

STATE OF SOUTH CAROLINA

[In The Supreme Court]

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

RECEIVED

MAR 12 2019

S.C. SUPREME COURT

William H. Seals Jr., Circuit Court Judge

Case No. 2018-CP-22-0488

State of South Carolina.....Respondents,

v.

Jody Lynn Ward, #300644.....Appellant,

S.C.A.C.R. RULE 243 (c)  
(c) EXPLANATION REQUIRED

(c) Explanation Required. If the lower Court has determined that the Post Conviction Relief action is barred as successive or being untimely under the Statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

Respectfully Submitted,

/s/ *Jody Lynn Ward* #300644  
Jody Lynn Ward, #300644

S.C.A.C.R. RULE 243 (c)- EXPLANATION REQUIRED

Explanation as to why this determination was improper and sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper.

see: Trial Handbook for South Carolina Lawyers 4th Ed.

§ 6:3- Right of accused to challenge Potential Jurors in criminal cases.

In a criminal case, the Sixth (6th) and Fourteenth (14th) Amendments to the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors. State V. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003). In order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.

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. State V. Bryant, supra.

Juror # 19 Marissa Cooper- has never been brought before a Court and Questioned why she remained quiet during the 2004 Trial that she has a Business Relationship to 7 witnesses names that were called during the Voir Dire of his March 2004 Trial.

fNote1

See also: State V. McCoy, 401 S.C. 363, 737 S.E.2d 623 (2013)

see: Trial Transcript page 253 and 254  
pg. 253 lines

Lines: 16. ... Billy Wilson  
17. ... Denise Lawgston Cox  
23. ... Josh  
24 Ackerman, Jason Ackerman

pg. 254 lines

4...clifton  
5. Rogers Jr.  
15. ...Tracy Collins  
17... Roger Dale Ackerman Jr.

22. The Court: All Right, is there any member of the jury  
23 Panel who is related by blood or marriage or friend or  
24 Business acquaintance with any of these potential  
25 witnesses? If so, please stand.

Voir Dire Trial Transcript page 255 lines 1-2 is clear &  
Convincing Evidence

Tr. T. pg 255 lines 1-2

1. [ NO Response]  
2. The Court: All right, very well, if we could then

see: McCoy V. State, 401 S.C. 363, 737 S.E.2d 623 (2013)  
The S.C. Supreme Courts Ruling On Potential Jurors Misconduct  
& Bias!!!

On Official Transcript page 389 lines 12-page 452 lines 5 Lynn Denise Cox testified against Appellant one of States only key witnesses in this case and she rents a lot from Juror # 19 Marissa Cooper, and she is looking at a Woman who pays her rent every month and she still fails to tell the court.

That's intentionally concealing information from Appellant & the Court & Solicitors' Office It's Newly Discovered and there's No Way that petitioner or his counsel would have known of this business relationship.

see: Tr. T. page 452 lines 15-page 465 lines 17

Now next witness- Kevin Cooper- he is her husband cousin which is a relationship by marriage, separate & distinct but a pattern of bias/misconduct still Juror # 19 Marissa Cooper Never been questioned before a court at a hearing, but that issue is pending from a 29 (b) in the S.C. Court of Appeals as personal relationship Counsel of record Tristan Shaffer.

see: Tr. T. page 601 lines 4- page 606 lines 14

Tracy Collins testified and still Juror # 19 Marissa Cooper still doesn't tell the court that she rents a lot to this young lady who is testifying against Appellant. It's clearly improper and a hearing in this case is warranted is clear error & the Lower Court determination is improper as the 6th & 14th Amendment to the United States Constitution Guarantee Appellant a fair trial by a panel of impartial and indifferent jurors.

see: State V. Bryant, 354 S.C. 390 , 581 S.E.2d 623 (2013)

On April 19th, 2018 Clifton Rogers Jr. gave a sworn statement which was attached to P.C.R. as evidence of Material Facts in dispute. There was no way possible

to know that Marissa Cooper was the owner of Green Acre Mobile home park and she had a Business relationship with (7) (1);(2); (3);(4);(5);(6);(7); potential witnesses during the Voir Dire and she intentionally disclosed bias/misconduct and an Impartial juror without being properly brought before a court and on the record questioned of her impartiality & why she failed to tell the court & defense & solicitors of this business relationship to (7) potential witnesses whose names were called out at the Voir Dire of March 15, 2004 trial.

