R. v. Simpson, 2017 NWTSC 72 S-1-CR-2016-000113

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - v -

 SAMUEL SIMPSON

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 Transcript of the Reasons for Sentence delivered by The

 Honourable Justice K. M. Shaner, sitting in Yellowknife, in

 the Northwest Territories, on the 4th day of October, 2017.

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 APPEARANCES:

 Ms. A. Paquin: Counsel for the Crown

 Mr. J. Bran: Counsel for the Accused

 (Charge under s. 249(3) of the Criminal Code)

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 1 THE COURT: On September 7th, 2017, Samuel

 2 Simpson pleaded guilty to the following charge:

 3 On or about the 25th day of July, 2016, between

 4 the Hamlet of Behchoko and the City of

 5 Yellowknife, in the Northwest Territories, did

 6 operate a motor vehicle in a manner that was

 7 dangerous to the public and thereby caused bodily

 8 harm to Alice Zoe-Chocolate, contrary to Section

 9 249(3) of the Criminal Code.

 10 This is a serious offence which carries with

 11 it a maximum sentence of ten years' imprisonment.

 12 After hearing the facts read in court on

 13 September 28th, 2017, I was satisfied that the

 14 elements of the offence had been made out and I

 15 directed that a conviction be entered.

 16 The facts can be summarized as follows.

 17 Mr. Simpson and Ms. Zoe-Chocolate were in a

 18 romantic relationship which was described in the

 19 agreed facts as a boyfriend-girlfriend

 20 relationship.

 21 On July 25th, 2016, they were in a cabin on

 22 Highway 3 with two other people. The cabin was

 23 located between Yellowknife and Behchoko.

 24 Ms. Zoe-Chocolate and Mr. Simpson got into

 25 an argument which became physical.

 26 It was approximately 6:30 in the morning.

 27 Ms. Zoe-Chocolate left the cabin and proceeded on

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 1 foot to the highway where she flagged down a car

 2 headed towards Yellowknife. The car was being

 3 driven by Mr. Nelson Football who was headed to

 4 work to a camp on the highway. Ms. Zoe-Chocolate

 5 got into his car and Mr. Football started driving

 6 again in the direction of Yellowknife.

 7 Meanwhile, Mr. Simpson left the cabin and

 8 got into his vehicle, a Jeep Cherokee. He

 9 started driving down the highway in the direction

 10 of Behchoko toward Mr. Football's oncoming car.

 11 Mr. Football was concerned Mr. Simpson would hit

 12 him, so he stopped.

 13 Mr. Simpson stopped his vehicle, got out and

 14 approached the driver's side of Mr. Football's

 15 car. The window was down a few inches.

 16 Mr. Simpson yelled at Ms. Zoe-Chocolate to get

 17 out of the car. Ms. Zoe-Chocolate asked

 18 Mr. Football to give her a ride to his workplace

 19 because she did not wish to go with Mr. Simpson.

 20 Mr. Football closed his window. Mr. Simpson

 21 pushed on the window with both hands.

 22 Mr. Football drove away with

 23 Ms. Zoe-Chocolate in the car. Mr. Simpson got

 24 back into his vehicle and followed. He chased

 25 Mr. Football's vehicle and caught up to it after

 26 about one minute.

 27 Mr. Simpson slammed his Jeep into the back

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 1 of Mr. Football's vehicle. This caused

 2 Mr. Football to lose control of his car and go

 3 off the road. Mr. Football's car spun around and

 4 flipped into the bush. It came to a rest upside

 5 down in a swamp beside the highway.

 6 Mr. Football was able to undo his seatbelt

 7 and get out of the car. He then helped

 8 Ms. Zoe-Chocolate to get out of the car.

 9 Mr. Simpson drove by, but did not stop at

 10 that scene. He just kept driving.

