

APPENDIX A: Opinion, Richardson v. Gomez, appeal no.20-6953 (4th cir. Dec.22, 2020).

FILED: December 22, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6953
(3:19-cv-00812-HEH)

HENRY PAUL RICHARDSON

Petitioner - Appellant

v.

CHRISTOPHER GOMEZ, Warden

Respondent - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6953

HENRY PAUL RICHARDSON,

Petitioner - Appellant,

v.

CHRISTOPHER GOMEZ, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:19-cv-00812-HEH)

Submitted: December 17, 2020

Decided: December 22, 2020

Before THACKER, HARRIS, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Henry Paul Richardson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Henry Paul Richardson, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition in which he sought to challenge his convictions by way of the savings clause in 28 U.S.C. § 2255. Pursuant to § 2255(e), a prisoner may challenge his convictions in a traditional writ of habeas corpus pursuant to § 2241 if a § 2255 motion would be inadequate or ineffective to test the legality of his detention.

Section 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law. *In re Jones*, 226 F.3d 328, 333-34 (4th Cir. 2000).

We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Richardson v. Gomez*, No. 3:19-cv-00812-HEH (E.D. Va. Apr. 30, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B: Memorandum and Order denying Petition for a writ of habeas corpus Pursuant to 28 U.S.C. 2241,
Richardson v. Gomez, Case no. 3:19-cv-812, E.D. VA, April 30, 2020.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

HENRY P. RICHARDSON,)
Petitioner,)
v.) Civil Action No. 3:19CV812-HEH
CHRISTOPHER GOMEZ,)
Respondent.)

MEMORANDUM OPINION
(Dismissing 28 U.S.C. § 2241 for Want of Jurisdiction)

Henry P. Richardson, a federal inmate proceeding *pro se*, submitted a 28 U.S.C. § 2241¹ petition (“2241 Petition,” ECF No. 1).² This Court convicted Richardson of conspiracy to distribute heroin, possession of a firearm in furtherance of a drug trafficking offense, and possession of a firearm in furtherance of a drug trafficking

¹ That statute provides, in pertinent part:

(c) The writ of habeas corpus shall not extend to a prisoner unless—
(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
(3) He is in custody in violation of the Constitution or laws or treaties of the United States

28 U.S.C. § 2241(c)(1)-(3).

² The Court notes that Richardson is currently incarcerated in the Bureau of Prisons’ facility in Glenville, West Virginia, therefore, the § 2241 petition should have been filed in the West Virginia federal court. Nevertheless, because Richardson’s petition is readily dismissed for want of jurisdiction, the interests of judicial economy warrant resolving the action at this juncture without a transfer.

offense causing death of another. Since that date, Petitioner has filed a variety of frivolous and vexatious motions attempting to challenge his conviction. In his § 2241 Petition, Richardson once again contends that he is actually innocent. As the Court has explained several times to Richardson, “[t]he Court cannot consider these arguments or a successive § 2255 motion unless [he] obtains permission from the Fourth Circuit.”³ For the reasons stated below, the action will be dismissed for want of jurisdiction.

A. Motions under 28 U.S.C. § 2255 Compared to Petitions under 28 U.S.C. § 2241

A motion pursuant to 28 U.S.C. § 2255 provides the primary means of collateral attack on the imposition of a federal conviction and sentence and must be filed with the sentencing court. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (quoting *Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990)). The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a “‘gatekeeping’ mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).⁴

³ See, e.g., *United States v. Richardson*, No. 3:06CR106-HEH (E.D. Va.), ECF Nos. 211, 226, 253.

⁴ An inmate may not file a second or successive § 2255 motion, unless a panel of the appropriate Court of Appeals certifies that the motion contains:

A federal inmate may not proceed under 28 U.S.C. § 2241 unless he or she demonstrates that the remedy afforded by 28 U.S.C. § 2255 “is inadequate or ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e).⁵ For example, “attacks on the execution of a sentence are properly raised in a § 2241 petition.” *In re Vial*, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (citing *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996); *Hanahan v. Luther*, 693 F.2d 629, 632 n.1 (7th Cir. 1982)). Nevertheless, the Fourth Circuit has emphasized that “the remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision or because an individual is procedurally barred from filing a § 2255 motion.” *Id.* (internal citations omitted).

