Robert Koon 227020
MCI
386 Redemption Way
McCormick SC 29835

RECEIVED
MAY 31 2012
SC Court of Appeals

Clerk of Court
PO Box 11629
Columbia SC

5/23/12

STATE v. Robert Koon (Cherokee Co)

PLEASE FIND ENCLOSED A MOTION TO RECONSIDER DENIAL OF APPOINTMENT OF OUTSIDE COUNSEL BASED UPON RELEVANT FACTS NOT PREVIOUSLY AVAILABLE (At time of earlier motion). AND NEW FACTS RELEVANT to motion NOT then AVAILABLE AND ATTACHED thereto ARE RELEVANT COURT RECORDS, AFFIDAVITS (etc) IN SUPPORT OF the Above MOTION. (INTER ALIA) BASED ON CONFLICT OF INTEREST COUNSEL HAS FAILED TO MAKE this DOCUMENTS PART OF R.O.A.

ALSO, Proof of Service is ENCLOSED AS A TRUE COPY WAS SERVED ON Sally W. Elliott PO Box 11549 Columbia SC 29211

PLEASE SEND me A CLOCK STAMP COPY FOR MY RECORDS.

THANK YOU VERY MUCH

THIS MOTION TO RELIEVE COUNSEL IS ALLOWED

Prior to STATE v. GRADDICK (SC Supreme CT)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
HON. J. MARK HAYES II
CHEROKEE COUNTY

STATE

VS

ROBERT HOLLAND KOON — APPELLANT

MOTION TO RECONSIDER DENIAL OF APPOINTMENT OF OUTSIDE COUNSEL BASED UPON RELEVANT FACTS NOT AVAILABLE (L)

The APPELLANT MADE A MOTION TO APPOINT OUTSIDE COUNSEL BASED UPON A CONFLICT OF INTREST with APPELLATE DEFENSE, however, At the time APPELLATE DID NOT HAVE ACCESS to the COURT RECORDS OF KOON v. SCADE (et. al) '99-CP-11-489 which WAS A CIVIL ACTION AGAINST (INTER ALIA) APPELLATE DEFENSE ITSELF. (This CIVIL ACTION WAS IN the NEWSPAPERS IN EARLY AND WAS A PROLONGED Litigation with Depositions FROM TANA TAGGART (etc) BASED UPON the DOCUMENTED HISTORY OF CIVIL ACTION AGAINST APPELLATE DEFENSE APPELLANT ASSERTS Robert DUREK AND Robert PACHAK HAVE PURPOSELY SABOTOGUED his APPEAL,

- (1) CEFT the ATTACHED COURT RECORDS OUT OF the RECORD ON APPEAL TO MISLED COURT AS BASIS OF 29(b).
- (2) PURPOSELY omitted **Key** ISSUES FROM the BRIEF OF PROSECUTORIAL MISCONDUCT IN the KNOWN PRESENTMENT OF FALSE EVIDENCE AND FAILURE to CORRECT PRESENTATION OF FALSE EVIDENCE

ME OF MOTION TO Relieve APPELLATE DEFENSE HAD NOT ED ADVERSELY TO CLIENT INTRESTS" CUYLER v. SULIVAN (1980)

LEGAL MAIL

TO the MAGISTRATE (to obtain WARRANT) USE OF SAME WARRANT TO obtain INDICTMENT. And FAILURE to CORRECT SAME AT the PLEA. Riddle v. Ozmint 631 SE2d. 70 (2006) Citing Giglio v. US 405 US 150, 153 (1972) where Police obtained WARRANT 86-GS-11-289 For Second Degree Burglary (OFFICE IN Nighttime) w/out ANY EVIDENCE OF Nighttime (this was SAME Police, SAME Solicitor, SAME time FRAME AS Riddle v. Ozmint (shows PATTERN OF MISCONDUCT SCRE 406) where NEW EVIDENCE OF VICTIM AFFIDAVIT shows NO EVIDENCE EXISTED to Show OFFENSE OCCURED @ Nighttime (NONE) (1986 Solicitor OFFICE HAD PATTERN OF this)

*(3) Appellate DEFENSE NOT ONLY REFUSED to RAISE this ISSUE but ACTED IN Complicity with the 7th Circuit Solicitor OFFICE to thwart Appellants Attempt to present Detective Richard Weaver (the Police who SIGNED the FALSE AFFIDAVIT OF Probable CAUSE FOR ARREST FOR A Nighttime Burglary when VICTIM TESTIFIED the BREAK IN OCCURED between 5 PM 9 AM) Weaver IS A CRUCIAL FACT WITNESS.

AT the JUNE 27, 2011 hearing the SOLICTOR REPRESENTED TWO INVESTIGATORS COULD NOT FIND WEAVER to PRESENT AT the hearing but the victim SENT A SWORN AFFIDAVIT TO PACHAIC STATING WEAVER WAS FOUND ON INTERNET IN LESS THAN 30 MINUTES

*(AFFIDAVIT ATTACHED)

ONCE WE FOUND this Detective I ASKED R. PACHAIC to MAKE A FORMAL MOTION TO REMAND the CASE to Cherokee County SO DET. WEAVER

LEGAL MAIL

TESTIOMONY COUID bc TAICEN IN RE: to the ISSUE OF PROSCCUTORIAL MISCONDUCT IN the IcnowinG USE OF FAISE TESTIMONY SEE RiddLE v. OZMINIT, AMD the PATTERN AND HABit AnID RoutinE OF MIS CONDUCT by CAFFNEY City POLICE, SOLICITOR (Pun SCRE 406) ROb PACHAK ~~REPLAINE~~ REFUSED to PO SO!! AWhough he did MAICE A REFERENCE IN his BRIEF TO WEAVER HE DID NOT SET FONTH the SPECIFIC NEED to HAVE WEAVER AVAILABLE to testify ON KNOWING USE OF PERJURED TESTIMONY? (PATTERN THEREOF)

(4) IN FACT, he OMITTED this ENTIRE ISSUE From the BRIEF. AND WOULD NOT INCLUDE the ENCLOSED Rule 27(b) MOTION that STARTED these proceedings that CLEARLY SET FONTh the ISSUE ON the KNOWINE USE OF PERJURED testimony that WAS BASIS OF 27(b) to begin with. ~~AND COULD NOT BE FULLY DUES~~

COUNSEL HAS ACTED to "SUPPRESS WEAVER TESTIMONY AND OMIT LYNCHPIN ISSUE FROM the BRIEF that will EFFECTIVELY DENY APPELLANT his RIGHT to DUE PROCESS AND ALLOW the USE OF PERJURED testimony + GO UNCHALLENGED, BASED ON HIS CONFLICT OF INTREST. APPELLANT ASKS this COURT, in its WISDOM, + ALSO ACKNOWLEDGE A CRUCIAL FACT - the MAIN THRUST OF his 27(b) PROSE (ATTACHED) WAS © 7th CIRCUIT SOLICITORS OFFICE ENGAGED IN A PATTERN/~~OF~~ HABIT SCRE 406 OF PROSECUTORIAL MISCONDUCT IN KOON AND RIDDLE ... by the 7th CIRCUIT SOLICITOR IN 1986.

LEGAL MAIL

AND HE MADE A MOTION FOR APPOINTMENT OF COUNSEL OUTSIDE OF 7th CIRCUIT. HOWEVER, LOW AND BEHOLD FORMER 7th CIRCUIT ASSIST. SOLICITOR RUSS RACINE WAS APPOINTED AS COUNSEL AND RICHARD WEAVER WAS CLAIMED he COULD NOT BE FOUND, but the VICTIM FOUND WEAVER Albiet AFTER the HEARING.

RUSS RACINE HAD A CONFLICT AS he DID NOT WANT to EXPOSE HIS FORMER 7th CIRCUIT CO WORKERS TO ALLEGATIONS OF MISCONDUCT AND ACTED to DECIEVE his CLIENT(s) SOLICITOR) AS to WHEREABOUTS OF KEY FACT WITNESS WEAVER.

