25-5744

ORIGINAL

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY BALDUCCI,	:
Petitioner,	:
-vs-	:
JERRY SPATNY, Warden,	:
Respondent.	:

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FOR PETITIONER:

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QUESTIONS PRESENTED FOR REVIEW

I. Whether a hearing in which a defendant seeks to withdraw a guilty plea, made at his first opportunity and before sentencing, at which he asserts innocence and the failure of counsel to investigate the confession by another person, requires the opportunity for the defendant to be heard in order to comport with Due Process requirements under the Fifth and Fourteenth Amendments?

II. Whether the failure of defense counsel to conduct an investigation or to make a reasonable decision not to investigate a confession by another person in a murder case violates essential duties owed to the client and, by forcing the client to plead guilty, created sufficient prejudice to violate the Sixth and Fourteenth Amendment right to effective counsel?

III. Whether a Court of Appeals reviewing an application for a Certificate of Appealability under 28 U.S.C. §2244 which demonstrates that reasonable jurists might disagree with the district court may deny the issuance of the Certificate on the basis that the Court believes that the Applicant might not prevail on the merits?

IV. Whether, pursuant to 28 U.S.C. §2254(e)(2), where the failure to fully develop the factual record in the state court is not attributable to the Petitioner, but rather to failures of the state courts, a hearing is warranted on Federal Habeas review?

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All parties to this proceeding are listed in the caption of the case.

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The Magistrate Judge, N.D. Ohio, E. Div. recommended dismissal of the underlying Petition for Writ of Habeas Corpus, Case No. 1:22-cv-299, on November 6, 2024 (Appendix A).

The United States District Court, N.D. Ohio, E. Div. dismissed the underlying Petition for Writ of Habeas Corpus, Case No. 1:22-cv-299, on February 28, 2025 (Appendix B).

The United States Court of Appeals for the Sixth Circuit denied the issuance of a Certificate of Appealability on July 15, 2025 (Appendix C).

BASIS FOR JURISDICTION

The United States Court of Appeals for the Sixth Circuit denied Petitioner's Application for Certificate of Appealability on July 15, 2025. This timely Petition for Writ of Certiorari was submitted on October 18, 2024, and is being submitted within the ninety (90) day period provided by Rule in which to do so, rendering this Petition timely. This Court has original jurisdiction to issue a Writ of Certiorari pursuant to Article III of the United States Constitution, and to issue all writs in aid of its jurisdiction pursuant to 28 U.S.C. §1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment, United States Constitution:

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

Sixth Amendment, United States Constitution:

"The accused [...] shall enjoy the right [...] to the assistance of counsel for his defence..."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED, Cont'd.

Fourteenth Amendment, United States Constitution:

"[...] 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".

STATEMENT OF THE CASE

On February 12, 2019, Petitioner Anthony Balducci (hereinafter "Balducci"), was indicted and charged with four counts, including aggravated murder, murder, felonious assault and having a weapon while under disability, stemming from a homicide that occurred on January 27, 2019. On October 28, 2019, solely upon the advice of appointed counsel, Balducci entered a plea of guilty to a plea agreement in which he plead to one count of murder, a one- and three- year firearm specifications, and the weapon under disability charge. Sentencing was fast-tracked at the request of defense counsel, and was scheduled for October 31, 2019, a mere three days later.

At the sentencing hearing, at his first opportunity to speak or address the court, Balducci requested orally and prior to sentencing, to withdraw his plea, on the stated basis that "I don't feel that I should plead guilty to something I didn't do. I didn't discuss this with my lawyers first because I feel that their best interest is not my best interest. I would like to enter a plea of not guilty" (Transcript). The trial court, after attempting to dissuade Balducci from withdrawing his pea, scheduled a hearing for November 6, 2019. The hearing Was ultimately held on November 14, 2019, and, during the hearing, the trial court repeatedly would ask Baludcci a question, then interrupt him. During the hearing, not once did the trial court actually let Balducci fully explain his reasoning [for seeking to withdraw his plea], cutting him off and interrupting him each time be began to speak in order to harangue him (Tr. passim).

