

[Cite as *Young v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-8097.]

CHAD YOUNG

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2015-00867

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence. This action arises from a July 23, 2015 accident in which the tips of plaintiff's index and middle fingers on his left hand were severed by a miter saw in the carpentry shop at the Lebanon Correctional Institution (LECI). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff testified at trial that he arrived at LECI in November or December 2010, and that prior to his current incarceration, he worked at a job where he installed windows. Plaintiff stated that in October or November of 2014, he was assigned to work in the carpenter shop; in December 2014, plaintiff was assigned to the school where he was enrolled in the pre-GED program. Plaintiff stated that he went to the school in the morning and the carpentry shop in the afternoon and that no one took his badge for the carpentry shop when he was assigned to the school. According to plaintiff, for the first few months of his assignment in the carpentry shop, he did not perform many tasks; however, plaintiff provided that at some point he began repairing broken windows and bed springs. Plaintiff eventually began making cabinets in the carpentry shop. Plaintiff used several of the tools including the miter saw, table saw, screw gun, tape measure, and a hammer. Plaintiff stated that he had not used a miter saw prior to using the one at LECI.

{¶3} Plaintiff testified that the miter saw blade was missing two teeth. Plaintiff added that the blade guard, which automatically uncovers the blade as the blade is lowered onto the wood, did not function properly. Plaintiff testified that when the blade was raised back up, the blade guard would not re-cover the blade, although he did not believe malfunctioning of the blade cover contributed to the accident. Plaintiff asserted that he informed the manager of the shop, David Books, about these issues approximately two months prior to the accident.

{¶4} Plaintiff testified that at some point he tired of working in the shop. As a result, plaintiff requested that Books find a replacement so that he would no longer need to work in the carpentry shop. Plaintiff added that Books hired inmate Mitchell Howard but continued to require that he work in the carpentry shop. Plaintiff asserted that despite eventually being reassigned as a porter responsible for cleaning his own cell, Books would call his block and order him to report to the carpentry shop. Plaintiff, however, acknowledged that he was not ordered to report to the carpentry shop on the day of the accident. Plaintiff further acknowledged that he did not return his badge for the carpentry shop even though he was no longer assigned to work in the carpentry shop. Plaintiff stated that he was not assigned to the carpentry shop on the day of the accident and admitted that if he felt he was being required to work where he was not assigned, he could file a grievance or write a kite. Plaintiff did not file a grievance or write a kite regarding being required to work where he was not assigned.

{¶5} Regarding any training on the tools in the carpentry shop, plaintiff testified that he was not trained to use the miter saw. Plaintiff added that prior to the accident, he had only used the miter saw seven or eight times. Plaintiff acknowledged that there were safety materials posted near the miter saw and that he read the signs.

{¶6} Plaintiff testified that on July 23, 2015, he was reassigned to work in the commissary, preventing him from continuing to work in the carpentry shop. Plaintiff, however, asserted that he was informed that he was required to complete the day under

previous assignments and that he would report to the commissary the following day. Shortly thereafter plaintiff arrived at the carpentry shop, and Books instructed him to continue working on the cabinets that he worked on the previous day. Plaintiff explained that he was following a pattern to make the cuts and that it required him to use the miter saw. Plaintiff stated that he was cutting the corners off a 6x6 inch piece of plywood and that he made approximately 8-12 cuts that day prior to the accident. Plaintiff asserted that due to the small size of the wood and the cuts he was making, he was compelled to make half the cut, flip the wood, and complete the cut. Plaintiff added that due to the way in which he was making the cut and the size of the wood, he placed the fingers of his left hand over the blade track on the table. Plaintiff acknowledged that he knew that he should not place his fingers close to the blade while cutting wood.

