

20-1308

No. 21-_____

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

Roger D. White,

Petitioner

v.

Super Gasoline, Inc., and Abdullah Al Mamun,

Respondent

On Petition for a Writ of Certiorari to
the Supreme Court of Virginia

PETITION FOR A WRIT OF CERTIORARI

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Pro Se

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Petitioner

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I. Question Presented

Where the trial court engages in tainting a jury (especially during voir dire) making it clearly **pro-defense** by punishing pro-plaintiff potential jurors and impanelling pro-defense potential jurors, also creates a non-diverse jury (all white and all women), and removes the only black member of the jury, does this violate Mr. White's guaranteed right to a fair trial and an impartial jury under the Due Process Clauses of the 5th, 6th and 14th Amendments to the Constitution of the United States?

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IV. Petition for Writ of Certiorari

Roger White, Pro Se, victim and petitioner, respectfully petitions this court for a writ of certiorari to review the judgement of the Supreme Court of Virginia. The Supreme Court of the U.S. should note that Mr. White is brain injured from the attack on him by repondent Abdullah Al Mamun which is clearly shown in the photographic exhibits placed into evidence and for that reason, and since Mr. White is acting pro se, he asks for some latitude in his filing since he is also losing his vision and can only read larger print. Mr. White is also elderly.

V. Opinions Below

The decision by the Supreme Court of Virginia denying Mr. White's direct appeal is reported as Roger D. White v. Super Gasoline, Inc., and Abdullah Al Mamun, Record No. 191752, Circuit Court No. 2018-09795. The Supreme Court of Virginia denied White's petition for appeal on May 26, 2020. A Petition for Rehearing was also denied on October 9, 2020. Supreme Court of Virginia Record No. 191752.

VI. Jurisdiction

Mr. White's petition for rehearing to the Supreme Court of Virginia was denied on October 9, 2020. Mr. White invokes this Court's jurisdiction under 28 U.S.C. Section 1257, having timely filed this petition for a writ of certiorari within 150 days of the Supreme Court of Virginia's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

This is a civil case that was considered to be a slam dunk by many scholars of law. An elderly man (Mr. White) got gas spilled on him by defective gas pump at a gas station, the cashier, who is a registered child predator and sex offender, attacks Mr. White (twice) with an object used as a weapon, and this is recorded on a store surveillance camera. Mr. White even placed into evidence photos from the high speed strike which clearly show the extreme speed and viciousness of the strikes on an elderly gentleman-- who is simply seeking help from a cashier. This case represents one judicial error after another. Given that there was irrefutable evidence in five (5) photos of the battery-- the jury astonishingly went on to render a verdict that there was no battery in egregious error.

The judge violates even the most basic Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. This begs the question---when a judge: 1. acts with extreme prejudice towards the petitioner, Mr. White and his wife, Nancy White, 2. has ex parte conversations with the defense lawyer in which the defense lawyer is heard stating "you really are the best judge." 3. taints and fixes a jury clearly favoring the defense by putting the jury into a "pro-defense" mode by allowing strongly pro-defense potential members on the jury and not allowing pro-plaintiff jury members such as Mr. Barrigan. Mr. Barrigan was also punished in front of the entire jury pool which intimidated and threatened these honest citizens of the U.S. in an unlawful and outrageous manner which was reprehensible in the annals of jurisprudence. Abuse of discretion. Exxon Mobil Corp v. Minton, 285 Va. 115, 130 (2013).

1. The vicious attack on elderly Mr. White

A convicted child predator felon (also on the official sex offender registry of the Virginia State Police) named Abdullah Al Mamun attacked Mr. White on May 28, 2014, at an Exxon gas station. Mr. Mamun was an employee and manager of the station and oversaw bathrooms where women and children frequented.