LIKEWISE, ROB PACHAK / ROB DUDEK ACTED UNDER A CONFLICT OF INTREST BASED ON PRIOR HISTORY OF LITIGATION AGAINST THEIR OFFICE while THEY WERE EMPLOYED there AND DILUTED the APPELLANTS ISSUES AND ACTED to UNDERMINE his ATTEMPTS TO HAVE this CASE REMANDED to PLACE WEAVER testimony IN the RECORD TO SUBSTIATE the PROSECUTORIAL MISCONDUCT, PATTERN there OF, (SCRE 406)

REMEDY

APPELLANT ASK this COURT TO APPOINT COUNSEL who is FAMILIAR with the Riddle PROSECUTORIAL MISCONDUCT that is BASIS OF his RULE 406 PATTERN / HABIT OF CHEROKEE CO. (1986) SOLICITOR OFFICE DIANA HOLT (ESQ). AND to HAVE this CASE REMANDED to CHEROKEE COUNTY TO TAKE the TESTIMONY

LEGAL MAIL

OF RICHARD WEAVER AND ANY other witness COUNSEL DEEMS IS NEEDED (INTER ALIA) ASST. SOL. BILL B. DUNCAN WOULD FAILED to CORRECT the KNOWING USE OF FALSE TESTIMONY AT the PLEA.

OR other COUNSEL this COURT FEELS that is up to the TASK OF this CASE possibly TARA SHURLINE (ESQ)

AS it should be CLEAR that VICTIM AFFIDAVIT ESTABLISHES PROSECUTORIAL MISCONDUCT DID KNOW AND STRIKE that has him SERVING LWOP FOR A PROPERTY OFFENSE. ONE OF SC WORST MISCARRIAGES OF JUSTICE

Relief

~~P. PACER~~

APPELLATE ~~DEFENSE~~ BE RELIEVED AS COUNSEL (2) ORDERED TO TURN OVER ALL MATERIAL TO COUNSEL APPOINTED BY this COURT.

Respectfully

FN (2) APPELLATE ~~DEFENSE~~ WILL NOT EVEN TAKE APPELLANT CALLS or meet w/ him which violation OF CODE OF PROFESSIONAL CONDUCT (SC Rules OF COURT)

LEGAL MAIL

APPENDIX TO MOTION TO RECONSIDER DENIAL OF APPOINTMENT OF OUTSIDE COUNSEL BASED ON RELEVANT FACTS NOT AVAILABLE

(1) MOTION FOR NEW TRIAL PUR Rule 29(b) CLOCK STAMP (NOT IN ROA)

(2) AMENDMENT TO PCR REFERRED TO IN FN 2 OF AMENDED MOTION FOR NEW TRIAL (NOT IN ROA)

(3) NOTICE AND MOTION FOR NEW TRIAL FILED 6/27/11 AT 29(b) HEARING.

(4) AFFIDAVIT OF VICTIM IN RE: to HOW EASILY DET. WEAVER WAS LOCATED (SENT TO PACHAK by Victim)

(5) AFFIDAVIT OF VICTIM RE: NO EVIDENCE OF Nighttime (EXHIBIT AT 276 HEARING)

(6) Letter to Solicitor RE: Nighttime Element (LACK THEREOF) (EXHIBIT AT 29(b))

(7) LETTER OF Judge MANIC HATES RE: CONFLICT W/ RACINE (Former solicitor)

(8) COMPLAINT DISCIPLINARY COUNSEL / REPLY RE: RACINE HAVING A CONFLICT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE)

Robert Holland Koon, SCDC No. 27826) CASE NO.
☐ Plaintiff) 2007-CP-11-0208

v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET

State of South Carolina)
☒ Defendant.)

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2009 AUG 12 P 3:22
BRANDY W. MCBEE

~~Plaintiff's Attorney:~~ Plaintiff	Defendant's Attorney:
Robert Holland Koon, ~~Bar No.~~ SCDC No. 227826	S. Prentiss Counts
Address:	Address:
McCormick Correctional Institution	P.O. Box 11549
386 Redemption Way	Columbia, SC 29211-11549
McCormick, South Carolina 29899	phone: (803) 734-3737 fax: (803) 734-4113
phone: fax:	e-mail: other:
e-mail: other:	

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed Order.

S. Prentiss Counts — July 31, 2009
~~Signature~~ of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA) # 86-GS-11-289

v.)

ROBERT HOLLAND KOON) RULE 29(B) MOTION FOR A NEW TRIAL - BASED UPON AFTER DISCOVERED EVIDENCE

DEFENDANT)

TO: HENRY D. McMASTER
ATTORNEY GENERAL
HAROLD 'TREY' GOWDY III, Solicitor

The DEFENDANT, PROSE, would hereby MOVE the COURT OF GENERAL SESSIONS to GRANT A NEW TRIAL - based upon AFTER DISCOVERED EVIDENCE - PUR. to SC RULES OF CRIM. PRO. 29(b)

PROCEDURAL HISTORY

The DEFENDANT WAS INDICTED by the CHEROKEE COUNTY GRAND JURY IN APRIL 1986 FOR SECOND DEGREE BURGLARY 16-11-312(B)3) WHICH ALLEGED ROBERT HOLAND KOON DID IN CHEROKEE COUNTY ON OR ABOUT the 28th DAY OF MARCH 1986 DID ENTER DWELLING OF CUDD-LOVELACE INSURANCE CO. WITHOUT CONSENT AND WITH the INTENT to COMMIT A CRIME THEREIN, ENTERING IN the Nighttime.

BASED upon the RECENT AFFIDAVIT OF the victim HARRY L. LOVELACE IT IS NOW KNOWN, AND CAN be PROVEN, that the SOLICITOR AND POLICE DETECTIVE RICHARD WEAVER MADE FAISE REPRESENTATION

TO the GRAND JURY TO obtain the INDICTMENT, AND to the MAGISTRATE to obtain the ARREST WARRANT, AS NO EVIDENCE HAS EVER EXISTED to show that this OFFENSE OCCURED AT NIGHTTIME. (1)

IN FACT, it CAN ALSO be shown SOLICITORS REPRESENTATION AT PLEA this OFFENSE OCCURED AT Nighttime WAS 'KNOWING USE OF FAISE TESTIMONY' which has been held to be INCOMPATIBLE with Rudimentary DEMANDS OF DUE PROCESS. MOONEY V. HOLOHAN, 294 U.S. 103 (1935) SEE ALSO: Giglio V. US, 405 U.S. 150, 153 (1972) BANKS V. DRETKE, 540 U.S. 668 (2004)

IN FACT, DET. WEAVER REPRESENTATION TO the MAGISTRATE that this OFFENSE WAS A Nighttime BURGLARY WAS A KNOWN FAISE PRESENTMENT OF EVIDENCE IN VIOLATION OF MOONEY V. HOLOHAN SUPRA, AND its PROGENY,

IT IS FURTHER Alleged the SOLICITOR commited A BRADY VIOLATION when he FAILED to DISCLOSE TO DEFENSE COUNSEL that POLICE AND Victim DISCOVERED this OFFENSE AT 9 AM the FOLLOWING DAY 3/29/86 AND that OFFICE closed AT 5pm the DAY BEFORE 3/28/86 LEAVING SEVERAL DAYlight hours when this OFFENSE COULD HAVE OCCURED AND SHOWING AFFIRMATIVELY that NOBODY COULD possibly ASSERT UNDER OATH this OFFENSE OCCURED AT NIGHTTIME!

(1) WITHOUT The Nighttime ELEMENT this OFFENSE WOULD be AT MOST BURGLARY THIRD DEGREE 16-11-313

Thus, it is CLEAR STATE WITHHELD EVIDENCE MATERIAL to Guilt, FAVORABLE to the ACCUSED BRADY V. MARYLAND, 373 U.S. 83, 87 (1963) IN U.S. V. AGURS, 427 U.S. 97 (1976) : NONDISCLOSED EVIDENCE OF PERJURED TESTIMONY About which the PROSECUTOR KNEW OR SHOULD HAVE KNOWN Id.