The Fourth Circuit has stressed that an inmate may proceed under § 2241 to challenge his conviction “in only very limited circumstances.” *United States v. Poole*, 531 F.3d 263, 269 (4th Cir. 2008) (citation omitted) (internal quotation marks omitted). The “controlling test,” *id.*, in the Fourth Circuit is as follows:

[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

⁵ “This ‘inadequate and ineffective’ exception is known as the ‘savings clause’ to [the] limitations imposed by § 2255.” *Wilson v. Wilson*, No. 1:11cv645 (TSE/TCB), 2012 WL 1245671, at *3 (E.D. Va. Apr. 12, 2012) (quoting *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000)).

the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner *was convicted is deemed not to be criminal*; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000) (emphasis added).⁶ The Fourth Circuit formulated this test to provide a remedy for the “fundamental defect presented by a situation in which *an individual is incarcerated for conduct that is not criminal* but, through no fault of his [or her] own, [he or she] has no source of redress.” *Id.* at 333 n.3 (emphasis added).

B. Analysis of Richardson's 28 U.S.C. § 2241 Petition

Richardson fails to satisfy the second prong of *In re Jones*. *See id.* at 334. Specifically, Richardson fails to demonstrate that “subsequent to [his] direct appeal and [his] first § 2255 motion, the substantive law changed such that the conduct of which [he] *was convicted is deemed not to be criminal*.” *Id.* (emphasis added). The conduct of which Richardson stands convicted, conspiring to distribute heroin, possessing a firearm in

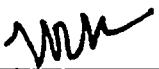
⁶ The Court recognizes that the Fourth Circuit recently expanded the longstanding “controlling test,” to allow a petitioner to challenge his sentence as follows:

[W]e conclude that § 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.

United States v. Wheeler, 886 F.3d 415, 429 (4th Cir. 2018) (citations omitted), *cert. denied*, 138 S. Ct. 1318 (2019). However, *Wheeler* is inapplicable here because Richardson is not challenging his sentence.

furtherance of a drug trafficking offense, and possessing a firearm in furtherance of a drug trafficking offense causing death of another, remains criminal. Accordingly, Richardson's 28 U.S.C. § 2241 Petition will be dismissed without prejudice for want of jurisdiction.

An appropriate Order will accompany this Memorandum Opinion.

 /s/

HENRY E. HUDSON
SENIOR UNITED STATES DISTRICT JUDGE

Date: April 30, 2020
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

HENRY P. RICHARDSON,)
Petitioner,)
v.) Civil Action No. 3:19CV812-HEH
CHRISTOPHER GOMEZ,)
Respondent.)

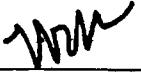
ORDER
(Dismissing 28 U.S.C. § 2241 for Want of Jurisdiction)

In accordance with the accompanying Memorandum Opinion, it is hereby
ORDERED that the 28 U.S.C. § 2241 Petition is DISMISSED WITHOUT PREJUDICE
FOR WANT OF JURISDICTION.

Should Richardson desire to appeal, a written notice of appeal must be filed with
the Clerk of the Court within sixty (60) days of the date of entry hereof. Failure to file a
notice of appeal within that period may result in the loss of the ability to appeal.

The Clerk is DIRECTED to send a copy of the Memorandum Opinion and Order
to Richardson.

It is so ORDERED.


/s/
HENRY E. HUDSON
SENIOR UNITED STATES DISTRICT JUDGE

Date: April 20, 2020
Richmond, Virginia

APPENDIX C: Order denying petition for rehearing en banc, Richardson v. Gomez, appeal no.20-6953 (4th cir. march 1, 2021); and the mandate of judgment issued on March 9, 2021.

FILED: March 1, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6953
(3:19-cv-00812-HEH)

HENRY PAUL RICHARDSON

Petitioner - Appellant

v.

CHRISTOPHER GOMEZ, Warden

Respondent - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Upon consideration of the motion to exceed length limitations for the petition for rehearing and rehearing en banc, the court grants the motion.

Entered at the direction of the panel: Judge Thacker, Judge Harris, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6953
(3:19-cv-00812-HEH)

HENRY PAUL RICHARDSON

Petitioner - Appellant

v.

CHRISTOPHER GOMEZ, Warden

Respondent - Appellee

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/ Patricia S. Connor, Clerk

FILED: March 9, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6953
(3:19-cv-00812-HEH)

HENRY PAUL RICHARDSON

Petitioner - Appellant

v.