An officer Kearns reviewed station's video and told Mr. White that he saw two severe strikes on Mr. White by Mamun and that he would file charges against Mr. Mamun. Later, officer Kearns said that higher ups were against any prosecution, and he had to go along with them. At trial, Lt. Carter (recently promoted to Chief of Police) admitted he was a friend and business partner of Mamun. This was a huge conflict of interest---especially, since Chief Battle received a non-spoliation notice less than a week after the attack took place on Mr. White. The Chief flagrantly disregarded the notice which gave specific direction to preserve all video evidence in which Mr. White appeared. This negligence of the Chief in preserving all of this evidence allowed Gupta (the station owner) to destroy approximately 97%

of all the video evidence from 14 cameras at the station and engage in a cover up by supplying only about a 2 minute segment of video which had been reduced to 5 fps to make the attack on Mr. appear less severe than it actually was. The DVR-- the brain of the system-- was also destroyed by Gupta, in total disregard of the non-spoliation notice sent to him less than one week after the attack on Mr. White.

The Chief had actually aided in tampering and destroying evidence for which he was given direct responsibility to preserve by a non-spoliation letter. Had Mr. White been able to present all of this evidence in court he would have prevailed. Emerald Point, LLC v. Hawkins, 294 Va. 544, 808, S.E. 2d 384 (2017)

The circuit court Judge Kasabian ruled in an evidentiary hearing that non-spoliation notices and actions of the police and Gupta in destroying evidence could not be presented to the jury. The Judge gave no reason for his decision. Notably, the Judge knew the defense counsel well and participated in several ex-parte conversations with him. Mr. White heard the defense counsel say "you really are the best judge." This denied Mr. White due process under 5th and 14th Amendments. Mr. White had been employed at NPIC (the National Photographic Interpretation Center) as a top interpreter. The video segment that had been provided by the defense was altered and the DVR that the station had destroyed, with complicity of the police chief, could have proven that. This further denied Mr. White his right to due process . The Judge's decisions were shameful and cast grave doubt on the integrity of jurisprudence in the U.S. This is clearly abuse of discretion by the judge.

Mr. White, a photographic analyst, also discovered **new evidence** which should be grounds for a writ of certiorari. The new evidence consists of Lt. Carter revealing at trial that the DVR video system he inspected at the gas station where Mr. White was attacked was a Magic video system. Mr. White noted after the trial

that the video segment supplied by the police and the defendants was produced by the REVO video recording system. This was clearly visible at the top video segment produced by the police. Notably, Mr. White was one of the top photo experts that worked in the section at NPIC that had discovered the Cuban missiles in 1962 and briefed JFK. New Evidence: the video defense produced was manipulated.

It was also Mr. White's opinion, as a top government analyst and photographic interpreter, that the video had been altered to make it appear more favorable to the perpetrator of the attack on Mr. White and that it was slowed down to 5 frames per second which eliminates over 80% of the action of the battery on Mr. White. This is NEW EVIDENCE. Mr. White was able to make the connection of the altered and deceptive video segment shown to the jury as well as the fact that the DVR video shown at trial was different from the original DVR in the gas station which Chief Carter testified was, in fact, a Magic or Majic DVR.

Mr. White went to trial and lost his two claims against Super Gasoline, Inc., and Mr. Mamun for 1. battery and 2. negligence. Mr. White had calculated the speed of the 2 strikes as being so fast they could break one-inch boards easily but the Judge did not want the jury to hear this.

Mr. White presented absolute and irrefutable evidence of battery on him by Mamun (defendant). Five (5) still frame photos, extracted from the defense's video segment that defense manipulated, were presented into evidence. These photos show that actual contact was made between Mamun's hand and Mr. White. Mere touching unwanted is the standard definition for battery in Virginia. **Photographic evidence is the highest form of evidence available to a jury.** Since the strike on Mr. White was a "cobra like karate/weapon high speed event" similar to a horse race video--- the still frame photos are the only way to conclusively prove that a battery has taken place or judge the winner of a horse

race. This revealed that the jury was "plainly wrong" about its verdict that Mamun had not committed battery on Mr. White under Virginia code section 8.01-680 "When judgement of a trial court not to be set aside unless **plainly wrong** The defense counsel prevented, by his actions, the jury from studying these photos in detail. Va. Code Sec. 8.01-680. A clear error in factual findings. Thompson v. Bacon, 245 Va. 107, 425 S.E. 2d 512 (1993).

