

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
(Criminal Division – Felony Branch)**

AARON MICHAEL HOWARD,	)	
	)	
Petitioner,	)	Case No. F997-89
	)	
v.	)	Hon. James E. Boasberg
	)	Next Hearing:
UNITED STATES OF AMERICA,	)	Status Conference, May 2, 2008
	)	
Defendants.	)	
	)	

**MEMORANDUM OF LAW AND POINTS AND AUTHORITIES IN SUPPORT  
OF AMENDED MOTION TO VACATE CONVICTIONS  
ON THE GROUNDS OF ACTUAL INNOCENCE**

In further support of his Amended Motion to Vacate Convictions on the Grounds of Actual Innocence (“Amended Motion”), Aaron Michael Howard states as follows:

**INTRODUCTION**

In early June 1990, Aaron Michael Howard was convicted of the February 8, 1988 murder of Bobby Parker. He was also convicted of carrying a pistol without a license in connection with that murder. Mr. Howard, however, is actually innocent of both crimes. As set forth in detail in the Amended Motion, the murder was committed by Mr. Howard’s three co-defendants – Eric Weaver, Cary Sanders and Terry Evans – and a fourth man, Tron Crowe, who is now deceased. Mr. Howard was not present when the murder occurred and had nothing to do with it.

The previously-unavailable accounts of the three co-defendants unequivocally establish Mr. Howard’s actual innocence. These accounts are corroborated by substantial new evidence from additional witnesses and substantial new evidence that was in the

government's possession but not presented at trial. Significantly, the accounts are also corroborated by substantial forensic and testimonial evidence introduced at trial. In fact, the only evidence in the existing record that is directly at odds with Mr. Howard's claim of innocence is the implausible, self-interested trial testimony of deceased siblings Bobby Taylor and Wanda Thompson. That testimony is conclusively debunked and disproven by the new evidence, as reinforced by a considerable amount of the trial evidence.

Because Mr. Howard is, by clear and convincing evidence, actually innocent of the crimes he was convicted of in this case, the D.C. Innocence Protection Act, D.C. Code § 22-4131 *et seq.*, requires that his convictions be vacated, that the counts of conviction be dismissed with prejudice, and that he be released immediately from custody.

#### **FACTUAL SUMMARY**

The evidence establishing Mr. Howard's innocence is set forth in the Amended Motion. It is incorporated here, and will not be repeated in detail. The evidence, in short, shows that, on the evening of February 8, 1988, Eric Weaver, Cary "Little Man" Sanders, Terry "Jerry" Evans and Tron Crowe saw one of their nemeses, Bobby Parker, drive by in their neighborhood in Southeast D.C. Weaver, Sanders, Evans and Crowe got into a yellow Volkswagen Rabbit and followed Parker to a stop light at the corner of Chesapeake Street and Southern Avenue S.E. Crowe was driving. At the stop light, Weaver, Sanders and Evans got out of the Rabbit and ran up to Parker's car. Crowe remained in the Rabbit. Weaver fired multiple times into the driver's side of Parker's car using a TEC-9. Sanders fired multiple times into the passenger's side of Parker's car,

using a .38 revolver. Evans, standing in back of Parker's car, had a gun in his hand but did not fire. Mr. Howard was not there and was altogether uninvolved. Mot. at ¶¶ 8-12.

When the shooting was over, the three men fled the scene through a nearby parking lot, sometimes referred to as a shortcut or alley, that led to the Linda Pollin Apartments. After running through the lot, Evans ran up a set of steps and into the Linda Pollin complex. Weaver and Sanders went a different way. They flagged down Crowe, who had pulled off into an alley that ran between the rear of the Linda Pollin complex and buildings that fronted onto Chesapeake Street. When Crowe stopped the Rabbit in the alley, Weaver and Sanders jumped in, and the three of them drove off. Mot. at ¶ 13.