The trial court ultimately ruled that Balducci had "merely changed his mind", and proceeded to sentence him to 18 years to life. A timely direct appeal was taken, presenting a sole assignment of error arguing that the trial court abused its discretion in denying the motion to withdraw plea, made without the effective assistance of counsel, and, on November 19, 2020, the

Eighth District Court of Appeals affirmed the trial court. A delayed appeal was taken to the Ohio Supreme Court, which permitted the delayed appeal but eventually declined to accept selective jurisdiction, on January 18, 2022 (179 NE3d 119).

In the interim, Balducci filed an Application to Reopen the Direct Appeal citing to ineffective appellate counsel for failing to argue ineffective trial counsel as an independent assignment of error. The Eighth District Court of Appeals denied the Application on June 30 2021, which was not appealed to the Ohio Supreme Court.

On February 22, 2022, Balducci filed his Petition for Writ of Habeas Corpus in the Northern District of Ohio, Case No. 1:22-cv-299. On November 6, 2024, the Magistrate Judge recommended the dismissal of the underlying (Appendix A). Petitioner filed timely Objections, and February 28, 2025 The District Court dismissed the underlying (Appendix B).

Following a timely Notice of Appeal, The United States Court of Appeals for the Sixth Circuit denied the issuance of a Certificate of Appealability in Case No. 25-3186, on July 15, 2025 (Appendix C). This timely Petition for Writ of Certiorari follows.

FIRST QUESTION PRESENTED FOR REVIEW

Whether a hearing in which a defendant seeks to withdraw a guilty plea, made at his first opportunity and before sentencing, at which he asserts innocence and the failure of counsel to investigate the confession by another person, requires the opportunity for the defendant to be heard in order to comport with Due Process requirements under the Fifth and Fourteenth Amendments?

LAW AND ARGUMENT

It is well-settled by this Court that, "procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." **Mathews v Eldridge** (1976), U.S. 319, 332; and holding at 333, "this Court consistently has held that some form of hearing is required before an individual is finally deprived of a liberty or a property interest". The **Mathews** court further found: "[t]he fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." (id). This encompasses procedures due under both state and federal law as explained infra. Cf. **Michigan v. Long** (1983), 463 U.S. 1032, 1038-39, ("we have ourselves examined state law to determine whether state courts have used federal law to guide their application of state law or to provide the actual basis for the decision that was reached."). A claim of the denial of procedural due process is plain on its face as a Constitutional claim and the District Court's analysis is contrary to clearly established U.S. Supreme Court case law.

In this case, the District Court, in adopting the Magistrate's Report and Recommendation, and rejecting all Objections in toto, based its' decision that the trial court hearing was not "fundamentally unfair" upon a factual finding that "A review of the record shows Mr. Balducci fully articulated to the trial court his reasons for wanting to withdraw the plea" (PAGE ID# 465),

Balducci submits that these factual findings as clearly erroneous. The Sixth Circuit adopted these erroneous conclusions in rejecting the request to issue a Certificate of Appealability.

Balducci further submits that a review of the transcript of proceedings created during the hearing and referenced by the lower courts, affirmatively demonstrates that the trial court did not, in fact, permit him to speak on his own behalf, rendering this factual finding by the District Court to be clearly erroneous and warranting rejection of said factual finding by this Court and further de novo review thereof. As pled in Balducci's Merit Brief, the transcripts of proceedings arising from the hearing cited to by the District Court affirmatively demonstrates that "not once did the trial court actually let Balducci fully explain his reasoning [for seeking to withdraw his plea], cutting him off and interrupting him each time be began [to speak] in order to harangue him (Tr. Passim; Petitioner's Merit Brief, Doc. #4, Page 8).

Appellant further submits that the legal conclusion reached by the District Court that the trial court hearing on Appellant's Motion to Withdraw Guilty Plea was "not fundamentally unfair" is also clearly erroneous. (Page ID# 467). The Sixth Circuit erred in adopting this reasoning in rejecting the issuance of a Certificate of Appealability.