CHRISTOPHER GOMEZ, Warden

Respondent - Appellee

M A N D A T E

The judgment of this court, entered December 22, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX D: Copy of the following Sworn Affidavits: (1) Private investigator Mr. Alfred C Brown; (2) Sylvester T. Washington; (3) Andrew Grant; (4) Natilia Nikki Johnson; and (5) Neurologist and medical professor Elkhonon Goldberg.

Affidavit of Alfred C. Brown

I, Alfred C. Brown, do swear and affirm that the following information is true and correct to the best of my knowledge and belief.

1. I, Alfred C. Brown, am a Private Investigator with Insight Investigations located at 7206 Hull Street Road, Suite 210 North Chesterfield, Virginia 23235. No promise or agreement has been made in exchange for this statement, and I do not expect any in the future. I am willing to testify before any court if called upon concerning such matters stated herein.
2. I have been retained to conduct an investigation in the case of the United States v. Henry Paul Richardson, Criminal Case no: 3:06 cr-106 E.D. VA June 26, 2006. This investigation included conducting interviews with prior government witnesses, and developing potential new witnesses to shed light on Henry P. Richardson's innocence, the police and the prosecutorial misconduct that was concealed on this case and recently revealed by a key government witness.
3. As part of my investigation, I conducted several interviews with prior key government witness Sylvester T. Washington during August 2012, September 2013 and in March 2014 at his residence. I secured an Affidavit from Sylvester T. Washington based upon what was revealed to me during the investigation process and interviews with Mr. Washington (See Attachment Affidavit of Sylvester T. Washington.)
4. According to Mr. Washington on the night of February 14, 2006 a shooting occurred in Gilpin Court near the corner West Court Street and Saint Paul Street at which time he was shot and Freeman Brown was killed. Mr. Washington lapsed into a coma for a week.
5. According to Mr. Washington, on February 21, 2006 Richmond Police Detective David Burt visited him at the hospital which at that time Detective Burt asked him some questions pertaining to him being shot. Washington stated that Detective Burt showed him some pictures and asked him did he know any of the people shown in the pictures. Mr. Washington stated that he informed the detective that he recognized the guys in the pictures as being from Jackson Ward area. Then Detective Burt showed Mr. Washington a picture of Henry Richardson a.k.a. Packer and asked if he knew him, which Washington stated "yeah". According to Mr. Washington, Detective Burt told him to initial and circle the picture of Henry Richardson. Mr. Washington stated that during that hospital encounter on February 21, 2006 with detective Burt, he was never asked to circle or initial the picture of the person who allegedly shot him and Freeman Brown. Mr. Washington stated that he did not initial or circle the picture Henry Richardson shown to him by Detective Burt as the person involved with the shooting on February 21, 2006 in which he shot and freeman Brown Killed. According to Mr. Washington, he signed the picture of Henry Richardson as only as knowing him when asked by Detective Burt and nothing further.

6. According to Mr. Washington, on February 21, 2006, when he was visited at MCV Hospital by Detective Burt, he was so heavily medicated, and out of it that he didn't even remember what Detective Burt was talking about during such visit.

7. According to Mr. Washington, he was arrested for a probation violation in March 2006. That's when he was approached by Richmond Police Detective David Burt, Richmond Police Officer Sandy Ledbetter (who was the one that arrested him), F.B.I. Agent Gary Jennings (who put his wheelchair in the Van during the time that he arrested) and he was then taken to the Richmond City Jail visitation. During such interview Mr. Washington alleged that Richmond Police Officer Sand Ledbetter stated to him that District Attorney Roderick very pissed at him, real pissed at him, referring to when Mr. Washington testified in the General District Court before Judge Cheeks on March 13, 2006 that Henry Richardson wasn't the person that shot him.

8. According to Mr. Washington, at the time of his arrest for probation violation on March 2006, Richmond Police Officer Sandy Ledbetter and Richmond Detective Burt informed him Henry Richardson a.k.a. Packer was the person responsible for shooting him and Freeman Brown. Mr. Washington stated that these Richmond Police Officers also informed him that Mr. Richardson had confessed to shooting him and Freeman Brown, and that Mr. Richardson was around Jackson Ward bragging about it. Mr. Washington stated that Detective Burt and Officer Ledbetter continued to tell him the story of how he was shot and that Henry Richardson was the shooter.

