

**In The
Supreme Court of the United States**

BRIAN ARTHUR TATE,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF MARYLAND

MOTION FOR REHEARING

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Pro se

QUESTION PRESENTED

Does the Due Process Clause of the Fifth Amendment and Fourteenth Amendment of the United States Constitution require federal and state courts, before accepting a guilty plea from a juvenile defendant being tried in adult court, to conduct a searching inquiry as to whether a juvenile's status of age, limited education, and mental impairments have had on the juvenile's voluntariness and decision to plead guilty?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINION BELOW

On June 25, 2018 the Maryland Court of Appeals issued a published opinion denying the Petitioner's appeal on the issues presented herein. *Tate v. State*, 456 Md. 524 (2017). The opinion of the Maryland Court of Appeals is attached as an Appendix to Petitioner's Writ of Certiorari. (A: 1-45).

On July 30, 2018 the Maryland Court of Appeals denied Petitioner's request for rehearing without opinion. (B: 1-2).

On August 15, 2017 in an unreported opinion and order, the intermediate Court of Special Appeals for Maryland reversed and remanded Mr. Tate's order for a new trial. *State v. Tate*, 2017 Md. App. LEXIS 845 (2017). (C: 1-18).

On September 26, 2014 Petitioner's post-conviction was granted in the Circuit Court for Howard County, Maryland, his guilty plea and sentence were vacated, and a new trial was ordered. (D: 1-86).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) and Supreme Court Rule 44(2). This Honorable Court denied Petitioner's writ of certiorari to the Court of Appeals of Maryland on November 5, 2018.

STATUTES INVOLVED IN THIS CASE

This case presents the question whether a guilty plea entered pursuant to MARYLAND RULE 4-242(c) and MARYLAND DECLARATION OF RIGHTS, ARTICLE 24 (due process), when being tendered by a child charged as an adult and suffering from diminished capacity due to mental illness, is in accord with the Due Process Clause of the United States Constitution Fifth Amendment, applicable to the States through the Fourteenth Amendment, that before a federal or state court accept a guilty plea from that child the court conduct an inquiry on the record as to whether a juvenile's status of age, limited education, and mental impairments have had on the juvenile's voluntariness and decision to plead guilty.

STATEMENT OF THE CASE^a

In addition to the statement of the case previously provided to the Court, Petitioner (hereinafter "Mr. Tate") supplements those with the following facts. The circuit court never did make any factual finding that Mr. Tate had entered his guilty plea knowingly and voluntarily, but only stated that the court was "satisfied --- and find him guilty of first-degree murder." (Appendix E, at 20).

The guilty plea transcript is full of errors and omissions that have been repeatedly glossed over by the Maryland courts due to a standard of review that fails to recognize that, while Mr. Tate was charged as an adult, he was nevertheless still a mentally ill child. Tate was provided a copy of his charging document before court and discussed it with his lawyer. *Id.*, at 8-9. The charging document only used the generic "short form language" which was not specific and covered more than one form of murder. The words "first-degree murder" were only read aloud during the guilty plea three times, and no one asked Mr. Tate if he understood that he was pleading guilty to first-degree murder. *Id.*, at 5, 20.

The guilty plea court was aware of Mr. Tate's juvenile age and diminished capacity, but never explored what impact that had on the voluntariness of Mr. Tate's decision to plead guilty. *Id.*, at 8. That court never found that Tate's waiver of his right to jury trial was a knowing, intelligent, and voluntary choice. *Id.*, at 10-11. There was no constitutional waiver of Tate's right to challenge his accuser(s), compel witnesses testimony for his defense, or was there a waiver of his right against compulsory self-incrimination. *Id.*, at 11.

^a A full statement of the case is contained within the Petition for Writ of Certiorari filed to this Court which was denied on November 5, 2018 with the following additions.

