IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

CURTIS F. PRICE ,

On Habeas Corpus,

CAPITAL CASE

S069685

(former related appeal S004719; related petitions, S018328 & S023791)

TRAVERSE
TO RETURN TO ORDER TO SHOW CAUSE

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PETITIONER'S TRAVERSE

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

By this verified traverse, petitioner CURTIS F. PRICE, through his court-appointed counsel, responds to the Return as follows:

Introduction

1. Petitioner Curtis F. Price was convicted by a jury on May 9, 1986 in Humboldt County Superior Court of the first degree murders of Elizabeth Hickey and Richard Barnes, of conspiracy to commit murder and of other substantive offenses. The jury returned a death verdict against petitioner on July 8, 1986.

2. Petitioner's convictions and sentence of death were affirmed by this Court on direct appeal in People v. Price (1991) 1 Cal.4th 324. Petitioner filed a petition for writ of habeas corpus on November 12, 1990, and another petition on November 11, 1991. This Court denied both petitions without opinion. Petitioner

filed a federal petition for writ of habeas corpus on April 21, 1997. Petitioner filed a petition for writ of habeas corpus in this Court on April 21, 1998 to exhaust ten of the claims raised in his federal petition. Respondent filed its informal response to the exhaustion petition on April 5, 1999. Petitioner filed his reply to the informal response on December 20, 1999. Respondent filed a letter brief on October 2, 2000 concerning the materials forwarded to this Court by San Mateo Superior Court Judge Carl W. Holm in which a special agent employed by the California Attorney General's Office documented and recounted case-related misconduct by Price prosecutor and now retired Assistant California Attorney General Ronald A. Bass. Petitioner filed his reply to respondent's letter brief on May 18, 2001.

3. On December 17, 2003, this Court issued an order to show cause ("OSC"), limited in scope, requiring the Director of Corrections to show cause why habeas relief should not be granted on the ground that "the prosecutor in this case improperly tampered with a sitting juror by sending her alcoholic drinks and money, telling her to return a guilty verdict."

4. The facts to which the OSC applies are set forth in Claim III of the exhaustion petition. In that Claim, petitioner alleged as follows: Ronald A. Bass, then a Deputy California Attorney General and a co-prosecutor in the Price case, engaged in unethical, inappropriate and improper conduct involving juror Zetta Southworth one evening during petitioner's trial when Bass was out drinking at the Waterfront, a bar/café in Eureka, with Geri Johnson, the wife of his co-prosecutor; juror Southworth was working as a cook at the Waterfront that evening, during the course of which Bass sent her an alcohol drink and later some cash along with a message from him to her to bring back a guilty verdict against Price; the alcohol drink, the cash and the message to vote guilty were all delivered to Southworth by Robert McConkey, the bartender at the Waterfront; and when

McConkey gave Southworth Bass's message to vote guilty and handed her the cash, Southworth accepted the money.

5. In its Informal Response to that Claim, respondent called petitioner's accusations of improper conduct by Ron Bass involving juror Southworth "wholly unsupported, but gravely inflammatory." (See Informal Response at 25.) Respondent suggested on the basis of McConkey's statements to respondent's investigator that the incident at the Waterfront never happened and that the entire story was only a yarn and was not to be taken seriously. (Id. at 26.) Without filing a declaration from either Ron Bass or from Geri Johnson, respondent asserted that petitioner's allegations "are entirely unsupported by plausible evidence." Respondent went on to suggest that petitioner's claim of jury tampering by Bass could and should therefore be rejected out-of-hand by this Court. (Id.)

6. This Court rejected that suggestion and instead issued an OSC on the jury tampering claim. "Issuance of an OSC signifies the court's preliminary determination that the petitioner has pleaded sufficient facts that, if true, would entitle him to relief." (People v. Duvall (1995) 9 Cal.4th 464, 475.)

7. On March 2, 2004, respondent filed its Return to the OSC, with three appended exhibits: a declaration of Ronald A. Bass (Exhibit A to the Return); a declaration from Geraldine Ann Johnson (Exhibit B to the Return) and a report of a telephonic interview of Robert McConkey conducted on February 10, 2004. (Exhibit C to the Return). On March 25, 2004, respondent belatedly filed McConkey's declaration, which was executed on February 28, 2004 and which contains most but not all of the information set forth in the report of his interview

by respondent's investigator on February 10, 2004. Petitioner will refer in this Traverse to McConkey's declaration as Exhibit C1 to the Return.[1]

8. Geri Johnson's declaration negates any notion that the Bass-Southworth incident never happened and was only a yarn made up by Robert McConkey. Johnson confirms that she and Ron Bass did in fact go to the Waterfront one evening during the Price trial after playing racquetball together. She also confirms that Robert McConkey was working as the bartender that evening at the Waterfront, that Zetta Southworth was working in the kitchen at the Waterfront that evening in question, and that she (Johnson) and Bass knew that Southworth was present at the Waterfront that evening. Johnson also confirms that before she and Bass left the Waterfront that evening, Bass put two $20 bills on the bar and told McConkey to give one of the twenties to Zetta and "tell her to vote guilty." (Exh. B to the Return.) Ms. Johnson claims that both she and McConkey understood that this remark was plainly meant as a joke. (Exh. B to Return, at 2.) Johnson has no personal knowledge nor does she purport to know what took place at the Waterfront that evening after she and Bass left the premises. Her declaration therefore does not refute nor does it even address the critical issue of whether McConkey did what Bass asked him to do, jokingly or otherwise, and gave Southworth the message about voting guilty and the money.

9. Petitioner alleges that McConkey did convey Bass's message to Southworth about voting guilty and handed her the money from Bass, and that Southworth accepted the money, and that McConkey admitted doing so to his acquaintance, attorney Gena Eichenberg (See Exhibit I to Traverse), to petitioner's habeas counsel, Robert McGlasson, in Ms. Eichenberg's presence in December 1995 (id.), and later to Mr. McGlasson and to Sandra Michaels, an attorney assisting him. (See Exh. 11 to the Petition.)

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[1] Petitioner notes that in the Court's docket, McConkey's declaration is erroneously referred to as Exhibit A to the Return.

10. As part of his investigation for this Traverse, petitioner attempted to interview Mr. McConkey about certain statements in his declaration for the State, to interview Geri Johnson about some ambiguities in her declaration for the State and also certain apparent omissions in her declaration, to interview Ron Bass about certain apparent omissions in his declaration for the State, and also to interview Deputy District Attorney Worth Dikeman. Petitioner's efforts to interview those witnesses were rebuffed. McConkey, Johnson and Dikeman expressly refused to be interviewed by petitioner's investigator and/or by his counsel. (See declaration of Jon Frappier, attached as Exhibit 2 to the Traverse.) Ron Bass, who is now in the private practice of law, did not respond at all to counsel's written request to interview him.

11. Petitioner never had any opportunity to interview juror Southworth about the incident at the Waterfront. She died in 1989, six years before petitioner's counsel and petitioner first learned about the potential claim of jury tampering by the prosecutor in his case.

12. This Court has ordered petitioner to file his traverse to the return on or before October 5, 2004. This Traverse follows.

Incorporation by Reference

13. Petitioner hereby incorporates by this reference herein each fact alleged in his exhaustion petition for writ of habeas corpus filed in this Court on April 21, 1998 , as if fully set forth herein. He also refers to and incorporates by this reference each exhibit attached to the petition as if fully set forth herein. (See In re Sixto (1989) 48 Cal.3d 1247, 1252.) Petitioner also incorporates by reference each fact alleged in his informal reply to the State's informal response to the petition as if fully set forth herein, and refers to and incorporates by this reference each exhibit attached to the informal reply as if fully set forth herein. (See In re Gay (1998) 19 Cal. 4th 771, 781, n. 7 [noting that a petitioner may

incorporate by reference factual allegations in petitioner's reply to informal response].) Petitioner also incorporates by reference each fact alleged in his Reply to respondent's October 6, 2000 letter brief as if fully set forth herein, and refers to and incorporates by reference each exhibit attached to that Reply as if fully set forth herein.