In further violation of Mr. White's amendment rights, the Judge fixed the jury with pro-defense members and punished pro-plaintiff members (Barrigan et al). Jury tampering directly effects the constitutional impartiality of a jury. Remmer v. United States 347 U.S. 227 (1954).

The Judge also made the jury non diverse-- being all women and the only black member being removed just before the jury deliberated. Strauder v. West Virginia 100 U.S. 303 (1880). The black member of the jury appeared shocked and upset over this action and looked towards Mr. White with sympathy as she left the court room. This was a violation of the 6th Amendment to the U.S. Constitution. Batson v. Kentucky, 476 U.S. 79 (1986).

Judge Kasabian's mind wandered incoherently-- at one point talking about movies he had seen with Will Ferrell and his trips to Disneyland on a train with his family. This was a total breakdown in due process for Mr. White's case involving acute brain injury and many other injuries from the vicious and unprovoked attack on his person by Mamun (defendant), not only unethical but criminal in nature -- hence, undermining Mr. White's 5th, 6th, and 14th Amendment rights.

On August 30, 2019, Judge Kasabian ordered that the Plaintiff's Motion to Set Aside the Verdict and for a New Trial was denied. The circuit court gave no written reason whatsoever for its decision which appeared arbitrary and without justification.

2. Direct Appeal

On direct appeal, White renewed his arguments of the numerous violation of his legal rights under the 5th, 6th and 14th Amendments and received a writ hearing from the Supreme Court of Virginia. The writ hearing took place on March 31, 2020. On May 26, 2020, the the court refused the petition for appeal. The Court rendered no comment.

A petition for rehearing was filed and on October 9, 2020, the prayer of that petition was denied without explanation. The court rendered no comment.

IX. REASONS FOR GRANTING THE WRIT

A. Where the police receive a non-spoliation notice (in writing by certified mail) within 7 days of an actual battery on an elderly person at a gas station-- and the police and the defendants fail to preserve key video evidence of the attack and actually DESTROY over 95% of the video evidence from 16 cameras and DESTROY the DVR in concert with each other-- which the police and defendants admit to-- these acts are a flagrant violation of Mr. White's constitutional right to due process under the 5th and 14th Amendments to the U. S. Constitution. Further, the investigating police officer (Carter) admitted at trial that he was a personal friend of the attack perpetrator (Mamun) and was also in a business relationship with Mamun-- this is why Carter did not arrest and charge Mamun with assault and battery. The jury inferred that since Mamun was not charged with a criminal offense that he had not committed a tort under Virginia law-- even though photographic evidence from a video supplied by the defendants and the police proved otherwise.

The Due Process Clause of the United States Constitution obligates the police

to preserve evidence (retain and disclose evidence). Brady v. Maryland 373 U.S. 83 (1963); California v. Trombetta 467 U.S. 479 (1984); and Arizona v. Youngblood 488 U.S. 51 (1988).

All evidence must be disclosed-- especially if it can alter the outcome of a trial. Brady v. Maryland, supra, p. 87. The police officer also acted in bad faith by destroying the evidence he had a clear duty to preserve. The bad faith was the fact that the officer was a friend of the perpetrator (Mamun) and also in a business relationship with him. The bad faith was also the fact that the police and the defendants received non-spoliation notices within 7 days of the attack on White and proceeded to destroy over 95% of the video evidence and the DVR-- the brain of the station's video recording system, in order to shield Mamun from prosecution.

