

MAY 21 2019

OFFICE OF THE CLERK

18-9678

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BINIKA L. HANKTON—PETITIONER

VS.

FREDERICK BOUTTÉ—RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

Binika L. Hankton #461434
Louisiana Correctional Institute for Women
PO Box 26
St. Gabriel, Louisiana 70776

QUESTION(S) PRESENTED

1. Is a conviction constitutionally suspect when the evidence used to convict does not meet the standards of *Jackson*?
Please see page [11].
2. Is a conviction constitutionally suspect when an alleged offender's family name creates undue biased?
Please see page [12]
3. Is a conviction constitutionally sound when the accused has not been afforded her *Fourth*, *Fifth*, *Sixth*, and *Fourteenth* Amendment rights?
Please see page [12]

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- United States Court of Appeal for the Fifth Circuit,
Binika Hankton v. Frederick Bouthé, No.18-30948,
USDC No.2:17-CV-11362
- United States District Court, Eastern District of Louisiana
Binika Hankton v. Frederick Bouthé, Civ. No. 17-11362, Sec. A (2)
- Supreme Court of Louisiana, No. 2015-KH-2265
- Fourth Circuit Court of Louisiana, No.2015-K-1170
- 41st Judicial District Court, Parish of Orleans, No. 493-937, Sec “1”

TABLE OF CONTENTS

OPINIONS BELOW	Page 5
JURISDICTION	Page 6
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	Page 7
STATEMENT OF THE CASE	Page 8
REASONS FOR GRANTING THE WRIT	Page 11
CONCLUSION	Page 13

INDEX TO APPENDICES

APENDIX A	United States Court of Appeal for the Fifth Circuit, Judgment, April 12, 2019
APENDIX B	United States Court of Appeal for the Fifth Circuit, Grant to reinstate appeal, September 26, 2018
APENDIX C	Eastern District Court of Louisiana, Order granting in forma pauperis, September 12, 2018
APENDIX D	Eastern District Court of Louisiana, Judgment denying certificate of appealability, July 27, 2018
APENDIX E	Eastern District Court of Louisiana, Judgment, July 12, 2018
APENDIX F	Eastern District Court of Louisiana, Order, July 27, 2018
APENDIX G	Report and Recommendation, June 29, 2018

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
<i>Jackson v. Virginia</i> , 443 U.S. 307, 318, 99 S. Ct. 2781, 2788-2789, 61 L.Ed.2d 560 (1979).	Page 11
<i>Miranda v. Arizona</i> , 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2D 694 (1966).	Page 12
<i>Missouri v. Seibert</i> , 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2D 643 (2004).	Page 12
<i>State v. Danastasio</i> , (La.App. 4 Cir. 1/30/14), 133 So.3d 224, 229, 2014 WL 529430.	Page 11
<i>State v. Hankton</i> , 140 So.3d 398; 2014 La.App. LEXIS 1131 (April 30, 2014).	Page 13
<i>State v. Hearold</i> , 603 So.2d 731, 734 (La. 1992).	Page 11
<i>State v. Huckabee</i> , (La.App. 4 Cir. 2/6/02), 809 So.2d 1093, 1111.	Page 11
<i>State v. Kirk</i> , (La.App.4Cir. 8/8/12), 98 So.3d 934, 939, <i>denied</i> , 12-2023 (La. 2/8/13), 108 So.3d 80.	Page 11
<i>State v. Marcantel</i> , 00-1629, p. 8 (La. 4/3/02), 815 So.2d 50, 55.	Page 11
<i>State v. Phillips</i> , 774 So.2d at 993. <i>Id.</i> , 774 So.2d at 990.	Page 12
<i>State v. Taylor</i> , (La.App. 4 Cir. 12/18/13), 130 So.3d 439, 446.	Page 11
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).	Page 12
<u>STATUTORY LAW</u>	
LSA-R.S.14:30.	Page 8

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from the **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix [A] to the petition and is

[] reported at _____; or,

[X] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the United States district court appears at Appendix [B] to the petition and is

[X] reported at 2018 U.S. Dist. LEXIS 126899 or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court, Supreme Court of Louisiana, to review the merits appears at Appendix [C] to the petition and is

[X] reported at 161 So.3d 630; 2015 La.LEXIS 626; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the Fourth Circuit Court of Louisiana court appears at Appendix [D] to the petition and is

[X] reported at 140 So.3d 398, 2014 La.LEXIS 1131; or,

[] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was **04/12/2019**.

