

JOHN DYKEMAN
#245443

PETITIONER

V.

STATE OF SOUTH
CAROLINA

RESPONDENT

CASE No. 2015-CP-07-1565

EXPLANATION WHY THE
LOWER COURTS DETERMINATION
WAS IMPROPER

APPELLATE CASE No. 2016-001032

ACCORDING TO RULE 243(C) OF THE SOUTH
CAROLINA APPELLATE COURT RULE, THIS RULE
REQUIRES A WRITTEN EXPLANATION AS TO
WHY THIS DETERMINATION WAS IMPROPER, MAY
IT PLEASE THE COURT PETITIONER'S WRITTEN
EXPLANATION IS AS FOLLOWS:

RECEIVED

JUN 03 2016

S.C. SUPREME COURT

EXPLANATION

WHY THE LOWER COURT'S DETERMINATION WAS IMPROPER.

THE LOWER COURT MISCONSTRUE APPLICANTS P.C.R. APPLICATION AS BEING NEWLY-DISCOVERED EVIDENCE WHEN IN FACT IT WAS FILED UNDER THE DISCOVERY RULE S.C. CODE ANN. § 17-27-45 (C) FILING PROCEDURES FOR POST CONVICTION RELIEF.

NO WHERE IN APPLICANTS P.C.R. OR SUPPORTING DOCUMENTATION DID HE MAKE A CLAIM OF NEWLY-DISCOVERED EVIDENCE. HIS CLAIM IS BASED SOLELY ON THE DISCOVERY RULE § 17-27-45 (C) WHICH STATES: IF THE APPLICANT CONTENDS THAT THERE IS EVIDENCE OF MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE

OF REASONABLE DILIGENCE. FURTHER, APPLICANT
CONTENDS THAT IT IS APPARENT THAT THE P.C.R. JUDGE
OVERLOOKED THE DISCOVERY RULE IN SECTION 17-27-45(C).

APPLICANT CONTENDS THAT, HAD THE LOWER COURT
REVIEWED HIS P.C.R. UNDER THE DISCOVERY RULE S.C. CODE
ANN. § 17-27-45(C) IT WOULD HAVE NOTED THAT THIS
CASE IS LIKE THAT OF MCCOY VS. STATE, 737 SE2D 623,
628 (2013). IN THAT ("E]VALUATING THE MERITS OF A
JUROR MISCONDUCT CLAIM IS A FACT-INTENSIVE INQUIRY,
WHICH IS MOST APPROPRIATELY CONDUCTED AFTER A HEARING.");
STATE VS. BRYANT, 581 SE2D 157, 160 (2003) ("IN CASES WHERE
A JUROR'S IMPARTIALITY IS QUESTIONED AFTER TRIAL, IT IS
APPROPRIATE TO CONDUCT A HEARING IN WHICH THE DEFENDANT
HAS THE OPPORTUNITY TO PROVE ACTUAL JUROR BIAS.').

WHEN CONSIDERING THE STATE'S MOTION FOR SUMMARY
DISMISSAL, WHERE NO EVIDENTIARY HAS BEEN HELD, THE
P.C.R. JUDGE MUST ASSUME FACTS PRESENTED BY
THE APPLICANT ARE TRUE AND VIEW THOSE FACTS
IN THE LIGHT MOST FAVORABLE TO THE APPLICANT

LEAMON VS STATE, 611 SE2d 494, 495 (2005)
CITING S.C. CODE ANN. § 17-27-80) (P.C.R. ACTIONS ARE
GOVERNED BY USUAL RULES OF CIVIL PROCEDURES);
WILSON VS. STATE, 559 SE2d 581 (2002); AL-SHABAZZ
VS. STATE, 527 SE2d 742, 747 (2000).

WHERE AN APPLICANT ALLEGES FACTS THAT WOULD
ESTABLISH AN EXCEPTION TO EITHER THE STATUTE OF
LIMITATIONS OR THE PROHIBITION AGAINST SUCCESSIVE P.C.R.
APPLICATIONS AND THOSE FACTS ARE NOT CONCLUSIVELY
REFUTED BY THE RECORD BEFORE THE P.C.R. COURT.
A QUESTION OF FACT IS RAISED WHICH CAN ONLY BE
RESOLVED BY A HEARING. SEE MCCOY VS STATE, 737
SE2d 623 (2013), CITING DELANEY VS. STATE, 238 SE
2d 679 (1977).

