

No. 20-6163

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANGELIQUE BANKSTON PETITIONER
(Your Name)

vs.
UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANGELIQUE BANKSTON #53579-060
(Your Name)

FEDERAL PRISON CAMP
P.O. BOX A Bldg A-4
(Address)

ALDERSON WV 24910
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I

. If the Government went to the Grand Jury Seven (7) times, would ~~not~~ ~~not~~ not disclosing three (3) of their trips to Grand Jury, the evidence and witnesses presented where (Bankston's) was not charged be in violation to Brady?

II

. If the Government fabricate probable cause and made material omissions in the entire affidavit wouldn't that violate (Bankston's) clearly established fourth Amendment of the Constitution?

III

. If, (Bankston's) attorney failed to do any pretrial investigation into any evidence or any witnesses who possessed knowledge concerning Bankston guilt or innocence. Wouldn't that fall below prevailing professional norms and violate (Bankston's) Sixth amendment to effective assistance of counsel?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ 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:

RELATED CASES

UNITED STATES V BANKSTON 1:13-CR-00166
The Northern District of Ohio

UNITED COURT OF APPEALS Sixth District 19-3959

UNITED COURT OF APPEALS Sixth District 14-3723

Table of Contents

Question Presented	i
Table of Contents	iii
Index to Appendices	iii-iv
Table of Authorities Cited	v
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved ...	1
Statement of the Case	4
Reasons for Granting the Writ	10
Conclusion	14
Index to Appendices	
Appendix A	
Opinion of the Sixth Circuit Court of Appeals, No. 19-3959, filed February 14, 2020 ...	A1

Appendix B

District Court Memorandum and Opinion
Doc# 322 Filed August 5th 2019 - A-2

Appendix C

Opinion of Sixth Circuit Court of Appeals
UNITED STATES V BANKSON 820 F.2d 215 (2006) - A-12

Appendix D

ORDER Denying ENBANC Filed May 13th 2020 - A-13

Appendix E

ORDER Denying REHEARING ENBANC Filed May 28th 2020
A-14

Appendix F

District Court Denying COA Filed August 5, 2019 - A-15

Appendix G

ORDER From Judge Fortin 2015 Filing Doc# 316
A-3

Appendix H

STATE OF OHIO Grand Jury Subpoena
Listing FEDERAL Postal MACK as Contact A-16

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BRADY V. MARYLAND, 373 U.S. 83 (1963)	(7, 3, 11)
BERGER V. UNITED STATES, 295 U.S. 78 (1935)	(9)
FRANKS V. DELAWARE, 438 U.S. 154 (1978)	(10, 11)
GIGLIO V. UNITED STATES, 405 U.S. 150 (1972)	(8)
KYLES V. WHITLEY, 514 U.S. 419 (1995)	(7, 8)
MONTEJO V. LOUISIANA, 556 U.S. 778 (2009)	(12)
STRICKLAND V. WASHINGTON, 446 U.S. 668 (1984)	(12)
STRICKLER, 527 U.S. 263 (1936)	-9
UNITED STATES V. BAGLEY, 473 U.S. 667 (1985)	(7)
UNITED STATES V. BANKSTON, 820 F.2d 215 (6th Cir 2016)	(5)
WILLIAMS V. TAYLOR, 529 U.S. 362 (2000)	(13)

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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at CASE #19-3959; or,
☐ 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

☒ reported at CASE #13-CR-00166; 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 to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 14, 2020

☐ No petition for rehearing was timely 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 E.

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

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

RELEVANT CONSTITUTIONAL PROVISION

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

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.

* FOURTH Amendment - SEARCHES and SEIZURES

- 4th - 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 WARRANT shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched.

* FIFTH Amendment - ... Not be deprived of life, liberty, without DUE PROCESS OF LAW

* SIXTH Amendment - In ALL CRIMINAL prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witness in his favor and to have the assistance of Counsel for his Defence.

Statement of Facts
(Chronological Order)

Date

On 2/1/12 unknown to Angelique Bankston ["Bankston"] Federal Postal Inspector Lawrence E. Macek ("macek") in Partnership with the State of Ohio Asst. Prosecutor James D. Mays ("Mays") issued a Duce's Tecum Subpoena # 813653 to AT&T requesting records for "Bankstons" IP address. The State Subpoena reads Verbatim "If [AT&T] has any questions please contact Inspector Lawrence E. Macek at 216-443-4031."