9. According to Mr. Washington, he stated the he sat there quietly and listened. Mr. Washington then told Detective Burt and Officer Ledbetter that Henry Richardson wasn't the person that was responsible for shooting him. The police continued to tell him that Packer was the one that shot him. Mr. Washington stated that Detective Burt told him that he faced seven years for probation violation. Mr. Washington stated that he told Detective Burt that he had not done anything to violate his probation and that he was supposedly ready to come off probation. Mr. Washington stated that Detective Burt then alleged that they found cocaine in his pockets during the night he was shot on February 14, 2006 and they were withholding the charges.

10. According to Mr. Washington, in March 2006 or so he was approached by Richmond Police officer Sandy Ledbetter and she told him that they were going to charge him with murder and robbery stemming from 1992 that occurred in Jackson Ward on West Charity Street.

11. According to Mr. Washington, he stated that he was never formally charged or prosecuted by the Richmond Police Department with the 1992 murder and robbery, nor was he charged or prosecuted for forging documents, or cocaine possession. Mr. Washington stated that these charges were withheld by the Richmond Police in an effort to get him to cooperate in the case against Henry Richardson.

12. According to Mr. Washington, during the time of his arrest around March 2006, for probation violation, F.B.I. Agent Gary Jennings told Mr. Washington that they arrested him for his protection and safety. Mr. Washington then told the police that his wife and kids were still in Gilpin Court. Shortly thereafter, he was released from his probation violation in which they re-located him and his family to Southside of Richmond.

13. Mr. Washington stated that F.B.I. Agent Jennings gave him \$2000.00 in cash to help him move. Agent Jennings had him sign some piece of paper.

14. According to Mr. Washington, Richmond Police Detective Burt and Richmond Police Officer Ledbetter told him if Henry Richardson found out that he was talking to the police that he would kill his family. Also, Washington mentioned that Detective David Burt and Officer Ledbetter informed him that Richardson had committed a murder in Mosby court and that a guy was shot to death and his son was in the vehicle with him. Mr. Washington stated that Detective Burt felt like Mr. Richardson had gotten away with murder and they wanted to put him away for the rest of his life.

15. According to Mr. Washington, on or about April 2006, he met with Richmond Police Detective David Burt, F.B.I. Agent Gary Jennings and Prosecutor Roderick Young at the Federal Court Building in the case against Henry Richardson in which the Federal Grand Jury was meeting. Mr. Washington stated that he was informed by Richmond Detective David Burt that they needed him to go before the Grand Jury. Mr. Washington stated that is when he told them he didn't know what to say. According to Washington Detective Burt told him that "We already told you what to say. Henry Richardson aka "Packer" is around there bragging that he shot you. He confessed to the shooting".

16. According to Mr. Washington, he was coerced, and pressed by Richmond Police Officer Sandy Ledbetter, Detective David Burt, F.B.I. Agent Gary Jennings and Prosecutor Roderick Young into saying Henry Richardson was the shooter when he was shot and Freeman Brown was killed on February 14, 2006.

17. Mr. Washington informed me that the three people he saw on that night in the van were dark skinned and that Mr. Richardson was light skinned. He said none of the shooters was Mr. Richardson.

18. Mr. Washington also informed me that he did purchase drugs in the past from Mr. Richardson.

19. According to Mr. Washington, he stated that he and Andre Seward were friends and had been hanging together every day up until Mr. Seward was killed in August 2012.

The Information and facts contained herein are true and correct.

By

Alma B.

STATE OF VIRGINIA: Richmond, to wit:

CITY/COUNTY OF Richmond, to wit:

Sworn and subscribed before me in my jurisdiction aforesaid the 7th day of

June, 2014

My Commission Expires: September 30, 2017

222745

Reg#

Shane P. Butler

Notary Public

Affidavit of Sylvester Tyres Washington

I, Sylvester T. Washington, do swear and affirm that the following information is true and correct to the best of my knowledge and belief.

1. I, Sylvester T. Washington currently reside at the 1347 Minefee Street Road, Richmond Virginia 23224. No promises or agreements have been made in exchange for this statement, and I do not expect any in the future.
2. I want to tell the truth regarding my participation in the case United States of America v. Henry Paul Richardson that happened in May of 2006.
3. At the time I was living on 913 South Meadow Street, Richmond Virginia.
4. I knew Mr. Henry Paul Richardson a.k.a. "Packer" because he was a familiar face in Gilpin Court and he knew the people of Jackson Ward.
5. I was wounded in the shooting that occurred on February 14, 2006, in which Freeman Brown was killed.

