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Your Honor.

MR. VANCE: We have none,

Your Honor.

THE COURT: All right,

Constable Thorp, you are excused, sir, thank you.

(Witness excused.)

MR. BUTLER: Dan Weyenberg.

D A N W E Y E N B E R G, called as a witness  
on behalf of the State, having been duly sworn,  
testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. BUTLER:

Q Would you state your name for the jury, please?

A I am Dan Weyenberg.

Q And how are you employed, sir?

A I am employed as Chief Deputy with the McLennan  
County Sheriff's Department in Waco.

Q How long have you been so employed?

A Approximately, 14 years.

Q And were you employed in that capacity during the  
summer of June -- of 1982?

A Yes, sir, I was.

Q Specifically, what were your duties, at that time?

A To oversee the operation of McLennan County Sheriff's  
Department under the direction of Sheriff Jack Harwell.

12  
1 Q Directing your attention to specifically the 14th  
2 day of July in the late afternoon or early evening  
3 hours, did anything unusual occur?

4 A Yes, sir.

5 Q What was that?

6 A I got -- received a call at my residence in reference  
7 to a body being found at Lake Waco, Speegleville  
8 Park.

9 Q What, if anything, did you do?

10 A I left the house and went to that location.

11 Q Why?

12 A Because there was some question when the dispatcher  
13 called me as to whether it was going to be a city  
14 case or a county case.

15 Q What -- would you explain for the jury what you mean  
16 "whose case it would be"?

17 A Generally with our department, if the offense or  
18 crime happens within the jurisdiction of the city  
19 limits, the Waco Police Department would work the  
20 crime.

21 If it happens outside in the county, then  
22 generally the Sheriff's Department will conduct the  
23 investigation.

24 Q Did you, in fact, go to that location?

25 A I did.

1 Q And were you able to determine what law enforcement  
2 agency had the jurisdiction?

3 A After arriving at the scene, yes, sir.

4 Q And which one was it?

5 A It would be the Waco Police Department.

6 Q What did you find when you got there?

7 A We found -- initially, there were two people, two  
8 civilians there that I did not know, one deputy  
9 constable that I did know, and I came up at the  
10 same time that two or three Waco police units  
11 arrived at the scene.

12 We found one body, one dead person.

13 Q What deputy constable was it that you did know?

14 A It would be Gene Thorp.

15 Q And that is the same deputy constable that just  
16 testified in this case. Is that correct?

17 A Yes, sir.

18 Q Who else was there that you knew?

19 A We had a Sergeant Truman Simons with the Waco  
20 Police Department, and there was some local news  
21 media there, but I do not recall exactly who it  
22 was.

23 Q And you stated that you found the body of one person,  
24 at that time?

25 A Yes, sir, I went up to the body of the one person

1 that we were called to the scene about.

2 Q And you later indicated you had occasion to find  
3 out that that was, in fact, the body of Kenneth  
4 Franks?

5 A I did, yes, sir.

6 Q How long did you stay at that location in Speegleville  
7 Park?

8 A Oh, I guess approximately an hour and a-half or two  
9 hours.

10 Q During that period of time, did you have occasion  
11 to conduct any searches?

12 A Yes, sir, we conducted a search of the whole area.

13 Q What was your reason for conducting a search?

14 A Another one of the officers that came on the scene  
15 was Sergeant Salinas who happened to be investigating,  
16 also.

17 Identification was made of the Franks boy, and  
18 it was determined that there was two females missing  
19 that was with him.

20 Q Who determined the identification of the Franks boy?

21 A I believe, it was Ramon Salinas, Sergeant Salinas.

22 Q And you also determined or learned from him that  
23 there were two females missing?

24 A Yes, sir.

25 Q And was everyone there requested or did everyone



1 A Yes, sir, they do.

2 Q Would you describe for the jury how those bodies

3 appeared when you first saw them?

4 A I really can't add much to what the pictures show.

5 Q Do they have clothes on?

6 A No.

7 Q How far were they from the road, if you recall?

8 A I believe, the first one was probably about 20 or

9 25 feet off the road.

10 MR. REAVES: Your Honor, we are

11 going to object to this as an extraneous offense in

12 the trial of this case involving Kenneth Franks and

13 not Raylene Rice and Jill Montgomery.