14. Specifically, petitioner relies on every fact alleged in claims III and IV of his exhaustion petition and in the related sections of his informal reply, and specifically relies on the exhibits attached to the petition and to the informal reply supporting the allegations in those claims. Petitioner also specifically relies on every fact alleged in Claims I and VII of the petition and in the exhibits attached to the petition supporting those claims, and on each fact alleged in the related sections of the informal reply and the exhibits attached to the informal reply supporting those claims, and on every fact alleged in his reply to respondent's letter brief and in the exhibits to the reply, which show that in petitioner's case, prosecutor Ronald A. Bass engaged in a pattern of deliberate misconduct including the jury tampering incident that is the subject of the present proceedings.

15. Petitioner also incorporates all legal and factual arguments set forth in his exhaustion petition, informal reply and reply to respondent's letter brief as if fully set forth herein, and petitioner incorporates each exhibit attached to this Traverse by reference as if fully set forth herein.

Petitioner's Denials of the Allegations in the Return

16. Petitioner denies that his confinement is legal and that his constitutional rights were not violated in any respect. (Return, VI [b]).[2]

[2] Petitioner notes that the Return contains two sections enumerated as VI. In this Traverse, petitioner will refer to the second of those sections, which begins in the middle of page 7 of the Return, as VI (b).

17. Petitioner asserts that his convictions and sentence of death were unconstitutionally obtained and that he is entitled to habeas corpus relief.

18. Petitioner denies all allegations in section I on the Return except for the allegation that the body of Richard Barnes was found face down on his bed with three gun shot wounds to the back of his head. (Return, I, at p. 1).

19. Petitioner admits that he was convicted of special circumstance murder, robbery and other crimes, and was sentenced to death. (Return, II.)

20. Petitioner admits that his conviction and sentence were affirmed by this Court in 1991. He admits that this court's judgment constitutes the authority and cause for his restraint in respondent's custody, but he alleges that his judgment and convictions were unconstitutionally obtained and his restraint is illegal. (Return, III.)

21. Petitioner admits that his first application for collateral relief in this Court was denied on January 29, 1992. (Return, IV.) Petitioner filed that application on November 11, 1990. (S018328). Petitioner filed another application a year later on November 12, 1991. (S023791.) After informal briefing by both parties, that application was denied on February 19, 1992. The current exhaustion petition is therefore not petitioner's second application.

22. Petitioner admits the allegations in section V of the Return.

23. Petitioner denies the allegation in Section VI of the Return that there was no improper conduct whatsoever by prosecutor Ron Bass in petitioner's case. (Return at p. 7.) To the contrary, petitioner alleges that Ron Bass engaged in a pattern of deliberate prosecutorial misconduct during petitioner's case and that he engaged in the specific acts of improper, unethical and inappropriate conduct that are the subject of the order to show cause issued by this Court.

24. Petitioner denies the allegation that Ron Bass had no improper contact whatsoever with Zetta Southworth, a sitting juror in the case. (Return at p. 7.) To

the contrary, petitioner alleges that Bass, using a conduit (Robert McConkey), had an improper out-of-court communication that directly related to petitioner's case with a sitting juror on the case, Zetta Southworth.

25. Petitioner also denies the allegation that Bass never sent drinks to Southworth. (Return, Section VI, at 6.) Petitioner alleges that Bass did send Southworth a drink (of alcohol) on the evening in question, and that the drink was delivered to her by Robert McConkey. There is no denial by McConkey in his declaration that he delivered a drink to Southworth from Ron Bass that evening. His declaration and the report of his February 2004 interview with respondent's investigator fail to mention the topic at all. Bass and Johnson have alleged in their respective declarations that Bass did not send drinks to Southworth. Petitioner denies that those allegations are true, and alleges the following further facts in support of his denial of those allegations by Bass and Johnson. Those facts are set forth in the declaration of attorney Gena Eichenberg, which is appended to this declaration as Exhibit I and is incorporated fully herein by this reference.

26. Ms. Eichenberg is the acquaintance of Robert McConkey to whom he refers by name in Exh. C to the Return[3] and to whom he also refers in his declaration (Exh. C1 to Return at p. 2). Ms. Eichenberg is also the person who contacted petitioner's counsel and informed counsel about information told to her (Eichenberg) by McConkey concerning an incident that McConkey told her had happened at the Waterfront during the Price trial and involved prosecutor Ron Bass and juror Zetta Southworth. (See Eichenberg Declaration, [Exh. 1 to Traverse] ¶6.)

27. In December of 1995, Ms. Eichenberg introduced Robert McConkey to Robert McGlasson [federal habeas co-counsel for petitioner], at BC's, a local

[3] In Exh. C to the Return at p. 3, Ms. Eichenberg's name appears as "Gina Eichelberger" with the notation that the spelling of the name is phonetic.

bar in Eureka, after McConkey got off work at the Waterfront. (Eichenberg declaration, ¶7.) After introducing them, Ms. Eichenberg, Robert McConkey and Robert McGlasson all sat together at a table at BC's and chatted. At some point during the evening, after McConkey had described the Bass-Southworth incident for Mr. McGlasson in Ms. Eichenberg's presence, repeating the same information McConkey had previously told her about that incident (Eichenberg declaration, ¶¶ 4, 7), McConkey revealed that Bass had also ordered a drink for Southworth that night and that he (McConkey) had delivered that drink to Southworth in the kitchen. (Eichenberg declaration, Exh. 1, ¶ 8.) That information was volunteered by McConkey after he was asked by McGlasson whether or not he recalled if Southworth was drinking alcohol on the evening that Bass sent her back the money and the message about the guilty verdict. (Id.) McGlasson asked that question after McConkey mentioned that Southworth was a heavy drinker and drank during the time she served as a juror in the Price case. (Id.) McConkey confirmed that Southworth did drink alcohol that night and went on to reveal that he had delivered a drink from Bass to Southworth that evening. That is what McConkey also told Mr. McGlasson and attorney Sandra Michaels when they talked to him in March 1996. (See Exh. 11 to the Petition.)

28. Petitioner alleges and asserts that McConkey's admissions to Robert McGlasson and Ms. Eichenberg in December 1995 and subsequently to Sandra Michaels and Robert McGlasson that he (McConkey) delivered a drink to Southworth ordered for her by Ron Bass accurately described what transpired on the night in question at the Waterfront. Petitioner alleges and asserts that those are admissions that no one in McConkey's position would have made unless they were true. Petitioner also alleges and asserts that McConkey's admissions first to Ms. Eichenberg, then to Mr. McGlasson and Ms. Eichenberg, and later to Mr. McGlasson and Ms. Michaels that he (McConkey) delivered a message to Southworth from Bass to vote guilty and at the same time handed her money from

Bass, which McConkey said Southworth accepted, accurately described what transpired that night at the Waterfront. (See Eichenberg declaration, ¶4, and Michael declaration, Exh. 11 to petition.). Petitioner asserts that those are admissions that no one in McConkey's position would have made unless they were true.

29. In addressing the Bass-Southworth incident in the Return, respondent recapitulates what Bass, Johnson and McConkey purport to recall or to not recall about the incident, with some direct quotes from Ms. Johnson's declaration and portions of the McConkey-Lierly February 2004 interview report. (See Return at 3-7.) Respondent does not address any of the contradictions in the accounts given by the State's witnesses, nor does respondent admit or deny the specifics allegations made by those witnesses. Respondent does incorporate by reference Exhibits A, B, and C to the Return. (See Return at VIII). In so far as that incorporation by reference is intended by respondent to plead the facts alleged in the exhibits to the Return, petitioner addresses the specific factual allegations in those exhibits in paragraphs 31-69 below.

30. Respondent asserts at the conclusion of section VI of the Return that petitioner will not be able to prove his case through any "hoped-for" future testimony by McConkey. Respondent also asserts that petitioner will not be able to prove prejudice, implying that it is petitioner who has the burden. (See Return at p. 7.) Petitioner excepts to those assertions and addresses them in paragraphs 70-74 below.

