

**COURT OF APPEALS OF GEORGIA**  
**DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS**

December 29, 2015

**To:** Mr. Patrick Wayne Angell, GDC460273, Riverbend Correctional Facility, 196 Laying Farm Road,  
Milledgeville, Georgia 31061

**Docket Number:** A16A0613      **Style:** Patrick W. Angell v. The State

Your document(s) is (are) being returned for the following reason(s).

1.  Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal \*Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2.  A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3.  Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4.  **No Certificate of Service accompanied your document(s). Rule 6**
5.  Your Certificate of Service did not include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6.  There were an insufficient number of copies of your document. Rule 6.
7.  Your document exceeds page limits. Rules 24 (f) and 27 (a)
8.  Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9.  Letter briefs and letter cites are not permitted. Rule 27 (b)
10.  Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11.  Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12.  Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13.  The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14.  Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15.  Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16.  Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17.  The Motion to Supplement has not been granted.
18.  Other: \_\_\_\_\_

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For Additional information, please go to the Court's website at: [www.gaappeals.us](http://www.gaappeals.us)

IN THE COURT OF APPEALS  
OF GEORGIA

CASE NO. A16A0613

PATRICK WAYNE ANGELL  
Appellant

V.

STATE OF GEORGIA  
Appellee

RECEIVED IN OFFICE  
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COURT OF APPEALS OF GA

BRIEF OF APPELLANT

Patrick Wayne Angell  
GDC 460273  
Riverbend Correctional Facility  
196 Laying Farm Road  
Milledgeville, Georgia 31061

BRIEF OF APPELLANTPART ONE  
STATEMENT OF CASEA.  
STATEMENT OF JURISDICTION

The Court of Appeals rather than the Supreme Court has jurisdiction over the present case because this is an appeal from a final judgment of a Superior Court in a NON-capital felony case. The Court of Appeals has jurisdiction of this case pursuant to Article VI, Section V, Paragraph III, Georgia Constitution of 1983.

B.  
PROCEEDINGS BELOW

I was indicted by a Fulton County grand jury on March 11, 2014 charging me, in Indictment 14SC125082, with burglary, possession of tools for the commission of a crime.

On August 4, 2014, I entered an Alford plea on those indictments before the Honorable Kimberly M. Esmond Adams. Upon returning to the jail I wrote a letter to my Public Defender, Sandra Wolfe, expressing my desire to withdraw my plea. Two weeks later and within the 30 days of my plea and in the same court term a

timely motion was filed to withdraw my plea. This appeal follows.

C.  
Statement of Facts

A week prior to the August 4 court date my lawyer, Sandra Wolfe, informed me that she had requested the evidence, screw driver and flashlight, be made available for viewing for the August 4, 2014 court date. She also informed me that the State was seeking Recidivist sentencing in my case and if I lost trial I would be sentenced to the max of 20 years without the possibility of parole.

On August 4, 2014, I discussed entering a plea with my lawyer and decided to enter a non negotiated plea. I was told by the Judge that since I was on the trial calendar that I could not withdraw my plea once entered. I found out much later that I was not on the trial calendar. I entered a guilty plea while protesting my innocence per North Carolina v. Alford, 400 U.S. 25 (1970). The court imposed a sentence of 20 years serve 4 years suspend the balance.

In open court, after I entered my

Afford plea but before I was sentenced the Judge asked for the factual basis of the case, During this phase of the case it was brought to the attention of the Judge that my lawyer, Sandra Wolfe, had repeatedly requested the State to provide the evidence, the screwdriver and flashlight, for viewing in court. The Judge asked Assistant District Attorney Scott Wells directly where the evidence was. He then admitted that the evidence was "lost" and was never logged in as evidence by the police. The Judge acknowledged that she has filed complaints on Mr. Wells for the same type of Misconduct. I was sentenced to 20 yrs serve 4 years to suspend the balance under Recidivist (A) + (C).

The motion to withdraw my plea was timely-filed by my Attorney on August 29, 2014. The motion asserted that I would have never entered a guilty plea had I known the evidence had been "lost".

## PART TWO

### ENUMERATION OF ERRORS

The Court erred in denying the Motion to Withdraw Guilty Plea. The plea has been entered based on the belief

was in my best interest rather than possibly losing in trial. This belief was based on the State having the flashlight and screw driver. The Assistant District Attorney Scott Wells knew they had "lost" the evidence and failed to notify my Attorney causing harm to me.

### ENUMERATION TWO

After I entered my Alford plea but prior to being sentenced it was discovered the evidence was lost. (O.C.G.A. 17-16-6) If at any time during the course of the proceedings it is brought to the attention of the Court that the State has failed to comply with the requirements of this article the court may order the state to permit the discovery for inspection, grant a CONTINUANCE or upon a showing of prejudice and bad faith prohibit the State from introducing the evidence not disclosed.

### ENUMERATION THREE

After I entered my Alford plea but but prior to being sentenced I was not informed of my Right to Withdraw my Plea. My Lawyer should have told me of that right when it was discovered the evidence was "lost". Also my Attorney should have

asked for a Direct Verdict of Acquittal for lack or lost evidence would not be sufficient to enable a rational trier of fact to find guilt beyond a reasonable doubt.

#### ENUMERATION FOUR

The Court should not have accepted my plea when the facts did not support a conviction.

#### ENUMERATION FIVE

With no witness, no fingerprints and no stolen property in my possession when arrested. The screwdriver and flashlight were used to imply intent and show probable cause for the burglary (warrant NO: EW-0108812).

Without this evidence there is no probable cause for a Burglary.

#### Related Cases:

Stovokland v. Washington 466 US 688 (104 S Ct 2052, 80 L Ed 2d 674) 1984

Allen v. State, 293 Ga. 626, 627

Jackson v. Va 443 US 307 (99 S Ct 2781, 61 L Ed 2d 560) 1979

Brady v. Maryland 373 U.S. 83, 87 (1963)

Rollins v. State 277 Ga 488, 490 (1) (591 SE2d 796) 2004

Clue v. State Ga App 672 673-675 (615 SE2d 800) 2005

Barber v. State 231 Ga. App 176, 177 (2) (498 SE2d 758) 1998

CONCLUSION

Consequently, the trial court erred by not allowing me to withdraw my guilty plea. The trial court must allow withdrawal in order to correct the present manifest of injustice.

For the forgoing reasons, I respectfully request this Court to reverse the judgement in this case of the Superior Court of Fulton County and allow me to withdraw my plea and proceed to trial so that I may contest my guilt to the charges contained in the indictment

Respectfully Submitted,  
*Patrick Wayne Angel*  
Patrick Wayne Angel  
GDC 460243  
Riverbend Correctional Facility  
196 Laying Farm Rd  
Milledgeville, Ga 31061

Signed before me  
this 21 of December 2015.

*A. Greene*  
Notary Public