As detailed in the Amended Motion, this account of the shooting, taken from the new, previously-unavailable accounts of Weaver, Sanders and Evans, is consistent with a vast amount of other evidence. The forensic evidence established that two weapons, a .9 mm and a .38 revolver, were used in Parker's murder, as the government concedes. Mot. at ¶¶ 70-75. Documents show that the government identified Crowe as a potential suspect near the onset of its investigation. Mot. at ¶¶ 21-22. The government's rebuttal witness, Charlita Brown, whose trial testimony was sanitized so as to exclude some of what she actually saw, has come forward to reiterate what she told the prosecutor prior to her testimony: Weaver, Sanders and a third man surrounded Parker's car, Crowe remained in the yellow Rabbit, and Mr. Howard, whom she knew, was not there. Mot. at ¶¶ 18-19, 23-24. Newly-discovered witness Lakeesha Wilson-Bey, who was with Brown that evening, confirms key aspects of Brown's account, including the presence of Sanders and Crowe at the crime scene. Mot. at ¶ 20. New witness Darrell Westbrook, Crowe's good friend, recounts that Crowe confessed to him that Mr. Howard was "taking the

beef” for Crowe in connection with Parker’s murder. Mot. at ¶ 16. New witness Lakesha Gillison confirms that, contrary to the government’s theory that four men surrounded and fled from Parker’s car, she saw two men surrounding the car and three men fleeing the scene on foot, and that none of them was Mr. Howard, whom she knew. Mot. at ¶¶ 25, 56. New witnesses Belinda Fowler and Jerome Brown say they saw three men running away from Parker’s car, not four. Mot. at ¶¶ 39-43. Newly-discovered statements from witnesses Claudia Holloway, Kate Harrison and Lt. Robert Lee Gales refer to three men, not four men, fleeing the scene, and Holloway’s and Harrison’s statements, taken together, confirm that one of the assailants ran up a set of steps leading into the Linda Pollin complex while the other two chased down and hopped into a yellow car in the alley. Mot. at ¶¶ 34-38, 51-52. Trial witness Pamuela Barnett told the police the night of the murder and testified at trial that she saw three men, not four, surround the car and flee the scene. Mot. at ¶¶ 31-32. Two other trial witnesses, Darene Barnett and Robert Erkhart, told the police the night of the murder that they, too, observed three suspects on foot, not four. Mot. at ¶¶ 58, 62-63. Consistent with the accounts of Weaver, Sanders and Evans, each of the above-named percipient witnesses – Charlita Brown, Wilson-Bey, Gillison, Fowler, Jerome Brown, Holloway, Harrison, Gales, Pamuela Barnett, Darene Barnett and Erkhart – as well as other trial witnesses, *all* establish that Parker’s car was located near the stoplight at the corner of Chesapeake and Southern and that the assailants fled through the parking lot leading to the Linda Pollin complex. And, in addition to yet more evidence demonstrating Mr. Howard’s innocence (which is set forth in the Amended Motion), Mr. Howard has sworn under oath that he did not participate in the murder. Mot. at ¶ 12.

All of this evidence establishing Mr. Howard's innocence flatly contradicts the testimony of Bobby Taylor and Wanda Thompson, the only two witnesses who placed Mr. Howard at the scene of the crime. As to the means and path of the assailants' flight, Taylor's and Thompson's accounts are inconsistent not only with each other, but with the consistent accounts of no fewer than 19 other witnesses. Mot. at ¶¶ 91-92, 114.

Similarly, their testimony regarding whether it was daylight when the shooting occurred (Taylor), where Parker's car was located (Thompson and Taylor), whether Parker's car was moving (Taylor) and whether all the assailants were wearing something on their heads (Thompson and Taylor), is inconsistent with the account of every single other witness who has given testimony or otherwise made statements on the same subjects. Mot. at ¶¶ 93-95, 115-116.