On 2/13/12 AT&T provided Macek with the requested records.

On 2/17/2012 at 9:00am - AT&T records, witnesses and evidence were presented to Grand Jury. NO charges for Bankston were filed.

On 6/26/12 unknown to Bankston the government went to the grand jury for the State 2nd time again no charges for Bankston. Filed

On 8/31/12 After two unsuccessful indictment The three (3) lead agents (Macek), (Shadle) and IRS agent Joseph Ziegler (Ziegler) presented their probable cause in a 45 paragraph affidavit with ^{ONLY} the following 9 ONLY pertaining to "Bankston" (IE: 6, 8, 11, 12, 13, 23, 24, 25, & 26)

¶ 6 - The IP address was captured by Bank when account was opened

¶ 8: On Feb 13, 2012 Federal Grand Subpoena indicated the IP address used to create the fraudulent account was assigned to Bankston

¶ 11: The USPS Inspector (Macek) discovery 12 online mailholds made under same IP address

¶ 12 & 13: Maroon Jaguar registered to Bankston

¶'s 23, 24, 25, 26: Suspicious taxes \$242,349 mailhold Bankston

On 9/5/12 ("Macek") lead search to Bankston's residence. No incriminating evidence found, No statement was given, no waiver of rights signed by Bankston.

On 9/11/12 unknown to ("Bankston") the government goes to Grand jury for the 3rd time. Still no charges for Bankston were filed

On 3/28/13 for the fourth time the government goes to the grand jury securing a 22 CT^s indictment. The government would go to the grand jury (3) three more times. Totaling 7 TIMES

In April 2013 Bankston instructed attorney to challenge entire affidavit, interview witness and investigate evidence given by government and Bankston

On or about 5/15/13 Bankston's attorney filed motion to suppress but does not challenge the entire affidavit. The suppression is denied

On or about 9/15/13 unknown to (Bankston her attorney gets an email from AUSA Mark Bennett stating paragraph 23, 24, 25, 26 in affidavit don't apply to Bankston. The attorney does not renew the suppression motion.

Bankston release attorney days before trial when it ^{was} discovered attorney has not interviewed or investigated the government nor Bankston's witnesses and evidence that was given to her.

Trial begins where it reveals 1). The address does exist and 2) Bankston IP address was not captured by the bank contradicting paragraph 6 in affidavit.

3) No one identified Bankston ⁴⁷ and the Maroon Jaguar was not registered to Bankston address contradicting paragraph 12 and 13 in affidavit.

Macek present government Exhibit 330 a self made document to the jury showing Bankston's IP address was captured at least 12 times

placing online mailhold. AND EVIDENCE THAT WASN'T FOUND DURING SEARCH OF BANKSTON'S HOME IS NOW FOUND AN ALLEGED STATEMENT

Over 15 government witnesses testified - 242 times Bankston IP addresses being captured 140 times placing mailhold by Bankston.

Bankston was convicted of all 23 counts.

From 2015 - 2018 Bankston appealed got resentence, appeal again, En banc and petitioned writ of Certiorari with Bankston 1st appeal was denied on or about 5/29/18. All while Bankston was gathering exculpatory Brady material withheld by government.

Around 4/30/15 after Bankston appeal was filed Bankston received a FOIA request response from the Postal Service telling Bankston they did not capture IP address that place online mail holds contradicting paragraph 11 of affidavit.

Then around 8/28/17 after Bankston appeal Bankston got notice from AT&T that the grand jury subpoena in question was not a Federal Subpoena but a State of Ohio Subpoena. Contradicting paragraph 8 in affidavit.

On 5/29/19 (Bankston's) attorney filed 2255 Doc# 312 Arguing 4th, 5th, 6th, and 14 Amendment violations

- A) Due process - govt fail to disclose Brady material State Subpoena - mail holds
- B) Fourth amendment violation - False information in affidavit
- C) Sixth amendment - NO pretrial investigation or preparation
- D) Batson challenge and Jury venire
- E) Knowingly Soliciting false testimony
- F) Sixth amendment - Initial Sentence hearing
- G) Sixth amendment - preparation for resentencing and present offers of proof to the above #

On 6/19/19 - Government file an opposition Doc# 318

1. Failure to raise a claim at trial or Direct appeal
2. Bankston was afforded effective counsel.
3. Bankston is procedurally barred from raising Claims not made on direct appeal and that the State and Federal investigation were Seperate
4. and ignore all the material arguments that the government attached Bankston to the case in the first Place.