14 THE COURT: Objection overruled.

15 Q And how far -- you say approximately 20 to 25 feet

16 from the road was the first body?

17 A Yes, sir.

18 Q All right, do you recall if that was the body of

19 the blond girl, Raylene Rice, or was the other girl,

20 Jill Montgomery?

21 A That was the blond.

22 Q And in relation to that body, where was the body of

23 Jill Montgomery found?

24 A It was deeper into the woods another 20, 25 feet,

25 I think.

1 MR. BUTLER: Your Honor, at this  
2 time, we would offer what has been marked and  
3 identified as State's Exhibits 8 and 9 into  
4 evidence.

5 MR. REAVES: Can we excuse the  
6 jury for a minute?

7 (Whereupon the jury retired from  
8 (the courtroom and the following  
9 (proceedings took place out of  
10 (their presence and hearing:

11 MR. REAVES: Your Honor, we are  
12 going to object to State's Exhibits 8 and 9, first  
13 of all, on the grounds that it shows an extraneous  
14 offense, something not relevant to what is being  
15 tried in this case.

16 Secondly, pictures of the bodies  
17 of Raylene Rice and Jill Montgomery are irrelevant  
18 to any issue in this case, and thirdly, we would  
19 object to these photos on the grounds that whatever  
20 probative value they have, which may be slight, is  
21 extremely outweighed by the inflammatory and  
22 prejudicial effect these pictures would have on the  
23 jury.

24 THE COURT: All right, objection  
25 overruled. It will be admitted.

(State's Exhibits Nos. 8 and 9  
(were then admitted into evidence.

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THE COURT: Let me first see them before we bring the jury in.

(Brief pause.)

(Whereupon the jury returned into the courtroom and the following proceedings took place:

THE COURT: All right, let us proceed, gentlemen.

MR. REAVES: Your Honor, we would object to the offering of State's Exhibits Nos. 8 and 9 on the grounds, first of all, it constitutes evidence of an extraneous offense. Secondly, that the pictures are totally irrelevant to any issue that is being tried in this case, and third, that any probative value that those pictures may have and assistance they may have to this jury is totally outweighed by any inflammatory and prejudicial effect those pictures would have.

THE COURT: All right, objection overruled. Exhibits 8 and 9 will be admitted.

MR. BUTLER: Thank you, Your Honor.

Q After the bodies of the two girls were discovered, what, if anything, happened at that scene?

A The scene was more or less secured at that time where they were calling for the ID specialists to come out and take photographs of the scene.



12

1 A It was shortly after the Lake Waco murders.

2 Q And does this photograph truly and accurately

3 depict the Koehne Park area of Lake Waco?

4 A Yes, sir.

5 Q How it appeared at that time?

6 A Highway 6 landing in Koehne Park, yes, sir.

7 Q And let me show you what has been marked for

8 identification purposes as State's Exhibit No. 11

9 and ask if you can identify that?

10 A Yes, sir, this is an aerial view that I took showing

11 entrance into Speegleville Park looking back, I

12 believe, to the east and north where the Speegleville

13 Marina, where the bodies were located.

14 Q All right, when you say "the entrance into the

15 park," are you speaking of the recognized used gate?

16 A No, sir.

17 Q All right, which entrance are you speaking of?

18 A This is a closed off entrance that we found a

19 portion of the cable and fence was down, and I

20 took a shot to show how the road connected to the

21 main artery going back to where the girls and boy

22 were found.

23 Q All right, and in that photograph, can you see the

24 area where, approximately, the bodies of the three

25 teenagers were found?

12

1 A Yes, sir, it was right back in this area right in  
2 here.  
3 Q All right, and does this photograph truly and  
4 accurately -- was it made at or near the same time  
5 this photograph was?  
6 A Yes, I believe, it was on the same flight. I would  
7 have to check my logbooks to be sure.  
8 Q And does it accurately depict what it purports to  
9 depict, and that is, this particular area of  
10 Speegleville Park as it appears?  
11 A Appeared at that time, yes, sir.

12 MR. BUTLER: Your Honor, we  
13 would offer what has been marked as State's Exhibits  
14 10 and 11 into evidence.

15 MR. REAVES: We don't have any  
16 objection, Your Honor.

17 THE COURT: All right, 10 and 11  
18 will be admitted.

19 (State's Exhibits Nos. 10 and 11  
20 (were then admitted into  
21 (evidence.