No petition for rehearing was filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Appendix No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Appendix No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Louisiana Constitution of 1974, Article I §'s 2 through 25

Fourth Amendment of the United States Constitution
Unreasonable searches and seizures.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Page 11

Fifth Amendment of the United States Constitution
Criminal actions: Provisions concerning Due process of law and just compensation clauses.

"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 twice put in jeopardy of life or 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."

Page 11, 14

Sixth Amendment of the United States Constitution
Rights of the accused.

"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 wherein 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 defense.

Fourteenth Amendment of the United States Constitution"

Page 12, 14

Fourteenth Amendment of the United States Constitution, Sec. 1.

"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."

Page 11, 12

STATEMENT OF THE CASE

On September 17, 2009, Henry Barber was found stabbed to death in his home in New Orleans. Binika Hankton, petitioner, took care of Mr. Barber along with his house, his errands, and his personal matters; for all intents and purposes, she was considered Mr. Barber's girlfriend. Binika is also the person who first reported to police that something was amiss at Mr. Barber's residence when she could not reach him by phone. She thereafter went to his apartment and noticed that his mail and such had not been collected, again contacting the New Orleans Police Department ("NOPD").

The following facts are undisputed.

The seventy-six year old victim, Mr. Henry Barber, was found dead in his home. The petitioner, Binika Hankton, is the person who continually reported Mr. Barber missing to the police. Her efforts lead to the discovery of Mr. Barber's battered body. A grand jury indicted Binika Hankton for first-degree murder in connection with Mr. Barber's death. LSA-R.S. 14:30. Ms. Hankton pled not guilty and she still fights the conviction for a crime she did not do.

Ms. Hankton spent most of the day of September 15, 2009, with Mr. Barber, who employed her for various domestic work, again noting that she was also his girlfriend. The following day, unable to reach Mr. Barber by phone, Ms. Hankton went to his apartment, where she found his mail and newspaper uncollected. That evening, Ms. Hankton contacted the New Orleans Police Department ("NOPD").

NOPD Officer Christopher Harris met Ms. Hankton at Mr. Barber's apartment on the evening of September 16, 2009. Unable to gain entry to the apartment, Officer Harris and Ms. Hankton walked around the outside of the apartment but were unable to locate Mr. Barber. Officer Harris did not believe there was sufficient justification to force his way into the apartment.

The following morning (September 17, 2009), Ms. Hankton called the NOPD again concerned for Mr. Barber. She likewise contacted the manager of the apartment complex, Stanley Meyers, who had also received a call from the NOPD that day asking for his assistance at Mr. Barber's apartment. Mr. Myers did not have a proper key and called a locksmith to assist; Myers did not wait for the police to arrive before he entered the apartment, where he saw blood on the floor in the hallway and could see a leg hanging off of the bed in the bedroom. Myers said that he immediately withdrew from the apartment and then called the NOPD.

NOPD Homicide Detective Greg Hamilton was the first detective to arrive at Mr. Barber's home. Through information gathered by the other officers, he learned that Ms. Hankton had reported her concern for Mr. Barber and had made various inquiries regarding his well-being to others at Mr. Barber's apartment complex. Detective Hamilton called Ms. Hankton from the murder scene asking to speak with her, as the last person known to have seen Mr. Barber. Ms. Hankton expressed willingness to cooperate in the investigation; and Detective Hamilton dispatched a unit to pick up Ms. Hankton and to bring her, along with her two young children, to the police station in order for her to be interviewed.