6. I was awakened in the hospital by two detectives, Detective David E. Burt and his partner. They began to question me, "you know this dude right here?" They were showing me an array of photographs, but he was pointing to one particular photograph. I said "yeah." They had me circle the photograph and initial it.
7. When I was questioned by Judge Cheeks as to whether or not I knew who shot me, he had pointed to Mr. Richardson, I said "no." Judge Cheeks said he was going to dismiss the case.
8. The next morning, I was in bed and awakened by Special Agent Gary F. Jennings, Sandy Leadbetter, a large Black police officer and a Caucasian police officer that resembled Chuck Norris. Sandy Leadbetter stated "District Attorney Roderick Young is pissed at you....real pissed at you." They rearrested me and took me to the Richmond City Jail.
9. I was taken to a visitation room in the Richmond City Jail where Detective David E. Burt and his partner, Special Agent Gary F. Jennings, Donna Mixner and an unknown female questioned me and stated that they wanted to keep me in jail for my safety. Gary Jennings

stated to me that the charges they brought against me were to keep me off the streets and to protect me and my family. The charges were trespassing in Jackson, forging a public document and a probation violation.

10. Law enforcement was attempting to intimidate me and wanted my family to be afraid of Mr. Richardson. According to them, Mr. Richardson committed a murder in Mosby Court. A guy was shot to death while his son was in the vehicle with him. They felt as though Mr. Richardson had gotten away with that murder.

11. They asked me if I had ever bought drugs from Mr. Richardson and I said "yes".

12. Special Agent Gary Jennings gave me \$2000.00 in cash to help me move away from the Gilpin Court apartment complex. My family and I moved from Gilpin Court in Jackson Ward to Southside where we live now. I was given a paper to sign that said I accepted the money. I didn't get a copy of that paper. This was done at their office and it was done at some point before court.

13. I was coerced into saying that the shooter was Mr. Henry Richardson when, in fact the shooters were three dark skinned men and Mr. Henry Richardson is light skinned.

14. The driver was also dark skinned and none of them were Mr. Henry Paul Richardson.

The information and facts contained herein are true and correct.

Sylvester Washington
Sylvester T. Washington

State of
City/County of Richmond, to wit:

Sworn and subscribed before me in my jurisdiction aforesaid the 25 day of February
2014.

A. J. Bell, Jr.
Notary Public

Registration Number: # 238973

My Commission Expires on: October 31, 2017

AFFIDAVIT

My name is Andrew Lee Grant, Jr. I am 34 years old and currently incarcerated in the Richmond City Jail. On August 6, 2013, I was visited by Attorney Joe Morrissey who asked me if I knew about the shooting that occurred on or about February 14, 2006 at the intersection of St. Paul and Coe Street in Gilpin Court. I told Mr. Morrissey that I did remember the facts very well and I told him the following.

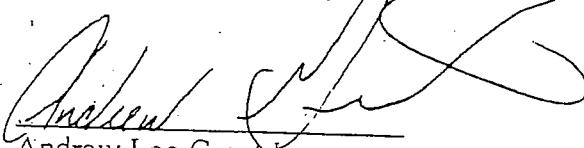
On February 14, 2006, I had just exited the Tiger Mart Convenience Store and was crossing the street diagonally (See map). I told Mr. Morrissey that I saw Sylvester Washington walking on St. Paul Street. As I continued walking towards Washington I saw a car drive up Coe Street and stop in the middle of the road. At first, I did not think anything of the car. Then, all of sudden, I heard a loud voice yell at the person who was in the phone booth: "So you think that I am playing with you?" Then that person started shooting at the person in the phone booth. The person in the phone booth was Mr. Brown and he was killed by the gun shots.

As soon as the shooting took place, I ran and ducked behind some cars on St. Paul Street. However, I was able to see the person who was doing the shooting. He was a brown-skinned male approximately 5'8" tall and very muscular weighing approximately 190-195 pounds. The person who was shooting was using an assault rifle and fired approximately 8-9 shots. Brown was shot and killed and Washington was hit in the cross-fire. (The only reason that I was not shot/killed was because I ran behind the cars on St. Paul Street).

I also remember that the shooter had on a light tee shirt and a low-style haircut. While I do not know the name of the person that did the shooting, I know that it was not Henry Richardson. Henry Richardson is approximately 5'5", 145 pounds, light-skinned with curly, bushy hair.