21 Q All right, once again for clarification purposes  
22 in State's Exhibit No. 11 where the red ink pen mark  
23 is, that is not part of the photograph. That is  
24 where -- that is indicating the area where you  
25 found a cut fence or a cut gate?

12  
1 A Yes, sir.

2 Q Would you indicate for the jury on State's Exhibit  
3 No. 11 that particular portion of the photograph  
4 where the bodies were found?

5 A It would be in the upper right-hand corner where you  
6 will see a little -- looks like a little dirt strip  
7 or a white streak coming in close to this tree line.

8 Q And I believe, you say this photograph was taken  
9 from the west side looking back toward the east side.  
10 Is that correct?

11 A Yes, sir, it would be looking east by northeast.

12 Q And what is this dark straight strip right here?

13 A This little dark asphalt strip is where they fly  
14 the model airplanes, radio controlled aircrafts.

15 Q And would you approach State's Exhibit No. 1,  
16 please, sir? If you would, stand back so the jury  
17 can see the map, and let me ask you if this model  
18 airplane landing strip is depicted in that photograph?

19 A Right here (indicating).

20 Q All right, and is the area from which this photograph  
21 is taken the intersection that is circled in red  
22 depicted on this photograph?

23 A It would be right, approximately here (indicating).  
24 Okay, I am sorry. I didn't go out far enough. This  
25 is where the road had been abandoned and fenced off

L2  
1 area, and the other road comes in by the little  
2 airstrip -- model airstrip here.

3 Q So when you took this photograph, your aircraft  
4 was approximately here taking the picture this  
5 direction?

6 A Yes, sir, I was approximately over Highway 6 which  
7 extends on out like this and shows you back to the  
8 east/northeast.

9 Q And when you took the photograph of Koehne Park,  
10 approximately, in which direction were you facing?

11 A I was about possibly a little bit over the water  
12 but in this general area right here (indicating).

13 Q Photographed from where?

14 A Coming back this way.

15 Q You may resume your seat.

16 Let me show you State's Exhibits 4, 5, 6 and 7  
17 and ask if you can identify those, please?

18 A Yes, sir.

19 Q What are they?

20 A They are the bodies of Kenneth Franks, the first body  
21 that we found that I went to in the park that day.

22 Q Do they accurately describe the condition of the  
23 body when you observed it?

24 A Yes, sir, as we walked up and saw it.

25 MR. BUTLER: We would pass the

1 witness, Your Honor.

2 CROSS EXAMINATION

3 QUESTIONS BY MR. REAVES:

4 Q Captain Weyenberg, about what time did you get out  
5 to Speegleville Park on July the 14th?

6 A Somewhere in the neighborhood of about 6:00 o'clock,  
7 Mr. Reaves.

8 Q Okay, and who all was there when you arrived?

9 A Gene Thorp was already there at the scene, I believe,  
10 and again, the people -- two young people that I  
11 don't know that originally located the body of  
12 Kenneth Franks.

13 I believe, Channel 10 had just gotten there  
14 and pulled up about the same time I did, and I came  
15 in with two police cars, Waco police cars.

16 Q They accompanied you in, or they came in at the  
17 same time?

18 A We all came in at the same time.

19 Q And who were the Waco police officers?

20 A One of them was Sergeant Simons, and I do not  
21 remember the officer in the other car.

22 Q And that would be Truman Simons?

23 A Yes, sir.

24 Q Okay, and so two Waco police officers, each one  
25 in a separate car?

1 A Yes, sir.

2 Q Who had charge of the investigation at the time  
3 that you arrived?

4 A There was no one that had charge of the investigation.

5 Q And you were called out to a park to determine whose  
6 jurisdiction it was and say who would take charge  
7 of the investigation?

8 A Yes, sir, and we just happened to pull up at the  
9 same time.

10 Q Okay, after officers from Waco Police Department came  
11 out, did anyone from the Sheriff's Department come  
12 out?

