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Daniels v. Lee
316 F.3d 477 (4th Cir. 2003)

I. Facts

On January 17, 1990, in Mecklenberg County, John Dennis Daniels ("Daniels") wrapped an electrical cord around his elderly aunt's neck and strangled her. Daniels stole seventy to eighty dollars from his aunt's purse, purchased some cocaine, and returned to his home which he shared with his wife and son. Daniels smoked his cocaine in the bathroom. Afterward, he attacked his wife with a hammer, then chased her down the hall and hit her in the head with a kerosene heater. At this point, Daniels's son joined the struggle. Daniels removed a rock from the family's aquarium and struck his son with it. He then began striking his son in the head with the hammer. Daniels chased his wife and son out into the yard and continued to strike his wife in the head with the hammer. Shortly thereafter, the house caught on fire and the police arrived.[1]

When the police picked Daniels up, he directed them to his aunt's house. The police discovered her strangled body with the cord still wrapped around her neck. The police officer then took Daniels to the Law Enforcement Center. Daniels requested pen and paper and wrote a letter to the Governor which stated that he was not crazy and that his actions were premeditated. Shortly after writing this letter, an investigator found Daniels with the drawstring from his pants tied around his neck and a second string attached to a filing cabinet. Following this incident, Daniels waived his Miranda rights and gave a confession by the end of the night. Early the next morning, the defendant was committed to Dorothea Dix Hospital for two weeks because he was suicidal.[2]

At trial, Daniels presented evidence that he had a pervasive personality disorder and a history of drug and alcohol dependency which impaired his ability to act with premeditation. His substance abuse aggravated his personality disorder and resulted in an emotional and social state similar to that of an eleven or twelve-year-old child. A clinical psychologist testified that the defendant's ability to weigh the consequences of his behavior would have been reduced to the point of being "inconsequential."[3]

Daniels was convicted of capital murder and sentenced to death. On direct appeal, Daniels was denied relief. He then filed a Motion for Appropriate Relief ("MAR"), but it too was denied. Daniels filed a second MAR in 1995 and it was

1. Daniels v. Lee, 316 F.3d 477, 480-81 (4th Cir. 2003).

2. *Id.* at 481-82.

3. *Id.* at 483.

dismissed. In 1996, the North Carolina legislature passed North Carolina General Statutes Section 15A-1415(f) ("1415(f)") which provided that a capital prisoner is entitled to the complete files of his case from all the agencies involved in his prosecution. Based on 1415(f), Daniels filed a motion for discovery. The State contended that because Daniels's second MAR had been filed and dismissed before 1996, 1415(f) did not entitle him to relief. While this issue was being contested, Daniels sought federal habeas relief in district court. Eventually, the Supreme Court of North Carolina determined that 1415(f) applied retroactively. Daniels was then able to complete his request for discovery under the statute. He filed an amended petition for federal habeas relief in 2001 and the district court awarded summary judgment to the State. Daniels then sought a certificate of appealability and a reversal of the Summary Judgment Order.[4]

II. Holding

The United States Court of Appeals for the Fourth Circuit declined to issue Daniels a certificate of appealability and dismissed his appeal.[5]

III. Analysis

The Fourth Circuit explained that in order for a certificate of appealability to issue, the applicant must make a "substantial showing of the denial of a constitutional right."[6] The court then applied this standard to the five claims Daniels raised in his petition for habeas relief.[7] The court gave the most detailed treatment to Daniels's Sixth Amendment claim.

Daniels claimed that the trial court violated his Sixth Amendment rights by impinging upon his right to compulsory process and his right to self-representation.[8] Daniels wanted to call Public Defender Isabel Day ("Day") to testify about his incapacity on the night he was arrested.[9] Day represented Daniels at the

4. *Id.* at 483-85.

5. *Id.* at 480.

6. *Id.* at 486 (quoting 28 U.S.C. § 2253(c)(B)(2) (2000) (explaining the standard for issuing a COA; part of AEDPA)). The Fourth Circuit in *Daniels* applied the appropriate standard in its determination that a COA should not issue. *Id.* at 486-95; *see* Miller-El v. Cockrell, 123 S.Ct. 1029, 1034 (2003) (holding that a petitioner must demonstrate a substantial showing of a denial of a constitutional right before a COA may issue); Priya Nath, Case Note, 15 CAP. DEF. J. 407 (2003) (analyzing Miller-El v. Cockrell, 123 S. Ct. 1029 (2003)).