{¶7} According to plaintiff, he pulled the saw handle down with his right hand, while holding the wood as described above, and the wood caught and “kicked” to the back, pulling his left hand with it. The tips of plaintiff’s index and middle fingers on his left hand contacted the saw blade and were severed. Plaintiff wrapped his hand in his shirt and informed Books, who was at his desk in the carpentry shop office at the time, that his fingers had been severed. Plaintiff was subsequently escorted to medical. The accident occurred about an hour and a half to two hours after plaintiff arrived in the carpentry shop.

{¶8} Plaintiff testified that he believes the medication he was taking at that time caused his reaction time to slow. Plaintiff explained that he was prescribed medication for anxiety and depression and that he noticed a slowing of his reactions due to the medication. Plaintiff allowed that the medication may have contributed to the accident, but added that he did not believe that it contributed. Plaintiff testified that he did not tell anyone that he experienced slowed reaction times because he thought the medication was helping him. Following the accident, plaintiff filed a number of informal complaints

and notifications of grievances regarding the accident. Plaintiff pursued those complaints through the grievance process.

{¶9} Inmate Mitchell Howard testified by way of deposition that he was present in the carpentry shop on July 23, 2015.¹ Howard recalled that plaintiff had used the miter saw prior to the accident. Howard stated that he did not recall plaintiff complaining about the operation of the saw or the lack of training he received. Howard testified that on July 23, 2015, he was on the opposite side of the carpentry shop from plaintiff when he heard an unusual sound come from the saw. Howard testified that he proceeded to where plaintiff was, saw two severed fingers on the bench by the saw, picked them up, placed them in a paper towel, and gave them to a corrections officer. Howard denied having a conversation with Books following the incident wherein he allegedly told Books how he believed plaintiff's injury happened; Howard further denied the suggestion that plaintiff asked him to injure him.

{¶10} David Books testified that he was formerly employed by defendant at LECI as a maintenance repair worker. Books explained that he currently builds cabins for state parks in Ohio. Books recalled that plaintiff began reporting to the carpentry shop in November 2014. Books added that on a couple of occasions when plaintiff was first assigned to the carpentry shop, he had to call plaintiff's block to get him to report to the shop. Books explained that plaintiff initially worked on small projects and then advanced to cabinetry.

{¶11} Books testified that he trained plaintiff on the proper use of the miter saw, although he admitted that he did not document that training. Books stated that on more than 100 occasions he also demonstrated for plaintiff how to use the saw. Books explained that when he trains an inmate, he verbally explains why he is doing what he is doing while he performs the work. Books testified that plaintiff operated the miter saw on more than 40 occasions prior to July 23, 2015, and that he never heard plaintiff state

¹The objections contained in the deposition are OVERRULED.

that he was uncomfortable using the saw. Books added that while plaintiff was using the saw, he would monitor plaintiff to ensure that he was safely operating the saw. Books testified that he believed plaintiff had the skills necessary to operate the saw and that he considered plaintiff to be very competent.

{¶12} Books testified that on July 7, 2015, he exchanged the old blade on the miter saw for a new blade. The new blade is documented as being checked out to the carpentry shop in an inventory log maintained at LECI. Books added that he installed the new blade immediately and that the blade at the trial was the same blade used on July 23, 2015. The blade at trial was not missing any teeth.

{¶13} Books denied ever hearing anyone complain about the guard not functioning on the miter saw. Books asserted that at the time of the accident, the guard was functioning properly. Books testified that at the time of the accident, plaintiff was using safety glasses and that safety materials are posted by every machine in the carpentry shop.

{¶14} Books explained that to make a cut using the miter saw, the wood is placed on the saw and pressed up against the back of the saw where the fence is located. The saw blade is then lined up to where the cut is to be made and the blade is then pulled down onto the wood. Books stated that there is never a time when a cut would require someone to place fingers on top of the blade track and that he would have stopped plaintiff from making cuts if he would have seen him making cuts as he described at trial. Books added that plaintiff should have selected a larger piece of wood and that he had previously seen plaintiff make the type of cut he was making the day of the accident.