 11 The events were seen by Rene Baumgarten who

 12 was driving to Behchoko. He saw Mr. Simpson's

 13 vehicle chase Mr. Football's car at a high rate

 14 of speed. He also saw that Mr. Football's car

 15 was in the proper lane but Mr. Simpson's vehicle

 16 was straddling the centreline. Because of this,

 17 Mr. Baumgarten pulled over on the side of the

 18 road and stopped. Mr. Baumgarten continued to

 19 watch the two vehicles and he saw Mr. Simpson's

 20 Jeep hit Mr. Football's car.

 21 Mr. Baumgarten turned his vehicle around and

 22 he followed Mr. Simpson's vehicle. He passed the

 23 accident scene, but seeing that Mr. Football was

 24 able to get out of the car, he did not stop right

 25 away. Shortly after, though, he turned around

 26 and returned to the accident scene.

 27 Mr. Baumgarten and Mr. Football then saw

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 1 Mr. Simpson drive past the accident scene again.

 2 Mr. Simpson did not stop.

 3 Mr. Baumgarten drove Mr. Football and

 4 Ms. Zoe-Chocolate to his work camp. An ambulance

 5 came and took both of them to the Health Centre

 6 in Behchoko. After that, Ms. Zoe-Chocolate was

 7 taken to Stanton Hospital in Yellowknife.

 8 Ms. Zoe-Chocolate was released from the hospital

 9 the same day.

 10 Mr. Football had a scratched leg, a backache,

 11 and a stiff neck as a result of the accident.

 12 Ms. Zoe-Chocolate had pain almost everywhere

 13 in her body. She had a bruise at her hip area

 14 where the seatbelt had passed and she had a

 15 burning sensation where she had contact with the

 16 seatbelt. She had scratches to her knees, her

 17 arms, and her head. She had lumps all over her

 18 head and scratches and bruising on her elbow.

 19 She required pain medication.

 20 Mr. Baumgarten reported the incident to an

 21 RCMP officer. Constable Ryan arrived at the

 22 crash scene and took pictures, which form part of

 23 the agreed facts. Constable Ryan later

 24 discovered Mr. Simpson's vehicle in the parking

 25 lot at the Behchoko cemetery. Mr. Simpson was

 26 located at a house in Behchoko a little while

 27 later. He was intoxicated. There is no

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 1 suggestion that he was intoxicated when he was

 2 driving earlier in the day, however.

 3 The pictures of the accident scene show tire

 4 skid marks where Mr. Football's car left the road

 5 and where the car came to a stop some distance

 6 from the road. The car is upside down, the

 7 windows at the rear of the car are broken, and

 8 the back of the car is smashed.

 9 Mr. Simpson's vehicle is shown with damage

 10 to the front end towards the passenger side.

 11 Both Mr. Simpson and his lawyer provided

 12 this Court with information yesterday about

 13 Mr. Simpson's background. I am grateful for this

 14 because it did enable me to gain insight into

 15 Mr. Simpson's background and insight into who he

 16 is as a person.

 17 Mr. Simpson is 58 years old and he is a

 18 Tlicho citizen. He grew up in Wekweeti, speaking

 19 exclusively Tlicho and did not learn English

 20 until he was in his teens or early 20s. He has

 21 lived a very traditional lifestyle. By some act

 22 of grace, he was not forced to attend residential

 23 school. He did not attend government-run day

 24 school either. As such, he does not have a

 25 formal education as that term is commonly used,

 26 but it is fair to say, based on what I heard from

 27 both Mr. Simpson and his counsel, that he is

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 1 nevertheless a highly educated man.

 2 He is very skilled at hunting and trapping,

 3 having learned these skills from his own father

 4 and then continuing on his own in his teenage

 5 years and as an adult. He is also a qualified

 6 heavy equipment operator, and he has worked for a

 7 diamond mine for many years before taking early

 8 retirement.

 9 Before the events that bring him to court

 10 today occurred, he was working for various mining

 11 companies in bear and other wildlife management.

