

The State of South Carolina  
In the Court of Appeals

RECEIVED

JUN 30 2025

SC Court of Appeals

Appeal from Spartanburg County  
Honorable J. MARK Hayes, II; Judge

GARY LAMONT PERRY, . . . . APPELLANT

V.

STATE OF SOUTH CAROLINA . . . . RESPONDENT

Petition For writ of CERTIORARI

GARY LAMONT PERRY  
PERRY COCK. JUST.  
430 OAKLAWN RD.  
PETZER, S.C. 29669

PRO - SE

I. Did the trial Court Abuse its discretion in NOT granting Appellant A hearing On his Post Conviction Application For dna testing.

SEE Application (ATTACH. #3) (and attachments included with it)

The trial Courts' Conclusions, SEE (ATTACH #1) WERE THAT THE BODE DNA TESTING RESULT REPORT STATED:

THE MAJOR COMPONENT DNA PROFILE MATCHES THE DNA PROFILE OBTAINED FROM SAMPLE CCC 1666-0364-PO3 GARY PETTY

SEE THE ENTIRE BODE RESULT REPORT, (ATTACH. #3, P. 16-22) SAMPLE NAME CCC 1666-0364-E01, IS VAGINAL SWAB.

(2) THE DNA PROFILE FROM THE (EF) OF SAMPLE CCC 1666-0364-E01 IS CONSISTENT WITH A FEMALE CONTRIBUTOR AND WILL BE USED AS VICTIM REFERENCE SAMPLE . . .

This indicates that the sample had NOT derived from the Alleged Case Victim but CAME FROM A "RANDOM FEMALE" CONTRIBUTOR, TO BE USED AS CASE VICTIM REFERENCE SAMPLE.

Appellant asserts that the Bode's result report is a fraudulent report due to Bode being a contracted lab for the state of South Carolina (SLED); the results stated, are not of actual case collected items.

The alleged vagina swab was appellant's saliva swab that had been collected by "nurse" Nancy and mislabeled (whom was actually Nancy Skeraba, the same SLED agent that had presented false DNA evidence during appellant's trial) at the time of collecting appellant's saliva swab for the 2016 Bode retest. This SLED agent had to have contaminated this swab for it to show female DNA.

The reason there had been no serology testing selected (determination of substance) for the alleged vaginal swab, see submission form, (attach #2)

\* OR this swab had been collected from or contaminated by a Perry Core Inst. staff member on the same day the saliva swab had been collected.

(3.) states there was a mixture of DNA, which there could not have been a mixture with a sperm determination as there was not a serology testing selected nor conducted.

The items of the results stated on the Bode Result Report was not the items stated to have been submitted, as the items stated on the Submission Form were not actual case collected alleged items.

The purpose served by further proceedings in this matter is the fact that the test of bode was not of an adequate testing type selection (serology/female dna comparison)

The basis of appellants' application requesting dna testing from the state is the Submission form, that had been discovered by appellant 5 years after testing and Bode Result Report being provided, as stated in application.

PCR application 0410 is not appellants' application requesting dna testing from the state [0410 is for a belated appeal of PCR App. 04184] This application has not been given a case number.

The submission form shows items submitted for the dna testing that were not the items allegedly collected from the case victim, see sled result report, (Attach. #4)

The Alleged DNA Source of Conviction, Suspected Semen only has the words Suspected Semen stated on the Submission Form, with no item submitted, (Shoets nor swab) And no testing selected for the words.

Panties, were not a case collected and alleged DNA evidence item, SEE (TR. pg. —) Victim was naked prior to alleged assault, only had a robe on afterwards.

The Vagina Swab (NOT SOURCE of Conviction) stated on SLED result report was a FALSE MATCH ("ALSO MATCH defendant's DNA profile")

The CASE victim stated there was no penile/vaginal penetration, SEE (TR. pg. —); And it was determined by the medical examination that there had been no penetration to the vagina, ATTACH. #3, (pg. 18 of 22)

FURTHERMORE, this alleged vaginal swab was determined to NOT be a match to appellant's DNA profile by independent DNA expert Brian Meehan and the S.C. Innocence Project, Attachment #3, pg. 13 of 22

The STATE (SLED) HAS ATTEMPTED to change the source of conviction to a false vagina swab.

## Conclusion

Appellant should be granted A hearing on his  
Application requesting DNA testing from THE STATE,  
OR THE RELIEF THE COURT DEEM APPROPRIATE,

Respectfully Submitted,

GARY LAMON PERRY  
PERRY COCK. INST.  
430 OAKLAND RD.  
PETZEL, S.C. 29669



State of South Carolina  
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
SPARTANBURG, SOUTH CAROLINA 29306  
TELEPHONE: (864) 562-4144  
FAX: (864) 562-4142  
E-MAIL: mhayesj@sccourts.org

June 6, 2025

Gary Lamont Petty, #264235  
Perry Correctional Institute  
430 Oaklawn Road  
Pelzer, South Carolina 29669

Re: 1999-GS-42-02357 to 59

Dear Mr. Petty:

The motions you filed with the Spartanburg County Clerk of Court's Office over the past year were forwarded to me to review. They were sent to me in my capacity as the Seventh Circuit Chief Administrative Judge for General Sessions matters.

After reviewing the numerous motions and filings, please be advised that, by copy of this letter to the Spartanburg Clerk of Court, I am instructing the Clerk to not schedule any of the motions for a hearing.

I write to you to advise you of my instructions in the event you desire to seek additional judicial review before other courts. If you wish to appeal my decision, please do so in a timely manner. I also wished you to have this letter so that you can also share it with the lawyer of your choice. My belief is that any lay person benefits from receiving independent legal advice—especially matters that are important as the ones you raise in these motions. I realize in the past you were represented by Joseph McCulloch of the Palmetto Innocence Project and William Yarborough of the Greenville Bar when you raised issues related to DNA. Mr. McCulloch and Mr. Yarborough should be considered by you as appropriate legal resources to share the content of this letter and advise you of your rights. These two lawyers are just my suggestions, please consult with whichever lawyer you feel best serves you.

As reflected in the materials, you received a life sentence to a Burglary First Degree and a 30-year sentence on a Criminal Sexual Conduct charge (the 5-year sentence for grand larceny has expired because of the time you have served). Since the time you were sentenced, you and your lawyers have filed numerous actions in circuit court and other courts challenging various aspects of your case. A review of the records indicates that you have been unsuccessful with your challenges. It does appear that additional DNA testing was accomplished in 2017. This DNA report indicated the following; "the major component DNA profile matches the DNA profile obtained from sample CCC 1666-0364-R03 (Gary Petty)".

