr. Idell; bloodshot, glossy eyes; and slurred speech (R. 28:8). Mr. Idell admitted to drinking wine 30-40 minutes before the stop. *Id*. Officer Roth administered standard field sobriety tests. Based upon his observations, Officer Roth believed Mr. Idell to be under the influence of intoxicants and placed him under arrest. (R. 82:2).

b. Procedural History

Mr. Idell filed a motion to suppress evidence on April 8, 2021, alleging that Officer Roth unreasonably extended the stop. Mr. Idell claimed that Officer Roth's administration of the

standard field sobriety tests resulted in an unreasonable seizure in violation of the Fourth Amendment. (R. 10:5). On July 19, 2021, the trial court held an evidentiary motion hearing. Officer Roth testified about his observations during the stop. (R. 28:5). Officer Roth also testified that Officer Carlson informed him of her observations; including the fact that Officer Carlson also detected an odor of alcohol and that he was aware that Mr. Idell had a prior drunk driving conviction from 2009. (R. 28:12-13).

The trial court denied Mr. Idell's suppression motion on July 31, 2019. (R. 27:6). The trial court based its decision on Officer Roth's testimony. In its findings of fact, the trial court noted Mr. Idell's admission of drinking alcohol, Mr. Idell's prior OWI, the odor of alcohol emanating from Mr. Idell, and Mr. Idell's possible glassy eyes. (R. 27:5).

On April 14, 2022, Mr. Idell then entered a guilty plea to the charge of operating while intoxicated, as a second offense. (R. 29:10). At the guilty plea hearing, Mr. Idell confirmed that no other aspect to the stop was being challenged (R. 29:4). Mr. Idell further confirmed that he had an opportunity to raise or discuss other potential defenses before pleading guilty. He expressed satisfaction with his attorney's legal representation. (R. 29:8). The trial court found that Mr. Idell entered his plea freely, voluntarily, intelligently, and understandingly, without any objections raised. (R. 29:10).

Mr. Idell then filed a postconviction motion requesting to withdraw his guilty plea. (R. 65:1). Mr. Idell raised ineffective assistance of counsel, claiming that his trial counsel failed to argue that Officer Carlson's initial traffic stop was unlawful. (R. 66:1). Mr. Idell argued specifically that Officer Carlson lacked reasonable suspicion after her initial contact with him to warrant an extension of the stop for an OWI investigation. (R. 66:8). Mr. Idell characterized the 12-minute extension of the stop as unreasonable because the original mission of the stop was for expired registration (R. 66:11). Mr. Idell alleged ineffective assistance for failing to move to suppress evidence prior to Mr. Idell entering his guilty plea. (R. 66:12).

The State filed a reply requesting that the postconviction motion be denied. (R. 69:1). The State emphasized that the original purpose of the stop for expired registration was not unreasonably extended once Officer Carlson observed indicia

of intoxication. At that point, the mission of the stop changed. (R. 69:7). Ergo, Idell's trial counsel was not ineffective, and Idell was not entitled to withdraw his guilty plea. (R. 69:11).

In a written decision, the Honorable Judge Raphael F. Ramos denied Idell's motion for postconviction relief. (R. 82:2). Judge Ramos found any extension supported by reasonable suspicion. Judge Ramos reasoned that the odor of intoxication, while not enough for probable cause to arrest, warranted additional investigation by Officer Carlson. (R. 82:5). Judge Ramos found Officer Carlson's search of Idell's traffic records to be consistent with standard police practice and a reasonable inquiry related to potential OWI-related concerns. *Id*. Judge Ramos rejected Idell's characterization of the 12-minute time frame. Judge Ramos found the 12-minute time frame as an appropriate length of time to run a registration check and wait for the arrival of a back-up police officer. (R. 82:6). Judge Ramos held that any motion raised by trial counsel under these grounds would have been denied. (R. 82:7). Judge Ramos held that Mr. Idell's trial counsel was not ineffective. Mr. Idell's motion to withdraw his guilty plea was thereby denied. *Id*. This appeal follows.

