

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

ERIC GLENN PARKER- PETITIONER

vs.

UNITED STATES OF AMERICA- RESPONDENT

ON PETITION OF WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Was Venue Proven To Convict Eric Glenn Parker Of Conspiracy To Commit RICO- In The Northern District Of Mississippi?
2. Was Venue Proven To Convict Eric Glenn Parker Of Aiding and Abetting Murder- In The Northern District Of Mississippi?

LIST OF ALL PARTIES

1. Eric Glenn Parker- Petitioner
2. The United States of America- Respondent
3. Frank George Owens- co-defendant of Eric Glenn Parker at trial, and on appeal at The Fifth Circuit Court of Appeals.

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OPINIONS BELOW

1. The Opinion of The Fifth Circuit Court of Appeals appears at Appendix A and is unpublished, but may be found at *United States v. Owens*, U.S. App. Lexis 4257.
2. The Opinion of The United States District Court for the Northern District of Mississippi appears at Appendix C, but may be found at *United States v. Owens*, 2016 U.S. Dist. Lexis 139970.

BASIS FOR JURISDICTION

The Fifth Circuit Court of Appeals upheld Count I and Count IV on February 22, 2018.

A motion for re-hearing was timely filed asking for en banc review and said motion was denied on April 2, 2018.

CONSTITUTIONAL PROVISIONS AND FEDERAL RULES INVOLVED

1. U.S. *Const. Amend. VI.*
2. *Article III* § 2 cl. 3 of the United States Constitution
3. *Federal Rule of Criminal Procedure* 18.

JURISDICTION

This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C § 1291, *Fed. R. App. Pro.* 4, *U.S. Const. Article III* § 2 cl. 3, and *U.S. Const. Amend. VI.*

The fact that Mr. Parker's argument to this Court is specifically regarding lack of venue and jurisdiction, is the primary reason to grant his request.

STATEMENT OF CASE AND FACTS

The superseding indictment (see **Appendix D**) in this case outlined the alleged criminal actions of seventeen individuals. Only two of those individuals went to trial, the other fifteen individuals pled guilty, and snitched. Eric Glenn Parker (hereafter “Mr. Parker or Eric Parker”) and George Frank Owens (hereafter “Frank Owens”). Mr. Parker and Frank Owens’ respective involvement in the alleged crimes are unique from one another.

Importantly, none of the facts presented at trial involved Eric Parker¹ being physically in any portion of the Northern District of Mississippi, at any time in history. Also, and just as importantly, none of the facts presented at trial showed that Eric Parker made any agreements in the Northern District of Mississippi, or committed any overt act(s) in the Northern District of Mississippi. Mr. Parker did not even make any agreements in some other part of the world that would be carried out in the Northern District of Mississippi.

Important to this case, is understanding the Aryan Brotherhood’s leadership in Mississippi from 2010 until 2014. The Government put on proof that in 2010 Steve May, Baron Goff, and Brandon Creel were the leaders of the Aryan Brotherhood in Mississippi.² In 2011, things changed, and beginning in 2012 and continuing until 2014, the leadership of the Aryan Brotherhood in Mississippi consisted of Perry Mask, Larry Sneed and Baron Goff. Stephen Hubanks also held a leadership role and was

¹ Eric Parker lived in Petal, Mississippi, which lies in the Southern District of Mississippi, at all times discussed in the indictment and times testified to at trial.

² The three leaders of the Aryan Brotherhood, at any given time, were referred to as “The Wheel.”

instrumental in the crimes in the Northern District of Mississippi with Perry Mask. Mr. Creel, Mr. Hubanks and Mr. Mask were the only leaders, who testified at trial. Hubanks and Mask testified that they had never met Eric Parker, and did not even know who he was.³ Mr. Creel's testimony, outlined below in this petition verbatim, stated that Eric Parker was an Aryan Brotherhood member and that the alleged crimes that Eric Parker was a part of were not Aryan Brotherhood related and that they all occurred near Petal, Mississippi which is in the Southern District of Mississippi. Mr. Creel also testified that Eric Parker didn't have anything to do with the Aryan Brotherhood at all after 2011.

Mr. Parker was charged with Count I- conspiracy to participate in racketeering activity, Count II- conspiracy to possess with the intent to distribute methamphetamine; and Count IV- aiding and abetting murder⁴ of Michael James Hudson. The Fifth Circuit Court of Appeals reversed Count II and vacated the conviction for lack of venue. In truth, no proof was produced that Mr. Parker committed any crimes in the Northern District of Mississippi.