Petitioner's Denials of Allegations in the Exhibits to the Return

31. Petitioner denies or admits the factual allegations made by the State's witnesses in their respective declarations and/or statements for the Return as follows:

32. Petitioner admits that Geri Johnson is a practicing attorney in Humboldt County. (See Johnson Declaration at p. 1.) Petitioner alleges that Johnson was admitted to the California Bar in December 1980, and that she is currently employed by the Harland Law Firm in Eureka. Petitioner has no information as to whether Johnson worked at the Harland Law Firm during the trial proceedings in his case. Petitioner admits that Johnson is married to Deputy District Attorney Worth Dikeman and was married to him during the trial proceedings in petitioner's case. Petitioner also admits Johnson's husband co-prosecuted the case against petitioner with then Deputy Attorney General Ron Bass. (Id.)

33. Petitioner admits that Geri Johnson and Ron Bass were out socializing together at the Waterfront café one evening during petitioner's trial after they had played racquetball together. (Id.). Petitioner admits that Johnson and Bass sat at the bar, that no other customers were at the Waterfront besides them that evening, and that McConkey locked the door behind them after they left that evening. (See McConkey declaration at p. 1-2.) Petitioner denies that it was "early on in the trial" when Bass and Johnson went to the Waterfront that evening. (See Johnson declaration at 1.) Petitioner alleges that it was in the Winter season, most likely sometime after the holidays, that Bass and Johnson went to the Waterfront on the evening in question. Petitioner admits McConkey's allegation that the bar was "dead" that evening and his allegation that it was in the Winter that business at the Waterfront was "typically slow." (See McConkey declaration at 1.)

34. Petitioner admits that Zetta Southworth was working as a cook at the Waterfront that evening. (McConkey declaration at p. 1.) Petitioner denies that the kitchen at the Waterfront is 60-70 feet away from the bar (id.) and denies that the kitchen cannot be seen at all from the restaurant (Johnson declaration at 2), if restaurant means the entire premises. Petitioner admits that the kitchen window is positioned near the restrooms. (McConkey declaration at 1.)

35. Petitioner admits that Southworth was seen at the Waterfront by Johnson and Bass that evening. (See Johnson declaration at 1; McConkey declaration at 1.) Petitioner also admits that Bass recognized Southworth and told Johnson who Southworth was. (Id.) Petitioner admits that Bass identified Southworth to Johnson that evening as a sitting juror on the Price case. (Id.) Petitioner denies that Bass identified or would have identified Southworth as a prospective juror. (Id.) Petitioner alleges that Southworth was already on the jury at that time, and petitioner admits that McConkey knew that Southworth was on the jury at the time of the Bass-Johnson visit to the Waterfront. (See McConkey declaration at 2.)

36. Petitioner has no information about whether Bass was told that evening before he saw Southworth at the Waterfront that a sitting juror was working in the kitchen that night. (See Bass declaration at 1.) Petitioner alleges that that if anyone so informed Bass, it would have been Robert McConkey, because McConkey knew who Bass was, even if he never personally met Bass before that evening, and knew that Bass was one of the prosecutors in the case on which Southworth was serving on the jury.

37. Bass alleges in his declaration that he was surprised that a sitting juror was working during the trial, because he believed that the jurors had been ordered by the trial judge not to work their normal jobs while they sat as jurors. (See Bass declaration at 1.) Petitioner denies that the trial court made such an order. To the contrary, the trial court record in his case reveals that when Southworth told the trial court at the hearing on April 2, 1986, that she was still working at the Waterfront part-time in the evening, the court did not instruct her not to continue working her normal job while serving on the jury or even suggest that it was a violation of any court order for her to do so. (See RT 18921-18924.) Bass and Dikeman were present at that hearing, and neither of them asked the court to so

admonish her, and neither of them expressed any surprise about the fact that Southworth was working nights after court at her normal job.

38. Petitioner admits that Bass and Johnson went to the Waterfront at around 8:00 p.m. (See McConkey declaration at 1.) Petitioner alleges that they remained at the Waterfront even after they found out that Southworth was working there that night. Petitioner admits that they were there for at least an hour and that they talked on and off to McConkey during the time they were there. (See McConkey declaration at 1.)

39. Petitioner admits that both Bass and Johnson consumed alcoholic drinks that night at the Waterfront and also had some appetizers. (See Johnson declaration at 1.) Johnson alleges that she and Bass had only two drinks apiece. (Id.) McConkey alleges that Bass and Johnson ordered and consumed five or six martinis apiece during the course of the evening, and also had approximately five to six appetizers. (See McConkey declaration at 2.) Petitioner admits that Bass and Johnson had a minimum of 2 drinks that evening. Petitioner alleges that they probably had more than two drinks a piece that evening. Petitioner does not deny that McConkey may have been drinking that evening even though he was working. (See McConkey declaration at 1.) Petitioner does deny Johnson's allegation that McConkey drank heavily throughout the evening, and drank more than she and Bass did. (Johnson declaration at 1.) Petitioner alleges that McConkey's memory of the events was not impaired by whatever quantity of alcohol he may have consumed that night, since he was able to correctly recall almost a decade after the events in question numerous details about the evening which Johnson's declaration confirms are accurate, and McConkey first provided those details almost a decade before Johnson provided her declaration.

40. Petitioner has no information as to whether Southworth brought Bass and Johnson the menus that evening or as to whether she suggested that Johnson and Bass order the crab fritters (see Johnson declaration at 1), and on that ground

petitioner denies that she did. Petitioner alleges that Johnson and Bass may have ordered a crab appetizer that evening, since crab is season in the Winter in California -- which is when petitioner alleges the incident occurred.

41. Johnson alleges that when Bass saw Southworth, he jumped from his bar stool, held up his hands as if he were being arrested, positioned the stool and Johnson physically between him and Southworth, and said to Southworth some like "I gotta stay away from you, I have to maintain propriety." (See Johnson declaration at p. 1.) Petitioner has no information as to whether that occurred, and he denies the allegation on that ground and on the further ground that McConkey does not allege in his declaration and has never claimed that anything of the sort happened, and Bass states in his declaration that he does not even remember if he actually saw Southworth on that occasion. (Bass declaration at 2.) Petitioner alleges and asserts that if Bass had done what Johnson alleges he did, it is not likely that he would have forgotten all about it unless he was too drunk that evening to the remember, which Bass and Johnson both deny.

42. Petitioner alleges that Bass sent Southworth a drink [of alcohol] that evening, and denies the allegations by Johnson and Bass that he did not send drinks to Southworth. Petitioner also denies Bass's allegation that he did not communicate improperly that night or ever with a sitting juror during the Price trial; denies Bass's allegation that he did not send money to a sitting juror during the trial or do any of the other improper acts alleged in the Petition, and denies Bass's allegation that he did not, out-of-court, request a juror to vote in favor of a guilty verdict. (Bass declaration at 2.)

43. Petitioner admits that before Johnson and Bass left the Waterfront that evening, Bass told McConkey to give "Zetta" $20 and tell her to vote guilty. (See Johnson declaration at 1-2.) Petitioner denies that Bass said to McConkey that he "should" give Zetta the money and that message, but alleges instead that Bass told McConkey to give Zetta the money and the message to vote guilty. Petitioner has

no information as to whether Bass said this in a whisper or in "a mock conspiratorial tone" (Johnson declaration at 1) and on that ground denies that he did. Petitioner denies that Bass's remark was plainly meant as a joke and understood by McConkey as such. (See Johnson declaration at 2). Petitioner has no information as to whether Johnson, McConkey and Bass all laughed when Bass made that remark (Johnson declaration at 2) and on that ground denies that they did. Petitioner alleges and asserts that it was not a laughing matter for any prosecutor to tell any third party to give a message to a sitting juror to vote guilty, and that it was especially not a laughing matter for any prosecutor to have made such a remark to the co-worker of a juror in a capital case, especially a prosecutor employed by the California Attorney General's Office -- the chief law office in the State and the office charged with the duty to see that the laws are uniformly and adequately enforced. (See California Constitution, Article 5, section 13).

44. Petitioner denies and rejects the notion that Bass did not intend for or want McConkey to convey the message to Southworth about voting for guilty in the Price case. To the contrary, petitioner alleges that if Bass had not intended for or wanted McConkey to deliver that message to Southworth, Bass would not have told McConkey to do so in the first place, not even as a joke, and that having Southworth vote for guilty was exactly what Bass wanted, since he was prosecuting the case on which she was a juror.