Ms. Hankton gave an initial statement to Detective Hamilton and Lead Detective Desmond Pratt around 2:30 or 3:00 that afternoon, in which she described the events that took place on the last day she saw Mr. Barber (September 15, 2009). She indicated that her morning consisted of running errands with Mr. Barber, after which she cooked for him. She said that when she left his apartment that afternoon, he was "fine." According to Detective Hamilton, at the time of this initial statement, Ms. Hankton was not a suspect in the murder, and as such, was not advised of her *Miranda* rights.

During the time that Ms. Hankton spoke with Detectives Hamilton and Pratt, other detectives were interviewing different witnesses in connection with the investigation. Both

Detectives testified that some inconsistencies were discovered as a result of those other witnesses' interviews and accordingly, they sought a second interview with Ms. Hankton. Detective Hamilton testified that at the time of the second interview, Ms. Hankton was still not a suspect and she was not "limited to the room or handcuffed to a chair." Ms. Hankton, too, testified she was free to go about at the police station during this time, and she visited with her children who were being watched by her aunt and uncle.

The second interview with Ms. Hankton began in the early morning of September 18, 2009, wherein Ms. Hankton supposedly stated at the outset "I'm going to tell you the truth." Ms. Hankton then said that the last time she was with Mr. Barber, she backed into him as he was shaving and he cut himself. Believing that "this thing [her statement] was not making sense," Detective Hamilton said that he stopped interviewing, advised Ms. Hankton of her constitutional rights, and obtained a signed waiver of rights form from her. He then video taped the next interview with Ms. Hankton.

The videotaped statement given by Ms. Hankton essentially mirrored what she had previously stated or so Detectives testified. The only change was that Ms. Hankton believed Mr. Barber must have hurt himself worse than first thought when she backed into him as he was pulling hairs out of his neck with an unknown object. However, Mr. Barber reportedly told her that he was all right, and she noticed only a drop or so of blood. Mr. Barber then assured Ms. Hankton that he was fine and went to lie down. The last time Ms. Hankton saw Mr. Barber was when he rose to close the front door as she left.

Ms. Hankton was not charged with Mr. Barber's murder after the second statement had been concluded even though the above mentioned officers said that they *felt* there were inconsistencies. Yet, when the autopsy results disclosed that Mr. Barber had been stabbed in his neck, head, chest and torso, Ms. Hankton was charged with his murder. Ms. Hankton went from

being a helpful and concerned witness to the presumed murderer based on tests that did not even implicate her.

The autopsy did not prove that Ms. Hankton had anything to do with Mr. Barber's death. The autopsy did not lead to speculation that Ms. Hankton was involved. All the autopsy revealed was how horribly Mr. Barber died.¹

Mr. Barber was viciously murdered, but no direct evidence was produced connecting Binika Hankton to his murder, and the circumstantial evidence was insufficient to sustain her conviction.²

REASONS FOR GRANTING THE PETITION

Claim ONE: Insufficiency of Evidence: There was not enough evidence to convict petitioner under the standards of *Jackson*, violating her due process rights secured within *Fifth* and *Fourteenth* Amendments subjecting her to illegal search and seizure thereby violating her *Fourth* Amendment right.

Petitioner was convicted on speculation and illegally obtained statements that were worded by others to sound inculpatory. No blood was found on a knife that was taken from petitioner's apartment and presented as evidence; yet, the jury was lead to believe that it [knife] was the murder weapon, when in fact—it was simply a knife that went to a set that the victim had purchased and gave to the Petitioner. The *RadioShack* phone that was also presented as evidence was not inspected or its origin investigated. The victim sustained injuries that were not immediately incapacitating. He would have had tried to defend himself; yet no DNA was found under his fingernails. *Most notably*, no DNA was searched for under the victim's fingernails or on his person.

1 *State v. Marcantel*, 00-1629, p. 8 (La. 4/3/02), 815 So.2d 50, 55, citing *State v. Hearold*, 603 So.2d 731, 734 (La. 1992).