ATTACHED TO THIS PETITION FOR WRIT OF
CERTIORARI AND INCORPORATED HEREIN BY REFERENCE
ARE THE EXHIBITS PETITIONER SUBMITTED WITH HIS APPLICATION
FOR POST-CONVICTION RELIEF. EXHIBIT (F) TITLED OFFICE
OF THE CLERK OF COURT ROLL CALL LIST FOR PANEL -

APR 16, 2007. WHICH CLEARLY SHOWS THAT JUROR #292 JAMES H. RATHAN AND JUROR #293 STEPHANIE S. RATHAN NOT ONLY SHARE THE SAME LAST NAME BUT ALSO RESIDE AT THE SAME ADDRESS EXHIBIT (D) TITLED VOIR DIRE SHOWS WHERE JUROR #292 JAMES RATHAN WAS SELECTED AND ACCEPTED AS A ~~JUROR~~ JUROR, AND JUROR #293 STEPHANIE RATHAN WAS SELECTED AND ACCEPTED. IN PETITIONER'S NOTICE OF MOTION AND MOTION IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION FOR A CONDITIONAL ORDER OF DISMISSAL, PETITIONER SUBMITTED ANOTHER EXHIBIT THAT CLEARLY SUPPORTED HIS CLAIM THAT THERE WAS IN FACT A MARRIED COUPLE SERVING ON THE SURY. THIS EXHIBIT COMES BY WAY OF A NEWS PAPER ARTICLE WRITTEN IN THE BEAUFORT GAZETTE.

FURTHER MORE, PETITIONER CAN SHOW BASE ON DOCUMENTATION FILED BY THE CLERK OF COURT TIME STAMPED 2015-SEPT-21. THAT THIS MATTER WAS BROUGHT BEFORE THE LOWER COURT BY WAY OF NOTICE OF MOTION AND MOTION IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION

FOR A CONDITIONAL ORDER OF DISMISSAL. PURSUANT TO S.C. CODE ANN. § 17-27-45(C) (DISCOVERY RULE), NO WHERE IN ANY DOCUMENTATION FILED BY PETITIONER DOES HE CLAIM RELIEF BASED ON NEWLY-DISCOVERED NOR AFTER-DISCOVERED EVIDENCE. HIS CLAIM FOR AN EVIDENTIARY HEARING IS BASED ON THE DISCOVERY RULE § 17-27-45(C) SEE EXHIBIT A, IN MCCOY VS. STATE, 737 S.C.2d 625 (2013). THIS COURT STATED "FOR THE BENEFIT OF THE BENCH AND BAR, WE ADDRESS THE FREQUENT BUT ERRONEOUS APPLICATION OF THE STANDARD NEWLY DISCOVERED EVIDENCE FRAMEWORK IN SUMMARILY DISMISSING PCR CLAIMS INVOLVING JUROR MISCONDUCT. WHERE A PCR APPLICANT ALLEGES JUROR MISCONDUCT, WE REJECT APPLICATION OF THE CLARK FIVE-PRONGED NEWLY DISCOVERED EVIDENCE STANDARD, AS IT DOES NOT HOLD ITSELF TO PROPERLY EVALUATING A CLAIM OF JUROR MISCONDUCT. IN ADDITION, THE CLARK FRAMEWORK IS NOT CONDUCIVE FOR DETERMINING WHETHER A PCR APPLICANT IS ENTITLED TO A HEARING WHERE INTENTIONAL JUROR CONCEALMENT IS ALLEGED."