7. *Daniels*, 316 F.3d at 486. This case note will discuss four of the five points of error Daniels raised. The fifth claim involved an error in the State's closing argument that the court determined was procedurally defaulted. *Id.* The prosecutor used biblical quotations from the Old Testament to urge the jury to sentence the defendant to death and the prosecutor suggested to the jury that it was not ultimately responsible for a sentence of death. *Id.* at 487. The defendant did not object to these statements at trial, the error was therefore not preserved and the claim was procedurally defaulted. *Id.*

8. *Id.* at 488.

9. *Id.*

commitment proceeding which followed his early morning confession on January 18, 1990.[10] However, because another public defender from Day's office was one of Daniels's trial attorneys, the court would not permit her to testify.[11] Daniels's trial attorney then attempted to withdraw so that Day could testify, but the court refused his request.[12] The Fourth Circuit considered whether these claims amounted to a violation of the Sixth Amendment by applying the United States Supreme Court's language in *United States v. Valenzuela-Bernal*.[13] The Court stated that a defendant "cannot establish a violation of his constitutional right to a compulsory process merely by showing that [the court] deprived him of [the excluded witness's] testimony. He must at least make some plausible showing of how their testimony would have been both material and favorable to his defense."[14] In *Daniels*, the Fourth Circuit determined that other witnesses testified to the defendant's mental state and incapacity on the night of his arrest.[15] Therefore, Day's testimony was only cumulative and its exclusion did not constitute a violation of a constitutional right.[16]

In the same vein, Daniels argued that he should have been allowed to discharge the attorney who worked with Day.[17] The trial court's refusal to allow this withdrawal, Daniels argued, violated his right to self-representation.[18] The Fourth Circuit found this argument to border on the ridiculous and countered the defendant's claim with the fact that he never wanted to represent himself and that even if the attorney in question did withdraw, Daniels still would have been represented by his second attorney.[19]

Daniels also claimed that his right to testify had been violated during his sentencing proceeding.[20] Both of Daniels's trial attorneys admitted that while they did advise him of his right to testify during the guilt phase of the trial, they could not recall advising him of his right to testify during the sentencing phase.[21] The court found that Daniels was present during two discussions of his ability to testify at sentencing, once during voir dire and again when the trial court ruled that Daniels would be kept in leg irons during the sentencing proceeding.[22]

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10. *Id.*
11. *Id.*
12. *Id.*
13. *Daniels*, 316 F.3d 488-89 (citing United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982) (explaining the standard applied to violations of compulsory process)).
14. *Id.* at 489 (quoting *Valenzuela-Bernal*, 458 U.S. at 867).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Daniels*, 316 F.3d at 489-90.
20. *Id.* at 490.
21. *Id.*
22. *Id.* at 490-91.

During this hearing, the trial court stated that should Daniels choose to testify, the leg irons would not be displayed before the jury.[23] Based on this evidence, the court found that Daniels was aware of his right to testify, waived that right, and, therefore, could not make a substantial showing of a denial of a constitutional right.[24]

In conjunction with this claim, Daniels argued that his attorneys did not provide effective assistance of counsel because they failed to explicitly inform him of his right to testify.[25] The Fourth Circuit determined that Daniels's ineffective assistance of counsel claim did not pass the two-pronged test announced in *Strickland v. Washington.*[26] In order for counsel to be considered ineffective under *Strickland*, counsel must have made serious errors which produced prejudice to the defendant.[27] Daniels's trial attorneys were concerned with him taking the stand during the guilt phase of the trial and convinced him not to testify.[28] During the sentencing phase, the attorneys made sure that Daniels's mother took the stand to testify about his remorse.[29] Based on this evidence, the lower court determined that Daniels's attorneys made a tactical decision and the Fourth Circuit concluded that there was no showing of a denial of a constitutional right.[30]

Next, Daniels raised two claims against his indictment.[31] He argued that North Carolina's short form indictment did not allege the necessary elements of the murder offense and, therefore, was insufficient.[32] The court gave short shrift to this argument and cited the longstanding support for the short form murder indictment in the United States Supreme Court's decision in *Hodgson v. Vermont*[33] which the Fourth Circuit recently reapplied in *Hartman v. Lee.*[34] Further, Daniels claimed that because the indictment failed to allege the aggravating factors necessary for a jury to find for a sentence of death, the indictment was insuffi-

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23. *Id.* at 491.

24. *Id.*

25. *Daniels*, 316 F.3d at 491.

26. *Id.* (citing Strickland v. Washington, 466 U.S. 668, 687 (1984) (defining the test for an ineffective assistance of counsel claim)).