STANDARD OF REVIEW

The principles governing a circuit court's summary denial of a postconviction motion and an appellate court's review of such denial are well-established. *See State v. Allen*, 2004 WI 106, 274 Wis. 2d 568, 682 N.W.2d 433; *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996).

> Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review. First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review de novo. *Bentley*, 201 Wis. 2d at 309-10 …. If the motion raises such facts, the circuit court must hold an evidentiary hearing. *Id*. at 310; *Nelson v. State*, 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972). However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled

> to relief, the circuit court has the discretion to grant or deny a hearing. *Bentley*, 201 Wis. 2d at 310-11; *Nelson*, 54 Wis. 2d at 497-98. We require the circuit court "to form its independent judgment after a review of the record and pleadings and to support its decision by written opinion." *Nelson*, 54 Wis. 2d at 498. See *Bentley*, 201 Wis. 2d at 318-19 (quoting the same). We review a circuit court's discretionary decisions under the deferential erroneous exercise of discretion standard. *In re the Commitment of Franklin*, 2004 WI 38, ¶ 6, 270 Wis. 2d 271, 677 N.W.2d 276; *Bentley*, 201 Wis. 2d at 311.

Allen, 274 Wis. 2d 568, ¶ 9.

ARGUMENT

I. The Trial Court Properly Denied Mr. Idell's Post-Conviction Motion without a Hearing; Because Officer Carlson did not Unreasonably Extend the Traffic Stop, Mr. Idell's Trial Counsel was not Ineffective.

Officer Carlson did not unreasonably extend the traffic stop to conduct the OWI investigation. Her training, experience, and her observations of an odor of intoxicants—coupled with Idell's prior OWI conviction—created enough reasonable suspicion to change the mission of the stop from one of an expired vehicle license registration offense to that of a drunk driving investigation. In refraining from contesting an issue which would have been unsuccessful, trial counsel was not ineffective. Any motion challenging the validity of Officer Carlson's extension would have been denied. Judge Ramos appropriately denied Idell's request to withdraw his guilty plea without any further necessity of a hearing.

A. Officer Carlson's decision to extend the stop was not unreasonable based on the odor of intoxicants, the time of day, and Mr. Idell's previous OWI conviction.

1. Legal Principles.

Both the Fourth Amendment to the federal Constitution and Article I, sec. 11 of the Wisconsin Constitution guarantees citizens the right to be free from "unreasonable searches and

seizures. *Terry v. Ohio*, 392 U.S. 1 (1968) established the standard of reasonable suspicion as the justification needed for conducting investigatory stops. The Court recognized the investigatory stops as ways to "effectively meet[] government interests in crime prevention and protection." *State v. Richardson*, 156 Wis.2d 128, 138 (1990). The U.S. Supreme Court in *Terry* ruled that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Terry*, 392 U.S. at 22.

A traffic stop may become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ... ticket." *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 1614–15, 191 L.Ed.2d 492 (2015) (*quoting Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005)). However, after a proper stop occurs, the officer may expand the scope of the inquiry to investigate "additional suspicious factors [that] come to the officer's attention." *Betow*, 226 Wis. 2d at 94, 593 N.W.2d 499 (*citing United States v. Perez*, 37 F.3d 510, 513 (9th Cir.1994)). *See also State v. Gammons*, 2001 WI App 36, ¶¶ 18–19, 241 Wis. 2d 296, 625 N.W.2d 623, *State v. Adell*, 399 Wis. 2d 339, 407, 966 N.W.2d 115, 119, 2021 WI App 72, ¶ 16.

An expansion in the scope of the inquiry, when accompanied by an extension of time longer than would have been needed for the original stop, must be supported by reasonable suspicion. *See State v. Colstad*, 2003 WI App 25, ¶ 13, 260 Wis.2d 406, 659 N.W.2d 394. *See also Navarette v. California*, 572 U.S. 393, 134 S.Ct. 1683, 1687, 188 L.Ed.2d 680 (2014); *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of circumstances...." *State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830 (1990). In assessing whether there exists reasonable suspicion for a particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. *State v. Dunn*, 158 Wis.2d 138, 146, 462 N.W.2d 538, 541 (Ct.App.1990). The question of what constitutes reasonable suspicion is a common sense test: under all the facts

and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience? *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386, 390 (1989).