As the Amended Motion makes clear, the accounts of Taylor and Thompson suffer from myriad other deficiencies. Taylor (i) had falsely accused Mr. Howard of sexually assaulting him in the D.C. jail; (ii) had falsely accused Mr. Howard of punching his sister; (iii) for a brief period dated the same woman as Mr. Howard – a woman whom Taylor told he would “get back at” Mr. Howard for returning to her the purse that Taylor took; (iv) acknowledged that he and Mr. Howard were not on good terms; (v) first came forward seven months after the murder by volunteering information, without being asked, in the 7<sup>th</sup> District station after having just been arrested for a felony drug offense and a Bail Reform Act violation; (vi) had falsely recounted that he was part of an argument (which included a reference to Mr. Howard) about the Parker murder with Weaver and Sanders at the D.C. jail on the same day that he first came forward; (vii) would, according to his own mother, “lie to the police and in court to get out of trouble”; and

(viii) was a drug abuser and an off-medication escapee from St. Elizabeth's with a history of auditory and visual hallucinations. Mot. at ¶¶ 99-109. Thompson, also a chronic drug abuser, denied knowing anything about the murder until she was put in the same room in the U.S. Attorney's Office with her brother Taylor, whom she knew was facing charges at the time and on whose behalf, according to her mother, she would "lie to the police and in court . . . ." Mot. at ¶ 111. In addition, Thompson *misidentified* Mr. Howard (and Weaver) at trial, after having repeatedly altered her story – indeed, contradicted herself – about how she supposedly knew him. Mot. at ¶¶ 117-121. With all of this, it makes sense that Taylor and Thompson's mother, Geraldine Thompson, has now come forward to state, under oath, that Taylor and Thompson never left the house the evening of Parker's murder, and thus could not have seen what they said they saw. Mot. at ¶ 124.

## **ARGUMENT**

### **I. THE D.C. INNOCENCE PROTECTION ACT**

The D.C. Innocence Protection Act ("IPA"), enacted on May 17, 2002, allows a person convicted of a criminal offense to have his conviction vacated or to obtain a new trial on the grounds of actual innocence based on new evidence. See D.C. Code § 22-4135(a). The IPA effectively "supplements the protections available to a convicted person under Rule 33 or D.C. Code § 23-110 by enabling the person to seek relief, *without time limitation*, on the basis of 'new evidence,' § 22-4135(a), demonstrating his 'actual innocence.'" Bell v. United States, 871 A.2d 1199, 1201 (D.C. 2005) (citing Bouknight v. United States, 867 A.2d 245, 251-52 (D.C. 2005)) (emphasis added).

The "new evidence" necessary to obtain relief under the IPA is defined, in pertinent part, as evidence that:

- (A) Was not personally known and could not, in the exercise of reasonable diligence, have been personally known to the movant at the time of the trial or plea proceeding;
- (B) Was personally known to the movant at the time of the trial or the plea proceeding, but could not be produced at that time because:
  - (i) The presence or the testimony of a witness could not be compelled or, in the exercise of reasonable diligence by the movant, otherwise obtained . . .

D.C. Code § 22-4131(7). As the D.C. Court of Appeals has noted, this new evidence provision of the IPA is “broader and more inclusive than the judicial test for newly discovered evidence” set forth in Super. Ct. Crim. R. 33. See Bouknight, 867 A.2d at 255. Moreover, as the above-cited provisions make clear, claims for innocence under the IPA need not be limited to those arising from new DNA or biological evidence, but can include claims arising from non-biological evidence obtained after the three-year limit of Rule 33. See Bouknight, 867 A.2d at 252 n.4.

In determining whether to grant relief under the IPA, the Court must consider:

- (A) The new evidence;
- (B) How the new evidence demonstrates actual innocence;
- (C) Why the new evidence is or is not cumulative or impeaching . . .

D.C. Code § 22-4135 (g)(1). Additionally, the Court may consider “*any relevant evidence*” bearing on the movant’s claim. Id. (emphasis added). As demonstrated by Judge Burgess’ opinion in United States v. Dewitt, the consideration of “any relevant evidence” entails not only an assessment of the new evidence, but a re-examination of the evidence introduced at trial in light of the new evidence. See United States v. Dewitt, Mem. and Order, No. F5548-91 (D.C. Super. Ct. Dec. 17, 2004) (attached hereto as **Exhibit A**). In Dewitt, Judge Burgess began by discussing the key piece of new

evidence, which was a new eyewitness account identifying a perpetrator other than Dewitt. Dewitt, at 4-12. Judge Burgess proceeded to determine how other evidence, including both other new evidence (including an admission by the newly-identified, alternative perpetrator) *and* evidence from the trial record, provided corroboration for the new evidence. Id. at 12-37. Judge Burgess concluded by examining whether the new evidence, plus the corroborating trial evidence, tended to undermine the trial evidence incriminating Dewitt, including the prior eyewitness identifications of Dewitt.<sup>1</sup> Id. at 37-84.