PAGE TWO  
GARY LAMONT PETTY, #264235  
JUNE 6, 2025

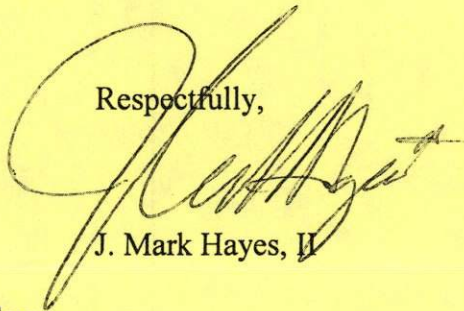
The new motions, in my opinion, are not properly filed and/or do not contain the required substantive claims to necessitate the scheduling of additional hearings by the circuit court. Expressed in more legal terms, a prima facie showing has not been made to justify conducting a hearing. Having reviewed the materials, these new motions, on their face, do not meet the standard for conducting a SCCrimR 29(b) review. Viewing the issues you raised in a manner most favorably to you, these issues, if true, should have been raised in your previous filings. Statute of limitations is a problem for you. Additionally, even though you assert you did not know of this information (jury information) until recently, the nature and existence of the information was available at the time of your trial, or at least within 12 months afterwards. Additionally, the affidavit filed is your own affidavit and contains inadmissible hearsay statements from your cousin. Additionally, your assertion through a Rule 29(b) motion of third party guilty of another man convicted of similar crimes that occurred during the same time as the ones you were convicted of is, again, untimely, based upon inadmissible information—newspaper accounts—and is, at best, speculative—especially given the DNA information previously obtained. Again, no prima facie showing. Also, the issue of needing an actual “injury” to support a burglary conviction is not support in law.

The above is a brief summary of my reasons for instructing the Clerk of Court that no hearing will be needed on the motions you have filed.

Even though my decisions are not favorable and no hearing will be conducted, I understand these issues are important to you. Thus, I, again, encourage you to seek legal advice with an attorney. Please share this letter with them and your prior filings.

I wish you only the best.

Respectfully,



J. Mark Hayes, II

CC: The Honorable Amy Cox  
Spartanburg County Clerk of Court  
Spartanburg County Courthouse  
180 Magnolia Street  
Spartanburg, South Carolina 29306

CC: The Honorable Barry Barnette  
Solicitor, Seventh Judicial Circuit  
Spartanburg County Courthouse  
180 Magnolia Street  
Spartanburg, South Carolina 29306

JMH/smw

**Case Submission Form**

Bode Cellmark Forensics  
10430 Furnace Rd. Ste 107  
Lorton, VA 22079  
Phone: 866-263-3443  
Fax: 703-646-9741  
boda.service@bodetech.com  
www.bodetech.com

Bode Cellmark Case Number (To be filled out by Lab): \_\_\_\_\_  
Submitting Agency Reference/ Case Number: SLED Lab Case No. 198-12831

In order to process your case efficiently, this form must be filled out entirely and submitted either along with the evidence or directly to Technical Services. Prior to submitting a case, please call Technical Services at 703-646-9740 x787 or toll free at 866-263-3443 x787.

Evidence Items*	Please check the appropriate boxes for desired testing. Serology is the screening of items for specific biological material.	Permission to Consume (if necessary)
Note: Descriptions may be reflected in Chain of Custody and Report. <input type="checkbox"/> Check here if any samples were collected in the state of New York.		
Item 1.7: Sealed converted item described as vaginal swab	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair DNA Testing: <input checked="" type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> Yes <input type="checkbox"/> No
Item 1.10: Sealed converted item described as suspected semen	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> Yes <input type="checkbox"/> No
Item 1.14: Sealed item containing panties with possible semen	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair DNA Testing: <input checked="" type="checkbox"/> STR <input checked="" type="checkbox"/> miniSTR <input checked="" type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No
	Serology Testing: <input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Hair	<input type="checkbox"/> Yes
	DNA Testing: <input type="checkbox"/> STR <input type="checkbox"/> miniSTR <input type="checkbox"/> Y-STR <input type="checkbox"/> mtDNA	<input type="checkbox"/> No

\* When submitting extracts, the associated reagent blanks must also be included. Please be sure to include the following information:  
Total human quant, Total Y quant, volume extract remaining and reagent blank names associated with samples.

**Case Submission Form**

Bode Cellmark Case Number (To be filled out by Lab):

Submitting Agency Reference Case Number: SLED Lab Case No. 198-12831

In order to process your case efficiently, this form must be filled out entirely and submitted either along with the evidence or directly to Technical Services. Prior to submitting a case, please call Technical Services at 703-648-9740 x787 or toll free at 866-283-3443 x787.

Select type of service:

**Standard Service - Turn Around Time is as follows:**  
 Serology, STR (Short Tandem Repeat), Y-STR, MiniSTR Analysis and Mitochondrial DNA Analysis (mtDNA): 12-16 weeks

**Expedited Service - Select Turn Around Time:**  
**SUBJECT TO RESTRICTIONS, AVAILABILITY AND ADDITIONAL FEES APPLY.**  
 Please contact Technical Services prior to submission of an Expedited Case.

<u>Serology, STR, Y-STR &amp; MiniSTR</u>	<u>Mitochondrial DNA Analysis</u>
<input type="checkbox"/> Same Day Service	<input type="checkbox"/> 4 Weeks
<input type="checkbox"/> 6 Business Days	
<input type="checkbox"/> 10 Business Days	
<input type="checkbox"/> 15 Business Days	
<input type="checkbox"/> 20 Business Days	

**Case Background & Instructions:**  
 If this is an additional submission, please note previous Bode Cellmark Case Number here:

This is evidence from a 17 year old burglary and sexual assault case in Spartanburg, SC, in which the defendant was convicted using an erroneous DNA analysis of the evidence to be tested. There is a possibility that the DNA samples from the items listed below may be degraded such that STR testing may be inadequate. If this is determined to be the case, then Bode-Cellmark is authorized to conduct mini STR testing.

If STR data is obtained, will CODIS entry or search be requested?  Yes  No

NOTE: Private forensic DNA laboratories do not have access to enter or search samples in CODIS. If "yes" is marked, Bode Cellmark will contact the appropriate NDIS laboratory Technical Leader prior to initiation of this case. Please be aware that this may increase turnaround time.

If requesting Expedited service, approval from appropriate NDIS laboratory is required prior to case submission.

**Processing:**  
 Amp Kit:  ID  ID+  PP16  PP16HS  Yfiler  PPY23  MiniFiler Fusion

If no amp kit is selected, samples will be processed at Bode Cellmark's discretion. All samples will be processed using the CE platform & analyzed using GMID.