When Tate was asked if was pleading guilty because he was guilty, no answer was recorded. *Id.*, at 12. When Tate was asked whether he understood that by pleading guilty he was waiving his right to appeal the trial court's ruling at a suppression hearing regarding the admissibility of evidence, no answer was recorded. *Id.*, at 14-15. When Tate was asked if he had any further questions of his lawyers, no answer was recorded. *Id.*, at 16.

In the end, the Maryland Court of Appeals compared Tate's guilty plea to that of a fully functioning adult in *State v. Daughtry*, 419 Md. 35 (Md. 2011), created *Tate v. State*, 459 Md. 587 (Md. 2018) for an entirely different purpose to change the law in Maryland violating the "fundamental fairness doctrine" for appellate review, and ignored decades of juvenile jurisprudence to reach it's non-sensical conclusion in Tate's case. It is for these reasons that Due Process, fundamental fairness, and issues of first impression that raise serious concern about Tate's guilty plea.

1. The Due Process Clause Required The Circuit Court To Conduct A Voluntariness Inquiry That Focused On Mr. Tate's Age, Limited Education, And Mental Impairments.

This Honorable Court has held that Due Process "mandates ... evaluation of [a] juvenile's age ... and intelligence" as part of this constitutional voluntariness analysis. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). This approach gives constitutional dimension to the "limited experience and education" of juveniles that, when coupled with their "immature judgment," present "special concerns" that can affect the voluntariness of a juvenile's guilty plea. *Id.* at 725.

For these reasons, the Due Process Clause recognizes that minors often are "easy victim[s] of the law," *Haley v. Ohio*, 332 U.S. 596, 599, because at their age they "lack the experience, perspective, and judgment to ... avoid choices that could be detrimental to them." *Bellotti v. Baird*, 443 U.S. 622,

635 (1979) (plurality opinion). *E.g.*, *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) (The "immaturity, inexperience, and lack of judgment" of young people "may sometimes impair their ability to exercise their rights wisely.")

In determining voluntariness of a juvenile's plea, a court must do more than simply acknowledge the defendants' age. Rather, it must evaluate voluntariness in the context of the "commonsense conclusion," *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011), that minors "lack [the] maturity, experience, and capacity for judgment required for making life's difficult decisions," *Parham v. J.R.*, 442 U.S. 584, 602 (1979), such that "even in adolescence" they "simply are not able to make sound judgments concerning many decisions." *Id.* at 603.

To satisfy Due Process in making the voluntariness determination, a court take express account of the age of a juvenile offender by conducting a searching inquiry that ensures that the juvenile defendant's plea, in light of "the features that distinguish juveniles from adults" and "put them at a significant disadvantage in criminal proceedings," *Graham v. Florida*, 560 U.S. 48, 78 (2010), is truly voluntary and knowing. The inquiry must address the factors this Court has identified as carrying constitutional significance when dealing with juveniles, as set out in the decisions cited above, all of which "can lead to poor decisions by" a juvenile navigating the criminal justice system. *Id.* Age is then identified as carrying this constitutional significance and certainly is a crucial factor when a child pleads guilty in an adult court.

In a related context, *J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011) held that a defendant's age presents "a reality that courts cannot simply ignore." *J.D.B.* stressed that "the test for whether a person is in custody for *Miranda* purposes" is "an objective inquiry," *id.*, at 270, with the result that courts are required to treat a defendant's age not just as a personal characteristic,

but as an "objective fact related to the interrogation itself." *Id.*, at 278.

This Court accordingly directed that state court on remand specifically to take into account "J.D.B.'s age at the time." *Id.*, at 281. In the same way, Mr. Tate's age at the time he pleaded guilty was an "objective fac[t] related to the [plea proceeding] itself," an objective fact the Due Process Clause required the circuit court to treat as the crucial factor in determining whether Mr. Tate's plea was voluntary. For this reason this Honorable Court should grant this motion for rehearing.

