

THE STATE OF SOUTH CAROLINA **RECEIVED**
In The Supreme Court

JAN 02 2024

Joey Lynn Clark, Appellant,

S.C. SUPREME COURT

v.
State of South Carolina, Respondent.

APPEAL FROM CHEROKEE COUNTY

Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2018-001627

NOTICE OF APPEAL

Joey Lynn Clark, seeks appellate review in the Supreme Court of South Carolina of the South Carolina Court of Appeals November 01, 2023 Order Affirming Clark's conviction in which the Court of Appeals made improperly after view the state's evidence incorrectly and outside the consideration of the evidence presented at Clark's trial as a whole, including DNA and finger prints belonging to a unidentified third party. Clark's Appellate attorney failed to act on the Court of Appeals misstep and refused to file appeal to the Supreme Court even though the Court of Appeals affirmed Clark's conviction improperly. In a attempted to seek the Court of Appeals correction of their ruling Clark filed a motion for reconsideration twice in hopes the Court of Appeals would alter or amend their ruling. The first was denied because Clark's appellate counsel was still legally representing

even though counsel refused to act on Clark's behalf offering ineffective assistance. The second motion was denied because once Clark was released of counsel Clark's case was remitted to the lower court the very next day. So Clark has to seek review by appeal to the S.C. Supreme Court, if not who will correct the mistake in the Court of Appeals ruling? The Court of Appeals procedures wouldn't even allow Clark to opportunity to seek correction of the Court's improper ruling. Out of the interest of justice Clark pleads with this Court to review and order correction of the Court of Appeals improper ruling.

In support of the S.C. Court of Appeals ruling being improper Clark presents the following facts and evidence:

The South Carolina Court of Appeals affirmed Clark's conviction improperly stating:

"The state presented extensive evidence of Clark's guilt including DNA evidence recovered from the 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 door to the admission of the conflicting statements (Note these statements were from (5) five different jail house informants who were never called to trial.) by cross-examining Detective Burgess about the statements' inconsistencies and the detective's failure to investigate the jailhouse witnesses' many credibility problems."

Clark presents that the S.C. Court of Appeals mistakenly viewed the DNA and boot fiber evidence in the wrong light, also the Court failed to consider other substantial evidence of Clark's actual innocence.

A. Boots and Fibers

The boot fibers that the court of Appeals cited as one half of the states "extensive evidence of Clark's guilt" did not come from the Clark'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 Appellant's exhibit 6). Clark'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 Appellant's exhibits 2 and 3: photos of Beverly Patrick wearing the Wolverine boots that are remotely linked to the collected fibers.

Photo's of the Petitioner's size 11 Brama boots taken by detectives are included marked as Appealant'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 Appealant's exhibit 6) accuracy that they came from these boots? (line 1, pg. 486 of trial transcripts included and marked Appealant'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 Appealant'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 consistant with the boot collected belonging to Beverly Patrick. see again Appealant's exhibits 2 and 3 photos 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 been prejudiced against Clark and could not have reached a guilty verdict based on boot fiber evidence not even remotely linked to Clark. In this regard the out come of Clark's trial would have been different had it not been for trial counsel's ineffectiveness.

Had the fiber came from the Brama boots belonging to the Appealant then it would be evidence to the Appealant's guilt but the fibers did not. Clark's feet will not even fit in the Wolverine boots even if they could be linked directly to the Wolverine boots collected. Since the fiber is not from Clark's boots, the fibers are evidence to Clark's innocence. The wrong person is in prison for this crime.

B. DNA Evidence

The DNA that the Court of Appeals cited as the second half of the state's "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 Clark's DNA was present through the probability of secondary transfer from sexual intercourse between the victim and Clark prior to the incident. Also there were several unidentified finger prints found that also indicate third party guilt that does not belong to the victim, or Clark.

The Court of Appeals failed to consider the fact there is unidentified third party DNA and finger prints nor to consider the appellants DNA was explainable by non-criminal activity. All of which trump the court's claim that there is DNA evidence that can be even remotely considered "extensive evidence of Clark's guilt".

- Clark's DNA was secondary transfer. See Appellant's exhibit 9, pg. 561 of trial transcripts, Lines 15-23.

- Unidentified third party DNA.