When the police received a clear non-spoliation notice which was sent to them, and Chief Battle signed a receipt for-- the police had a clear duty to preserve that evidence and not appoint a friend of Mamun's (Lt. Carter) to conduct the investigation into the video evidence-- which under the circumstances amounts to nothing less than tampering with evidence and entering into a conspiracy with the defendants to destroy crucial evidence necessary for the victim of the attack (White) to prove his case. The police and the defendants also knew that Mr. White had been a high ranking intelligence officer and an expert in video and photographic interpretation with the National Photographic Interpretation Center (NPIC) of the U.S. government. JFK depended on them during the Cuban missile crisis. Also, they identified a second shooter the very night JFK was assassinated from the Zapruder movie film. They are tops in the U.S. government for video and photographic interpretation. Mr. White had a top-secret clearance and this supports his extreme integrity about being attacked by Mamun and presenting photo evidence to the court to support his claim. Gupta, the owner of the station, admitted destroying most of the video evidence and the DVR even after admitting

he received a detailed non-spoliation notice from White's attorney within 7 days of the brutal attack on White. The police and the defendants feared White could take the DVR apart and look at every detail in it for evidence. The evidence is clear--- Officer Carter and the defendants **entered into a conspiracy to destroy all traces of the attack on White.** In many states, the failure of a police officer to prosecute a case (where there is overwhelming video evidence of a crime) because the perpetrator is a friend and business partner in this case) is a felony in and of itself. A police officer who prevents another police officer from prosecuting a crime, since he is friends with the perpetrator, is guilty of violating Va. Code section 18.2-460 Obstruction of Justice since he was an admitted friend and business partner of Mamun (perpetrator).

In Virginia, SB1619, clearly offers sanctions for the destruction of evidence. As of July 1, 2019, parties to a law suit now have a duty by statute to preserve evidence. Va. Sec. 8.01-379.2.1

While the defense offered the ***Emerald Point, LLC v. Hawkins***, 294 Va. 544, 808, S.E. 2d 384 (2017) case as a defense for their destruction of evidence--- it stated clearly in that case that there was no notice given to the defendants for over one year that there was a need to preserve evidence in the case. On the contrary, White's attorney (Mr. Downey) sent non-spoliation notices to the Chief of Police (Battle) and to the defendants within 7 days of the attack on Mr. White. These notices stated very clearly what was to be preserved--especially, all the video in which Mr. White appeared.

Notably, it turned out that the investigating officer (Carter) admitted in the trial transcript that he and the defendants were **friends and involved in a business relationship together**-- hence, the evidence was destroyed and denied White his constitutional rights under the Due Process Clauses of U.S. Constitution.

Screws v. United States 325 U.S. 91, 98 (1945), 18 U.S.C. section 242.

Lt. Carter, the police officer who downloaded only one small piece of evidence from the station DVR **and then permitted the destruction of all the other evidence--** even the DVR and video from 15 other cameras--committed a Class 6 felony under Va. Code section 18.2-462 (B) Chapter 4, of this title "willfully conceals, alters, dismembers, or destroys any item of physical evidence with the intent to delay, impede, obstruct, or hinder the investigation, apprehension, prosecution, conviction, or punishment of any person regarding such offense is guilty of a Class 6 felony." Lt. Carter worked for notoriously dysfunctional police department which was later investigated by the local D.A. and the state police for beating up a woman in a bar and breaking her nose.

B. To avoid a judge's failure to recognize the meaning of due process under the U.S. Constitution the Court should clarify how far a judge can go to "fix" a jury by asking jurors if they are pro-plaintiff or pro-defense and then going so far to approve jurors of one persuasion or the other and then punish jurors that are of the other persuasion in front of the whole jury pool of potential jurors during voir dire.

There is little doubt that anyone observing this trial would have seen the element of prejudice by the Court towards the Plaintiff. The judge (Kasabian) even entered into ex-parte conversations with the defense counsel and the defense counsel was clearly heard saying, "you really are the best judge--" upon which the judge smiled and said "thank you." After this point, most of the rulings were in the favor of the defense.

White had a stacked deck against him and the trial proved to be an embarrassment to the integrity of jurisprudence in Virginia. The trial was, in fact, a sham.

