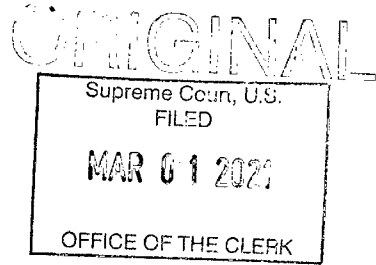


20-7691

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Ernest D. Washington — PETITIONER
(Your Name)

vs.

Tammy Brown Williams — RESPONDENT(S)
Warden, DFCC; Harold Clarke, Doc Dir.
ON PETITION FOR A WRIT OF CERTIORARI TO

On Petition For Writ Of Certiorari to the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Ernest Donald Washington
(Your Name) Doc #1437496
DFCC
21360 Deer Field Drive
(Address)

Capron, Va. 23829
(City, State, Zip Code)

(Phone Number)

Question Presented

Mr. Washington (Petitioner) alleged that the Circuit Court lack subject matter jurisdiction to try him. Petitioner was convicted, in large part upon Plain Error Federal Rule of Evidence Rule 103(e). The Commonwealth's (Com.) witness testified that he could not verify that Petitioner received a picture without getting his computer. (Tr. 183 9-8-10). No law officer searched the so called crime scene (Tr. 195, 196) Petitioner's residence. The Fourth Circuit relied upon a technicality but significantly misstated even the slanted version of the fact. The lip of truth shall be established for ever; but a lying tongue is but for a moment.

Did the Fourth Circuit err in over looking the truth for a technicality in deferring to the Com. Finding that Petitioner was not prejudiced by the court not having subject matter jurisdiction (SMJ) to convict when the Fourth Circuit decision was based on a flagrant misreading of the trial record?

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

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

Table of Authorities

Cases: Bousley v. U.S., 97 F.3d 284 (1998)	4
Cameron, 2012 U.S. App. Lexis 23397	8
Chapman v. Clarke, 2012 U.S. Dist. Lexis 166284	7
Cheuning v. Com., 2014 Va. App. Lexis 82	3
Cobb v. Com., 2013 Va. App. Lexis 301	3
Donahue v. Com., 225 Va. 145, 151-152 (1983)	3
Fridman v. Higgs, 2012 U.S. Dist. Lexis 51907	3
Garnett v. Com., 2016 Va. App. Lexis 316	6
Hooker v. Com., 14 Va. App. 454, 455 (1992)	8
Horsley v. Com., 2 Va. App. 335, 338 (1986)	3
Keese v. Com., 216 Va. 174 (1975)	7
Midkiff v. Com., 280 Va. 216 (2010)	7, 8
Owusu v. Com., 11 Va. App. 671, 672 (1991)	7
People v. Johnson, 376 Ill. App. 3d 175 (2007)	3
Pollard v. Com., 220 Va. 723 (1980)	8
Rochin v. California, 342 U.S. 165, 173 (1952)	5
Thomas v. Com., 36 Va. App. 326, 333 (2001)	7
U.S. v. Jackson, 488 F. Supp. 2d 866 (2007)	7
U.S. v. Ruth, 489 Fed. Appx. 941 (2012)	7
Walker v. Com., 132 Va. 819 (1922)	3
Williams v. Taylor, 529 U.S. 362 (2002)	4
Wilson v. Com., 272 Va. 19, 27 (2006)	3
Statutes & Rules: U.S. Const. Amend. IV	5
U.S. Const. Amend. V	5
U.S. Const. Amend. VI	2, 8
U.S. Const. Amend. VIII	5
U.S. Const. Amend. XIV	2, 5, 6, 9

Va. Const. Article I section 8, 9, and 10

Fed. R. Civ. Pro. Rule 12(b)(1-5)

4, 8

Fed. R. of Evid. Rule 103(e)

4

Other: Va. Practice "Criminal Procedure" 2013-2014

3

Va. Rules Annotated 2019-2020

5

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

OTHER

Opinion Below

The Fourth Circuit Court of Appeals decision is unreported. It is cited 2020 U.S. Dist. Lexis 32167 Civil Action No. 3:18CV792 and a copy is attached as Appendix A. The order of the Fourth Circuit Court of Appeals denying rehearing is in Appendix B. The mail was late. The Center holds legal mail for 3 days before mailing out.

Jurisdiction

The judgment of the United States Fourth Circuit Court of Appeals was entered on September 28, 2020. An order denying a petition for rehearing was entered on [lost date during search and seizure]. Jurisdiction is conferred by 28 U.S.C. 1254(1).

