

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

CURTIS F. PRICE,

On Habeas Corpus.

CAPITAL CASE

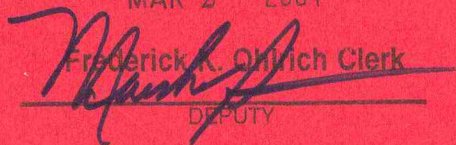
S069685

(Former related appeal:
S004719; first related
petition: S018328)

**RETURN TO ORDER TO SHOW CAUSE
(SECOND PETITION)**

**SUPREME COURT
FILED**

MAR 2 - 2004


Frederick K. Olinich Clerk
DEPUTY

BILL LOCKYER

Attorney General of the State of California

ROBERT R. ANDERSON

Chief Assistant Attorney General

GERALD A. ENGLER

Senior Assistant Attorney General

RONALD S. MATTHIAS

Supervising Deputy Attorney General

DAVID H. ROSE

Deputy Attorney General

State Bar No. 112008

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102-7004

Telephone: (415) 703-5850

Fax: (415) 703-1234

Attorneys for Respondent

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MAR - 2 2004

CLERK SUPREME COURT

DEATH PENALTY

BILL LOCKYER
Attorney General

ORIGINAL

State of California
DEPARTMENT OF JUSTICE



455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

SUPREME COURT
FILED

MAR 25 2004


Frederick K. Ohlrich Clerk
DEPTV

Public: (415) 703-5500
Telephone: (415) 703-5850
Facsimile: (415) 703-1234
E-Mail: david.rose@doj.ca.gov

March 19, 2004

Honorable Frederick Ohlrich
California Supreme Court
350 McAllister Street
San Francisco, California 94102

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MAR 25 2004

CLERK SUPREME COURT

RE: *In re Price*
Supreme Court ~~Court of Appeal~~ No. S069685

Dear Mr. Ohlrich:

On March 2, 2004, respondent filed its Return to Order to Show Cause (Second Petition) in this case. In that brief, we referred to our attempts to secure a declaration from Robert McConkey. We have now received a signed version of that declaration, which we attach hereto as Exhibit A. We thoroughly explained the relevance and background of the issues discussed in this declaration in our return. We are therefore now forwarding this declaration to this Court, and to defense counsel for whatever light it may shed on the issues in this case.

Sincerely,



DAVID H. ROSE
Deputy Attorney General
[State Bar No. 112008]

For BILL LOCKYER
Attorney General

DHR/gm
SF1997XH0008

EXHIBIT A

DECLARATION OF ROBERT MCCONKEY

Robert McConkey declares under penalty of perjury as follows:

I recall that about 15 years ago, during the Price trial, I was a bartender at the Waterfront Café in Eureka. I recall one evening when Ron Bass, who I had never met before, and Geri Dikeman Johnson came into the bar. I know Johnson on a first name basis as a customer who frequented the Waterfront Café, as do many of the attorneys in Eureka. Johnson is outgoing, friendly, attractive and a woman with a great sense of humor.

Bass and Johnson came into the café at about 8 p.m. after they had finished playing racquetball. The bar was dead that night, and there were no other customers besides Bass and Johnson. Because it was so quiet inside the bar, I believe that it must have been sometime during the winter months when the café is typically slow. Bass and Johnson sat at the bar in front of the station where I mix drinks, and I recall talking to them off and on during the approximately one hour that they were in the café, although I was also attending to other normal work duties during the time period. One of the topics of discussion was racquetball because I also play. There was no discussion regarding the trial. I was not drinking that night because I was working.

Zetta Southworth was working as a cook at the café that evening. I was aware of no contact between Bass, Johnson and Southworth. At some point during the evening, either Bass or Johnson, I am not sure who, recognized that Southworth was in the kitchen. I am not sure how Southworth was seen. It is possible that Bass or Johnson saw Southworth through a small window leading to the kitchen from where they were seated at the bar, about 60 or 70 feet away. It is also possible that they may have seen Southworth walking around the café or through the small kitchen window which is positioned near the restrooms on one of their trips to the restroom. I do not recall any comments Bass made at the point he recognized Southworth.