2 *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S. Ct. 2781, 2788-2789, 61 L.Ed.2d 560 (1979); *State v. Danastasio*, (La.App. 4 Cir. 1/30/14), 133 So.3d 224, 229, 2014 WL 529430, quoting *State v. Huckabay*, (La.App. 4 Cir. 2/6/02), 809 So.2d 1093, 1111; *State v. Taylor*, (La.App. 4 Cir. 12/18/13), 130 So.3d 439, 446; and, *State v. Kirk*, (La.App. 4 Cir. 8/8/12), 98 So.3d 934, 939, *writ denied*, 12-2023 (La. 2/8/13), 108 So.3d 80.

Claim TWO: Petitioner was denied the right to effective assistance of counsel. Trial counsel did not strategically enforce his client's right to change of venue, violating her *Sixth* and *Fourteenth* Amendments.

Trial record proves that defense counsel motioned for change of venue at an inappropriate time and was advised by the Court to re-urge the motion after voir dire. Defense counsel did not, thereby subjecting Petitioner to unfair prejudices by jury members who were familiar with the Hankton (her maiden) name. This unprofessional lack of action on part of Petitioner's agent could have been prevented and that prevention would have produced a different outcome to the betterment of the petitioner. *Strickland v. Washington*, 466 U.S. 668 (1984).

Claim THREE: Petitioner was denied her due process right to a fair trial which is guaranteed under the *Fifth* and *Fourteenth* Amendments.

Illegally elicited inculpatory statements were used against Petitioner at trial. These statements were not obtained by law enforcement in a way that agrees with the United States Constitution and were taken out of context and used to the detriment of this petitioner resulting in a conviction of first degree murder.

The trial testimony given by the investigating officers [Detectives Gregory Hamilton and Desmond Pratt] regarding the timing of *Miranda* warnings given to Petitioner materially differs from the account testified to at the hearing on her motion to suppress in May of 2010. This testimony differs enough to assert a different outcome had protocol been followed.³ *Missouri v. Seibert* and *Miranda v. Arizona*. Detectives failed to timely advise her of her constitutional rights. *Phillips*, 00-0279, p. 7, 774 So.2d at 993. *Phillips* involved an appeal from a drug conviction in which the arresting officer's suppression testimony "differed substantially from his testimony at trial." *Id.*, 00-0279, p. 2, 774 So.2d at 990 (emphasis added); *Id.*, 00-0279, p. 2, 774 So.2d at 990; *Id.*, 00-0279, pp. 2-3, 774 So.2d at 990-91, 993. Relying on the officer's trial

³ *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004), because detectives failed to timely advise her of her constitutional rights per *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2D 694 (1966).

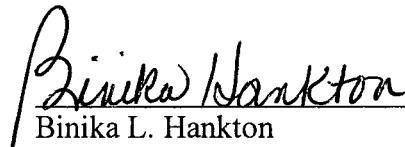
testimony, which “more fully presented” the issue, we concluded that the stop occurred before reasonable suspicion existed and, on that basis, reversed the conviction, holding the motion to suppress was wrongly denied. *Id.*, 00-0279, p. 8, 774 So.2d at 993.⁴

Please see Honorable Judge, Sandra Cabrina Jenkins' entire dissenting opinion in *State v. Hankton*, 140 So.3d 398; 2014 La.App. LEXIS 1131 (April 30, 2014).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Petitioner Binika L. Hankton maintains that the claims set forth in this petition are sufficient to warrant review by this Court. Once her claims are accepted, Ms. Hankton urges this Honorable Court to reverse her conviction and sentence and remand her back to her trial court for a new trial.

Respectfully submitted,



Binika L. Hankton
Louisiana Correctional Institute for Women
PO Box 26
St. Gabriel, LA 70776

Date: 5/17/19

⁴ *State v. Phillips*, 774 So.2d 989, (10/04/2000)