

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Spartanburg County  
Honorable R. Keith Kelly, Circuit Court Judge  
Appellate Case No.: 2023-001693

THE STATE

RESPONDENT,

vs.  
LORE,  
TIMOTHY J. MCKINNEY

RECEIVED

FEB 06 2026

SC Court of Appeals

APPELLANT.

SUPPLEMENTAL BRIEF

Timothy J. McKinney  
Lieber Corr. Inst.  
Post Office Box 205  
Ridgely, SC 29472  
Appellant.

S.C. Attorney General's Office  
Lembert & Dennis Building  
Post Office Box 11549  
Columbia, SC 29211  
Respondent.

Appellant Statement of Case

The appellant Timothy J. McKinney, was alleged indicted upon information during the coroner's Grand Jury at the August 18, 2023 Court Term of General Sessions for the Spartanburg County, Seventh District Court for the offense of murder and arson. The State nolle prosequi charging offense of arson and pursued a selective prosecution seeking life without parole (LWOP). The Appellant's case was called to trial on October 16, 2023, before the Honorable R. Keith Kelly and a petit jury of twelve jurors.

Trial Counsel of Record Daniel J. Macdonald, IV, and

Lois Calmar, ineffectively provided representation during pre-trial trial, and post-trial. Assistant District Attorneys Jennifer Jordan and James Belts represented the State. On October 19, 2023, the petit jurors found Appellant and Honorable Kelly sentenced Appellant to life imprisonment.

On January 14, 2026, Appellant learned that Appellate Counsel

Robert Budak died after filing an Anders brief and his case was reassigned to David Alexander. On January 06, 2026, Appellant informed the Division of Appellate Defense of sending his claims and this filing follows.

- WHETHER PETITIONER PROCEDURALLY DEFAULTED HIS CLAIM THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND PROSECUTORIAL MISCONDUCT?

The Appellant Timothy J. McKinney, preserve a state ground that is firmly established and regularly followed in which the State of South Carolina practice at the time this petition is applied to applicable state law and or common law.

### STANDARD OF REVIEW

A trial court's decision regarding the comparative probative value versus prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Grace*, 350 S.C. 19, 28, 564 S.E.2d 331, 335 ( Ct. App. 2002); See also, *State Phil 1128*, 430 S.C. 319, 844 S.E. 2d 651, 2020 WL 2893586, Rule 403, S.C.R., the minimal probative value of Expert testimony must be balanced against the danger of unfair prejudice, confusion of the issues, or misleading the jury.

### ARGUMENT

The Appellant aver that the inadequate factual investigation of case by attorney denied the Appellant a just result in which amounts

to having no counsel at all during the critical stages of pretrial,

trial, post-trial, and appellate reviews.

A Sixth Amendment right to counsel exists in order

to safeguard a fundamental right to fairness in criminal proceedings

of law and equity. U.S. CONST. 6th Amend.; 8.C. CONST. Art I §14.

The criminal proceeding is (a) adversarial format

and a potential danger exists to cause a criminal defendant a loss

of liberty or life, requires this safeguard. In scope of counsel

skills and knowledge, he can defend ably against the case presented

by the prosecution. For counsel performance is to produce just results

and to ensure a fair trial and fairness during appellate review. The

effect of assistance has on the ability of the accused to receive fairness

who does not know how to establish his innocence and demand relief

of release based on a constitutional violation and undue prejudice this court

protects a wrongfully convicted on a claim of actual innocence.

Appellate Counsel of Record Mr. Robert Dudek died and

prior to dying, Counsel Dudek's submitted and file on Anders Brief without

informed consent ~~not~~ meeting with Appellate to discuss matters in the

trial record. As of date, the Appellate Division Committee of Judges

DISCUSSION

confined case to present counsel of record David Alexander who informed Appellant that counsel will not do anything in this case unless therefore, the claim of ineffective assistance of counsel is deemed caused by not raising it on direct appeal due to it stemmed from matters in the trial record

Should the prisoner have been debored of his rights

on the trial of such an original issue, do more before the Court of Appeals for a new trial or acquittal in error of judgment on sufficient grounds, which may have arisen at the trial?

