

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-7000  
(1:21-cv-00039-TSE-JFA)

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ONTERIO DIMITRI BROWN

Petitioner - Appellant

v.

HAROLD W. CLARKE

Respondent - Appellee

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ORDER

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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.

Entered at the direction of the panel: Judge Motz, Judge Wynn, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: April 15, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-7000  
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TEMPORARY STAY OF MANDATE

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

/s/Patricia S. Connor, Clerk

Appeal No. 21-7000

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

ONTERIO DIMITRI BROWN

v.

HAROLD W. CLARKE

Appellant ONTERIO DIMITRI BROWN'S  
PETITION FOR PANEL REHEARING AND/OR  
REHEARING EN BANC

Onterio Dimitri Brown, pro-se

#1090907

I-V-C-C

1607 Planters Road

Lawrenceville Va, 23868

## Summary Of Proceedings

The panel's decision to deny the issuance of C.O.A, attached as attachment #4 of this petition, is contrary to the decisions of the Supreme Court of the United States and or the precedents of this Circuit and that consideration by the full court is necessary to maintain and conform to Supreme Court precedents.

## Statement of Facts

1. On or about the 11th day of January 2021, Mr Brown a meritorious 28 U.S.C 2254 petition asserting three claims of insufficient evidence and one claim relating to the Constitutionality of the arrest warrant.
2. On 4-22-21 the District Court issued a show cause order to the respondent. [Attachment #3]
3. On 5-21-21 the respondent filed a unsigned and unverified motion to dismiss stating "failure to stated a claim in which relief can be granted under 2254 and 2244", essentially arguing that claims of sufficiency of the evidence can't be raised in a 2254 Habeas Corpus petition. [Attachment #1]
4. On 6-22-21 the District Court granted respondent motion to dismiss
5. On or about 6-28-21 Mr Brown filed a notice of appeal in the District Court.
6. On 7-5-21 Mr Brown filed a C.O.A in this Court.
7. On 3-28-22 this court denied the C.O.A. [Attachment 4]

Here now Mr Antonio D. Brown files the petition, in pro-se, seeking a panel rehearing and/or Rehearing En Banc.

## Summary of the Issues

1. The panel was in plain and clear error when it denied Mr. Brown's Motion for a Certificate of Appealability based on the District Court's deliberate indifference to the United States Supreme Court's controlling precedent of *Jackson v. Virginia* 443 U.S. 321 (1979) mandating that claims of insufficiency of evidence must be considered in 2254 Habeas Corpus proceedings.

### Argument

Mr. Brown claimed in his 2254 motion that the evidence presented in his criminal trial "was insufficient to prove beyond a reasonable doubt that Mr. Brown committed a malicious wounding. The evidence was insufficient to prove Mr. Brown was the individual who attacked Javon Edwards, and the verdict was constitutionally infirm as it was based solely on surmise, speculation and ungrounded conjecture.

The respondent moved to have the aforementioned motion dismissed on grounds that claims of insufficient evidence can't be raised in a 2254 proceeding [attachment #1]. The District Court granted respondent's motion. [attachment #2] Petitioner then filed a C.O.A. in this court claiming that the District Court erred when it dismissed the aforementioned complaint as "unless the Court overturned [*Jackson v. Virginia* 443 U.S. 321 (1979)] the Court was in plain error. A panel of this Court denied petitioner/appellant a C.O.A. in direct conflict with SCOTUS precedent.<sup>see</sup> *Slack v. McDaniel*, 529 U.S. 473 2a, 2b, 2C, 2d, 2e. When a Federal District Court denies a state prisoner's habeas Corpus petition on procedural grounds without reaching the underlying federal Constitutional claims, a (COA) should issue pursuant to the appeal provisions of the AEDPA of 1996 (28 USC § 2253(c)) - and an appeal of the District Court's order may properly be taken - if the prisoner shows, at

least, that jurists of reason would find it debatable both whether (1) the petition states a valid claim of the denial of a constitutionally protected right and (2) the District Court was correct in its procedural ruling." [End] Unless Jackson v. Virginia has been overturned the District Court and a panel of this Court committed clear error. The Supreme Court mandated in Jackson v. Virginia [443 U.S. 320] [8b] under 28 USC 2254 [28 U.S.C. 2254] a federal Court "must" entertain a claim by a state prisoner that he or she is being held in "custody in violation of the Constitution or laws or treaties of the United States." Under the Winship decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Thus assuming that state remedies have been exhausted, see 28 USC 2254(b) . . . and that no independent and adequate state ground stands as bar . . . it follows that such a claim "is" cognizable." [End] Respondent nevertheless claims that no relief can be granted for claims of insufficient evidence and the District Court granted said motion in clear violation of Jackson v. Virginia which has stood for 43 years. All of petitioners sufficiency of evidence claims have been preserved throughout the state process, therefore the District Court was obligated to entertain appellants' sufficiency claims and the panel of this court was in plain error for refusing appellants COA as "a federal Court" "must" entertain a claim by a state prisoner that he or she is being held in violation of the Constitution of the United States. . . . it follows that such a claim is cognizable in a federal habeas Corpus proceeding. Jackson v. Virginia [443 U.S. 321]. See also Rules of the United States Courts of appeals Rule 35(b) Petition for hearing or rehearing en banc A party may petition for a hearing or rehearing en banc (1) the petition

must begin with a statement that either (A) the panel decision conflicts with a decision of the United States Supreme Court [End] The District Courts dismissal of appellants petition based on respondents motion was clearly in violation of the Supreme Courts decision in Jackson and a C.O.A should have been issued as the District Courts procedural ruling was clear error and conflicts with binding Supreme Court precedent set forth in Jackson v. Virginia 443 U.S 320 [1979] Therefore appellants seeks a rehearing and/or rehearing En banc to determine whether sufficiency of evidence claims can be raised in a 2254 proceeding or has Jackson v. Virginia been overturned?

#### Conclusion

Wherefore Mr. Brown respectfully request that this Court grant this petition for rehearing and/or rehearing En Banc.

Respectfully Submitted on the 4th day of April 2022

I swear under the penalty of perjury that everything stated herein is correct.  
I swear that a true copy was mailed to the attorney for respondent  
Victoria Lee Johnson. Porter Brown

FILED: March 28, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-7000  
(1:21-cv-00039-TSE-JFA)

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ONTERIO DIMITRI BROWN

Petitioner - Appellant

v.

HAROLD W. CLARKE

Respondent - Appellee

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J U D G M E N T

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In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

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**

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**No. 21-7000**

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ONTERIO DIMITRI BROWN,

Petitioner - Appellant,

v.

HAROLD W. CLARKE,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis, III, Senior District Judge. (1:21-cv-00039-TSE-JFA)

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Submitted: March 24, 2022

Decided: March 28, 2022

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Before MOTZ, WYNN, and RICHARDSON, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Onterio Dimitri Brown, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Onterio Dimitri Brown seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 petition and he has filed a motion for a certificate of appealability. The district court's order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Brown has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. 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.

*DISMISSED*

## Appendix C

### UNITED STATES COURT OF APPEALS FOURTH CIRCUIT

NO. 21-7000

Onterio Dimitri Brown

v

Harold W. Clarke

On Appeal From The United States District  
Court For The Eastern District Of Virginia  
Brown v. Clarke - 21-cv-0034-Tse-JFA

Motion for Issuance Of A Certificate  
Of Appealability.

Onterio Dimitri Brown 1090907

In pro-se in necessity

Lawrenceville Correctional Center

1607 Planters Road

Lawrenceville Va, 23818

TT- Trial Transcript

PT- Pre-trial Transcript

ST- Sentencing Transcript

Appeal Brief- State Appeal Brief attachment one to Habeas corpus Petition.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ONTERIO DIMITRI BROWN #1090907

District Court Case No. 1:21-cv-00

v.

U.S.C.O.A-Case No. 21-7000

HAROLD W. CLARKE

MOTION TO REQUEST A CERTIFICATE OF APPEALABILITY

Comes now the petitioner, Onterio Dimitri Brown, in prose, in necessity, and hereby moves this court to issue a Certificate of Appealability pursuant to 28 U.S.C. 2253(c)(2). He herein seeks C.O.A. authorizing him to appeal the denial of his 28 U.S.C. 2254 Writ of Habeas Corpus. See *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000). *Miller-el v. Cockrell* 537 U.S. 322, 123 S.Ct. 1039, 154 L.Ed. 2d 931 (2003). Mr. Brown seeks a C.O.A. based upon the District Court's refusal to satisfy the relief requested in his 2254 petition. The Court by dismissing Brown's 2254 petition for the grounds set forth in its Memorandum opinion stands in plain error. Moreover Mr. Brown avers that he seeks C.O.A. for good cause based on the Court's deliberate indifference to Court rule, law, and/or Constitutional mandates and fundamental fairness.

I. STATEMENT OF JURISDICTION

"The jurisdiction to issue a C.O.A. is invoked pursuant to 28 U.S.C. 1291, 2253 and 2254; Federal Rule of Civil procedure, Rule 58; and Federal Rule of Appellant Procedure, Rule 4(a)(7)(A)(ii).

II. STATEMENT OF THE CASE

1. On or about 1-11-21 Mr. Brown filed a timely and meritorious 2254 petition for Writ of Habeas Corpus.
2. On 4-20-21, the Court issued an order to show cause why the writ shouldn't be granted within 30 days of the date of the order and also to forward the record of the state criminal trial along with the responsive pleading.