2. Due Process Requires That Courts Also Consider The Effect
Of Mental Disabilities And Limited Education In
Determining Whether A Plea Is Voluntary

This Court has also made clear that "mental condition" is likewise a "significant factor in the 'voluntariness' calculus." *Colorado v. Connelly*, 479 U.S. 157, 164-165 (1986). *E.g.*, *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961) ("mental state" part of voluntariness analysis); *Spano v. New York*, 360 U.S. 315, 322 (1959) ("history of emotional instability" factor in voluntariness analysis); *Fikes v. Alabama*, 352 U.S. 191, 196 (1957) (that defendant "of low mentality, if not mentally ill" part of voluntariness analysis). A defendant's limited education also has relevance to the voluntariness issue, because it is indicative of cognitive and intellectual abilities. *E.g.*, *Spano*, 360 U.S., at 322 (fact that defendant "had progressed only one-half year into high school" relevant to voluntariness). *E.g.*, *United States v. Preston*, 751 F.3d 1008, 1020-1029 (CA9 2014).

Just like his age, Mr. Tate's mental disabilities and limited education constituted "objective circumstances" relating to the voluntariness of his plea. *J.D.B.*, 564 U.S., at 279. The Due Process Clause required the circuit court to conduct a searching inquiry on the record into those objective facts in determining the voluntariness of Mr. Tate's waiver of his constitutional

rights. For this additional reason, independent of the effect of Mr. Tate's age, the judgment of the Maryland Court of Appeals should be reversed.

3. Scientific Research Confirms That Children And Youth Are Especially Vulnerable During Plea Negotiations.

J.D.B. v. North Carolina observed that "[a]lthough citation to social science and cognitive science authorities is unnecessary to establish th[e] commonsense propositions" regarding juveniles that the Court outlined, *id.*, at 273 n. 5, "the literature confirms what experience bears out." *Id.* This Court referred to "'[d]evelopments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds.'" *Id.* (quoting *Graham*, 560 U.S., at 68). *Graham* held that scientific research demonstrated that the "parts of the brain involved in behavior control continue to mature through late adolescence," and that "[t]hese matters relate to the status of the offenders in question," that is, as juveniles, for purposes of the Court's constitutional analysis. 560 U.S., at 68.

An established and growing body of scientific literature continues to "bear out" these "commonsense conclusions" regarding adolescents, establishing that teenagers such as Mr. Tate are uniquely vulnerable during plea negotiations. As a group, adolescents make decisions in ways that differ from adults, and those distinctions result at least in part from developmental differences in a number of brain regions. L. Steinberg, *A Social Neuroscience Perspective On Adolescent Risk-Taking*, 28 DEVELOPMENTAL REVIEW 78, 83-92 (2008). These developmental differences affect an adolescent's capacity to understand his or her rights, appreciate the benefits and consequences of exercising or waiving those rights, and make reasoned and independent decisions about the best course of action. *E.g.*, L. Steinberg, *The Influence Of*

Neuroscience On US Supreme Court Decisions About Adolescents' Criminal Culpability, 14 NATURE REVIEWS NEUROSCIENCE 513 (2013); R. Bonnie & E. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 158 (2013); K. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail To Protect Children From Unknowing, Unintelligent, And Involuntary Waivers Of Miranda Rights*, 2006 WISC. LAW REVIEW 431, 432 (2006) (youth must "reason about what happens right now and in the future if she does or does not answer questions").

The developmental literature explains how the unique qualities of adolescent decision-making are relevant to the voluntariness determination. Leading researcher Thomas Grisso has found that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement." *Grisso*, at 357. Thus, in "evaluating a plea agreement, younger adolescents are less likely, or perhaps less able, than others to recognize the risks inherent in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions." *Id.*

Grisso concluded that "psychosocial immaturity may affect a young person's decisions, attitudes, and behavior in the role of defendant in ways that do not directly implicate competence to stand trial, but that may be quite important to how they make choices, interact with police, relate to their attorneys, and respond to the trial context." *Id.*, at 361. The study continued:

"In general, those who deal with young persons charged with crimes -- and particularly their attorneys -- should be alert to the impact of psychosocial factors on youths' attitudes and decisions, even when their understanding and reasoning appear to be adequate. Deficiencies in risk perception and future orientation, as well as immature attitudes toward authority

figures, may undermine competent decision-making in ways that standard assessments of competence to stand trial do not capture." *Id.*

This research has direct relevance to Mr. Tate's case: "In the plea agreement context, judicial inquiry that goes beyond the standard colloquy may be needed when courts are presented with a guilty plea by a young defendant." *Id.* This becomes even more apparent where, (as is the plea agreement that was presented to Mr. Tate in 1992) the contemplated bargain offered by the government is illusory in nature and the result of "bad faith." Due to Mr. Tate's overall status as a juvenile suffering from mental illness, he was a "[y]outh [that] react[ed] emotionally and impulsively in such circumstances without engaging in a measured decision-making process, and succumb[ed] to perceived pressure from adults." L. Malloy, *et al.*, 38 LAW AND HUMAN BEHAVIOR, at 181; E. Cauffman & L. Steinberg, *Emerging Findings From Research On Adolescent Development And Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 438 (2012).

Over fifty years of research has demonstrated that the "commonsense conclusions" of this Honorable Court have a strong basis in medical, psychological, and scientific fact: Adolescents like Mr. Tate, simply by their age alone, are prone to plead guilty without making a knowing and intelligent decision to waive their constitutional rights, especially where the terms of a plea agreement are presented in bad faith. An adolescent's limited education and mental disabilities exacerbate this effect.

4. Mr. Tate's Plea Hearing Did Not Meet The Constitutional Requirements Of Due Process.

Mr. Tate's *mens rea* was impaired throughout his entire guilty plea proceeding, including during sentencing. (App. F., at 44). Because of this, apart from anything else, Mr. Tate's guilty plea was not entered into

knowingly and voluntarily. However, add his status as a juvenile into the equation and it becomes clear that the circuit court's failure to conduct a searching inquiry into the voluntariness of Mr. Tate's plea violated the Due Process Clause.

Medical science is improving our ability to quantify with more precision how these characteristics of adolescence leave minors at such a significant disadvantage in criminal proceedings. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (status as an adolescent impacts assessments of the minor's mental capacity, as compared to an average adult); *Miller v. Alabama*, 567 U.S. 460, 477-478 (2012) (explaining that the hallmark features of juvenility include the "incompetencies associated with youth," such as "inability to deal with police officers or prosecutors ... [and] incapacity to assist [one's] own attorneys").

While there are many disadvantages that have legal significance, specific disadvantages that are material to evaluating guilty plea proceedings include a possible decreased ability to understand and make decisions, as compared with adults. See *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011) (minors lack "mature judgment," and possess "an incomplete ability to understand");

Graham v. Florida, 560 U.S. 48, 78 (2010) (juveniles have "limited understandings of the criminal justice system;" are more susceptible to making poor decisions in those proceedings; and "[have] [d]ifficulty in weighing long-term consequences").

The Circuit Court for Anne Arundel County, Maryland made no attempt to determine how Mr. Tate's age, limited education, diminished capacity due to mental illness, or his status as a juvenile in general affected his decision to plead guilty. It restricted its voluntariness inquiries to a few basic questions, and made no further attempt to probe whether, Mr. Tate's diminished

juvenile status, he actually understood the rights he was waiving and the consequences of that waiver. It did this even though that court also knew when it accepted Mr. Tate's plea that psychiatrists had diagnosed him as suffering from serious mental disorders. As such, the court failed to also probe how these disorders affected the voluntariness of Mr. Tate's plea.

The Due Process Clause required the circuit court to inquire into these matters with "special caution" and "special care," *In re Gault*, 387 U.S., at 45 (internal quotation marks omitted) - indeed, with "the greatest care" - so as "to assure that [Mr. Tate's waiver of constitutional rights] was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair." *Id.*, at 55. The Circuit Court for Anne Arundel County, Maryland failed to do so.