I have not spoken to Henry Richardson in over 7 years – a couple of weeks before the shooting. Mr. Morrissey is the first person to ask me questions about the shooting in seven years.

I am currently incarcerated in the Richmond City Jail and have approximately 80 more days left to serve of my sentence. I will then be released and I have no other charges pending. Mr. Morrissey asked if I would provide information to any police or law enforcement officer if they have any questions and I said that I would. I can be reached at 592-4265 and I will be residing with my fiancé at 3407 Ensley Avenue, Richmond, Virginia 23222. 3



Andrew Lee Grant Jr.

City/County of
Commonwealth
Subscribed and sworn to before me
this 11 day of August 2013
by James W. Warden 4130117
Reg. # DS108

Affidavit of Natilia "Nikki" Johnson

I, Natilia "Nikki" Johnson, do swear and affirm that the following information is true and correct to the best of my knowledge.

1. I, Natilia "Nikki" Johnson live at 1702 South Lawn Ave. Richmond, Virginia 23235. No promise or agreement has been made in exchange for this statement, and I don't expect anything in the future. I am willing to testify before any court if called upon concerning such matters as stated herein.
2. On February 14, 2006, I was living at 204 West Coutts Street Apartment # D in Gilpin Court, Richmond, Virginia 23220. My telephone number was 804-562-4895.
3. I was sitting on my porch when I first saw a Silver Van coming down St. Paul Street. There were three individuals in the Van. I had never seen them before. The Van went up the street, turned around and came back. The Van stopped on Coutts and St. Paul Street; the person on the passenger side got out and had a weapon in his hand. The Van sliding door opened and another guy got out and he also had a weapon and they both started shooting.
4. The description of the person who got out on the passenger side was brown skinned, with Cornrows. The person who opened the Van sliding door had real dark skin. The both looked to be about 5'10", between 140 to 160 pounds. The driver had Cornrows also, but he never got out of the Van. They all had on dark hoodies. After shooting stopped, the two guys got back in the Van and left.
5. When I looked out at the street, Freeman Brown was lying in the street, he had been shot and I called 911. I saw another individual lying by the telephone booth, he had been shot also.
6. I have heard of Henry Richardson aka "Packer" but never been formally introduced to him. I've seen him around and my memory of him is he is very light skinned. Neither one of the shooters were light skinned. They were much darker than Henry P. Richardson.
7. I lived next door to Jackie who was Freeman's girlfriend at that time. When the shooting was over I saw Jackie run over to Freeman Brown.
8. I called sometime before 11:21 p.m. to 911 and told the operator what I saw happen. I don't remember telling the operator that I didn't wish to be seen.

9. Since the 911 call, I have had no contact with police at all. No one has contacted me until Mr. Alfred C. Brown came to ask me questions regarding this incident.

The Information and facts contained herein are true and correct.

By: Alfred C.

STATE OF VIRGINIA: Richmond
CITY/COUNTY OF Richmond, to wit:

Sworn and subscribed before me in my jurisdiction aforesaid the 6th day of June, 2014.

My Commission Expires: September 30, 2017

222745
Reg#

Shawna L. Burton
Notary Public

Detective Jeffrey Crewell

Report # 20060214-1206

911 Information

Collected from Dispatcher Lloyd at 2-14-06 at 2321 hours

Call #

Information

Number

1204

Two males shot, no suspect information
Male caller doesn't wish to be seen

040-7004

1205

1-5 shots heard, caller doesn't wish to be seen

439-9390

1206

Two people shot on corner, "drive by"
Female caller named NIKI doesn't wish to
Be seen

562-4895

1207

Several shots heard, nothing seen

523-3492

1208

Two males in street, male caller doesn't wish
To be seen

397-4675

1209

Shots heard, two bodies in street, female caller

938-2251

1210

Person shot, vehicle might have turned on to
Watson Street

611-8876

1211

Two people shot, one possibly DOA
Female caller

622-3838

1212

Two males shot, NFD

237-2135

1213

Subject shot, several shots heard,
Male caller doesn't wish to be seen

303-7629

1214

Shots heard, one male in street,
Female caller doesn't wish to be seen

648-9807

ELKHONON GOLDBERG, PH.D.