{¶15} Regarding plaintiff's job assignment, Books testified that he was not aware that on July 23, 2015, plaintiff was reassigned to work in the commissary. Books explained that the move sheets generated by the count office were given to his supervisor and that he did not have the computer access to view plaintiff's job

assignment. Books stated that there is no policy that prevents an inmate from holding two job assignments such as school and the carpentry shop.

{¶16} Books testified that on July 23, 2015, plaintiff was tasked with completing a cabinet that he had been working on the previous day. Books explained that plaintiff was using $\frac{3}{4}$ inch particle board and that he was comfortable with plaintiff selecting which piece of wood he wished to cut in order to complete the project. Books asserted that plaintiff did not have any questions or concerns regarding the project. Books added that if plaintiff had told him that he had concerns with using the miter saw, he would have simply made the cuts himself. Books testified that he was in his office, about 20 feet from where plaintiff was using the miter saw, and that he could see plaintiff from his office. Books stated that he heard an unusual sound from the saw and went to see what it was. Books reported that plaintiff had his hand wrapped in a shirt and informed him that he was severely cut. Plaintiff was then sent to the infirmary. Books stated that a corrections officer retrieved the severed fingers.

{¶17} Tyler Dennis testified that he has been employed by defendant at LECI as the building construction superintendent since July 2015. Dennis explained that he went to the carpentry shop a few hours after the accident and spoke with Books about what had occurred. Dennis completed an incident report wherein he wrote as follows:

On Thursday 7/23/2015 I was notified of an incident that an inmate had cut two fingers off in an accident in the carpenter shop. The inmate involved was inmate Young 638-206. Be advised that the carpenter shop is under the supervision of MRW3 David Books. At the time of the incident Mr. Books admitted that he was in his office and the inmate was in the shop working. After the incident Mr. Books admitted to me that the inmate was not classed to maintenance but rather to school and he was only working in maintenance while he was out of school for the summer. **Mr. Books also admitted that he had not completed any training and has no knowledge or paperwork showing that the inmate had been properly trained or shown how to utilize any tools or equipment in the carpenter shop.** It is the shop supervisor's responsibility to properly train and obtain paperwork proving such training per job description and

classification of an MRW3. After researching the inmate's re-class history he was re-classed as a student on 12/16/2014 thus making the inmate knowingly out of place to work in maintenance. Somehow through the process he was able to keep his maintenance identification badge and report to the maintenance department. Mr. Books knowing this should have confiscated the identification badge from the inmate and removed him from the maintenance department and not allow the inmate to work. End of report. (Emphasis added).

(Plaintiff's Exhibit 4).

{¶18} Dennis testified that he also examined the miter saw following the accident. Dennis stated that he did not turn the saw on to examine how it functioned, but he added that he did not recall seeing any missing teeth on the blade. Regarding his report, Dennis testified that he wanted to ensure that procedures were followed regarding training and wanted to see if the inmate was out of place. Dennis explained that the inmates must sign a form attesting to completing the training on each piece of equipment. Dennis testified that he asked Books if he trained plaintiff and acknowledged that his report notes that Books admitted to not training plaintiff. Dennis added, however, that he did not specifically ask Books if he demonstrated how to use the miter saw and that demonstrating how to use the saw would constitute training. With respect to plaintiff being out of place, Dennis testified that Books should have confiscated plaintiff's badge but asserted that Books may not have known that plaintiff was reassigned, even though he wrote in his report that Books admitted to knowing that plaintiff was not assigned to the carpentry shop.

{¶19} Daniel Ivins testified that he is employed by defendant at LECI as the health and safety coordinator. Ivins stated that approximately a week after plaintiff's July 23, 2015 accident, he became involved with the investigation. Ivins testified that as a part of the investigation, he inspected the shop and the miter saw, and he interviewed plaintiff, inmate Howard, and Books. Regarding the miter saw, Ivins testified that he operated the miter saw, putting it through the functions, and determined that the miter

saw was functioning properly. Ivins testified that he did not recall seeing any missing teeth but admitted that he did not move the blade around to look at every tooth. According to Ivins, Books informed him in his interview that he trained plaintiff but failed to document that training. Ivins added that inmates must be trained on each piece of equipment prior to using it.