••• "HOWEVER, JUROR MISCONDUCT DISCOVERED POST-TRIAL IS NOT

PROPERLY CONSIDERED "NEWLY DISCOVERED EVIDENCE"; RATHER, IT IS A SEPARATE BASIS FOR A NEW TRIAL. SEE, E.G., STATE VS SHEPPARD, 582 A.2d 116, 179 (Vt. 1990) (NOTING EVIDENCE OF JUROR MISCONDUCT IS NOT PROPERLY CONSIDERED NEWLY DISCOVERED EVIDENCE BECAUSE IT HAS NO BEARING ON THE ISSUE OF INNOCENCE OR GUILT AND DOES NOT CONCERN THE SUBSTANCE OF THE STATE'S CASE OR AN ACCUSED'S DEFENSE):

STATEMENT OF FACTS

ON July 16, 2013, WHILE STANDING IN THE PILL LINE HERE AT LICBER CORR. INST. I OVERHEARD A CONVERSATION DEALING WITH VARIOUS CASES AND CASELAW THAT WAS APPLIED. I ASKED SEVERAL QUESTIONS ABOUT JUROR MISCONDUCT AND WHAT TO LOOK FOR. SO I WENT BACK TO MY HOUSING UNIT AND STARTED GOING THROUGH MY CASE, WHERE I DISCOVERED TWO (2) JURORS WITH THE SAME LAST NAME AND LIVING AT THE SAME ADDRESS. I THEN STARTED LOOKING FOR ANY PAPER WORK THAT I COULD OBTAIN THAT WOULD IN FACT PROVE THAT THESE TWO (2) JURORS WERE IN FACT MARRIED AT THE TIME OF MY TRIAL AND THAT THESE SAME JURORS WITH HELD THIS INFO NOT ONLY FROM THE COURT BUT FROM THE DEFENSE AS WELL. THESE JURORS HAD AMPLE TIME AND OPPORTUNITY TO DISCLOSE THIS FACT TO THE COURT AND REFUSED TO DO SO.

DOCUMENTATION OF MATERIAL FACTS

THE FOLLOWING DOCUMENTATION WAS INCLUDED
IN MY APPLICATION FOR PCR.:

EXHIBIT C: A COPY OF TITLE TO REAL ESTATE PURCHASED
BY JUROR #292 JAMES H. RATHAN AND JUROR #293 STEPHANIE
J. RATHAN, JOINTLY FOR THE SUM OF THREE HUNDRED TWENTY
THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$32,500.00)
WHICH IS A MATTER OF PUBLIC RECORD FILED IN THE BEAUFORT
COUNTY TAX OFFICE AND IS HEREBY KNOWN AS EXHIBIT C.

EXHIBIT D: A COPY OF THE VIOZ DIRE FORM, WHICH WAS USED
TO RECORD ALL JURORS SELECTED FOR TRIAL. SIGNED BY THE
PRESIDING JUDGE JOHN M. MILLING, PROSECUTOR DUFFY STONE,
SEAN THORTON, DEFENSE ATTORNEY'S GENE C. HOOD, SCOTT
LEE, AND DAPHNE HELMS THE COURT REPORTER. JUROR #292
JAMES H. RATHAN WAS THE 7TH JUROR SELECTED AND JUROR
#293 STEPHANIE J. RATHAN WAS THE 10TH JUROR SELECTED.
THIS DOCUMENT IS HEREBY KNOWN AS EXHIBIT D.

EXHIBIT F IS A COPY OF PAGE 25 OF 34 OF THE ROLL CALL
LIST FOR PANEL - APR 16, 2007 OFFICE OF THE CLERK OF

OF COURT. HERE BY KNOWN AS EXHIBIT F.

EXHIBIT 1 IS A COPY OF A NEWS PAPER CLIPPING FROM THE FRONT PAGE OF THE BEAUFORT GAZETTE WHICH CLEARLY STATES THAT THE JURY SELECTED FOR DYKEMAN'S TRIAL CONTAINED A PANEL OF NINE (9) MEN AND THREE (3) WOMEN, INCLUDING A MARRIED COUPLE. HEREBY KNOWN AS EXHIBIT 1.

EXHIBIT 2 A COPY OF PAGE 3 OF THE PCR APPLICATION STATING TO THE COURT THAT HIS CLAIM IS JUROR MISCONDUCT AND A VIOLATION OF 6TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

AUTHORITIES

COATS V STATE 575 SE2d 557 (2003) [HOLDING PETITIONER'S CLAIM FELL WITHIN RULE PROVIDING WHEN THERE IS EVIDENCE OF MATERIAL FACT NOT PREVIOUSLY PRESENTED, P.C.R. APPLICATION WAS TO BE FILED WITHIN ONE YEAR AFTER ACTUAL DISCOVERY OF FACTS AND DID NOT HAVE TO BE FILED WITHIN ONE YEAR AFTER CONVICTION.]