The trial of this case lasted from April 4, 2016 until April 13, 2016 in the Northern District of Mississippi. At the beginning of the day on April 4, 2016, the trial judge asked trial counsel for Eric Parker if he was ready to go to trial, and he respectfully responded "no." The primary reason for the response was that Mr. Parker did not (and still does not) agree to the jurisdiction, and venue of the court.

³ Frank Owens, Mr. Parker's co-defendant, did not testify,

⁴ Mr. Parker was charged under the VICAR statute regarding the murder. See 18 **U.S.C § 1959(a)(1)**.

Lastly, for this Court's assistance, Joshua Turner was counsel for Defendant-Eric Parker⁵ and William Sumrall was trial counsel for Defendant- Frank Owens. Scott Leary, Clayton Dabbs, and Kelly Pearson were the attorneys for the United States of America.

⁵ Mr. Turner is also Mr. Parker's appellate counsel, and counsel herein.

ARGUMENT

I. The United States Failed To Prove Venue Existed To Convict Eric Glenn Parker of RICO conspiracy in The Northern District of Mississippi.

Proper venue in criminal proceedings was a matter of concern to the Nation's founders. Their complaints against the King of Great Britain, listed in the Declaration of Independence, included his transportation of colonists 'beyond Seas to be tried.' *The Constitution twice safeguards the defendant's venue right: Article III, § 2, cl. 3, instructs that "Trial of all Crimes ... shall be held in the State where the said Crimes shall have been committed"; the Sixth Amendment calls for trial "by an impartial jury of the State and district wherein the crime shall have been committed." Rule 18 of the Federal Rules of Criminal Procedure, providing that "prosecution shall be had in a district in which the offense was committed," echoes the constitutional commands.*

United States v. Cabrales, 524 U.S. 1, 6 (1998) (emphasis supplied).

In 2013, this Court ruled the following regarding RICO conspiracy cases:

The essence of conspiracy is "the combination of minds in an unlawful purpose." United States v. Hirsch, 100 U.S. 33, 34, 25 L. Ed. 539 (1879). [5] To convict a defendant of narcotics or RICO conspiracy, the *Government must prove beyond a reasonable doubt that two or more people agreed to commit a crime covered by the specific conspiracy statute (that a conspiracy existed) and that the defendant knowingly and willfully participated in the agreement* (that he was a member of the conspiracy). Far from contradicting an element [****9] [*111] of the offense, withdrawal presupposes that the defendant committed the offense. Withdrawal achieves more modest ends than exoneration. Since conspiracy is a continuing offense, United States v. Kissel, 218 U.S. 601, 610, 31 S. Ct. 124, 54 L. Ed. 1168 (1910), a defendant who has joined a conspiracy continues to violate the law "through every moment of [the conspiracy's] existence," Hyde v. United States, 225 U.S. 347, 369, 32 S. Ct. 793, 56 L. Ed. 1114 (1912), and *he becomes responsible for the acts of his co-conspirators in pursuit of their common plot*, Pinkerton v. United States, 328 U.S. 640, 646, 66 S. Ct. 1180, 90 L. Ed. 1489 (1946). Withdrawal terminates the defendant's liability for postwithdrawal acts of his co-conspirators, but he remains guilty of conspiracy.

Smith v. United States, 568 U.S. 106, 111 (2013) (emphasis supplied).

No proof of a common plot existed to support Mr. Parker's conviction for RICO conspiracy. No proof of an agreement involving Eric Parker in the Northern District of Mississippi was produced through any evidence at trial. No proof of any overt act by Eric Parker in the Northern District of Mississippi was submitted to the jury through any evidence at trial. Mr. Parker not only challenges the sufficiency of the evidence to support venue, but its very existence. It is indeed the *simplicity* of the absence of evidence, and proof of any kind, which reaches the truth: venue was at no time proper, as to Mr. Parker, in the Northern District of Mississippi.

At the outset, Mr. Parker objected to venue in this case before trial and when asked if Mr. Parker was ready to go to trial on April 4, 2016, counsel responded: "no." Additionally, Mr. Parker objected to venue in this case throughout the trial, at time for JNOV, and then again after the jury verdict.