13 A I believe, there was some more deputies that showed  
14 up, yes, sir.

15 Q Okay, do you recall who they were?

16 A Sergeant Torres, I believe, was one, but I don't  
17 remember who his partner was with him.

18 Since it became a Waco police case investigation,  
19 we did not write reports -- offense reports, to  
20 speak of.

21 Q Okay, would it be fair to say then that Officer Simons  
22 arrived which was about the same time that you did,  
23 you determined that Waco police had jurisdiction and  
24 turned over the investigation to them?

25 A Yes, sir.

13  
1 Q Okay. Now, you say Channel 10 was out there when  
2 you arrived?

3 A I believe, it was Channel 10, yes, sir.

4 Q Where were they at?

5 A They were in the general area of where the body was  
6 found.

7 Q Could you tell whether or not they were shooting  
8 any film or taking pictures of the area?

9 A I am sure they did, yes, sir. They had their camera  
10 out.

11 They got it out after we arrived.

12 Q Now, you said that after the bodies of the two  
13 girls were found, then the scene was secured?

14 A Yes, sir.

15 Q Okay, what steps did that entail?

16 A That would have to be answered more by Waco PD,  
17 Mr. Reaves. Because again, it became their  
18 jurisdiction and their obligation to do the crime  
19 scene search.

20 Our part in it was simply to help locate the  
21 bodies and assist in any way we could.

22 We felt like it was better to get as many  
23 people out of the area so that the crime scene not  
24 be disturbed any more than what it already had been,  
25 if it had been.

1 Q Was Waco PD conducting a search while you were out  
2 there?

3 A We were all doing it together, sir.

4 Q Okay, were they conducting a search for evidence  
5 at the time that you were out there?

6 A They were doing it in the general vicinity of  
7 where Kenneth Franks was, and we were off looking  
8 for the other two missing people, at that time.

9 Q Was anything, to your knowledge, unusual discovered  
10 around the location of the body where Kenneth  
11 Franks was found?

12 A I don't recall, sir.

13 Q Okay, you didn't come across anything unusual  
14 yourself?

15 A I don't remember.

16 Q Okay, did Waco PD have an identification specialist  
17 or an evidence specialist out there?

18 A I assume, they did, but the identification on  
19 Kenneth Franks, as I recall, was made by Sergeant Salinas.  
20 He was working the missing persons report, I believe.

21 Q Okay, do you know whether or not Waco police had an  
22 expert -- an evidence expert or somebody out there  
23 helping, coordinating the gathering of evidence?

24 A I feel certain that they would have had a specialist  
25 called, yes, sir. They usually have a specialist

3  
1 on a crime scene.

2 Q Was Officer Kidwell at the scene while you were there?

3 A I don't recall, sir.

4 Q To your knowledge in past investigations that you  
5 have gone -- that you have been associated with or  
6 things like that that you have been involved with,  
7 has Sergeant Kidwell been the one that coordinated  
8 the gathering of evidence for Waco PD?

9 A I am sure Sergeant Kidwell has done the gathering  
10 of evidence for the PD in the past.

11 Which cases he has worked on, I don't have that  
12 knowledge.

13 Q Okay, could I get you to go turn around and go to the  
14 pad that is on the back wall there, and could you  
15 draw a diagram of Speegleville Park which would  
16 show both the gate, the main entrance to Speegleville  
17 Park and the road off to the side where your aerial  
18 photo was shot from or what is depicted in your  
19 aerial photo?

20 A I could probably show you easier off the aerial  
21 photograph there on the left.

22 Q Okay, we need something to -- down on paper that we  
23 can put with the records of this cause, though.

24 A Okay.

25 Q If you could just start with --

13

1 A You want it on this paper?

2 Q Yes, sir.

3 A How much detail do you want me to try to go into?

4 Q First of all, let us start off, could you put a

5 G where the main gate is?

6 A Main gate would be approximately here (indicating).

7 Q Okay, and that is a gravel road leading -- I mean,

8 a paved road leading in. Is that correct?

9 A Yes, going in here.

10 Q Okay, going back up from the main -- from the gate

11 back towards you, what is that road?

12 A This road?

13 Q Yes, sir.

14 A It is a gravel road going back to the west by northwest

15 that would connect toward the photograph shown with

16 the red circle on it where the fence was down.

17 Q Okay, could you just kind of put some squiggly lines

18 to indicate that that is a gravel road there?