3. The respondent failed to show cause or file a responsive pleading.
4. On 5-20-21 31 days after the date of the Court order respondent filed a motion to dismiss for failure to state a claim in which relief can be granted under 2254 and 2244, however the motion failed to cite any statutory authority authorizing it to file such a motion, the motion also failed to include the mandatory Roseboro warning mandated by E.D. Va. Local Civ. R 7(K) and Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). petitioner received said motion on 5-27-21. Petitioner however could not find any authority under 2254 or 2244 and the motion failed to cite what statute governs such a motion-petitioner was unable to respond. Petitioner was also unaware that he had to respond to such a motion as it wasn't the responsive pleading ordered by the Court in it's order nor did it cite Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) giving petitioner the required warning that they were requesting summary judgment. The motion was clearly frivolous since claims of insufficient evidence is clearly a ground upon which relief can be granted under 2254(F) and Jackson v. Virginia 443 U.S 307, 61 L.Ed 2d 560, 99 S.Ct 2781 (1979) and In RE Winship, the motion to dismiss was granted in error.
5. On 6-22-21 the District Court granted respondents frivolous and unauthorized motion and dismissed petitioner's meritorious Writ of Habeas Corpus in clear and plain error essentially denying petitioners Constitutional right of Writ of Habeas Corpus.
6. On 6-22-21 the District Court also denied petitioners motion for bail and a C.O.A. the court dismissed with prejudice.
7. On 6-28-21 petitioner filed a notice of Appeal in the District Court.
8. Brown requests a issuance of a Certificate of appealability on three claims that relates to the sufficiency of the evidence and the constitutionality of the verdict.

### The Legal Standard That Controls the Issuance of a certificate of Appealability

In the recent Supreme Court case *Buck v. Davis*, 580 U.S. 137 S.Ct. 197 L.Ed 2d (2017) the Supreme Court held that the Fifth Circuit exceeded the limited scope of the C.O.A. analysis. The C.O.A. statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and then if it is, an appeal in the normal course. Chief Justice Roberts, writing for the Court, held that the certificate of appealability "inquiry, we have emphasized, is not coextensive with a merit analysis." According to the chief justice "the question for the Fifth Circuit was not whether Buck had shown extraordinary circumstances, those are ultimate determinations the panel should not have reached. We reiterate what we have said before. A court of Appeals should limit its examination at the C.O.A. stage to a threshold inquiry into the underlying merit of the claims, and ask only if the District Court decision was debatable." [End Quote] An appeal may not be taken from the final order in a 2254 proceeding unless a judge issues a certificate of Appealability ("COA") 28 U.S.C. 2253(c)(1)(A). A C.O.A. will not issue unless a prisoner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. 2253(c)(2). This requirement is satisfied only when a "reasonable jurist could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As the Supreme Court made clear in "its decision in the case of *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029, 1039 154 L.Ed 2d 931 (2003), a C.O.A. is a jurisdictional prerequisite," and "until a C.O.A. has been issued, the Federal Court of Appeals lacks jurisdiction to rule on the merits of appeals from habeas petitioners. When considering a request for a C.O.A., the question is the debatability of the underlying Constitutional claim, not the resolution of that debate." id at 1042 [End Quote] With the foregoing

legal standard presented for this Court's consideration as the standard for issuance of a C.O.A., McBrown shows to this Court his Constitutional claims and how they are debatable among jurists of reason.

#### IV

#### CORRECT STANDARD OF REVIEW IN FEDERAL HABEAS CORPUS PROCEEDINGS RESULTING FROM CLAIM OF INSUFFICIENT EVIDENCE TO SUPPORT A STATE CRIMINAL CONVICTION HELD TO BE PROOF BEYOND A REASONABLE DOUBT AS DETERMINED BY A RATIONAL TRIER OF FACT.

The due process clause of the Federal Constitution prohibits the criminal conviction of any person except upon proof beyond a reasonable doubt [2a, 2b, 2c] In a habeas corpus proceeding arising from a claim that a person has been convicted in a State Court upon insufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt, a federal Court must consider whether there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt and should not restrict itself to whether there is any evidence to support the conviction; accordingly, in a challenge to a state court conviction under 28. USCS 2254, the applicant is entitled to habeas corpus relief, assuming settled procedural prerequisites for such a claim have otherwise been satisfied, if it is found upon the record evidence at trial that no rational trier of fact could have found guilt beyond a reasonable doubt in terms of the substantive elements of the criminal offense as defined by state law." Jackson v. Virginia 443 U.S. 307, 61 L Ed 2d 560, 99 Sct 278 (1979) In a federal habeas Corpus proceeding, a federal Court has a duty to assess the historic facts when called upon to apply the constitutional standard to a conviction obtained in State Court - duty of court - [End quote] Under Virginia Law malicious wounding is described as if any person maliciously shoot, stab, cut or wound any person or by any means cause him bodily injury, with the intent to maim, disfigure, disable or kill he shall, except where it is otherwise provided be guilty of a class 3 felony.

Issue One

1. Reasonable Jurist would find it debatable in a circumstantial evidence case whether the evidence was sufficient to prove beyond a reasonable doubt that a malicious wounding occurred when the Commonwealth's evidence failed to exclude the reasonable hypotheses of innocence that flowed from the evidence as the record evidence supported three different hypotheses.
2. All of the hypotheses come from Edwards himself. The Commonwealth and respondent argues that Edwards sustained the injury to his finger when he grabbed a knife after someone lunged at him. TT pg 28 "He pulled out a knife and said "it ain't that kind of party" and he lunged at me with the knife. TT 28 "I drew my weapon from my waistband". TT 29 "In an attempt to block the blow, I grabbed it with my left hand and drew my weapon with my right and fired one shot. PT 10 "I'm assuming" I sustained the injury to my finger when I grabbed the knife. TT 33  
Cross examination: 57. 13-14 Q. you grabbed the knife? Edwards: Yes 15-16 Q. Did you grab his wrist or the knife? Edwards: I. when he lunged I grabbed that." TT 58 1-4- as I said, he lunged at me, and I went to block the blow with my hand. Q. over his hand? Edwards: that's correct [Preliminary Hearing] PT 33. 19-25 Okay, so you grabbed his hand? Edwards: as it was coming up yes. Q. their hand? Edwards: well yes Q. Okay their wrist or their hand? Edwards: I can't be sure. Q. You certainly didn't grab the knife blade right? Edwards: like I said I can't be sure.
3. The second hypothesis that flow from the evidence is that Edwards sustained the injury to his finger when he fell on his own knife. Dr. Elana Garrett testified that Edwards told her that he pulled out a knife during the altercation and is unsure if he fell on it or not TT 114 she acknowledged that she made a notation in her medical records Juvon Edwards indicating he thought he might have



cut himself with his own knife: "Patient pulled out a knife during a altercation and is unsure if he fell on it or not." TT 119; Defense Exhibit 2 [Medical records]

9. The third hypothesis that flows from the evidence in the trial record is that Mr. Edwards own fingernail was the cause of the laceration to Mr. Edwards index finger. P.T. 37 1-7 Q. Okay. And your fingernail -- the top of your finger actually broke off during the altercation, right? A. That's correct. Q. Right about the distance it would be on your inner index finger, right, if they were placed together? [Direct Examination the court asked defense counsel to repeat the question] 12-16 Q. Did your fingernail break off at the exact location? If you were to take your thumb and put it on your index finger where the cut is, would it touch that location. A. possibly yes. <sup>[Motion]</sup> ~~[Surrender]~~ T 191 16-25 "But when we're looking at what the Commonwealth is really resting its hat on as far as the malicious Wounding in this case, they're talking about the laceration that's on his index finger. That laceration, it does not shock the conscience. It looks like it directly matches up with that fingernail. That fingernail is broken. It is clear as day. It was long and now it is broken. And I would argue to the court, while I'm completely speculating, I don't think the Commonwealth can eliminate the reasonable hypothesis of innocence that when this individual, Mr. Edwards was shot and went down -- and the court had the opportunity to observe his body structure and observe his potential body weight -- that if he fell on that hand, that it is entirely possible and probable that that fingernail drove into his finger when he collapsed and fell on the hard pavement of Lafayette Square. That's where that injury came from. [End quote] TT 191.16-25

10. In Virginia see *Smith v. Virginia* and *Virginia v. Smith* 259 Va. 780; 529 S.E. 2d 78 (2000) (SCV) if proof upon which the Commonwealth relied is wholly circumstantial, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with

innocence. They must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. To accomplish that, the chain of necessary circumstances must be unbroken and the evidence as a whole must satisfy the guarded judgement that both the corpus delicti and the criminal agency of the accused have been proved to the exclusion of any other rational hypothesis and to a moral certainty. Suspicion, no matter how strong, is insufficient to sustain a criminal conviction. [End Quote] Where a fact is equally susceptible of two interpretations one of which is consistent with the innocence of the accused, the trier of fact cannot arbitrarily adopt that interpretation which incriminates the accused. Additionally, the burden is upon the Commonwealth to prove the guilt of the accused to the exclusion of every reasonable hypothesis consistent with his innocence. [End Quote]

6. In this case the Commonwealth put forward the picture of Mr. Edwards index finger and broken fingernail and the hypothesis that TT 111 21-25 "the injuries he has are consistent with him having grabbed the Knife to defend himself, to grab it as he was trying to grab the wrist of his assailant. He has a broken thumbnail, which I would argue is consistent with a Knife wound." [End Quote] No medical evidence was offered to support this hypothesis. Edwards testified that he merely TT 33 "assumed once I grabbed the knife" and also stated "Pt 33 & 34" "I can't be sure" when asked if he grabbed the Knife blade. Then when asked at trial TT 57 15-16 Q. Did you grab the Knife or his wrist? A. I -- when he lunged, I grabbed that. TT 58 1-4 [Edwards] A. As I said, he lunged at me, and I went to block the blow with my hand Q. Over his hand? A. That's correct [End Quote]

The crux of the Commonwealth's argument was that Edwards injury was on the same hand that may have grabbed a Knife, hand, or wrist, which would make this a circumstantial evidence case. As stated in Commonwealth v

Smith 259 Va 780 529 S.E. 2d 78 (2000) 'If proof relied upon by the Commonwealth is wholly circumstantial . . . they must overcome the presumption of innocence and exclude all reasonable conclusions inconsistent with that of guilt. [End Quote]

In this case the Commonwealth was under the affirmative duty to exclude the two reasonable hypotheses that Edwards may have cut himself with his own knife causing the injury or that his fingernail caused the injury as it broke off at the exact location as the injury and was consistent with the injury. Yet the Commonwealth stated TT 206 14-16 As far as the reasonable hypothesis of innocence for the injury, that is the standard in a circumstantial case. This isn't a circumstantial case. [End Quote] after previously arguing TT 185 13-17 "It is the Commonwealth's contention that the circumstances that are there and what Mr. Edwards does know all point towards that injury came from that moment." [End Quote] This double sided argument from the Commonwealth was clearly erroneous and consequently, the Commonwealth failed "to prove the guilt of the accused to the exclusion of every reasonable hypothesis consistent with his innocence". . . . *Spicer v. Commonwealth*, 156 Va. at 973, 157 S.E. at 546 and the trier of fact was not at liberty to remove this burden. Jurists of reason would find it debatable whether in a circumstantial evidence case the Commonwealth had to exclude every reasonable hypothesis of innocence that flows from the evidence in a case. The Supreme Court of Virginia in *Commonwealth v. Smith* 259 Va 780 resolved a case similar to this in a different manner where "the victim described at least some of the stab wounds as being in the 'same spots' where the defendant had struck him." But the evidence, or lack of evidence supports a different hypothesis. [End Quote] The Court found that the evidence was insufficient to support the conviction. Petitioner contends that other courts have resolved similar cases in a different manner and jurists of reason would have found it debatable if the evidence was sufficient.