As noted above, Mr. Balducci was never permitted to fully explain the reason for seeking to withdraw the guilty plea as required by Ohio Crim. R. 32. The failure to provide the opportunity to be heard is a fundamental denial of Due Process of Law. See, e.g. **LaChance v Erickson** (1998) 522 U.S. 262. In this case, Appellant was not provided an actual legitimate opportunity to be heard, based upon being interrupted before he could finish articulating his reasons by the trial court, who instead of listening or even letting Appellant finish a thought, instead interrupted and lambasted him for attempting to exercise his rights. The fact of the matter is that Balducci began his initial

request to withdraw his plea with the statement that he thought about it and, despite counsel's advice that "pleading guilty was his only way out", he did not feel it was right to "plead guilty to something I did not do" (Transcript). Nowhere in the lower Courts' analysis is there any mention of actual innocence having been invoked, or any analysis of the effect of claimed innocence upon the denial of the presentence Motion to Withdraw the Plea and, at the first opportunity to do so, within three days of the entry of the plea, and before sentencing. The lower Courts completely overlooked these facts which were also ignored by the state court, and of which the transcript constitutes competent and credible evidence. This additional evidence further demonstrates that the trial court's ultimate determination is unreasonable in light of the evidence, and the District Court erred in affording a presumption of correctness thereto, and basing its' ultimate legal conclusions thereupon. Moreover, the Sixth Circuit erred in adopting this reasoning in rejecting the issuance of a Certificate of Appealability.

In addition, procedural due process requires that "a presentence motion to withdraw a guilty plea should be freely and liberally granted." **State v. Xie** (1992), 62 Ohio St. 3d 521, 527. A review of the record demonstrates that the presentence motion in this case was not "freely or liberally granted", but rather, despite putting on a show of holding a hearing (during which, even the District Court noted that new counsel pointed out that "It sounds like a decision has already been made", to which the state court judge replied "Absolutely not, I'm happy to hear from your client..." (Doc. #15, PAGEID#467), quoting from the hearing transcript), yet the trial court proceeded to interrupt and lambaste Appellant every time he tried to speak. The transcript of proceedings from the "hearing" on Balducci's pre-sentence Motion to Withdraw Plea, made at the first possible opportunity to do so, and within three days of the entry of the plea in the first instance, constitutes

clear and convincing evidence that the state appellate court's factual findings are unreasonable in light of that evidence, and the District Court erred as a matter of law in relying upon such erroneous factual findings to support its' legal conclusions. The Sixth Circuit also erred in adopting this reasoning in rejecting the issuance of a Certificate of Appealability.

The Writ of Habeas Corpus "is the fundamental instrument for safeguarding individual freedom from arbitrary and lawless state action. Its' pre-eminence is recognized by the admonition in the Constitution that the privilege of the Writ of Habeas Corpus shall not be suspended. [...] the scope and flexibility of the writ, its' capacity to reach all manner of illegal detention – its' ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility to ensure that miscarriages of justice within its reach be surfaced and corrected". **Harris v Nelson** (1969). 394 U. S. 286, 290. The decision of the District Court in this case abandons the purpose of the Writ and, by basing the ultimate legal conclusions upon clearly erroneous determinations of fact by the state court, for which the presumption of correctness is completely overcome by record evidence, the District Court erred and abused its' discretion. The Sixth Circuit also erred in adopting this reasoning in rejecting the issuance of a Certificate of Appealability.

The failure of the trial court to properly conduct a hearing at which Appellant could be heard, meaningfully, deprived him of procedural due process and the District Court's opinion otherwise is clearly erroneous and contrary to clearly established U.S. federal law as established by the Supreme Court. Therefore, the decision of the lower Courts must be reversed as a matter of law.

SECOND QUESTION PRESENTED FOR REVIEW

Whether the failure of defense counsel to conduct an investigation or to make a reasonable decision not to investigate a confession by another person in a murder case violates essential duties owed to the client and, by forcing the client to plead guilty, created sufficient prejudice to violate the Sixth and Fourteenth Amendment right to effective counsel?

