RECEIVED
APR 23 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable G.D. Morgan Jr., Circuit Court Judge

AKEVIUS LINDSEY,

APPELLANT

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO ~~2024~~ 2025-ADL-000317

BRIEF OF APPELLANT

Akevius Lindsey, #396525
Appellant, Pro-se
Tyger River Corr. Inst.
200 Prison Road
Enoree, SC 29335

INTRODUCTION

Appellant, Akevius Lindsey, respectfully submits this Pro-se Supplemental Brief pursuant to Anders v. California, 386 U.S. 738 (1967), and Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), to identify preserved, non-frivolous issues apparent on the face of the record that warrant full merits review.

The following issues concern trial court error and prosecutorial misconduct that deprived Appellant of a fair trial and resulted in an extreme sentence of fifty (50) years.

TABLE OF AUTHORITIES

Cases

State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999)

State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)

State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)

State v. Davis, 278 S.C. 544, 299 S.E.2d 334 (1983)

State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001)

State v. Beam, 336 S.C. 45, 518 S.E.2d 297 (1999)

State v. Gill, 355 S.C. 234, 584 S.E.2d 432 (Ct. App. 2003)

Woomer v. State, 277 S.C. 170, 284 S.E.2d 357 (1981)

State v. White, 246 S.C. 502 (1965)

State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999)

Jackson v. Virginia, 443 U.S. 307 (1979)

(CASE EMPHASIS)

State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999) -any evidence standard; weak or circumstantial evidence still requires the charge.

State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) - Judge may not weigh credibility when deciding whether to charge the lesser.

State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988) - jury, not judge, decides degree where evidence supports lesser.

Beck v. Alabama, 447 U.S. 625 (1980) - due process violated by forcing an all-or-nothing verdict when lesser is supported.

State v. Lowry, 434 S.C. 509, 863 S.E.2d 144 (2021) - domestic confrontation plus emotional escalation commonly necessitate lesser instruction.

STATUTES

S.C. Code Ann. § 16-3-10
S.C. Code Ann. § 16-3-20

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in refusing to charge voluntary manslaughter where "any evidence," including emotional confrontation, relationship conflict, and circumstantial evidence of sudden heat of passion, supported the charge?

2. Did the prosecutor's closing argument violate due process by misstating the law of malice, appealing to passion and emotion, arguing facts not in evidence, and shifting the burden of proof?

3. Did the trial court commit reversible error in refusing to give curative instruction after acknowledging that the prosecutor's argument was improper?

4. Did the cumulative effect of the solicitor's misconduct, the denial of a lesser included offense, and the purely circumstantial evidence deprive Appellant of a fair trial?

STATEMENT OF THE CASE

Appellant was tried in Greenville County for murder and Possession of a Weapon During the Commission of a Violent Crime. Appellant did not testify and presented no witnesses. The jury convicted him on both charges.

The court sentenced Appellant to 50 years for murder, with a concurrent 5-year sentence for the weapon charge, and 646 days of credit.

This appeal follows.

STATEMENT OF FACTS

The State presented circumstantial evidence regarding the death of the victim inside a residence shared with Appellant. There were no eyewitnesses, no confession obtained under Miranda, and no murder weapon produced. The State relied on text messages, Ring camera notifications, and the condition of the room where the victim was found.

Defense counsel presented no evidence, instead relying entirely on the State's burden of proof.

During the charge conference, defense counsel requested voluntary manslaughter. The court refused. Counsel renewed the objection after the charge; the court preserved it.

During closing, the prosecutor repeatedly read messages in emotional tone, invoked sympathy for the victim and her family, argued facts not in evidence, and misstated the legal standard of malice, Defense objected after closing; the court acknowledged impropriety but refused to cure it.

The jury returned a guilty verdict.

ARGUMENTS

ISSUE 1 - REFUSAL TO CHARGE VOLUNTARY MANSLAUGHTER WAS REVERSIBLE ERROR

Trial counsel requested the voluntary manslaughter instruction; the trial court refused. Counsel renewed this objection after the charge was read, preserving the issue.

South Carolina Supreme Court precedent holds:

"If there is any evidence whatsoever supporting sudden heat of passion, the instruction must be given."

"Where the record reflects domestic conflict, emotional escalation, and circumstantial evidence of a sudden confrontation, South Carolina law requires submission of voluntary manslaughter to the jury; refusal forces an unconstitutional all-or-nothing verdict, See. Burriss v. State, 334 S.C. 256, 513 S.E.2d 104 (1999); State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009); State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988); Beck v. Alabama, 477 U.S. 625 (1980)."

