

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Joey Lynn Clark, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001627

Appeal From Cherokee County
Grace Gilchrist Knie, Circuit Court Judge

MOTION FOR RECONSIDERATION

On 11-13-2023, Joey Lynn Clark, Petitioner, received the 11-01-2023 Court of Appeals Order Affirming Clark's conviction. This Court affirmed Clark's conviction improperly stating:

"The State presented extensive evidence of Clark's guilt, including DNA evidence recovered from victim's body and fibers collected from the crime scene. Thus, evidence supports the PCR court's finding that Clark failed to demonstrate a reasonable probability that the results of his trial would have been different had trial counsel chosen not to open the

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SC Court of Appeals

door to the admission of the conflicting statements by cross-examining Detective Burgess about the statements' inconsistencies and the detectives' failure to investigate the jailhouse witnesses' many credibility problems."

Petitioner presents that the South Carolina Court of Appeals mistakenly viewed the DNA and boot fiber evidence in the wrong light leading to the improper affirming of petitioner's conviction. Out of the interest of justice Petitioner pleads with this court to reconsider its order viewing the DNA and boot fiber evidence properly. In support of this Petitioner presents the following facts and evidence:

A. Boots and Fibers

The boot fibers that the appeals court cited to as one half of the states "extensive evidence of Clark's guilt" did not come from the Petitioner's boots. The boot fibers collected from the crime scene came from a Wolverine boot as seen on pg. 485 of trial transcripts (included marked Petitioner's exhibit 6). The Petitioner's boot was a size 11 Brama brand boot. The only Wolverine boots collected by detectives belonged to Beverly Patrick. She can be seen wearing these boots in photos taken by detectives. See Petitioner's exhibits 2 and 3;

photos of Beverly Patrick wearing the Wolverine boots that are remotely linked to the collected fibers. Photos of the Petitioner's size 11 Brama boots taken by detectives are included marked as Petitioner's exhibits 4 and 5.

Not only are the Wolverine boots linked to the fibers not the Petitioner's but also SLED agent Michael Moskai could not say that the fibers collected came from the specific Wolverine boots collected. Under direct examination by Ms. Jordan, SLED agent Moskai was asked:

Okay. When you say consistent with, are you able to tell the jury that you can state with one hundred percent (line 24, 25; pg. 485 of trial transcripts included and marked Petitioner's exhibit 6) accuracy that they came from these boots? (line 1; pg. 486 of trial transcripts included and marked Petitioner's exhibit 7).

SLED agent Moskai replied:

No, ma'am, these boots are made in large quantities and so I cannot say it's this boot, as opposed to any of the other boots that were made at that time (lines 2-4; pg 486 trial transcripts included and marked Petitioner's exhibit 7).

Also in regards to the boots you will find on pg. 223 of the trial transcripts, included marked Petitioner's exhibit 8, that the boot prints found at the crime scene were described as having a horseshoe shaped mark in the print. This is consistent with the boot collected belonging to Beverly Patrick. See again petitioner's exhibits 2 and 3 of Ms. Patrick wearing Wolverine boots with the horseshoe shaped design in the boot sole. No horseshoe shaped design can be found on the Petitioner's Brama boots shown in Petitioner's exhibits 4 and 5.

Considering the above evidence and facts it is clear that the boot fibers are not "extensive evidence of Clark's guilt." Had it not been for the ineffectiveness of trial counsel "opening the door" to the admission of the statements of the five jailhouse informants, the jury would not have reached a guilty verdict based on boot fiber evidence linked to a boot that did not even belong to the Petitioner. Much less considering the boot fiber could not be linked directly to the boot but could have come from any boot manufactured by Wolverine.

Had the fiber come from the Brama boots belonging to the Petitioner then it

would be evidence to the Petitioner's guilt but the fibers did not come from his boots. The Petitioner's feet wouldn't even fit in the Wolverine boots even if the fibers could be linked directly to the Wolverine boots, which it can't. This is not evidence of guilt; it is evidence of innocence since the fiber is not even remotely connected to the Petitioner's actual boots. The wrong person is in prison for this crime.

B. DNA Evidence

The DNA that the Court of Appeals Court cited as the second half of the states "extensive evidence of Clark's guilt" was not the only DNA found. There is the presence of a third parties DNA that has not been identified and it was testified to that the Petitioner's DNA was present through the probability of secondary transfer from sexual intercourse between the victim and Petitioner prior to the victim's murder. Also there was several unidentified finger prints found that also indicate third party guilt that does not belong to the victim, or the Petitioner.