Respectfully, the cases cited by the District Court's Memorandum, and by The Fifth Circuit Court of Appeals, do not support venue in the Northern District of Mississippi- for conspiracy analysis with the lack of facts, regarding Mr. Parker. For example, the District Court cites to ***United States v. Nieto***, 721 F.3d 357 (5th Cir. 2013) for support that venue is proper. However, the issue of venue was "probably waived for failure to brief." ***Id.*** at 369. Also, the proof in that case showed that the conspiracy was centered in the Western District of Texas and therefore venue was proper in Dallas, Texas. ***Id.*** ***Nieto*** has no applicability here. Simply being a member of the Aryan Brotherhood is not a crime; and it is far too tenuous to find that being a member means you are subject to venue, anywhere a crime is committed by other

members. See *United States v. Stewart*, 145 F.3d 273, 277-78 (5th Cir. 1998), holding that a close association with another committing a criminal act is insufficient for an aiding and abetting conviction. The same holds true here, merely being a member of the Aryan Brotherhood does not make one guilty of all the crimes committed by each individual.

In this case, proof was put forth by the Government that Frank Owens (Mr. Parker's co-defendant) committed crimes in the Northern District of Mississippi, as well as Perry Mask and Stephen Hubanks (members in the Aryan Brotherhood that held top leadership positions), but they had nothing to do with Mr. Parker. No proof was ever put forth that any criminal activity by Eric Parker was Aryan Brotherhood related. The Government carries the burden throughout the entire trial to prove, by a preponderance, that venue is proper in the Northern District of Mississippi as to Mr. Parker. The burden of proving venue never shifts to the defendant. This would require the Defendant to prove a negative. Respectfully, the assertions of the Government, the opinion of the District Court, and ruling by the Fifth Circuit would mean that if one were a member of Sigma Nu Fraternity, and the University of Mississippi members were selling marijuana in Oxford, Mississippi, then venue would be proper anywhere a Sigma Nu chapter existed. A premise that defies venue law requiring an agreement, or an overt act, to establish conspiracy venue.

Mr. Parker cited to *United States v. Winship*, 726 F.2d 1116 (5th Cir. 1994) when he made his motion for acquittal at the close of the Government's case, during

trial. The reason the Fifth Circuit found venue was proper for the conspiracy charge in *Winship*, was testimony of co-conspirators supported venue.

In Mr. Parker's case, the Government's witnesses, specifically Perry Mask and Stephen Hubanks, unequivocally testified that they did not know Eric Parker and the crimes that they orchestrated in the Northern District, in 2012 and 2013, had nothing to do with Eric Parker. The Government's own witnesses (Mr. Mask and Mr. Hubanks) provided proof that Eric Parker had no part at all in the crimes they were planning and committing in the Northern District of Mississippi. Even more problematic for the Government, is that Perry Mask said that monies made from his criminal activity in the Northern District of Mississippi were not used to further the Aryan Brotherhood (the alleged "enterprise"). Instead, Mr. Mask was using the proceeds from the drug sales to pay for his attorney at the time. Also, problematic for the Government, is the timeline of when the conspiracies in the Northern District between Mask, Hubanks, and Owens began. All proof involving crimes in the Northern District began in late 2012. No greater proof of Mr. Parker's lack of involvement, or evidence "hooking" him to the Northern District of Mississippi exists, than the following cross-examination testimony of Perry Mask:

Mr. Turner: Okay. In your direct testimony with Mr. Leary, you said - - and I wrote this down, because it was important - - each one had their own thing.

And then when you were talking to Mr. Sumrall, you said "my business."

Eric Parker did not have anything to do with the firearms that were mentioned, correct?

Mr. Mask: **Correct.**

Mr. Turner: And Eric Parker didn't have anything to do with enriching your business of methamphetamines, correct?

Mr. Mask: **I didn't even know Eric.**

Mr. Turner: I understand that, but there's a reason I'm asking these questions. I'm anticipating your answer, but the jury needs to hear it from you, okay?

Mr. Mask: Okay.

Mr. Turner: Eric Parker didn't help you traffic any of those drugs that were coming from California, correct?

Mr. Mask: **Correct.**

Mr. Turner: Eric Parker didn't intimidate anyone so that your methamphetamine business could continue, correct?

Mr. Mask: **Correct.**

Mr. Turner: Eric Parker never received any of the financial part of what you gained from the amphetamines, correct?