I knew Southworth was on the jury at the time of Bass and Johnson's visit. Southworth was a nervous wreck during the trial. I think Southworth died either during the Price trial or just after it. I have no idea when with respect to the course of the trial that Bass and Johnson came into the café.

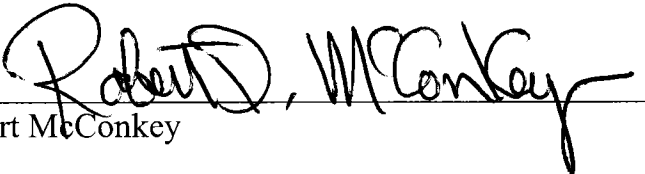
During the course of the evening, Bass and Johnson ordered and ate about five or six appetizers and had five or six martinis each. Their bill was about \$65. I recall that Bass paid the bill, although I don't recall if he paid in cash or with a credit card. I would guess that Bass probably paid the bill in cash, or he would have left the tip on the credit card. After I gave Bass either his change or his credit card receipt, Bass stood up, handed me one \$10 bill, and said "split it with Zetta." I accepted the \$10 bill which I understood was a tip to me and Southworth. Bass said something about the appetizers being very good. Bass and Johnson left, and I locked the door behind them. I gave Southworth \$5, which was half of the \$10 bill, as her half of the tip. I had no discussion with her other than to say where the tip had come from, and that they said "Thanks." I typically do not know the names of patrons and I customarily identify specific tips to the cooks by reference to the dish that they prepared. I have no recollection of Bass, Johnson or Southworth making any type of comment about Southworth voting guilty during the trial. I did not think that the tip was intended to influence Southworth's verdict. Bass's tip was a common practice and in a customary amount. I had no reason to believe that Bass was attempting to buy influence for the minuscule amount of \$5.

I do not recall ever being interviewed by any attorneys regarding the Price case. I do not recognize the names Robert McGlasson, Karen Sorensen or Sandra Michaels. I do not remember being interviewed by a male and female attorney at a bar around the corner from the Waterfront Café. I do remember speaking with an acquaintance at a bar around the corner from the Waterfront Café about the Price case, but I do not recall speaking with any attorneys. My acquaintance may possibly have said something about the conversation to someone else, but I do not recall anything about

that, because it was a long time ago. I told that acquaintance the same things I am stating in this declaration and I cannot imagine that I would have told that acquaintance anything along the lines that the tip was intended to get Southworth to vote guilty.

Someone that I believe was a defense attorney did once come to my house, but I told them I did not remember anything. I had been drinking heavily throughout most of my adult life, and it is possible that I could have met with a male and female attorney for an interview but just cannot remember it now.

Executed at Humboldt County, California on this _____ day of Feb 28 04
2004.


Robert McConkey

DECLARATION OF SERVICE

Case Name: **In re Curtis F. Price**

No.: **S069685**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **March 24, 2004**, I placed the attached **LETTER WITH DECLARATION OF ROBERT MCCONKEY** in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

Karen S. Sorensen
Attorney at Law
PMB 394
336 Bon Air Center
Greenbrae, CA 94904-3017

Robert L. McGlasson
Attorney at Law
1024 Clairemont Ave.
Decatur, GA 30030

California Appellate Project
One Ecker Place, 4th Fl.
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 24, 2004**, at San Francisco, California.

GLORIA MILINA

Typed Name



Signature

TABLE OF AUTHORITIES

	Page
Cases	
<i>People v. Duvall</i> (1995) 9 Cal.4th 464	2
<i>People v. Price</i> (1991) 1 Cal.4th 324	1
<i>United States v. Soulard</i> (9th Cir. 1984) 730 F.2d 1292	7

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CURTIS F. PRICE,

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CAPITAL CASE
S069685

(Former related appeal:
S004719; first related
petition: S018328)

COMES NOW the Director of the Department of Corrections to state in return to the order to show cause issued on December 17, 2003, as follows:

I.