Issue Two

Reasonable Jurist would find it debatable or agree that the verdict in this case is constitutionally infirm as it was based solely on surmise speculation and ungrounded conjecture.

When the trier of fact looked at the photo of the laceration on Edwards' hand and came to the ungrounded conclusion TT 210 6-11 [The Court] he clearly was cut on the hand, he required stitches, you can see from the photo and that would certainly be consistent with being jabbed in some way with a knife or how he described putting his hand over a knife and someone lunged at him. [End Quote] The Commonwealth would love to gloss over this statement and make this a issue of credibility, when the judge made this finding, this finding was neither supported by medical evidence or based on any expert finding, the judge simply guessed and based his finding on the actual wounding element of the offense on his own subjective conjecture. Edward's only stated, that he assumed he sustained the injury when he grabbed a knife [PT pg 10 TT pg 33] Edward's [attachment 5] didn't report this injury until nine days later in the criminal complaint which is problematic in itself. There's no testimony of Edward's reporting this wounding to any officer and in the video recordings on the night in question Edwards never mentioned being cut by a knife [The Judge viewed the recordings Defense ex. 1 1-3-2019, on the trial date] Edward's doctor Elana Garret testified that Edwards stated that he pulled out a knife during an altercation and is unsure if he fell on it or not [END] [TT, 114]. "which could be consistent with being jabbed with a knife". The defense put forth the reasonable hypothesis of innocence that flowed from the evidence that Edwards injury was caused by his own fingernail as Edward's testified that his fingernail broke off at the exact location of the wound [PT 37:1-7] and matched the shape and size of the wound. The trier of fact was being asked to guess which of these several hypotheses was the cause

of the injury. The trier of fact was being asked to speculate about how he thought the injury occurred and to base his determination on this particular element of the offense, which would be the actual wounding and the intent. (The intent would be negated if Edwards caused his own injury which would negate malice.) None of petitioners arguments in any claim are based on credibility. (although clearly Edwards testimony is inherently incredible) all of the reasonable hypotheses put forth come from Edwards himself. The Commonwealth never rebutted Edward's doctor's testimony and "the trier of fact... may not arbitrarily disregard uncontradicted evidence of unimpeached ~~ness~~ which is not inherently incredible and not inconsistent with facts in the record." *Hankerson v. Moody* 229 Va. 270, 274 329 S.E. 2d 791 (1985) and "where a fact is equally susceptible of two interpretations, one which is consistent with the innocence of the accused, the trier of fact cannot arbitrarily adopt that interpretation which incriminates him." *Corbett v. Commonwealth* 210 Va. 304, 307, 171 S.E. 2d 251, 253 (1969) Instead, "the interpretation more favorable to the accused should be adopted unless it is untenable under all the facts and circumstances of the case," *id.* "when from the circumstantial evidence, it is just as likely if not more likely that a reasonable hypothesis of innocence explains the accused conduct, the evidence cannot be said to rise to proof beyond a reasonable doubt." *Littlejohn v. Commonwealth*, 24 Va. App. 401, 44 482 S.E. 2d 853, 859 (1997). "Suspicion of guilt no matter how strong is insufficient to sustain a criminal conviction" *Bishop v. Commonwealth*, 227 Va. 164, 313 S.E. 2d 390 (1984) "In order to convict the Commonwealth {227 Va. 164, 313} must exclude every reasonable hypothesis of innocence {that flow from the evidence} *Cotter v. Commonwealth* 19 Va. App. 382, 452 S.E. 2d 20 (1995) "In a criminal case where the quantum of proof must be beyond a reasonable doubt, the imperative to secure a conviction free of speculation surmise, and conjecture

is constitutionally based. See *In Re Winship* 397 U.S. 358 (1970) "Guilt beyond a reasonable doubt cannot be premised on pure conjecture. The presumption of innocence is violated when the jury is encouraged (or allowed) to consider facts which have not been received in evidence." *OWENS v. Duncan* 781 F.3d 360: 205 (CA7) The Commonwealth made the argument on the day of trial TT pg 180 his (Mr. Brown's) account doesn't explain the injuries to the victim. How did the victim end up with that laceration [End] Petitioner in violation of the presumption of innocence was being forced to prove how Edwards received the laceration as counsel argued on the day of trial TT. 196. 1-7 (Defense Counsel "let's not forget that I don't have to prove where that comes from. I don't need to get up here and get ballistics, logistics or anything like that. The presumption of innocence lies with this individual, and until the Commonwealth can eliminate these reasonable hypotheses of innocence, he shouldn't be found guilty." [End Quote] The court also stated TT pg 209 18-25 -- The court: the defendants version that there was no knife involved, then the court would clearly would have reason to find him not guilty. But if the court does not believe that there was no knife involved or that the knife was not in the hands of the defendant or it was the knife of the defendant, the court has doubt whether that's sufficient evidence for the malicious wounding. 210 1-11 -- But the court has to weigh the credibility of the witnesses -- all the witnesses it has heard, and it has to do that in conjunction with the physical evidence (picture of finger) the court has been able to review. As to specifically the nature of the wounds, again, the nature of the wound, he was clearly cut on his hand he required stitches, you can see that in the pictures and that would certainly be consistent with being jabbed with a knife or how he described putting his hands over that knife and someone lunging at him [End Quote] the court went on to deny the motion to set aside the verdict. While petitioner concedes credibility is something

left to the trier of fact, he was not at liberty to speculate where the injury came from or disregard the reasonable hypotheses that flowed from Mr. Edwards himself. How the judge could look at that picture and tell that it was consistent with being jabbed in some way with a knife (there was no evidence Brown jabbed Edwards with a knife) or how he placed his hand over that knife and someone lunged at him. This is not something that's in the exclusive province of the trier of fact, simply put he should have never made such a subjective determination but if the judge was at liberty to make such determination based off the picture of Edwards' index finger and broken finger nail then this court would also be at liberty to make a like determination or one to the contrary. Reasonable jurists would find it debatable whether by looking at the photo of Edwards' injury you could tell how it was sustained when <sup>HAVE</sup> you <sup>↑</sup> two other reasonable hypotheses consistent with innocence. Reasonable jurists would also find it debatable or agree the trier facts subjective determination in this case was based solely on surmise, speculation, and conjecture not supported by any evidence. "to find guilt beyond a reasonable doubt - neither permits a court to make its own subjective determination of guilt or innocence (1986) Jackson v. Virginia 443 U.S. (1979) Petitioner should be granted a certificate of appealability on the claim that the verdict was constitutionally infirm as it was based solely on surmise speculation and ungrounded conjecture as "Guilt beyond a reasonable doubt cannot be premised on pure conjecture" Owens v. Duncan 781 F.3d 360: 2015 (CA7). \*In light most favorable to the Commonwealth "Edwards merely assumed" or guessed [attachment 5] he sustained the injury when he grabbed the person's wrist, hand, arm or knife PT pg 8. This argument has never been about credibility nor was petitioners motion to strike on this element of the offense and would ask the court to take judicial notice of this fact reasonable jurists would also agree by simply looking at that picture you could tell whether it was inflicted in any type of manner to support a conviction.

Issue Three

'Reasonable Jurist would find it debatable whether the evidence was sufficient' to prove beyond a reasonable doubt that Onterio Brown was the individual who lunged at Edwards with a knife on 4-29-2018. As Edwards testified that his identification of Brown was based on Detective Slodysco telling him that Onterio Brown had a knife in question and was the person in the hospital who had been shot by two separate firearms. Prior to the Detective telling Edwards that Onterio Brown had been shot and had a "knife", Edwards told officers, Ellis, officer autos, officer Slodysco and officer schugeld that he didn't know the individual and described him as a "unknown individual, light skinned, light beard, late 20's [PT pg 46] Both Edwards and Brown acknowledged that they were cousins and knew each other prior to this incident. Edwards testified [on meeting Brown] Sept 6, 2018 pg 15-19-21 [A Year Prior] Edwards: He (Brown) called me by my brothers name, and I said im not Devion, im Jevon PT pg 16 We shook hands and just say, hey we're family (6-7) - TT pg 35 13-15 [Direct examination] Q. Okay did you have any problem with him that you're aware of? Edwards: No as far as I know we're family [cross-examination] [Pre-trial] Pt pg 20: 24-25 Q. Isn't it true that Mr. Slodysco actually told you it was Onterio Brown? [PT pg 21: 2-4] Edwards: That's correct Q. And before that you didn't know who it was? Edwards: That's correct Q. And before that you didn't know who it was? Edwards: That's Correct PT pg 23: 3-25 Q. And so it's surprising to you today then that in his [schugeld's] police report he indicates you could not identify the individual with the knife? Edwards: it would be a possibility. Q. And I guess you've also testified you weren't even aware it was Onterio Brown until investigator Slodysco told you that? Edwards: that's correct Q. So it wasn't based on meeting Mr. Brown a year earlier that you were able to identify