All evidence items must be shipped using a traceable carrier (i.e. FedEx, UPS, DHL, Priority Mail) with signature required. Overnight shipping is recommended.

Evidence should be shipped to:  
**ATTN: EVIDENCE DEPARTMENT**  
 Bode Cellmark Forensics  
 10430 Furnace Rd. Suite 107  
 Lorton, VA 22079

2016 SEP -9 AM 11:48

5

**Case Submission Form**

Bode Cellmark Forensics  
 10430 Furnace Rd. Ste 107  
 Lorton, VA 22079  
 Phone: 866-263-3443  
 Fax: 703-646-6741  
 bode.services@bodeitech.com  
 www.bodeitech.com

Bode Cellmark Case Number (To be filled out by Lab):

Submitting Agency Reference/ Case Number: SLED Lab Case No. 198-12631

Before Bode Cellmark can begin processing your case, this form must be filled out in its entirety. Please submit either along with the evidence or directly to Technical Services. Prior to submitting a case, please call Technical Services at 703-646-6740 x767 or toll free at 866-263-3443 x767.

Submitting Agency: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Billing Information:</b>		<b>Method of Payment:</b>	
Name: Palmetto Innocence Project		<input checked="" type="checkbox"/> Purchase Order #:	
Agency:		<input type="checkbox"/> Contract #:	
Address: 1613 Hampton Street		<input type="checkbox"/> Credit Card: call 866-263-3443 x767 to provide	
City/State/Zip: Columbia, SC 29201		<input type="checkbox"/> Other:	
Office Number: (803)-779-0005			
Fax Number: (803)779-0666			
Email: joe@mccullochlaw.com			
Quote Number:			

<b>Report Mailing Address:</b>		<b>Evidence Return:</b>	
Where the report will be sent. Note: FedEx cannot deliver to PO boxes.		All evidence and generated extracts will be returned to this address following the delivery of the case report, unless otherwise specified.	
Name: Palmetto Innocence Project		Name: Hope Blackley	
Agency:		Agency: Spartanburg County Clerk of Court	
Address: (same as above)		Address: 180 Magnolia Street	
City/State/Zip:		City/State/Zip: Spartanburg, SC 29306	
Office Number:		Office Number: (864)598-2593	
Fax Number:		Fax Number:	
Email:		Email: clerksoffice@spartanburgcounty.org	

<b>Authorized Point of Contact:</b>		<b>Additional Point of Contact:</b>	
Name: Joseph McCulloch		Name: William G. Yarborough, III	
Agency: Palmetto Innocence Project		Agency: Law Office of William G. Yarborough	
Title:		Title: Attorney for the Accused	
Office Number: (803)779-0005		Office Number: (864)331-1612	
Cell Number:		Cell Number:	
Fax Number: (803)779-0666		Fax Number:	
Email:		Email: wgyarborough@gmail.com	

I hereby certify that the information provided on this Case Submission Form is accurate to the best of my knowledge. I understand that I will be charged for services according to the pricing that I have received.

Point of Contact Print Name: Joseph McCulloch  
 Point of Contact Signature: Joseph McCulloch

Date: 8/29/16

ATTACHMENT (#3)

ATTN: Amy W Cox, Sp. Clk. Co. Clerk of Court

PLEASE file the enclosed application for  
DNA retesting with the Court and prosecuting  
Agency and please return me a filed  
Stamped copy of the PCR application and  
Exhibits in the SASE enclosed

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FILED

Thank you,

Gary Lament Perry  
Perry Core. Inst.  
430 Oaklawn Rd.  
Perry S.C. 29669

This 17<sup>th</sup> day of January, 2024

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

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**RECEIVED**  
MAY 01 2024  
PCI MAILROOM

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Name of applicant and Inmate number (if applicable)  
Gray Lamont Petty # 2601285

OR

IN THE INTEREST OF

Juvenile

v.

State of South Carolina

) IN THE COURT OF (Select one)  
)  GENERAL SESSIONS  
)  FAMILY COURT  
) JUDICIAL CIRCUIT

) APPLICATION FOR  
) FORENSIC DNA TESTING

) ORIGINAL INDICTMENT NO.  
) -GS- - 99 - GS-42-2358

) ORIGINAL PETITION NO.  
) -GS- -

2021 MAY -9 PM 1:11  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may continue an answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the end of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated.

Jury trial, Spartanburg Circuit Court

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

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2. Give the date of the entry of the judgment and sentence: February 10, 2000

and current place of incarceration: Perry Correctional Institution

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) SEE enclosed (pg. 6) - 14

(b) SEE enclosed (pg. 6) - 14

(c) SEE enclosed (pg. 6) - 14

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: All swabs, black sheets, party and buccal swab from random female; substance of all swabs for saliva and female DNA swab and party comparison to "random female" DNA, black sheet test comparison (analysis) to applicants saliva.

Identify specific type of DNA testing being sought:

- Serology screening of swab substances
- Female XX Chromosome DNA analysis
- DNA analysis comparison (Female DNA) to victim or (random female)

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or not contendere or made or is alleged to have made an incriminating statement or admission as to identity:

~~Identity was a significant issue during trial as it was to be determined and ascertained by DNA that was collected from the actual case victim and matched to the alleged assailant.~~

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requester

sued result report pg 15 enclosed; Bodes result report pg. 16

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CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

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CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

DNA test would provide a substantially more probative result: With it being proven that applicants DNA profile could not have matched the initial case alleged suspected semen, establishing the integrity of the physical evidence and biological material; The substance of the alleged vaginal swab and suspected semen swab proven to be saliva or the female DNA profile of the items being from a random female and not from the initial case victim, (see pg 16, # 2)

7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching: The new testing and subsequent DNA evidence will change the outcome of applicant's conviction and a new trial because the results will demonstrate that applicant's DNA was not collected from the actual case victim, proving applicant's innocence. This new evidence is not cumulative nor impeaching

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

9. If DNA testing is conducted and results are determined to be inculpatory by the court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Gary Petty

Print Applicant Name

Gary Petty

Signature of Applicant

FILED  
 2009 FEB 12 AM 11:37  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 AMY W. COX  
 FILED  
 2009 FEB 9 PM 4:15  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 AMY W. COX

STATE OF SOUTH CAROLINA )

County of Spartanburg )

VERIFICATION

I Erney Petty, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Erney Petty  
Signature of Applicant

SWORN to and subscribed before me this 17  
day of January, 2024.  
Tamara Conwell (L.S.)  
Notary Public

My Commission Expires: My Commission Expires  
October 6, 2033

FILED  
2024 FEB 12 AM 11:27  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

FILED  
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CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

(4 of 22)

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I Gaisy Lamont Doty, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true.