In the early morning hours of February 19, 1983, appellant bludgeoned to death Elizabeth Hickey in the home she shared with her two minor children. Appellant absconded with Hickey's extensive gun collection. On the night of February 12-13, 1983, appellant committed the execution style murder of Richard Barnes in the bedroom of his residence. Barnes's body was found face down on his bed with three contact gunshot wounds to the back of his head. (*People v. Price* (1991) 1 Cal.4th 324, 378-379.) Given that this current issue does not involve the factual issues in the case, we refer the court for further factual exposition to its opinion, *supra*.

II.

Petitioner was convicted of special circumstance murder, robbery and other crimes, and he was sentenced to death. (*People v. Price, supra*, 1 Cal.4th at p. 376.)

III.

Petitioner's conviction and sentence were affirmed by this Court in 1991. (*People v. Price, supra*, 1 Cal.4th at p. 494.) Such judgment constitutes the authority and cause for petitioner's restraint in the custody of respondent at

the California State Prison at San Quentin, California.

IV.

Petitioner's first application for collateral relief in this Court was denied on January 29, 1992. (*In re Price*, S018328.) This is petitioner's second application.

V.

This Court has ordered respondent to show cause as to the issue of whether "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." (See Order to Show Cause issued December 17, 2003.)

VI.

Under *People v. Duvall* (1995) 9 Cal.4th 464, 474, respondent has no duty of proof at this stage of this proceeding. Respondent does have a duty to investigate facts which may narrow the issues. In support of this duty, respondent has performed certain investigation. This investigation has yielded the declarations of Ronald A. Bass, (see Exh. A) and Geri Anne Johnson (see Exh. B).

The allegations in this case are essentially contained in exhibit 11 to petitioner's petition, which is the declaration of Sandra L. Michaels. Michaels states that she was retained by petitioner's attorneys of record in this case, Robert McGlasson and Karen Sorensen, to assist them in the habeas corpus proceedings. Michaels declares under penalty of perjury that she met with Robert McConkey, a bartender at the Waterfront Bar and Restaurant in downtown Eureka, California. Michaels states the interview took place on April 30, 1996, in the evening, after work, at a bar around the corner from the Waterfront.

Michaels states that McGlasson reminded McConkey that McGlasson was petitioner's attorney. McGlasson referred McConkey to an incident that

occurred during the *Price* trial between sitting juror Zetta Southworth and Ron Bass. Michaels avers that McConkey acknowledged the incident and that he had discussed it previously with McGlasson.

Michaels states that at one point in the interview, McGlasson excused himself, and Michaels asked McConkey “to describe to me again as best he could remember the incident that had occurred between Zetta Southworth and Ron Bass during the *Price* trial.” According to Michaels, McConkey stated that Bass and Geri Johnson, the wife of another prosecutor on the *Price* case, Worth Dikeman, entered the bar after having played racquetball together; that Bass and Johnson ordered and drank large amounts of alcohol; and that Bass was aware that Southworth worked in the kitchen at the bar, and Bass sent drinks back to Southworth in the kitchen that evening.

Michaels concludes by stating that McConkey told her that at some point during the evening, Bass took out a \$10 or \$20 bill, handed it to McConkey, and said ““Take this back to Zetta and tell her to vote for guilty.”” (Pet., Exh. 11, at p. 2.) According to Michaels, McConkey said he took the money to Southworth, and told her that Bass had told her to vote for a guilty verdict in the *Price* case; Southworth then took the money from him. (*Id.* at p. 2.) According to Michaels, McConkey added that he thought Bass was “just kidding around.” (*Id.* at p. 3.)

Under *Duvall*, petitioner has no burden of proof at this stage. Rather, petitioner need only allege, in good faith, that he believes he will be able to prove facts sufficient to state a claim for relief. Our investigator refutes petitioner’s claims.

First, in the attached declaration of Ronald A. Bass, Bass states that he cannot remember any incidents such as those described in Michaels’s declaration. (See Exh. A.) Bass does deny that he ever sent drinks to Southworth during the trial, and denies that he improperly tried to influence her

vote on a verdict in the case.