him? Edwards: No Sir [Detective Slodysco] PT pg 55:4-5 Slodysco: When I met with Mr Edwards he stated he knew Mr Brown... he knew the name... he knew the name. Q So you didn't tell him the individual with the knife was Onorio Brown? Slodysco: I may have, he knew the name. I may have said was that Onorio Brown "and he said -- and then gave a description to him and I said yeah, that's him." Q Let me just clarify that, he knew Onorio Brown [PT pg 56:1-4] from being out there or he knew the individual? [with the knife] from being out there? Slodysco: he knew the individual, he recognized the individual he just didn't know his name. Slodysco: [55:1-4] he stated he knew Mr Brown... he knew the name... he knew the name. [PT pg 56:10-16] Did you indicate to him on May 3rd that you would be doing a photo lineup with Onorio Brown? Slodysco: I believe we spoke about it but it was ultimately determined one wasn't needed based on Mr. Brown's own statements and evidence that he was obviously involved in the altercation. [End Quote] Det. Schugeld [TT pg 102] asked Brown did he own a knife? and Brown indicated that he kept a knife on his person. Brown acknowledged TT pg 160. he asked me, do I own a knife? I didn't see the relevance of the question [without context] I said, yeah I keep a knife. I do electrical work, I do carpentry work, I recently worked for colonial gardens, but outside of work I don't carry a knife around with me. Schugeld pt pg 43-44 24-13 Brown said he went down to deescalate the situation and the fat guy (referring to Edwards) pulled out a gun and started shooting. The Commonwealth and the District court contends that because Brown stated that he owns a knife and was the individual who shot this means he was the unknown individual, light skinned, light beard in their 20's who lunged at Edwards. There is no explanation why

Detective failed to conduct a photo lineup or any identification procedure for Mr. Edwards to identify his alleged assailant. On the night in question Mr. Edwards said he didn't know the individual, several days and several interviews later without any form of identification procedure, Edwards still hadn't identified anyone, then Investigator Slodysco tells Edwards Oterio Brown got shot twice and that Oterio Brown was the individual with the knife! All of Edwards subsequent identifications are based upon that, Edwards admitted it wasn't based upon meeting him a year before that he was able to identify him. (Pt pg 2: At trial when asked "Q. you're saying you're able to identify the individual today based off meeting him a year before? Edwards: No . . . also when asked TT 64 13-16 Q. It's not until Investigator Slodysco tells you that it's Oterio Brown that you are now able to identify him (Oterio Brown) Edwards: That's correct.

As counsel argued in his motion to set aside the verdict on May 22, 2019 ST [pg 4] appeal brief incorporated by reference] Although Edwards was unable to recognize repeatedly (in police interviews) who the person was who attacked him with a knife he's told by the admission of Detective Slodysco that the person who's been shot once in the hip and once in the leg was this Oterio Brown. And then Edward's says, well it must have been Oterio Brown who attacked me . . . he admits it. So that's not a true identification, where Edward's says, 'I recognized him . . . Both detectives acknowledged they never bothered to do a show up identification. They never bothered to prepare a photo spread. So the first time he makes a identification is after he's told Brown was shot [End] It is undisputed that other people were out there and other people were arrested for ~~their~~ their involvement in this altercation, other individuals fit the description described, so the notion because petitioner admitted to owning a knife and being involved makes him the unknown individual in their 20's is a far reach and petitioner contends that Edward's never made a true identification and the evidence without Edwards independent identification

is insufficient to prove Onterio Brown was the individual who attacked Edwards as counsel noted in his motion to set aside the verdict ST6-22. I submit there is reasonable doubt in presuming it was really the Defendant that went out there and attacked Edwards in light of the fact Edwards has admitted that his uncorroborated identification is just based on . . . what the detective told him about who was in the hospital. [End Quote]

[18] "there must be sufficient evidence for a rational trier of facts to find guilt beyond a reasonable doubt -- neither permits a court to make its own subjective determination of guilt or innocence . . . . [19] Evidence which has a tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence (that is, "relevant evidence") cannot by itself, rationally support a conviction beyond a reasonable doubt as required by due process. [Jackson v. Virginia 443 U.S. 307, 61 L.Ed 2d 560, 93 sc.] Because Edwards said that he shot at his assailant and because Onterio Brown was shot, respondent argues this is proof Onterio Brown was the assailant, this is a ludicrous contention as bullets don't always hit their targets and bystanders and unintended victims often find themselves victims of errant bullets. There were several unimpeached witnesses who testified Onterio Brown didn't have a knife, Monique Bobey, Jasmine Strong, Onterio Brown and to some extent Jay Mcnair. Edwards testified that he wasn't aware of Onterio Brown until told by the detective. Reasonable Jurists would find it debatable whether there was ever a true identification of Onterio Brown as the knife wielding assailant. Reasonable Jurists would also find it debatable whether an identification by a witness who's told by law enforcement the identity of the suspect is unreliable given all other circumstances of this case and the fact that others were around and arrested for being involved in this altercation. In summary the evidence was insufficient to prove beyond a reasonable doubt Onterio Brown was the individual who attacked Jevon Edwards. A certificate of appeal should issue on this claim.

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9. Petitioner abandons all other claims regardless of their merit.
10. Respondent failed to include a Roseboro notification in its motion to dismiss, the District Court in its memorandum opinion pg 1 cites document number thirteen as proof of notification, however petitioner never recieved document thirteen nor is it listed on the Docket sheet of the federal website (See <sup>Pacer</sup> ~~Justia~~ Brown v. Clarke 1:21 cv-39)

### Argument / Proposed Question

11. Is Roseboro inconsistent with Rule 5 of 2254? which states, a petitioner may submit a reply. Roseboro would make filing a reply mandatory in habeas corpus proceedings or face summary judgment. Rule 12 of the Federal Habeas statute states " the federal rules of civil procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules. Also 28 U.S.C. 224B- the allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true. [End Quote] Petitioner contends the evidence clearly shows that Petitioner made the following claims in his 2254 petition grounds 2-4 "the evidence was insufficient to prove beyond a reasonable doubt that Onterio Brown was the individual who attacked Javon Edwards (pg 8), the evidence was insufficient to prove beyond a reasonable doubt that Onterio Brown Committed a malicious wounding (pg 9), the verdict was constitutionally infirm as it based soley on surmise, speculation and ungrounded conjecture". The respondent reframed petitioners claims as "In Grounds II-V, Brown essentially argues that the Virginia Court of Appeals erred when it found the evidence was sufficient to support his conviction for malicious wounding. (Brief in support of motion to dismiss Document 11 pg 9 20-22) this reframing changes the standard of review and is fatal to his complaint as Habeas corpus is not another

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grounds of appeal. The respondent was not at liberty to change petitioners arguments and it was clear from the record that in grounds 11-V petitioner never even mentioned the court of Appeals. "The allegations of a return shall be accepted as true except to the extent that the judge finds from the evidence that they are not true" 2248. This deliberate deception is clear on its face and this District Court had a duty under 2248 and fundamental fairness to reject this fatal error. Also, in considering the respondents motion to dismiss, the court must assume that every fact stated in the petitioners Complaint is true. The Court must then ask if all those facts are true, is it plausible that the defendants violated petitioners rights. Respondent's motion to dismiss claimed failure to state a claim which relief may be granted under 2254 and 2244, however three of petitioners claims pertain to the sufficiency of the evidence. Respondents motion fails on its face unless the court has reversed Jackson v. Virginia 443 U.S. 307, 61 LEd 2d 560, 99 Sct 278 (1979) Respondent also failed to cite any statute or authority that governs its motion to dismiss and failed to cite any legal precedents that allows it. The respondent must not be able to mix several different statutes in contradiction with each other and make up their own motion. Habeas Corpus proceedings must not be a trap set for the unsuspecting pro-se prisoner, petitioners claims of insufficient evidence has never been litigated on the merits. Petitioners legal arguments have been changed to arguments on credibility in order to deny justice and the actual review of petitioners constitutional claims on its merits. The district court granted respondents motion to dismiss in error and as respondent failed to show cause or file a responsive pleading, petition for relief should have been granted, Petitioner should have at the very least been allowed to proceed further.

The District Court erred when it applied the presumption of correctness and the look through doctrine to the Court of Appeals of Virginia's per-curiam order denying petitioner permission to appeal as the last reasoned state court opinion and giving it the presumption of correctness.