{¶20} Lora Austin testified that she is employed by defendant at LECI and that among other things, she is responsible for responding to inmate grievances. Austin testified that following the accident, plaintiff filed a grievance regarding his assignment in the carpentry shop. Austin explained that when an inmate is reassigned to a new job, a “move sheet” is generated by the count office with all the new assignments; the move sheet is generated several times per day and includes new arrivals of inmates and job changes of inmates. Austin stated that generally when an inmate is reassigned, the unit that requested the inmate will simply look over the move sheet for the inmate’s name. Austin added that the inmate typically would notify the supervisor when he was reassigned to a new job. Austin testified that as a part of the assignment, the inmate would get a badge for the job assignment. Austin stated that she investigated plaintiff’s assignments and determined that on July 23, 2015, plaintiff was reassigned to be a clerk in the commissary; prior to that, plaintiff was assigned as a porter 4, which she described as an idle status where the inmate is responsible for cleaning his own cell. Austin explained that prior to his assignment as a porter 4, plaintiff was a pre-GED student. Austin concluded that plaintiff was out of place on July 23, 2015.

{¶21} Tia Ledford testified that she is employed by defendant at LECI as a sergeant but that she also is a backup health and safety officer. Ledford testified that she responded to the carpentry shop due to the accident but noted that the miter saw was already cleaned up prior to her arrival. Ledford stated that she visually observed the miter saw and ensured that the blade guard was functioning. Ledford added that

she did not notice any missing teeth on the blade but admitted that she did not turn the blade to look at every tooth.

{¶22} Martin Westall testified that he is employed by defendant at LECI as the building maintenance superintendent. Westall, who is Books' supervisor, testified that after he became aware of the accident involving plaintiff, he proceeded to the carpentry shop where he spoke with Books. Westall stated that the miter saw was cleaned up prior to when he arrived but that he nevertheless looked over the miter saw. Westall testified that the blade guard was on and working properly but admitted that he did not turn the blade to look for missing teeth. Westall stated that he did not receive any complaints about missing teeth on the miter saw. Westall added that if a piece of wood kicks, it would hit against the fence on the back of the miter saw and then it would ricochet away from the saw. Regarding training an inmate to use the miter saw, Westall testified that if an inmate has operated the miter saw seven or eight times, he would consider the inmate to be familiar with the operation of the saw. With respect to job assignments, Westall stated that on occasion inmates have been allowed to keep two assignments and that there is no policy prohibiting an inmate from doing so. Westall testified that an inmate should know there is a new badge associated with a new assignment and that plaintiff was out of place on the day of the accident.

{¶23} Scott Yount testified that he is employed by defendant as a psychologist at LECI and treated plaintiff on the mental health case load. Yount explained that plaintiff is diagnosed as a paranoid schizophrenic and takes two kinds of medications: Effexor, which he described as an antidepressant, and Trazodone, an antidepressant and sedative used for sleep induction. Yount testified that plaintiff never mentioned to him that the medications caused a slowness in reaction time and that he did not personally notice any slowness of plaintiff's reactions. Yount explained that Effexor has a stimulant effect and that Trazodone would wear off by the morning after taking it in the evening. Yount stated that when an inmate who is on the mental health case load is considered

for a job assignment, he receives an email from the unit supervisor asking if the inmate is cleared to work. Yount testified that he cleared plaintiff to work in the carpentry shop for his job assignment but did not know the particular job duties involved.

{¶24} “In a claim predicated on negligence, plaintiff bears the burden of proving by a preponderance of the evidence that defendant breached a duty owed to him and that this breach proximately caused the injury.” *Woods v. Ohio Dept. of Rehab. & Corr.*, 130 Ohio App.3d 742, 744 (10th Dist.1998).