Johnson's recollection is even more specific. (See Exh. B.) Johnson recalls that she and Bass entered the bar during the *Price* trial after having played racquetball together. She acknowledges that she and Bass had two drinks apiece and ate some appetizers. She also acknowledges that Southworth emerged from the kitchen at one point with some menus and addressed Bass and Dikeman. Dikeman recalls that, in reaction to that appearance, Bass forcefully told Southworth that it was improper for him to have contact with her, and that he would not talk to her. (*Id.*) Johnson recalls that she and Bass had no further contact that evening with Southworth. Johnson recalls that McConkey drank heavily throughout the evening, and that the three socialized at the bar. Johnson further recalled:

When we prepared to leave, McConkey gave us the check. The tab was between \$20 and \$30; I remember the amount because I either offered or considered offering to pay. In payment, Bass put two \$20 bills on the bar. Bass leaned forward and, in a mock conspiratorial tone, whispered to McConkey something like "you should give one of these (twenties) to Zetta and tell her to vote guilty." We all laughed. McConkey and I understood that this remark was plainly meant as a joke. Music was playing, and it would have been impossible for Southworth or anyone in the kitchen to have heard Bass's remark.

McConkey took the twenties to the cash register and returned with change for Bass. Bass left a tip, the amount of which I thought at the time seemed appropriate to the bill. Bass pocketed the rest of the change from the twenty.

(Exh.B at 1-2.)

Finally, while we have not been able to secure the declaration of Robert McConkey, our investigator Jeff Lierly interviewed McConkey telephonically on February 10, 2004. (See Exh. C.) McConkey confirms that Bass and Johnson came into the Waterfront Bar after playing racquetball one evening during the *Price* trial. McConkey stated that Bass and Johnson had

five or six martinis each, and ate some appetizers. McConkey denied having any alcohol that evening. McConkey stated that, at some point, Bass and Johnson became aware that Southworth was working in the kitchen. McConkey could not recall how they gained this awareness, given that the kitchen was 60 or 70 feet away from the bar where Bass and Johnson were sitting. McConkey speculated that one of them may have seen into the kitchen when they went to the restroom. McConkey recalled the end of the evening as follows:

McConkey stated that during the course of the evening, Bass and Johnson ordered and consumed approximately five or six appetizers and five or six martinis apiece and estimated their bill would have been approximately \$65. McConkey recalled that Bass paid the bill but could not remember if Bass paid in cash or with a credit card; he speculated that Bass probably paid the bill in cash or he most likely would have left the tip on the credit card. After returning to Bass with either his change or credit card receipt, he said Bass stood up, handed him one ten-dollar bill, and told McConkey, "Split this with Zetta." McConkey accepted the ten-dollar bill which he said he "knew" was a tip to him and Southworth. McConkey also recalled Bass saying something at that time about the appetizers "being very good." Immediately after paying the bill and leaving the tip, he said Bass and Johnson left and he locked the door behind them. McConkey said he gave Southworth her half of the tip (\$5) and had no discussion with her other than to tell her where it had come from and they said "thanks." Although McConkey could not remember exactly what he said to Southworth, he indicated he typically does not know the names of the patrons and customarily identifies specific tips to the cooks by the dish they prepared. McConkey had no recollection of Bass, Johnson, or Southworth making any type of comment about Southworth voting guilty during the trial. [A]sked . . . if he had any reason to suspect either then or now that the money Bass gave him was intended to influence Southworth's verdict . . . [,] McConkey stated that it was only \$5, not \$500, and that it is very common for patrons every day to tip the cook, especially when the customer likes the dish that is prepared. McConkey said he "knows" the money was a tip and he has no reason to suspect Bass was attempting to buy influence for the "minuscule" amount of \$5. After paying the bill, he said Bass and Johnson left and he locked the door behind them.

(Exh. C, report of Agent Jeff Lierly, at 2-3.)

McConkey further stated that he had no memory of being interviewed by any defense attorneys in this case, and that he had no recollection of the names Robert McGlasson, Karen Sorensen, or Sandra Michaels. McConkey acknowledged that he had been a life long alcoholic and may have forgotten things.