19 A (Witness complied.)

20 Q Okay. Now, is that off the access road from

21 Highway 6?

22 A I am not sure this is a gravel road, Mr. Reaves,

23 whether it has been black topped or not, now.

24 Q Okay, is the entrance to that road off of the

25 access road on Highway 6?

11

1 A This entrance here?

2 Q Yes, sir.

3 A This is off that little road that goes down. This  
4 is Highway 6, and the access road is right beside  
5 it.

6 So this is another road that goes up through  
7 there. Again, which I can show you easier on  
8 the aerial photograph.

9 Q But the road that you are referring to up to the  
10 portion where you say the fence is down, the  
11 entrance to that road is off the access road to  
12 Highway 6?

13 A No, sir, there is a road, as best I recall, that  
14 comes on out to the access road here, but it is  
15 not -- I don't think -- I don't know whether it is  
16 still in use or not.

17 Q Okay, where is the -- where do you get on that road  
18 that leads back to the circled area?

19 A Right here?

20 Q Yes, sir.

21 A You get on the road -- you would turn off going  
22 into the gate and continue on up. It would take  
23 you up to this location.

24 Q Okay. Now, your photo was taken back to your left  
25 looking in. Is that correct?

3

1 A Approximately, off of Highway 6 looking back in  
2 this direction because you can look and see in the  
3 Speegleville Marina up in the corner and the tree  
4 lines right down in here where the bodies were  
5 found.

6 Q Would you just put a little indication up there?  
7 Draw in your little helicopter in there to show where  
8 the photo was taken from.

9 A Approximately, for lack of more room, yes, sir.

10 Q That is fine. You can go ahead and have a seat.  
11 Do you recall the date that that was taken?

12 A No, sir, I do not without checking my logbooks.

13 Q Okay, that was something that are in your possession  
14 back in Waco?

15 A Yes, sir.

16 Q Okay, I take it that it was sometime after the  
17 bodies were found. Is that correct?

18 A Yes, sir, shortly thereafter.

19 Q Okay, would it have been July 14th or sometime after  
20 that?

21 A It would have been after that, yes, sir.

22 Q Okay, did you take both the photos of that area and  
23 the photos of Koehne Park on the same day?

24 A I am not sure, Mr. Reaves, whether I did or not.  
25 I have made several flights taking -- and I

3  
1 took up quite a bit of film. I don't recall whether  
2 I marked any specific spot of what I took in my  
3 logbooks or not.

4 Q What led you to take a photo of that area? Had you  
5 conducted a perimeter search and found that, or had  
6 somebody else pointed that out?

7 A A Waco unit found the fence down, and that was one  
8 of the things they wanted to get in the aerial  
9 photograph, yes, sir.

10 Q Now, you speak about a fence down or a cable down.  
11 Are we speaking about a barbed wire fence or a solid  
12 metal cable?

13 A No, I think -- I am not sure whether it was -- I  
14 did not go to the area and see. They simply told me  
15 where it was, and I took the photograph, but I want  
16 to say, it was a cable that was broke down.

17 Q You did not actually go out there on the grounds and  
18 observe that?

19 A No, sir, I was probably two or 300 feet in the air.

20 Q What officer was that that pointed that out to you?

21 A Mr. Reaves, I don't remember. They didn't point it  
22 out to me. They told me where it was and what they  
23 wanted in the pictures.

24 There was so many officers involved in the  
25 investigation that information was being fed back

1 and when it comes to photographing and flying,  
2 generally, that would come to us in the Sheriff's  
3 Department, and I will handle it.

4 Q So you can't recall exactly who it was that asked  
5 you to take that picture?

6 A No, sir, I don't.

7 Q Would it be fair to say it was somebody with Waco PD?

8 A Yes, sir, it was.

9 Q Are you familiar with Speegleville Park?

10 A Yes, sir, I am.

11 Q Other than the main gate that goes into Speegleville  
12 Park which you have labeled as a G up on the diagram,  
13 are there any other entrances into Speegleville Park?

14 A To my knowledge, there is one that is further up  
15 river that can be gained access into a trailer parking  
16 area, yes, sir.