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gaisy Doty  
Signature of Applicant

SWORN to and subscribed before me this 17  
day of January, 2024.  
Tamara Conwell (L.S.)  
Notary Public

My Commission Expires: ~~My Commission Expires~~  
October 6, 2033

FILED FILED  
2024 JAN -9 PM 11:07  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

Esquire. The following issues were addressed on appeal:

1. Did the court err in failing to suppress appellant's statements and all evidence that was the fruits of those statements?
2. Did the court err in failing to exclude evidence of the DNA results, where the state failed to comply with discovery by producing accurate copies of those results to the defense in advance of trial?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Petty*, 2002-UP-359 (S.C. Ct. App. filed May 21, 2002). The remittitur was issued on June 6, 2002.

*First PCR Action: (2003-CP-42-1781)*

Applicant subsequently filed his first PCR application on May 19, 2003, in which he alleged the following grounds for relief:

1. "A violation of 6<sup>th</sup> amendment right to effective assistance of counsel."
  - a. "Counsel failed to fully investigate case and failure to seek some remedy with respect to the inaccurate copies of the DNA analysis provided during discovery."
2. "Lack of subject matter jurisdiction."
  - a. "Violation of Article III Sect. 17 of the S.C. Const. 'Single Subject Clause.'"

Respondent made its return and motion to dismiss on or about March 12, 2004, moving to summarily dismiss the lack subject matter jurisdiction allegation and requesting a hearing on the ineffective assistance of counsel claim.

Applicant, through PCR Counsel David M. Collins, Jr., filed his first amendment to the PCR application on or around January 4, 2005, alleging:

1. Ineffective assistance of counsel for:
  - a. Failure to fully investigate the facts and circumstances surrounding the Defendant's charges and failed to properly prepare for trial.
  - b. Failure to adequately object to the admission of the State's DNA evidence on the grounds that the State had failed to fully and accurately disclose the documentation related to the DNA evidence during discovery.
  - c. Failure to consult with an expert witness, before or during the trial, regarding the State's DNA and trial counsel failed to call an expert witness at trial to rebut the claims of the State's expert witness regarding the DNA evidence

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- presented at trial.
- d. Failure to object to premature jury instructions given by the court during the State's case in chief.
  - e. Failure to challenge the admissibility at trial of Defendant's prior statements given to law enforcement officials.
  - f. Failure to disclose a potential conflict of interest involving one of the State's witnesses.
  - g. Failure to object to improper comments by the Solicitor during the State's closing argument.

The second amendment to the PCR application was filed on or around February 2, 2005. In the amendment, Applicant, through PCR Counsel, reasserted the allegations in the first application and also alleged:

1. Counsel was ineffective for:
  - a. Failure to challenge the admissibility of Nancy Skraba as an expert witness at trial.
  - b. Failure to conduct an adequate cross-examination of the alleged victim at the trial of the case.
  - c. Failure to object to improper hearsay testimony during the State's case in chief and failed to request curative measures after the improper testimony was presented to the jury.
  - d. Failure to adequately address the elements which the State was required to prove and the lack of evidence presented on those elements in Counsel's closing argument.
  - e. Failure to move to quash defendant's indictment for first degree burglary on the ground that it lacked any specific references to aggravating circumstances.
  - f. Failure to adequately challenge the admission of Defendant's prior record at the trial.
  - g. Failure to challenge the court's erroneous jury charge on the issue of "reasonable doubt."
2. Defendant's indictment for First Degree Burglary was insufficient because it lacked specific references to any aggravating circumstances.

An evidentiary hearing into the matter was convened on April 7, 2005, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by David M. Collins, Jr., Esquire. Molly R. Crum, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On June 10, 2005, the Honorable John M. Milling, presiding judge, issued the order of dismissal denying Applicant's PCR application.

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On April 20, 2006, Wanda H. Carter, Esquire filed a petition for writ of certiorari and a petition to be relieved as counsel in the Supreme Court of South Carolina on behalf of Applicant, pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. On September 28, 2007, by written order the South Carolina Court of Appeals denied the petition for writ of certiorari and granted the petition to relieve counsel. The remittitur was issued on October 16, 2007.

***First Habeas Corpus Action: (9:08-2967-RBH-P)***

Applicant then filed a federal writ of habeas corpus on September 4, 2008. After the Report and Recommendations were issued, Applicant filed objections on August 26, 2009. The United States District Court of South Carolina dismissed the Petition by written order on September 21, 2009.

***Second PCR Action: (2009-CP-42-4363)***

Applicant filed his second PCR application on August 7, 2009, alleging

1. "Insufficiency of evidence – pre-interrogation waiver is specific."
2. "Statutory and Constitutional 4<sup>th</sup> Amendment violation – 17-13-140 violation, no probable cause illegal body intrusion."
3. "Prosecutor(s) Corpus Delicti Rule Violation – no corroborating evidence."
4. Ineffective assistance of counsel, in that:
  - a. "Counsel failed to make adequate objections."
  - b. "Counsel failed to make motion to obtain DNA expert for the defense."

Respondent filed its return and motion to dismiss on May 13, 2010, requesting the matter be summarily dismissed for successiveness and untimeliness. On August 3, 2010, a conditional order of dismissal was signed by the Honorable J. Derham Cole,<sup>1</sup> Esquire, conditionally

<sup>1</sup> Judge Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, and the Honorable J. Mark Hayes, II, is Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit. However, because both Judge Hayes and Judge Cole presided over Applicant's prior PCR actions, this return and motion to dismiss and the

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summarily dismissing the application for failure to state a claim, successiveness, and untimeliness. The final order summarily dismissing the case was signed by the Honorable J. Mark Hayes, II, and filed on February 3, 2011.

*Third PCR Action: (2011-CP-42-0251)*

Applicant filed his third PCR application on January 21, 2011, alleging:

1. Ineffective assistance of counsel, in that:
  - a. Counsel failed to object to there being no jury selection process, which led to Applicant's cousin being seated on the jury;
  - b. Counsel failed to object to improper comment of prosecutor and request directed verdict.
2. Denial of a fair trial, in that:
  - a. Applicant's 5<sup>th</sup> Amendment rights were violated due to his being compelled to provide DNA evidence against himself without due process, following a coerced statement and incarceration.
3. State's failure to prove their case:
  - a. State failed to prove by direct or circumstantial evidence that the Applicant caused physical injury to the victim or participated in the crime.

