

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Cherokee County

J. Mark Hayes, II, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

AUG 02 2012

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

ROBERT H. KOON,

APPELLANT

\_\_\_\_\_  
INITIAL REPLY BRIEF OF APPELLANT  
\_\_\_\_\_

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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## ARGUMENT IN REPLY

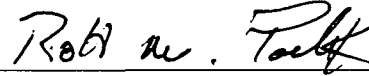
1. Appellant would note that no factual basis was put on the record, at the guilty plea by the solicitor to show that the Cudd-Lovelace burglary occurred in the nighttime as opposed to the daytime.
2. Appellant admitted at the time of the plea that the reason he was pleading guilty was because, "I'm facing a lot of time; it would just be better for me to plead guilty."
3. Respondent admits that appellant pled guilty to gain the benefit of a ten (10) year sentence and that a defendant may plead guilty to an offense he is not guilty of. (Brief of Respondent, p. 6).
4. The South Carolina Supreme Court found that during the same time as appellant's plea, the solicitor's office in that county "maintained an unusual 'open file' policy in that they removed not only work product, but also 'other documents on a case-by-case basis.'" Riddle v. Ozmint, 369 S.C. 39, 46, 631 S.E.2d 70, 74 (2006).
5. Appellant testified that what got him into looking into the facts and circumstances of his case was when he read the Riddle case in 2009.
6. Now the current solicitor stated that he could not locate Detective Weaver who signed the affidavits on the Cudd-Lovelace and the Stylette burglary arr est warrants.
7. Respondent has not explained why the solicitor's office, with all of its resources, could not locate Detective Weaver.

8. Now that appellant has found Detective Weaver, respondent has not responded to the suggestion that in the interest of justice this Court may wish to remand this case for the limited purpose of finding out what Detective Weaver's testimony is as it relates to this case.

CONCLUSION

Appellant's motion for a new trial should be granted or his case should be remanded to the lower court and respective counsel to obtain the testimony of Detective Weaver.

Respectfully submitted,



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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT.

This 2nd day of August, 2012.

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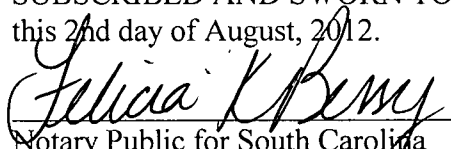
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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of August, 2012.

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 2nd day of August, 2012.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: June 21, 2020