17 Q Okay, is that -- could you indicate that on your  
18 drawing, or is it somewhere --

19 A No, sir, it would be too far removed from that area.

20 Q Could you indicate that to me on the aerial photo?

21 A I am not sure I can see it on this photo. It may  
22 be out of bounds. No, sir, it would be beyond this.

23 Q Okay, does Speegleville Park continue on?

24 A If I may inject this this is the entrance I am  
25 talking about is to a trailer parking area -- not

1 back into the marina or the area where the bodies  
2 were found.

3 Q Okay, so the entrance that you are speaking of  
4 would not actually gain you entrance to Speegleville  
5 Park but to a trailer park there?

6 A Yes, sir.

7 Q To your knowledge, is that -- is the outer perimeter  
8 of Speegleville Park secured by a fence or --

9 A It is either by fence or a low cable.

10 Q Okay, by low cable, are we speaking of the solid  
11 metal --

12 A No, sir, post with a cable run through the post  
13 approximately knee high.

14 Q Before you sit down, Mr. Weyenberg, can you locate  
15 on this map Koehne Park?

16 If you want to, you can use that ruler to point.

17 A Yes, sir, it would be right here (indicating).

18 Q Okay, and you are familiar with Koehne Park, also?

19 A Yes, sir.

20 Q Approximately, how far would you say it is from  
21 Koehne Park to Speegleville Park driving?

22 A Three to four miles maybe.

23 Q Approximately how far is it as the profiles goes  
24 straight across Lake Waco?

25 A Probably a mile.

1 MR. REAVES: May I approach  
2 the witness, Your Honor?

3 THE COURT: Yes, sir.

4 (Whereupon an instrument was  
5 (marked for identification  
(as Defendant's Exhibit No. 6.

6 Q Mr. Weyenberg, let me show you what has been marked  
7 as Defendant's Exhibit No. 6 which is a drawing of  
8 your diagram of Speegleville Park showing the gate  
9 to Speegleville Park and the area where you shot the  
10 aerial photo.

11 Is that an accurate drawing of your testimony?

12 A As close as I can draw, yes, sir.

13 MR. REAVES: Okay, at this time,  
14 we would offer Defendant's Exhibit No. 6.

15 MR. BUTLER: No objection.

16 THE COURT: No. 6 will be  
17 admitted.

18 (Defendant's Exhibit No. 6 was  
19 (then admitted into evidence.

20 Q Captain Weyenberg, you said you didn't make any  
21 written reports since you were not -- since it was  
22 not your jurisdiction or the Sheriff's Department  
23 was not in charge of the investigation. Is that  
24 correct?

25 A I don't recall any that I made, no, Mr. Reaves.

13  
1 Q Did you make any kind of report or transmit any  
2 kind of information that would be in a report?

3 A I would have to go back and check to see if my  
4 night car or Sergeant Torres had made any reports.  
5 I don't recall them offhand.

6 Q Sergeant Torres -- is that the same person that  
7 you previously referred to that was out at the  
8 lake?

9 A Yes, sir.

10 Q And what is his first name?

11 A Ed.

12 MR. REAVES: Your Honor, we  
13 will pass the witness.

14 MR. BUTLER: Judge, at this  
15 time, we have no further questions from this  
16 witness.

17 THE COURT: All right, may the  
18 Captain be excused to return to Waco?

19 MR. VANCE: No, he can't,  
20 Your Honor. We are probably going to need him  
21 for another matter down the road.

22 THE COURT: Well, he can come  
23 back.

24 MR. VANCE: Well, not today.

25 THE COURT: I am talking about

17  
1 today. He can always be recalled later on, but he  
2 doesn't need to stay today, does he?

3 MR. VANCE: No.

4 MR. REAVES: No, sir.

5 THE COURT: All right, Captain,  
6 you can go back to Waco.

7 (Witness excused.)

8 THE COURT: Ladies and gentlemen  
9 of the jury, we will recess until 8:00 o'clock  
10 tomorrow, and we may be able to stop a little early  
11 tomorrow afternoon, maybe around 4:30.

12 We might take a shorter lunch  
13 hour or something so we will get in a full day.

14 One of the jurors needs to  
15 attend a meeting. Now, remember the instructions  
16 of the Court.

17 There will be some news media  
18 coverage, and so just disregard. Don't watch, look,  
19 listen in any way whatsoever. Thank you very much.  
20 Have a good evening.

21

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25