 12 Mr. Simpson is a widower. His wife died of

 13 cancer in 2014. He has two children and he has

 14 grandchildren.

 15 Mr. Simpson said yesterday that he is sorry

 16 for the harm that he caused. He also said that

 17 he has thought a great deal about what happened

 18 that day. He has trouble sleeping because of it.

 19 I understood him to say that he feels true

 20 remorse, that he realizes the harm he caused and

 21 that he recognizes what he did was wrong.

 22 Mr. Simpson has a very limited and dated

 23 criminal record. It contains three convictions

 24 for causing bodily harm in 1983, and an assault

 25 conviction in 1985 as well as a breach of

 26 probation, and an impaired driving conviction in

 27 2001. It is also noted that he breached his

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 1 recognizance with respect to this charge.

 2 I also gained insight into Mr. Simpson and

 3 who he is from the three letters of support. One

 4 of those letters was written by Ms. Zoe-Chocolate.

 5 She makes many positive comments about

 6 Mr. Simpson and the support that he provided her

 7 and her children when they were together. She

 8 says he is a helper in the community and a good

 9 provider for his children and grandchildren.

 10 One puzzling comment in her letter, however,

 11 is that she says she exaggerated in what she told

 12 the police about what happened that day and that

 13 she made a false statement. She also says she

 14 does not remember what happened that day. I draw

 15 no conclusions about what motivated

 16 Ms. Zoe-Chocolate to make that statement. But,

 17 there are two other witnesses to the crash, being

 18 Mr. Baumgarten and Mr. Football, and there are

 19 pictures of the crash site, so Ms. Zoe-Chocolate's

 20 statement does not make me question the truth of

 21 the facts that were agreed on. That said, it is

 22 clear that she cares very much for Mr. Simpson

 23 and she holds him in high regard.

 24 I also understand, or I assume from her

 25 comments in her letter and her Victim Impact

 26 Statement that she has been able to come to terms

 27 with this very terrifying ordeal.

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 1 Two other letters of support came to court

 2 as well. One is from the Senior Administrative

 3 Officer of the Tlicho Community Government in

 4 Wekweeti, Mr. Moretti. The letter from

 5 Mr. Moretti says in part:

 6 Mr. Samuel Simpson is still

 grieving for the loss of his wife

 7 that passed away a few years ago.

 He was also supporting his

 8 daughter financially when he was

 working so he could help his

 9 grandchildren. He also takes

 medication for health reasons.

 10 The family feels that if given a

 lesser sentence, he could prove to

 11 be a good citizen, father and

 brother to his family and friends.

 12

 13 The letter from his family and friends shows

 14 a hardworking, helpful person who was a dedicated

 15 husband and a supportive and caring father and

 16 grandfather. Importantly, it states that his

 17 family and friends are there to support him.

 18 The Crown and defence are very far apart in

 19 what each thinks is an appropriate sentence. The

 20 Crown wants a sentence of three years in prison,

 21 a five- to seven-year driving prohibition, an

 22 order for DNA, and a ten-year firearms

 23 prohibition under Section 109. The Section 109

 24 is mandatory because the victim in this case was

 25 Mr. Simpson's intimate partner. Defence counsel

 26 suggests a custodial sentence, a prison sentence,

 27 of nine months is appropriate, and he also

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 1 suggests that probation would be a reasonable

 2 option.

 3 The range of sentences imposed in dangerous

 4 driving cases is very wide. This is shown in the

 5 cases that both the Crown and the defence counsel

 6 gave to me during submissions.

 7 I am not going to summarize all of the cases

 8 in these reasons, but I have read and considered

 9 each of the cases which was submitted and I note

 10 the following that emerges: Denunciation and

 11 deterrence are the primary sentencing objectives

 12 for this offence and others like it.

 13 The two most important goals in sentencing

 14 in this kind of an offence are to keep the

 15 general public and the offender themselves from

 16 doing it again and to denounce or portray

 17 society's disapproval of this kind of conduct.