LAW AND ARGUMENT

Standard of Review

A Constitutional claim of ineffective assistance of counsel is a mixed question of law and fact and the factual determinations of the reviewing Court are reviewable under the clearly erroneous standard, while the legal conclusions are reviewed de novo. **Strickland v Washington** (1984) 466 U.S. 668.

As a preliminary matter, it is black-letter law that a defendant in a criminal case is constitutionally entitled to competent assistance of counsel "at all critical stages of the proceedings" (**Douglas v California** (1963) 372 U.S. 353; **Gideon v Wainwright** (1963) 373 U.S. 335). Moreover, it is also clearly established by the Supreme Court that counsel's errors made prior to a proceeding, such as procedures relating to the entry or withdrawal of a guilty plea, constitute ineffective assistance of counsel within the meaning of the Sixth and Fourteenth Amendments under the standard set forth by the Court in **Strickand v Washington** (1984) 466 U.S. 668. See, e.g. **Frye v Missouri** (2012) 566 U.S. 135 and **Lafler v Cooper** (2012) 566 U.S.156.

When reviewing a claim of ineffective assistance of counsel, "the question is whether there is any reasonable argument that counsel satisfied **Strickland's** deferential standard, see, e.g. **Harrington v Richter,** (2011) 562 U.S. 86. where a claim of ineffective assistance of counsel implicates the Sixth and Fourteenth Amendments under **Strickland v Washington** (1984) 466 US

668, and is universally recognized as such.

It is well-settled that an attorney in a criminal case has an affirmative duty under the **Strickland** analysis to make proper investigations into the law and facts of the case, or to make a *reasonable* determination that such investigation is unnecessary. In **Bigelow v Williams** (6th Cir., 2007) 367 F3d. 562, the Court vacated a conviction where, as here, trial counsel failed to conduct reasonable investigations. In **Bigelow**, the failure to investigate concerned an alibi witness, in this case, it was another suspect *who had confessed.* The failure to investigate by trial counsel "must be supported by a reasoned and deliberate determination that investigation is not warranted". (id., citing **O'Hara v Wigginton** (6th Cir., 2004) 24 f3d. 823, 828, citing **Mathews v Abramajtys** (6th Cir., 2003) 319 F3d 780, 789-790, citing **Blackburn v Foltz** (6th Cir., 1987) 828 F2d 1177.

In this case, the record is clear that trial counsel completely failed to conduct any investigation into the facts and circumstances of the case. As acknowledged by the Magistrate, and adopted by the District Court and the Sixth Circuit, trial counsel failed to investigate a third-party confessor, noting "Mr. Balducci was made aware through the discovery process that another person confessed to the murder on Facebook, *but the state's investigator eliminated that individual as a suspect* after interviewing that individual and the individual's father" (Doc. #15, PAGE ID #463). The Magistrate never referred back to this highly important point in its' analysis anywhere in the R&R, (which was adopted in full by the District Court and the Sixth Circuit), yet this is the crux of the ineffective counsel claim. Trial counsel failed to investigate the fact that another individual had confessed to the crime for which Balducci maintains his innocence, and he sought to withdraw the guilty plea, that the same counsel induced, at his first possible opportunity to do so.

The only reason provided by the state court for counsel's failure (and not by counsel), was reliance on the prosecutor's office ("but the state's investigator eliminated that individual as a suspect after interviewing that individual and the individual's father"), notwithstanding the fact that the record shows that the father lied about his son's whereabouts, and the son lied as well.

Not only did counsel ignore the confession by another person in his quest to facilitate a guilty plea rather than properly arm himself with the relevant facts and law to actually represent Appellant zealously, within the bounds of the law, but counsel also failed to conduct a plethora of basic investigatory requirements such as:

- Determine whose DNA was on the body (It was not Balducci's)
- Determine the time synchronization of the videos referenced to establish a proper time line
- Elicit a report from the Crime Scene tech that no GSR was found on Balducci or his car
- Engage a blood-spatter specialist to establish that there was no blood on Balducci or his car (the victim was reportedly shot at point-blank range
- Engage a fingerprint analyst to examine the partial print found on a shell casing that does not match Balducci's

None of these basic investigatory steps were ever taken by counsel, and no reasoned decision was made for not doing so. Yet, the state court completely ignored all of these failure on the part of counsel that were presented by Balducci, as did the District Court and Sixth Circuit.