27. *Strickland*, 466 U.S. at 687 (stating that a Sixth Amendment violation requires that the defendant "show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense").

28. *Daniels*, 316 F.3d at 491.

29. *Id.*

30. *Id.* at 491-92.

31. *Id.* at 492.

32. *Id.*

33. 168 U.S. 262 (1897).

34. *Daniels*, 316 F.3d at 493; *see* Hodgson v. Vermont, 168 U.S. 262, 270 (1897) (holding that "it is sufficient to charge a statutory offense in the terms of the statute"); Hartman v. Lee, 283 F.3d 190, 197 (4th Cir. 2002) (upholding North Carolina's short-form murder indictment).

cient under the United States Supreme Court's rulings in *Ring v. Arizona*,[35] *Harris v. United States*,[36] *Apprendi v. New Jersey*,[37] and *Jones v. United States*.[38] The Fourth Circuit determined that this indictment claim did not amount to a substantial showing of a denial of a constitutional right because the *Ring* line of cases was not clearly established federal law at the time of Daniels's final conviction.[39]

Finally, Daniels asserted that the prosecution knowingly offered false testimony to the jury.[40] One witness for the prosecution, Dr. White, testified that she interviewed some of Daniels's classmates, one of his supervisors when he was in the Marines, and a former employer.[41] She testified that she formed her opinions regarding Daniels's capacity based on these interviews, a review of Daniels's files, and her expertise.[42] The defendant's false testimony claim centers around two facts. First, Dr. White only interviewed one of the defendant's classmates, but she told the jury she had interviewed "some."[43] Second, the prosecutor sent Dr. White a note a day or two before she testified and instructed her to interview certain individuals and to review certain documents.[44] When she testified to the jury, Dr. White said that her opinions were based upon these documents and interviews.[45] The defendant tried to argue that Dr. White's opinions must have been formed ahead of time and that she only cited these last minute interviews to bolster her credibility; therefore, her testimony regarding the basis of her opinions was false.[46]

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35. 122 S. Ct. 2428 (2002).

36. 122 S. Ct. 2406 (2002).

37. 530 U.S. 466 (2000).

38. *Daniels*, 316 F.3d at 492; *see* Ring v. Arizona, 122 S. Ct. 2428, 2430 (2002) (Scalia, J., concurring) (clarifying that "[b]ecause Arizona's enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,' the Sixth Amendment requires that they be found by a jury"); Harris v. United States, 122 S. Ct. 2406, 2413-16 (2002) (holding that a judge can determine a sentencing factor that affects the mandatory minimum penalty without violating constitutional rights, but cannot determine a sentencing factor which will affect a mandatory maximum); Apprendi v. New Jersey, 530 U.S. 466, 476 (2000) (holding that the Sixth Amendment protects a defendant from receiving a punishment that exceeds the maximum penalty he would have received based on the facts found by the jury verdict alone); Jones v. United States, 526 U.S. 227, 243 n.6, 252 (1999) (finding that a carjacking statute that listed three acts with three different penalties must be treated as three distinct offenses and each offense "must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt").

39. *Daniels*, 316 F.3d at 492-93; *see* 28 U.S.C. § 2254(d)(1) (2000) (stating that a writ of habeas corpus pursuant to a state court decision can only be granted if the state court decision was contrary to or was an unreasonable application of clearly established federal law; part of AEDPA).

40. *Daniels*, 316 F.3d at 493.

41. *Id.* at 493-94.

42. *Id.*

43. *Id.* at 494.

44. *Id.*

45. *Id.*

46. *Daniels*, 316 F.3d at 494.

In order to resolve this claim the Fourth Circuit relied on *Napue v. Illinois*[47] which holds that the knowing use of false testimony could violate the defendant's due process rights.[48] *Napue* requires that a witness gave testimony which was false, that the prosecutor knew the testimony was false, and that the testimony was material.[49] The fact that Dr. White testified that she interviewed "some" as opposed to one classmate did not constitute a *Napue* claim because there was no indication that the prosecutor was aware that this testimony was false. The court, however, did not mention this point and focused instead on the materiality of the statement.[50] Dr. White corrected her statement regarding the number of classmates she interviewed while still on direct examination before the jury.[51] In light of this quick correction, the court determined that the original false statement did not have a material effect on the judgment of the jury.[52] Further, Dr. White's testimony that her interviews informed her opinions was not necessarily false just because the interviews took place right before the trial.[53] The Fourth Circuit concluded that neither of these incidents amounted to a violation of a constitutional right.[54]

IV. Application in Virginia

The first point of interest that arises from *Daniels* surrounds the defendant's right to testify. According to the Fourth Circuit, a defendant need not be specifically informed of his right to testify during the sentencing proceeding.[55] A criminal defendant should be competent enough to infer this right from the interactions his attorneys have with the court.[56] This holding presumes that criminal defendants are astute enough to make inferences regarding their rights at trial and sentencing and do not need the benefit of explicit explanation or guidance from counsel.