IN GIBSON V. STATE 514 SE2d. 320 (1999) S.C. Supreme COURT HELD that STATE WITHHOLDING OF EXCULPATORY EVIDENCE CAN RENDER GUILTY PLEA INVOLUNTARY.

DEFENDANT ASSERTS he CAN MEET the (5) ELEMENTS IN ORDER TO OBTAIN RELIEF NEWLY DISCOVERED EVIDENCE:

(1) EVIDENCE Will probably change the outcome IF A NEW TRIAL IS GRANTED (2) the EVIDENCE has been DISCOVERED SINCE the TRIAL (3) the EVIDENCE COULD NOT HAVE been DISCOVERED PRIOR to TRIAL by EXERCISE OF DUE DILIGENCE. (4) the EVIDENCE IS MATERIAL (5) the EVIDENCE IS NOT MERELY CUMMULATIVE OR IMPEACHING. Id. STATE V. NEEDS, 508 SE2d. 857 (SC 1998).

SEE: STATE V. SPANN, 513 S.E.2d. 98 (SC 1999).

(NEW TRIAL GRANTED PUR Rule 29(b) SCR. Crim. Pro.)

RELIEF!

DEFENDANT SEEKS TO HAVE COUNSEL APPOINTED. AND to be HEARD IN OPEN COURT

NEW TRIAL.

10/10/10

Respectfully,

PROSE

EXHIBIT 2 (E) 595 SE2d 456 (Book 1)

COPY

STATE OF SOUTH CAROLINA)) COUNTY OF CHEROKEE)	IN THE FAMILY COURT FOR THE SEVENTH JUDICIAL CIRCUIT CASE NO.: 1993-CP-11-109 1999-CP-11-260 1999-CP-11-280
ROBERT H. KOON,)) Plaintiff,)) v.)) STATE OF SOUTH CAROLINA,)) Defendant.)	**AMENDMENT TO APPLICATION AND INCORPORATED MEMORANDUM OF LAW**

FILED
CLERK OF COURT
CHEROKEE CO. S.C.
2005 SEP 22 A 11:13
BRANDY R. HODGE

The Applicant, by and through counsel, would hereby amend his Application for Post Conviction Relief.

PROCEDURAL HISTORY

1. Applicant was indicted by the Cherokee county Grand Jury on April 21, 1986, for four (4) counts of Second Decree Burglary and one (1) count of Grand Larceny. (#86-GS-11-289, 290, 291, 292).

2. Applicant was represented by Harry Kline, Esquire (deceased); and Gary Paul Mallard, Esquire; and on June 17, 1986 pled guilty, in a plea recommendation before the Honorable Jonathan Z. McKown and was sentenced to four ten-year sentences concurrent to each of the Second Decree Burglaries. No direct appeal was filed.[1]

3. Applicant filed a Post Conviction Relief February, 1987 alleging, inter alia, the plea was involuntary and the State withheld favorable evidence, and plea was coerced. The Respondent filed its Return and Motion to Dismiss

[1] 86-GS-11-290 was overturned by the Supreme Court (S.C.) on April 5, 2004, Koon v. State, 595 S.E.2d 456 (2004)

EXHIBIT A 6

on October 9, 1987. A Evidentiary Hearing was held on October 26, 1987. Applicant was represented by Wade S. Weatherford, III. Following the hearing, the Honorable Dan F. Laney, Jr. issued an Order denying relief and dismissing the application. Koon v. State, 87-CP-11-103. Wade S. Weatherford, III did not file a Notice of Appeal.

4. On November 27, 1991, Applicant filed a Writ of Habeas Corpus that was construed as a P.C.R. Application, alleging, inter alia, he was not advised of right to appeal his first PCR (87-CP-11-103). This PCR (91-CP-11-539) was summarily dismissed November 27, 1992. A Notice of Appeal was filed (pro se); and the South Carolina Supreme Court remanded the PCR for a Evidentiary Hearing to determine whether the Applicant "knowingly and willingly waived his right to Appellate Review of his first PCR Application."[2] Koon v. State, (1993-MO-308)(filed October 12, 1993).

5. The 1991-CP-11-539 Remand Hearing pursuant to Order of the Supreme Court (93-MO-308) was initially scheduled October 25, 1994, but the Applicant was incarcerated in Virginia on misdemeanor offense, and the PCR was dismissed without prejudice by Order of the HonorableThomas Ervin dated December 10, 1994. The Applicant was represented by Thomas Shealy of Cherokee County Public Defender's Office. (Same office the represented Applicant at his plea).

6. On March 14, 2001, the PCR 1991-CP-11-539 was heard before the Honorable Paul Short, Jr. (under revised case number 2000-CP-11-623).

---

[2] Under Austin v. State, 409 S.E.2d 395 (1991)

EXHIBIT 2 G

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---

[2] Under Austin v. State, 409 S.E.2d 395 (1991)

B. Allen Bullard, Esquire "Former Assistant Attorney General" was assigned to represent the Applicant. Applicant decided to proceed pro se. The PCR Court addressed two issues:

a. Subject matter jurisdiction; and

b. Whether the Applicant knowingly waived his right to appeal the denial of the first PCR in 87-CP-11-103.

By Order dated August 10, 2001, the Court dismissed the application and denied relief.

7. A Notice of Appeal was filed, and the writ of certiorari was perfected by Andrew Grimes, Esquire of Summerville. The Supreme Court granted certiorari and reversed in part, affirmed in part; Koon v. State, 595 S.E.2d. 456 (April 5, 2004), and overturned the 1986-GS-11-290 Second Degree Burglary for lack of subject matter jurisdiction; and held Applicant was entitled to Appellate Review of his 1987 PCR allegations by the Supreme Court as he did not "knowingly" waive his right to appeal of his first PCR (1987-CP-11-103) and ordered the issues of that PCR to be fully briefed by appellate counsel Andrew Grimes, Esquire.

8. At that time, appellate counsel Grimes was informed by the State the 1987 PCR transcripts were "lost or destroyed" (by the State), and Mr. Grimes, therefore, moved for a "reconstruction hearing" pursuant to China v. Parrott, 162 S.E. 2d. 276 (1968), and Whitehead v. State, 574 S.E. 2d 200 (2002), stating that he was unable to brief the appeal without the 1987 transcripts.

(6)

The Supreme Court denied the "Motion to Remand for a Reconstruction of the 1987 PCR Record", holding that "In his brief, Petitioner failed to allege any specifics regarding the allegation (that the guilty plea was involuntary, and that the State withheld Brady material), id 595 S.E.2d. 457. (Footnote [7] Petitioner failed to include a copy of the 1987 Order (1987-CP-11-103) denying relief and has provided no reason why the Order could not be included in the Appendix).

AFFIDAVIT of VICTIM 04-08-10

9. Thus, the Applicant has never been afforded appellate review of the substance of his 1987 PCR allegations as provided by 17-27-100 (South Carolina Code of Laws) and Austin v. State, 409 S.E.2d. 395 (1991), Odom v. State, 523 S.E.2d. 753 (1999).

ISSUE ONE

10. Applicant was denied "Appellate Review" of his 1987 PCR application due to a procedural irregularity in the PCR/Appellate process when Exhibit (A) (in 1991-CP-11-339)(revised as 2000-CP-11-623), which contained the 1987 PCR Order (referenced in Koon v. State, 595 S.E.2d. 456, 457 (2004) Footnote [7]) was not provided to appellate counsel to be made a part of the Appendix in the Austin review proceedings of 595 S.E.2d. 456 as mandated by S.C.A.C.R. 227(c),(e) which requires the Appendix contain the entire lower court record of the PCR court. And 17-27-70 (SC Code of Laws) states, "If the Application is not accompanied by the record of the proceedings challenged therein the Respondent shall file with its answer the record or portions thereof that are material to the questions

raised in the application. Based on violations of SCACR 227(c),(e) and 17-27-70 the Appellate has not received "His full bite at the apple" in re: to 1987 PCR.