TILLEY V STATE 511 SE2d 689 (1999) [HOLDING INMATE'S FOURTH P.C.R. APPLICATION WAS NOT SUCCESSIVE.] STATING [“ HE COULD HAVE RAISED THIS CLAIM IN A PREVIOUS P.C.R. APPLICATION BECAUSE HE DID NOT KNOW OF THE CLAIM UNTIL OCTOBER 26, 1995”]

CONCLUSION

ATTACHED TO THIS MOTION FOR WRIT OF HABEAS CORPUS AND INCORPORATED HEREIN BY REFERENCE AS MATERIAL DOCUMENTATION IN SUPPORT OF HIS CLAIM OF JUDICIAL MISCONDUCT.

FOR THE FOREGOING REASONS THIS CASE SHOULD BE REMANDED TO THE LOWER COURT FOR AN EVIDENTIARY HEARING TO BE HELD.

PETITIONER ARGUED THAT JUROR #292 AND JUROR #293'S CONCEALMENT DEPRIVED HIM OF INFORMATION MATERIAL TO HIS INTELLIGENT USE OF PEREMPTORY CHALLENGES, WHICH, IN TURN, DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO TRIAL BY IMPARTIAL JURY.

5-11-16
DATE

John D'Ykeman 245443
John D'Ykeman 245443
PO BOX 205 LCI CA 959
21000 Valley St 29472

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
John Dykeman, #245443,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-07-1565

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 19, 2015. Respondent made its return on or about August 18, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, and the prohibition on successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed August 24, 2015 and filed September 8, 2015, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated September 25, 2015, serving the above-mentioned Conditional Order of Dismissal on Applicant.

In a document titled "Notice of Motion and Motion in Opposition to Attorney General's Motion for Conditional Order of Dismissal," dated September 16, 2015, Applicant argues that his claim of juror misconduct is newly discovered evidence and is not barred by the statute of limitations.

On October 9, 2015, Applicant sent a proposed "Order to Rescind Conditional Order of Dismissal and Order an Evidentiary Hearing."

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

Applicant has failed to make a *prima facie* showing that he is entitled to relief based on newly-discovered evidence. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965). Applicant alleges that he did not discover the evidence to support his claim of juror misconduct until "well after his 1st and second PCR's were filed." An applicant "requesting a new trial based on after-discovered evidence must show that the evidence: (1) is such as would likely change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant has failed to set forth facts sufficient to satisfy these requirements. Specifically, Applicant has failed to establish why such alleged evidence could not have been discovered before the trial or during his initial PCR action. Applicant has failed to make such a *prima facie* showing on these elements that he is entitled to relief based on the information set forth and, therefore, this Court finds he is not entitled to an evidentiary hearing in the matter.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal

AND IT IS SO ORDERED this 23 day of March, 2016.



CARMEN T. MULLEN
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina.

STATE of SOUTH CAROLINA
COUNTY of BEaufort

JOHN DYKEMAN # 268443
APPLICANT

v.

STATE of SOUTH CAROLINA
RESPONDENT

2015 SEP 21 PM 4:26
IN THE COURT of Common Pleas
THE FOURTEENTH JUDICIAL CIRCUIT
2015-CP-07-1565
CLERK OF COURT S.C.

NOTICE of MOTION AND MOTION
IN OPPOSITION TO THE ATTORNEY
GENERAL'S MOTION FOR A CONDITIONAL
ORDER OF DISMISSAL

THIS MATTER IS BEFORE THE COURT BY WAY OF AN APPLICATION FOR POST-CONVICTION RELIEF (PCR) FILED BY JOHN DYKEMAN (APPLICANT) ON JUNE 19, 2015. APPLICANT IS MAKING A RETURN MOTION IN OPPOSITION TO THE STATE'S REQUEST FOR A CONDITIONAL ORDER OF DISMISSAL FILED AUGUST 24, 2015.