The District Court in analyzing petitioner's claims of insufficient evidence applied the look through doctrine to the Court of Appeals of Virginia, although the order is flawed upon its face and didn't rule on the merits of petitioner's assignments of error which was trial court erred when it denied Brown's motion to strike and motion to set aside the verdict," as proven by the fact that the conviction was never affirmed, therefore it shouldn't be considered a reasoned state court opinion as the court only denied permission to appeal, as that stage in the appeal process isn't a merit determination. The order is also flawed upon its face and in considering this issue we must look to claims of insufficient evidence, how to preserve said claims for appeal and other post-conviction relief. In Virginia in order to preserve a claim to the sufficiency of the evidence on appeal the defendant has to make a motion to strike the evidence at the conclusion of the Commonwealth's case. If the defense elects to present its own evidence then in order to preserve this issue for appeal he must then make a renewed motion to strike or a motion to set aside the verdict. See *Murillo-Rodriguez v. Commonwealth* 279 Va. 64; 688 S.E. 2d 199; (2010). In this case it is undisputed that petitioner preserved his claims for appeal, however petitioner's petition for appeal raising two assignments of error "trial court erred when it denied Brown's motion to strike and motion to set aside the verdict" was refused and the assignments of error was never addressed on its merits as the petition for appeal is similar to a C.O.A. and not a merit determination and hence the court never ruled on the trial court's denial of the motion to strike and motion to set aside

the verdict and Brown's conviction was never affirmed, this action by the court was inconsistent with normal cases of properly preserved challenges to the sufficiency of the evidence and was merely reviewed for abuse of discretion although "Under the Winship decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a constitutional claim." After the court of appeals refused Brown's petition for Appeal, Brown appealed to the Virginia Supreme Court and the Virginia Supreme Court refused Brown's petition for appeal. Brown then commenced to file the current Habeas claims in federal court. The District Court in its memorandum opinion applied the look through doctrine "Federal habeas corpus court reviewing, under 28 U.S.C. § 2254(d), unexplained state court merits decision should (1) "look through" decision to last related state court decision providing relevant rationale; and should (2) presume that unexplained decision adopted same reasoning" *Wilson v. Sellers* 138 S.Ct 1188 200 L.Ed. 2d 530 (2018). The court of appeals order was not a merit determination and was merely an order stating its refusal to entertain Brown's constitutional challenge to the sufficiency of the evidence and in applying the look-through doctrine the Supreme Court of Virginia adopted its reasoning. However, regardless whether a state court refuses to entertain a challenge to the sufficiency of the evidence a Federal Court must "consider whether there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt, accordingly, in a challenge to a state court conviction under 28 U.S.C. § 2254 the applicant is entitled to habeas corpus relief, assuming settled procedural prerequisites for such a claim have otherwise been satisfied." *Jackson v. Virginia* 443 US 307, 61 L.Ed. 2d 560, 99 S.Ct 2781 (1979). Regardless whether a state court allows a constitutional challenge the sufficiency of the evidence

as long as a applicant has satisfied the procedural requirements of the state court and has exhausted his state court remedies a Federal Court is required to entertain the Federal Claim. [443 U.S. 318] [13] [14] A federal court has a duty to assess the historic facts when it is called upon to apply a Constitutional Standard to a conviction obtained in state court. [End] The look through doctrine should not have applied to this case as the court of appeals order only addressed it's flawed reasoning in refusing to entertain Brown's constitutional claims on the merits and unless Jackson v. Virginia has been overturned, the District Court was obligated to entertain Brown's claims relating to the sufficiency of the evidence on the merits, applying the beyond a reasonable doubt standard to each claim based on the historic facts and not the court of appeals edited rendition of the facts presented. Assuming for the sake of argument that the look through doctrine applies to this case, the court of appeals order should not be given the presumption of correctness in accordance with 2254(d) as petitioner was never given a full and fair hearing in the state court as petitioner wasn't even allowed to file a opening brief and the court of appeals order contained "facts" not contained in the records and facts proven false by the trial record. The order changed petitioners supporting arguments from "The trial court erred when it denied Brown's motion to strike and motion to set aside the verdict where the alleged victim Javon Edwards gave a detailed description of the assailant but inexplicably failed to identify his cousin Brown as the assailant until four days later when Detective Stodysco told Edwards that Brown was the individual in the hospital whid been shot" [Brief in support of petition for appeal] The court changed the argument to "the trial court erred in denying Brown's motion to strike and motion to set aside the verdict. First he notes Edward didn't identify him until four days later [End Quote] This clearly wasn't the argument, as



petitioner would concede that not identifying someone until four days later wouldn't be fatal to the identification. However the fact that a law enforcement officer telling a witness the identity of the accused after the witness previously stated they didn't know the assailant and the fact that the witness may have shot the accused changes the complexity of the argument and is fatal. One version is a credibility determination, the other a possible due process violation not within the judges discretion. Brown next argued where "no knife was recovered and the Commonwealth's evidence failed to prove that Brown possessed or used a knife on the night in question. The court edited the argument to "the evidence was insufficient to prove he did not have a knife." Brown also made arguments addressing the reasonable hypothesis of innocence that Edwards fell on his own knife. The court in it's order fails to address or even mention this fact and instead changed all of Brown's arguments to credibility determinations in plain error and therefore changed the standard of review and petitioners constitutional challenges to the motion to strike and motion to set aside the verdict was never addressed. Finally [but not only] the courts order stated Edwards told emergency personnel he cut his hand index finger on a knife, this would make this a direct evidence case and therefore a credibility contest, however Edwards never told medical personnel he was cut by a knife see Defense Ex. 1 [Video interview of Javon Edwards by Det. Schugeld] [see also attachment one police report from that interview Det Schugeld] Edwards stated he grabbed someone's hand, no where in the record is there a report of Edwards cutting his hand on knife. Detective Slodysco made it up on 5-8-2018 based off Det. Schugeld's police report [attachment 2c3] [2- Slodysco's affidavit for medical records - 3- affidavit for arrest warrant for Antonio Brown both filed on 5-8-2018 based off Schugeld's report. See also medical report attachment 4 this injury is listed as \* pre-existing.

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The order also states that Edwards gave appellants description on the night in question. This statement has no foundation in the record the Court of Appeals (VA) made it up. SEE attachment 1 police report from the night in question - written report of Defense exhibit 1 Det. Schugeld interview with Javon Edwards. This entire case against Mr. Brown was fabricated off of Detective Schugelds interview with Javon Edwards see attachments 2 and 3. Edwards never mentioned being cut by a knife nor did he give Brown's description, he gave a description of an Unknown individual in their 20's, which obviously doesn't describe Brown who he knew and was in his late 30's at the time. Edwards also told medical personnel he caused his own injury and the wound to his finger was pre-existing. (attachment 4). The orders description of the case also fails to mention several defense witnesses, Monique Robey who testified Brown didn't have a knife, Dr. Ekana Garrett who testified Edwards said he fell on his own knife, and Jay Mcnair who testified that no other witnesses saw a knife. Regardless of a judges arbitrary credibility determination, the Court wasn't at liberty to whitewash the fact that these witnesses existed. The presumption of correctness should not apply to the order and it shouldn't be considered a accurate portrayal of this case nor a reasoned state court opinion as it merely gave its reasons for not considering Brown's Constitutional claims and hence Brown wasn't allowed to appeal and his claims were never addressed on the merits.

#### Conclusion

The look through doctrine and presumption of correctness was incorrectly applied

"A Federal Court has a duty to assess the historical facts when it is called upon to apply the facts and Constitutional standard to a conviction obtained in state court." Jackson v. Virginia 443 U.S. 307.... petitioner has

rebutted the presumption of correctness by clear and convincing evidence.

\*Attachment number five negates the assertion that this is a direct evidence case.

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Petitioner prays that the court issue a certificate of appealability on all claims presented herein and any other appropriate action in the interest of justice. Respectfully submitted 7-5-2021 I swear under the penalty of perjury

~~Ontario Brown~~

that everything contained herein is

Ontario Dimitri Brown

true - ~~Ontario Brown~~

Harold W. Clarke

Ontario D. Brown # 1090907

L.V.C.C.

1607 Planters Rd

Lawrenceville Va 23868

### Certificate of Service

I the undersigned, do hereby certify that a true and correct copy of this, the foregoing instrument, has been mailed, via U.S. Mail, First Class postage prepaid, on this 5th day of July 2021, to Victoria Johnson Assistant Attorney General Counsel for the respondent. OFFICE OF THE ATTORNEY GENERAL 202 NORTH NINTH Street Richmond Va 23219. Respectfully submitted on this 5th day of July 2021 I hereby declare that this foregoing certificate is executed under the pains and penalties of perjury pursuant to 28 U.S.C. 1746. Respectfully submitted. ~~Ontario Brown~~

Ontario Dimitri Brown v Harold W. Clarke

1607 Planters Rd

Lawrenceville Va 23868

Alc

ASE SUPPLEMENTAL REPORT

Printed: 07/19/2018 12:20

James City County Police Dept

Attachment #1

OCA: 18001337

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: **CLEARED BY ARREST**

Case Mng Status: **CLEARED BY ARREST - 18**

Occurred: 04/29/2018

Offense: **AGGRAVATED ASSAULT**

Investigator: **SCHUGELD, R. A. (RS021)**

Date / Time: 04/30/2018 11:29:08, Monday

Supervisor: **LUCHARD, D. C. (DL015)**

Supervisor Review Date / Time: 05/01/2018 07:22:48, Tuesday

Contact:

Reference: **Investigative Narrative**

On April 30, 2018 at approximately 12:39 AM, Investigator Schugeld was called to respond to Riverside Regional Hospital in Newport News in reference to gunshot victims. Sergeant Luchard advised Investigator Schugeld that the shooting occurred outside apartment 122 D Dehaven Court. Also, Sergeant Luchard informed that shooting occurred during an altercation with multiple suspects.

Investigator Schugeld arrived at Riverside Regional Emergency Room #39 and conducted an interview with Javon Edwards. Investigator Schugeld observed that Edwards had abrasions to his forehead and top of head. Also, Edwards had lacerations to his left index finger and left thumbnail. According to Dr. Garnet, Edwards suffered a gunshot wound that entered the back of the right butt cheek and the side of the left butt cheek. Investigator Schugeld asked Edwards what happened. Edwards advised that his ex-girlfriend Tiara Jackson was helping him with his laundry at her apartment complex. While waiting for the clothes to dry, Edwards and Jackson remained in the car. While waiting in the car, a silver Lexus drove by. Edwards knows the driver of the Lexus as "Quan". Once the clothes were dry, Edwards drove Jackson back to her residence at 122 D Dehaven so that she could get a laundry basket. While riding back, Jackson received a phone call from Quan who said that "they didn't have to move because he had already seen them". Jackson told Quan that she didn't have time for this and hung up the phone. At that time, Jackson went into her apartment and got the laundry basket. While Jackson was inside Quan knocked on the door. Edwards texted Jackson and advised her that Quan was outside her door. Jackson exited her apartment and walked back to Edward's car and placed the basket inside the car. Jackson and Quan were both arguing back-and-forth. During this time, Edwards got out of his car and said to Quan "do we have an issue". At this time, Edwards advised that Quan pulled a gun from his waistband and gave it to an unknown black male (dark complexion, late teens/early 20's, thin build) that was with him. Edwards informed he believed that he was going to have a fair fight with Quan. While Edwards and Quan were arguing another unknown black male (light complexion, beard, late twenties, thin build and blue sweatshirt) came up behind him. Edwards turned around and observed that he had a knife in his right hand. Edwards grabbed the knife hand of the black male with his left hand and drew out his Glock 23 with his right and fired one shot at the black male with the knife. After the first shot, Edwards advised his gun jammed and he dropped the magazine and tried to holster. Edwards then advised he heard a "pop" and that's when he went down to the ground. While on the ground, Edwards advised that he was kicked and hit for approximately thirty seconds. Edwards advised that he covered up while he was being assaulted on the ground. Edwards did not know the individual who tried to stab him nor could advise who shot him or assaulted him while on the ground. Edwards was completely corporative with Inv. Schugeld.