Evidence that Mr. Tate introduced through correspondence to the guilty plea court prior to the plea hearing included the results of a psychiatrist who had examined Mr. Tate prior to that plea. *See Correspondences to Trial Court Before Guilty Plea*, attached as Appendix G. The guilty plea court was aware that Tate underwent a psychiatric evaluation conducted by Dr. Michael Spodak. The summary provided to the court included a reference to Tate's "tender years," and that he was functioning below his chronological age. The court was made aware of this psychiatric evaluation, and some of the results, through litigation before the plea hearing. In fact, the judge taking the guilty plea had also previously signed an order allowing for such examinations were going to be performed.

However, the court made no specific inquiry during the plea hearing about these mental impairments. The only rudimentary question regarding Tate's mental impairments was when the court asked "have you ever been under the care

of a psychiatrist or in a mental institution?," App. E, at 8, and he replied, "Yes, I have." *Id.* The court was completely aware that Mr. Tate was suffering from diminished capacity due to mental illness, but made no attempt to explore how these impairments affected Tate's ability to understand the guilty plea proceedings itself. In fact, the portion of the plea where the judge inquired about Tate's personal characteristics is short. *Id.* The judge never even asked a single question about age or the fact that Mr. Tate was a minor. *See id.*

Mental impairments and limited education, like age, is not just a personal characteristic: it is an "objective fact[t] related to the [proceeding] itself," one which Due Process requires a court to evaluate in determining voluntariness. *J.D.B.*, 564 U.S., at 278 (internal quotation marks omitted). The record here demonstrates that the Circuit Court for Anne Arundel County, Maryland knew of these diagnoses before the guilty plea. The record contains a copy of a letter to the court from the State's Attorney requesting that the court order a "mental evaluation of the defendant," referring to an evaluation of Mr. Tate by defense experts, and transmitting a copy of a letter from Mr. Tate's counsel referring to Mr. Tate's "lack of maturity even for his age" and "his psychological and psychiatric testing disclosing manifestations of narcissistic and passive-aggressive personality disorders." *See App. G; generally.* A constitutionally-appropriate inquiry into the voluntariness of Mr. Tate's guilty plea would have addressed how these mental impairments, quite apart from his age or level of education, affected Mr. Tate's decision to plead guilty.

The Circuit Court for Howard County, Maryland granted Mr. Tate post-conviction relief in part because of Mr. Tate's age and medical condition. Appendix D, at 57. But the Maryland Court of Appeals never addressed Mr. Tate's age or education at all, and discounted the medical testimony in its entirety as it related to the voluntariness of Mr. Tate's guilty plea.

II. MR. TATE'S CASE PRESENTS "INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT" AND "SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED."

1. Parental Influence Coerced Mr. Tate Into Accepting This Plea.

While not apparent from the records submitted as Appendices E & F, Mr. Tate's defense was conducted by his parents. They threatened to withdraw familial and financial support if Tate did not do as they commanded. Ultimately, Tate pled guilty because of those threats.

Trial counsel was aware of this and injected into the record that it was Tate's decision to plead guilty and not his parents. App. E, at 14-16. Tate did state he was not threatened or promised anything (App. E, at 7); but what child views their parents a threat? It was this reason Tate stated he was not coerced. It is for this reason this Court has found "[t]he purpose of the 'knowing and voluntary' inquiry ... is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." *Godinez v. Moran*, 509 U.S. 389, 401 n. 12 (1993) (emphasis in original).

At Mr. Tate's first post-conviction hearing, testimony was given by Mr. Tate and his parents relating to the familial coercion that was used to induce this plea. See Excerpt: Post-Conviction Findings, 5/25/10, pp. 37-52, attached as Appendix H. That court had found parental coercion appropriate, *id.*, at 39, 41, 44, and that their threats acceptable. *Id.*, at 45. This is brought to the Court's attention to demonstrate Tate's juvenile status was more than a failure of counsel and the court to explain the essential elements of first-degree murder. Tate was a mentally ill child whose *mens rea* was incapable of committing first-degree murder. And it was this Court's rulings in *Graham*, *J.D.B.*, *Miller*, and *Roper*, that the post-conviction court on re-review granted Mr. Tate a new trial. See Appendix D, at 58.