Respondent filed its return and motion to dismiss, moving to summarily dismiss for successiveness, untimeliness, failure to establish a *prima facie* case of newly discovered evidence, and as barred by the doctrine of *res judicata*. On March 6, 2012, the Honorable J. Derham Cole, circuit court judge, signed the conditional order of dismissal, summarily dismissing the case for untimeliness, successiveness, and as barred by the doctrine of *res judicata*. Judge Cole signed the final order of dismissal on January 14, 2013.

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Applicant filed a notice of appeal on February 8, 2013. The Supreme Court of South Carolina dismissed the appeal because Petitioner failed to show that there was an arguable basis for asserting that the determination by the lower court was improper, as required by Rule 243(c), SCACR. The remittitur was issued on March 11, 2013.

\_\_\_\_\_ conditional order of dismissal are being sent to the Honorable R. Keith Kelly, Seventh Circuit Court Judge.

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**Fourth PCR Application: (2013-CP-42-2165)**

Applicant filed his fourth PCR application on May 7, 2013. He alleged the following grounds for relief in his application:

- 1. "Ineffective assistance of appellate (PCR) counsel," in that
  - a. "Failure to protect my rights pursuant to Code Ann. 17-27-100, right to seek appellate review of denial of original PCR application (1781)".

Applicant then filed a motion captioned "amendment to post-conviction relief application" where he alleged the following grounds for relief:

- 1. "Ineffective assistance of appellate (PCR) counsel," in that:
  - a. "Appellate counsel Wanda H. Carter failed to follow procedures set forth in *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988) in not briefing one arguable legal issue which arose during the post-conviction relief procedure."
  - b. "Instead, she presented issue of ineffective assistance of trial counsel because he lacked sufficient time to prepare petitioners case prior to plea proceeding (see enclosed Johnson petition)."
  - c. "This was error because had she reviewed the record she would have known Applicant had a trial and that this issue was not raised and ruled upon during post-conviction relief process, [preserving] it for appellate review. However, the Court of Appeals erroneously relieved counsel and made ruling on issue they had not jurisdiction, in violation of state laws, 17-27-80. Due to the Court of Appeals and appellate counsels illegality, Applicant has been denied appeal within the fully adjudication on the merits of his original PCR (order), dismissing application."

Respondent made its return and motion to dismiss on February 20, 2014, arguing the application was successive and untimely. On March 12, 2014, the Honorable J. Derham Cole issued a conditional order of dismissal. The Honorable J. Mark Hayes, II issued a final order on February 1, 2016 dismissing the matter with prejudice.

**Second Habeas Corpus Action: (0:15-4192-RBH-PJG)**

Applicant, by and through retained counsel William G. Yarborough Esquire,

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subsequently filed a second petition for habeas corpus under 28 United States Code Section 2254 on October 29, 2015. In his petition, Applicant set forth the following grounds for relief:

1. Newly-Discovered Evidence, in that:

- a. “[T]he DNA analysis used to convict Applicant was based on faulty and risk-prone procedures, the results of which are questionable at best and inconsistent with normal expectations of DNA analysis, as well as concluding that the results’ corresponding statistical findings were greatly mistaken and exaggerated.”

On October 29, 2015, the Honorable Paige J. Gossett, United States Magistrate Judge, issued a report and recommendation that the petition be dismissed without requiring Respondent to file a return. Applicant, by and through counsel, thereafter filed on November 2, 2015, a “motion to withdraw petition for writ of habeas corpus and *stay* timely filing limit” (emphasis original), seeking time to properly file a motion seeking authorization for a successive application. On November 3, 2015, the Honorable R. Bryan Harwell, United States District Judge, granted Applicant’s motion to withdraw, but denied Applicant’s motion to stay time limits, citing the Court’s lack of jurisdiction.

***28 U.S.C. § 2244 Motion: No. 15-349***

On November 5, 2015, Applicant, by and through retained counsel William G. Yarborough, III, Esquire, filed a motion pursuant to 28 United States Code Section 2244 in the Fourth Circuit Court of Appeals, seeking authorization for district court consideration of a successive application. The Court denied that motion by order filed November 18, 2015.

***Fifth PCR Action: (2015-CP-42-4889)***

Applicant, through Counsel William Yarborough, III, subsequently filed his fifth PCR application on November 24, 2015, alleging:

1. “There is newly discovered evidence that would exonerate Applicant. Pursuant to the framework in *Clark v. State* for the grant of a new trial based on new evidence, the

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newly discovered evidence for Applicant's case would change the result if there was a new trial, the evidence has been discovered since trial, it could not have been discovered before trial, is material to the issue of guilt or innocence, and is not merely cumulative or impeaching."

a. "On December 2, 2014, Forensic DNA expert, Dr. Brian Meehan, PhD produced a report about the DNA analysis that was presented at trial. (See Exhibit A, initial report Dec. 2, 2014). Dr. Meehan is a highly trained expert on the matter as he was educated at Bridgeport University, Wagner College and at College of William and Mary where he obtained his doctorate degree. His experience includes Professorships of Biology, Forensic Biology, and Genetics at various universities throughout the United States. Dr. Meehan's experience as includes high level positions at private entities which conduct DNA, forensic and genetic analysis such as IntelliGenetics LLC, DNA Security Inc., Lab Corp's Paternity and Laboratory Automation System Departments, National Legal Laboratories, and Genetic Design, Inc. He also served on various educational, research, and advisory committees pertaining to biology and genetics. His findings have also been published in various publications and he has also conducting numerous seminars in the field of genetics and biology. (See Exhibit B. Dr. Brian Meehan's professional resume.)"

b. "In Dr. Meehan's supplemental report (Exhibit C), he concluded that the DNA analysis used to convict Applicant was based on faulty and risk-prone procedures, the results of which are questionable at best and inconsistent with normal expectations of DNA analysis, as well as concluding that the results' corresponding statistical findings were greatly mistaken and exaggerated. For example, Dr. Meehan concluding Nancy Skraba, forensic serologist and DNA analyst for law enforcement, had likely only conducted a presumptive test for the presence of semen on the vaginal swab taken from the victim. Presumptive tests' results are vulnerable to false positives, rather than if she had conducted a confirmatory test based on immunochemistry; tests that are definitive indicators for the presence of semen without the risk of false positives. In light of the danger of a false positive result, the presumptive test likely did result in a false positive for semen if Nancy Skraba did not identify semen on the rectal swab taken from the victim (Trial Transcript, p. 303), or the suspected semen sample on the cloth of the shorts taken from the crime scene. (Nancy Skraba at trial did not testify that she compared either of these samples with the DNA collected from Applicant).