45. Petitioner alleges that in addition to sending Southworth a message through McConkey to vote for guilty, Bass also sent money to Southworth through McConkey that evening. Petitioner denies McConkey's allegations that the amount was only $5 and denies that Bass handed McConkey only a $10 bill and told him to "split it with Zetta." (See McConkey declaration at p. 2).

46. Johnson alleges that Bass left a tip that night, but she does not state how much of a tip, stating only that she thought at the time that the tip was appropriate in amount. (See Johnson declaration at 2.) Johnson does not allege

that Bass handed McConkey only a $10 bill that night and told McConkey to split it with Zetta. Johnson alleges that the tab that evening was between $20 and $30, and that it was Bass who paid the tab. (Johnson declaration at 1.) McConkey alleges that their bill was about $65, and that Bass paid the bill. (McConkey declaration at 2.) Petitioner admits only that Bass paid the tab; petitioner does not know the amount of the tab. Petitioner alleges that McConkey gave Southworth at least $10 and probably $20 from Bass that evening. Petitioner denies that this was a customary amount to give the cook at a restaurant or that it was a common practice for a customer to leave any money for the cook. (See McConkey declaration at 2.) Petitioner alleges that giving a cook who was also a juror in the case Bass was prosecuting any money was improper and unethical and was inherently harmful since such a gesture can subtly create juror empathy with a party. (See Rinker v. County of Napa (9th Cir. 1983) 724 F.2d 1352, 1354.)

47. Johnson claims that she and Bass were not intoxicated from two drinks, but she mentions that she and Bass walked around the block to "clear our heads." Petitioner has no information as to whether Bass and Johnson were or would have been intoxicated from two drinks since that would depend on such factors as their respective weights. Petitioner admits that Bass and Johnson probably did walk around the block and gaze at the sky together.

48. Johnson alleges that she told her husband (Worth Dikeman) the following morning what happened at the Waterfront the night before, and alleges that when her husband heard that a juror worked there as a cook, he was "concerned" but after she told him that Southworth had stayed in the kitchen after delivering menus to them (Johnson and Bass), they (Dikeman and Johnson) "dropped the subject there." (Johnson declaration at 2.) Petitioner does not know whether Johnson told her husband what happened at the Waterfront the night before, but he denies that she did so, since Dikeman never informed the trial court or defense counsel that Bass had told the co-worker of a sitting juror to give the

juror money and a message to vote for guilty. As a prosecutor and member of the State Bar, Dikeman was "required to reveal promptly to the court improper conduct ... by another toward ... a juror ... of which the member of the State Bar has knowledge. (Exh. 3 to Traverse [rules of California State Bar in effect at the time of petitioner's trial].) Dikeman did not inform the court or defense counsel at any time that his wife and Bass had contact with Southworth when Johnson and Bass were at the Waterfront together one evening while Southworth was working there, not even at the April 2, 1986 hearing, which was held because Southworth had been seen embracing Dikeman's wife outside the courtroom during a recess in the Price trial, and at which the trial court specifically asked Southworth in Dikeman's presence about her prior contacts with Geri Johnson. (See RT 18921-18924.)

49. Petitioner alleges that when the trial court told Southworth at that hearing that it had been reported to the court that she was seen embracing and conversing with a red-headed lady, Southworth did not deny that the report was true, and Dikeman stipulated the woman was Geraldine Ann Johnson. (RT 18921-18922.) Petitioner alleges that Southworth embraced Johnson on that occasion by kissing her on the check and hugging her. At that hearing, Southworth told the trial court that she became acquainted with and talked to Geri one evening at the Waterfront after she (Southworth) was on the jury, and that other than that one time, she had only seen and talked to Johnson at the courthouse and then only on two occasions. (RT 19821-18922.) Southworth did not reveal to the trial court that she had seen Bass and Johnson at the Waterfront, nor did she reveal what happened on the evening she saw them there. Neither did Bass, who was also present at the hearing. Petitioner alleges and asserts that their silence denied him a meaningful and timely hearing on the federal constitutional claim that is the subject of the current proceedings. (See Remmer v. United States (1954) 347 U.S. 227.)

50. Johnson alleges that after her visit to the Waterfront, she went there frequently and saw Southworth "once in a while there, but not often --- usually when she came out of the kitchen to ask a waiter or the bartender something." (Johnson declaration at 2.) Johnson does not allege that she and Southworth became acquainted or ever talked at the Waterfront after the evening in question here, and she claims that interchange she and Southworth had on that evening was extremely brief and was limited to Southworth recommending that they (meaning Johnson and Bass) order the crab fritters. (Johnson declaration at 1). Johnson does not mention, purport to remember, or explain why Southworth would have embraced her and in fact did embrace her at the courthouse. Petitioner alleges that Johnson and Southworth were better acquainted than either one of them has admitted.

51. Petitioner does not deny that Johnson went to the Waterfront frequently after the evening in question here, but whether she went there frequently during his trial as opposed to afterwards is something petitioner does not know. Petitioner alleges that at some point in time, Johnson lived above the Waterfront in an apartment during a time that she was separated from her husband, but petitioner does not know whether that happened during or after his trial.

52. Petitioner admits that Johnson and Bass saw each other frequently after that night. (See Johnson declaration at 2). Petitioner alleges that Bass and Johnson had a close personal relationship which lasted a number of months during his trial and which involved significantly more than what either of them is admitting to in their respective declarations -- namely, that they saw each other at the courthouse, played racquetball together on and off, and went out for drinks together that one evening at the Waterfront. (See Johnson declaration at 2, Bass declaration at 1.) Petitioner has no information about whether their relationship continued after his trial or about whether they saw each other in San Francisco on the times Johnson was there.

53. Except as petitioner has otherwise indicated above, he denies each and every other factual allegation made by Johnson, Bass and McConkey in their respective declarations, including but not limited to Johnson's allegation that Bass did not communicate with Southworth, through McConkey, at any time that evening. (See Johnson declaration at 1.) Johnson has no personal knowledge nor does she purport to know whether McConkey gave Southworth Bass's message about voting guilty after she and Bass left the Waterfront that evening.

54. McConkey is now claiming he had no discussion with Southworth after Bass and Johnson only than to tell her where the "tip" had come from and to tell that they said "Thanks." (McConkey declaration at 2.) McConkey is also claiming to have no recollection of Bass, Johnson or Southworth "making any type of comment about Southworth voting guilty during the trial" and that there was no discussion that night about the Price trial. (McConkey declaration, 1-2.) McConkey admits that he did talk to an acquaintance about the Price case, but claims that he told that acquaintance "the same things" he is stating in his declaration. (McConkey declaration at 1-2.) Petitioner alleges that the acquaintance to whom McConkey is referring is Gena Eichenberg. (See McConkey interview, Exhibit C to Return at p. 3.)

55. Petitioner denies McConkey's allegation that he told Southworth only that they [Bass and Johnson] said "thanks" and denies McConkey's allegation that he told Ms. Eichenberg the same thing. Petitioner alleges that McConkey's prior statements to Ms. Eichenberg about the Bass-Southworth incident and the circumstances surrounding those statements are as follows:

56. Mr. McConkey has made statements to Ms. Eichenberg about the Bass-Southworth incident on several occasions. The first of those occasions was in the Spring of 1995 -- the year that Eichenberg was president of the Humboldt County Bar Association. (See Exh. 1 to Traverse [Eichenberg declaration] at 1.)

57. On that occasion, while McConkey and Eichenberg were chatting at the Waterfront, McConkey told Eichenberg that he had a "good lawyer story" for her, and he proceeded to tell her that Ron Bass, one of the prosecutors in the Price case, and a local attorney, Geri Ann Johnson, came into the Waterfront one evening during the Price trial when he (Bob) and Zetta Southworth, a juror in the Price case were both at work there. McConkey said that Bass and Johnson drank a lot of alcohol that night, and before they left, that Bass handed him $20.00 and told him to give it to Zetta and tell her to vote guilty. McConkey told Eichenberg that he did as Bass asked, giving the cook the cash along with the message from Bass about bringing back a guilty verdict. McConkey said that Zetta accepted the money. (Eichenberg declaration at 1-2.)