Officer Dykstra secured Edwards clothing along with a Glock 23 magazine that Edwards carried with him in pocket.

After interviewing Edwards, Inv. Schugeld interviewed Onterio Brown who was in room #: P71 at Riverside Regional. Brown suffered a gunshot wounds to his left hip and thigh. Inv. Schugeld asked Brown what happened. Brown advised

Investigator Signature

Supervisor Signature

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## ASE SUPPLEMENTAL REPORT

Printed: 07/19/2018 12:20

James City County Police Dept

Attachment #1

OCA: 18001337

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Case Status: **CLEARED BY ARREST**Case Mng Status: **CLEARED BY ARREST - 18**Occurred: **04/29/2018**Offense: **AGGRAVATED ASSAULT**Investigator: **SCHUGELD, R. A. (RS021)**Date / Time: **04/30/2018 11:29:08, Monday**Supervisor: **LUCHARD, D. C. (DL015)**Supervisor Review Date / Time: **05/01/2018 07:22:48, Tuesday**

Contact:

Reference: **Investigative Narrative**

that he was inside his girlfriend's apartment and that he heard people arguing so he went outside to "deescalate" the situation. Brown advised that he tried to break up the situation and the fat guy (referring to Edwards) pulled out a gun and started shooting. Inv. Schugeld asked if knew who else was involved. Brown advised he did not the individuals and could not describe them. Inv. Schugeld asked Brown if he owned a knife. Brown advised that he always has a knife on him and it is blue in color lock blade. Inv. Schugeld asked if he tried to cut or stab Edwards. Brown advised he did not attempt to stab or cut Edwards and maintained he did not know the individuals involved and could not describe them.

Brown consented to a GSR kit. Inv. Steen administered the GSR kit.

Officer Ellis had secured Brown's clothing and a bullet from one of his wounds before Inv. Schugeld's arrival.

Once back at the LEC Inv. Schugeld took possession of the items from Officers Dykstra and Ellis. Inv. Schugeld placed Edwards and Brown's clothing in drying chambers. Also, Inv. Schugeld placed the recovered bullet from Brown in the drying chamber as well. Furthermore, Inv. Schugeld turned over the Glock magazine to Inv. Sten.

Nothing Further to report at this time.

[04/30/2018 11:29 RSCHUGELD]

Investigator Signature

Supervisor Signature

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Attachment # 2

ADDENDUM "A"

On 4/29/18, JCCPD officers responded to the area of the 122 block of Dehaven Court, located in JCC, for a call of a possible gunshot patient. Officers there found Jevon William Edwards, who had been shot in the right buttocks, and also had a variety of other injuries consistent with an attack. Mr. Edwards was transported to Riverside Regional Medical Center in Newport News, Va. for treatment.

Mr. Edwards was interviewed by JCCPD Inv. R. Shugeld. Mr. Edwards stated that while in the area of Dehaven Court visiting with a friend, he got into a verbal altercation with a male named Jequan Carroll. During the verbal confrontation, Mr. Carroll was standing with Onterio Dimitri Brown. Mr. Carroll produced a handgun from his waist and handed it to a fourth, unknown male.

Mr. Carroll was about to fight Mr. Edwards, when Mr. Brown walked around behind Mr. Edwards. Mr. Edwards turned toward Mr. Brown and stated "oh, so y'all are gonna jump me?" Mr. Brown then produced a knife with a 3 or 4 inch blade and stated "Ain't that kind of party bro." Mr. Brown then lunged at Mr. Edwards with the knife, attempting to stab him.

Mr. Edwards fought Mr. Brown, using his left hand to try and grab Mr. Brown's right hand, which was holding the knife, causing several lacerations on Mr. Edwards' left hand requiring stitches. With his right hand, Mr. Edwards produced a .40 caliber handgun, which he legally owned and had a concealed weapons permit for. He attempted to defend himself with the handgun, but it jammed and would not shoot. Mr. Brown was not shot with this weapon.

Mr. Edwards then heard a loud bang and immediately felt pain in his right leg. His legs gave out and he collapsed to the ground. At this point, he had dropped his handgun and was being struck and kicked about his face, head, and body. He covered his head to protect himself. When the attack stopped, he saw that the males that had attacked him had fled the scene.

Shortly after this occurred, Mr. Carroll transported Mr. Brown in his car to Riverside Doctor's Hospital. Video footage shows Mr. Carroll helping to bring Mr. Brown into the hospital, and then leaving. Mr. Carroll then left the area.

Mr. Brown was transported from Riverside Doctor's Hospital to Riverside Regional Medical Center in Newport News for treatment. After Inv. Schugeld interviewed Mr. Edwards while at Riverside Regional Medical Center, he then interviewed Mr. Brown, who had arrived there as well.

Inv. Schugeld then interviewed Mr. Onterio Brown, who was not cooperative. Mr. Brown claimed that he overheard Mr. Carroll and Mr. Edwards about to fight. He then stated that he attempted to intervene to "deescalate" the fight, and was shot by an unknown subject. Mr. Brown claimed that he did not know any of the people involved, and could not give a description of any of the people involved. He would not provide any other information.

Inv. L. Sten interviewed the friend Mr. Edwards was visiting. She provided a similar account of events to what Mr. Edwards provided, saying that Mr. Edwards and Mr. Carroll were arguing. She said they were

Handwritten notes and stamps on the right side of the page, including a vertical stamp that reads "JCCPD - RIVERSIDE REGIONAL MEDICAL CENTER" and a signature that appears to be "B. Edwards".

AC

Attachment # 2

about to fight when Mr. Brown went behind Mr. Edwards. She asked Mr. Brown why he was "walking up on" Mr. Edwards. At this time, she saw Mr. Brown try to assault Mr. Edwards from behind. She attempted to stop Mr. Brown but he threw her to the ground. She then heard a single gunshot, and saw Mr. Edwards fall to the ground. She stated that Mr. Carroll, Mr. Brown, and the unknown male attack Mr. Edwards as he lay on the ground, kicking and punching him. She stated the unknown male then ran off, and Mr. Carroll and Mr. Brown got into the car Mr. Carroll was driving and drove away.

Located at the scene was one 9mm bullet casing. A 9mm bullet was recovered from the hip area of Mr. Brown. Both have been placed into JCCPD evidence, as well as the bloodied clothing from both Mr. Edwards and Mr. Brown.

Based on this information, a search warrant is requested for a medical records from Riverside Regional Medical Center located at 500 J. Clyde Morris Blvd., in Newport News, Va. For medical records belonging to Onterio Dimitri Brown for 4/29/18 through 4/30/18.

CLERK  
ST. ANDERSON  
NEW.S. VA.

4010 MAY - 8 PM 1:48  
Bureau of the  
FBI

## CRIMINAL COMPLAINT (CONTINUED)

ACCUSED: \_\_\_\_\_

CHARGE: \_\_\_\_\_

I base my belief on the following facts:

Mr. Edwards was interviewed by JCCPD Investigators. Mr. Edwards stated that while in the area of Dehaven Court visiting with a friend, he got into a verbal altercation with a male named Jequan Carroll. During the verbal confrontation, Mr. Carroll was standing with Onterio Dimitri Brown and Trevin Jarrell Ashby. Mr. Carroll produced a handgun from his waist and handed it to Trevin Ashby.

Mr. Carroll was about to fight Mr. Edwards, when Onterio Brown walked around behind Mr. Edwards. Mr. Edwards turned toward Onterio Brown and stated "oh, so y'all are gonna jump me?" Mr. Brown then produced a knife with a 3 or 4 inch blade and stated "Ain't that kind of party bro." Onterio Brown then lunged at Mr. Edwards with the knife, attempting to stab him.

Mr. Edwards fought Onterio Brown, using his left hand to try and grab Mr. Brown's right hand, which was holding the knife, causing several lacerations on Mr. Edwards' left hand requiring stitches. With his right hand, Mr. Edwards produced a .40 caliber handgun, which he legally owned and had a concealed weapons permit for. He attempted to defend himself with the handgun, but it jammed and would not shoot. Onterio Brown was not shot with this weapon.

Mr. Edwards then heard a loud bang and immediately felt pain in his right leg. His legs gave out and he collapsed to the ground. At this point, he had dropped his handgun and was being struck and kicked about his face, head, and body. He covered his head to protect himself. When the attack stopped, he saw that the males that had attacked him had fled the scene. Mr. Edwards then realized he had been shot. He was transported by ambulance to the emergency room.

Shortly after this occurred, Mr. Carroll transported Mr. Brown in his car to Riverside Doctor's Hospital. Video footage shows Mr. Carroll helping to bring Mr. Brown into the hospital, and then leaving. Mr. Carroll then left the area.

Mr. Brown was transported from Riverside Doctor's Hospital to Riverside Regional Medical Center in Newport News for treatment.

Investigators then interviewed Mr. Onterio Brown, who was not cooperative. Onterio Brown claimed that he overheard Mr. Carroll and Mr. Edwards about to fight. He then stated that he attempted to intervene to "deescalate" the fight, and was shot by an unknown subject. Onterio Brown claimed that he did not know any of the people involved, and could not give a description of any of the people involved. He would not provide any other information. Onterio Brown was shot in his hip, and a 9mm bullet was recovered from inside of his hip area.

