

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018**

No.

NATHANIEL HOSKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**J. Clifford Greene, Jr.
55 East Monroe Street
Suite 3800
Chicago, Illinois 60603
(312) 212-4412**

**Counsel for Nathaniel Hoskins
Counsel of Record**

QUESTION PRESENTED

Petitioner Nathaniel Hoskins was indicted for his participation in a RICO Conspiracy; Conspiracy to Murder in Aid of Racketeering Activity; and Possession of a Firearm in Relation to a Crime of Violence. After a bench trial Petitioner was convicted on all counts. After the trial the Government tendered 500 pages of various law enforcement reports, interviews and statements from the “king” or leader of the Double Insane Vice Lords street gang (“IIVLs”) who had been acting as a confidential informant while he was leading the IIVLs and which were gathered over a period of 6 years prior to Petitioner’s indictment. (“D.J. material”)

In the district court Petitioner challenged the unconstitutional suppression of the D.J. material under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. The district denied Petitioner’s post trial motions raised under Brady and thereafter the district court imposed concurrent sentences of 120 months on the RICO and Firearm counts and life imprisonment on the Conspiracy to Murder count.

Petitioner appealed to the Seventh Circuit Court of Appeals where the judgments of the district court were affirmed. The question presented is this:

Whether the prosecution’s pretrial evidentiary suppression of various law enforcement reports, interviews and statements favorable to the Petitioner violated due process, under *Brady v. Maryland*, 373 U.S. 83 (1963), where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution and thereby undermined confidence in the outcome of Petitioner’s trial.

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The Petitioner, Nathaniel Hoskins, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit which was entered in the above-entitled case on December 6, 2018.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, entitled *United States v. Torrie King, et al.* No. 16-1275 was consolidated with Hoskins, 16-2260, and Martin, 16-3084 & 16-4212, *slip opinion*, (Seventh Circuit December 6, 2018), is reported at 910 F.3d 320, 327 (7th Cir. 2018), reh'g denied (Jan. 4, 2019) and is included in the appendix attached hereto at page A-1.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1). On December 6, 2018 the United States Court of Appeals for the Seventh Circuit affirmed the judgment of the district court in the case of *United*

States v. Nathaniel Hoskins No. 16- 2260, *slip opinion*, (7th Cir. 2018), reported at 910 F.3d 320, 327 (7th Cir. 2018), reh'g denied (Jan. 4, 2019) and is included in the appendix attached hereto at page A-1.

CONSTITUTIONAL PROVISIONS INVOLVED

The fifth amendment to the United States Constitution provides in pertinent part as follows:

No person shall be . . . deprived of life, liberty, or property without due process of law.

The sixth amendment to the United States Constitution provides in pertinent part as follows:

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 . . . to have compulsory process for obtaining witnesses in his favor . . .

STATEMENT OF THE CASE

This case involved an investigation into a Chicago-area street gang known as the Imperial Insane Vice Lords (“IIVL”). It was alleged that between approximately 1996 to September 2013, the IIVL engaged in drug trafficking and violence to protect its power and territory. During the spring of 2011, the IIVLs were in conflict with a rival street gang known as the Four Corner Hustlers. As part of the conflict between the two gangs, the government alleged that the IIVL were involved in the murder of Marcus Hurley and the attempted murders of Brian Smith and Tony Carr. In this case, Hoskins’ alleged involvement centered on activities related to the conflict between the aforementioned street gangs. A

majority of the relevant events took place in the area surrounding Keystone and Thomas on Chicago's west side, which the IIVL controlled at the time.

The investigation into the IIVL resulted in the indictment of 24 alleged IIVL members including Hoskins. On September 26, 2013, a grand jury returned an indictment in the Northern District of Illinois charging Hoskins and others with multiple counts related to the alleged criminal enterprise of the IIVL. R.2. On December 9, 2014, a grand jury returned a superseding indictment against 11 individuals including Hoskins. R. 863 The superseding indictment charged Hoskins with: Count I Racketeering Conspiracy in violation of 18 U.S.C. §§1962 (d); Count IV Conspiracy to Murder in Aid of Racketeering Activity in violation of 18 U.S.C. §1959(a)(5); and Count V Possession of a Firearm in Relation to a Crime of Violence in violation of 18 U.S.C. §924(c)(1)(A).

On June 18, 2014 the District Court granted motions filed by various defendants for disclosure of exculpatory and impeaching material under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), and ordered the Government to produce such material for all defendants 45 days before trial. R. 444. But the government suppressed certain critical Brady evidence until after Petitioner was convicted at trial. See below.

On June 15, 2015 a joint bench trial began and lasted 2 weeks. The government alleged that the IIVL were a criminal organization whose members, functioning as a unit, engaged in acts of violence and distributed drugs. Hoskins and his co-defendants offered contrary evidence to show that the alleged criminal

organization was nothing more than a group of desperate, self-interested, impoverished individuals who did not adhere to any structure or hierarchy.