Additionally, the DNA profile obtained from the vaginal swab is inconsistent with the report stating that the specimen contained spermatozoa. Because a nurse at the hospital testified that the visual Wood Light test showed positive for spermatozoa (Trial Transcript p. 208, 213), a DNA analyst would expect such a sample with a visually confirmed presence of spermatozoa to yield a good-quality male DNA profile. However, to the contrary, the vaginal swab yielded a very weak and only partial DNA profile.

Furthermore, the DNA profile obtained from the vaginal swab is not sufficient to determine that it matches Applicant. Only two of the loci, D4S139 and

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D5S110, are consistent with the DNA profile of the Applicant and a match of only two loci is absolutely insufficient to determine a DNA match between the vaginal swab and the Applicant. (See Exhibit D, SLED DNA Report). Thus, the conclusion in law enforcement's forensic report and testified to at trial that the DNA profile developed from semen on item 1.7 (the vaginal swab) also matched Gary Petty is erroneous.

Moreover, Nancy Skraba's testimony that the probability of selecting an unrelated individual randomly from the population who has a DNA profile matching item 1.10 is approximately one in 1.3 trillion is incorrect, false and misleading. (See Exhibit E, SLED DNA Laboratory Statistical Database Report: Trial Transcript 303). This testimony is a gross misapplication of the analysis and statistics because such likelihood is actually 1 in 11,372 blacks, which is hardly conclusive as an individual evidence item."

- c. "In Dr. Meehan's report, he stated that the DNA testing used, restriction fragment length polymorphism, has been supplanted by more precise and reliable DNA analysis procedures and equipment. Dr. Meehan asserts that there are more exact methods of biochemical analysis of fluid for semen, and these methods are more definitive with respect to DNA analysis of evidence items. Upon retrieval of DNA from Applicant, as well as the items originally tested for trial, Dr. Meehan will be retained to conduct new DNA analysis and will testify to the results at a new trial.

Pursuant to Clark v. State, a new trial is warranted for new testing of the DNA based on recent technological and scientific innovations, and in light of the faulty testing originally used and their erroneous results. Because the ultimate issue at trial was to ascertain the identity of the victim's rapist, the new testing and subsequent DNA evidence would change the outcome of the new trial because the new DNA results would demonstrate that Applicant was not the victim's attacker. Also pursuant to Clark, the evidence has been discovered since trial and was not available at trial because the field of genetic and forensic testing is more innovative, precise and reliable than it was at the time of trial in 2000. Moreover, the evidence is material to the innocence of Applicant rather than impeaching or cumulative because the ultimate issue at trial was whether Applicant was the victim's attacker, and the State presented Nancy Skraba's testimony and findings in an effort to prove that Applicant was guilty by the 'match' of his DNA to the sample taken from the victim. The DNA findings were the utmost probative evidence presented by the State because Applicant has always maintained his innocence, and his confession given to police was falsified, forced and fabricated. Therefore, DNA would be the only piece of evidence connecting him to the crime."

Respondent made its return and motion to dismiss on March 24, 2017, arguing the application was successive, moot, untimely, and failed to state a cognizable claim. On March 30, 2017, the Honorable J. Derham Cole issued a conditional order of dismissal. Judge Cole issued a

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final order on May 19, 2017 dismissing the matter with prejudice.

A notice of appeal was made on May 30, 2017. On June 6, 2017, by written order the Supreme Court of South Carolina dismissed the appeal because Applicant did not file a response to the conditional order of dismissal. The remittitur was issued on June 23, 2017.

**II. Current Action Before the Court**

In his sixth and current PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Due process violation; the State failed to prove every element beyond a reasonable doubt."
2. "Trial counsel rendered ineffective assistance for failing to state with specificity the basis for a directed verdict."
3. "Trial counsel rendered ineffective assistance for failing to make a 4<sup>th</sup> Amendment suppression motion."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, the PCR application, and prior direct appeal, PCR, PCR appeals and habeas corpus records. Respondent reserves the right to amend this return upon receipt of additional information.

**III. Motion to Dismiss**

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not appoint counsel in this matter, and instead issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.<sup>2</sup> See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary

<sup>2</sup> A proposed conditional order of dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

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Phone: 703-646-9740

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Forensic Case Report  
February 8, 2017

To:  
Joseph McCulloch  
Palmetto Innocence Project  
1513 Hampton Street  
Columbia, SC 29201

Bode Cellmark Case #: CCC1666-0364  
Agency Case #: L98-12831

William G. Yarborough, III  
Law Office of William G. Yarborough  
522 North Church St.  
Greenville, SC 29601

Victim: Brenda K. Bishop  
Subject: Gary Petty

List of evidence received on November 22, 2016 for possible DNA analysis:

<u>Bode Cellmark Sample Name</u>	<u>Agency Sample ID</u>	<u>Agency Description</u>
CCC1666-0364-E01	1.7	Vaginal Swabs
CCC1666-0364-E02	1.10	Suspected Semen Swabs
CCC1666-0364-R03	Not Listed	Known Standards from Gary Petty

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STR Processing, Results, Conclusions, and Statistics:

The evidence was processed for DNA typing using the Applied Biosystems AmpFLSTR® Identifiler® Plus kit.

1. A DNA profile was obtained from sample CCC1666-0364-R03 (Gary Petty).
2. The DNA profile obtained from the epithelial fraction (EF) of sample CCC1666-0364-E01 is consistent with a female contributor and will be used as the victim reference sample (Brenda K. Bishop).
3. The DNA profile obtained from the sperm fraction (SF) of sample CCC1666-0364-E01 is consistent with a mixture of two individuals including a major male contributor (Male 1) and alleles consistent with the victim.

This major component DNA profile matches the DNA profile obtained from sample CCC1666-0364-R03 (Gary Petty).

The probability of randomly selecting an unrelated individual with this DNA profile at 15 of 15 loci tested is approximately:

- 1 in 580 quintillion in the US Caucasian population
- 1 in 1.3 quintillion in the US African American population
- 1 in 71 quintillion in the US Hispanic population

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Bode Cellmark Case #: CCC166 364  
Agency Case #: L98-12831

Date: February 08, 2017

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STR Processing, Results, Conclusions, and Statistics:

4. The partial DNA profile obtained from the sperm fraction (SF) of sample CCC1666-0364-E02 is consistent with a male contributor (Male 1).
- This DNA profile matches the DNA profile obtained from sample CCC1666-0364-R03 (Gary Petty).
- The probability of randomly selecting an unrelated individual with this DNA profile at 13 of 15 loci tested is approximately:
- 1 in 1.3 quadrillion in the US Caucasian population
  - 1 in 1.4 trillion in the US African American population
  - 1 in 90 trillion in the US Hispanic population
- The following loci were not used in the statistical calculation due to no results being obtained: D5S818 and FGA.
5. A partial DNA profile was obtained from the epithelial fraction (EF) of sample CCC1666-0364-E02. Due to the limited data obtained, no conclusions can be made on this partial profile.