Mr. Mask: **Like I said, I never met Eric. Never had no business with him. They had their own thing going down south that I didn't have nothing to do with and I had what I had going. He didn't have nothing to do with what I had going.**

Mr. Turner: **Okay. So would it - - I might can summarize this. Would it be fair to say that everything that you testified about that you had going on with**

Mr. Owens, Mr. Hubansk, Mr. Pugh, that that - - that Mr. Parker had nothing to do with that; is that correct?

Mr. Mask: **Correct.**

Record Excerpts: (emphasis supplied).

In the case *sub judice*, Mr. Parker was not part of any conspiracy in the Northern District of Mississippi. Everyone that testified about the crimes and conspiracies in the Northern District of Mississippi, under oath, and in front of the jury, said they did not know Eric Parker and he had nothing to do with the drug crimes, guns, audio recordings, and pounds of methamphetamines. Testimony which disproved the Government's allegations of venue. Mr. Parker cannot prove a negative and show this Court where something in the record exonerates him, when it does not exist at all.

Brandon Creel testified that the methamphetamine business of Mr. Parker had nothing to do with the Aryan Brotherhood. No monies were comingled with the Aryan Brotherhood treasury. Perry Mask testified his methamphetamine business was his own "thing." Likewise, the gun charges within the indictment had nothing to do with Mr. Parker at all. These two things, according to the Government's own witnesses, were not acts in furtherance of any enterprise. They were acts in furtherance of Perry Mask, or according to Brandon Creel's testimony regarding drug trafficking in the Southern District of Mississippi- acts to further himself individually. According to Mr. Mask and Mr. Hubanks, Eric Parker had absolutely nothing to do with the criminal activities in the Northern District of Mississippi.

How can Mr. Parker be guilty of a conspiracy when the supposed co-conspirators (Mask and Hubanks) did not even know, or speak, to Eric Parker?

More pointedly, when Mr. Creel was questioned at trial about Eric Parker's involvement in the Aryan Brotherhood after the alleged death of Michael Hudson in December 2010, he testified as follows:

Mr. Turner: How many KOS orders have you given?

Mr. Creel: None.

Mr. Turner: Okay. And you also said something about you decommissioned everyone that was involved in this?

Mr. Creel: Yes, I did.

Mr. Turner: What does that mean?

Mr. Creel: That means that they are -- they're not -- they're not active. There was -- like I stated earlier, there was a lot of -- a lot of talk within the family about what had happened. And in order to -- to keep the situation that happened contained to the best of my knowledge, I instructed these brothers to -- to not come to any functions or have any -- any involvement with the rest of the brotherhood.

* * * * *

Mr. Turner: Okay. In 2011, did Eric Parker attend any Aryan Brotherhood functions? He didn't, did he?

Mr. Creel: If I said either way, I would be -- I'm not sure.

Mr. Turner: Okay. All right. Would you agree with me in 2012 that he didn't attend any Aryan Brotherhood functions?

Mr. Creel: **I would - - I would definitely agree with that.**

Mr. Turner: Would you agree with me in 2013 he did not?

Mr. Creel: **I would definitely agree with that.**

Mr. Turner: And in 2014, he did not?

Mr. Creel: **He did not.**

Mr. Turner: He removed himself from the Aryan Brotherhood, didn't he?

Mr. Creel: I - - well, I told Eric the same thing I told them. Eric had - -

Mr. Turner: I'm sorry. Will you answer me yes or no? And then you can explain.

Mr. Creel: **Yes.**

Mr. Turner: Okay. Thank you.

Record Excerpts: (emphasis supplied).

Eric Parker abandoned the Aryan Brotherhood. Any conspiracies in the Northern District of Mississippi that were brought forth by Perry Mask, Stephen Hubanks, and Frank Owens all occurred in the Northern District of Mississippi beginning in 2012. A time when Eric Parker was in the Southern District of Mississippi and had no knowledge about the personal criminal activity of Perry Mask, Frank Owens and Michael Hubanks.

Moreover, all testimony about conspiracy to distribute methamphetamine by Eric Parker, occurred in the Southern District of Mississippi, and had nothing at all to do with the Aryan Brotherhood. The Fifth Circuit vacated this conviction, but it

does not logically follow that the murder charge does not travel under the same logic. Mr. Creel testified that Michael Hudson was killed, in the Southern District of Mississippi, because of a personal drug debt that he owed to Eric Parker, and that it did not have anything to do with the Aryan Brotherhood, or any type of enterprise.

