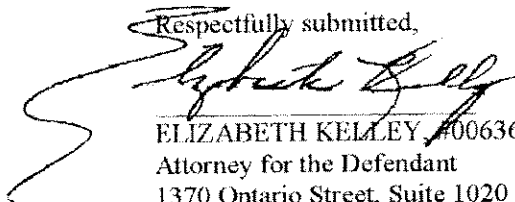


IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CRIMINAL DIVISION

DIANA JAMPERI
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SUMMIT COUNTY
CLERK OF COURTS

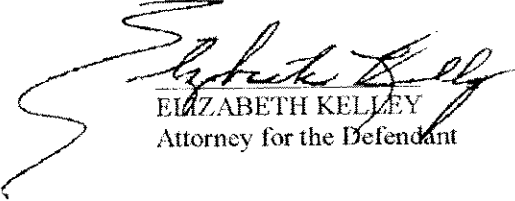
STATE OF OHIO	:	CASE NO. CR 98 06 1415
Plaintiff	:	JUDGE JOHN ADAMS
-vs-	:	
CLARENCE ARNOLD ELKINS	:	<u>MOTION FOR LEAVE TO AMEND</u> <u>(SUPPLEMENT)</u>
Defendant	:	
	:	

Now comes the Defendant, Clarence Arnold Elkins, by and through Counsel Elizabeth Kelley, and asks this honorable Court pursuant to Ohio Revised Code Section 2953.21(F) for leave to amend his Petition in order to supplement his Petition for Post-conviction Relief and Motion for a New Trial by supplementing the original filing with the attached affidavits.

Respectfully submitted,

 ELIZABETH KELLEY #0063641
 Attorney for the Defendant
 1370 Ontario Street, Suite 1020
 Cleveland, Ohio 44113
 216 523-1113 fax 216 502-0765
 email ZealousAdvocacy@aol.com

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon Richard Kasay, Summit County Prosecutor, 53 University Avenue, Akron Ohio 44308 this 9th day of August, 2002.


 ELIZABETH KELLEY
 Attorney for the Defendant

AFFIDAVIT OF BROOKE SUTTON

STATE OF OHIO
COUNTY OF SUMMIT, SS:

1. Brooke Sutton, depose and state under oath as follows:

1. I am the granddaughter of the late Judith Johnson.

2. I saw my grandma beaten to death in 1998. I was staying the night with Grandma, as I often did, because I loved her a lot and she was always nice to me.

3. When I went to bed in the bedroom, grandma was on the couch watching TV. She always fell asleep this way.

4. Because the house was hot and stuffy, grandma left the door open a little bit. She did not act afraid as the people who gave us a ride say she was or she wouldn't have left the door open.

5. I don't think grandma ever closed the door. When I tried to tell one of the prosecutors about this later, they told me not to mention it again.

6. In the middle of the night, I woke up when I heard noises coming from the kitchen. I peeked around the corner of the kitchen door and saw someone who looked and sounded like my uncle Clarence Elkins arguing with my grandma. He was holding something that looked like a pipe but it was brown and silver. As he turned his face toward me, the light shown in his eyes. I got scared and looked down to the floor. I then noticed that the man was wearing black cowboy boots.

7. Since I didn't know for sure if the man was Uncle Clarence, I first said "somebody" killed my grandma. After saying that on a friend's message machine and to the woman next door, I began to say the man looked like Uncle Clarence. The woman told my parents this when she took me home.

8. Although I had some doubts that the man was Uncle Clarence, everyone else acted as if it was, so I started to believe that too.

9. I forgot all about my doubts by the time I testified at Uncle Clarence's trial because everyone acted like he did it. I believed what I told the judge was true.

10. After the trial was over, I began to have bad feelings. I was told this was common, so I didn't say anything more. I especially didn't want to tell the prosecutors about my feelings, because they had already told me to forget about the open door.

11. I kept my doubts to myself until Aunt Mindy, Clarence's wife, and Martin Yant came to our house. Although my parents had me leave the room, I could still hear Mr. Yant say

PAGE 2AFFIDAVIT OF BROOKE SUTTON

that there was new evidence that possibly pointed to someone else as the man who killed my grandma. I was very happy when I learned that my parents were willing to help find out for sure who killed grandma because I wasn't really positive it was Uncle Clarence. This is what I meant when I mentioned something about new evidence during my deposition with Miss Kelley.

12. When Mr. Yant first interviewed me, he stressed that he only wanted to hear the truth, and that if I still thought Clarence killed grandma and hurt me, that is what I should say.

13. I was still scared when Mr. Yant first talked to me, so I only told him a little bit about my doubts. Later, after I had shared some of my secret thoughts with my mom, I did tell Mr. Yant that the story about Clarence pointing a gun at my grandma while I was with her was not true. When he asked me to describe what the man used to hit grandma and I did, Mr. Yant then showed me a stick that I told him looked almost exactly like what the man used.

14. While I was visiting Aunt Mindy's, I found a picture in a drawer in her garage of Uncle Clarence and his brothers, sister and mom and dad. I saw that Clarence had blue eyes and that he seemed to be taller than the man who killed my grandma.

15. I later told my mom that I had seen this picture and that Clarence had blue eyes instead of brown eyes like the man I saw in the kitchen. My mom then showed me a picture of a man who looked a lot like Uncle Clarence except that he had brown eyes.

16. When I saw the picture, I said, "That's him. I'll never forget those eyes." I also told her then about the cowboy boots. My mom seemed shocked when I said that. She said that the man in the picture, Ryall Rush, had admitted to Mr. Yant that he probably was wearing cowboy boots the night of grandma's murder.

17. I realize it would be better for our family for me to say nothing about this. But I have been taught to tell the truth. I thought that is what I was doing when I was in court. But I know now that I was wrong and must make things right.

18. I no longer believe that Uncle Clarence was the man who killed my grandma and hurt me. I believe the man who did that probably was Ryall Rush, the man whose photo my mother first showed me.

19. I am now 10 years old and have been through some bad times that make me feel much older. I am saying these things because I believe them. I have not been tricked into saying things I feel aren't true.

20. The only time I felt pressured to say or not say something was at Uncle Clarence's trial.

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AFFIDAVIT OF BROOKE SUTTON

Further I sayeth naught.

Brooke L. Sutton
Brooke Sutton

Sworn and subscribed in my presence this 8 day of August, 2002.

Roger H. Scritchfield
NOTARY PUBLIC

ROGER H. SCRITCHFIELD, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
Commission Expires Jan. 28, 2007