58. McConkey knew at the time he told Ms. Eichenberg that information that she was an attorney and was serving as president of the local Bar Association. However, McConkey was not seeking her legal advice nor was she acting as his attorney. (Eichenberg declaration, ¶ 5.)

59. In December of 1995, McConkey described the Bass-Southworth incident for attorney Robert McGlasson, co-counsel for petitioner in his federal habeas action, in Ms. Eichenberg's presence, and he repeated the same information he had previously related to her about the Bass-Southworth incident, specifically mentioning that Bass had handed him $20.00 and asked him to take the money back to Zetta and give her the message to vote for guilty, and that he (McConkey) gave Southworth that message from Bass, handed her the cash, and said that Southworth took the money. (Eichenberg declaration, ¶7.)

60. On that same occasion in 1995, Robert McGlasson asked McConkey whether Southworth was drinking that night at the Waterfront, after McConkey mentioned that she was a heavy drinker, and drank during the time she served as a juror in the Price case. In response to that question, and after confirming that Southworth did drink alcohol that night, McConkey revealed that Bass had

ordered a drink for Southworth at some point that evening and that he (McConkey) had delivered the drink to her in the kitchen. Ms. Eichenberg was present when McConkey made those statements. (Eichenberg declaration, ¶8.)

61. McConkey has made statements to Ms. Eichenberg about the Bass-Southworth incident on several occasions after 1995. On all of those occasions, his statements to her about that incident have been consistent with one another and consistent with what he told her in early 1995 when he first talked to her about the incident. (Eichenberg declaration, ¶9.)

62. McConkey has never told Ms. Eichenberg that the amount of cash he handed to juror Zetta Southworth from prosecutor Ron Bass that evening at the Waterfront was just $5, and has never told her that Bass left a $10 tip and told him to split the money with Zetta. McConkey has also never told Eichenberg that the only thing he told Zetta Southworth after Bass and Johnson left the Waterfront that evening was where the tip came from, and that they said "thanks." To the contrary, McConkey specifically told Ms. Eichenberg that Bass asked him that evening to tell Zetta to vote for guilty and that he (McConkey) delivered that message from Bass to Southworth at the time he (McConkey) gave her the cash from Bass.

63. Petitioner alleges that McConkey's prior statements to Ms. Eichenberg about what he told Southworth that evening and how much money he gave Southworth from Bass are materially inconsistent with what he is now claiming in his declaration, and petitioner asserts that McConkey's story that he told Southworth nothing except that "they" said thanks, and that he split a $10 tip from Bass with her, giving her half of that amount, is a recent fabrication.

64. Petitioner also asserts that McConkey's claim to have no recollection about Bass or anyone else making any comment that evening about Southworth voting guilty is feigned. In support of his assertion, petitioner alleges that even though McConkey has been a heavy drinker for years, he has never had any

difficulty recalling the details of the Bass-Southworth incident on any occasion when he has talked to Ms. Eichenberg about it, and he did not have any problems with recollection when he talked to her about the incident earlier this year. (Eichenberg declaration, ¶12.) McConkey's declaration itself demonstrates that he has recall of numerous details about the incident. The only details he claims not to recall about the incident are the details that would clearly be of help to petitioner.

65. Petitioner alleges that McConkey harbors strong bias against him and has made that bias manifest by his recent remarks to petitioner's investigator. (See Frappier declaration, Exhibit 2 to Traverse, ¶6.) McConkey has also expressed his strong bias against petitioner to Ms. Eichenberg McConkey has made it clear to Ms. Eichenberg that he is upset at being in the middle of this controversy in the Price case, and has expressed strong negative feelings to her about petitioner and has used disparaging terms in referring to him. (Eichenberg declaration, ¶11.) McConkey told Ms. Eichenberg, around the time he was contacted earlier this year by representatives of the State that he was afraid that Price would be let out. (Id.) McConkey also shared his concern with Ms. Eichenberg that he would be blamed by people in the community if the Price case was reversed. McConkey has told Ms. Eichenberg that he just wanted the "whole thing to go away," and has told her that he would just say he "couldn't remember because he was drinking." (Eichenberg declaration, ¶11.)

66. Finally, McConkey claims that he had no reason to believe that Bass was attempting to buy influence for the miniscule amount of $5.00. (McConkey declaration at p. 2). Petitioner denies McConkey's claim and alleges that McConkey is being deliberately disingenuous since he was well aware of the fact that along with the money, which petitioner denies was only $5, but admits was not more than $20, Bass also sent Southworth a message to vote guilty and earlier in the evening, sent her a drink of alcohol. McConkey himself delivered that

drink, the message and the money to her, and knew at the time she was a juror in the Price case, as did Ron Bass.

67. Petitioner alleges that Bass made those gestures towards Southworth to ingratiate himself and curry favor with her. Petitioner also alleges that Southworth was particularly susceptible to the gestures made towards her by Ron Bass at the Waterfront that evening for two main reasons.

68. First, Zetta Southworth had a serious drinking problem, and drank not only before and after petitioner's trial but during his trial. The fact that Southworth had an apparent drinking problem was brought to the trial court's attention by her neighbor, one of the court reporters in petitioner's case, at a hearing at which Bass was present, before Southworth was impaneled as a juror in petitioner's case. (See CCT 1679-1690.) Petitioner has documented Southworth's history of alcoholism and her repeated encounters with the criminal justice system as a result, including the two convictions she suffered for driving under the influence during petitioner's trial, in Claim IV of his exhaustion petition, and he incorporates the factual allegations in that Claim and in the related exhibit to the petition, Exhibit 62, fully here by this reference. Because Southworth liked to drink and was an alcoholic, having Bass buy her a drink would have and undoubtedly did incline her favorably towards him and in turn towards his side of the case.

69. Second, Southworth had to work nights during petitioner's trial as a cook, after spending all day in the courtroom as a juror, because she apparently needed the money. Southworth had financial problems even before petitioner's trial as evidenced by her history of writing worthless checks, including a check for about the same amount of money at issue here. She was living in North Carolina at the time, was married to her second husband, William A. Frizzell, and was using her married name, Mrs. William A. Frizzell or alternatively, Zetta S. Frizzell. (See Exh. 4 to Traverse, at 1-3.). Petitioner has obtained and has

appended to this Traverse copies of criminal court dockets from Jackson County, North Carolina, which reveal that Mrs. Wm. A. Frizzell (aka Zetta Southworth) was ordered to pay costs and restitution in her worthless check cases. (See Exh. 4 to Traverse, at 4-5.) Petitioner has also obtained and appended to this Traverse a court record from Davidson County, North California, showing that in 1983, which was only two years before she served on petitioner's jury, a summons was issued for her again in another worthless check case involving a check for $15.51. (See Exh. 4 to Traverse at 6.) For a juror in Southworth's position to be given $10 or $20 or for that matter any money at all from Ron Bass would have and undoubtedly did incline her favorably towards him and in turn towards his side of the case. (See Exh. 4 to Traverse, 4-5.)

Petitioner's Denials and Exceptions to Respondent's Assertions that Petitioner Will Be Unable to Prevail on the Jury Tampering Claim

70. At the conclusion of section VI of the Return, respondent asserts that petitioner will not be able to prove his case on the basis of any hoped-for future testimony by Robert McConkey, contending that any such testimony by McConkey would directly conflict with the "sworn testimony" by the other parties, and that McConkey was drinking when he made the statements about the Bass-Southworth incident, has made a number of contradictory statements about the topic and has also admitted that his memory is clouded by decades of drinking. (Return at p. 6.). Petitioner denies and excepts to respondent's assertion as follows. Although Ron Bass and Geri Johnson, those other "parties" to whom respondent refers, have given declarations in this matter, they have yet to "testify" about the jury tampering incident, much less have their testimony subjected to and tested by the rigors of cross-examination by petitioner's counsel. Importantly, both of them are adverse, non-neutral witnesses in this matter and have refused to even talk to petitioner's counsel or investigator about the allegations in their

respective declarations. The same is true of Worth Dikeman and of Robert McConkey.