On 7/2/19 The governments files another opposition this time presented new Brady violations Doc #319 2 page 18# 5467-5472 Two(2) more federal grand Jury investigation again where Bankston wasn't indicted.

On 7/29/19 If the 2 opposition filed wasn't enough The government had to file another opposition Doc# 321. The Judge allowed it.

On 8/5/19 This district court denied the 2255 Doc# 322. Agreeing with government and ignoring the same material arguments. Bankston never had a chance of due process

On 10/10/19 Bankston's Attorney filed an application for Certificate of Appealability

On 2/14/20 The appeal's court denied COA Case NO. 19-3959 Doc# 4-2 citing Bankston knew of the State investigation referencing 820 F.3d at 221 but the court finding was misplaced because 820 F.3d at 221

Actually says the federal Postal Inspector Macek no where in entire opinion does it say's local anything. The appeals court ignores all material evidence present just as the district court ignore all the alledged evidence that attached Bankston to the case.

On may 13, 20 Bankston was denied En Banc

On may 28, 20 Bankston was denied rehearing en banc.

REASONS FOR GRANTING WRIT Date

I The evidence and witnesses presented to the three undisclosed grand jury should have been disclosed under Brady because Bankston wasn't indicted in all 3.

The purpose of Brady is to ensure that "Criminal trials are fair" Brady, 373 U.S. at 87, and that a miscarriage of justice does not occur," United States v. Bagley, 473 U.S. 667, 675, 105 S.Ct. 3375, 81 L.Ed. 2d 481 (1985).

Under the landmark case of Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 215 (1963), prosecutors are constitutionally obligated to disclose "evidence favorable to an accused... [that] is material either to guilt or to punishment."

The prosecution duty to reveal favorable, material information extends to information that is not in the possession of the individual prosecutor trying the case. In Kyles v. Whitley, 514 U.S. 419, 441-42, 115 S.Ct. 1555, 131 L.Ed. 2d 490 (1995)

Federal Postal Inspector Lawrence E. Macek was the lead investigator and contact for both the State and Federal Investigation into Bankston and Bankston IP address in so far as sharing the same States Grand Jury Documents Doc # 312-25174 ^{PAGE ID #} then misrepresented them, to the Federal Magistrate Judge to obtain a warrant to Bankston home and to the Federal grand jury to secure an indictment as if they were obtained through a Federal Grand Jury Subpoena

This District Court label it as a parallel investigation denied Bankston 2255 petitioner but the Supreme Court held that the prosecutors had violated Brady, for they had "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the Agent" Kyles, 514 U.S. at 437. This requirement meant that prosecutors had to put in place "procedures and regulation... to insure communication of all relevant information on each case to every lawyer who deals with it." Id at 438 (quoting Giglio, 405 U.S. at 154). Interpreting Kyles, The District Court should observed that "[b]ecause the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned."

Furthering the government massive Brady violations the government produce two (2) more undisclosed federal grand jury subpoena during Bankston's 2255 petition. and the district allowed the government to explain their Brady violation without given defense a chance to challenge the new undisclosed Brady material also violating the Brady doctrine.

It was reasonable for Bankston to rely on the prosecution's full disclosure representation, It was also appropriate for Bankston to assume that her prosecution would not stoop to improper litigation conduct to advance prospects for gaining

a conviction See *Berger v. United States*,
295 U.S. 78, 88, 79 L. Ed. 1314 155 S.Ct. 629
(1935) *Strickler*, 527 U.S. 263 at 284, 144 L.
Ed. 2d 286 119 S.Ct. 1936.

The prosecution is trusted to turn
over evidence to the defense because its
interest "is not that it shall win a case, but
that justice shall be done." *Id.* (quoting
Berger v. United States, 295 U.S. 78, 88, 55
S.Ct. 629, 79 L. Ed. 1314 (1935)).