ARGUMENT
(Timeliness/Successiveness)

11. As a initial matter Austin reviews are not subject to 17-27-45 (a) Statute of Limitations Odom v. State, 523 S.E.2d 753 (1999).
Secondly, this is not a successive application, but merely a continuation of the 1987 PCR proceedings and Appellate Review thereon, pursuant to Austin and Odom Guidelines. More cogently, the issue of a procedural irregularity in the PCR process through the lack of a complete record of the lower court id SCACR 227, Section 17-27-70, could not have been raised at the Mach 14, 2001 PCR Hearing, as those facts were not yet in existence, but rather came into knowledge of the Applicant after the decision in Koon v. State, 595 S.E. 2d. 456(2004). And, therefore 17-27-45(c) provided Applicant one year from the date of these "material facts not previously presented or heard that requires the vacation of the conviction or sentence; the application must be filed under this chapter (17-27-45(c)) after the actual discovery of these facts by the Applicant or the date these facts could have been ascertained by the exercise of reasonable diligence.
*See SCARCR 205 which states "Upon the service of the Notice of Appeal, the Appellate Court shall have exclusive jurisdiction over the appeal. Thus. SCACR 205 prevented the Applicant from raising these claims (and the jurisdiction of the PCR Court) until the appeal in Koon v. State, 595 S.E.2d. 495 (2004) was decided April 5, 2005.

12. As a related matter, it must be noted this matter was initially raised and preserved within four (4) months of the decision in Koon v. State, 595 S.E.2d. 456 (April 5, 2004) by the July 30, 2004 filing of Koon v. State 2004-CP-11-412.

On February 15, 2005 the 2004-CP-11-412 PCR was dismissed on SCRCP Form 4, Rev. 2/96. Since that form order did not state a dismissal with prejudice under South Carolina Law, that dismissal is assumed to be without prejudice.

Nevertheless, the South Carolina Supreme Court vacated this dismissal Form 4 Order as it did not purport with 17-27-80 Factual Findings and a Motion to Withdraw the Motion for Dismissal is pending before the Honorable J. Mark Hayes, II. The 2004-CP-11-412 is as a matter of law is still pending, and the 2004-CP-11-412 Factual Issues are amended into this PCR (as amended) which precedes the filing date.

13 In Aice v. State, 409 S.E.2d. 392 (1991), in re: to 17-27-90 held "Any new grounds raised in a subsequent application is limited to those grounds that could not have been raised in the previous application."

Thus, under the PCR Statute successive post convictions are forbidden unless a Applicant can point to a sufficient reason why the new grounds for relief were not raised or were not properly raised in previous applications Aice v. State supra.

14 It is beyond obvious that the violations of 17-27-70 (in not providing records material to PCR) and Rule 227(c),(e) (not providing entire lower court record in Appendix) could not have been raised in prior PCR Application or until after April 5, 2004 pursuant to SCACR 205 (a jurisdiction lied with Supreme Court). And is sufficient reason for this PCR which is not successive, but merely a continuation of the original Austin claim 91-CP-11-539, remanded by Supreme Court 93-MO-308, (given a revised case number 2000-CP-11-623) and not fully ruled upon due to incomplete Appendix barred review by Supreme Court in Koon v. State, 595 S.E.2d. 456 (2004). While Koon v. State, 595 S.E.2d 456 (2004) granted a Austin review, that review has yet to take place on the substance of the 1987 PCR issues.

15 Thus, this PCR is not successive under 17-27-90 Aice v. State, supra, Land v. State, supra. id 17-27-45(c), held statute of limitations do not apply to Austin claims.

ISSUE ONE

ARGUMENT

16 It is clear beyond doubt Applicant entered Exhibit (A) into the lower court record on March 14, 2001 (2000-CP-11-623, Appendix page 000019, line 6-25). First, Mr. Shealy was examined at 000024, line 7-20 (etc) – second, the 1987 PCR order contained in Exhibit (A) was used to examine 1987 PCR counsel Wade Weatherford appendix of 2000-CP-11-623 (page 115 of Exhibit A) at 000030 app. Line 3 – 000037 line 25.

This conclusively shows that the 1987 PCR order inter alia, was contained within Exhibit (A) of the March 14, 2001 hearing.

Yet, this Exhibit (A) – 1987 PCR order was not provided to the Supreme Court (see: Footnote 7 of 595 S.E.2d. 456 Koon v. State). This is a procedural violation of Rule 227(c),(e) which requires the Appendix contain the entire lower court record.

In Washington v. State, 478 S.E.2d. 833 (SC 1996) held "procedural irregularities in PCR process denied Applicant due process." Likewise, Odom v. State, supra, held Applicant "entitled to one full bite at the apple", with PCR and Appellate Review.

The prejudice from this gross procedural irregularity (incomplete lower court record) is that Applicant was denied a Reconstruction Hearing because the 1987 PCR order was "mysteriously" missing from the record.

17. Notwithstanding Exhibit (A) and it contents, 17-27-70 has a mandatory requirement that "Respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application." However, the State failed to do so.

18. Thus, had the State complied with the mandatory requirements of 17-27-70, the 1987 PCR Order would have been in the record and Applicant

would in all probability received a Reconstruction Hearing in Koon v. State; 595 S.E.2d. 456 (2004).[3]

Applicant asserts this "procedural irregularity" deprived him of due process. Washington v. State, supra, and denied him Appellate Review of his Austin claim, Odom v. State, supra.

1987 PCR ISSUES

Applicant plea was involuntary as the State withheld favorable evidence, Rule 5 and Brady material, that had Applicant been apprised of this evidence (a), he would not had plead guilty (b) been able to challenge the indictment as a product of false testimony to the Grand Jury pursuant to 17-19-20, 17-19-90, 17-19-100, and 14-7-1140 SC Code of Laws and it companion statutes relevant hereto.[4]

VIC AFFIDAVIT 29(b) PROVIDES AFTER DISCOVERED PROOF OF CLAIM.

19. (A) Guilty plea was involuntary as the State withheld the fact that there was absolutely no evidence available to show that the offense was committed at nighttime in re: 86-GS-11-289 March 28, 1986 Burglary of CUDD-Lovelace Insurance Company Gibson v. State. (The withholding of this favorable evidence prejudiced the defendant's right to show that without any evidence at all, that the burglary occurred at nighttime a True Bill Indictment could not have been properly obtained, and that some type

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[3] It must be noted initial PCR counsel was B. Allen Bullard (Esquire) the former counsel for the Attorney General's Office, who at the March 14, 2001 PCR Hearing was back at the Attorney General's Office – 2000-CP-11-623 Appendix page 000007 (line 16-21) – and he (as counsel for Applicant) allowed the State to violate 17-27-70 (in not providing the lower court records) while Applicant asserts he was not entitled to effective assistance of PCR counsel, he was entitled to counsel "free from conflict" of interests. In addition to the above conflict, Mr. Bullard was subject to a malpractice/conspiracy to violate civil rights lawsuit Koon v. Slade, 1999-CP-11-489. (Applicant asserts these two conflicts affected the adequacy of his representation, and suggests collusion of government officials with the Attorney General's Office (i.e.) 17-27-70 violations inter alia. This is a procedural error in violation of 17-27-60 appointment of counsel).

[4] While the Applicant recognizes under Austin v. State, supra, the Supreme Court would review the reconstructed record in this proceedings to determine if the 1987 PCR Order should be affirmed or reversed in regard to the Brady violation. Due to the procedural posture of this case, the Applicant respectfully request the court to make a factual finding as to whether or not a Brady violation occurred based on evidence and credibility of the witness at the hearing. Foye v. State, 335 S.C. 586 (1999)

(6)

of false testimony obviously was presented by State to obtain a indictment on this element when no evidence was available to support the indictment. Especially as the indictment was obtained in violation of State v. Capps with the prosecution officer as the sole witness before the Grand Jury. See: State v. Anderson.