As we described in our earlier informal opposition, McConkey has previously stated that the incident described by Michaels never happened, that the entire story was a yarn, and that he never intended anyone to take it seriously. (See Brief in Opposition, filed April 2, 1999, Exh. A.) McConkey stated that when he told the “attorney” the story “as a joke,” he had been drinking. (*Ibid.*) Further, petitioner acknowledges that when he sent his own investigator to McConkey to attempt to secure from him a sworn declaration on the topic, McConkey stated that he “had drunk too many brandies” and that he could not remember anything about the incident. He also stated that the whole incident was a big joke, and that Bass was just kidding around. (Pet., Exh. 10 at p. 2.)

We note there is no sworn evidence in this case that Bass ever sent drinks to Soutworth; in fact, the sworn evidence in this case all states that Bass affirmatively did not perform any such misconduct.

It is true that the record concerning Bass’s apparent comment to McConkey about having Southworth vote guilty is somewhat less clear. Johnson’s sworn statement shows that Bass, McConkey, and Johnson all clearly understood that this statement was a joke. McConkey’s unsworn statements also indicate that the statement either was understood as a joke, or that the tip was simply a customary tip, with no significance whatsoever. The fact that McConkey was drinking at the time he made his statements to defense counsel, combined with his numerous contradictory statements on the topic, and his

admission that his memory is clouded by decades of drinking, undermines any suggestion that petitioner can prove any fact solely on the basis an expectation of future testimony by McConkey. This is especially true to the extent that that hoped-for future testimony by McConkey would directly conflict with sworn testimony by other parties.

It is equally apparent that petitioner will not be able to demonstrate prejudice in this case. (See *United States v. Soulard* (9th Cir. 1984) 730 F.2d 1292, 1306, fn. 13.) Here, under Johnson's comprehensive memory of the events, all that occurred was a joking remark by Bass. No improper conduct or contact whatsoever occurred. Under McConkey's previous hearsay versions of the story, McConkey agreed that any statements by Bass were meant as and understood to be a joke. Under McConkey's newer theory that the money was intended as a tip, no improper motive or behavior is shown. Accordingly, under any of these theories of the evidence, petitioner will be unable to show prejudice stemming from any actions of Bass.

VI.

Except as otherwise indicated, respondent denies each and every allegation of the petition, denies the petitioner's confinement is in any way illegal, and denies that petitioner's rights have been violated in any respect.

VII.

If petitioner disputes the material facts asserted in this return, a referee should be appointed and an evidentiary hearing held to resolve any conflicts thus created.

VIII.

Respondent incorporates by reference Exhibits A, B and C, appended to this return.

WHEREFORE, it is respectfully submitted that the Second Petition for Writ of Habeas Corpus be denied and the Order to Show cause discharged, unless petitioner disputes any material assertion contained herein. If petitioner does deny any material fact asserted herein, a referee should be appointed and an evidentiary hearing should be convened to resolve such disputed fact or facts, after which the Second Petition for Writ of Habeas Corpus should be denied and the Order to Show Cause discharged.

Dated: March 1, 2004

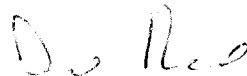
Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

GERALD A. ENGLER
Senior Assistant Attorney General

RONALD S. MATTHIAS
Supervising Deputy Attorney General



DAVID H. ROSE
Deputy Attorney General

Attorneys for Respondent

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CERTIFICATE OF COMPLIANCE

I certify that the attached RETURN TO ORDER TO SHOW CAUSE uses a 13 point Times New Roman font and contains 2,211 words.

Dated: March 2, 2004

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

A handwritten signature in black ink, appearing to read "David H. Rose".

DAVID H. ROSE
Deputy Attorney General
Attorneys for Respondent

EXHIBIT A

DECLARATION OF RONALD A. BASS

RONALD A. BASS declares under penalty of perjury as follows:

1. In 1985 through 1986, I was a co-prosecutor, along with Humboldt County Deputy District Attorney Worth Dikeman, in the capital murder case *People v. Price*. At the time, I was a Deputy Attorney General in the Office of the California Attorney General. I have read the hearsay allegations in the current Petition for Writ of Habeas Corpus in the California Supreme Court, Case No. S069685, concerning that trial. My best memory concerning the allegations is as follows:

2. I remember playing racquetball during the time of the trial. I played on occasion with my sister, and, on at least one occasion with Geri Anne Johnson, the wife of my co-prosecutor Worth Dikeman.