Clinical Professor of Neurology
New York University School of Medicine

Diplomate, American Board of Professional Psychology
American Board of Clinical Neuropsychology

AFFIDAVIT

To: The Honorable Court

Please find enclosed an affidavit for Mr. Henry P. Richardson

I have been retained by Mr. Henry Richardson to review the circumstances leading to his conviction and incarceration. Specifically, I have been asked to address the issues related to the validity of the presumed perpetrator's identification by the victim.

The following records have been made available to me for review:

Medical College of Virginia Hospital treatment notes and reports pertaining to Sylvester Washington (2/14/06-3/8/06)

Richmond Police Department Reports (select) (2/14/06-2/15/06)

United States of America vs. Henry Paul Richardson trial transcripts (6/26/06-6/27/06)

Based on my review of records, a shooting incident took place on February 14, 2006, in which Mr. Sylvester Washington was wounded and Mr. Freeman Brown was killed. Mr. Washington suffered five gunshot wounds to the left upper and lower extremities, which necessitated amputation of his left leg above the knee and also interfered with his motions in the left arm. Systolic blood pressure was reported 80 on hospital admission. Toxicology was positive for cocaine and opiates. Mr. Washington was reportedly conscious on arrival but then slipped into coma and remained comatose for 7 days. Before lapsing into coma he was questioned by detective Joseph Fultz but provided little information and said he was in pain, repeating "Not now, not now." He subsequently lapsed into coma on February 15 and remained comatose until February 21, 2006. He was put on Methadone immediately upon coming out of coma.

Identification of Mr. Henry Richardson as the alleged perpetrator in the shooting was made by Mr. Sylvester Washington on or about February 21, 2006 to Detective David

Burt, who visited Mr. Washington in the hospital upon being advised that he had just come out of coma - reportedly the day after he came out of coma. It is my understanding that Mr. Washington was shown several photos, and that he began to nod when he saw Mr. Richardson's photo, and that this was interpreted by Detective Burt as positive identification. It is my understanding that at about the time of this interaction a note was made in the patient's progress notes by a treating physician that he was "extremely paranoid."

Several issues of concern exist, leading one to question the validity of the presumed perpetrator's identification by Mr. Washington. The first issue pertains to the possibility of retrograde amnesia, i.e. memory impairment for the events antedating the assault. The second issue pertains to Mr. Washington's mental state at the time when he made the identification. The third issue pertains to the format of the identification procedure itself. The fourth issue pertains to the illicit substances Mr. Washington reportedly had taken before the assault. The fifth issue pertains to the medications Mr. Washington was on at and around the time of the identification. I will address these issues one by one.

Retrograde amnesia. Retrograde amnesia (RA) is a complete or partial loss of memories pertaining to the events preceding the onset of brain dysfunction. RA is characterized by a "temporal gradient" whereby memory is most affected for the events relatively proximal to, and is less affected for the events further removed back in time from, the onset of brain dysfunction. RA may cover the time span ranging from minutes to days, weeks, or even months (1, 2). Mr. Washington lapsed into a week-long coma a day after the assault. Coma is clearly a form of brain dysfunction, and a distinct possibility exists that RA developed as a result, impairing Mr. Washington's memory for the events of the previous day, including the identity of the assailant. According to the records, Mr. Washington did not remember being given Methadone on admission even before coma. This clearly suggests the presence of RA, which could have also clouded his recollections about the circumstances of the assault.

The accuracy of Mr. Washington's memories for the events in question is challenged by several inconsistencies between his account and that of the witnesses. He referred to a "gold" van, whereas witness Jacqueline Jones referred to a "silver" van. Mr. Washington claimed that the assailant was "light-skinned" but a witness claimed that the people in the van were "dark-skinned". Furthermore, it sounds like Mr. Washington's assertion that Mr. Richardson was the assailant may have been based on inference rather than on direct recollection: it had to be "him" because he's lighter than the rest of them.

When he was asked in the ambulance "Who shot you, man?" Mr. Washington did not offer a definitive response, but said that he was in pain and asked for some medications to alleviate the pain. When subsequently asked by the prosecutor about prior identification, he said that he was in a coma and could not have identified anyone, and on another occasion he said that Mr. Richardson was not the shooter; and then again that he lied when he had said so. Assertions have been made that Mr. Washington "changed his mind" because he felt or actually was threatened; but the fact remained that he could not

have been telling the truth both times, since he contradicted himself and kept making mutually exclusive statements.