In sum, the District Court should
have held an evidentiary hearing, order a full
grand jury transcript and evidence and given
Bankston an opportunity to challenge
all the known and not known Brady
material through additional discovery.

II Any agent knows that fabricating probable cause in affidavit make the affidavit invalid and violates the fourth Amendment.

In *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) The Supreme Court held that a search warrant is invalid if [Agent] obtained it by deliberately or recklessly presenting false material information to issuing judge. *Franks* also applies to deliberate or reckless deceptive omissions.

Bankston identified and made a substantial preliminary showing that multiple false material statements and material omissions knowingly and intentionally or with reckless disregard for the truth was included by the affiant in all nine paragraphs pertaining to Bankston in the warrant affidavit and the false statements and omissions is necessary to the finding of probable cause. *Franks* 438 U.S. at 155-56.

The Fourth Amendment Entitles Bankston to an evidentiary hearing to elaborate on her submission and to prove the entire warrant was invalid and the constitutionality of the search.

The problem arised when The District Court did not hold a hearing but allowed Bankston's fabricated probable cause 4th Amendment violation to become a vehicle for the government to present non newly discovered material exculpatory evidence. Doc# 319-2 Further violating Brady to explain the fabricated evidence identified by the defense, yet Bankston was not given

a full opportunity to challenge or rebut the government newly Brady evidence. This procedure does not ^{satisfy} the Fourth Amendment concerns addressed in Franks 1d 739. Such government evidence appropriate for the Franks hearing itself, where the defense must have the opportunity for a full cross examination.

This procedure here is not acceptable and was erroneous because it denied Bankston her full opportunity to challenge the warrant under Franks.

The District Court relied on the untested government's evidence and found that Bankston's Fourth Amendment claims are waived when the petitioner had a full and fair opportunity to raise claim on Direct Appeal." and waived this claim as she failed to raise on direct appeal." Completely ignoring that the fabrication of probable cause was discovered by Bankston after her Direct Appeal was filed. NO agent should be able to fabricate probable cause, hide it, make the defense find it, then put a limit on when the defense can and should file her claim. Violating due process clause and Brady.

In sum the District should not have given the government the opportunity to present their newly withheld Brady material without a Franks hearing and should have limited it's consideration on the government evidence tending to refute probable cause.

The Fourth Amendment requires that a Franks hearing be held.

III. The lawyer failed to conduct substantial investigation into her client's plausible line of defense.

The Sixth Amendment guarantees that [i]n all criminal prosecutions the accused shall enjoy the rights... to have the assistance of counsel for her defense U.S. Con VI.

The right is not limited to the trial itself, an accused is entitled to assistance of counsel at all "critical stages" of criminal proceeding *Montejo v. Louisiana* 556 U.S. 778 (2009) 129 S.Ct. 2079 173 L.Ed. 2d 955 (2009).

The purpose of the Sixth Amendment assistance of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding see *Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 674 (1984).

Pre-Trial preparation is a "critical stage of a criminal proceeding. In this stage the evidence is investigated, witness are interviewed, even the added co-defendant, search warrant is challenged, access to additional documents, the identification of potential witness, an independent investigation into the pending charges against Bankston and official records not provided by the government are requested.

From April 2013 until trial there was pre-trial correspondence between Bankston and her attorney documents numerous request for pre-trial interview of witness and request official records and to investigate the evidence received by the governments.

Days before trial in jury selection Bankston became aware that her attorney did no investigation, interviews provide by Bankston months before. The attorney was not prepared for trial which was a factor in her decision to represent herself.

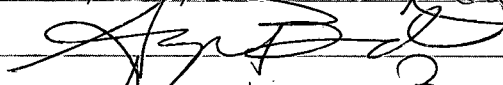
This court repeatedly held that failure to perform mitigation investigation constitutes deficient performance See *William v. Taylor* 529 U.S. 342 396 1120 S.Ct 1495, 146 L.Ed 2d 389 (2000)

In sum Counsel has a duty to investigate and interview all witnesses and evidence who allegedly possesses knowledge concerning the defendant guilt or innocence.

Conclusion

For the foregoing reasons, the Petition for writ of certiorari should be granted.

Respectfully Submitted

 #53579-060

Angelique Bankston

Federal Prison camp

P.O. Box A Bldg A

Alderson WV 24910

#53579-060