APPLICANT CONTENDS THAT THE RESPONDENT (PALES) TO LEAD THE APPLICANT'S APPLICATION AND EXHIBITS IN THEIR ENTIRETY, HAD THEY DONE SO THEY WOULD HAVE FOUND MATERIAL FACTS WHICH MEETS THE GUIDELINES SET OUT IN THE S.C. CODE ANN § 17-27-95(C) AS WELL AS S.C. CODE ANN § 17-27-90 (1995). APPLICANT CLEARLY MEETS THE STANDARDS IN BOTH SECTIONS AND SHOULD BE AFFORDED AN EVIDENTIARY HEARING.

APPLICANT HEREIN PROVIDES SPECIFIC REASONS, FACTUAL AND LEGAL, WHY THE APPLICATION SHOULD NOT BE DISMISSED.

MATERIAL FACTS.

ATTACHED HERE WITH AND INCORPORATED HERE IN ARE MATERIAL FACTS, LEGAL AUTHORITIES, AND EXHIBITS THAT WERE FILED IN THE BEAUFORT COUNTY CLERK OF COURT, COURT OF COMMON PLEAS. CASE No. 2015-CP-07-1565 DATED JUNE 19, 2015.

D. OBJECTIONS TO SUCCESSIVENESS:

A). APPLICANT CAN SHOW WITH MATERIAL FACTS THAT HIS APPLICATION SHOULD NOT BE CONSTRUED AS SUCCESSIVE BASED IN PART BY AN ORDER RECEIVED FROM THE SOUTH CAROLINA SUPREME COURT. (SEE EXHIBIT 1A).

B). APPLICANT CAN SHOW PURSUANT TO MCCOY V. STATE, 737 SE 2d 623, 2013.

IN THE INSTANT CASE APPLICANT CAN SHOW MATERIAL FACTS WHICH MIRROR THOSE USED IN MCCOY. FOR THE SAME REASONS USED IN MCCOY, JUROR MISCONDUCT IS A SEPERATE BASIS FOR A NEW TRIAL. AS IN MCCOY, APPLICANT DISCOVERED THE ISSUE OF JUROR MISCONDUCT WELL AFTER HIS 1ST AND 2ND PCR'S WERE FILED. AS NOTED IN THE RECORD APPLICANT FIRST FILED HIS MOTION FOR JUROR MISCONDUCT IN THE WRONG COURT. (SEE EXHIBIT 1A). ALSO (SEE NOTICE OF MOTION FOR A HEARING WHERE JUROR'S IMPARTIALITY IS QUESTIONED AFTER DEFENDANTS TRIAL PURSUANT TO STATE V. BRYANT, 354 S.C. 390, 581 SE 2d 157 (2003). FILED DECEMBER 9, 2013.

C) APPLICANT HAS PRESENTED SEVERAL REASONS WHY HE COULD NOT HAVE SUFFICIENTLY RAISED THIS ISSUE IN HIS PREVIOUS PCR APPLICATIONS. (SEE PCR APPLICATION AND ATTACHMENTS CASE NO. 2015-CP-07-1565). ALSO (SEE AFFIDAVIT MARKED AS EXHIBIT G IN NOTICE OF MOTION AND MOTION FOR A HEARING WHERE JUROR'S IMPARTIALITY IS QUESTIONED AFTER DEFENDANT'S TRIAL PURSUANT TO STATE VS. BRYANT, 354 S.C. 390, 581 SE 2d 157 (2003). THEREFORE, THIS COURT SHOULD NOT FIND THIS PRESENT APPLICATION AS BEING BARRED AS SUCCESSIVE.

2) OBJECTIONS AS TO STATUTE OF LIMITATIONS:

A). AS TO THE TIMELINESS ISSUE, THE ATTORNEY GENERAL MISCONSTRUE SECTION 17-27-45 (A) (2003) IN FINDING APPLICANT WAS REQUIRED TO FILE HIS CLAIM WITHIN ONE YEAR AFTER HIS TRIAL, RATHER THAN ONE YEAR AFTER THE REMITTUR WAS SENT FROM HIS DIRECT APPEAL. FURTHER, THE ATTORNEY GENERAL APPARENTLY OVERLOOKED THE DISCOVERY RULE IN SECTION 17-27-45 (C) WHICH ALLOWS ONE YEAR AFTER THE DISCOVERY OF "MATERIAL FACTS NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRE [] VACATION OF THE CONVICTION OR SENTENCE". APPLICANT HAS PROVIDED AN AFFIDAVIT (SEE EXHIBIT G INCLUDED IN HIS APPLICATION FOR PCR AS WELL AS HIS STATEMENT OF FACTS).