Investigators interviewed the friend Mr. Edwards was visiting. She provided a similar account of events to what Mr. Edwards provided, saying that Mr. Edwards and Mr. Carroll were arguing. She said they were about to fight when Onterio Brown went behind Mr. Edwards. She asked Onterio Brown why he was "walking up on" Mr. Edwards. At this time, she saw Onterio Brown try to assault Mr. Edwards from behind. She attempted to stop Onterio Brown but he threw her to the ground. She then heard a single gunshot, and saw Mr. Edwards fall to the ground. She stated that Mr. Carroll, Onterio Brown, and Trevin Ashby attacked Mr. Edwards as he lay on the ground, kicking and punching him. She stated that Mr. Ashby, Mr. Carroll, and Mr. Brown got into the car Mr. Carroll was driving and drove away.

As Mr. Edwards was fighting Mr. Carroll and Onterio Brown, and Trevin Ashby was handed Mr. Carroll's handgun, it is most probable that Trevin Ashby shot Mr. Edwards. The bullet then travelled through Mr. Edwards' body, striking Onterio Brown and lodging inside of his body. After shooting Mr. Edwards, Mr. Ashby then joined in with Mr. Carroll and Onterio Brown to assault Mr. Edwards as he lay on the ground.

Based on this information, I am requesting a warrant against Mr. Trevin Ashby for maiming (18.2-51) for shooting Mr. Edwards, and unlawful wounding (18.2-51) for the bullet also striking Onterio Brown.

Attachment 43

A/C





# RIVERSIDE

RMC HOSPITAL  
500 J CLYDE MORRIS BLVD  
NEWPORT NEWS VA 23601-1929  
Inpatient Record

EDWARDS,JAVON  
MRN: 008156518  
DOB: 11/27/1989, Sex: M  
Adm: 4/29/2018, D/C: 4/30/2018

Attachment #4

## Flowsheets (all recorded)

### Skin Color/Condition

|                                                                                            |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
|--------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------|--|-------------------------------|--|----------------|--|
| 04/30/18 02:38:00                                                                          |  | 04/30/18 02:31:47                                                                                                                                                                                                                                                                    |  | 04/30/18 02:30:27 |  | 04/30/18 02:29:05             |  | 04/30/18 00:17 |  |
| Wound 04/30/18 Laceration Hand Left pt has small lac to L 1st digit approx .5 cm in length |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0017 -JW Pre-Existing Wound: Yes -JW Wound Type: Laceration -JW Location: Hand -JW, L 1st digit Wound Location Orientation: Left -JW Wound Description (Comments): pt has small lac to L 1st digit approx .5 cm in length -JW |  |                   |  |                               |  |                |  |
| Site Assessment                                                                            |  | Pink; Clean -JW                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Peri-wound Assessment                                                                      |  | Clean; Dry; Intact -JW                                                                                                                                                                                                                                                               |  |                   |  |                               |  |                |  |
| Wound Length (cm)                                                                          |  | 0.5 cm -JW                                                                                                                                                                                                                                                                           |  |                   |  |                               |  |                |  |
| Closure                                                                                    |  | Demabond -JW                                                                                                                                                                                                                                                                         |  |                   |  |                               |  |                |  |
| Treatments                                                                                 |  | Cleansed; Site care -JW                                                                                                                                                                                                                                                              |  |                   |  |                               |  |                |  |
| Exudate Amount                                                                             |  | 0 -JW                                                                                                                                                                                                                                                                                |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Gunshot Buttocks Right                                                      |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0005 -JW Wound Type: Gunshot -JW Location: Buttocks -JW Wound Location Orientation: Right -JW                                                                                                                                 |  |                   |  |                               |  |                |  |
| Site Assessment                                                                            |  | Bleeding -JW                                                                                                                                                                                                                                                                         |  |                   |  |                               |  |                |  |
| Peri-wound Assessment                                                                      |  | Clean; Dry; Intact -JW                                                                                                                                                                                                                                                               |  |                   |  |                               |  |                |  |
| Treatments                                                                                 |  | Cleansed -JW                                                                                                                                                                                                                                                                         |  |                   |  |                               |  |                |  |
| Dressing                                                                                   |  | Pressure dressing -JW                                                                                                                                                                                                                                                                |  |                   |  |                               |  |                |  |
| Dressing Changed                                                                           |  | New -JW                                                                                                                                                                                                                                                                              |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Gunshot Leg Left Lateral                                                    |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0006 -JW Wound Type: Gunshot -JW Location: Leg -JW Wound Location Orientation: Left; Lateral -JW, L thigh                                                                                                                     |  |                   |  |                               |  |                |  |
| Treatments                                                                                 |  | Cleansed; Site care -JW                                                                                                                                                                                                                                                              |  |                   |  |                               |  |                |  |
| Dressing                                                                                   |  | Pressure dressing -JW                                                                                                                                                                                                                                                                |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Laceration Head                                                             |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0017 -JW Wound Type: Laceration -JW Location: Head -JW, top of scalp                                                                                                                                                          |  |                   |  |                               |  |                |  |
| Site Assessment                                                                            |  | Clean; Pink; Bleeding -JW                                                                                                                                                                                                                                                            |  |                   |  |                               |  |                |  |
| Peri-wound Assessment                                                                      |  | Dry; Intact; Clean -JW                                                                                                                                                                                                                                                               |  |                   |  |                               |  |                |  |
| Closure                                                                                    |  | Staples -JW                                                                                                                                                                                                                                                                          |  |                   |  |                               |  |                |  |
| Drainage Amount                                                                            |  | Scant -JW                                                                                                                                                                                                                                                                            |  |                   |  |                               |  |                |  |
| Drainage Description                                                                       |  | Sanguineous -JW                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Treatments                                                                                 |  | Cleansed; Irrigation -JW                                                                                                                                                                                                                                                             |  |                   |  |                               |  |                |  |
| Dressing                                                                                   |  | Open to air -JW                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| 04/30/18 00:19                                                                             |  | 04/29/18 23:55:36                                                                                                                                                                                                                                                                    |  |                   |  |                               |  |                |  |
| Constitutional                                                                             |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Level of Consciousness                                                                     |  | Alert -JW                                                                                                                                                                                                                                                                            |  |                   |  |                               |  |                |  |
| Orientation Level                                                                          |  | 1 -JW                                                                                                                                                                                                                                                                                |  |                   |  |                               |  |                |  |
| Skin Condition/Temp                                                                        |  | Warm; Dry -JW                                                                                                                                                                                                                                                                        |  |                   |  |                               |  |                |  |
| Skin Color                                                                                 |  | Appropriate for ethnicity -JW                                                                                                                                                                                                                                                        |  |                   |  | Appropriate for ethnicity -JW |  |                |  |
| Wound 04/30/18 Laceration Hand Left pt has small lac to L 1st digit approx .5 cm in length |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0017 -JW Pre-Existing Wound: Yes -JW Wound Type: Laceration -JW Location: Hand -JW, L 1st digit Wound Location Orientation: Left -JW Wound Description (Comments): pt has small lac to L 1st digit approx .5 cm in length -JW |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Gunshot Buttocks Right                                                      |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0005 -JW Wound Type: Gunshot -JW Location: Buttocks -JW Wound Location Orientation: Right -JW                                                                                                                                 |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Gunshot Leg Left Lateral                                                    |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0006 -JW Wound Type: Gunshot -JW Location: Leg -JW Wound Location Orientation: Left; Lateral -JW, L thigh                                                                                                                     |  |                   |  |                               |  |                |  |
| Wound 04/30/18 Laceration Head                                                             |  |                                                                                                                                                                                                                                                                                      |  |                   |  |                               |  |                |  |
| Wound Properties                                                                           |  | Date First Assessed: 04/30/18 -JW Time First Assessed: 0017 -JW Wound Type: Laceration -JW Location: Head -JW, top of scalp                                                                                                                                                          |  |                   |  |                               |  |                |  |



RIVERSIDE

RMC HOSPITAL  
500 J CLYDE MORRIS BLVD  
NEWPORT NEWS VA 23601-1929  
Inpatient Record

EDWARDS, JAVON  
MRN: 008156518  
DOB: 11/27/1989, Sex: M  
Adm: 4/29/2018, D/C: 4/30/2018

Flowsheets (all recorded)