See **Table 1** for summary of alleles reported for each sample.

Notes:

1. Testing performed for this case is in compliance with accredited procedures under the laboratory's ISO/IEC 17025 accreditation issued by ASCLD/LAB. Refer to certificate and scope of accreditation for certificate number ALI-231-T.
2. The DNA profiles reported in this case were determined by procedures that have been validated according to the standards established in the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories.
3. Any reference to body fluids in evidence descriptions are based on the written descriptions of the samples by the submitting agency.
4. The DNA extracts and submitted evidence will be returned to the Spartanburg County Clerk of Court.

Report submitted by,

*Christina H. Nash*

Christina H. Nash, MSFS  
DNA Analyst II

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EXHIBIT 1

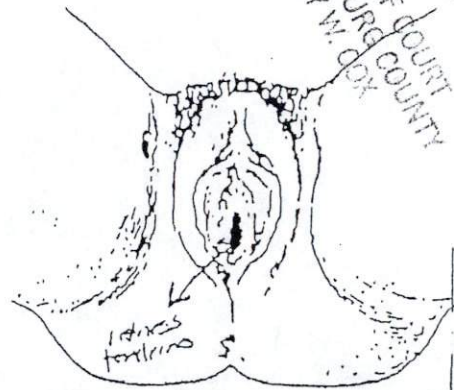
Brenda Kaye Bishop  
VICTIM'S NAME

16

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PELVIC EXAMINATION—(To be performed by qualified medical personnel.)  
(Use a non-lubricated speculum.)

VULVA: intact  
INTROITUS: intact  
VAGINA: intact; pinkish  
CERVIX: occur  
UTERUS: Anterior  
ADNEXA: no tenderness  
HYMEN: frimbriated  
RECTUM: intact no scars or redness  
ANUS: intact



COMMENTS: + Woods light reaction to inner thigh's & perineum.  
Pt crying during exam, muscles tense.

Dalvite Linda RN, SINE  
(Examiner)

10/14/98  
Date

1100AM  
Time

SWABS AND SMEARS COLLECTION PROCEDURE

NOTE

- (A) Do Not moisten swabs prior to collection.
- (B) Do Not stain or chemically fix smears.
- (C) It is imperative that swabs and smears be *completely air dried* before re-packaging in the kit box.

- 1 Slide and 4 air dried swabs from the vaginal area (including vulva and cervical areas) for semen analysis
- 1 Slide and 2 air-dried swabs from rectum for semen analysis (if applicable)
- 1 Slide and 2 air-dried swabs from the mouth for semen analysis (if applicable)

LABORATORY TESTS TO BE PERFORMED BY HOSPITAL LAB

Wet mount for presence of:

- Spermatozoa
- Motile
  - Non-Motile
  - None Seen

Other

- Trichomonas
- Gardnerella
- Candida

Please perform the following:

- Pap Smear
- GC Culture - Oral
- Other Culture (i.e. Herpes)

- Gravindex or HCG
- GC Culture - Vaginal
- HIV (with victim's consent)

- VDRL
- GC Culture - Rectal
- Urinalysis

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Personal Knowledge facts:

The CASE initial SLED DNA test report (pg 15) STATES THAT SEMEN ON ITEM 1.10 MATCHED APPLICANT'S DNA PROFILE.

ITEM 1.10 STATED BY NURSE DURING TRIAL WAS A SUSPECTED SEMEN SWAB, WHICH WAS SUBSTITUTED BY SLED AS IT STATED THAT SUSPECTED SEMEN WAS SUSPECTED SEMEN SAMPLE (TR. PG 304)

SUSPECTED SEMEN WAS AN ITEM DESCRIPTION USED TO UNDOUBTEDLY REFER TO FALSE CASE ALLEGED DNA EVIDENCE ITEM BLACK SHEETS (SEE PG. 19, ENCLOSED)

THE INITIAL CASE VAGINA SWAB WAS FRAUDULENT AS THERE WAS NO VAGINAL PENETRATION (SEE PG 18, ENCLOSED)

THE BODIES DNA TEST RESULT REPORT (PG 16, ENCLOSED) WAS BASED UPON NEW 2016 ILLEGALLY COLLECTED (SEE PG. 22) DNA EVIDENCE ITEMS THAT WERE FRAUDULENTLY USED AS BEING ACTUAL CASE DNA EVIDENCE ITEMS [SEE PG. 20, SHOWING THE ATTEMPTED SUBSTITUTION OF BLACK PANTIES THAT WERE NOT AN INITIAL CASE DNA EVIDENCE ITEM (SEE TR. PG 2042)]

THIS RESULT REPORT ALSO STATES THAT THE [REDACTED] WAS THE RESULT OF AN ITEM THAT MATCH APPLICANT'S DNA PROFILE (SUSPECTED SEMEN SWAB) THAT HAD NOT BEEN SUBMITTED FOR THE DNA TESTING (SEE PG 20)

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On Oct 12<sup>th</sup>, 2016 SLED DNA analyst NANCY J. SKENABA  
CAME TO PERRY Correctional Institution to collect applicants'  
then ATTORNEY William Yarborough and illegally collected  
applicant's SALIVA SWAB for a DNA re-testing.

William Yarborough had STATED to applicant that the  
SLED DNA ANALYST WAS "NURSE NANCY", AS THERE WAS  
no COURT ORDER from A JUDGE for the Collection of  
applicant's SALIVA.

THE FACTS STATED ARE WITHIN applicant's personal  
knowledge and the AUTHENTICITY of ALL document  
EXHIBITS ATTACHED (pg. 6-20) to the application  
ARE hereby sworn to AS true and correct.

*Gary Lamont Petty*

GARY LAMONT PETTY  
PERRY CORR. INST.  
430 OAKDAWN RD.  
PETZEC, S.C. 29669

This \_\_\_ day of \_\_\_\_\_, 2024

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(22 of 22)

## Fwd: Petty Case Rape Kit

Stephanie <stephie32@gmail.com>

Fri 3/11/2016 9:12 AM

Stephanie W. Brown

Begin forwarded message:

**From:**  
**Date:** March 7, 2016 at 11:15:47 AM EST  
**To:** "stephie32@gmail.com" <stephie32@gmail.com>  
**Subject:** FW: Petty Case Rape Kit

Hi Stephanie,

This was already pointed out to me by Mr. Yarborough. A corrected email is below.