While not apparent from the record, Tate was coerced into pleading guilty.

Had Tate been treated more than "simply a miniature adult []" for purposes of implementing Constitutional guarantees, *J.D.B.*, 564 U.S., at 274, the circuit court would have been concerned about Tate's ability to voluntarily plead guilty to first-degree murder.

2. The Plea Bargain Was Illusory And A "Bad-Faith" Deal That Trial Counsel Failed To Thoroughly Investigate.

On March 13, 1992 Tate received a \$100,000 house-arrest bond on the murder charge. That same evening new charges were filed against Tate in an unrelated case. See Case No. 02-K-92-863, *Maryland v. Tate*, Circuit Court for A.A. Co., Maryland. See also Documents: Application for Statement of Charges, Statement of Charges/Statement of Probable Cause, Arrest Warrant On Charging Document; attached as Petitioner's Appendix I.

These charges were absolutely "by their nature improper as having no proper relationship to the prosecutor's business." *Brady v. U.S.*, 397 U.S. 742, 755 (1970).

This Court quoted approvingly of the Fifth Circuit's statement that guilty pleas must stand unless induced by "misrepresentation (including unfulfilled or unfulfillable promises)." *Id.*, at 755 (quoting *Shelton v. United States*, 246 F.2d 571, 572 n. 2 (CA5 1957) (en banc) (internal quotation marks omitted).

On November 7, 1991 a tragic fire occurred at the Rogalski home at 1:12am.⁴ Had the circuit court of trial counsel investigated these charges, it would have been learned early on that there was no crime. The Statement of Charges fails to state an arson crime occurred as "undetermined" is not arson; especially where the investigation by the Fire Marshall determined the cause to be a faulty furnace.

⁴ Unfortunately the Fire Marshall's original investigative report never surfaced. The Circuit Court for Anne Arundel County does not have a copy, the state prosecutor's office does not have a copy, and the document was never supplied to defense counsel or Mr. Tate through discovery motion. This is clearly a *Brady* violation. See *Brady v. Maryland*, 373 U.S. 83 (1963). However, more pertinent, is defense counsel filed no motions and made no objections during any of Mr. Tate's pretrial hearings to remedy this defect in the prosecution. Instead, trial counsel permitted the prosecution to include the *nolle prosequi* of these illusory charges to induce Mr. Tate's guilty plea.

Counsel's failure in this regard and permitting the prosecution to use these illusory charges to induce Tate's guilty plea meets the *Strickland v. Washington*, 466 U.S. 668 (1984) test for ineffectiveness. See also *Hill v. Lockhart*, 474 U.S. 52 (1985). Prosecutorial misconduct is also apparent for failing to turn over exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83 (1963). Mr. Tate would not have pled guilty if he actually understood what was happening during those proceedings. The circuit court did not "take any special care to ensure that [Mr. Tate's] [] plea was truly voluntary." E.g., *Gallegos v. Colorado*, 370 U.S. 49, 53 (1962) (changes from original).

Mr. Tate's Fifth Amendment right under the totality of circumstances was violated. The records may not be enough, on their own, to demonstrate the level of incomprehension Tate suffered. Add that counsel was ineffective and prosecutorial misconduct during the plea bargain phase, and further concern is added stating there needs to be more when children plead guilty in adult courts.

CONCLUSION

For these reasons, Petitioner respectfully prays this Honorable Court grant this Motion for Rehearing, grant Certiorari to the Court of Appeals of Maryland, and place this appeal on the Court's regular appeal docket as this petition is filed in good faith and not for delay.

Respectfully submitted,



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