On July 7, 2015, the District Court found Hoskins guilty of Counts 1,4 and 5. R. 1148.

Following the trial, Hoskins filed a Rule 29 Motion for a New Trial and Motion for a Judgment of Acquittal. R. 1177. The District Court denied said motions in a short minute order that failed to provide any reasoning in support of its decision. R. 1330.

On February 12, 2016, after the district court's denial of the aforementioned motions, the government belatedly disclosed to the defense approximately 500 pages of DEA reports amassed in concert with a supposed leader of the IIVL named D.J. who served as a confidential informant for six years ("D.J. materials"). Because of the constitutionally untimely disclosure of the D.J. material, Hoskins filed a supplement to his Motions for a New Trial and Motion for a Judgment of Acquittal, arguing that under *Brady*, that the suppression of this exculpatory and material evidence violated his due process protections. R. 1488. The district court denied the aforementioned Brady motion in a short minute order, again failing to provide any reasoning or support for its decision. R. 1498.

At sentencing Hoskins received concurrent sentences of 120 months on Counts I and V and Life on Count IV. Hoskins raised a violation of *Brady* on direct appeal.

The Seventh Circuit noted that under *Brady*, a defendant must show that the evidence is (1) favorable, (2) suppressed, and (3) material to the defense. It also noted that the government did not contest that the evidence was suppressed and also that because the new evidence contained in the D.J. material carries “some weight” in favor of the them, defendants clear the “favorability” hurdle. However, the Seventh Circuit ruled that as to materiality, the final prong of the *Brady* standard, any belatedly discovered evidence (D.J. material) failed to create a reasonable probability of a different result.

REASONS FOR GRANTING THE WRIT

This case concerns the materiality standard applied to evaluate *Brady* claims. Petitioner argued that because of the constant infighting, violence among its colleagues toward each other, inter alia, that no structure, hierarchy or agreements presented and therefore no enterprise or conspiracy existed. Instead, operations were so fractured and splintered, that by the time Petitioner was indicted, the IIVL were an unrecognizable gaggle, especially when compared to earlier days when D.J. was elevated to “king” and the primary authority. When D. J. became a confidential informant for the DEA, while still leading the IIVLs but toward the end of his reign as “king”, some 6 years or more prior to the Government’s Indictment, the IIVL ceased to exist as an enterprise. See *Boyle v. United States*, 556 U.S. 938, 947 n.4 (2009)(individuals acting “independently and without coordination” are not an enterprise under RICO); *United States v. Townsend*, 924 F.2d 1385, 1395 (7th Cir. 1991)(“Evidence that the parties . . . seek

to maximize their gains at the expense of others or engage in other forms of opportunistic behavior at the expense of the group, suggests that transaction costs among the group are high and counsel against a finding for conspiracy between its members.”).

In reaching its decision the Seventh Circuit focused its analysis on the third prong or the materiality test of the *Brady* decision and ruled that the undisclosed evidence in Petitioner’s case was not material under *Brady* because, “. . . the defendants already tried and failed to persuade the district court that infighting is inconsistent with the existence of an enterprise or conspiracy.” App 8. Further, that, “The belatedly disclosed evidence is simply more of the same, and cumulative evidence does not justify a new trial under *Brady*.” Id. The Seventh Circuit failed to appreciate how the undisclosed evidence could have been just the type of additional evidence that could have convinced the district court that the persistent infighting actually reduced the IIVL to its every-man-for-himself status: especially when told from the perspective of its “king”, D.J.’s 6 years as a DEA cooperating informant.

The Seventh Circuit’s analysis distorts this Court’s *Brady* pronouncements, which provide that materiality is not a sufficiency-of-the-evidence test. *Kyles v. Whitley*, 514 U.S. at 434-35 & n.8. In *Kyles*, this Court held that withheld evidence was material when it undermined some of the prosecution’s eyewitnesses and bolstered the defendant’s theory that he was framed. The Court in *Kyles* reached that conclusion even though two of the four eyewitnesses were “totally

untouched” (and a third “barely affected”) by the withheld evidence. 514 U.S. at 435 n.8, 443 n.14. The Court even reached that conclusion despite the fact that the holster and ammunition for the murder weapon were located in Mr. Kyles’s residence. *Id.* at 451. Here, the withheld D.J. material would have clearly facilitated the cross-examination and impeachment of some of the prosecution’s witnesses regarding the supposed operation, structure and hierarchy of the IIVL and undermined same while bolstering Petitioner’s theory that there was no RICO enterprise or conspiracy.