This case raises a question of interpretation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

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 February 25, 2020 (see case); 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 _____ to the petition and is

☐ reported at _____; 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 2-25-2020.

☒ 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 _____.

☐ 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).

Constitutional Provisions Involved

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory ~~process~~ process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV

Section I 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. (Tr. 165)

Statement of the Case

This case arises from a bias detective. The Virginia courts have recognized that bias may be established by showing: The witness is a paid detective who invites the commission of crime in order to detect the commission thereof. (Tr. 178) Walker v. Com., 132 Va. 819, 111 S.E. 274 (1922); Fridman v. Higgs, 2012 U.S. Dist. Lexis 51907; Virginia Practice "Criminal Procedure" 2013-2014 Edition page 527.

Petitioner was convicted of "Use Communication System to Solicit a minor" September 8, 2010. The trial court erred in admitting Chat messages and videotape (Tr. 103) without the proper foundation. Horsley v. Com., 2 Va. App. 335, 338, 343 S.E. 2d 389, 390 (1986); Chewing v. Com., 2014 Va. App. Lexis 82; People v. Johnson, 376 Ill. App. 3d 175 (2007). (Tr. 183). The trial court erred in admitting the messages and videotape into evidence over the best evidence and hearsay rule. Cobb v. Com., 2013 Va. App. Lexis 301; Donahue v. Com., 225 Va. 145, 151-152 (1983); Va. Sup. Ct. R. 2:801, 802, 1001, 1002 (Tr. 98). The trial court erred by not proving constructive possession of the computer that was not introduced into evidence by the Com. (Tr. 201, 202) Wilson v. Com., 272 Va. 19, 27 (2006). By the signal being transmitted through a router (Tr. 168) there is reasonable doubt that petitioner was ^{not} aware of the presence and character of the crime

By the actions of all the Courts the Petitioner substantial right to a Fair trial was violated Fed. R. of Evid. Rule 103(c) Plain Error; Fed. R. Civ. Proc. Rule 12(b)(1-5). The Courts errors affect one or more of Petitioner's constitutional rights.

The prosecution, thus, sustain a conviction under the "use" prong. The prosecution did not show the Petitioner actively employed the computer during and in relation to the predicate crime. Under reading "use" a displaying must be seen, *Bousley v. U.S.*, 97 F.3d 284 (1998) No. 96-8516

Trial counsel did no investigating to perpare or present a defense (Tr. 212) No witness was called by trial counsel. Petitioner had a alibi to show someone else committed the crime. The church that Petitioner attended and his place of employment but trial counsel did not contact either place. *Williams v. Taylor*, 529 U.S. 362 (2001) Justice Stevens, concluding that Williams was denied his constitutionally guaranteed right to the effective assistance of counsel, as defined in *Strickland*, when his trial lawyer failed to investigate and to present substantial mitigating evidence to the sentence jury. Judge Young over looked the constitution violation by trial court.

Reason For Granting The Writ

The Fourth Circuit's finding misapplied truth is not the best form of justice. The Constitution's Fifth and Fourteenth Amendment keeps the government from taking your life, liberty, or property without due process. Therefore, the Due Process Clause of the Fourteenth Amendment keeps the government from treating accused unfairly.

The Fourth Circuit overlooked the truth for a technicality. The truth is the evidence was insufficient to convict Petitioner according to the U.S. Const. Due Process Clause of the Fourteenth Amendment. *Rochin v. California*, 342 U.S. 165, 173 (1952). It does incorporate major provisions of the Fourth, Fifth, Sixth, and Eighth Amendment. Article I of the Virginia Const. set forth the Virginia Bill of Rights, with section 8, 9, and 10 constituting the important provisions with respect to criminal procedure.

The Rules of Supreme Court of Virginia
Article IX. Authentication

Rule 2:901 Requirement of Authentication or Identification

Rules text the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the thing in question is what its proponent claims.

Admission of evidence not harmless. Circuit Court's error in admitting certain text messages found on a cellular phone that related to the sale and distribution of drugs was not harmless because defendant's proximity to the phone ~~and~~ ~~authored~~ insufficient to prove that he owned the phone and authored the messages, the records from the cell phone carrier were not offered to prove that the phone belonged to defendant, defendant did not make any statements to the police regarding the phone's ownership, there no evidence from other people who could recognize defendant's text messages, and the Com. conceded that if the phone did not come into evidence, there was not sufficient to convict defendant. *Garnett v. Com.*, 2016 Va. App. Lexis 361, No. 1573-15-2. No computer belonging to Petitioner was introduce as evidence, no one from provider offered evidence against Petitioner, Petitioner did not make any statement to police (Tr. 201), no Ip address belonging to Petitioner was introduce as evidence, no other person recognize the messages or video tape, and Petitioner never admitted he owned a computer all data came from the police data base. The case is enough to grant the writ for plain error, and the Fourteenth Amendment. substantial showing of the denial of a constitutional right (Tr. 165)