More cogently, had defendant been apprised under Brady that no evidence existed to show the offense occurred at nighttime, Defendant would not have plead guilty to that element and would not have accepted package (plea).

(B) The guilty pleas to 1986-GS-11-289, 291, 292 were involuntary as there

was no evidence to show that the defendant committed these offenses; no witnesses, no fingerprints, no confession, no physical evidence or circumstantial evidence. Again, without any evidence to connect defendant to the offense, it is suspicious as to how the State obtained the indictment as a True Bill with no evidence to support its finding. Again, the prosecuting officer was the sole witness before the Grand Jury see Capps, and Anderson, supra.

Habit; Pattern of misconduct SCNE 406

20. More cogently, had the defendant been apprised under Brady that there was no evidence to connect him to these three (3) offenses, he would not have plead guilty, and he would have been able to challenge the manner in which the indictment was obtained (i.e.) by false testimony of the sole witness. In Evans v. State, 611 S.E.2d. 510 (2005) at 518, Footnote [7]. [11] Although this case involves the State Grand Jury, we similarly conclude that challenges to the legality and sufficiency of the process of a County Grand Jury also must be made before the jury renders a verdict in order to preserve the error for Appellate Review. 17-19-90,14-7-1140 SC Code of Laws.

21. The State withholding of favorable evidence (that no evidence existed the 86-289 Burglary occurred at night, or that defendant committed 86-289, 291, 292) deprived him of the right to show this indictment process was

(5)

13th 14th offenses

tainted, (i.e.) how can a True Bill be returned with no evidence to support offense.

22

More cogently, the defendant was induced to plead by fabricated evidence on "mud samples" on shoes that was represented as conclusive match by S.L.E.D. when no tests had been conducted. This is a Brady violation that rendered plea involuntary.

Patterned scene 406

23. The (19 year old) Applicant had been informed by police that a conclusive match had been made between his shoes, crime scene, and stolen truck in that the mud from the crime scene existed in all three places and his shoe print was a positive match. This was the only evidence in 86-GS-11-291, 86-GS-11-292. Bill Willard/P&G Motors Office offense.

24. It is asserted that had the 19 year old Applicant (or his counsel) been informed the mud sample evidence was inconclusive (or unavailable), he would not have entered the plea. See State v. Kennerly, 503 S.E.2d. 214, Kyles v. Whitley, 514 U.S. 519 (1995): Rule 5, SC Rules of Criminal Procedures.

25. It is noted in 86-GS-11-289, 290 offense of CUDD-Lovelace and Stylette Offices:, the Stylette offense did not allege a nighttime element and was reversed by the Supreme Court in Koon v. State, 595 S.E.2d. 456 (2004).

Evidence now available

26. The police alleged the Stylette and Cudd-Lovelace offenses occurred at the same time, this is supportive of the theory no evidence existed of the crucial nighttime element in either Stylette or Cudd-Lovelace offenses and had this been disclosed, no evidence existed to prove nighttime, he would not have plead guilty. Thus, there is a reasonable probability the result of the trial would have been different if the suppressed evidence had been disclosed to the defense. Strickler v. Greene, 119 S.Ct. 1936 (1999) See U.S. v. Bagley, 105 S.Ct. 3375 (1985) "Favorable evidence is material under Brady only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different." Gibson v. State, held that prosecution withholding of

(E)

favorable evidence can render a plea involuntary, as it effects decision whether to plead or go to trial based on the evidence (paraphrased).

27. Applicant subject the prosecution's failure to disclose that (1) no evidence existed on 86-GS-11-289 that the offense occurred at nighttime would have cause him not to plead to Second Degree Burglary or accept the package pea of ten (10) years; (2) no evidence existed to place defendant at offenses 86-GS-11-289, 290, 291, 292; and (3) most crucially, that the State had no physical evidence of claimed mud samples that would connect him to the offense.

EVIDENCE NOW AVAILABLE →

28. And the result of the proceedings would have been different U.S. v. Bagley, supra, as (A) he would have had a basis to challenge and quash the indictment as there was no evidence to support its true bill and (b) defendant would have plead not guilty and been acquitted.

RELIEF: New Trial.

Respectfully Submitted:

Michael R. Jeffcoat
MICHAEL R. JEFFCOAT,
ATTORNEY AT LAW, P.A.
407 West Main Street
Post Office Box 1860
Lexington, South Carolina 29071
Phone: 803-808-9600
Facsimile: 803-808-2240

ATTORNEY FOR THE
PLAINTIFF/APPLICANT

Lexington, South Carolina

September 19, 2005

State of South Carolina)
County of Cherokee)
)

In Court of General Sessions
for the Seventh Judicial Circuit
#86-GS-11-289

State) Notice and Motion for a New Trial

v.

Robert Holland Koon,
Defendant

The Defendant Robert Holland Koon hereby files his Notice and Motion for a new trial pur. to SC Rules of Crim. Pro. 29(B) and invokes the jurisdiction and power of the Court of General Sessions to grant a new trial, or any other relief this Court deems just and proper in the interests of justice, based on After Discovered Evidence, as set forth in the attached Memorandum of Law in support of Rule 29 (B) Re: Second Degree Burglary 86-GS-11-289.

* Power and Jurisdiction of Court of General Sessions*

"The power to grant new trials in cases tried by the circuit courts was one of their inherent powers". State v David 14 S.C. 428 (1881). Defendant asserts this inherent power to grant new trials has not and can not be circumvented though any other rule of law, or case law. (1) In fact, "Circuit Courts have the power to grant new trials not only under specific provisions of the Criminal Code 1912 S99, SEC: Code 1942 & 1030 but as an incident to their original jurisdiction". State v Williams 93 S.E. 1006 (SC 1917). Therefore, Court is not limited it would seem, specifically to Rule 29(B) or Case Law (e.g.) State v Spann 513 S.E. 2d 98 (1999) (setting forth (5) elements required for a new trial) but may grant a new trial for other reasons, e.g.

to correct an injustice. See: "Trail judge has broad discretion sitting as 13th juror to grant a new trial when he is convinced 'justice has not been done'". Watson v Town of Pendleton 363 S.E.2d 234 (SC 1987). "In fact, trial judge has broad discretion sitting as the 13th juror when he deems action is necessary to prevent a miscarriage of justice – in the very intricate and doubtful case, notwithstanding the finding of a jury, the judge will in the exercise of extraordinary discretion may in some cases order a new trial so that justice may be better ascertained". Garrison v U.S. 62 F2d 41 (4th Cir). In fact, it would seem that the earlier Case Law was "justice oriented" rather than adherence to strict legal formula (e.g.) Spann Test. In Re: to New Trails. See: "The Court on Motion for a new trial for newly discovered evidence is not restricted to consideration only of the grounds brought to its attention by accused but must ascertain if justice has been done and exclude nothing which can legitimately aid in guarding the rights of the accused and interests of the State". State v Jones, 71 S.E. 291 (SC 1911). In other words, neither legislative rules or restrictive Case Law can interfere with a court power and jurisdiction to correct injustices. In this case, accused has raised a lack of Proof Aliunde of Corpus Delecti, Brady and Rule 5 violations, lack of evidence to obtain a Warrant and Indictment, and failure to require factual basis for plea despite protestation of factual innocence and not advising the Defendant of right to confront the accuser pur. to 6th Amendment U.S.C.A. Inter Alia, with credible/substantial After Discovered Evidence of victim being presented as proof thereon. This Court has Power, Jurisdiction, and Duty to either grant a new trial or to reduce offense from Second Degree to Third Degree Burglary (a) No proof exists to support Nighttime Element