After considering all relevant evidence bearing on an IPA claim, the Court, like Judge Burgess in Dewitt, must determine what relief, if any, is warranted. If the Court “concludes by clear and convincing evidence that the movant is actually innocent of the crime,” then it “shall vacate the conviction and dismiss the relevant count with prejudice.” D.C. Code § 22-4135(g)(3). If, however, the Court determines that “it is more likely than not that the movant is actually innocent of the crime,” then the Court “shall grant a new trial.” D.C. Code § 22-4135(g)(2).

**II. THE NEW EVIDENCE, TAKEN TOGETHER WITH ALL THE OTHER EVIDENCE IN THIS CASE, ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT MR. HOWARD IS ACTUALLY INNOCENT.**

A considerable amount of the evidence set forth in the Amended Motion, and briefly summarized above, constitutes “new evidence” under the IPA. It is not cumulative of evidence introduced at trial, nor does it merely impeach the two trial witnesses who inculpated Mr. Howard. When considered in combination with all other

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<sup>1</sup> For instance, Judge Burgess observed that the new eyewitness’ account, “if believed, is evidence more powerful than that of eyewitnesses at trial, who were strangers to Dewitt and whose identifications are impaired . . . .” Id. at 8.

relevant evidence, including the evidence at trial, this new evidence shows by clear and convincing evidence that Mr. Howard is actually innocent of the crimes of which he was convicted.

**A. The New Evidence Establishing Mr. Howard's Innocence Satisfies the "New Evidence" Requirements of the Innocence Protection Act.**

Some of the new evidence set forth in the Amended Motion constitutes new evidence because it is evidence that, although personally known to Mr. Howard at the time of trial, could not have been produced at that time because it could not be compelled or otherwise could not be obtained in the exercise of reasonable diligence. See D.C. Code § 22-4131(7)(B)(i). This new evidence includes:

1. The accounts Mr. Howard's three co-defendants, Eric Weaver, Cary Sanders and Terry Evans. In these accounts, each co-defendant independently admits his involvement in the murder of Bobby Parker, establishes that Tron Crowe participated and confirms that Mr. Howard was not involved. Mot. at ¶¶ 9-13. These accounts have been unobtainable because each co-defendant has enjoyed a Fifth Amendment right against self-incrimination.
2. The account of newly-discovered witness Lakeesha Gillison, who observed Parker's murder, knew Mr. Howard and did not see Howard among the assailants. Mot. at ¶¶ 25, 56. Gillison's account, although generally known to Mr. Howard, could not be obtained in the exercise of reasonable diligence, as Mr. Howard's trial attorney did not locate (or attempt to locate) her.

The following “new evidence” was not personally known and could not, in the exercise of reasonable diligence, have been personally known to Mr. Howard at the time of trial, D.C. Code § 22-4131(7)(A):

1. Tron Crowe’s admission to his close friend Darrell Westbrook that Mr. Howard was “taking the beef” for Crowe in connection with Bobby Parker’s murder. Mot. at ¶ 16.
2. The account of Charlita Brown, whose trial testimony was sanitized, who observed Weaver, Sanders and Crowe as participants in the murder, and who knew Mr. Howard but did not see Mr. Howard at the scene of the crime (as she informed the government the morning of her trial testimony). Mot. at ¶ 18-19, 23-24.
3. The account of Lakeesha Wilson-Bey, who was with Brown at the time of Parker’s murder and saw Sanders and Crowe at the scene of the shooting. Mot. at ¶ 20.
4. The notes of MPD Det. George Steel’s March 1988 interview of key government witness Anthony Ferguson. The notes contain numerous details about “Tron,” who, according to Ferguson, was “always w/Weaver & Little Man” and was “probably present” at the scene of the murder. Mot. at ¶ 21.
5. A preliminary “to do list” prepared by MPD Det. George Steel. One of the tasks listed is “to identify ‘Tron.’” Mot. at ¶ 22.