Footnote

Denise Cox testified against the Appellant, and she also Rented a Lot and paid rent to Marissa Cooper Juror #19, Denise Cox was supposedly one of the only critical witness against Appellant state using try to argue Overwhelming Evidence. Her husband had a trailer in her park over 25 years.

ISSUE

Did the Post Conviction Relief Judge "Commit A Error Of Law" in Summarily Dismissing the Juror Misconduct Allegations without appointment of counsel and a Evidentiary Hearing, to require a Remand for Appointment of Counsel to satisfy Rule 243 SCACR Explanation as to why this Honorable Court should appoint counsel and allow Writ of Certiorari to Proceed.

STATEMENT OF CASE

The pro se applicant was found guilty in Georgetown General Sessions on March 18, 2004 and sentenced to Life for Murder 2003-GS-22-01030,01031- Hon. Paula Thomas.

Applicant Direct Appeal a Anders Brief Filed by Robert Dudek (ESQ) and denied State V. Ward 2007-UP-048 (Jan 26, 2007). Applicant first PCR was denied by May 19, 2008 Applicant filed Certiorari Denied by SC Supreme Court Ward V. State Aug. 20, 2009.

Applicant filed two other PCR applications both held to be successive.

And a Federal Habeas Petition that was denied and appealed to Fourth Circuit and to US Supreme Court.

A Rule 29(b) SCRCRIM PRO. was filed in 2012 State V. Ward and denied 2014-UP-402 SC Court of Appeal.

None of the above are relevant to this PCR.

1st JUROR MISCONDUCT PROCEEDING

On Oct 28, 2014 Applicant filed a pro se motion for a new trial based upon after discovered evidence pur. to Rule 29(b) SCRCrimPro. based upon Juror Misconduct.

This rule 29(b) was based on Juror Marissa Cooper (#19) concealed a personal relationship between her and witness.

Judge Larry Hyman dismissed the Rule 29(b) and this Rule 29(b) appeal is now pending briefing in the SC Court of Appeals. With Tristian Shaffer (ESQ) as Appeal counsel.

CURRENT JUROR MISCONDUCT PCR

During the proceedings incident to the above Rule 29(b) on Juror #19 Marrissa Cooper concealing, intentionally, her personal relationship to witnesses in VOIR DIRE applicant discovered juror #19 Marissa Cooper while concealing personal relationship to State witnesses she also intentionally failed concurrently disclose she had a long term rent-landlord tenant business relationship with (7)SEVEN OF STATE WITNESSES.

The applicant asserted under oath pur to Rule 11 SCRCP he discovered within one year of the filing of the P.C.R. upon further investigation JUROR #19 Marissa Cooper was in a Business relationship with (7)seven State Witnesses as Landlord of Green Acres Mobile Home Park to whom 7 witnesses paid her rent every month. A Business Relationship.

The PCR Court initially signed a order named as a conditional order of dismissal stating PCR did not meet the (5) prongs of newly discovered evidence Hayden V. State 278 SC 610, 611 (1983).

When Applicant objected to the error of law in failure of PCR court to address issue under McCoy V. State 737 Se2d 623 (2013).

In final order the PCR found McCoy V. State did in fact apply to this case but held "pg 2: even under McCoy Applicant is not entitled to a Evidentiary Hearing.

As the Supreme Court in McCoy noted the claim must be timely raised. As applicant sought relief ' on this ground in October 2014 and a Judge Hyman rejected that effort finding applicant knew about the new evidence prior to and at the time or trial in 2004, he cannot now achieve a hearing based upon the information.

First, the Juror Misconduct issue referred to addresses a " separate and distinct ground, to wit juror #19 Marissa Cooper intentionally concealed personal relationship to witnesses, the denial of a evidentiary hearing on that issue is on appeal in SC Court of Appeals.