Brian

---

Subject: Petty Case Rape Kit  
Date: Mon, 7 Mar 2016 10:40:35 -0500

Dear Mr. Yarborough,

Per our phone conversation last week I have gone back and reviewed my notes for this case.

As indicated in my initial review dated August 10, 2015, there are at least four categories of concern regarding the DNA analysis and testimony. Of course these issues have NOT been addressed so they remain a concern. Please feel free to contact me to discuss the details and possible impact of each of these issues.

With regard to the rape kit that is being held at the Spartanburg Sheriff's Office, at the very least we should examine the contents and chain of custody (description) of each item and compare this to the notes from the DNA analysis already conducted. Base on this a decision can be made to move forward with testing items for the presence of semen and/or DNA. One very important item is 1.10 (cloth with semen) that contained a DNA profile from your client. The notes I have from the lab indicate that this item was consumed during analysis which, on the surface, is unusual. Therefore, details of the size of the cloth, size of the stain and its' origin are important. The lab notes and testimony I have describing this item are not clear. Also, we should determine if the lab has any of the extracted DNA in storage from this specimen.

A re-examination of the rape kit can be considered a double-edged sword so we should first examine the kit contents as explained above before making this decision. As a suggestion, it will be important to be able to

explain the presence of his DNA on items tested based on activity not related to the accusations before committing to performing any any additional tests.

Perhaps the best way to make a fully informed decision is for me to travel to Spartanburg and examine the rape kit contents and related documents directly. It is a 4.5 hour drive and I should commit to a full day for my examinations so I would actually be out of my office three days. My standard fees including travel and consultation for this type of work would be approximately \$5,500. However, as I am aware of the history and financial limitations with this case, I will reduce my fee for this service to \$2,750.

Please let me know if you have any questions or need any additional information from me.

Sincerely,

Forensic DNA Expert  
[www.foresicdnaexpert.org](http://www.foresicdnaexpert.org)

## Fwd: Petty Case Rape Kit

Stephanie <stephie32@gmail.com>

Fri 3/11/2016 9:12 AM

Stephanie W. Brown

Begin forwarded message:

From:  
Date: March 7, 2016 at 11:15:47 AM EST  
To: "stephie32@gmail.com" <stephie32@gmail.com>  
Subject: FW: Petty Case Rape Kit

Hi Stephanie,

This was already pointed out to me by Mr. Yarborough. A corrected email is below.

Brian

---

Subject: Petty Case Rape Kit  
Date: Mon, 7 Mar 2016 10:40:35 -0500

Dear Mr. Yarborough,

Per our phone conversation last week I have gone back and reviewed my notes for this case.

As indicated in my initial review dated August 10, 2015, there are at least four categories of concern regarding the DNA analysis and testimony. Of course these issues have NOT been addressed so they remain a concern. Please feel free to contact me to discuss the details and possible impact of each of these issues.

With regard to the rape kit that is being held at the Spartanburg Sheriff's Office, at the very least we should examine the contents and chain of custody (description) of each item and compare this to the notes from the DNA analysis already conducted. Base on this a decision can be made to move forward with testing items for the presence of semen and/or DNA. One very important item is 1.10 (cloth with semen) that contained a DNA profile from your client. The notes I have from the lab indicate that this item was consumed during analysis which, on the surface, is unusual. Therefore, details of the size of the cloth, size of the stain and its' origin are important. The lab notes and testimony I have describing this item are not clear. Also, we should determine if the lab has any of the extracted DNA in storage from this specimen.

A re-examination of the rape kit can be considered a double-edged sword so we should first examine the kit contents as explained above before making this decision. As a suggestion, it will be important to be able to

explain the presence of his DNA on items tested based on activity not related to the accusations before committing to performing any any additional tests.

Perhaps the best way to make a fully informed decision is for me to travel to Spartanburg and examine the rape kit contents and related documents directly. It is a 4.5 hour drive and I should commit to a full day for my examinations so I would actually be out of my office three days. My standard fees including travel and consultation for this type of work would be approximately \$5,500. However, as I am aware of the history and financial limitations with this case, I will reduce my fee for this service to \$2,750.

Please let me know if you have any questions or need any additional information from me.

Sincerely,

Forensic DNA Expert  
[www.foresicdnaexpert.org](http://www.foresicdnaexpert.org)

Nancy Skraba  
Direct examination by Ms. Stone

1 A Yes.

2 MS. STONE: Your Honor, I would offer the report into  
3 evidence.

4 MR. MORIN: I have no objection.

5 THE COURT: Okay. Admitted without objection.

6 (SLED report marked State's Exhibit Number Twenty-  
7 four.)

8 Q Would you please read us the results of that report?

9 A Yes. "The D. N. A. profile developed from semen on  
10 Item 1.10 matches the D. N. A. profile of Gary Petty (item  
11 5.4) at genetic loci D2S44, D4S139, D10S28, D1S7, D5S110 and  
12 D7S467. The results are inconclusive at genetic locus  
13 D17S79."

14 THE COURT REPORTER: Ma'am, you need to slow down.

15 THE WITNESS: I'm sorry.

16 A "The probability of selecting an unrelated individual  
17 at random from the population having a D. N. A. profile  
18 matching item 1.10 is approximately one in 1.3 trillion  
19 Blacks and one in 180 billion Caucasians.

20 "The D. N. A. profile developed from semen on Item  
21 1.7," which is the vaginal swab, "also matches Gary Petty.

22 "No D. N. A. profile unlike the victim, Brenda Bishop,  
23 was developed from Item 1.9." And 1.9 was the rectal swab.

24 Q Okay. So for the statistics' purposes, you used 1.10,  
25 and what was that?

*Handwritten notes:*  
about 4 pages  
to review  
SLED report  
SLED report

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Spartanburg County  
Honorable J. Mark Hayes, II; Judge

RECEIVED

JUN 30 2025

SC Court of Appeals

GARY LAMONT PERRY, . . . . .

APPELLANT

v.

STATE OF SOUTH CAROLINA, . . . . .

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned pro-se Appellant Certify that a true copy of the petition for writ of Certiorari as well as a copy of Lower Court Record, in the above referenced case has been served upon opposing Counsel by mailing copies in an envelope properly addressed, pre-paid postage,

This 23<sup>rd</sup> day of JUNE, 2025



GARY LAMONT PERRY  
PERRY COOK, TRST.  
430 OAKHAWN RD.  
PETZER, S.C.  
29669

GARY LAMONT PERRY #204235/103(B)224  
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