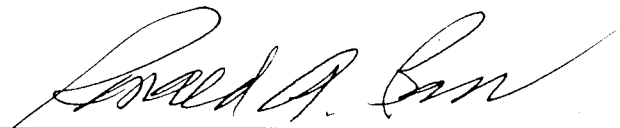
3. I recall that, on one occasion, after playing racquetball with Ms. Johnson, we went to a local tavern, where we had “hor d’ oeuvres,” and drinks. I did not drink to excess or become intoxicated on that occasion, or on any other occasion during the trial.

4. I remember that on one occasion during trial I was at an establishment in Eureka when I was told that a sitting juror was working in the kitchen at that establishment. I was surprised, because I believed that the trial judge in that case had ordered the jurors not to work their normal jobs while they sat as jurors in the case. I

do not remember if I actually saw the juror on that occasion. I do not recall if that was the same occasion when I was with Ms. Johnson. I would point out, however, that seeing jurors was not uncommon, because Eureka is a relatively small town. I believe that on other occasions during the lengthy trial I did see other jurors carrying out normal activities around town.

5. I do not remember any other facts concerning the supposed incidents described in the hearsay allegations in the Petition for Writ of Habeas Corpus. I can categorically say, however, that I did not then, nor did I ever, communicate improperly with a sitting juror during that trial. I did not perform any of the other improper acts alleged in the Petition. In particular, I did not send money or drinks to a sitting juror during the trial. Further, I did not, out of court, request a juror to vote in favor of a guilty verdict.

Executed on this 8th day of January 2004, at San Francisco, California.



RONALD A. BASS

EXHIBIT B

DECLARATION OF GERI ANNE JOHNSON

Geri Anne Johnson declares under penalty of perjury:

On Monday, December 22, 2003, I spoke to Deputy Attorney General David Rose by telephone. This was the first time we had spoken or had any contact. We communicated again several times thereafter. I told him of my memory of the following facts:

I met Deputy Attorney General Ron Bass during the capital murder trial in *People v. Price* in Humboldt County. Bass was a co-prosecutor of the case along with Humboldt County Deputy District Attorney Worth Dikeman, who was and is my husband. I was and am a practicing attorney in Humboldt County.

One day early in the trial, Bass and I played racquetball, and then drove in separate cars to Old Town Eureka to have a drink. This was the first time Bass and I had socialized. I saw a nice tavern called the Waterfront Café, where I had never gone before. Bass and I parked and entered the Café.

The room had a bar and tables. No one was at the bar, and I do not recall whether anyone was at the tables. We went to the bar and ordered drinks. The bartender, whom I later knew to be Robert McConkey, asked if we wanted food. When we said we did, a woman came out with menus. Bass later identified this woman as Zetta Southworth, who was either a sitting or prospective juror in the *Price* case.

When Bass saw Southworth, he jumped up from his barstool, held up his hands as if he were being arrested, and positioned the stool and me physically between him and Southworth. Bass said something like, "I gotta stay away from you, I have to maintain propriety."

Southworth handed me the menus and suggested we get the crab fritters. She then walked away, back through the door into the kitchen. I believe Southworth had understood Bass's meaning, and knew she could not be in contact with Bass. Southworth did not come back into the bar the rest of the time that Bass and I were present, and I did not see Southworth again that evening. Bass did not send drinks to, or otherwise communicate with, Southworth, through McConkey or otherwise, at any time that evening.

Bass, McConkey and I spent a pleasant time talking and laughing. Bass, a native of Eureka, told stories about his ancestors in Eureka, and McConkey talked about his family as well. McConkey seemed like a sweet man. However, McConkey drank heavily throughout the evening. Bass and I had two drinks apiece; McConkey had more.