Mr. Creel testified on cross examination as follows:

Mr. Turner: Okay. You said several times that whatever dispute existed between

Mr. Parker and Mr. Hudson, that was personal nature?

Mr. Creel: That's correct.

Mr. Turner: It didn't have anything to do with the Aryan Brotherhood, did it?

Mr. Creel: No, sir, because - -

THE WITNESS: Am I allowed to explain this?

THE COURT: Yes, sir.

Mr. Creel: The reason being, was that the drug debt that was owed to Eric Parker was on a personal - - a personal gain. It was not - - the Aryan Brotherhood treasury did not see one dime of any proceeds that Eric Parker made from his drug sales; so therefore, it was a personal issue between two brothers.

Mr. Turner: I understand. Thank you. And that's what I was getting at.

Mr. Creel: Yes sir.

Mr. Turner: Eric - - whatever - - any drug sales that you made, that went in your pocket, right?

Mr. Creel: Yes, sir.

Mr. Turner: Okay. **That didn't have anything to do with the Aryan Brotherhood, right?**

Mr. Creel: **No, sir, it didn't.**

Mr. Turner: Okay.

Mr. Creel: **The Aryan Brotherhood, while was calling the shots in the free world, had no involvement as a whole as a drug distributioners (sic), drug sellers, or drug buyers. That was strictly on a personal - - personal, you know, venue.**

Record Excerpts (emphasis supplied).

It comes down to a simple question: What did the Government put forth to the jury that ties, or "hooks"⁶, Eric Parker to the Northern District of Mississippi? The answer is simple: Nothing. The Government can continue to argue that a conspiracy exists, but it cannot point to testimony, or evidence in the record, to attach Eric Parker to the Northern District of Mississippi. The testimony simply does not support the argument that any offense, pertaining to Eric Parker, began in the Southern District of Mississippi, and was completed in the Northern District of Mississippi. No agreements or overt acts, support the RICO conspiracy against Mr. Parker.

The testimony of Brandon Creel shatters the Government's venue arguments as to all Counts. Mr. Creel clearly stated that the methamphetamine crimes by Mr. Parker had nothing to do with the Aryan Brotherhood. Mr. Creel also clearly stated

⁶ See **United States v. Strain**, 396 F.3d 689, 695 (5th Cir. 2005), holding that some evidentiary "hook" must attach for an inference to establish venue by a preponderance of the evidence.

that the assault and alleged murder of Michael Hudson was not ordered by the Aryan Brotherhood, and it was a personal thing between Mr. Parker and Michael Hudson.

Count I (the RICO conspiracy) makes broad allegations against several individuals. See **Appendix D**. However, none of the proof submitted at trial shows Eric Parker making an agreement or committing an overt act to support the superseding indictment. The testimony of Mr. Mask and Mr. Hubanks dismantles the argument that Mr. Parker was involved in any conspiracy in the Northern District of Mississippi.

II. The United States Failed To Prove Venue Existed To Convict Eric Glenn Parker of Murder, Or Aiding and Abetting Murder, In The Northern District of Mississippi.

There is absolutely zero proof that the VICAR murder charge (Count IV in the superseding indictment) has any connection at all to the Northern District of Mississippi. *“Venue may properly be laid in one district with respect to one count of an indictment, but still be improper with respect to the other counts.”* ***United States v. Davis***, 666 F.2d 195, 198 (5th Cir. 1982) (emphasis supplied).

Count IV (the murder charge), via the indictment, even admits that it occurred in the Southern District of Mississippi, and all proof (even in the light most favorable to the Government) showed all acts occurred in the Southern District of Mississippi, as Mr. Creel’s testimony showed at trial.

Assuming *arguendo* that there was sufficient proof that a homicide occurred, the proof put forward by the government was that it occurred because of a personal drug debt owed to Eric Parker by Michael Hudson. Michael Hudson’s alleged death

had nothing to do with the Aryan Brotherhood, or any conspiracy in the Northern District of Mississippi.

For the reasons cited herein and above in **Part I**, this Court should dismiss Count IV, as well as Count I.

CONCLUSION

Mr. Parker respectfully petitions to this Court and asks that it grant his request for certiorari, and that this Court review the case and dismiss all the charges against him, with prejudice.

Respectfully submitted, this the 2nd day of July, 2018.

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