- I. *The Court should grant certiorari to ensure that the due process protections embodied in Brady are assiduously and uniformly applied, otherwise pushed aside Brady violations erode the public’s trust in the criminal justice system.*

Petitioner contends that the government suppressed the D. J. material because it sought to further an advantage at trial or to deny Petitioner the opportunity to resolve the case through a plea agreement. It is no stretch to conclude therefore, that the government was fearful of disclosing 6 years worth of law enforcement reports, statements and interviews amalgamated between law enforcement and D.J., while he simultaneously led the IIVLs, because doing so would have been favorable to the defense. Under *Brady*, withholding favorable evidence is a clear violation, the disclosure of which could have potentially leveled the playing field and been used by Petitioner to not only assist in the discovery of additional defense witnesses, but also to more effectively cross examine government witnesses regarding IIVL members shooting each other, robbing each

other and snitching on each other during the time period covered by the the D.J. material.

Additionally, had the defense been able to demonstrate in the district court during the trial, that its leader, D.J., had been cooperating with law enforcement prior to his death in 2010, at the same time that he was leading the IIVLs and had done so for at least 6 years, prior to the government's indictment of Petitioner, the defense arguments under *Boyle* and *Townsend*, supra, would have put the case in a significantly different light. In other words, for purposes of assessing materiality the proper question is whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985). Said another way, if "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict," it is material. *Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

The Seventh Circuit found that as to "favorability" the new evidence (D.J. material) carries "some weight" App 7. Under *Kyles*, 514 U.S. at 433, favorable evidence is material and "constitutional error resulted from its suppression by the government. Under that standard, there is no question that the evidence withheld from Petitioner in this case was material and that he is entitled to a new trial.

II. " . . . *had the evidence been disclosed to the defense, the result of the proceeding would have been different.*" *Brady and Bagley, passim.*

Brady and its progeny stand for the proposition that the prosecution's suppression of evidence favorable to the defendant "violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (quoting *Brady*, 373 U.S. at 87) (internal quotation marks omitted). The Seventh Circuit's defective analysis of this Court's interpretation of the materiality prong of *Brady*, operated to molest Petitioner's due process protections, resulting in Petitioner receiving a life sentence premised on an unconstitutional conviction.¹ But for the government's unconstitutional suppression of evidence, (the D.J. material), Petitioner would not have elected to proceed to trial of his case. Instead, he would have avoided being punished with a life sentence by entering into a timely plea agreement with the government and at a minimum, been positioned for acceptance of responsibility consideration by the district court. The D.J. material unconstitutionally suppressed by the government revealed that the leader of the IIVLs was cooperating with law enforcement and had done so for more than a half a decade prior to Petitioner being indicted. In a myriad of reports, statements and interviews D. J. disclosed to law enforcement nearly every planned act of violence including murder; nearly every person involved in drug purchases and sales; the locations, discussions and plans raised in IIVL meetings, including the names and contact information of those in attendance. Having this evidence prior to trial would have no doubt caused the outcome of the proceeding to be different because Petitioner would have pled

¹ Had the prosecution disclosed the D.J. material pretrial, Petitioner would have: (1) learned that the leader of the IIVLs, D.J., was a government confidential informant who had been cooperating with the government for at least 6 years prior to Petitioner being indicted and (2) he would have not proceeded to a trial of the matter, but negotiated a plea agreement with the government, thus avoiding a life sentence.

guilty once he discovered that IIVL leader, D.J., was a confidential informant. The Seventh Circuit's analysis of materiality under Brady and its progeny is flawed because when analyzing whether or not a Brady violation has occurred, a necessary consideration centers not only on whether the suppressed evidence impacts guilt, but also if it impacts punishment and clearly the suppressed evidence impacted the punishment imposed by the district court in Petitioner's case.

Moreover, the Seventh Circuit's decision marshals to corrode faith in our system of justice through its contaminating reach beyond the parameters of Petitioner's case, as it jeopardizes the constitutional protections for other cases under which Brady may apply. The Seventh Circuit's decision in Petitioner's case enfeebles the government's incentives to disclose exculpatory and impeachment evidence to the defense and tends to reward the government for its unfair prosecution. Without said incentives promulgated by Brady, the idea that the criminal justice system fairly and accurately adjudicates guilt or innocence becomes a fiction. No conviction resulting from a fundamentally unfair trial should be permitted to stand.²

² See generally Angela J. Davis, The Legal Profession's Failure to Discipline Unethical Prosecutors, 36 Hofstra L. Rev. 275, 279-80 (2007)(collecting studies finding alarming rates of Brady violations resulting in criminal convictions).

CONCLUSION

For the reasons noted herein, Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on December 6, 2018.

Respectfully submitted,

J. Clifford Greene, Jr.
Counsel of Record

APPENDIX ITEM A-1

United States v. Nathaniel Hoskins, 910 F.3d 320, 327 (7th Cir. 2018), reh'g denied (Jan. 4, 2019)