71. Petitioner admits that McConkey was drinking on the occasions he made statements to petitioner's counsel about the Bass-Southworth incident, but denies that McConkey's drinking on those occasions had any adverse affect on his ability to recall what happened during that incident nor did it mean that he was not telling the truth. To the contrary, petitioner alleges that McConkey's drinking on those occasions helped to lower his inhibitions and his guard, and in turn made him willing to even talk to petitioner's counsel and to truthfully recount what happened on the evening at the Waterfront. McConkey has made numerous consistent statements about the Bass-Southworth incident to his acquaintance Gena Eichenberg and then to petitioner's counsel and legal assistant. Although he subsequently made contradictory statements to petitioner's investigator Bob Cloud and later to respondent's investigator, Jeff Lierly, and most recently in his declaration, petitioner alleges and asserts that he did so, not because those statements were true, which they were not, but because he hoped those statements would get him out from being in the middle of this controversy in the Price case, and keep him from aiding petitioner and being blamed if the Price were to be reversed. Petitioner alleges that for reasons, Mr. McConkey is purporting to have only a clouded memory of the Bass-Southworth incident, which he does not, due to his decades of drinking.

72. At the conclusion of Section VI of the Return, respondent also asserts that petitioner will not be able to prove prejudice in this case. (Return at p. 7). Petitioner excepts to the contention that petitioner has the burden of proving prejudice on a claim involving jury tampering, especially jury tampering by the prosecutor. To the contrary, placing that burden on petitioner would be contrary to clearly established United States Supreme Court precedent. (Remmer v. United

States, supra; Mattox v. United States (1892) 146 U.S. 140; see also Caliendo v. Warden (9th Cir. 2004) 365 F.3d 691, and cases cited therein.)

73. Petitioner alleges and asserts that he has met the threshold showing that there was jury tampering in his case, including, inter alia, the highly improper communication by prosecutor Ron Bass to juror Southworth, through Southworth's co-worker, Robert McConkey, and that it is respondent who has the burden of showing of overcoming the presumption of prejudice therefrom. (Id.)

74. Petitioner alleges and asserts that respondent has not made the strong contrary showing required to overcome that presumption of prejudice nor can respondent do so, since Bass's actions in this matter were undeniably harmful. This is a case in which it was the prosecutor himself, who initiated and had an improper, unauthorized communication with a sitting juror on the case he was prosecuting. That improper communication concerned the case and the most critical decision in the case that the juror would be required to make in the case, namely whether to vote for guilt or for innocence. The prejudice from such a communication is substantial even if the juror was informed that the prosecutor was only joking around, which there is no evidence she was told, since the juror would then have realized that she was in on a joke with a Deputy Attorney General who was prosecuting the case in which she was a juror. The prejudice from that communication was compounded by other improper acts by the prosecutor including sending money in any amount to a juror in the case he was prosecuting.

Conclusion

75. For all of the reasons set forth above, relief should be granted. In the alternative, should the Court conclude that there are disputed facts which are material to the resolution of this case, an evidentiary hearing should be ordered.

Dated: October 5, 2004

Respectfully submitted,

KAREN S. SORENSEN

Karen S. Sorensen

Attorney for Petitioner

VERIFICATION

I, KAREN S. SORENSEN, declare as follows:

I am an attorney admitted to practice law in the State of California. I represent petitioner herein, who is confined and restrained of his liberty at San Quentin Prison, San Quentin CA.

I am authorized to file this Traverse to the Return to the Order to Show Cause on petitioner's behalf. I make this verification on petitioner's behalf because the facts and law set forth in this Traverse are more within my knowledge than his. I have read the Traverse and know its contents of the petition to be true.

Executed this 5th day of October 2004, at Kentfield, California

KAREN S. SORENSEN
Karen S. Sorensen

DECLARATION OF GENA RAE EICHENBERG

I, GENA RAE EICHENBERG, declare under penalty of perjury that:

1. I am a sole practitioner. My law office is located at 517 Third Street, Suite 1, Eureka, California. I returned to Humboldt County in 1988 and opened my law office in Eureka in 1989. In early December, 1994, I was elected President of the Humboldt County Bar Association.

2. That same month, I was contacted by Karen Sorensen, appellate attorney for Curtis Price, asking for my assistance. She was having difficulty arranging a review of some local court files relevant to the Price case. I was able to resolve the problem with a few phone calls.

3. Sometime in the Spring of 1995, I went to the Waterfront Restaurant ("the Waterfront") one evening after work. Robert McConkey ("Bob"), an acquaintance of mine who has worked there as a bartender/waiter for many years, served me.

4. At one point that evening while we were chatting, Bob said he had a "good lawyer story" for me about the Curtis Price case. Bob proceeded to tell me the following about Ron Bass, one of the prosecutor's in the Price case, and Zetta Southworth, one of the jurors in the case who worked as a cook at the Waterfront. Bob said that Bass and a local attorney named Geri Ann Johnson came into the Waterfront one evening during the Price trial when Bob and Zetta were both working. Bass and Johnson drank a lot of alcohol that night, and

before they left, Bass handed Bob $20.00 and told him to give it to Zetta and tell her to vote guilty. Bob told me that he did as Bass asked, giving the cook the cash along with the message from Bass about bringing back a guilty verdict. He said that Zetta accepted the money.

5. Bob knew at the time he told me this that I was an attorney and I was serving as President of the local Bar Association. Bob was neither seeking my legal advice, nor was I acting as his attorney when he told me this information.

6. The next day, I telephoned Karen Sorensen and informed her of my conversation with McConkey. I agreed to introduce her to Robert McConkey during her next visit to Humboldt County.

7. I subsequently met with Ms. Sorensen's co-counsel, Robert McGlasson, in December of 1995, when he came to Humboldt County to conduct their federal habeas investigation. I took McGlasson over to B.C.'s, a neighborhood bar in Eureka, to introduce him to Bob McConkey. McConkey showed up at B.C.'s after getting off work at the Waterfront. I introduced him to Robert McGlasson, telling Bob that Robert was a lawyer from out of state. Bob, Robert McGlasson, and I all sat together at a table at B.C.'s and chatted. Bob had several drinks while we were chatting. At some point that evening, Bob told McGlasson, in my presence, the same information he had previously related to me about the Bass-Southworth incident, specifically mentioning that Bass had handed him $20.00 and asked him to take the money back to Zetta and give her the message to vote

for guilty. Bob again said that he gave Southworth that message from Bass, handing her the cash, and that Southworth took the money.

8. Bob also told Robert McGlasson that evening in my presence that Zetta was a heavy drinker, and drank during the time she served as a juror in the Price case. Mr. McGlasson asked Bob if he recalled whether Southworth was drinking alcohol the evening Bass sent her back the money and the message about the guilty verdict. Bob confirmed that Southworth did drink alcohol that night and he revealed that Bass had ordered a drink for Southworth at some point that evening and Bob delivered the drink to her in the kitchen.

9. Since the evening when I introduced Robert McGlasson to Bob McConkey at B.C.'s bar, Bob has made statements to me on several different occasions about the Bass-Southworth incident. On all of those occasions, Bob's statements to me about the incident have been consistent with one another and consistent with what he told me in early 1995 when he first talked to me about the incident.

10. At no time has Bob McConkey ever told me that the amount of cash he handed to juror Zetta Southworth from prosecutor Ron Bass that evening at the Waterfront was just $5. Bob has never told me that Bass left a $10 tip and told him (Bob) to split the money with Zetta, nor has Bob ever told me that the only thing he told Zetta Southworth after Bass and Johnson left the Waterfront that evening was where the tip came from and that they said "thanks." To the contrary, Bob specifically told me that Bass asked him that evening to tell Zetta

to vote for guilty and that he (Bob) delivered that message from Bass to Southworth at the time he (Bob) gave her the cash from Bass.