{¶25} “In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks.” *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. “The state’s duty of reasonable care does not render it an insurer of inmate safety.” *Allen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-619, 2015-Ohio-383, ¶ 17. “Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know.” *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16. “Where an inmate also performs labor for the state, the state’s duty must be defined in the context of those additional factors which characterize the particular work performed.” *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1186, 2010-Ohio-4737, ¶ 18. “The inmate also bears a responsibility ‘to use reasonable care to ensure his own safety.’” *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-941, 2011-Ohio-3314, ¶ 20, quoting *Macklin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-293, 2002-Ohio-5069, ¶ 21.

{¶26} Upon review of the evidence, the magistrate finds that on July 23, 2015, plaintiff, while using a miter saw to complete a cabinet, severed the tips of his index and middle fingers of his left hand. The magistrate further finds that defendant failed to

properly train plaintiff on the use of the miter saw. There is no dispute that Books failed to document any training he claimed to have provided to plaintiff. Additionally, there is no dispute that failure to document training provided to inmates is a violation of defendant's internal policies and procedures. *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 10 (a violation of internal rules or policies may be used to support a claim of negligence.). While Books testified that he did train plaintiff on the use of the saw by demonstrating how to use it, it is noted in the incident report authored by Dennis that Books "admitted that he had not completed any training[.]" (Plaintiff's Exhibit 4).

{¶27} The magistrate further notes that Books testified at trial that plaintiff was working in the shop and attending school. Books also testified that plaintiff continually reported from the time he was assigned to work in the carpentry shop in November 2014. Books denied knowing that plaintiff was reassigned and should not have been in the carpentry shop; however, he asserted that plaintiff informed him that he could both attend school and work in the carpentry shop. Again, in the incident report, Dennis wrote that "Books admitted to me that the inmate was not classed to maintenance but rather to school and he was only working in maintenance while he was out of the school for the summer." (Plaintiff's Exhibit 4). Given the inconsistent statements in the incident report authored by Dennis and in Books' testimony at trial, the magistrate finds Books' testimony at trial to lack credibility.

{¶28} There is no dispute that Books was in the office in the carpentry shop at the time of the accident. From the office, Books had a view of the shop, including the miter saw. Books maintained at trial that he was supervising plaintiff's work on the miter saw while he remained in the office. Plaintiff meanwhile managed to select wood that Books admitted was too small to be safely cut and managed to make 8-12 cuts with the miter saw. Books added at trial that had he noticed plaintiff cutting the wood the way he described at trial, he would have stopped plaintiff from making the cuts. Given that

plaintiff managed to continue making cuts with the miter saw in an unsafe manner even though Books claimed he was supervising from the office, the magistrate finds that Books was not supervising plaintiff at the time of the accident. While there is no requirement that Books constantly watch plaintiff's work, at some point during plaintiff's work on the miter saw, Books should have noticed the unsafe manner in which plaintiff was operating the miter saw.

{¶29} The magistrate finds that Books' failure to properly train plaintiff and failure to supervise plaintiff created an unreasonable risk of harm and that defendant breached its duty owed to plaintiff of reasonable care and protection from unreasonable risks. Such breaches of the duty of care proximately caused plaintiff's injury.

{¶30} The magistrate further finds that in making the cuts, plaintiff was using $\frac{3}{4}$ inch particle board that was approximately 6 x 6 inches large. Plaintiff was making such cuts due to the instruction given by Books to continue to work on the cabinets that plaintiff had worked on previously. Plaintiff placed the board on the saw, aligned the blade, and pulled the blade down onto the wood. Plaintiff completed 8-12 cuts before his fingers were severed. Plaintiff acknowledged that he placed his fingers on the blade track and further acknowledged that he knew he should not place his fingers on the track for the blade. While performing the cut, the wood caught and plaintiff's hand made contact with the blade severing the tips of his index and middle fingers. The magistrate finds that even though plaintiff was not properly trained on the use of the saw, he should have known that by placing his fingers on the blade track and exposing his fingers to the blade, he was creating an unreasonable risk of harm for his own personal safety.