The Supreme Court of Wisconsin has held that observation of unlawful acts are not required to raise reasonable suspicion. *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681, 685 (1996). "[W]hen a police officer observes lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for the purpose of inquiry. *Id.* at 206 Wis. 2d 51, 60, 556 N.W.2d 681, 686. Further, even when an observation of one fact may not be enough to rise to reasonable basis for suspicion, the totality of facts still may. *Id.* at 206 Wis. 2d 51, 58, 556 N.W.2d 681, 685. "The building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn. In essence, a point is reached where the sum of the whole is greater than the sum of its individual parts." *Id.*

As to the extension of a stop, the "tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *State v. Wright*, 2019 WI 45, ¶ 8, 386 Wis. 2d 495, 926 N.W.2d 157 (*citing Rodriguez v. United States*, 575 U.S. 348, 355 (2015)). However, the length of a stop becomes unreasonable if extended beyond "when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Brown*, 392 Wis. 2d 454, ¶ 10 (*citing Rodriguez*, 575 U.S. at 354). Officers are prohibited from undertaking unrelated inquiries that in any way prolong the duration of the stop beyond the time that it reasonably should take to complete the mission *unless reasonable suspicion develops to support such inquiries*. *State v. Davis*, 2021 WI App 65, ¶ 24, 399 Wis. 2d 354, 965 N.W.2d 84 (*citing Rodriguez*, 575 U.S. at 354) (emphasis added).

2. Officer Carlson had enough reasonable suspicion to merit an OWI investigation.

Mr. Idell asserts that Officer Carlson did not have enough reasonable suspicion for her to extend the stop and conduct an OWI investigation. (Mr. Idell's brief, 17). Specifically, Mr. Idell argues that using *Waldner's* "building blocks of fact," there is not enough to reach reasonable suspicion. *Id.* While the State agrees that *Waldner* is the precedent this court should use, the State disagrees with Idell's analysis. Mr. Idell cites to the unpublished case of *County of Sauk of Leon* No.2010AP1593 (unpublished) to argue that the building blocks must be more substantial in cases with no reckless driving; however, no published opinion supports this.

Alternatively, in 2021, the Court of Appeals of Wisconsin published an opinion holding that a deputy properly extended a traffic stop to investigate when the driver was operating with a prohibited alcohol concentration. The Court of Appeals deemed that the totality of the facts and circumstances gave rise to reasonable suspicion of that offense, though the only evidence of suspicious driving involved minor speeding. *State v. Adell*, 2021 WI App 72, ¶ 2, 399 Wis. 2d 399, 403, 966 N.W.2d 115, 117. In *Adell,* the driver was pulled over for speeding. The deputy did not observe anything else illegal nor did the deputy observe "suspicious" driving activity, nor did the deputy observe anything suspicious about the way the driver talked or what he said. *Id*. at 404, 118. The Court of Appeals held that there was enough reasonable suspicion to justify the extension of the stop. *Id*. at 413, 122.

Using *Waldner's* building blocks, the Court of Appeals in *Adell* found six relevant factors: (1) experience of the deputy, (2) prior OWI convictions of the driver, (3) learning the driver was under a .02 BAC restriction, (4) odor of intoxicants, (5) admission of consuming alcohol the evening before, and (6) the illegal driving by speeding. *Id.* 408-411, 120-121. The Court noted that prior OWI offenses and the odor of intoxicants are factors not only for reasonable suspicion, but also for a finding of probable cause to administer a preliminary breath test. *Id.* at 409, 120. When considering all of these factors in the aggregate, the court concluded that "any police officer in the deputy's position would reasonably suspect that [the driver] was operating with a prohibited alcohol concentration." *Id.* 410-411, 121.