BASED ON THE HOLDING IN MCCOY, APPLICANT FALLS UNDER THE SAME GUIDELINES USED IN MCCOY. ACCORDING TO THE SOUTH CAROLINA SUPREME COURT IT WOULD BE AN ERROR TO SUMMARILY DISMISS APPLICANT'S CLAIM WITHOUT AN EVIDENTIARY HEARING. APPLICANT CLAIMS THAT HE IS ENTITLED TO THE BENEFIT

OF THE DISCOVERY RULE SINCE IT IS NOT CONCLUSIVELY REFUTED BY THE RECORD, (SEE MCCOY VS. STATE, 737 S.E.2d 623 (2013)).

3) SINCE FILING THE CURRENT PCR APPLICATION APPLICANT HAS SINCE RECEIVED ADDITIONAL "MATERIAL FACTS" WHICH HE IS INCLUDING IN THIS MOTION OF OPPOSITION TO THE ATTORNEY GENERAL'S CONDITIONAL ORDER OF DISMISSAL. (SEE EXHIBIT 1B).

CONCLUSION

PURSUANT TO S.C. CODE ANN. § 17-27-45 (C) WHICH STATES AS FOLLOWS:

IF THE APPLICANT CONTENTS THAT THERE IS EVIDENCE OF "MATERIAL FACTS" NOT PREVIOUSLY PRESENTED AND HEARD THAT REQUIRES VACATION OF THE CONVICTION OR SENTENCE, THE APPLICATION MUST BE FILED UNDER THIS CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT, OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE.

PURSUANT TO S.C. CODE ANN § 17-27-90 (1985) UNDER THIS STATUTE APPLICANT HAS SHOWN "SUFFICIENT REASONS" WHY THIS APPLICATION IS NOT SUCCESSIVE AND THE COURT SHOULD NOT DISMISS THIS APPLICATION WITHOUT AFFORDING THE APPLICANT AN EVIDENTIARY HEARING BASED ON ALL OF THE MATERIAL FACTS HE HAS PRESENTED TO THE COURT.

APPLICANT CONTENTS THAT THE "MATERIAL FACTS" HE HAS PRESENTED TO THE COURT ARE SUFFICIENT TO AFFORD HIM AN EVIDENTIARY HEARING.

BASED ON THE APPLICANTS CONSTITUTIONAL RIGHTS UNDER THE 6TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION WHICH GUARANTEES HIM THE FUNDAMENTAL RIGHT TO A TRIAL BY FAIR AND IMPARTIAL JURORS.

9-14-15

John Dykeman 245443
JOHN DYKEMAN 245443

3/10/04
Willy
595

EXHIBIT C

BEAUFORT COUNTY SC - ROD
BK 01849 PG 0300
FILE NUM 2003078224
10/02/2003 10:00:41 AM
REC'D BY V GARVIN RCPT# 188174
RECORDING FEES 10.00
County Tax 343.75
State Tax 812.60
Transfer Tax 781.26
RECORDED
2003 Oct -10 03:11 PM
Sharon Q. Bunn
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOWN ALL MEN BY THESE PRESENTS, THAT WE, RICHARD ALEX FELDMAN and ANNE E. FELDMAN, in the State aforesaid for and in consideration of the sum of Three Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$312,500.00), to us in hand paid at and before the sealing of these presents by JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN of 6 Sarah Court, Hilton Head Island, South Carolina 29926, in the State aforesaid for which the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN, as joint tenants, with rights of survivorship, and not as tenants in common their heirs and assigns, forever, in fee simple, the following described property, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, south Carolina, more particularly described as LOT NUMBER NINETY (90) SARA COURT, PARCEL JJ SUBDIVISION in HILTON HEAD PLANTATION; said property having dimensions, metes and bounds as shown on the plat thereof recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Plat Book 50 at Page 165.