Defense counsel should also consider their professional relationships with other attorneys who have interacted with the defendant before accepting an appointment to a capital case. Day could well have been the most convincing

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47. 360 U.S. 264 (1959).

48. *Daniels*, 316 F.3d at 493 (citing Napue v. Illinois, 360 U.S. 264, 269 (1959) (holding that the prosecution violates a defendant's due process rights by knowingly using perjured testimony to obtain a conviction)).

49. *Id.* (citing Basden v. Lee, 290 F.3d 602, 614 (4th Cir. 2002) (stating that a "*Napue* claim requires a showing of the falsity and materiality of testimony" and that "by knowingly offering or failing to correct false testimony" the State violates the defendant's due process rights)).

50. *Id.* at 494.

51. *Id.* at 494-95.

52. *Id.* at 495.

53. *Id.* at 494.

54. *Daniels*, 316 F.3d at 495.

55. *Id.* at 490.

56. *Id.* at 490-91.

witness to speak on Daniels's behalf regarding his condition on the night of his arrest. Yet, the Fourth Circuit upheld the lower court's decision to bar her testimony because she worked with one of Daniels's trial attorneys.[57] Defense counsel may need to check that a possible client has not had an evaluation, commitment hearing, interview, or pre-trial hearing that involved a co-worker before taking the case.

Daniels also clarified the Fourth Circuit's position on the application of *Ring* to capital indictments. The court leaves open the question of whether capital sentencing aggravators are now required in the indictment.[58] However, the Fourth Circuit clearly stated that *Ring* cannot be applied retroactively.[59] This decision affects all defendants whose date of final conviction precedes 2002. The Fourth Circuit will not entertain insufficiencies in the indictment in pre-2002 final convictions for failure to allege the aggravating factors.[60]

The Fourth Circuit's decision regarding retroactivity is based exclusively on the language of AEDPA.[61] The court does not make an inquiry under *Teague v. Lane*.[62] However, sister circuits have responded differently to similar retroactivity questions. In 1999, the United States Supreme Court held in *Richardson v. United States*[63] that when a jury convicts a defendant of committing a continuing series of violations, it must unanimously agree on the specific violations.[64] This decision provided a substantive interpretation of a statute—the underlying violations are elements of the offense. Like *Richardson*, *Ring* also provided a substantive interpretation of a statute—capital sentencing aggravators are elements of the offense.[65]

The Fourth Circuit has not ruled on whether *Richardson* should be applied retroactively on collateral review.[66] Six other circuits have, however, concluded

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57. *Id.* at 488-89.

58. *Id.* at 492.

59. *Id.* at 493.

60. *See Daniels*, 316 F.3d at 493 (stating that because *Ring*, *Harris*, *Jones*, and *Apprendi* were not established law in 1995, they cannot be used to invalidate Daniels's conviction or sentence).

61. *Id.*

62. Teague v. Lane, 489 U.S. 288, 311 (1989) (holding that new criminal *procedure* rules, that are not based on prior precedent, do not apply to defendants who have received final judgments, unless the rule falls within two narrow exceptions); *see* Horn v. Banks, 122 S. Ct. 2147, 2150 (2002) (affirming that a threshold question in every habeas case, is whether the court must apply the *Teague* rule to the defendant's claim); Janice L. Kopec, Case Note, 15 CAP. DEF. J. 133 (2002) (analyzing Horn v. Banks, 122 S. Ct. 2147 (2002)).

63. 526 U.S. 813 (1999).

64. Richardson v. United States, 526 U.S. 813, 815 (1999) (holding that a jury must unanimously find the specific violations underlying a conviction of committing a continuing series of violations).

65. *Ring*, 122 S. Ct. at 2430.