As the state court's decision relied upon an unreasonable determination of the facts in light of the evidence, the District Court's reliance thereupon for its' ultimate conclusion that counsel was not constitutionally deficient when he completely failed to conduct even the most basic investigations, including into the person who actually confessed to the crime, and that Balducci did not establish counsel's ineffectiveness during pretrial proceedings, including coercing a guilty

plea and subsequently arguing his motion to withdraw a plea, is clearly erroneous and contrary to clearly established U.S. federal law as established by this Court. Therefore, the decision must be reversed as a matter of law.

As to the fact that ineffectiveness of counsel established above render the resultant guilty plea involuntary, it is well-settled federal law, as established by the Supreme Court that a guilty plea is only voluntary when it is accompanied by the "advice of competent counsel". See, e.g. **Tollett v Henderson** (1973) 411 U.S. 258. It is clear that trial counsel failed completely to conduct any requisite investigation, and that such failure was not the result of a reasoned decision not to do so, but rather simply due to the failure to perform essential duties owed to Balducci. Thus, absent the advice of competent counsel, the guilty plea in this case is, of necessity, involuntary. The District Court's determination otherwise ignores the record evidence and is, thus clearly erroneous, mandating reversal and the issuance of a Certificate of Appealability. The lower courts should be reversed.

THIRD QUESTION PRESENTED FOR REVIEW

Whether a Court of Appeals reviewing an application for a Certificate of Appealability under 28 U.S.C. §2244 which demonstrates that reasonable jurists might disagree with the district court may deny the issuance of the Certificate on the basis that the Court believes that the Applicant might not prevail on the merits?

LAW AND ARGUMENT

Standard of Review

The statutory provisions created by the AEDPA as set forth in 28 U.S.C. §2253(c)(3) served only to codify the standards established by this Court for the issuance of a then-Certificate of Probable Cause" to appeal in **Barefoot v Estelle** (1983) 463 U.S. 880, which held that a prospective habeas appellant must make a "substantial showing of the denial of a Constitutional right", and that the case presents issues that are "debatable among jurists of reason" (id). See, e.g. **Slack v McDaniel** (2000) 529 U.S. 473. A COA may issue where the issues are sufficient to deserve encouragement to proceed further, **Barefoot** and **Slack**, supra. Where a District Court disposes of a Habeas petition on procedural grounds, a COA shall issue where the appellant shows that jurists of reason would find it debatable whether the District Court was correct in its procedural ruling. **Slack**, supra. In **Miller-El v Cockrell** (2003) 537 U.S. 322, this Court held that, when considering whether to issue a COA, only a cursory review of the underlying merits of the claims is permitted, and the question is not whether the prospective appellant is likely to succeed on appeal, but rather whether the issues are debatable (id).

A merits analysis is not coexistent with the "debatable among reasonable jurists" standard and may not be used to deny the issuance of a COA via threshold analysis. **Buck v Davis** (2017) 580 U.S.100.Moreover, merely because a reasonable jurist might agree with the district court is insufficient cause to deny the issuance of a COA (id). The only question is whether it is debatable.

Where a Magistrate Judge or a District Court Judge renders factual findings, the standard of review of said factual findings is whether the findings are "clearly erroneous". See, e.g. **Anderson v Bessemer City** (1997) 470 U.S 564. Clear error exists where the reviewing court, after reviewing all record evidence, is "left with a definite and firm conviction that a mistake has been committed" (id, citing **U.S. v United States Gypsum Co.** (1948) 333 U.S. 364, 395. Where the record evidence presents "two permissible views" of the facts, clear error cannot be found (id), citing **United States v Yellow Cab Co.** (1949) 338 U.S. 338, 342. The legal conclusions of a Magistrate Judge or a District Court Judge are subject to de novo review. See, e.g. **U.S. v Raddatz** (1980) 447 U.S. 667.

