

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3137
Conference Calendar

BERNARD RICARDO,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden, Louisiana
State Penitentiary, and RICHARD P.
IEYOUB, Attorney General State of
Louisiana,

Respondents-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 91-2657-D-5
- - - - -
(January 21, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Ricardo contends that the state violated Brady by failing to disclose information contained in an initial police report that the defense might have used to impeach prosecution witnesses Donna Brooks and Lefester Brooks. The rule of Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), requires the prosecution to disclose to the defendant all favorable evidence material either to guilt or punishment. Impeachment

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

evidence, information contained in police reports, and exculpatory evidence may fall within the Brady rule. Williams v. Whitley, 940 F.2d 132, 133 (5th Cir. 1991).

Ricardo points to Donna Brooks's statement in the report that "an unknown black male" approached the victim and began firing, and to Lefester Brooks's statement that she was too afraid to look out of her window during the shooting, as conflicting with their trial testimony. However, notwithstanding Ricardo's contention to the contrary, it is not clear that the police report statements have any persuasive value as impeachment material. Donna Brooks's trial testimony revealed that, while initially neither she nor the victim knew who was firing the shots, as the shooting continued, she was able to identify Ricardo as the perpetrator. Lefester Brooks testified at trial that when she heard the first shot, she ran into her room and ducked down on the floor near a window. She further testified that after the shooting stopped, she looked out of the window and saw Ricardo pointing a gun. Moreover, the initial police report notes that both women told police officers that the victim had been shot by a man they knew as "Bunny." At trial, Ricardo acknowledged that this was his nickname. Thus, the record does not disclose a fatal inconsistency between the Brooks's trial testimony and their statements in the initial police report.

Most importantly, the identity of the perpetrator was never an issue in this case because Ricardo testified at trial that he shot the victim in self-defense.

Because the record before the district court was adequate to

dispose of Ricardo's claim, he is not entitled to an evidentiary hearing. See Joseph v. Butler, 838 F.2d 786, 788 (5th Cir. 1988).

AFFIRMED.