IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,	
v.	Case No.
JEFFREY B. CLARK, ET AL.,	23SC188947
Defendants	

RESPONSE TO STATE'S MOTION TO RE-SCAN THE INDICTMENT

Comes Now Jeffrey Bossert Clark, and submits this response in opposition to the State's Motion to Re-Scan the Indictment, respectfully showing the following:

The State contends that a re-scan of the Indictment is necessary because of what it contends is an error related to when the Indictment was originally scanned:

> [T]he State believes that the Optical Character Recognition (OCR) function misinterpreted certain numbers in the Indictment and replaced these numbers in the scanned version of the Indictment that was then uploaded into Odyssey. Specifically, there exist three errors in the scanned Indictment available in Odyssey that do not exist in the printed Indictment. None of the language in the Indictment was affected by this error.

Motion to Re-Scan, p. 2. Upon further inquiry by other defense counsel, the specific errors were identified in the Indictment as two Act 12s, two Act 52s, and two Act 123s, whereas the original is said to not have such errors.

Mr. Clark objects to this motion because the grounds offered in support of the motion do not make sense.

The undersigned, Mr. MacDougald, has worked with OCR'd documents for approximately 20-25 years, since OCR software first became available on personal computers. Over that period, the volume of OCR'd documents counsel has worked with is at least a million pages, if not several millions of pages. Counsel has personally run OCR on at least hundreds of thousands of pages of documents and continues to routinely and personally run OCR software or use litigation support databases that perform OCR on large document collections. Despite this experience, until receiving the State's motion, counsel had never heard of or seen an instance of an error of the type suggested by the State, much less for it to have occurred multiple times in a single document.

When OCR is performed, the software interprets a picture of text and converts the picture of text to actual text that can be searched or copied.[1] The pre-processing of the image can include de-skewing, despeckling, binarization, non-character line removal and layout analysis. But the alteration of the image to change the image text from one character to another is simply not done as it is totally contrary to the essential purpose and design of OCR, which is to achieve maximum accuracy in interpretation of the text in the image. Characters in the image are *interpreted*, not altered by OCR software. OCR can misinterpret characters that are not clear in the image due to poor image quality, but that is an error of interpretation of the text in the image, not an alteration of the text in

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[1] See *Optical Character Recognition*, WIKIPEDIA, https://en.wikipedia.org/wiki/Optical_character_recognition (last visited Feb. 2, 2024).

the image. For example, when one copies text from an OCR'd document, sometimes the copied text will contain interpretation errors, but in no instances ever previously encountered does the OCR software alter the image of the text.

The metadata in the Indictment shows that the conversion to pdf was performed by "GdPicture.NET."[2] GdPicture.NET is an "Enterprise-grade intelligent PDF & document processing SDKs." *See* https://www.gdpicture.com. The OCR capabilities of the product are touted here: https://www.gdpicture.com/ocr-sdk/. It is a sophisticated product and system.

The original document that was scanned was presumably not a poor-quality multiple-generation copy, but a laser-printed original, with extremely sharp text. OCR on fresh, first-generation laser printed documents is extremely accurate, even on personal computers with commercial off-the-shelf OCR software, such as Acrobat Professional.

If the GdPicture.NET product made errors of the nature and frequency suggested by the State, the vendor should be out of business.

All things considered, the likelihood that the OCR software chosen by Tyler Technologies would make this number of errors of this nature in a single document must be regarded as vanishingly small. Tyler Technologies is listed on the New York Stock

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[2] In Acrobat, File/Properties/Description shows the "PDF Producer," which refers to the application that generated the pdf file. See *General Document Properties, PDF Studio 2023 User Guide,* https://www.qoppa.com/files/pdfstudio/guide/general-document-properties.htm (last visited Feb. 2, 2024).

Exchange and is a component of the S&P 500, with a current market capitalization over $18 Billion.

The State does not state as a fact that the scanning and OCR software caused the errors in question, nor does it offer any evidence to support the claim. It says that "the State believes" that is what happened. The proposed Order says "it appears that" the Tyler Technologies OCR software replaced correct numbers with incorrect numbers. But that does not appear to be correct for the reasons stated above. Thus, the proposed order is exceedingly unlikely to be correct in this respect. Caution is warranted because it could be commercially damaging to Tyler Technologies for an order with an incorrect statement of this nature to be issued in this case, which is the subject of intense nationwide media scrutiny and publicity. Such a statement should not be made in a Court order absent adequate technical proof, which has not been offered. The State was asked in an email from Mr. MacDougald for a more convincing technical explanation, but none has yet been forthcoming.

Of course, we have all seen legal filings with paragraph numbering errors. This is a form of human error that is common by comparison to the error hypothesized in the State's motion, and thus a much more likely explanation for the errors in the Indictment.

Finally, if we accepted the State's suggestion that the scanning and OCR software used by the Clerk introduced the errors in question, then we should expect that similar

errors will occur if the same document were it re-scanned into the same system. It is therefore unclear how or why a re-scan would solve the problem.

CONCLUSION

The State's Motion to re-scan should denied.

Respectfully submitted, this 5th day of February, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2024, I electronically lodged the

within and foregoing *Response to State's Motion to Re-Scan The Indictment* with the

Clerk of Court using the PeachCourt eFile/GA system which will provide automatic

notification to counsel of record for the State of Georgia:

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