16-11-312 (b) 3) SC Code of Laws. See: "Trial Court has duty to direct verdict when there is absence of evidence of a Material Element of the offense. State v Gore, 456 S.E. 2d 419 (SC App 1995) "where evidence is insufficient to support a conviction on the lesser offense, and appellate court on appeal may direct the Entry of Judgement on the lesser offense". State v Muldrow 559 S.E.2d 847 (SC 2002) "A conviction without evidence to support it is contrary to law and requires a new trial". State v Hampton 60 S.E. 669 (SC 1908). "If there is no evidence of Corpus Delecti the Defendant is entitled to a Directed Verdict". State v Epps 39 S.E.2d 769 (SC 1946) State V Teal 82 S.E.2d 787 (SC 1954) (Defining Corpus Delecti) "Failure to disclose evidence favorable to accused can render pleas involuntary". Gibson V State 514 S.E.2d 320 (SC 1999). Also: Ferrera v US 456 F3d 278,297 (1st 2006) (Plea vacated on Brady violations) pleas bargaining that induces an innocent person to plead guilty can not be sanctioned. Brady v McDougal 392 F2d 155 (DCSC 1967) "The right to a new trial on the ground of newly discovered evidence can not be cut off by the mere fact that a new trial is asked for on other grounds" State v Williams 93 S.E. 1006 (SC 1917). In Case Subjudice it is clear that a "substantial injustice" has been done and that this Court has the power, jurisdiction, and duty to correct, notwithstanding any other rule of law/case law but as an "Inherent part of the original jurisdiction of the Court of General Sessions to correct errors, irregularities, and injustices in the proceedings". From the Arrest Warrant, indictment and subsequent plea based upon "misrepresentation and trickery" of the State". Does this State condone obtaining a Warrant/Indictment for a Nighttime Burglary pur. to 16-11-312 (b) 3) without a shred of Proof Aliunde or Corpus

Delecti that this offense even occurred? State v Teal Supra. Even while pleading Defendant asserted his factual innocence (see Plea Transcripts). Does inducing a nineteen year old to plead somehow cure these fraudulent representations? "When the Defendant claims his factual innocence while pleading guilty, a Court is constitutionally required to establish a 'sufficient factual basis for plea'". Farmer v Trent 531 S.E. 2d 711 (W.Va 2001) citing NC v Alford 91 SCT 160,167 (1970) Wallace v Turner 695 F2d 545,548 (11th 1983) US v Mastrapa 509F3d 652 @ 659 (4th 2007). "In fact, the nineteen year old Defendant was not advised of his right to confront his accusers" State v Truesdale 548 S.E.2d 896 (SC App 2001) Boykin v Alabama (US Supreme Court). This failure to advise the Defendant of his right to confront his accusers is now shown to be highly prejudicial in light of the After Discovered Evidence that the State did not even have a witness (for Defendant to confront) in Re: to Material Element of Nighttime. Court did not establish factual basis for the plea nor advise Defendant of his right to confront accusers. In short, this case constitutes a "Denial of fundamental fairness shocking to the universal sense of justice". Butler v State 397 S.E.2d 87, 88 (1990) See:Dissent in Johnson v Catoe 548 SE2d 589@ 593 (SC 2001) (arguing for a grant of new trial under Butler). The State did not, has not, and indeed can not present credible evidence establishing each element of crime charged as required by State v Smith 266 S.E.2d 422 (SC 1980). The plea was not voluntary as it was induced by misrepresentations by the State re: Nighttime element Bousely v US 118 SCT 1664 (1998). "There sits an inherent power in every court to see that a Defendant's fundamental rights are protected". State v Kimbrough 46 S.E.2d 273 (SC 1948). Defendant asserts that the

power, jurisdiction, and duty of the trial court is not per se strictly limited to the Spann Test (although this Defendant can meet all (5) elements) in granting a new trial to correct an "injustice" as has been set forth, and, in fact has broad discretion to do so. State v Johnson 654 S.E.2d 835 (SC App 2005). The After Discovered Evidence of the victim Harry Lovelace that the office closed at 5:00 pm on March 28, 1986 and the break-in was not discovered until the office opened at 9:00 am on March 29, 1986 is proof positive that the police speculated that this offense occurred at night with no Proof Aliunde of the Corpus Delecti to support Warrant, Indictment, or subsequent Plea.

(1) This Evidence will change the result if a new trial is granted.

(2) This Evidence has been discovered since the trial.

(3) The Evidence could not have been discovered by Due Diligence.

(4) The Evidence is Material

(5) The Evidence is not merely cumulative or impeaching State v Spann 513 S.E>2d 98 (1999)

In addition, notwithstanding Spann Test, Affidavit of Victim of April 8, 2010 in which Defendant was "excusably ignorant of" pur. State v Haulcomb 195 S.E.2d 601(1973) show a denial of fundamental fairness shocking to universal sense of justice Butler.v State.

The "injustice" is compounded by the fact that this illegal conviction is being used as Defendant's Second Strike (where he obtained two strikes at one plea. Koon v State 643 S.E.2d 680) to give him Life Without Parole for a Property Offense the State can not even show occurred. See: Motion to Arrest Sentence (LWOP attached

hereto).

A new trial should be granted to correct this injustice or the offense reduced to Burglary Third Degree as no proof of Nighttime exists to support Second Degree Burglary 16-110312 (b) 3).

Respectfully,

Robert Holland Koon

(1) Matheson v McCormick 195 S.E 122 (1938) and Article V & 1,7 SC Constitution (1987). In SC, no limitation on court power to adjudicate a case except as prohibited by law.

AFFIDAVIT

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

The first statement pertains to my attempts to obtain a viable address and phone number for Richard F. Weaver. It is my understanding that Mr. Weaver was the detective who lead the investigation of the break-in at Cudd-Lovelace Agency in March 1986 and Robert Koon believed that his testimony could assist in Mr. Koon's 29(b) hearing and he requested that Mr. Weaver, since retired, be located and subpoenaed. Mr. Koon was advised by his legal defense that Mr. Weaver could not be located and was therefore unavailable to provide testimony.
Mr. Koon subsequently requested that I try to contact a private investigator to locate Mr. Weaver. I asked an associate at work if he happened to know Mr. Weaver and he said remembered him and that his wife's name was Carla. With that item of information, I conducted an internet search on PublicRecords.com, and was able to locate three possible addresses and a phone number in less than thirty minutes from the time I began the search.

The second statement is my attestation that part of the structure that was broken into in March 1986 was an apartment, i.e. dwelling. The structure is a triplex that included the space leased to Cudd-Lovelace Agency, the business that I managed in March 1986. It is my understanding that the fact that a dwelling was located in the structure could have a material impact on Mr. Koon's case as in the decision by the SC Supreme Court in Koon v State (2004). Again, this structure was an apartment dwelling with an office and salon contained therein.

Further AFFIDAVIT sayeth not

Harry M. Lovelace **Daytime Phone: 864-838-1381**

Sworn and Subscribed to me on this 7th day of March, 2012.

My Commission expires:

Linda B Sorrow — 11-28-2017

Notary Public

AFFIDAVIT

Robert Koon V. State of SC 06 CP 11 513

I, Harry M. Lovelace, hereby give the following statement freely and voluntarily that is true and correct, under oath:

I was an employee of Cudd-Lovelace Agency in Gaffney, SC in March 1986. I recall that a break-in occurred at the office location between the close of business on Thursday, March 28, 1986 and the opening of the office on Friday, March 29, 1986. The break-in was discovered by Mr. J.D. Cudd who was assisting the staff of the office at the time. Mr. Cudd is now deceased. My recollection of details about the break-in and subsequent investigation is diminished by the length of time since the event occurred and the fact that my father had passed away a couple of weeks before the break-in. There is some question as to when the break-in occurred and whether or not it would necessarily be considered a "night time" event. I can not present evidence to refute the allegation that it occurred at "night time"; however, I am familiar enough with the routine of opening and closing the office that I can provide a time frame which might, at the least, bring into question whether or not the break-in had to have occurred at "night". For years prior to and subsequent to the break-in, Cudd-Lovelace Agency had posted hours of operation of 9:00 am to 5:00 pm Monday, Tuesday, Thursday, and Friday, and 9:00 am to 12:00 pm on Wednesday. The staff normally arrived no earlier than fifteen minutes before opening (8:54 am), and typically closed the office no late than 5:15 pm. It would have been very unusual for an employee to arrive before 8:30 am or close later than 5:30 pm. I would confidently testify that the break-in could have occurred anytime between 5:30 pm March 28, 1986 and 8:30 am March 29, 1986. I believe that an examination of the investigation report will show an initial contact time from Mr. Cudd that is consistent with the time frame I have referenced. My position is that the break-in may very well have occurred during a time period *other than* "night time".