- a) see Appellant'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 DNA found.

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

b) See Appealant'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 Appealant's exhibit 11, pg 302 of trial transcripts; Lines 7-25 and Appealant'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 near the victim's blood spatter. This third party had to be the one who committed this crime for their finger prints to be found near 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 Appealant'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 that can exonerate the Appealant 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 jailhouse 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.

Had the Court of Appeals view all the above evidence correctly and as a whole they would have ruled that there was No extensive evidence to Clark's guilt and found that the lower court erred in finding trial counsel was not ineffective. There is no extensive evidence of Clark's guilt, had it not been for the introduction of the five statements of jailhouse informants to the jury no reasonable jury would have found Clark guilty. Clark's trial attorney was ineffective in his actions concerning the introduction of these statements (Mind you that none of these informants were brought forward to testify so Clark could have his due process right to confront his accusers) and over 30 other issues concerning counsel's ineffectiveness that Clark's appealant attorney refused to present on appeal,

C. Dates and record of Clark's Diligence
Concerning this matter.

Included marked Appealant's exhibit 1 is a signed document showing that the Appealant received his first notice of the Court Order on 11-13-2023. He acted diligently as possible working to seek correction of the improper ruling made by the S.C. Court of Appeals in the order. By 11-20-2023 Clark had notified his appellate attorney and filed his first motion for reconsideration working in desperation to help fix this mistake and error in law. (see Appealant's exhibit 13 Cover letter (copy) from this first filing). On 12-01-2023 Clark received a letter dated 11-27-23 stating they would not be taking action on his 11-20-2023 motion for reconsideration due to Clark still having counsel. (see Appealant's Exhibit 14 copy of said letter). Also on 12-01-2023 Clark received a letter from Appellate Counsel saying she was not filing to the Supreme Court and that she was no longer Clark's attorney. (see Appealant's Exhibit 15 letter from attorney dated 11-28-2023 the day after the court would not act on Clark's first motion). Clark wrote the attorney again trying to get her to help him fix the mistake made in the Court of Appeals ruling on 12-06-2023. (see Appealant's Exhibit 16 copy of letter to lawyer). Also on 12-06-2023 Clark filed a second motion for reconsideration hoping to receive help in correcting the issue

since he no longer had attorney. (See Appellant's exhibit 17 cover letter from 2 motion for reconsideration to the S.C. Court of Appeals)

On 12-20-2023 Clark received notice from the S.C. Court of Appeals would take no action on Clark's second motion for reconsideration due to the remitture being issued. (See Appellant's exhibit #18 letter from court dated 12-13-2023) Also on 12-20-2023 Clark received a letter from appellate defender Hudgins wrote a letter to Clark that clearly shows she has not reviewed or clearly read the letters Clark wrote her concerning these issues. (See Appellant's exhibit 19 letter from attorney dated 12-14-2023).

So since no one in the S.C. Court of Appeals will allow Clark an avenue to seek correction of the error made by the Court of Appeals and he no longer has an attorney Clark has no other avenue under due process but to seek review here in the Supreme Court of South Carolina.

Conclusion

The S.C. Court of Appeals made their November 01, 2023 order affirming Clark's conviction in clear error. 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 Appellant has shown that had it not been for trial

Counsel's ineffectiveness and unprofessional errors, the result of the proceeding would have been different in compliance with Strickland, 466 U.S. at 694. The ineffective assistance of Clark's trial counsel prejudiced Clark before the jury when counsel "Opened the door" to admission of statements of five jailhouse informants, violating Clark's 6th admendment rights to effective assistance of counsel and Clark's 5th admendment rights to due process and fair trial. Appealant has also shown through clear facts and evidence that the S.C. Court of Appeals made a clear error in their November 01, 2023 order affirming Clark's conviction. Appealant further has shown that he has done everything within his ability to seek correction of the error before coming to the S.C. Supreme Court in the interest of justice seeking correction and help. Clark's conviction should be overturned and remanded for a new trial.

This the 23rd day of December, 2023.

Respectfully Submitted,

Joey Lynn Clark

Joey Lynn Clark

SCDC # 187595

B.R.C.I. Marion - 211

4460 Broad River Rd.

Columbia, S.C. 29210