{¶31} "Prisoners, however, are also required to use reasonable care to ensure their own safety." *Nott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-842, 2010-Ohio-1588, ¶ 8. The magistrate finds that plaintiff failed to use reasonable care for his own safety by failing to keep his hands free of the track for the blade, thus exposing his fingers to the blade, and that such a failure to use reasonable care

proximately caused the accident. Given plaintiff's lack of training, the magistrate finds that plaintiff's own failure to use reasonable care did not exceed the negligence of defendant's.

{¶32} Plaintiff asserted in his testimony that the blade was missing two teeth at the time of the accident. However, the credible evidence establishes that the blade plaintiff was using was a new blade and that it was not missing any teeth. Additionally, each person who subsequently examined the blade did not note any missing teeth on the saw blade. Likewise, plaintiff asserted at trial that the guard was not functioning properly. Again, the credible evidence establishes that the guard functioned properly at the time of the accident. Additionally, everyone who examined the miter saw following the accident noted that the guard was functioning as intended. Finally, plaintiff asserted at trial that his medications that he was taking at that time caused him to experience a slowness of reaction time. However, Yount credibly testified that he did not notice any slowness of plaintiff's reaction time and that he was unaware of any such slowed reaction time caused by plaintiff's medications.

{¶33} Defendant argues that plaintiff intentionally severed his fingers in order to file a lawsuit and to obtain a damages award. Defendant reasons that if plaintiff's testimony regarding the manner in which this accident occurred is to be believed, then no amount of training would have prevented the accident. However, the magistrate finds that the manner in which plaintiff described the accident to have occurred is consistent with that of other witnesses as to the operation of the saw. Westall credibly explained that if a piece of wood kicks, it would hit against the fence on the back of the miter saw and then it would ricochet away from the saw. Plaintiff stated that the wood caught and pulled his hand back toward the saw. Additionally, it is reasonable to conclude that the wood caught and plaintiff had no time to react to prevent his fingers from contacting the blade, given that his fingers were already exposed to the blade by the way in which he was making the cuts to the wood. Moreover, as Books pointed out,

plaintiff was using wood that was too small; plaintiff needed to select a larger piece of wood to safely make the cuts he was attempting to make.

{¶34} Defendant further argues that the saw blade, when released, would no longer engage making it impossible for plaintiff to fully sever his fingers. However, plaintiff credibly testified that the wood caught and pulled his hand into the blade. At the time of the accident, plaintiff was holding the wood to make the cut with his fingers covering the blade track, with his fingers exposed to the saw blade. There is no evidence that plaintiff's reaction time was quick enough to release the blade the moment his fingers made contact with the blade or the moment when the wood kicked. Additionally, there is no evidence that plaintiff's reaction time would have been quick enough to merely result in a cut to his fingers. In short, defendant did not persuade the magistrate the plaintiff intentionally severed his fingers in order to file a lawsuit to obtain a money damages award.

{¶35} Defendant requests that the magistrate admit into evidence a statement allegedly made by plaintiff to Howard. (Defendant's brief page 15). The magistrate notes that Howard expressly denied saying that plaintiff made any such statement. The magistrate does not believe that plaintiff "opened the door" and declines to revisit his earlier ruling.

{¶36} Based upon the foregoing, and weighing plaintiff's comparative negligence against that of defendant, the magistrate finds that plaintiff has proven his claim of negligence by a preponderance of the evidence. It is recommended that a judgment be entered in favor of plaintiff, with a 40 percent diminishment in any award for compensatory damages.

{¶37} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first*

objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

GARY PETERSON
Magistrate

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