- Petitioner's DNA was possible secondary transfer. see Petitioner's exhibit 9 pg. 561 of trial transcripts Lines 15-23.

- Unidentified third party DNA.

a) See Petitioner's exhibit 9, pg 561 of trial transcripts Lines 1-14; SLED agent Catherine Leisu testifies to the presence of an unidentified third party contributor to the DNA found.

"it is known to be at least a third contributor to that mixture."

b) See Petitioner's exhibit 10, pg 558 of trial transcripts Lines 8-17; SLED agent Catherine Leisy testifies to the presence of unidentified third party contributor to other DNA found.

"It is indicative of a possible third contributor, yes, sir."

- Unidentified third party finger prints. See Petitioner's exhibit 11, pg 302 of trial transcripts; Lines 7-25 and Petitioner's exhibit 12, pg 303 of trial transcripts Lines 1-5. At least 3 finger prints from an unidentified third party were collected; two of which were found in the victim's blood spatter. This third party had to be the one who committed this crime for their finger prints to be found in the blood of the victim.

Considering the above evidence and facts the DNA evidence is not "extensive evidence of Clark's guilt". There was testimony presented that the presence of the Petitioner's DNA was the result of secondary transfer from prior sexual activity not a criminal act. Also there is unidentified third party DNA and finger print evidence that can exonerate the Petitioner of this crime and un-mask the true perpetrator. Had it not been for the ineffectiveness of trial counsel "opening the door" to the five jail-house informants, the jury would not have been able to reach a guilty verdict without a reasonable doubt based on secondary DNA transfer from earlier sexual activity. Especially in light of substantial evidence indicating a guilty unidentified third party. The wrong person is in prison for this crime.

C. Date Petitioner received court order.

Included marked as Petitioner's exhibit 1 is a signed document showing that the Petitioner received the courts order on 11-13-2023. He acted as diligently as possible to move to correct the mistake concerning the "light" in which the court of appeals viewed the evidence used to deny the Petitioner's writ.

Conclusion

The state did not have "extensive evidence of Clark's guilt" consistent with Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). The Petitioner has shown that had it not been for trial counsel's unprofessional errors, the result of the proceeding would have been different in compliance with Strickland, 466 U.S. at 694. The ineffective assistance of Petitioner's trial counsel prejudiced the Petitioner when he "opened the door" to admission of statements of five jailhouse informants, violating the Petitioner's 6th Amendment rights to effective assistance of counsel and his 5th Amendment rights to due process and a fair trial. The Petitioner's conviction should be overturned and remanded to the lower court for a new trial.

This the 20th day of November, 2023.

Respectfully Submitted,

Joey Lynn Clark

Joey Lynn Clark

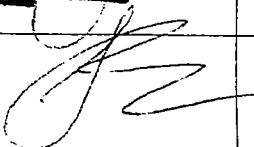
SCPC# 187595

B.R.C.I. Marion-211

4460 Broad River Rd.

Columbia, S.C. 29210

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Office of General Counsel
LEGAL/PRIVILEGED/CERTIFIED MAIL DELIVERY LOG

Date Received	Inmate Name and SCDC Number:	Sender's Name and Address	Date Mail/Order to Report Delivered to Inmate	Inmates Recipient's Signature	Inspected/Delivered in Inmate's Presence By:	Comments
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/06/23	Joey L Clark 187595 MA-211-B	SC Court of Appeals PO Bx 11629 Columbia Sc 29211	11/13/23	Joey Clark		
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

SCDC FORM 10-12 (Revised May 2013)