66. Little v. United States, 184 F. Supp. 2d 489, 496 (E.D. Va. 2002) (stating that because neither the Fourth Circuit, nor the United States Supreme Court, has ruled on retroactive application of *Richardson*, it might be retroactively applicable on collateral review).

that *Teague* does not bar retroactive application of *Richardson*.[67] The reason for this conclusion is that *Richardson* is considered a substantive rule, and *Teague* does not bar retroactive application of substantive rules.[68] Courts have also ruled that *Teague* does bar retroactive application of *Apprendi*, essentially because *Apprendi* contains a procedural rule.[69] These decisions are informative for two reasons. First, other circuits are applying a *Teague* analysis to *Richardson* and *Apprendi*; they are not confining their rulings to the language of AEDPA. Second, the portion of *Ring* which re-defines the aggravators is more like *Richardson* than *Apprendi*.

The holding of *Ring* has two components—one procedural and one substantive. The procedural component of *Ring* echoes *Apprendi* in that it requires the jury, not the judge to make factual findings during the sentencing phase.[70] The part of the Arizona statute which allocated this power to the judge is unconstitutional.[71] This portion of *Ring* is no doubt procedural and, like *Apprendi*, would be barred from retroactive application under *Teague*.[72]

In the same breath, the Court in *Ring* also stated that "Arizona's enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense.' "[73] Even though this language stems from *Apprendi*, it is substantively applied to Arizona's statutory aggravators. *Ring* requires that a sentencing jury agree unanimously on an aggravator. This interpretation is substantive and identical to the one at work in *Richardson*:

> If the statute creates a single element, a "series," in respect to which individual violations are but the means, then the jury need only agree that the defendant committed at least three of all the underlying crimes the Government has tried to prove. The jury need not agree about which three. On the other hand, if the statute makes each "violation"

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67. *See* United States v. Barajas-Diaz, 313 F.3d 1242, 1245 (10th Cir. 2002) (stating that *Teague* does not bar retroactive application of *Richardson* because *Richardson* is a substantive rule); Ross v. United States, 289 F.3d 677, 681 (11th Cir. 2002) (supporting the same proposition); United States v. Lopez, 248 F.3d 427, 432 (5th Cir. 2001) (supporting the same proposition); Santana-Madera v. United States, 260 F.3d 133, 138-39 (2d Cir. 2001) (supporting the same proposition); Lanier v. United States, 220 F.3d 833, 837-38 (7th Cir. 2000) (supporting the same proposition); Murr v. United States, 200 F.3d 895, 906 (6th Cir. 2000) (supporting the same proposition).

68. *Barajas-Diaz*, 313 F.3d at 1245.

69. United States v. Brown, 305 F.3d 304, 308 (5th Cir. 2002) (concluding that the new rule in *Apprendi* is procedural, not substantive, and under *Teague* would be barred from retroactive application on collateral review). *Brown* cites seven other circuits which applied the *Teague* analysis to *Apprendi* and held that it was not retroactive on collateral review. *Id.* at 308-09 (citations omitted).

70. *Ring*, 122 S.Ct. at 2443.

71. *Id.* at 2442-43.

72. For an interesting discussion supporting the proposition that *Apprendi* should be granted retroactive status under *Teague* see People v. Beachem, No. 1-99-0852, 2002 WL 31875456, at *1, *3-*8 (Ill. App. Dec. 24, 2002) (unpublished opinion).

73. *Ring*, 122 S.Ct. at 2443 (quoting *Apprendi*, 530 U.S. at 494 n.19).

> a separate element, then the jury must agree unanimously about which three crimes the defendant committed.[74]

Like *Richardson's* "violations," *Ring* makes every aggravator a separate element which the jury must unanimously agree upon. This portion of *Ring* is a substantive interpretation of the role of aggravators in the statute; similar to *Richardson*, they have been re-defined. Substantive statutory interpretations that result in new rules are not barred from retroactive application under *Teague*.

Based on *Ring*, Daniels claimed that his indictment was insufficient because it failed to allege the sentencing aggravators.[75] This challenge relied solely on the substantive portion of the *Ring* holding. The procedural portion which shifted power from judge to jury is not at issue. Because challenges to indictments only touch on the substantive portions of *Ring*, they should be granted retroactive application in accordance with the treatment *Richardson* has received.

V. Conclusion

In each issue which arose in *Daniels*, the Fourth Circuit contemplated the merits of the arguments and determined that the defendant did not make a substantial showing of a violation of a constitutional right. These decisions reflect the great deference paid to lower court decisions under the AEDPA standards. The Fourth Circuit punctuated its reluctance to challenge the lower court's decisions by using AEDPA to bar retroactive application of the *Ring* line of cases.[76]

Janice L. Kopec

74. *Richardson*, 526 U.S. at 818.

75. *Daniels*, 316 F.3d at 492-93.

76. *Id.* at 493.