DIST R510 - MAP 4 - SUBMAP C - PARCEL 591

ADD DMP Record 10/7/2003 03:33:04 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	004	00C	0591	0000	00

10F3

Said property is conveyed subject to all obligations, restrictions, limitations and covenants contained in the Amended and Restated Declaration of Covenants and Restrictions for Hilton Head Plantation as recorded in the Register of Deeds Office for Beaufort County, South Carolina in Deed Book 367 at Page 656 and the Amendments recorded in Deed Book 388 at Page 26, Deed Book 393 at Page 1421, Deed Book 477 at Page 18, Deed Book 477 at Page 929, Deed Book 484 at Page 1473, Deed Book 502 at Page 1903, and as may be further amended.

Said property further is conveyed subject to all obligations, restrictions, limitations, covenants, etc., contained in the Class "A" Covenants for Single Family Detached Areas of Hilton Head Plantation as recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Deed Book 211 at Page 1470, and the Amendments recorded in Deed Book 223 at Page 2054, Deed Book 224 at Page 1012, Deed Book 376 at Page 1437, Deed Book 451 at Page 759, re-recorded in Deed Book 475 at Page 1870, and as may be further amended.

This being the same property conveyed to the within Grantors by Deed of Gary M. Bruno and Maryann Bruno, as recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Records Book 1071 at Page 2319 on August 4, 1998.

THE within Deed was prepared in the law offices of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head Island, SC 29938.

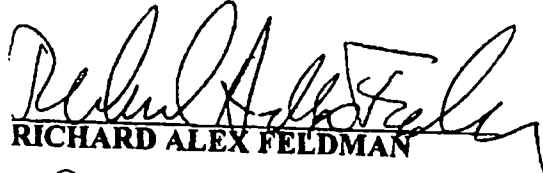
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN**, as joint tenants, with rights of survivorship, and not as tenants in common their heirs and assigns, forever, in fee simple.

AND we do hereby bind ourselves and our Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said **JAMES H. RATHAN, JR., and STEPHANIE J. RATHAN**, their Heirs and Assigns, against ourselves and our heirs, and all persons whomsoever now and hereafter lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals, this 30 day of September in the year of our Lord Two Thousand Three in the Two Hundred and Twenty-Eighth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


RICHARD ALEX FELDMAN


ANNE E. FELDMAN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Richard Alex Feldman and Anne E. Feldman personally appeared before me this 30 day of September, 2003, and acknowledged the due execution of the foregoing instrument.

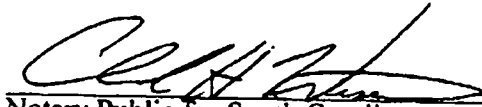

Notary Public for South Carolina
My Commission Expires: 12/18/10

EXHIBIT D

County: Beaufort
Date: 4-16-67

VOIR DIRE

Case No: 04-65-07-834-836

Judge: John Milling

Pl. / State: State

State/Pl's. Atty: Duffy Stone

Defendant: John Dykeman

Sean Thornton

Defense Atty: Gene Hood

Scott Lee

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
345	William Smost	m	W				✓
226	Mikel Macey	F	W			✓	
158	Judgy Hartnett	F	W				✓
333	Wesley Siau	m	W			✓	
106	Charles Ellis	m	W		✓		
363	Dayle Thomas	F	W			✓	
34	Francis Booth	m	W				✓
52	Lyaane Campanero	F	W				✓
317	James Rothnie	m	W			✓	
302	Mary Riley	F	W			✓	
78	Henry Curtis	m	W				✓
344	Thom's Smoll	m	O				✓
292	James Rathan	m	W				✓
373	Alan Judeau	m	W				✓
62	Michael Clark	m	W				✓
117	Ella Fields	F	B			✓	

* For the Court column, indicate who made the motion to strike the jurors "for cause."
C-Court, P-Plaintiff, D-Defense

County: Beaufort
 Date: 4-16-07

VOIR DIRE

Case No: 04-65-07-834-836 Judge: Milling
 Pl. / State: State State/Pl's. Atty: Stone
Thornton
 Defendant: John Dykeman Defense Atty: Hood
Lee