Date Petitioner recieved court order

Petitioner's exhibit 1

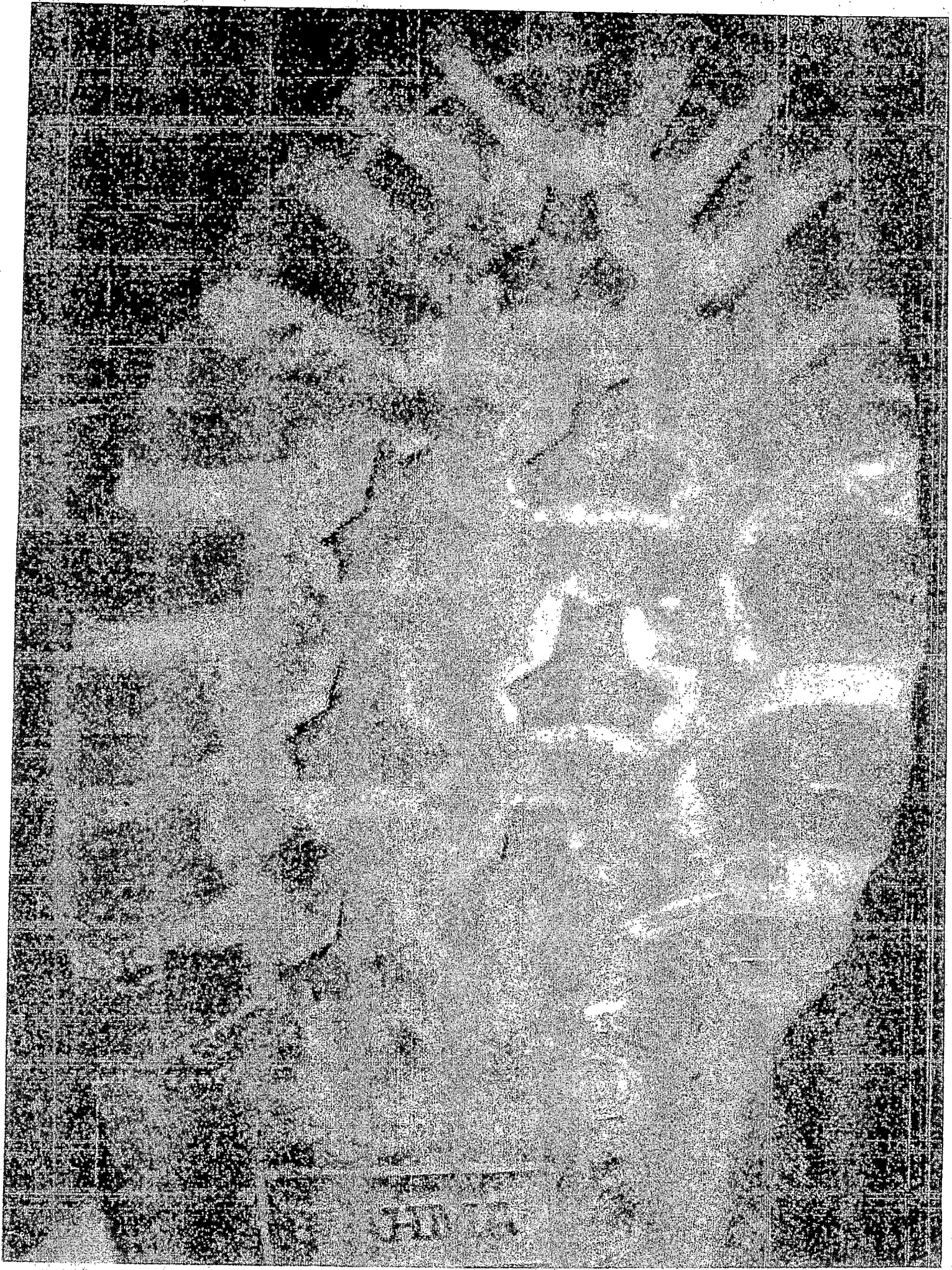


DATE: 11/22/01 3





A copy of Det. Tim Clark holding Joey Clark's leg! With Brahma Boot.
Petitioner's exhibit 4



— Petitioner's exhibit 5

1 A. Yes, ma'am. The characteristics we were looking for
2 cannot be seen or determined with the naked eye.

3 Q. Were you able to determine if any of those fibers, the
4 different kinds of fibers from strand 1, were consistent
5 with any fibers that were pulled from the Wolverine boots?

6 A. Yes, ma'am, I was. *Could they be consistent with fibers*

7 Q. Okay. Which fibers from the Wolverine boots and which
8 area did you remove the fibers from from the Wolverine boots
9 to compare to that collection?

10 A. May I pull the boot out and show?

11 Q. Yes, sir, I will do that for you.

12 A. All right. Again, I said I had taken multiple
13 locations from this. I took some from the shoelace. I took
14 some from the stitching that's in here.

15 The area I found that matched with some of this from
16 kind of the inside of the heel portion here. There is a
17 fabric in here. That portion was found to be consistent in
18 those optical and chemical properties with the fibers or
19 some of the fibers I found on that first strand of barbed
20 wire.

21 Q. Okay. Now, is that the blue and black polyester
22 fibers?

23 A. Yes, ma'am.

24 Q. Okay. When you say consistent with, are you able to
25 tell the jury that you can state with one hundred percent

from any other boots case also

Petitioner's exhibit 6

1 accuracy that they came from those boots?

2 A. No, ma'am, these boots are made in large quantities and
3 so I cannot say it's this boot, as opposed to any of the
4 other boots that were made at that time.