 18 The types and seriousness of the injury to

 19 the victims influences sentence. The more

 20 serious the injury, the longer the sentence.

 21 In the case of R. v. Shular, 2013 ABPC 268,

 22 2013 CarswellAlta 2013; aff'd 2014 ABCA 241, 2014

 23 CarswellAlta 1237; the offender was sentenced to

 24 concurrent sentences of four and six years for

 25 two counts of criminal negligence causing bodily

 26 harm. One of the victims suffered a traumatic

 27 brain injury and two broken legs.

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 1 In R. v. Balcha, 2004 CarswellOnt 1152, the

 2 offender hit the victim with his car and then

 3 backed over him. The victim had a dislocated

 4 jaw, two broken ribs, a sprained ankle, a

 5 punctured lung, a broken nose, and broken

 6 cheekbones. He needed to be in the hospital for

 7 nine days and he required ten months of

 8 rehabilitation treatment. The offender was

 9 sentenced to two years less a day in jail and

 10 there was a one-year driving prohibition.

 11 From the Yukon there is a case called R. v.

 12 Kloepfer, 2016 YKSC 56. The offender drove his

 13 truck into an "S" shaped curve on a road.

 14 He wound up hitting one victim in the

 15 shoulder with the side mirror of his truck and

 16 then sideswiping another victim, causing a back

 17 injury. When he came upon the people that he

 18 hit, he accelerated. He went faster. He then

 19 left the scene of the accident. The offender was

 20 sentenced to five months in jail followed by a

 21 two-year driving prohibition.

 22 In R. v. Modeste, 2012 NWTSC 16, 2012

 23 CarswellNWT 22, the offender hit the victim with

 24 a skidoo as the victim was walking away. The

 25 victim was flipped into the air and fell on the

 26 ground and bruised his forehead and broke his

 27 leg.

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 1 Mr. Modeste was sentenced to 17 months of

 2 jail and one-year driving prohibition.

 3 The circumstances of the offence itself are

 4 influential in the sentence. For example, in the

 5 Shular case, there was a long chase by two

 6 vehicles. Among other things, the two vehicles

 7 boxed in the victim's vehicle on the road. The

 8 Court, in that case, described it as a "sustained

 9 hunt". The Court also concluded that the

 10 offender had a high degree of moral

 11 blameworthiness. By contrast, in Kloepfer, the

 12 dangerous driving was for a short period of time,

 13 and even though the offender was considered to

 14 have a high degree of responsibility, his

 15 sentence was under a year.

 16 Finally, courts are influenced by varying

 17 aggravating and mitigating circumstances that are

 18 unique to each person's case.

 19 Driving is a privilege. People who use our

 20 roads and highways must have confidence that

 21 other people drive in a way that is safe. There

 22 must be a clear message sent to those who do not

 23 comply with the proper rules of the road that

 24 this type of conduct will not be tolerated.

 25 There is too much at risk. And so in this type

 26 of offence, jail time is usually imposed.

 27 In this case it is very lucky that everyone

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 1 involved, Ms. Zoe-Chocolate, Mr. Football,

 2 Mr. Baumgarten, and Mr. Simpson, did not suffer

 3 any permanent injuries, or even worse. A wrecked

 4 car can be replaced with money and bruises can

 5 heal, but other injuries or losses are not so

 6 easily overcome.

 7 Mr. Simpson's responsibility in this

 8 situation is very high. He acted without thought

 9 and without regard for the safety of Mr. Football

 10 and Ms. Zoe-Chocolate and without regard for the

 11 safety of the drivers and other occupants of

 12 other vehicles on the highway, like

 13 Mr. Baumgarten. Any reasonable person would know

 14 that ramming a car on a highway, even without

 15 going faster than the speed limit, would result

 16 in some type of car accident, and such a person

 17 would also know that there would be great

 18 potential for injury or even death.