The Court would not allow sanctions or a jury instruction regarding the defendants' destruction of the primary evidence in the case (over 95% of the video and the DVR...the brain of the video system). The judge said he didn't even want to hear the word "spoliation." He further gave no reason for his determination which was arbitrary and unfair to White. In a motion, Judge John M. Tran ordered that non-spoliation could be brought up to the jury by the plaintiff and this caused a **judicial conflict** between the trial judge and the motions judge, Judge Tran. This is grounds for an appeal based on an **error of law**.

Most notably, Judge Kasabian, at one point admits he "erred in the case."
[Trial Day 3: 136] Irrefutable and prima facie proof of judicial misconduct and grounds for a new trial and violation of Mr. White's Due Process Clause rights under the 5th, 6th and 14th amendments to the Constitution of the United States.

The defense attorney was caught tampering with White's photographic still frames which actually proved the battery on White--- the Judge did nothing. This is tampering with evidence. This constitutes a violation of White's right to a fair trial under the Due Process Clause under the 5th and 14th Amendments to the Constitution of the United States.

A Mr. Barrigan who was asked by the Judge during voir dire if he was pro-plaintiff, was **punished** for having that belief in front of the whole jury pool. This intimidated the other jurors into thinking that if they admitted having that position they would be severely punished also by the unfair judge. **None of the pro-defendant potential jurors were punished** for their beliefs and, in fact, some were **impanelled** on the jury for the trial. At this point, everyone in that imprisoned court room knew that Judge Kasabian was clearly pro-defense. Mr. White had been given no say whatsoever in the voir dire process in further violation of his constitutional due process rights.

The Court threw Mr. White's right to an unbiased tribunal under the Due Process Clauses of the 5th and 14th Amendments of the U.S. Constitution right out the window.

Judge Kasabian breached his duty of Code of Conduct for Judges. Va. R. Sup. Ct. 3. "(5) A judge shall perform judicial duties without bias or prejudice." **This includes "race" whereby the judge removed the only black juror from the jury just before the verdict.** The juror had appeared to separate herself from the all white female jury by her body language and gave eye contact to Mr. White as she left the courtroom obviously she was upset and visibly shaken by the judge's decision. The judge had prevented the jury from being a cross-section of the citizens and had no diversity whatsoever as is constitutionally guaranteed. This is further violation of White's right to Due Process under the 5th and 14th Amendments to the Constitution of the U.S. Further, judicial abuse of discretion by the trial judge.

C. The Court should not approve a jury verdict when it has clear and convincing evidence it is "plainly wrong" via the Va. Code Section 8.01-680. The statute not only approves setting aside the verdict but implies the necessity of the Court to set aside such a verdict. 5 actual still frame photos of the vicious attack on Mr. White **constitute irrefutable and absolute battery** on Mr. White. The jury's verdict was there was no battery and was, therefore, plainly wrong. Mr. White's rights under the Due Process Clauses were clearly violated. 5th and 14th Amendments to the Constitution of the United States.

Five (5) still frame photos admitted into evidence by White were unethically and illegally removed by the defense counsel from the Jury's monitors or tv screens. This action was observed by Mr. White and his attorney Mr. Loftus who promptly

jumped up from his desk and reprimanded the defense counsel (Friedman) out loud in court. During the time of the illegal removal of these key photos in the case the jury was not able to review them and as soon as the defense counsel put them back on from his computer control station they were removed again by the court. These key photos were extracted from the small piece of video provided by the police and defendants in the case and showed clearly Mr. White being battered at a high speed by the defendant Mamun. Also one photo shows a weapon in the hand of Mamun as he strikes White. Violation of Mr. White' right to due process and the 5th, 6th and 14th Amendments to the Constitution of the United States.

The standard for battery in Virginia is mere touching. The photos showed that Mamun's strike on White went far beyond that level touching to a brutal high speed attack on White. The defense counsel knew if these were shown to a jury for any extended length of time the defense would lose its case. Va. Code section 18.2-57.