5 Q. Okay. So you used the words consistent with?

6 A. Yes, ma'am.

7 Q. Okay. So it's -- is it safe to say that the fibers are
8 not like fingerprints that we just heard about?

9 A. No, ma'am, they are not like fingerprints, where they
10 can be identified individually to a single fiber. These are
11 made in large batches.

12 However, as we start to look at all of those different
13 properties that we discussed, it starts to limit the
14 application where those fibers were being produced or used.

15 Q. Okay. So you were able to pull fibers off of the first
16 strand of barbed wire that you could state are consistent
17 with fibers in the Wolverine boots?

18 A. Yes, ma'am.

19 Q. Explain to the jury, too, as to State's -- or the first
20 strand of barbed wire and the second strand of barbed wire,
21 which are State's 68 and 69, how you found the fibers? Like
22 how many fibers did you locate?

23 A. Okay. As far as the black/blue polyester fibers, there
24 were many, many of those fibers. I did not count them, but
25 they were in clumps. There were large clumps of those. As

Petitioner's exhibit 7

1 you have to refer to your notes, please feel free to. There
2 are several things marked here. If you could just explain
3 what you had marked and why?

4 A. Originally I put these out to keep anybody from walking
5 over in this area so we could search it real close and see
6 if we had any shoe prints or anything, tire prints, or
7 anything. And what we did was actually got on our hands and
8 knees and covered this whole area.

9 And here is number 11, this is a casting frame. We
10 casted this print. I'm pretty sure it was 11 that we cast,
11 made a cast of. ~~It was some identifying marks on that shoe~~
12 ~~prints. It was -- I can't remember, like a horseshoe, or~~
13 ~~something in it, that we could identify.~~

14 These other shoe prints -- this was another shoe print,
15 this was another shoe print, but these were so vague, there
16 wasn't much there. You couldn't tell size. You couldn't
17 tell the shape. There was no pattern of the shoe in these
18 whatsoever. We cleared them out and inspected them real
19 close to be sure that we couldn't be able to get anything
20 out of the print itself.

21
22
23 Q. And were you able to determine who that shoe print
24 belonged to?

25 A. It belonged to the gentleman that got out and looked at

Petitioner's exhibit 8

1 was, but there was -- there were samples that the third
2 profile that was found was represented by multiple alleles,
3 correct?

4 A. That's correct, there were samples that had alleles
5 that could not be contributed to the individuals known in
6 this case at between four and six different STR locations.

7 Q. And so as there are more alleles to actually see, but
8 do not belong to Joey or Winter, does that increase the
9 probability that it is not stutter? Does that increase the
10 probability that it is, in fact, a third person?

11 A. Yeah, I would say with the presence of minor types at
12 multiple locations, such as I had with several of the swabs
13 from the prior retrievals, it is known to be at least a
14 third contributor to that mixture.

15 Q. All right. And you have described to the jury what
16 secondary DNA transfer was. If the evidence suggests that
17 the victim and Joey had sex prior to the body being drug on
18 the side of the road, would it, in fact, be possible for
19 Joey's DNA to be transferred to the scene by Winter by means
20 of secondary transfer?

21 A. If there were foreign DNA present on Ms. Wingard from
22 Mr. Clark, it may be possible for it to be transferred to
23 the tree limbs or the briars through secondary transfer.

24 Q. And the probability of that happening depends,
25 obviously, on various circumstances, one of which would have

Petitioner's exhibit 9

1 you have actually eliminated them, based upon your training
2 and experience and you called them artifacts and marked them
3 off and said "in my experience this doesn't indicate another
4 person. It's just a flaw in the copying procedure."

5 A. That's correct. There were several items in the case
6 where potential types were crossed off and not interpreted
7 because of my interpretation.

8 Q. And so at some point you have to just simply believe in
9 your process and the science and what you have been taught.
10 So if you have not crossed them off as an artifact, you have
11 to accept the possibility that, in fact, based on your
12 training and science, that that is indicative of a third DNA
13 profile, a third person --

14 A. It is --

15 Q. -- is that correct?

16 A. It is indicative of a possible third contributor, yes,
17 sir.

18 Q. Now -- I apologize. I'm referring to my notes. I'm
19 certainly not smart enough to remember all of this.

20 On item 21.1, this is the swab from a briar. Is it
21 correct that most of the actual DNA sample there was from
22 Winter, and that a smaller amount -- maybe 90 percent, or
23 so, was actually from Winter, but the rest was not, is that
24 correct?