6. A report of an April 4, 1988 Crime Stoppers Call, in which a female caller names Eric Weaver, Cary Sanders, and Terry Evans as being responsible for Parker's murder but does not mention Mr. Howard. Mot. at ¶¶ 53-55.
7. The account of Belinda Fowler, who apparently was subpoenaed to the grand jury and trial but never testified in either forum. Fowler saw three men run from the scene through the parking lot leading to Linda Pollin Apartments, and maintains that she always told the government she saw only three men, even though they suggested to her that that there were four. Mot. at ¶¶ 39-40.
8. The account of Jerome Brown, who apparently was subpoenaed to the grand jury but who did not testify either in grand jury or at trial. Brown recalls seeing three men surrounding Parker's car and three men flee the scene. Mot. at ¶ 42.
9. The notes/running resumes containing the accounts of eyewitnesses Claudia Holloway, Kate Harrison, Leon Joiner and Lt. Robert Lee Gales, given soon after Parker's murder. These accounts corroborate the details of the accounts of Weaver, Sanders, and Evans. Mot. at ¶¶ 34-38, 49-52.
10. A diagram based on a pre-trial interview of government witness Mary McDuffie. The diagram constituted *Jencks* and *Brady* material. Mot. at ¶¶ 64-66.
11. The notes of a government interview of Sylvia Boulware, Anthony Ferguson's mother. The notes reflect the fact that Mr. Howard was in a

dispute with and was starting to disassociate himself from Weaver at the time of Parker's murder. Mot. at ¶ 27.

12. A memorandum prepared by Commander Ritchie, Captain of the MPD Homicide Branch on Feb. 25, 1988, which reflects the fact that, from the beginning (and probably until Bobby Taylor came forward), the government suspected three, not four, men in connection with Parker's murder. Mot. at ¶ 69.
13. The account of Geraldine Thompson, mother of siblings Bobby Taylor and Wanda Thompson. Thompson recalls that Taylor and Thompson did not leave the home the evening of Parker's murder, that neither one of them ever told her they witnessed Parker's murder, that Taylor would have lied to the police and in court to protect himself, and that Thompson would have lied to the police and in court to help out Taylor. Mot. at ¶¶ 104, 107-108, 111.
14. The account of Terry Thomas, who dated both Taylor and Mr. Howard. Thomas recalls that Taylor told her approximately two months before Parker's murder that Taylor would "get back at Mike [Howard]" because Mr. Howard had returned to Thomas a purse that Taylor had stolen from her. Mot. at ¶ 100.

**B. The New Evidence Establishing Mr. Howard's Innocence Is Substantially Corroborated by the Record Evidence and Conclusively Undermines the Weak Record Evidence of Mr. Howard's Guilt.**

The new evidence detailed in the Amended Motion and summarized above – which includes both new information that Mr. Howard independently has obtained and


information that the government had but did not present at trial – affirmatively establishes that Weaver, Sanders, Evans and Tron Crowe participated in the murder of Bobby Parker and that Mr. Howard was not involved. The evidence introduced at trial substantially reinforces that conclusion. See United States v. Dewitt, Mem. and Order, No. F5548-91, 23-37 (D.C. Super. Ct. Dec. 17, 2004) (considering record evidence that corroborates new evidence). At the same time, the new evidence, in combination with much of the trial evidence, conclusively undermines the only evidence inculping Mr. Howard, *i.e.*, the testimony of Bobby Taylor and Wanda Thompson. Id. at 37-84 (re-examining inculpatory evidence in light of the new evidence and countervailing record evidence). As a result, it is clear that Mr. Howard is actually innocent of the murder of Bobby Parker and of carrying a pistol without a license in connection with Parker’s murder.

### CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the Amended Motion, Mr. Howard’s convictions should be vacated, the counts of conviction should be dismissed with prejudice, and Mr. Howard should be released immediately from custody. Alternatively, Mr. Howard should be granted a new trial and released pending such trial.

Dated: April 28, 2008

Respectfully submitted,

  
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