When we prepared to leave, McConkey gave us the check. The tab was between \$20 and \$30; I remember the amount because I either offered or considered offering to pay. In payment, Bass put two \$20 bills on the bar. Bass leaned forward and, in a mock conspiratorial tone, whispered to McConkey something like "you should give one of these (twenties) to Zetta and tell

her to vote guilty.” We all laughed. McConkey and I understood that this remark was plainly meant as a joke. Music was playing, and it would have been impossible for Southworth or anyone in the kitchen to have heard Bass’s remark.

McConkey took the twenties to the cash register and returned with change for Bass. Bass left a tip, the amount of which I thought at the time seemed appropriate to the bill. Bass pocketed the rest of the change from the twenty.

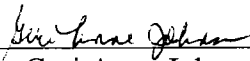
Bass and I were not intoxicated from the two drinks. However, it was an unusual clear night in Eureka, so we walked around the block to clear our heads. Bass pointed out and named several constellations. We then went to our separate cars and drove to our homes.

The next morning, I told my husband, Worth, what happened at the Waterfront the night before. When he heard that a juror worked as a cook there, he was concerned. I told him that Southworth had stayed in the kitchen after delivering menus to us, and we dropped the subject there.

I went to the Waterfront frequently after that evening. The Waterfront is a hangout for attorneys, and is also one of the few restaurants overlooking Humboldt Bay. I saw Southworth once in awhile there, but not often – usually when she came out of the kitchen to ask a waiter or the bartender something. The kitchen cannot be seen at all from the restaurant.

I saw Bass frequently after that night. Because of my occupation, I found myself in the same courthouse – sometimes the same courtroom – as my husband and Bass. We played racquetball off and on after that but I don't recall ever going out in the evening with him alone after that first night. After the Price case, sometimes when I found myself in San Francisco, I had lunch with Ron but I haven't seen him now for years.

Executed this 17th day of January, 2003 at Humboldt County, California, by



Geri Anne Johnson

EXHIBIT C

PRICE, Curtis**98-10102-01**

On February 10, 2004, I telephonically interviewed Robert McConkey, DOB: 9/4/44, 322 14th Street, Eureka, California, 95501, (707) 445-9318, regarding the circumstances surrounding Ron Bass and Geri Anne Johnson's patronage of the Waterfront Café during the Price murder trial. McConkey acknowledged having been a bartender at the Waterfront Café approximately 15 years ago during the Price trial and working as a bartender on the evening that Ron Bass, whom he had never met before, and Geri "Dikeman" (Johnson) came in. McConkey stated he knew Johnson on a first name basis and she was a customer who frequented the Waterfront Café as did many of the attorneys in Eureka. McConkey described Johnson as outgoing, friendly, attractive, and a woman with a great sense of humor.

McConkey recalled that Bass and Johnson came into the Waterfront Café at approximately 2000 hours after having just finished playing racquetball. McConkey described the bar as "dead" that night and said there were no other customers besides Bass and Johnson. Because it was so quiet inside the bar, McConkey believed this evening must have been sometime during the winter months when the café is typically slow. McConkey stated Bass and Johnson sat at the bar in front of the station where he mixed drinks and he recalled talking with them off and on during the estimated one hour Bass and Johnson were there, but he was also attending to his normal work duties. McConkey recalled one of the topics of discussion was racquetball because he also plays, but he said there was no conversation regarding the trial. McConkey said that because he was working, he did not drink any alcohol that evening.

McConkey stated Zetta Southworth was working as a cook at the Waterfront Café on the evening Bass and Johnson were there, however, he said there was no contact between Bass, Johnson, and Southworth. At some point during the evening, either Bass or Johnson, he was not sure who, recognized Southworth in the kitchen. McConkey was not sure how Southworth was seen and speculated that Bass or Johnson may have seen Southworth through a small window leading to the kitchen from where they were seated at the bar an estimated distance of 60 or 70 feet away. McConkey said it was also possible they may have seen Southworth walking around the café or through the small kitchen window which is positioned near the restrooms on one of their trips to the restroom. McConkey did not recall any comments Bass made at the point he recognized Southworth.