Further AFFIDAVIT sayeth not

Harry M. Lovelace Daytime Phone: 864-838-1381

Cc: Henry D. McMaster, State Attorney General
Hon. J. Mark Hayes II, Judge

Sworn and Subscribed before me this 8th day of April, 2010.

My Commission expires:

Linda B Sorrow

11-28-2017

Notary Public

Mr. Barry Barnette, Solicitor
Office of the Seventh Circuit Solicitor
180 Magnolia Street
Spartanburg, SC 29306

Harry M. Lovelace
31 Bo Lane
Gaffney, SC 29340
(864) 838-1381

January 6, 2011

Re: Robert Holland Koon
State v. Robert Koon 86-GS-11-289 Rule 29 (b) SCR.Crim.Pro.

Dear Mr. Barnette,

As the victim in the above referenced case, it is my sincere desire that Mr. Koon's 1986 Second Degree Burglary conviction 86-GS-11-289 Cudd-Lovelace Insurance Agency (3/28/1986) be ***reduced*** to Burglary Third Degree which will allow him to be sentenced to twenty years on his 1998 conviction for Second Degree Burglary 98-GS-11-650 rather than have him serve Life Without Any Possibility Of Parole (LWOP). It is clear to me that the police did not provide sufficient evidence to the magistrate that this offense definitely occurred at nighttime. See State v. Smith 493 S.E.2d 506 (Ct. App 1997). While it is not my place to accuse the detectives or solicitor of falsely swearing under oath, a very serious allegation indeed and I would not impugn their character in doing so, the evidence in this case does indicate that the nighttime element was misrepresented (to the magistrate and the Grand Jury) as stated previously in my affidavit when I contend that it occurred between 5:00 pm on March 28, 1986 (office closing time) and 9:00 am March 29, 1986, when the break-in was discovered. Therefore, it is impossible to swear under oath that this offense occurred at night; it could have just as easily occurred in the intervening daylight hours that were available between 5:00 pm and 9:00 am. I have submitted affidavits to the Attorney General and Judge Hayes in regards to these facts.

As a victim, a citizen, and a Christian, I am very upset and opposed to the fact that Mr. Koon is in jail for LWOP based on ***unsubstantiated*** evidence on my behalf as the victim. Further questions arise about the reliability of the evidence in the fact that a break-in at an adjacent location (Stylette Salon), alleged to have occurred at the same time, did not allege a nighttime element and was therefore held by the Supreme Court to at most be Third Degree Burglary and was vacated by Order Koon v. State 595 S.E.2d 456 (2004). As the copies of the enclosed warrants attest, both warrants allege "on or about", but with differing dates. If the dates themselves are uncertain as stated on the warrants, how can the assertion of nighttime element not also be called into question? This ***unsubstantiated*** allegation of nighttime on the Cudd-Lovelace warrant resulted in Mr. Koon's "second strike" and his current sentence of LWOP would not have applied had he been convicted of the same offense as Stylette. It is my understanding that without the nighttime allegation in the Cudd-Lovelace warrant (number 540173), Mr. Koon would be eligible to receive a twenty year sentence on his 1998 conviction upon resentencing. With credit for time served, he would have already completed or nearly completed his sentence. I therefore believe that a miscarriage of justice has resulted in a LWOP sentence for a

property offense with no theft included, and from my research, it is the solicitor's duty to correct this misrepresentation of the facts.

Mr.Koon has filed a Rule 29 (b) SCR.CRIM.PRO in Court of General Sessions to have this conviction reduced to Burglary Third Degree and I was referred to your office as the Rule 29(b) is on the General Sessions Court docket. Therefore, I ask that the Solicitor's office consent to this motion and allow Mr. Koon to be resentenced, in order that justice might be served. I am also requesting that a status conference between you, the Circuit Court Judge Honorable J. Mark Hayes II, Mr. Koon, and myself be held as soon as possible for the sole purpose of determining whether the 1986 Second Degree Burglary (violent nighttime) should be ***reduced*** to Third Degree Burglary (no nighttime) and if so, reducing the LWOP sentence to statutory maximum of twenty years. To assist with your review, I have enclosed copies of various correspondences regarding this matter.

I strongly and humbly request your urgent attention in correcting this injustice. Thank you for your time and I eagerly await your response.

Respectfully,

Harry M. Lovelace

Cc: The Hon. J. Mark Hayes, II, Circuit Court Judge
Mr. Michael Morin, Assistant Solicitor
Mr. Holman C. Gossett, Attorney at Law
The Hon. Roger L. Couch
The Hon. Gary E. Clary
Mr. Ray E. Thompson, Attorney at Law
Mr. Gary P. Mallard, Attorney at Law

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

August 17, 2011

The Hon. Brandy W. McBee
Clerk of Court – Cherokee County
PO Drawer 2289
Gaffney, SC 29342

RE: State v Koon 86-GS-11-289

Dear Madame Clerk:

I have signed a final order in regards to the Rule 29(b) motion filed on behalf of the defendant. My understanding is that the order was forwarded to your office for filing and mailing to the attorneys.

Enclosed, please find three mailings I have received directly from the defendant. Please make these filings part of your office's file on the present Rule 29(b) matter. However, please do not schedule any additional court time for the matters raised in these mailings I recently received directly from the defendant. My opinion is that with the issuance of the final order, this court has finished its work concerning the Rule 29(b) motion and any further review of the matter will need to be made by an appellate court. Also, I am not aware that under the criminal rules related to procedures, that a motion to reconsider a ruling on a Motion to Reconsider is procedurally allowed. Additionally, even if procedurally allowable, the mailings were untimely and were not received from his attorney. Nevertheless, I reviewed the recent mailings and found nothing in the mailings that this court believes need to be reheard or argued. Thus, even if the mailings presented a proper motion for reconsideration, this court would exercise its discretion and not set any additional hearings. Thus, it is my opinion that the matter is concluded on the circuit level.

I would like to memorialize and note that the defendant raises an issue about Mr. Racine's prior employment with the solicitor's office. Mr. Racine was not an employee of the solicitor's office when the defendant was convicted of his crime. I am aware of generally when Mr. Racine was employed with the solicitor's office because he appeared in front of me. There was a very substantial time lapse from when the defendant was convicted and when Mr. Racine was employed. Also, there has been a substantial amount of time from when Mr. Racine left the solicitor's office to the time he was appointed to represent the defendant. Thus, I can see no valid nexus to argue that Mr. Racine should not have been appointed to represent the defendant. Also, this defendant has a history of writing frequently to the court. This court recalls that the

defendant was aware of Mr. Racine's prior employment. At the hearing, the defendant and Mr. Racine worked well together. Mr. Racine diligently presented witnesses and evidence, and frequently consulted with the defendant during the hearing. No objection was expressed during the hearing and the court did not observe any conduct to suggest anything other than the defendant's case was presented as a collaborative effort by both men.

Again, please make the filings part of your file, but, unless one of the attorneys advises me otherwise of a matter I have not considered, you may consider this motion finalized on the circuit level.

In advance, thank you for your attention and cooperation.

Best regards,

J. Mark Hayes, II

JMHII/jfm
Enclosures

Cc: Russ Racine, Esq.
Robin File, Esq.