See also, State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).

Evidence included: volatile relationship; breakup and emotional conflict; confrontation in the bedroom; circumstantial indicators of sudden passion.

This issue is not frivolous and must be reviewed on the merits. South Carolina law is unequivocal:

If there is any evidence whatsoever tending to show sudden heat of passion, the court **MUST** charge voluntary manslaughter. See. Burris Supra; Starnes Supra; See also. State v Cole, 338 S.C. 97, 525 S.E.2d 511 (2000).

"Any evidence" includes: emotional confrontation; relationship conflict; circumstantial evidence of a struggle; evidence that the killing occurred during an argument.

The evidence here showed: a volatile relationship; a breakup in progress; emotional conflict, as well as a confrontation in the bedroom along with Appellant appearing distraught and panicked afterward; this is far more than the "slight evidence" required under South Carolina law.

Defense counsel requested the charge, then renewed the objection, preserving the issue. However, the judge refused, forcing an all-or-nothing verdict.

This is reversible error.

" The record further reflects that a neighbor who heard an argument and altercation immediately preceding the shooting was not presented to the jury. While the State bears the burden of proof, the absence of this testimony magnified the risk inherent in the court's refusal to charge voluntary manslaughter. That omission left the jury without direct evidence of provocation and sudden heat-evidence that would have compelled the lesser included instruction under settled law. The resulting all-or-nothing posture

substantially increased the likelihood of an unwarranted murder conviction. Burriss Supra; Wharton Supra; Beck Supra."

ISSUE 2 - PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT DENIED APPELLANT A FAIR TRIAL

The solicitor repeatedly argued that: "Malice can be inferred simply from the way it was done." This contradicts the court's correct instruction that malice requires hatred, ill will, or prior evil intent. Misstatements of law in closing constitute reversible error. See> State v. Gill, 355 S.C. 234, 584 SE.E2d 432 (Ct. App. (2003). This issue is arguable and substantial.

The solicitor's closing argument appealed to passion and emotion by the references to Mother's Day, the victim's children, family grief and emotional descriptions of the victim's body were improper. The prosecutor having misstated the law of malice by telling the jury that malice could be inferred "by the way it was done." was legally false. The Solicitor further, argued facts not in evidence by stating that: 1) Appellant watched the Ring camera; 2) Appellant heard the victim's conversation; 3) Appellant cleaned the scene; and, 4) Appellant covered the body; no witnesses testified to any of this.

Furthermore, the solicitor impermissibly shifted the burden of proof by arguing that Appellant needed to explain why he ran, why he did not call 911 and that Appellant had to explain where the weapon went. This argument by the solicitor was unconstitutional because it essentially tells the jury that the Appellant MUST testify; Under the Fifth Amendment, An accused may not be compelled to testify, or be a witness against himself. Here, the solicitor "directly" telling the jury that Appellant "has to explain..." thus testify against himself which violated his right to due process and a fair trial. Under Gill and Woomer, this conduct requires reversal. See, also, Fortune v. State, 428 S.C. 545, 837 S.E.2d 37.

The solicitor's assertion that malice could be inferred 'by the way it was done' misstated the element of malice and conflicted with the court's charge, creating prejudicial jury confusion requiring reversal See. State v.

Butler, 353 S.C. 383, 577 S.E.2d 498 (3003) (Misstatements of elements in closing is reversible); State v. Collins 409 S.C. 524, 763 S.E.2d 22 (2014) (Emotional narrative and blurred legal standards require relief); Darden v. Wainwright, 477 U.S. 168 (1986) (Improper argument undermining fairness violates due process).

ISSUE 3 - THE COURT REFUSED A CURATIVE INSTRUCTION DESPITE ADMITTING IMPROPER ARGUMENT

After defense counsel objected, the court stated:

"I do believe it was improper."

The court however, refused to cure it. When the court acknowledges impropriety, failure to cure it is reversible error. See. State v. Beam, 336 S.C. 45, 518 S.E.2d 297 (1999). See also State v. Rogers and State v. Patterson.

This is is preserved and is a substantial issue. Furthermore, This violates Beam Supra; Rogers, and basic due process.

When a judge acknowledges misconduct touching the core element of malice, a curative instruction is required. Failure to give one is reversible error.