McConkey acknowledged knowing Southworth was on the jury at the time of Bass and Johnson's visit to the Waterfront and recalled that Southworth was "a nervous wreck" during the trial. McConkey thought Southworth died either during the trial or just after it concluded. McConkey had no idea when, with respect to the progression of the trial, Bass and Johnson came into the café.

McConkey stated that during the course of the evening, Bass and Johnson ordered and consumed approximately five or six appetizers and five or six martinis apiece and estimated their bill would have been approximately \$65. McConkey recalled that Bass paid the bill but could not remember if Bass paid in cash or with a credit card; he speculated that Bass probably paid the bill in cash or he most likely would have left the tip on the credit card. After returning to Bass with either his change or credit card receipt, he said Bass stood up, handed him one ten-dollar bill, and told McConkey, "Split this with Zetta." McConkey accepted the ten-dollar bill which he said he "knew" was tip to him and Southworth. McConkey also recalled Bass saying something at that time about the appetizers "being very good." Immediately after paying the bill and leaving the tip, he said Bass and Johnson left and he locked the door behind them. McConkey said he gave

PRICE, Curtis

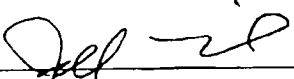
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Southworth her half of the tip (\$5) and had no discussion with her other than to tell her where it had come from and they said "thanks." Although McConkey could not remember exactly what he said to Southworth, he indicated he typically does not know the names of the patrons and customarily identifies specific tips to the cooks by the dish they prepared. McConkey had no recollection of Bass, Johnson, or Southworth making any type of comment about Southworth voting guilty during the trial. I asked McConkey if he had any reason to suspect either then or now that the money Bass gave him was intended to influence Southworth's verdict. McConkey stated that it was only \$5, not \$500, and that it is very common for patrons every day to tip the cook, especially when the customer likes the dish that is prepared. McConkey said he "knows" the money was a tip and he has no reason to suspect Bass was attempting to buy influence for the "minuscule" amount of \$5. After paying the bill, he said Bass and Johnson left and he locked the door behind them.

McConkey could not remember being interviewed by any attorneys regarding Price. I asked McConkey if the names Robert McGlasson, Karen Sorensen, or Sandra Michaels were familiar to him and he said they were not. I also asked him if he remembered being interviewed by a male and female attorney at a bar around the corner from the Waterfront Café and he replied that he did not remember that. McConkey did remember speaking with an acquaintance, Gina Eichelberger (phonetic spelling), at a bar around the corner from the Waterfront Café about the Price case but did not recall speaking with any attorneys. McConkey thought Eichelberger may have said something about their conversation to someone else but could not recall anything further because it was a long time ago. He said he told Eichelberger the same things he had told me today and could not imagine he would have told her anything along the lines that the tip was intended to get Southworth to vote guilty. McConkey recalled someone whom he believed was a defense attorney coming to his house and McConkey telling him he did not remember anything. McConkey acknowledged that he was "drinking heavily" during most of his adult life and that it was possible he could have met with a male and female attorney for an interview and just cannot remember it now. At the time of our interview, McConkey claimed not to have had an alcoholic drink for the past three weeks.

On February 10, 2004, I spoke with Rose via telephone and discussed the case with him. Other than requesting my assistance in reviewing a declaration with McConkey over the telephone, Rose had no further investigative requests.


Case closed.



 JEFF LIERLY
 Special Agent

2/10/04

 Date

APPROVED:  2/10/04

 STEVE HIRIGOYEN
 Special Agent Supervisor

S: 2/10/04
 T: 2/10/04

JL:ks

DECLARATION OF SERVICE

Case Name: **In re Curtis F. Price**

No.: **S069685**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **March 2, 2004**, I placed the attached **RETURN TO ORDER TO SHOW CAUSE (SECOND PETITION)** in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

Karen S. Sorensen
Attorney at Law
PMB 394
336 Bon Air Center
Greenbrae, CA 94904-3017

Robert L. McGlasson
Attorney at Law
1024 Clairemont Ave.
Decatur, GA 30030

California Appellate Project
One Ecker Place, 4th Fl.
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 2, 2004**, at San Francisco, California.

GLORIA MILINA

Typed Name



Signature