The Fourth Circuit Magistrate Judge Robert C. Young only looked for the technicality that the one-year statute of limitation governing Fed. habeas petition was barred. Judge Young did not look at the truth in the name of justice. No evidence came from Petitioner computer or residence of a crime. Judge Young allowed a miscarriage of justice and a actually innocent person was convicted. IF Judge Young had stopped the errors committed by the Com. Petitioner's Fourteenth Amendment Due Process Rights would have been corrected. U.S. v. Jackson, 488 F.Supp.2d 866 (2007) (no actual computer files were offered as evidence.).

The Com. of Virginia did not establish the Petitioner residence was common knowledge. (Tr. 206, 207) Watford, 295 Va. 114, 2018 Va. Lexis 11. The Com. did not introduce any Electronic Stored Information (ESI) that was retrieved from Petitioner computer harddrive to connect him with the crime. Chapman v. Clarke, 2012 U.S. Dist. Lexis 166284; MidKiff v. Com., 280 Va. 216, 694 S.E. 2d 576 (2010); U.S. v. Ruth, 489 Fed. Appx. 941 (2012). (Tr. 205, 206, 207) Judicial Notice not recorded.

The Com. of Virginia did not prove it had S.M.T. The mere fact that police of a certain jurisdiction investigate (Tr. 168, 183, 195) a crime cannot support an inference that the crime occurred within their jurisdiction. Keese, 216 Va. 174 (1975); Owusu, 11 Va.

App. 671, 672 (1991); Pollard, 220 Va. 723 (1980); Thomas, 36 Va. App. 326, 333 (2001); Federal Rules of Civil Procedure Rule 12(b)(1)(2)(3)(4)(5). The detective did not know personally who had used the electronic devices (Tr. 198, 199) to communicate to him or with him.

Petitioner could not confront the person from Verizon or Yahoo whom detective stated who gave him information about Petitioner electronic information which is a violation of the Confrontation Clause guarantee of the Sixth Amendment (Tr. 198, 199). The detective was or is not the custodian of records for the computer. No IP address was introduced by the Com. belonging to Petitioner (Tr. 198), no court (Tr. 198), no search warrant (Tr. 195, 196) Cameron, 2012 U.S. App. Lexis 23397 and no item was introduced into evidence of or an instrumentality of a crime.

All the evidence was hearsay according to Va. case law. Hooker v. Com., 14 Va. App. 454, 455 (1992) (Police failed to lay a proper foundation for admitting evidence under business record exception to hearsay rule. All data came from the police database). The Supreme Court has held that a proper foundation is laid for admission of electronic files containing digital images or motion pictures by testimony of the technician who "copied" the materials without change from a defendant's computer hard drive. Midkiff, 280 Va. 216, 649 S.E.2d 576 (2010).

By the Fourth Circuit Court of Appeals ignoring the truth for a technicality a Fundamental unfairness structural error has continue to take place. The substantial right to a fair trial was violate Under the Fourteenth Amendment of the U.S. Constitution, Equal Protection Clause. (Tr. 165)

In this case, the police did not take a computer from Petitioner when he was arrested and conducted an extraction on its contents. (Tr. 183, 198, 200, 201). So no computer was displayed at trial and none of the messages and videotape were displayed on his computer at trial. Instead, the detective presented copies of messages he obtained from police database the day of the trial (Tr. 98) No original copy of 2008-2009 to verify that there has been no alteration or substitution of it. No printout date on messages. Petitioner never acknowledge the introduction of the messages and videotape as being accurate.

Constitutional substantial right has no statute of limitations and Petitioner disput the crime happen in the Com. of Va. by him.

Conclusion

For the aforementioned, Petitioner prays that the judgment of the Fourth Circuit Court of Appeals be reviewed by this Honorable Court and reverse the errors admitted by the lower court. The Petitioner also request any other relief deemed appropriate.

Respectfully Submitted,
By: Ernest D. Washington
DOC#1437496

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was mailed 1st class postage to:
Attorney General of Va., 202 North Ninth Street,
Richmond, Virginia 23219. 22nd day of February
2021.

Ernest D. Washington

The Center here holds legal mail three (3) days, due to COVID19.

Ernest D. Washington

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ernest D. Washington

Date: 2-22-21