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
21	Bruce Belisle	m	w			✓	
293	Stephanie Rathen	F	w				✓
213	John Lentz	m	w				✓
16	Wallace Barnes	m	w				✓
Alternates:							
207	Matthew Lawrence	m	w		✓		
86	Florence Davis	F	B	(first alternate)			✓
204	Debra Laurich	F	w	(second alternate)			✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
 C-Court, P-Plaintiff, D-Defense

Office of the Clerk of Court
 ROLLCALL LIST FOR PANEL - APR 16, 2007
EXHIBIT F

FILEAGE JUROR #	STATUS	NAME	ADDRESS	RACE/SEX/DOB	OCCUPATION
291		Rasheed, Hasan	90 WIMBEE CREEK RD SEA BROOK 29940	B M 4/2/1927	RETURNED
* 292		Rathan, James H	6 SARACT HILTON HEAD ISL 29926	W M 3/28/1942	RETIRED
* 293		Rathan, Stephanie J	6 SARACT HILTON HEAD ISL 29926	W F 10/31/1952	ADMIN ASSIST
294		Reed, Anne A	16 BEAR ISLAND RD HILTON HEAD ISL 29926	W F 6/13/1947	SERVED 2005
295		Reo, Rosa J	35 SAVANNAH TRL HILTON HEAD ISL 29926	W F 12/6/1940	AGE-EXCUSED
296		Resanowitch, Roxanne /	6 DOE DR BEAUFORT 29907	W F 3/13/1960	RETURNED
297		Reusch, Teresita D	10 STANLEY FARM RD BEAUFORT 29906	A F 12/22/1946	LOWES
298		Richards, William G JR	56 DOLPHIN HEAD DR UNIT 28 HILTON HEAD ISL 29926	W M 4/29/1960	EXCUSED
299		Richardson, Allen L	4 CHINA COCKLE WAY HILTON HEAD ISL 29926	W M 3/6/1941	AGE-EXCUSED
300		Rickenbach, Richard C	26 SHELDON LN HILTON HEAD ISL 29926	W M 4/16/1949	RETIRED
301	Transferred Out	Riedmayer, David W	207 ANCHORAGE DR BEAUFORT 29907	W M 8/16/1955	TRANS 6/18/07
302		Riley, Mary J	10 ADVENTURE GALLEY LN HILTON HEAD ISL 29926	W F 3/31/1950	ASSOC ARCHITTE Not Grad

04/16/2007
8:05:19AM

File: Rollcall.rpt

EXHIBIT 1

Jury selected in Dykeman murder trial

By LORI YOUNT

lyount@beaufortgazette.com

843-986-5531

A jury of nine men and three women, including a married couple, was selected Monday to decide whether John Dykeman Jr. murdered a brain-damaged and physically disabled man in May 2004.

Opening statements are scheduled to begin this morning.

Jury selection took more than five and a half hours as Circuit Court Judge John Milling asked the larger than usual panel of potential jurors a battery of questions, including relationships to all parties in the case and media exposure.



Please see TRIAL on 5A

(b) NIA

(c) NIA

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) JUROR MISCONDUCT (SEE ATTACHMENT)

(b) VIOLATION OF 6th & 14th AMENDMENTS US. CONST.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ATTACHMENTS

(b) SEE ATTACHMENTS

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? YES, BUT NOT ON THIS ISSUE

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES, BUT NOT ON THIS ISSUE

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? YES, FILED IN WRONG COURT

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. DIRECT APPEAL NOT ON THIS ISSUE

ii. PCR NOT ON THIS ISSUE

iii. WRIT OF CERT. NOT ON THIS ISSUE

iv. FEDERAL HABEAS NOT ON THIS ISSUE

(b) the name and location of the Court in which each was filed:

i. S.C. COURT OF APPEALS

ii. BEAUFORT COUNTY COURT OF COMMON PLEAS NOT ON THIS ISSUE

iii. S.C. SUPREME COURT. NOT ON THIS ISSUE

JOHN DYKAMAN 245443
PO Box 205 LCI CA-59
RIDGEMOUNT, SC 29472

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