11. Bob has made it clear to me that he is upset at being in the middle of this controversy in the Price case. He has also expressed strong negative feelings to me about Curtis Price and has used disparaging terms in referring to Price. Around the time Bob was contacted earlier this year by representatives of the State, Bob told me that he was afraid that Price would be let out. Bob also shared his concern with me that he would be blamed by people in the community if the Price case was reversed. Bob has told me repeatedly that he just wanted the "whole thing to go away," and has told me that he would just say he "couldn't remember because he was drinking." Each time, I told Bob he had to tell the truth.

12. Bob has been a heavy drinker since I have known him. However, he has never had any difficulty recalling the details of the Bass-Southworth incident on any occasion when he has talked to me about it, and he did not have any problems with recollection when he talked to me about the incident earlier this year.

I declare under penalty of perjury that the above and foregoing is true and correct.

Executed this 17th day of September, 2004, at Eureka, California.

GENA RAE EICHENBERG

DECLARATION OF JON FRAPPIER

I, JON FRAPPIER, make the following declaration:

1. I am a private investigator duly licensed by the State of California. My business mailing address is P.O. Box 1160, Pacifica, California 94044. My private investigator's license is number 15379.

2. I have been retained by petitioner Curtis Price's attorney, Karen Sorensen, to assist her with the investigation for petitioner's Traverse in this matter. On September 14th and 17th of this year, I was in Eureka, California to conduct certain investigative tasks, including those specified below, as to which Ms. Sorensen had requested and had obtained prior approval from the California Supreme Court.

3. On September 14, 2004, I went to the Harland law firm in Eureka to interview Geri Anne Johnson, who provided a declaration for the State's Return. Ms. Johnson is employed as an attorney at the Harland law firm. The receptionist told me Ms. Johnson was in court. At noon I went to the courthouse and met Ms. Johnson as she was leaving court. I introduced myself by name and told her I was a private investigator working for attorney Karen Sorensen who represents Curtis Price. I also gave her my business card on which I had written the same information.

4. I said I would like to ask her a few questions. Ms. Johnson said she was in trial until Thursday (September 16), and did not have time to talk to me until then. She proposed a tentative meeting time on Thursday at 1:00 pm at her office to talk with me. She told me she needed to talk with David Rose (counsel for respondent) first. She also told me that if David Rose said she couldn't talk with me, then she would not talk with me. She asked me to call her at her office the next day (Wednesday, September 15) in the afternoon to confirm the appointment.

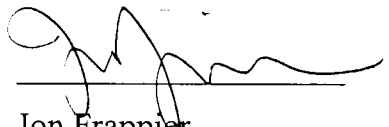
5. On Wednesday afternoon (September, 15), I contacted Ms. Johnson via telephone to confirm our appointment. She informed me that she had talked to David Rose and had been told by him that the decision was entirely up to her and that he was not her lawyer. Ms. Johnson also informed me that she had talked to her husband (Deputy District Attorney Worth Dikeman). She told me that she had been doing a lot of thinking about my interview request, and had decided to just let her filed declaration stand. She indicated that she was willing to take the stand and be cross-examined. For clarification I asked if she meant that she would not agree to be interviewed by me and she said "Yes, no interview."

6. On Friday, September 17, 2004, I went to the Waterfront Café at the corner of 1st and F streets to talk with Robert McConkey. At the time he was working both behind the bar and serving customers at tables. I introduced myself, identified myself as a private investigator working for the lawyer representing Curtis Price, and handed him a business card containing that same information and explained why I was there. Mr. McConkey appeared upset, and said "I'm sick of this to tell you the truth" and then he walked away. Mr. McConkey continued to carry out his duties. The next time he came over to where I was sitting at the bar I asked if he would be willing the meet with Price's lawyer, Karen Sorensen. He said "I don't want to have anything to do with this anymore. I don't want to talk to her. He's a murderer." I understood the last comment to be a reference to Mr. Price. And then Mr. McConkey walked away again. About ten minutes later, he again came over to where I was sitting. I asked him if he would be willing to answer a few questions that Ms. Sorensen had. He said, "No. If I don't have to talk, then no. He's a murderer. How much is it costing the taxpayers to try to get him out of prison?" At that point I thanked him for his time and left.

7. On September 17, 2004, I went to the Humboldt County District Attorney's office and told the receptionist I was there to talk to Worth Dikeman. A few minutes later, Mr. Dikeman came out to the lobby. I introduced myself by name, I told him I was a private investigator working for attorney Karen Sorensen

who is representing Curtis Price, and told him the purpose of my visit. I asked if I could ask him a couple questions, and he replied, "Nope." I asked, "That's it, nope?" and he said, "That's it."

I declare under penalty of perjury that the above and foregoing is true and correct. Executed this 27th day of September, 2004, at Pacifica, California.



Jon Frappier

PREVIOUS RULES (1975 TO 89)

Rule 7-106. Communication With or Investigation of Jurors

(A) Before the trial of a case, a member of the State Bar connected therewith shall not communicate directly or indirectly with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A member of the State Bar connected therewith shall not communicate directly or indirectly with any member of the jury.

(2) A member of the State Bar who is not connected therewith shall not communicate directly or indirectly with a juror concerning the case.

(C) Rule 7-106(A) and (B) do not prohibit a member of the State Bar from communicating with veniremen or jurors as a part of the official proceedings.

(D) After discharge of the jury from further consideration of a case with which the member of the State Bar was connected, the member of the State Bar shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service.

(E) A member of the State Bar shall not conduct directly or indirectly an out of court investigation of either a venireman or a juror of a type likely to influence the state of mind of such venireman or juror in present or future jury service.

(F) All restrictions imposed by Rule 7-106 upon a member of the State Bar also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A member of the State Bar shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family of which the member of the State Bar has knowledge.

STATE OF NORTH CAROLINA

GUILFORD County

File No

Film No

'84CV D 7760

In the General Court of Justice

☒ District Court Division ☐ Superior Court Division

Plaintiff

WILLIAM ASBURY FRIZZELL

FILED

DEC 3 2 PM 2:21

GUILFORD CO., C.S.C.

BY Dah

CIVIL SUMMONS

GS 1A-1, Rules 3, 4

VERSUS

Defendant

ZETTA JOY FRIZZELL (SOUTHWORTH)

* ☐ Alias and Pluries Summons

The summons originally issued against you was returned not served.

Date Last Summons Issued

*Disregard this section unless the block is checked

TO: ZETTA JOY FRIZZELL (SOUTHWORTH)

Name and Address of Defendant

Zetta Joy Frizzell (Southworth)
805 H Street
Eureka, CA 95501

TO:

Name and Address of Defendant

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or his attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to him or by mailing it to him at his last known address, and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint the plaintiff will apply to the Court for the relief demanded in the complaint.

Name and Address of Plaintiff's Attorney
If none, Address of Plaintiff

Anne A. Isaac
437 W. Friendly Ave., Suite 202
Greensboro, NC 27401
Telephone: (919) 275--0709

Date Issued: DEC 4 1984

Time Issued: 10:36 ☒ AM ☐ PM

Signature: Ann Hackney

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court

☐ ENDORSEMENT

This summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this summons must be served is extended thirty (30) days.

Date of Endorsement

Time ☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court

AOC-CV-100

NORTH CAROLINA

GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

84-CvD-7760

FILED
'85 JAN 22 PM 2:21
GUILFORD CO., C.S.C.
BY Oath

WILLIAM ASBURY FRIZZELL,
Plaintiff,

vs.

ZETTA JOY FRIZZELL,
Defendant.

AMENDMENT TO AFFIDAVIT FOR SERVICE OF PROCESS BY CERTIFIED MAIL

Anne A. Isaac, being first duly sworn, deposes and says:

1. I am the attorney for the plaintiff in the above-entitled action. This action is an action for absolute divorce on the ground of one year's separation and is one of those actions in which service of process may be had outside the state under the laws of North Carolina. I am informed and believe and so aver that a cause of action exists against ZETTA JOY FRIZZELL, the above-named defendant, by reason of the fact plaintiff and defendant were married, thereafter lived together as husband and wife, and thereafter commenced living separate and apart from one another and have done so for more than one year next preceding the commencement of this action. In addition, plaintiff has been a resident of the state of North Carolina for more than six months next preceding the commencement of the action and the filing of the complaint. The above-named defendant is a proper party to this action. The Court will have jurisdiction upon service of process by certified or registered mail under the statutes of North Carolina. The defendant resides in Eureka, California.