Robert Holland Koon
MCI
Redemption Way
McCormick, SC 29899

SC Supreme Court
Office of Judicial Misconduct
P.O. Box 11330
Columbia, SC 27201

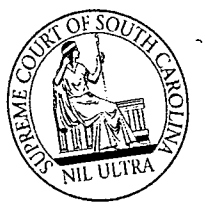
October 3, 2011

Complaint Hon. J. Mark Hayes II
State v. Robert Holland Koon 86GS 11289 (1)

In the matter of State v Koon 86GS 11289 Rule 29(b) motion for a new trial in Cherokee County General Sessions Court, I would like to lodge a formal complaint and request an independent investigation into evidence of trial court Hon. J. Mark Hayes II.

A) Refusing to schedule and hear motion to relieve counsel of conflict of interest with members of the Seventh Circuit Solicitor office when primary thrust of Rule 29(b) is prosecutorial misconduct (and habit, routine pur SC RE 406 of the same) in the prosecution of the Second Degree Burglary (Building/ Nighttime) 16-11-312 (b) where the police/solicitor presented false testimony to magistrate/ grand jury in Re: to Nighttime: See Koon v State 595 SE2d 456 (2004) (2)

B) Allowing counsel to proceed without moving to recuse trial court (Hayes) as set forth in December 30, 2010 letter from Judge Hays (counsel failure to do so grounded in conflict with the Seventh Circuit Solicitor) of civil action against Judge's law partner Koon v Thompson (Cherokee). The bias of the court is manifested, and the basis of the recusal grounded in the fact when counsel was to be appointed from outside the Seventh Circuit based upon numerous conflicts, the court appointed counsel from Fort Mill, SC outside Seventh Circuit) but lo and



The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

Lesley M. Coggiola
Disciplinary Counsel

Joseph P. Turner Jr.
Assistant Disciplinary Counsel

September 7, 2011

PERSONAL AND CONFIDENTIAL

Robert Holland Koon #227826
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Judge: Circuit Court Judge J. Mark Hayes, II
Matter Number: 11-DE-J-0154

Dear Mr. Koon:

We have received and reviewed your complaint about Circuit Court Judge J. Mark Hayes, II. The authority of this office and the jurisdiction of the Commission on Judicial Conduct concerning complaints against judges are limited to issues of whether a judge has committed misconduct or is incapacitated within the guidelines of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, adopted by the Supreme Court of South Carolina.

These rules do not apply to questions about whether or not the outcome of a case handled by a judge was fair. We do not have authority to intervene in any matter presently pending before a court or to change the outcome of the decision of a court. These are legal matters which must be addressed by you to the court or raised by you on appeal using the appropriate appellate procedures.

In addition, we do not seek to get a judge to do something a person wants done. We cannot give advice about your case or the legal system in general. This is not a place for an individual to seek relief, but a place where institutional values are promoted for the good of everyone who has dealings with our legal system.

STATE OF SOUTH CAROLINA
IN COURT OF APPEALS

Hon J. MARK HAYES II
Chesterfield County

STATE

v

Robert Koon — Appellant

SUPPLEMENT TO MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

THE APPELLANT WOULD MOVE RESPECTFULLY TO SUPPLEMENT HIS MOTION TO RELIEVE COUNSEL BASED ON CONFLICT OF INTREST TO SHOW.,

PRIOR CIVIL ACTION AGAINST APPELLATE DEFENSE KOON V. SCADE (ET.AL) (Aileen P. CLARE) #99 CP 11489 HAS MANIFESTED SUCH ANIMOSITY THAT APPELLATE DEFENSE WOULD NOT EVEN SPEAK to APPELLANT OVER the PHONE to DISCUSS CRUCIAL ASPECTS OF his CASE, where APPELLANT ATTEMPTED TO EXPLAIN he COULD NOT PRESENT the ORIGINAL ISSUE RAISED in the 29(b) which WAS "PROSECUTORIAL MISCONDUCT" because DETECTIVE RICHARD WEAVER WAS being hidden by the SOLICITOR OFFICE. AND WAS NOT AVAILABLE TO TESTIFY. AND APPELLATE COUNSEL WOULD NOT

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DID NOT AND HAS NOT MADE these SPECIFIC FACTS PART OF his REFERENCE to A REMAND. COUNSEL WOULD NOT EVEN MAKE A MOTION, SEPARATE AND DISTINCT, FOR A REMAND - NOW that this CRUCIAL FACT Witness has been LOCATED - to Show Police USED FAISE TESTIMONY (in Violation OF FRANKS v. DELAWARE) to obtain A Arrest WARRANT AND the Solicitor USED that SAME FAISE TESTIMONY to SECURE A INDICTMENT (KNOWINGLY) (GIGLIO v. US) AND FAILED TO CONNECT SAME AT PLEA (RIDDLE v. OZMINT) IN RE: NIGHTTIME ELEMENT

Further Appellate DEFENSE DID NOT MAKE the COORELATION OF "PATTERN OF MISCONDUCT" per SCRE 406 which WAS "FOUNDATION OF his CASE" RE: PROSECUTORIAL MISCONDUCT RIDDLE IC

In Short, Appellate DEFENSE has ACTED to Sabotague his CASE IN Retaliation FOR his previous CIVIL SUITS AGAINST that AGENCY.

APPELLANT ASKS this COURT to ① STRIKE the BRIEF, ② Appoint outside COUNSEL AND ③ REMAND CASE to Cherokee COUNTY SO that "PROSECUTORIAL MISCONDUCT" FROM WAS

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ISSUES RAISED IN the ORIGINAL 29 (b) CAN
be PRESENTED NOW that Detective WEAVER
HAS been LOCATED. COUNSELS REFERENCE
to "COURT MAY WISH to REMAND NOW that
DET. WEAVER HAS been FOUND to SEE what
his testimony is" is A diluted - HALFHEARTED
ARGUMENT to REMAND on ISSUE CENTRAL
to "PROSECUTORIAL MISCONDUCT ISSUE," that
COULD NOT be ESTABLISHED without WEAVER
PRESENCE.

Appellate DEFENSE being A DEFENDANT AND
HAVING to hire outside COUNSEL to DEFEND
AGAINST CIVIL SUIT HAS had "PROXIMATE
CAUSE" OF that OFFICE ACTING to dilute
AND MISCONSTRUE his ISSUES & SABOTAGE
his CASE to PREVENT A REMAND FROM
OCCURING TO PRESENT CRUCIAL FACT WITNESS.
Appellant SEEKS APPOINTMENT OF OUTSIDE COUNSEL
with SIGNIFICANT Appellate EXPERIENCE FREE
FROM BIAS, CONFLICT AND CORRUPT MOTIVE -
his CASE DESERVES NO LESS.

RESPECTFULLY

6/6/12

LEGAL MAIL

Proof of Service

A TRUE COPY WAS SENT TO
SALLEY W. ELLIOTT PO BOX 11549
COLUMBIA SC 29211 BY US MAIL
THIS 6th DAY JUNE 2012

UNDER OATH
PUR 28 USC 1746
I AFFIRM

Robert Kohn (Pro Se)

LEGAL MAIL

6/8/12

Robt. A Koon 227826
MCI
McCormick SC 29899

SC COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211

RE STATE v. Robert Koon
Cherokee Co.

Sir.

(CLOCK STAMP)

CAN YOU PLEASE SEND ME COPIES (without ATTACHMENTS) OF the RECENT (3) MOTIONS TO Relieve COUNSEL AND TO APPOINT OUTSIDE COUNSEL (3) AND LET ME KNOW STATUS OF THESE MOTIONS

I AM INDIGENT AND DO NOT HAVE FUNDS TO PAY FOR the COPIES but I NEED them FOR MY RECORDS.

THANK YOU FOR YOUR ASSISTANCE

Robert Koon

P.S. DID COUNSEL MAKE A RESPONSE TO ABOVE MOTIONS, IF SO, COULD I HAVE A COPY OF THAT AS WELL.

When IS STATE INITIAL BRIEF DUE TO BE FILED?