 19 It is also aggravating that Mr. Simpson

 20 passed by the accident scene not once, but twice

 21 and he never stopped to see if the people were

 22 all right.

 23 This being said, there are many reasons to

 24 exercise restraint in this case. While I do not

 25 wish to imply that Ms. Zoe-Chocolate did not

 26 suffer harm, her injuries were relatively minor

 27 compared to those of victims in the other cases

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 1 that I talked about here. That supports a

 2 sentence at the lower end of the range.

 3 There are also a number of mitigating

 4 factors. Mr. Simpson pled guilty. I know it

 5 came after a preliminary inquiry and not at the

 6 first opportunity, but, still, it came well

 7 before trial.

 8 Even though Mr. Simpson has a criminal

 9 record, it is very old and it is almost entirely

 10 irrelevant. That does not make it a mitigating

 11 factor, but because of the very productive and

 12 peaceful life that Mr. Simpson has led, the

 13 criminal record does not concern me. Mr. Simpson

 14 has led a life characterized mostly by good

 15 conduct, and this suggests that Mr. Simpson is

 16 someone who is not likely to reoffend. It also

 17 suggests that what happened here, though very,

 18 very serious, was out of character.

 19 I was struck by the degree of remorse that

 20 Mr. Simpson expressed when he made his own

 21 submissions yesterday. He said he was sorry. He

 22 said that he has given a great deal of thought to

 23 what he has done.

 24 Mr. Simpson also has support from his

 25 community, his friends and family. While that is

 26 not a mitigating factor in the classic sense, I

 27 view it as very important. Mr. Simpson has a

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 1 good support system and that will help him in his

 2 rehabilitation.

 3 I accept that proportionality is always the

 4 overriding sentencing principle. What that means

 5 is that the punishment must be proportionate to

 6 Mr. Simpson's responsibility for this crime.

 7 Restraint continues to be important, too, and

 8 this is found in Section 718.2(d) and (e) of the

 9 Criminal Code. Section 718.2(d) provides that an

 10 offender should not be deprived of liberty if

 11 less restrictive punishment may be appropriate in

 12 the circumstances. Section 718.2(e) provides

 13 that all other available punishments beside

 14 imprisonment that are reasonable and consistent

 15 with the harm done to the victims should be

 16 considered for all offenders but especially

 17 indigenous offenders.

 18 The purpose of Section 718.2(e) is, of

 19 course, well established, and that is it is to

 20 address the over-representation of indigenous

 21 people in our prisons. Even though when the

 22 Court is asked to apply 718.2(e) it is often in

 23 the context of considering systemic Gladue

 24 factors, that is not a requirement and, in my

 25 view, it is something to be applied in the case

 26 of all indigenous offenders.

 27 In all of the circumstances, I find that the

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 1 penalty the Crown is seeking is excessive. I

 2 also recognize, though, that the Crown came to

 3 court and made its submissions without the

 4 benefit of knowing very much about Mr. Simpson,

 5 there being no pre-sentence report.

 6 I also realize that the Crown was

 7 prosecuting a very serious offence and that there

 8 were some aggravating circumstances.

 9 The injuries could have been far more

 10 serious and, in fact, death could have easily

 11 resulted from what happened.

 12 Again, though, having regard to all of the

 13 principles and objectives of sentencing, it would

 14 be unjust to sentence Mr. Simpson to a

 15 penitentiary term.

 16 This Court can send a message of

 17 denunciation and deterrence, both general and

 18 specific, with a much shorter period of custody,

 19 a period of probation, and a driving prohibition.

 20 All of these things are punitive. They restrict

 21 freedom. They restrict movement, especially for

 22 someone who lives in a rural area like

 23 Mr. Simpson. That Mr. Simpson's ability to have

 24 and use a firearm is going to be restricted in a

 25 community where hunting, trapping and being on

 26 the land remain such important and integral parts

 27 of life will also have a deterrent effect, both

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 1 specifically and generally.