2. Your affiant is further informed and believes, and so alleges, an inquiry has been made to sources of information about the above-named defendant and that information about the above-named defendant has been received indicating that defendant is using her maiden name, to wit: Zetta Joy Southworth; and that defendant resides at 805 H Street, Eureka, California.

3. Your affiant sent the defendant a copy of the summons and complaint filed against the defendant in this action.

4. Subsequently your affiant received from the United States Post Office a receipt indicating that the envelope containing the summons and complaint had been delivered personally to the defendant on December 10, 1984, and the defendant signed her maiden name, to wit: Zetta Southworth, on the form which was returned to your affiant from the United States Post Office. A genuine copy of the receipt for this certified letter is attached hereto and incorporated herein by reference as Exhibit "A".

5. Your affiant is informed and believes, and so avers, that

defendant is neither an infant nor an incompetent.

ANNE A. ISAAC, AFFIANT

Subscribed and sworn to before me
this 16th day of January, 1985.

Becky G. Hatfield (Britt)
NOTARY PUBLIC

BECKY G. HATFIELD (Britt)
NOTARY PUBLIC
GUILFORD COUNTY, NC
COMM. EXPIRES JULY 23, 1989

My Commission Expires: _____

INDEX TO CRIMINAL ACTIONS

DEFENDANTS				OFFENSE AND JUDGMENT	FILE and DOCKET NUMBER	Appeal	CLOSED Docket recorded on Film No.
SURNAME	GIVEN NAMES ABCDEFGH	GIVEN NAMES IJKLMNO	GIVEN NAMES PQRSTUVWXYZ				
Franks	Billy			P.D., Abate 10-27-75	75 Cr 3066		C
Frizzell			Wm. Grover	No Reg.-Dismissed 12-3-75	75 Cr 3039		C
Franks			Velma	Larceny-P.W. pay Cost 12-3-75	75 Cr 3218		C
Frizzell	Bobby Ray			R.D.-$50 & Cost 12-3-75	75 Cr 3291		C
Franks			R. L.	Hunting Viol.-$25 & Cost, Waiver 10-6-75	75 Cr 3351		C
Franks		Marion		Hunting Viol., $25 & Cost, Waiver 10-7-75	75 Cr 3369		C
Franks	Clinton Steven			Sp. 70/55z-Dimissed 12-3-75	75 Cr 3395		C
Franks	Carroll			P.D., 2 days in jail 10-13-75	75 Cr 3427		C
Frizzell			Mrs. Wm. A.	Worthless Ck. Cost, Rest 10-17-75	75 Cr 3470		C
Frizzell	George Edward			Sp. 50/35z-$10 & Cost, Waiver 10-21-75	75 Cr 3504		C
Frady		Leon Clayton		Sp. 76/55z-$34 & Cost 11-5-75	75 Cr 3570		C
Franks	Bill			DUI-Dismissed 10-30-75	75 Cr 3589		C
Frye			Wm. Daivd	P.D., Cost 11-1-75	75 Cr 3657		C
Franklin	Glenn Ray			Sp. 70/55z-$10 & Cost, Waiver 10-24-75	75 Cr 3709		C
Freeman			Ronald Eugene	Sp. 67/55z-$10 & Cost, Waiver 11-10-75	75 Cr 3736		C
Franks	Glenda (Velma Franks)			Steal $700-Returned Unserved-Cost 11-18-75	75 Cr 3806		C
French	Edward Savage			Failure to Yield-Cost, Waiver 11-18-75 & Cost 1-27-76	75 Cr 3800		C
Franks			Richard Carroll	R.D.; Fail to report accident-$100	75 Cr 3089		C
Freeman			Ralph A.	Sp. 65/55z-$5 & Cost, Waiver 11-26-75	75 Cr 3922		C
Franks		Lester Lee		Weight Viol., Cost, Waiver 12-1-75	75 Cr 3953		C

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Assistant Deputy, Clerk of Superior Court

French		Laurence Armand		Sp. 60/45Z $10, Cost, Waiver 4-2-74	74 Cr 740	C
Frady		Mack		Non Support N.P. 5-15-74	74 Cr 739	C
Franks	Clifton			Worthless Ck. Returned Unserved	74 Cr 360	C
Franks	Clifton			" " " "	74 Cr 363	C
Franks	Audie			10 Cases Trans. to Macon Co. Fee File 74-115	74 Cr 1401-1410	74-8-1092
Frizzell	Charles Willie			Imp. Equip. Cost, Waiver 4-11-74	74 Cr 849	C
Freeman, Jr.		James Byron		Sp. 65/55Z $5., Cost, Waiver 4-12-74	74 Cr 846	C
Free	Henry R.			Fishing Viol. Cost 4-17-74	74 Cr 897	C
Franks			Wm. Eugene	Non-Support Unserved 4-22-74 Proc. Wit. Pay Cost 9-2-74	74 Cr 944	C
Frizzell, Jr.		Joe Wesley		Exc. Safe Sp. Cost, Waiver 4-29-74	74 Cr 1047	C
Frizzell	George			Fishing Viol. Cost 5-1-74	74 Cr 1064	C
Freeman		John Thomas		N.O.L. Cost, Waiver 5-7-74	74 Cr 1096	C
Franks			Radford	Imp. Equip N.P.W.L. 6-12-74	74 Cr 1371	C
Franks	Billy Joe			N.O.L. Imp. Equip. N.P.W.L. 6-12-74	74 Cr 1384	C
Franks			Wm.	P. D. Cost 6-5-74	74 Cr 1464	C
Frady			Rasco	Fishing Viol. Cost 6-10-74	74 Cr 1497	C
Franklin			Phillip Allen	Imp. Equip. N.P.W.L. 6-11-74	74 Cr 1527	C
Franks	Bill			N.O.L. $25., Cost 6-12-74	74 Cr 1540	C
FrancKelly	Bradley Joseph			Stop Sign Viol. Cost, Waiver 6-17-74 on cost 7-24-74	74 Cr 1591	C
Frady		Jimmy		Interfere with arrest-Prayer for Judg. Cont	74 Cr 1735	C
Frady	Harold			Assault dismissed on cost 7-24-74	74 Cr 1817	C
Frankiewicz			Victoria Ann	Possess Marijuana & N.O.L., N.P. 8-8-74	74 Cr 1952	C
~~Frizzell~~			~~Mrs. Wm. A.~~	~~Worthless Ck. Cost & restitution 8-8-74~~	~~74 Cr 2001~~	C
Freeman		James Martin		Larceny $50 & cost & restitution	74 Cr 2010	C

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[illegible] TO CRIMINAL ACTIONS

Film No.

Name FRIZZELL, Zetta S. WF DOB

Address 310 Beckner St. Lexington, NC

Offense W/CR $15.51 Ron Washburn Western Auto

Issued 2/12/83 Served By: ☐ PD ☐ Sheriff ☐ SHP ☐ Other

Trial Date

Final Disposition NOT SERVED UNABLE TO LOCATE

☐ Appeal ☐ Order/Arrest ☐ Forfeiture

Judgment: ☐ Absolute ☐ Stricken LEO No.

Declaration of Service by Mail

RE: IN RE CURTIS F. PRICE ON HABEAS CORPUS, NO S069685

I, Karen S. Sorensen, declare that I am over 18 years of age and not a party to the within cause; I am self-employed in Marin County, California. I served a true copy of the within:

TRAVERSE TO ORDER TO SHOW CAUSE

on the following by placing same in a mailing container addressed as follows:

David H. Rose
Deputy California Attorney General
455 Golden Gate Ave., #11000
San Francisco, CA 94102-3664

Curtis F. Price
D34425
San Quentin State Prison
San Quentin, CA 94974

Enclosed said mailing container was then, on October 5, 2004, sealed and deposited in the United States Mail at Kentfield, in Marin County, California, the county in which I am employed, with postage thereon fully prepaid

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 5, 2004 at Kentfield, California.

KAREN S. SORENSEN

KAREN S. SORENSEN