The Juror Misconduct issue in case Sub Judice raises allegation, that within one year of filing the instant application he discovered juror #19 also concealed a landlord tenant business relationship with (7) witnesses, her intentional concealment is self-evident in her conduct by not disclosing (7) State witnesses, (Who testimony state relies upon as overwhelming evidence of guilt in several pleadings), Juror #19 Marissa Cooper concealment and intentional non disclosure of her business relationship to seven (7) state witnesses were not known to applicant, not disclosed by solicitor and certainly not (even now) disclosed by this malfeasant juror #19 Marissa Cooper, at time of previous Rule 29(b) before Judge Hyman (on Appeal) as, again, that hearing dealt with her concealing personal relationships, this is a horse of a whole different color juror misconduct based upon intentional non disclosure of business relationship

Pur. to Rule 243 based upon the allegations raised in the PCR sub judice Rule 12 (b) 6 Rule 56 SCRPC control this court analysis

Did Applicant allegations, if true, would entitle him to relief pursuant to McCoy V. State (2013)

A MATERIAL FACTUAL DISPUTE EXISTS AS

1) He alleged he discovered the business relationship between # 19 Marissa Cooper a (7) state witnesses within one year or the filing of PCR 17-27-45 (c) Rule 11 (a) Good Faith Belief. \* Applicant Affidavits, Proof and Verification are sufficient evidence proceed to a evidentiary hearing with appointment of counsel.

2) He has alleged "Juror Misconduct" of a juror #19 previously alleged to intentionally conceal personal relationships has now within the last year been discovered to be in a landlord-tenant relationship to 7 of state key fact witnesses showing habit or routine of juror misconduct, pur to Rule 243 the court holding 'applicant offers nothing to actually show the juror intentionally concealed this information but rather merely repeatedly insists on this conclusion. IS ERROR OF LAW. The facts themselves, 7 of her tenants being state witnesses, watching them testify and remaining silent is clear and convincing evidence probative and relevant of seeing a red-light and driving thru the intersection- a fact-finder could reasonably find that act intentional this juror drove thru 7 red lights and court does not credit that a intentional acts to warrant a evidentiary hearing 17-27-80 is abuse of discretion.

Applicant attaches in support of his Rule 243 the pleadings made in case sub judice objections to conditional orders as state did not comply with 17-27-70 by supplying the entire lower record in its return as mandated. Applicant has appeared appendix of relevant exhibits to support a arguable basis exists to ~~appoint counsel to brief juror misconduct~~

The applicant asserts in closing his juror misconduct meets State V. Kelly 331 SC 132 (1998) It is therefore imperative her answers be truthful and complete. State V. Kennedy 331 SC 442 (1999) (Failed to reveal her relationship to witnesses -) Thompson V. O'rouke 288 SC 13 (1986) A evidentiary hearing to examine evidence to prove allegations MCCoy . Her repeated non-disclosures of both personal (oct 2014) and business (recent) are clear and convincing evidence of a pattern pur to SCRE 406 "Habit or Routine" of Intentional concealment (more probable) At least powerful enough to mandate a evidentiary hearing and appointment of counsel 17-27-70,80,90 SC Code of Laws

The applicant affidavit as to time of discovery must be deemed a true for purposes of summary judgment

Anderson V. Liberty Lobby US Supreme Court (1984) Rule 56 SCRPC.

A Motion For Summary Judgment may not be granted when appears from the pleadings that there is material factual dispute, McDonnell V. Consolidated School District 315 SC 487 (1997) 17-27-70.

The applicant made the allegation he discovered Juror # 19 Marissa Cooper Intentionally failed to disclose the business landlord relationship to (7) of the state key witnesses.

First, the juror did not disclose this business relationship, at trial, or since the trial,

Second, the Solicitor or respondent SCAE Certainly did not disclose the business relationship.

Applicant prior Rule 29 (b) before Judge Hyman was on this same Juror # 19 M. Cooper Intentionally failing to disclose a personal relationship to witnesses. There is absolutely no probative evidence in the record to show applicant was aware of her business relationship to (7) state witnesses. None.

CONCLUSION A material factual dispute exists based upon facts of this case and fact that applicant asserted under oath he discovered the fact (not disputed by respondent and deemed to be admitted by rules of pleading) Juror # 19 Marissa Cooper intentionally concealed her landlord-tenant business relationship as part of a overall pattern, habit or routine SCRE 406 of intentionally concealment to find sufficient evidence to proceed to a evidentiary hearing of juror misconduct and appointment of counsel.

And applicant affidavit/verification that he discovered juror misconduct within one year deemed as true for summary judgment. Remand to Court of Common Pleas. for evidentiary hearing or further proceedings.

Respectfully,

1st Judge Lynn Ward, #300644

1) This Court may combine this juror misconduct to State V. Ward Pending in Court of Appeals as it pertains to same juror