A state ground is firmly established and regularly followed when the state practice at the time it is applied not whether the

referred by the state court was proper or otherwise. State v. Smith, 35 S.C.L. 372, 4 Ohio 372, 1850 WL 2822.

DISCUSSION

The Appellant should not be held responsible and

suffer (a) procedurally defaulted claim(s) that appellate counsel was ineffective for failing to raise ineffective assistance of trial counsel

on direct appeal, selective prosecution, malicious prosecution of the

underlying claim of prosecutorial misconduct, and trial judge abuse of discretion

The Appellant brought suit against <sup>Major Case Files</sup> ~~the~~ <sup>and</sup> evidence in relation to the subject matter  
2603426, a copy attorney failed to provide him with papers regarding his  
discussing, <sup>Major Case Files</sup> and evidence in relation to the subject matter

1194, 107, 2d 215. The Appellant does not have possession nor control of evidence  
Catholic Criminal Procedure discusses under Brady. See 393 U.S. 83, 83-645  
past trial. The Appellant does not have rule 5 and rule 6 of the death  
of evidence was made available to him prior to trial, during trial, and  
The Appellant did not obtain a copy of discovery nor furnished

in support of a allegation of constitutional error evidence.  
of D.V.A. Profile Analysis was either excluded or unavailable at trial  
counsel would have discovered that the probative force of relevant evidence  
counsel of record. Had appellate counsel adequately investigated the case,

the standard on the presumption of innocence was overruled by appellate  
page 44, 2n(5) 68. First claim for the defense were actual innocence and  
in the indictment, 2021-GS-42-1163, charging offense of murder. Trial transcript  
The Appellant pleaded not guilty to the allegations contained

the Respondent?  
this issue and pronounced judgment in favor of the Appellant against  
in the first instance as a legal right to entitlement, assumed to try  
where is the right of appeal, if the Court of Appeals,

of this case. The need for discovery outweighs the Office of

discipline counsel findings of Appellate Bar as to ethical lawyer

misconduct where conduct of Counsel professionalism were not called

into question at the time of disciplinary review. The Appellate was

creating a factual basis of not being able to prepare a viable defense.

The Appellant apprise several attorneys assigned to

his case, pretrial discovery was needed and is one of the prerequisites

of the investigation of a homicide. The attorney has the protection

files and at some point prior to trial were armed with the facts

disclosed at the preliminary hearing, the necessary or pertinent

reports and whatever investigational leads the attorney of record

has garnered from the scene of the crime. Yet Appellant was not

given his discovery.

The attorney failed to launch a thorough investigation

to develop a viable defense theory. See Trial Transcript page 217-218

cross-examination ~~that~~ on inculcated investigation done by law

enforcement, of Jon Gust. The attorney knew that only one drink bottle

was submitted based on a rushed judgment and failed to subpoena

Joe McKinney who gave two (2) false testimonies to law enforcement. Trial

Transcript page 455 L.11. I don't of this fact, Counsel never

subject subpoena and testimony, ordering Joe McKinney

to appear and give testimony or subpoena does seem, ordering

Joe McKinney to appear in court and to bring or surrender dna.

specimen from his human body from which dna, may be obtained

in which means QLTB D.N.A. Database operating photo and

procedures -

The Appellant over both the prosecution and attorneys

knows the Greenville Agency was not a jurisdictional agency over the

Appellant from when the sample of blood were obtained on June 01, 2015,

and Appellants attorneys <sup>did not</sup> sought a second opinion, rather accepting

the Greenville Laboratory Reports marshalled by the prosecution. See

S.C. Code of Regulations, C. 73-61 (A) (1). The Appellant suffered

prejudice and injury affecting the outcome of the trial for no reasonable

(was) more likely than not would have, convicted Appellant in light of

the new evidence. The Appellant's conclusion is not based on speculation

but relies on the probative force of relevant evidence either excluded

or unavailable at trial.

It is the attorney's ability to think rationally

and inductively that will enable him to proceed beyond the police investigation

with a minimum of mistakes once counsel has realized that a police investigation

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were incomplete and erroneous holes in the case. Counsel duty to

dismantle the police use of gross assumptions of Appellant being

suspected to killing and burying Travis West-McCall's body. These

assumptions use a premise to reach a prior conclusion as to the

identity and improper intent or motive as the suspect Appellant

as the killer when jumping to conclusion, the police constructed a

chain of extraordinary links that will lead back to the premise. In this

of doubly and triple checked investigations Appellant was completely convicted.