 2 Mr. Simpson, can you please stand up.

 3 Mr. Simpson, I sentence you to a period of

 4 incarceration of 300 days, which is approximately

 5 ten months. This will be followed by probation

 6 for one year and a driving prohibition for one

 7 year to take effect, both of these, upon your

 8 release. You can sit down.

 9 Mr. Simpson, as of today, has been on remand

 10 for 197 days.

 11 You will be credited at a rate of 1.5 days

 12 for each day served, which results in a total of

 13 295.5 days, and that will be deducted from his

 14 sentence. So that will leave you with 4.5 days

 15 until the expiration of the warrant.

 16 The probation order will contain a number of

 17 conditions that I am going to explain now, and,

 18 Mr. Bran, I will just ask that afterwards perhaps

 19 you and Ms. Wood can go over them with

 20 Mr. Simpson.

 21 You will keep the peace and be of good

 22 behaviour. You will not communicate directly or

 23 indirectly with Nelson Football or Rene

 24 Baumgarten without their a consent and that

 25 consent must be given in writing.

 26 With respect to Ms. Zoe-Chocolate, I am not

 27 going to make an order restricting communication

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 1 with her, and this is because she expressed

 2 unequivocally in her letter of support, as well

 3 as in her Victim Impact Statement, that she

 4 wishes to have contact with Mr. Simpson, and so,

 5 in my view, imposing this condition would be

 6 inappropriate.

 7 You will have to appear in court if you are

 8 required to do so, and you have to report to a

 9 probation officer within a week of your release

 10 and then, after that, as directed by the

 11 probation officer. You will, as I said, be

 12 subject to a driving prohibition for one year.

 13 With respect to the firearm prohibition

 14 under Section 109 of the Criminal Code, it is

 15 mandatory and it will run for ten years. I am

 16 satisfied, however, that Mr. Simpson is a

 17 subsistence hunter who requires a firearm to hunt

 18 and trap for sustenance and that he uses his

 19 firearm for employment, and, accordingly, I will

 20 order under Section 113(1) of the Criminal Code

 21 that the Chief Firearms Officer or Registrar, as

 22 the case may be, may authorize Mr. Simpson to

 23 have a firearm for the purposes of hunting or

 24 employment.

 25 In making this order, I have considered

 26 Mr. Simpson's criminal record. Specifically, it

 27 contains no weapons offences and the violent

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 1 offences on it are all over 30 years old. I

 2 recognize, again, that the offence of which

 3 Mr. Simpson has been convicted is a very serious

 4 one; however, it is one for which he has accepted

 5 responsibility. I also note that Mr. Simpson has

 6 had and used firearms for many years, since he

 7 was very young, and in all of those years, it

 8 appears that he used his firearms with the

 9 appropriate care and respect.

 10 It should be noted that although I can make

 11 this order, the Chief Firearms Officer or the

 12 Registrar, as the case may be, may feel that

 13 additional conditions should be imposed on the

 14 use of the firearm, and this order does not

 15 restrict them in imposing what they consider

 16 appropriate conditions.

 17 Finally, I decline to grant the DNA order

 18 that has been requested by the Crown. This is a

 19 secondary designated offence in the Criminal Code

 20 and so the order is not mandatory. In my view,

 21 having regard to the circumstances of the

 22 offence, it would be an unnecessary and serious

 23 intrusion upon Mr. Simpson's personal integrity.

 24 Mr. Simpson has an insignificant criminal record

 25 and he has for the most part led an exemplary

 26 life. I see no connection between this offence

 27 and the need to take bodily fluids and place them

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 1 in a databank. I see no way that that would be

 2 useful and it is not in the interests of justice.

 3 .................................

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 6 Certified Pursuant to Rule 723

 of the Rules of Court

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 Jane Romanowich, CSR(A)

 10 Court Reporter

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