"Having acknowledged the impropriety, the trial court's refusal to cure removed the sole safeguard against prejudice on a core element, mandating reversal, Beam (Once impropriety is acknowledged, refusal to cure is reversible," State v. Patterson, 367 S.C. 219, 625 S.E.2d 239 (2006).

ISSUE 4 - THE EVIDENCE WAS INSUFFICIENT TO PROVE MALICE

The solicitor invoked: Mother's Day, the victim's children, grieving family, speculative narrative and unproven events such as ("He covered her body",) ("Watched Ring camera,") and ("cleaned up the scene.")

South Carolina courts reverse for emotional appeals. See. State v. White, 246 S.C. 502 (1965); see also State v. Linder.

This issue is not frivolous.

The State presented no plan, no motive, no weapon, no confession, no eyewitnesses, and no history of violence. Malice cannot be based on emotional speculation, suspicious behavior, running, family emotions, or not calling 911. This violates clearly established federal law. See Jackson v. Virginia, 443 U.S. 307 (1979).

ISSUE 5 - CUMULATIVE ERROR REQUIRES REVERSAL

Even if each issue alone were insufficient, the combined effect of: improper closing argument, refusal to cure, refusal to instruct on manslaughter, circumstantial evidence, and no defense witnesses all deprived Appellant of a fundamentally fair trial.

"Where the record reflects domestic conflict. emotional escalation and circumstantial evidence of a sudden confrontation, South Carolina law requires submission of voluntary manslaughter to the jury; refusal forces an unconstitutional all-or-nothing verdict. Under the rulings in Burriss, Wharton Gilliam and Beck; this is no harmless error."

"The record further reflects that a neighbor who heard an argument and altercation immediately preceding the shooting was not presented to the jury. While the State bears the burden of proof, the absence of this testimony magnified the risk inherent in the court's refusal to charge voluntary manslaughter. That omission left the jury without direct evidence of provocation and sudden heat-evidence that would have compelled the lesser instruction under settled law. The resulting all-or-nothing posture substantially increased the likelihood of an unwarranted murder conviction in accordance to Burris; Wharton; and Beck.

CONCLUSION

Because these issues present at least arguable legal merit, this appeal cannot be deemed frivolous under Anders. Appellant submits this Brief to assist the Court in conducting its review, as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

For the foregoing reasons, Appellant respectfully requests:

REVERSAL OF HIS CONVICTION AND A NEW TRIAL.

Respectfully Submitted,

/s/ Akevius Lindsey

Akevius Lindsey #396525

Appellant, Pro-se

Dated: 4-13-26

SWORN TO AND SUBSCRIBED before me:

This 13 day of April, 2026

Notary Public for South Carolina

My Commission Expires: Jan. 24, 2030

PAUL DENNIS CRIDER
Notary Public, State of South Carolina
My Commission Expires 1/24/2035

MEMORANDUM FOR RECORD

REGARDING APPELLATE COUNSEL"S DEFICIENT ANDERS REVIEW

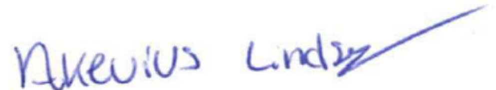
Appellate Counsel failed to:

- Review preserved objections;
- Raise the manslaughter charge denial (a mandatory reversal issue);
- Raise improper closing argument;
- Raise misstatement of malice law;
- Raise refusal of curative instruction;
- Raise insufficiency of evidence.

Under Tisdale v. State and Johnson v. State, failure to identify preserved, meritorious issues constitutes deficient performance.

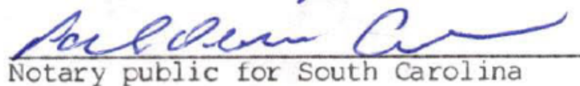
Akevious Lindsey #396525
Appellant, Pro-se

Tyger River Corr. Inst.
200 Prison Road
Enoree, S.C. 29335



SWORN TO AND SUBSCRIBED before me:

This 13 day of, April, 2026



Notary public for South Carolina

My Commission Expires: JAN. 24, 2035

PAUL DENNIS CRIDER
Notary Public, State of South Carolina
My Commission Expires 1/24/2035

APPENDIX A - ADDENDUM ON MISSING PROVOCATION EVIDENCE AND SENTENCING RISK

This appeal concerns not only legal error, but structural unfairness that produced an extreme sentence.

The record reflects that a neighbor heard an argument and altercation immediately before the shooting. That testimony-never presented to the jury-would have provided direct evidence of provocation and sudden heat of passion, the precise predicates for a voluntary manslaughter instruction under South Carolina law. State v. Burriss, 334 S.C. 256 (1999); State v. Wharton, 381 S.C. 209 (2009).