In this case, the Sixth Circuit simply adopted the findings of the lower courts without any legitimate analysis of whether Balducci made a "substantial showing of the denial of a Constitutional right" (**Barefoot**, supra). The Court completely overlooked Balducci's procedural due process argument, focusing instead on an issue not before the court at all. Likewise, the Court completely overlooked the fact that another person confessed to the murder, and counsel never interviewed or investigated this fact, instead simply arguing that Balducci "does not show that such investigations would have yielded favorable evidence" (Order, p. 5). Likewise, the Court failed to address the hearing issue, only adopting the erroneous conclusion that the state court held a "thorough plea hearing" (id), and ignored his actual innocence gateway claim.

A review of the Sixth Circuit's decision demonstrates that the conclusions reached mirror the District Court on the merits, rather than simply assessing whether the proposed Assignments of Error present constitutional claims and whether the lower courts could reasonably be disagreed with by reasonable jurists.

This Court has held that the standard for the issuance of a "Certificate of Probable Cause" did not change with the advent of the AEDPA, but rather it only served to codify the **Barefoot** standards (**Slack v McDaniel,** supra). The Sixth Circuit's decision ignores all of the precedents of this Court relating to a Certificate of Appealability and, instead, simply constitutes a cursory, deferent merit review, completely obliterating the function of the process. This Court should issue a Writ of Certiorari to aid in the jurisdiction of this Court, clarify the law, and correct the errors of the lower courts.

FOURTH QUESTION PRESENTED FOR REVIEW

Whether, pursuant to 28 U.S.C. §2254(e)(2), where the failure to fully develop the factual record in the state court is not attributable to the petitioner, but rather to failures of the state courts, a hearing is warranted on Federal Habeas review?

LAW AND ARGUMENT

In this case, the transcript of proceedings from the hearing on Balducci's presentence request to withdraw his plea affirmatively demonstrates that he was never once permitted to finish a sentence by the trial court, nor to fully articulate his reasons for seeking to withdraw the ill-advised plea. Balducci sought an evidentiary hearing on Habeas review to fully develop the record.

In response, the Magistrate rendered a factual finding that "The supreme Court has severely limited the authority of District Courts to hold such hearings, and has largely confined us to deciding cases entirely from the state court record. **Cullen v Pinholster**, 563 U.S. 170 (2011)" (Doc. #46, PAGE ID#1609) which was adopted in full by the District Court, over objection. Balducci objected to this passage as the sole response to his request for an evidentiary hearing in this case, and submits that the AEDPA limitations to evidentiary hearings in Habeas Corpus are limited specifically, by plain statutory language to cases in which any failure to fully develop the

factual record is solely attributable to acts or omissions by the prisoner (28 U.S.C. §2254(e)(2)). Where, as here, the failure to develop the factual record is not attributable to the Petitioner, but rather to failures of the state courts, a hearing is warranted. See, e.g. **Williams v Taylor** (2000) 529 U.S. 437; **Robinson v Howes** (6th Cir., 2011) 663 F3d 819, 824-25).c The refusal to conduct a hearing by the lower courts is contrary to the statutory language set forth in the AEDPA revisions to 28 U.S.C. §2254(e)(2), and this Court should clarify the actual standards for the lower courts to follow.

CONCLUSION

This case involves a defendant whose counsel failed to even investigate another individual who had confessed publicly to the crime, instead simply advocating for his quick appointed counsel fee by pushing a plea deal on the petitioner herein. The trial court refused to let him fully articulate his reasons for seeking to withdraw the plea, and the courts have rubber-stamped the case every step of the way. Petitioner Anthony Balducci is innocent and was forced into a guilty plea by a ruthless and lazy lawyer, and seeks redress in this Court.

For the foregoing reasons, this Court should accept jurisdiction, conduct full briefing, and, ultimately, reverse the lower court and order that it issue a Certificate of Appealability and, ultimately, grant the requested Writ of Habeas Corpus, and Petitioner so prays.

Respectfully submitted,

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