The jury was however presented with absolute and irrefutable evidence of battery under Virginia law and this evidence was admitted into court. THEREFORE, the jury's verdict that "there was no battery" was plainly wrong. Section 8.01-680 [plainly wrong verdict]. This was an error in law.

Notably, these still frame photos were extracted from a small segment of video tape provided by the police and defendants. A former FBI video expert (plaintiff expert witness) performed the extraction and testified at trial as to the fact that the video was only 5 frames per second which meant over **80% of the true action of the video had been eliminated by the police and the defendants**. The police and the defendants in concert destroyed the DVR and over 95% of the video from 16 cameras of the events that transpired while Mr. White was at the station--this was done in violation of non-spoliation letters they had received right after the attack on White. [Prevented White's right to a fair trial under the 5th and 14th Amendments

to the Constitution of the United States].

Mr. White, coincidentally, was one of the top photographic interpreters and analysts in the U.S. and had been employed with NPIC part of the federal governments highest photographic interpretation agency. Mr. White agreed with his FBI expert witness and calculated the speed of the attack on him at a rate strong enough to break a one-inch board which was confirmed by calculations done at M.I.T. Further, the weapon used to strike him appeared to be a kubaton--a deadly martial arts weapon. This was confirmed by a physician who was also a martial arts expert. Mr. White had been an Air Force officer and was a disabled veteran and was elderly at the time of the attack. White and the FBI expert agreed that the trial was a sham. Mr. White had a top-secret clearance and his integrity is of the highest caliber.

Allen v. Brooks (Va. Supreme Court) confirms the code that a jury's verdict must be upheld unless the verdict is plainly wrong. In this case, still frame photos of a brutal attack on White (twice) are irrefutable and absolute evidence of battery on White and the jury verdict that there was no battery was plainly wrong under Virginia code and therefore the verdict must be set aside. Allen v. Brooks 203 Va. 357 (1962).

D. The Court should act to remove and reprimand a defense counsel who electronically erases the plaintiff's still frame photos of an attack on him by a perpetrator so that the jury can not weigh their significance in their verdict. The photos were illegally and maliciously removed by the defense counsel right after the Court admitted them into evidence. From the location where the plaintiff sat he could see the jury monitors and the defense counsel's actions in removing the still frame photos. The Plaintiff's counsel jumped up and reprimanded the defense

counsel for what he had done. [Defense counsel: Friedman].

It is an extreme and illegal action for an attorney who is also an officer of the court to tamper with crucial evidence during a trial. Jury tampering is not only unethical but a criminal offense. The strict laws against evidence and jury tampering are in place to insure an individual's right to a fair trial under the Due Process Clauses of the 5th and 14th Amendments to the U.S. Constitution. 18 U.S. Code Section 1512 Tampering with a witness, victim or informant. Preventing the production of a record, document or other object, in an official proceeding is a crime.

In Virginia, it is the duty of the Judge to grant a mistrial when juries are influenced by an outside source such as an unscrupulous attorney eliminating court approved evidence in any case. Remmer v. United States :347 U.S. 227 (1954)

White was clearly not given a fair trial. Stockton v. Virginia, 852 F.2d 740 (1988); Va. Code section 18.2-462 Chapter 4 section 18.2-30 et seq. of title willfully conceals alters, dismembers or destroys any item of physical evidence with the intent to delay, impede, obstruct, prevent or hinder the investigation.... is guilty of a Class 6 felony. White's right to Due Process was denied under the 5th and 14th Amendments to the Constitution of the United States.

X. CONCLUSION

For the foregoing reasons, Mr. White, Petitioner, respectfully requests that this Court issue a writ of certiorari to review the judgement of the Supreme Court of Virginia and remand to the trial court for a new venue in Charlottesville, Virginia, and for a new bench trial and not a trial by jury.

DATED this 2nd day of March, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. White", is written over a horizontal line.

Roger White Pro Se

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