Without that testimony, and after the court refused to charge voluntary manslaughter, the jury was forced into an all-or-nothing choice between murder and acquittal. The Supreme Court has warned that such verdict structures intolerably increase the risk of unwarranted convictions. Beck v. Alabama, 447 U.S. 625 (1980).

The prejudice is concrete. A murder verdict carried a 50-year sentence, while a manslaughter option would have permitted the jury to calibrate culpability to the evidence. The combined effect of (1) the missing provocation testimony, (2) the denial of the lesser-included instruction, and (3) improper closing argument on malice foreclosed a lawful middle ground and directly contributed to an excessive punishment.

Relief is therefore warranted to restore the jury's proper role and to ensure a sentence proportionate to the evidence-whether through reversal and a new trial, remand with proper instructions, or other relief this Court deems just.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Pro Se Supplemental Brief of Appellant Akevius Lindsey

ISSUE 1: The trial court erred in refusing to charge voluntary manslaughter.

Trial counsel requested the instruction; the court denied it; the objection was preserved.

South Carolina law requires reversal where any evidence whatsoever supports heat of passion.

Cases:

State v Starnes, 338 S.C. 590
State v. Burriss, 334 S.C. 256
State v. Pittman
State v, Childers

The jury was forced into an all-or-nothing choice.

ISSUE 2: The solicitor committed misconduct in closing argument.

Invoked victim's children
Referenced Mother's Day
Argued facts not in evidence;
Misstated law of malice;
Shifted burden;
Injected fear and emotion;

Cases reversing for misconduct;

State v. Gill, 355 S.C. 234
State v White, 246 S.C. 502
State v. Linder

ISSUE 3: The judge acknowledged improper argument but refused to cure it.

This violated:

State v. Beam, 336 S.C. 45
State v. Patterson
State v. Rogers

Such refusal is reversible error when the misconduct concerns elements of the offense.

ISSUE 4: Insufficient evidence of malice.

No motive, no prior threats, no weapon, no eyewitness.

ISSUE 5: Appellate counsel (David Alexander) Failed to Raise Preserved, Meritorious Issues.

Appellate counsel:

Ignored preserved objections;
Failed to raise the manslaughter issue;
Failed to address prosecutorial misconduct;
Filed an Anders Brief despite clear legal issues.

This deprived Appellant of meaningful review.

Appellant respectfully requests this Court review ALL issues on full merits.

T

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
APR 23 2026
SC Court of Appeals

Akevius Lindsey, APPELLANT,

-v-

State of South Carolina RESPONDENT.

CERTIFICATE OF SERVICE

Appellant, Akevius Lindsey, hereby certifies that he has served a true copy of the foregoing Supplemental pro-se brief along with Objections to Anders Brief by placing a copy of the same in a prepaid first-class envelope and placing it in the U.S. Mail addressed to the names and addresses that appear below, on this 13 day of APRIL, 2026

By: Akevius Lindsy
Akevius Lindsey

S.C. Court of Appeals
Clerk's Office
PO.O Box 11629
Columbia, S.C. 29211

Office of the Attorney General
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Akevius Lindsey #396525
Tyger River Correctional Inst.
200 Prison Road
Enoree, S.C. 29335

South Carolina Court of Appeals
Clerk's Office
1220 Senate Street
Columbia, S.C. 29201

RECEIVED
APR 23 2026
SC Court of Appeals

RE: Akevius Lindsey v. State
Appellate Case No.: 2025-000317

Dear Clerk of Court,

Please accept for filing, the enclosed Pro-se Supplemental Brief of Appellant and Appellant's Objection to Anders Brief and Request for Full Merits Review, submitted pursuant to Anders v. California and Johnson v. State.

These filings identify preserved, non-frivolous issues apparent on the face of the record and respectfully request full merits review by the Court. Thank you for your consideration.

Respectfully Submitted,

/s/ Akevius Lindsey

Akevius Lindsey #396525
Appellant, Pro-se

Date: 4-13-26

Akevius Lindsey #396525
Tyger River Correctional Institution
200 Prison Road
Enoree SC 29335

RECEIVED
APR 23 2026
SC Court of Appeals

RECEIVED
APR 13 2026
TYGER RIVER MAILROOM

South Carolina Court of Appeals
Clerk's office
1220 Senate Street
Columbia, SC 29201