Wound Care

| Wound                 | 04/30/18 02:33:01                                                                                                                                                                                                                                                | 04/30/18 02:34:47 | 04/30/18 02:36:27 | 04/30/18 02:39:05 | 04/30/18 00:17 |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|-------------------|----------------|
| Wound Properties      | Wound: 04/30/18 Laceration Hand Left, pt has small laceration approx .5 cm in length -JW                                                                                                                                                                         |                   |                   |                   |                |
| Date First Assessed:  | 04/30/18 -JW Time First Assessed: 0017 -JW Pre-Existing Wound: Yes -JW Wound Type: Laceration -JW Location: Hand -JW, L 1st digit. Wound Location Orientation: Left -JW Wound Description (Comments): pt has small lac to L 1st digit approx .5 cm in length -JW |                   |                   |                   |                |
| Site Assessment       | Pink; Clean -JW                                                                                                                                                                                                                                                  |                   |                   |                   |                |
| Peri-wound Assessment | Clean; Dry; Intact -JW                                                                                                                                                                                                                                           |                   |                   |                   |                |
| Wound Length (cm)     | 0.5 cm -JW                                                                                                                                                                                                                                                       |                   |                   |                   |                |
| Closure               | DemaBond -JW                                                                                                                                                                                                                                                     |                   |                   |                   |                |
| Treatments            | Cleansed; Site care -JW                                                                                                                                                                                                                                          |                   |                   |                   |                |
| Exudate Amount        | 0 -JW                                                                                                                                                                                                                                                            |                   |                   |                   |                |
| Wound                 | Wound: 04/30/18 Gunshot Buttocks Right -JW                                                                                                                                                                                                                       |                   |                   |                   |                |
| Date First Assessed:  | 04/30/18 -JW Time First Assessed: 0005 -JW Wound Type: Gunshot -JW Location: Buttocks -JW Wound Location Orientation: Right -JW                                                                                                                                  |                   |                   |                   |                |
| Site Assessment       | Bleeding -JW                                                                                                                                                                                                                                                     |                   |                   |                   |                |
| Peri-wound Assessment | Clean; Dry; Intact -JW                                                                                                                                                                                                                                           |                   |                   |                   |                |
| Treatments            | Cleansed -JW                                                                                                                                                                                                                                                     |                   |                   |                   |                |
| Dressing              | Pressure dressing -JW                                                                                                                                                                                                                                            |                   |                   |                   |                |
| Dressing Changed      | New -JW                                                                                                                                                                                                                                                          |                   |                   |                   |                |
| Wound                 | Wound: 04/30/18 Gunshot Leg Left Lateral -JW                                                                                                                                                                                                                     |                   |                   |                   |                |
| Date First Assessed:  | 04/30/18 -JW Time First Assessed: 0006 -JW Wound Type: Gunshot -JW Location: Leg -JW Wound Location Orientation: Left; Lateral -JW, L thigh                                                                                                                      |                   |                   |                   |                |
| Treatments            | Cleansed; Site care -JW                                                                                                                                                                                                                                          |                   |                   |                   |                |
| Dressing              | Pressure dressing -JW                                                                                                                                                                                                                                            |                   |                   |                   |                |
| Wound                 | Wound: 04/30/18 Laceration Head -JW                                                                                                                                                                                                                              |                   |                   |                   |                |
| Date First Assessed:  | 04/30/18 -JW Time First Assessed: 0017 -JW Wound Type: Laceration -JW Location: Head -JW, top of scalp                                                                                                                                                           |                   |                   |                   |                |
| Site Assessment       | Clean; Pink; Bleeding -JW                                                                                                                                                                                                                                        |                   |                   |                   |                |
| Peri-wound Assessment | Dry; Intact; Clean -JW                                                                                                                                                                                                                                           |                   |                   |                   |                |
| Closure               | Staples -JW                                                                                                                                                                                                                                                      |                   |                   |                   |                |
| Drainage Amount       | Scant -JW                                                                                                                                                                                                                                                        |                   |                   |                   |                |
| Drainage Description  | Sanguineous -JW                                                                                                                                                                                                                                                  |                   |                   |                   |                |
| Treatments            | Cleansed; Irrigation -JW                                                                                                                                                                                                                                         |                   |                   |                   |                |
| Dressing              | Open to air -JW                                                                                                                                                                                                                                                  |                   |                   |                   |                |

A/C

Attachment #5

**Katey M. Fennig**

---

**From:** Katey M. Fennig <kfennig@wjcc-ca.com>  
**Sent:** Thursday, January 03, 2019 8:56 AM  
**To:** 'Chris Voltin'  
**Subject:** Re: Onterio

Chris,

Don't know if this is relevant to your theory, but wanted to let you know that the victim has expressed that he doesn't feel like Carroll deserves a felony out of the whole thing due to not having a weapon on him (he also knows Carroll best of the three). He understands the importance of not minimizing or exaggerating anyone's role.

About the knife, last time we talked, I asked if he knew when Onterio got his hand and he said, "I'm guessing when he lunged and I grabbed the knife."

He also was wondering if Onterio would claim he was protecting Jequan but did not supply facts that would support that—he reiterated that it was one on one when Onterio got into it and weapons were not involved at that time.

I'm printing the following out, I just wanted to put it down in a written form in case you need to ask questions.

Kathryn M. Fennig  
Assistant Commonwealth's Attorney  
Williamsburg/James City County Commonwealth's Attorney's Office  
Phone: 757-564-2281  
Fax: 757-564-2288

Appendix D

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA****Alexandria Division****Onterio Dimitri Brown,  
Petitioner,****v.****Harold W. Clarke,  
Respondent.**)  
)  
)  
)  
)  
)  
)**1:21cv39 (TSE/JFA)****ORDER**

For the reasons stated in the accompanying Memorandum Opinion, the respondent's Motion to Dismiss [Dkt. No. 9] is GRANTED, and it is further

ORDERED that petitioner's motion for bail [Dkt. No. 5] is DENIED; and it is further hereby

ORDERED that this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 be and is DISMISSED WITH PREJUDICE.

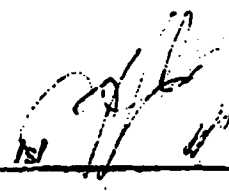
To appeal this decision, petitioner must file a written notice of appeal with the Clerk's office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement indicating a desire to appeal and including the date of the Order the petitioner wishes to appeal. Failure to file a timely notice of appeal waives the right to appeal this decision. Petitioner also must obtain a certificate of appealability ("COA") from a circuit justice or judge. See 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b). The Court expressly declines to issue a COA for the reasons explained in the accompanying Memorandum Opinion.

Appendix D

The Clerk is directed, pursuant to Federal Rule of Civil Procedure 58, to enter final judgment in favor of respondent; to send a copy of this Order and the accompanying Memorandum Opinion to petitioner and counsel of record for respondent; and to close this civil action.

Entered this 22<sup>nd</sup> day of JUL 2021.

Alexandria, Virginia

  
\_\_\_\_\_  
T. S. Ellis, III  
United States District Judge

## Alexandria Division

Respondent.

) ) ) ) ) ) ) ) ) )

Civil Action No. 1:21-cv-00039

Dated: 6/22/2021  
Alexandria, Virginia

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

**ONTERIO DIMITRI BROWN, No. 1090907,**

**Petitioner,**

**v.**

**Civil Action No. 1:21cv39**

**HAROLD W. CLARKE,**

**Respondent.**

**MOTION TO DISMISS AND RULE 5 ANSWER**

THE RESPONDENT comes pursuant to Rule 5, *Rules – governing § 2254 Cases*, and moves this Court to dismiss the petition for a writ of habeas corpus filed herein attacking the judgment of the Circuit Court for Williamsburg/James City County, Virginia of May 28, 2019. (Criminal No. CR28044-00).

The petition fails to state a claim for relief under 28 U.S.C. § 2244 and 28 U.S.C. § 2254. The reasons requiring dismissal are set forth in the accompanying brief, which is incorporated by reference.

Respectfully submitted,

**HAROLD W. CLARKE,**  
Respondent herein.

/ s/ \_\_\_\_\_  
Victoria Johnson  
Assistant Attorney General  
Counsel for Respondent  
Virginia State Bar No. 68282

OFFICE OF THE ATTORNEY GENERAL  
202 North Ninth Street  
Richmond, VA 23219  
(804) 786-2071 (TEL)  
(804) 371-0151 (FAX)  
oagcriminallitigation@oag.state.va.us

**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2021, I have electronically filed the foregoing Motion to Dismiss and Rule 5 Answer with the Clerk of Court using the CM/ECF system, and that I have mailed the document, with exhibits, by United States Postal Service to the following non-filing user: Onterio Dimitri Brown, No. 1090907, Lawrenceville Correctional Center, 1607 Planters Road, Lawrenceville, VA 23868, petitioner herein.

/ s/ \_\_\_\_\_  
Victoria Johnson  
Assistant Attorney General  
Counsel for Respondent  
Virginia State Bar No. 68282

OFFICE OF THE ATTORNEY GENERAL  
202 North Ninth Street  
Richmond, VA 23219  
(804) 786-2071 (TEL)  
(804) 371-0151 (FAX)  
vjohnson@oag.state.va.us



Appendix F

Attachment # 3

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

Alexandria Division

Onterio Dimitri Brown,  
Petitioner,

v.

Harold W. Clarke,  
Respondent.

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)  
)  
)  
)  
)  
)

1:21cv39 (TSE/JFA)

ORDER

Onterio Dimitri Brown ("petitioner"), a Virginia inmate proceeding pro se, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 [Dkt. No. 1]. He has paid the required filing fee. [Dkt. No. 4]. Petitioner has also filed motions for the issuance of a show cause order and for bail. [Dkt. Nos. 4, 5]. Accordingly, it is hereby

ORDERED that the petition [Dkt. No. 1] be and is FILED; and it is further

ORDERED that, within thirty (30) days of the date of this Order, respondent show cause why the writ should not be granted. Along with his responsive pleading, respondent shall forward the records of the state criminal trial and habeas corpus proceedings, if pertinent and available, to the Clerk's Office in Alexandria, Virginia. The Clerk's Office will return these records to the proper repository upon conclusion of the federal proceedings; and it is further

ORDERED that if petitioner files a reply to respondent's responsive pleading, such reply shall be due no more than twenty-one (21) days after respondent files his responsive pleading. Any reply by petitioner must include counter-affidavits (sworn statements subject to the penalty of perjury), or other responsive material contesting the affidavits or records filed by the respondent. See E.D. Va. Local Civ. R. 7(K); Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). Unless petitioner or respondent explicitly request additional time for filing additional

materials, the case will be considered ripe for disposition twenty-one (21) days after respondent files a responsive pleading; and it is further

ORDERED that Respondent file a reply to Petitioner's motion for bail [Dkt. No. 5] either with his responsive pleading or separately on or before said pleading is filed; and it is further

ORDERED that petitioner's motion for the issuance of a show cause order [Dkt. No. 4] is DENIED as MOOT; and it is further

ORDERED that petitioner's failure to notify the Court immediately upon being transferred, released, or otherwise relocated, may result in the dismissal of this petition pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk is directed to send a copy of this Order to petitioner and a copy of this Order and the petition for writ of habeas corpus [Dkt. No. 1] and a copy of the motion for bail [Dkt. No. 5] to the Attorney General of Virginia/on behalf of respondent.

Entered this 20<sup>th</sup> day of April 2021.

Alexandria, Virginia

  
T. S. Ellis, III  
United States District Judge