25 A. That's correct. The major contributor to the mixture

Petitioner's exhibit 10

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MR. HARBIN: Thank you, Your Honor.

CROSS EXAMINATION BY MR. HARBIN:

Q. How are you doing today?

A. I'm fine, sir. Thank you.

Q. I might jump -- start off in the middle and I might work backwards.

You went through the latent prints that you were able to pull from the GMC with Ms. Leskanic. And I'm wondering why it wasn't mentioned that there was ~~something~~ pulled from the inside passenger front glass, ~~where~~ presumably be where all that blood spatter ~~was~~ all those orange arrows --

A. Yes, sir.

Q. -- that SLED results that I was given by ~~him~~ or by the State, indicates that it did not belong to either Winter, Joey, or Beverly.

A. If I'm correct -- I think I'm correct. ~~That's right,~~ yes.

Q. That's right, okay.

So we have a fingerprint inside the vehicle ~~right~~ near all of this blood spatter activity ~~that's~~ unidentified, or it's identified as not coming from Joey, the victim Winter, or her mother Beverly Patrick?

A. Yes, sir.

Q. In addition to that, there is another print found at

Petitioner's exhibit 11

1 the rear quarter panel and I believe the rear passenger's
2 side quarter panel that is also apparently not Winter, not
3 Joey, and apparently there was no conclusion reached as to
4 whether it was Beverly, due to the quality of, I guess,
5 Beverly's comparison sample, is that right?

6 This was item 9, I believe is what it's listed as on
7 the SLED report. I don't know what your number might have
8 been.

9 A. It's a totally different number.

10 Q. And I'm happy to let you glance at the sheet that I'm
11 looking at, if it helps you, but -- you let me know.

12 A. Okay. It would be our number V-6, and you got that
13 listed as partial latent fingerprint from the passenger side
14 door of the front door. It's under V-5.

15 Q. Okay. And I believe we covered that, but then the next
16 question that I had was the print that was the rear -- the
17 passenger rear quarter panel that -- the information I have
18 is from SLED was not identified with Winter, not identified
19 with Joey, and for some reason there was no conclusion as to
20 whether or not it might have belonged to Beverly. And the
21 words they used, and you could tell us what this means, "no
22 conclusion will be rendered due to the quality of item 45."
23 Their item 45 I believe is Beverly's comparison or Beverly's
24 fingerprint standard from Beverly Patrick.

25 So am I correct in saying that that report -- or the

Petitioner's exhibit 12

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Appeal From Cherokee County
Grace Gilchrist Knie, Circuit Court Judge

PROOF OF SERVICE

The undersigned certifies that he has served his Motion For Reconsideration on the state of South Carolina through the Clerk of the S.C. Court of Appeals (Jenny Abbott Kitchings, Clerk; P.O. Box 11629; Columbia, S.C. 29211) and the S.C. Attorney Generals Office (P.O. Box 11549; Columbia, S.C. 29211) by placing said same in the U.S. Mail to the foregoing addresses.

This the 20th day of November, 2023.

Respectfully Submitted,

Joey Lynn Clark

Joey Lynn Clark

SCDC # 187595

BRCI, Marion - 211

4460 Broad River Rd.

Columbia, S.C. 29210

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, S.C. 29211

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NOV 22 2023
SC Court of Appeals

11-20-2023

RE: Joey Lynn Clark v. State, Case No. 2018-001627

Dear Clerk,

Enclosed please find 2 copies of my Motion For Reconsideration, One to be filed in the above referenced case, the other to be clocked stamped and returned to me at the address below.

Sincerely,

Joey L. Clark
Joey Lynn Clark
SCDC# 187595
B.R.C.I. Marion-211
4460 Broad River Rd.
Columbia, S.C. 29210

P.S. Certificates
of Service
Included

S.C. Attorney Generals Office
P.O. Box 11549
Columbia, S.C. 29211

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SC Court of Appeals

11-20-2023

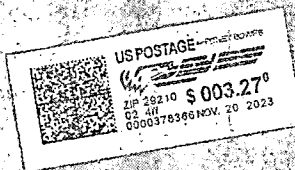
RE: Joey Lynn Clark v. State, Case No.
2018-001627

Dear Attorney General,

Please find my motion for
reconsideration and certificate
of service in the above referenced
case. Thank you for your time.

Sincerely,
Joey L. Clark
Joey Lynn Clark
SCDC# 187595
B.R.C.I. Marion-211
4460 Broad River Rd.
Columbia, S.C. 29210

Joey Lynn Clark scbc# 187595
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Columbia, S.C. 29210



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