Mental state at the time of identification. The transition from coma to complete lucidity is usually not instantaneous. The patient usually does not "snap out of coma" and returns to complete mental clarity right away. It is often a gradual process, whereby the patient's arousal level is compromised for a period of time and only gradually returns to a completely normal level (3). It is very probable that barely a day after coming out of coma, Mr. Washington's arousal level and overall cognition were still considerably impaired. Any recollections, statement, response, or decision made by Mr. Washington's at that time, as well as his ability to understand the nature of his interaction with the Detective, must be taken with a considerable grain of salt. While the Detectives' eagerness to get critical information as soon as possible is perfectly understandable, it can be argued that trying to elicit this information from a patient barely out of coma was a mistake.

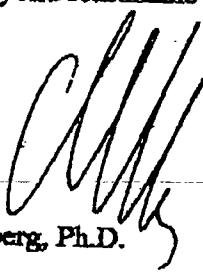
The format of identification. According to the records made available to me, Mr. Washington was shown a series of photographs which included the photo of Mr. Richardson. The whole "identification" process consisted of the following: Mr. Washington nodded his head upon seeing Mr. Richardson's photograph and then signed and dated the photograph at the Detective's request. There is no report of any definitive verbal statement by Mr. Washington and it is thus not at all clear that he even understood the nature of the inquiry. In his, very likely still compromised, mental state the nod, as well as the signature, could easily have meant a mere acknowledgment of familiarity, particularly if other photos were those of strangers or of individuals less well known to Mr. Washington. While interpreting a nod as a sign of identification may have been more acceptable in a cognitively intact individual, a mere nod is too ambiguous in a cognitively compromised individual when one cannot even be certain in his ability to fully understand the nature of the interaction and of questions asked. Likewise, Mr. Washington did not specify what exactly he was attesting to with his signature: linking Mr. Richardson to the assault or a mere fact of recognition of Mr. Richardson's face.

Illicit substances before the assault. According to the records, Mr. Washington had been a heroin addict for 15 years. Furthermore, according to the records toxicology on hospital admission was positive for cocaine and opiates. Mr. Washington himself later acknowledged that he had ingested heroin a few hours before the assault. Cocaine is a stimulant, a powerful catecholamine agonist, and chronic cocaine abuse results in changes in several dopamine pathways in the brain. Heroin is an opioid. While their mechanisms of action are different, research has shown that both cocaine and heroin abusers have impaired attention, executive functions, and memory (4, 5, 6, 7, 8, 9, 10). Thus Mr. Washington's cognition, including his memory, was likely to have been somewhat compromised even before his lapse into coma, thus casting additional doubt on his ability to accurately register the events at the time of the assault, and thus on the accuracy of his subsequent recollections and identification.

Medications at the hospital. At various times upon his admission, Mr. Washington was put on Methadone, Dilaudid, Oxycontin, and Morphine. Methadone is a synthetic opioid binding to opioid receptors. Methadone also binds to NMDA receptors, which makes it a glutamate antagonist. Methadone is known to produce cognitive symptoms including impairment of memory, decision making, impulse control, and of a wide range of other cognitive functions, as well as visual and auditory hallucinations. Dilaudid, Oxycontin, and Morphine are analgesics acting on the opioid receptors. Among their side effects, hallucinations, disorientation, and other cognitive changes are known to occur (11, 12, 13, 14). Barely a day after coming out of coma, Mr. Washington's cognition was likely to have been further compromised by these side effects, this casting further doubt on his ability to comprehend the nature of his interaction with the Detective, as well as on the accuracy of his recollections and identification.

CONCLUSIONS. The combination of the above factors – the possibility of retrograde amnesia, the likelihood of compromised mental state at the time of identification so soon after coming out of coma, the ambiguous nature of the format in which identification was conducted, the likely effect of illicit drugs at the time of assault, and the likely effect of medications at the time of identification – make the validity and accuracy of the perpetrator's identification by Mr. Washington subject to considerable doubt and fall far short of the "beyond reasonable doubt" criterion and standard.

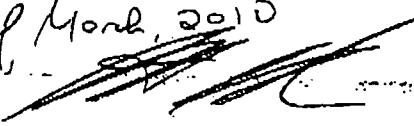
Sincerely,



Elkhonon Goldberg, Ph.D.

March 31, 2010

*Such signature this
31st day of March, 2010*



SCOTT SCHWEIZER
Notary Public State of New York
No. 0351-6000-000
Certified 03-24-2010 County
Commission Expires Dec. 26, 2010