

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Lucion Lee Edward Banks v. David Holbrook

Case No. 2:24-cv-05121-PA-GJS · No. 2:24-cv-05121-PA-GJS · Decided July 3, 2025

OPINION

Lucion Lee Edward Banks v. David Holbrook

PER CURIAM.

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

9 10 11 LUCION LEE EDWARD BANKS, Case No. 2:24-cv-05121-PA-GJS 12 Petitioner,
ORDER ACCEPTING AMENDED

v. REPORT AND RECOMMENDATION

13 OF UNITED STATES MAGISTRATE

14 DAVID HOLBROOK,

JUDGE

15 Respondent. 16

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of 18 Habeas Corpus
by a Person in State Custody, the records on file, the Amended 19 Report and Recommendation of
the United States Magistrate Judge (“Report”), and 20 Petitioner’s objections to the Report.
Further, the Court has made a de novo 21 determination of the portions of the Report to which
objections have been made. 22 The Report recommends the denial of the Petition and the
dismissal of this 23 action with prejudice. (ECF No. 20.) Petitioner’s objections to the Report
(ECF

24 No. 21) do not merit any change to the Report’s findings or recommendations.

25 Petitioner objects that the prosecution presented false evidence, under Napue 26 v. Illinois, 360
U.S. 264 (1959), consisting of text messages exchanged between 27 Petitioner and the victim.
(ECF No. 21 at 3-16.) The California Supreme Court’s 28 rejection of this claim was not
objectively unreasonable. (ECF No. 11-80.) 1 Petitioner failed to show that any evidence was
false. (ECF No. 20 at 21-24.) Petitioner had an opportunity to develop this claim before the state
trial court, 2 which held an evidentiary hearing and found that “it would require an inferential 3
leap outside ‘the realm of possibility’” to conclude that either the prosecutor or the 4 evidence
technician had manufactured evidence. (Id. at 22; ECF No. 11-69 at 44.) 5 The state trial court’s
factual finding is entitled to a presumption of correctness that 6 Petitioner has not overcome with

clear and convincing evidence. (ECF No. 20 at 7 22.) To hold otherwise, “this Court would be required to engage in unwarranted 8 inferential leaps and speculation based on a factual showing that is far from 9 persuasive.” (Id. at 24.) 10 Petitioner objects that his trial counsel was ineffective under Strickland v. 11 Washington, 466 U.S. 668 (1984), for failing to hire a forensic cellphone expert. 12 (ECF No. 21 at 16-28.) The California Supreme Court’s rejection of this claim was 13 not objectively unreasonable. (ECF No. 11-80.) Petitioner had a post-trial hearing 14 on this claim before the state trial court, during which trial counsel explained that, 15 after reviewing the matter, he had made a strategic decision not to hire a forensic 16 cellphone expert, because the records “proved not to reveal what [Petitioner] 17 thought they did[.]” (ECF No. 20 at 28; ECF No. 11-69 at 18.) It was not 18 objectively reasonable for the state court to conclude that trial counsel’s decision 19 “was within the realm of reasonable professional assistance.” (ECF No. 20 at 30.) 20 Moreover, because there is no evidence of what such an expert would have said, 21 any prejudice under Strickland from trial counsel’s failure to hire an expert is 22 entirely speculative. (Id. at 31.) 23 Petitioner objects that his appellate counsel was ineffective for failing to use 24 a forensic cellphone expert competently. (ECF No. 21 at 28-34.) The California 25 Supreme Court’s rejection of this claim was not objectively unreasonable. (ECF 26 No. 11-80.) Appellate counsel did take “significant investigatory efforts,” 27 including hiring an expert and monitoring an extraction performed by another 28 1 || expert. (ECF No. 20 at 36.) Appellate counsel then concluded, “I feel like the 2 || upshot of all of this is that the data on the phones support, rather than undermine, 3 || the prosecution narrative” and that the results “are not helpful to the defense.” 4 || (ECF No. 1 at 85.) Appellate counsel’s efforts were “within the wide range of 5 || reasonable professional assistance.” (ECF No. 20 at 36.) 6 IT IS ORDERED that (1) the Amended Report and Recommendation is 7 || approved and accepted; (2) the Petition is denied; and (3) Judgment shall be entered 8 || dismissing this action with prejudice. 9 10 | DATED: July 3, 2025 11 | Cte □□

tS UNITED STATES DISTRICT JUDGE

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