Just as in *Adell*, a number of *Waldner's* factors are present in this case. When taken in the aggregate, these factors gave Officer Carlson more than enough reasonable suspicion. Mr. Idell contends that only two factors were present, and that the factors were "mitigated". (Mr. Idell's brief at 18). However, Mr. Idell cites no case law to suggest that either a dated prior OWI or the level of odor of intoxication[1] is mitigating when regarding *Waldner's* building blocks; they are simply factors. Additionally, there are more factors that Idell fails to mention: the training and experience of Officer Carlson[2], the time of the evening in which this stop occurred, and the illegal driving.

Driving with expired plates may be regarded as less substantive than speeding; however, it is the type of behavior that speaks to irresponsible behavior and amounts to illegal driving nevertheless. It is a factor that a circuit court can consider. The time of the driving in this case is also a factor: 7:41 PM on a Sunday night. The Supreme Court of Wisconsin has reasoned that driving in early night, while not as significant as poor driving around "bar time," nonetheless lends further credence to an officer's suspicion that a driver was driving while intoxicated. *State v. Post*, 2007 WI 60, ¶ 36, 301 Wis. 2d 1, 21, 733 N.W.2d 634, 644.[3] This case contains not two building blocks, but at least five: (1) Odor of intoxicants, (2) prior OWI conviction, (3) experience of the officer, (4) time of night the driving took place, (5) illegal driving. These factors taken in the aggregate give any officer enough reasonable suspicion that the driver may be intoxicated while driving. Given the presence of these factors, Officer Carlson had enough reasonable suspicion that Mr. Idell may have been driving intoxicated.

3. Officer Carlson did not unreasonably delay the traffic stop.

[1] Idell also states in his brief that Officer Carlson "testified" to the level of the odor; however, Officer Carlson has given no testimony in this case.

[2] Officer Roth testified that West Allis Police Department spends a week and a half training for OWI investigations, where officers receive training on detecting certain indicators, "such as bloodshot, glossy eyes, slurred speech, and an odor of intoxicants emitting from their breath." (R. 28: 4-5).

[3] In *Post,* the traffic stop occurred at 9:30 PM, less than two hours later than the stop in his case.

As soon as Officer Carlson suspected that Mr. Idell may have been driving intoxicated, the mission of the stop changed. As such, the 12-minute period that Officer Carlson waited on scene for back up Police Officer Roth to arrive was not unreasonable. Once the mission of the stop had changed, the reasonable time frame no longer revolved around the amount of time necessary to investigate expired plates. The frame of reference shifted to the reasonable amount of time to properly conduct a drunk driving investigation. As such, Officer Carlson's decision to wait on the scene for a backup police officer was within the reasonable time frame for the investigation.[4] It is a best practice for law enforcement officers to summon backup for an OWI related investigation. See generally, *State v. Hay*, 393 Wis. 2d 845, 946 N.W.2d 190, 2020 WI App 35, *State v. Foston* 2022 WI App 55 (unpublished), *Matter of Schindler*, 2024 WI App 10 (unpublished) (illustrating generally that backup officers are routinely present in OWI-related investigations).

Had the mission of the stop remained focused solely on expired out of state license plates, the twelve minute extension may have been unreasonable, depending upon the amount of time necessary to reach out to a different state jurisdiction. However, because Officer Carlson had enough reasonable suspicion to pivot the mission of the stop to execute a proper OWI investigation, the extension of the stop did not amount to an unreasonable delay. Therefore, Mr. Idell's 4th Amendment rights were never in violation throughout the traffic stop.