How can the Appellate Counsel litigate a case without

first consulting with the Appellant to explain the laws and appellate

process regarding informed consent to file a(n) initial brief while

protecting Appellant's interest to a claim of actual innocence? To not

force the prosecutor to disclose the police files under penalty of

excluding as evidence, the information contained therein imposes the question

whether the officers of fact was deprived, the jurors, to call into question

the timeline of murder and the presence or absence of the scene

of crime in question.

Meanwhile, Appellant's actual innocence claims were abandoned

because counsel trial performance fell below an objective of unreasonableness

WHEREFORE UPON, based on the foregoing grounds and legal premises conviction of murder should be reversed and this case adjudication rendered void. The Appellant Timothy McKinley requests for acquittal of all charges and be immediately released from custody.

CONCLUSION

Verdict, in light of the investigator's knowledge, seems sound and not mere effort to assert probable cause as an "ex-ante" view dump a full investigation of precisely a murder crossing the threshold of Appellant's domain without probable cause. The brought such case as a suspect prior to a search warrant obtained when once at the height of the tip of Appellant seen with a red gun can US. Court, safeguard when the police suspicion was disregarded the alleged bucal straps due to an invasion of a Fourth Amendment trial rights. In this fashion, video surveillance was inadmissible and but another when excuses and instead a distrust to create, basic (Prigates is one thing, what's found in the area of case examination, reasonable of our would find Appellant guilty of murder. The fact due to failure present clear and convincing evidence that no

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Done This 29 day of January 2026.  
 Respectedly Submitted  
 /s/ Timothy McKinney  
 Timothy J. McKinney  
 Vice General Counsel  
 P.O. Box 285  
 Ridgeville, SC 29472

EXHIBIT A

FOR LEGAL USE ONLY



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Wanda H. Carter, Chief Appellate Defender

January 14, 2026

Timothy J. McKinney 287844  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, SC 29472

Re: Your Case

Dear Mr. McKinney:

This letter is in response to your letter dated January 6, 2026, that I received today. It is incorrect to say you have heard nothing from this Office since it assumed representation of you. Your former attorney who passed away, Bob Dudek, wrote to you informing you he was representing you and sent you a copy of the Anders brief he filed. I wrote to you in July 2025 informing you I was taking over your case. At that point everything had been filed by Mr. Dudek, one of the finest appellate lawyers in the history of South Carolina, and we were waiting on the Court. I explained this to you in a letter in July 2025 and again in December 2025. I also explained that I was not going to get your Rule 5 discovery and told you that you must get it from your trial attorney.

Ineffective assistance of trial counsel cannot be raised on direct appeal in South Carolina and must be raised in a PCR after your appeal is over. You can also raise ineffective assistance of appellate counsel in a PCR. As I have explained about the Anders procedure, the Court conducts its own independent review of the record to see if Mr. Dudek missed anything. Your standard of review question is, therefore, impossible to answer about speculative errors the Court might find. I see no need for an in-person visit and will not be scheduling one unless something changes in your case to require it. You are free to call me collect at 803-734-1330 at any time without an appointment. The best time to reach me is in the afternoons after 3:00pm.

Sincerely,



David Alexander

Timothy J. McKinney  
Sed # 287844  
Lieber Correctional Institution  
Post Office Box 205  
Ridgewood, SC 29472

January 28, 2026

David Alexander Esq.  
Division of Appellate Defense  
1380 Lady Street, Suite 401  
Columbia, SC 29201-3332

Re: The State v. Timothy J. McKinney

Dear Sir Alexander:

ENCLOSED PLEASE WILL YOU FIND One (1)  
NOTICE TO FILE AND SUPPLEMENTAL BRIEF and  
EX PARTE COMMUNICATION to preserve the record of  
ineffective assistance of trial counsel, ineffective assistance of appellate  
counsel of record, prosecutorial misconduct, and actual innocence claims.

Yours Truly,  
Timothy McKinney  
Timothy J. McKinney