

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
KENNETH SIMMONS)
Applicant,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2005-CP-18-1368

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**

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Clerk of Court
DORCHESTER COUNTY

This matter was remanded by the South Carolina Supreme Court for specific findings regarding Applicant's claims related to the State's DNA trial evidence. *Simmons v. South Carolina*, 416 S.C. 584, 788 S.E.2d 220 (2016). This Court held a status conference in Barnwell, South Carolina, on June 15, 2016. At the hearing, Respondent waived the right to present any additional evidence as well as the right to submit any additional briefing. Applicant agreed that all relevant evidence establishing the unreliability of the DNA evidence had previously been presented at the PCR hearing. This Court requested and received copied of the relevant portions of the record, as well as parties' post-hearing briefs. After careful and thorough review of these materials, the Court issued an order granting post-conviction relief. *See* Order Granting Post-Conviction Relief (hereafter "PCR Order").

Respondent thereafter filed a Motion to Alter or Amend the Judgment (hereafter "Motion to Alter"). This Court convened a second hearing, on October 4, 2016, in Aiken, South Carolina, at which counsel for both parties presented arguments for this Court's consideration. Respondent also submitted additional exhibits for this Court's review. The Court has given careful and thorough consideration to all of the issues raised in the parties' briefs, as well as the oral arguments presented at the October 4 hearing. The Court has pondered over the relevant portions

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of the transcripts and exhibits, reviewed and thoroughly considered the transcripts of the Applicant's statements, and analyzed the law applicable to this matter. The Court is still of the opinion that the presentation of DNA evidence at the Applicant's trial was so tainted that he was severely deprived of his due process rights. Thus, I respectfully deny the Motion to Alter.

The misrepresentation of the strength of the DNA evidence to the jury by the state was so overwhelming that it, in my opinion, deprived the applicant of his due process rights to such an extent that cannot be ignored, notwithstanding the Applicant's confession. The State relied on a chart presented to the jury that contained false information regarding the DNA samples. The Solicitor utilized the chart to emphasize his own incorrect claims about the DNA evidence during closing arguments. The State basically argued that it was impossible for the DNA to have come from anyone other than the Applicant, which is false.

Laura Crane's trial testimony was supported by a chart that contained false information. During her PCR deposition, Ms. Crane admitted the test results, upon closer review, were inconclusive and had no evidentiary value in identifying the Applicant. The presentation of the DNA evidence at trial was confusing, misleading, and inaccurate, which resulted in a complete denial of the Applicant's due process rights.

In this Court's PCR Order, a detailed list of the Applicant's due process violations were fully set out concerning the DNA evidence. Nothing new has been presented in support of this motion, nor have any of the facts changed which would justify the granting of the Respondent's motion.

This Court has considered the statement(s) made by the Applicant during various stages of the proceedings. The Court would have to be clairvoyant to make findings as to what effect the statement(s) had on the jury in reaching their verdict. The Respondent argued, in support of

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their motion, the details supported by investigation and knowledge, the lack of police coercion, and the affirmance of guilt, both made pre-trial and during trial make the statement(s) reliable and truthful. The Applicant contends the confession was extracted by the police from him, an intellectually disabled man, after multiple non-recorded interrogations, and that he had falsely confessed to other crimes before confessing to the murder. When determining what weight, if any, the jury gave to this evidence, whether the presentation of the DNA evidence was cumulative to the statement(s), whether they made their decision solely on the confession, or solely on DNA, is a question impossible to now answer.

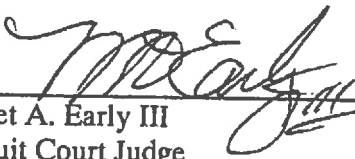
However, for the Court to rule that the confession justifies the upholding of the verdict in this case, notwithstanding the due process violations, would be compounding the injustice which has occurred.

For these reasons, and the reasons set out in the order granting relief, the Motion to Alter or Amend is denied. The matter is hereby remanded to the Court of General Sessions in Dorchester County for a new trial.

This ruling does not preclude either party from offering DNA evidence, provided it is admissible under the rules of evidence and cases regarding admissibility of expert testimony. Additionally, this order does not preclude statements by the Applicant, if admissible under the rules of evidence, being offered as evidence.

IT IS SO ORDERED.

June 13, 2017


Doyet A. Early III
Circuit Court Judge

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2005CP1801368

| | | | |
|-----------------|--|---------------------------|-------------------------|
| Kenneth Simmons | | Department of corrections | South carolina state of |
|-----------------|--|---------------------------|-------------------------|

| | |
|---------------|---|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

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 DORCHESTER COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

| | | |
|---------------------|------------|-----------|
| Doyet A. Early, III | | 6/29/2017 |
| Circuit Court Judge | Judge Code | Date |

For Clerk of Court Office Use Only

This judgment was entered on 6/29/2017, and a copy mailed first class or placed in the appropriate attorney's box on 6/29/2017, to attorneys of record or to parties (when appearing pro se) as follows:

James M. Morton James M. Morton PO Box 707 Rock Hill,
SC 29731
Emily C Paavola Attorney At Law Ctr. Capital Litigation,
900 Elmwood Ave. Suite 101 Columbia, SC 29201

Donald J. Zelenka PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