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[4] The State offers Attachment A. The Exhibit contains the cover page, title page, table of contents, and page 38 of *Vehicle Contacts: A Training Guide For Law Enforcement Officers*, published by the Wisconsin Department of Justice, Office of the Attorney General. This December 2022 "Law Enforcement Standards Board" publication contains information and guidance to law enforcement officers (on page 38) as to the proper way to conduct OWI Stops, advising as follows:

OWI Stops
If you stop a vehicle you suspect the driver is operating while impaired (OWI), you should request back-up. People who are impaired typically:

- Are unpredictable in their behavior
- May have abrupt mood swings—including becoming combative
- May require assistance to walk or move about
- Do not process information well—they may not respond to verbal commands

It is far easier to manage an impaired person with two officers rather than one. (*Vehicle Contacts: A Training Guide for Law Enforcement Officers*, p.38).

B. Mr. Idell failed to allege sufficient non-conclusory facts to warrant a *Machner* hearing.

1. Legal Principles.

Criminal defendants are constitutionally guaranteed the right to counsel under both the United States Constitution and the Wisconsin Constitution. U.S. Const. amends. VI, XIV; Wis. Const. art. I, § 7. The right to counsel includes the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

When a defendant claims that counsel was ineffective, she must assert her attorney was deficient and that she was prejudiced as a result of that deficiency. *Allen*, 274 Wis. 2d 568, ¶26 (citing *Strickland*). In order to establish deficient performance, a defendant must identify specific acts or omissions falling "outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. An attorney's performance is deficient if the attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Allen*, 274 Wis. 2d 568, ¶26; *Strickland*, 466 U.S. at 687. A defendant demonstrates prejudice if she establishes "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Allen*, 274 Wis. 2d 568, ¶26; *Strickland*, 466 U.S. at 694. A defendant must satisfy both portions of the *Strickland* test to succeed on the claim. *Allen*, 274 Wis. 2d 568, ¶26; *Strickland*, 466 U.S. at 687.

However, the mere assertion of a claim of ineffective assistance does not entitle a defendant to a hearing. *Allen*, 274 Wis. 2d 568, ¶15. Rather, a defendant must assert facts which enable the reviewing court to meaningfully assess the claim. *Bentley*, 201 Wis. 2d at 314; *Allen*, 274 Wis. 2d 568, ¶21. Such facts must be material, that is, significant or essential to the issue presented to the court. *Allen*, 274 Wis. 2d 568, ¶22.

The *Allen* court wrote:

> As an assistance to defendants and their counsel, we propose that postconviction motions sufficient to meet the *Bentley* standard allege the five "w's" and one "h"; that is, who, what, where, when, why, and how. A motion that alleges, within the four corners of the document itself, the kind of material factual objectivity we describe above will necessarily include sufficient material facts for reviewing courts to meaningfully assess a defendant's claim.

Allen, 274 Wis. 2d 568, ¶23. (Footnote omitted)

2. Mr. Idell has failed to meet his burden to prove deficient performance by trial counsel, and that the performance prejudiced him.

As stated above, the traffic stop in this case was not unlawfully extended. Judge Ramos decided that he would have denied any challenge to Officer Carlson's stop as well as an alleged improper extension of time. Because defense counsel's performance was not deficient, a failure to raise the issue cannot be deemed as ineffective assistance of counsel. Consequently, any motion would have been irrelevant.

Neither did the failure to bring a motion unduly prejudice Mr. Idell who entered a guilty plea, and confirmed that no other aspect to the stop need be challenged. (R. 29:4). Mr. Idell also confirmed that he had an opportunity to discuss other potential defenses before pleading guilty, expressing satisfaction with his attorney. (29:8). Judge Ramos properly denied Mr. Idell's postconviction motion without a hearing.

CONCLUSION

This Court should affirm Judge Ramos' written decision, which held that Mr. Idell's motion failed to raise a question of fact sufficient to meet either prong of the *Strickland* analysis, and that sufficient facts were not pled to warrant a *Machner* hearing.

Dated this ___27th__ day of March, 2025.

Respectfully submitted,

KENT LOVERN
District Attorney
Milwaukee County

Electronically signed by:

John P. Letsch
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 3763.

03/27/2025 Electronically signed by:

John P. Letsch
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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 27 day of March 2025.

Electronically signed by:

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