

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS (PRO SE BRIEF)

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COUNTY OF LEXINGTON

Honorable R. KNOX MCMAHON, CIRCUIT COURT JUDGE

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Case No. 2018-000491

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The State of South Carolina

vs.

Peter L. Coffey

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**BRIEF OF PETITIONER**

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**RECEIVED**  
APR 10 2019  
SC Court of Appeals

Peter L. Coffey #226897  
Petitioner, Pro-se.  
Lee C.I. [F6B-2253]  
990 Wisacky Hwy  
Bishopville, SC 29010

David Alexander  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
(803) 734-1330

To the Court of Appeals,

On the days of March 12-15, 2018, Appellant, was on trial before the Honorable R. Knox McMahon, Circuit Court Judge and jury.

Appellant was convicted by a jury for the offenses of Murder 2018-GS-32-000943 and First Degree Criminal Sexual Conduct 2018-GS-32-000944. Appellant was committed to the state department of corrections for a sentence of life without parole and a determine term of 30 years ran consecutively. Tr. Pg. 870 8-17.

On January 14, 2019, Appellant's defense counsel filed an *Anders v. California*, 386 U.S. 738 (1967) and moves to be relieved as counsel.

Appellant is writing this pro se brief addressing any issues to the Court of Appeals that should be considered error of law. These are the issues as follows:

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### **Statement of issue on Appeal**

Did the trial court lack subject matter jurisdiction over the trial?

Did the prosecutor's misconduct deny Appellant the right to a fair trial?

Did the trial court judge err in denying Appellant motion for directed verdict where evidence merely raised a suspicion of guilt?

Did the trial court judge abuse his discretion when allowing autopsy photographs?

### Statement of Case

Appellant was arrested for Murder and Criminal Sexual Conduct First Degree on August 19, 2015. TR page 97 (23-25): 98 (1-20) Appellant was indicted for Murder and CSC on March 12, 2018. TR page 16 (3-25): 17 (1-5) The jury trial proceedings were held March 12-15, 2018. Appellant was convicted by a jury of the offense of Murder, 2018-GS-32-000943, and committed to the State Department of Corrections for a sentence of life without parole. TR 870 (8-12) Appellant was also convicted by jury of the offense in the First Degree Criminal Sexual Conduct, 2018-GS-32-00944, being committed to the state department of corrections for a determine term of thirty years. TR 870 (13-16). Those are consecutive (TR 870 (16-17)). Subsequently, Appellant files a direct Appeal.

This Appeal is pro se brief as follows:

### Standard of Review

“In criminal cases, this court only rules on error of law.” *State v. Gamble*, 747 S.E. 2d 784 (2013) The admission or exclusion of evidence is also subject to an abuse of discretion Standard of Review. See also, *State v. Adams*, 580 S.E. 2d 785 (2003)

“An abuse of discretion occurs when a trial ruling is based on error law or when grounded factual conclusions are without evidentiary support. See also, *State v. Pittman*, 647 S.E. 2d 144 (2007)

An appellant court will not reverse the trial court’s decision unless that court abused its discretion. *White*, 61 S.E. 2d 756 (1950); see also, *State v. Allen*, 370 S.C. 88, 634 S.E. 2d 653 (2006).

### Argument (4a)

Did the Trial Court Judge **lack subject matter jurisdiction** over the trial?

The trial court lacked subject matter jurisdiction over the convictions for the following reasons. The state during the jury trial failed to prove precise day and time in the nature of offense. TR 21 (24-25); 22 (1-22) **“It is not necessary to prove the precise day laid in an indictment except where time enters nature of offense is made part of the description of.”** *State v. Rutledge*, 101 S.E. 2d 289 (1957); see also *State v. Wade*, 409 S.E. 2d 780 (1991)

Clearly time was the description of offense where the state used phone records to try and pinpoint the time of death. Furthermore, the time and place was never alleged in the indictments for Murder or CSC on violation of S.C. Code 17-19-30. **“Allegations sufficient for indictment for murder” “Every Indictment for murder shall be deemed and adjudged sufficiently and good in law which is addition to setting forth time and place together with a plain statement divested.”** This presented Indictment for murder alleges a day but is silent on time and place of victim’s death. **“The crime of murder is a composite one. It includes the assault committed upon a person and the resulting death from the assault. The State must prove not only the assault and death occurring from it, but the time of the assault and the time of the death, as time is recognized in the law. These necessary elements of the crime of murder must not only be proved before a person accused may be lawfully convicted but they must be alleged in the indictment.** *State v. Rector*, 155 S.E. 385 (1930); see also, *State v. Evans*, 363 S.C. 495 (2005)

### Argument (4b)

Did Prosecutor's Misconduct *deny* Appellant the right to a *fair trial*?

Trial Transcript page 825, lines 8-12, clearly from the record the solicitor made improper prejudice statements by calling the Appellant "someone who's evil, who's a killer, who's a murder, who's a rapist and that's Peter Coffey." These statements were substantially prejudicial to the defense and denied him a fair trial.

The solicitors comments were to inflame the jury and caused the trial to be unfair denying the Appellant of Due Process U.S. Constitution 14<sup>th</sup>; not only did the solicitor make these inflammable comments, he made an improper rebuttal closing argument to the defense. TR 836 (18-25)

In a criminal case where an Appellant does not introduce evidence this violation of Due Process clearly applies to the U.S. Constitution 14<sup>th</sup> and S.C. Constitutional Article 13 Section 3. **"In criminal cases where no defendant introduces evidence, the defendant has the right to open and closing arguments."** *State v. Beaty*, 813 S.E. 502 (2018)

### Argument (4c)

Did the trial court judge err in denying Appellant motion for directed verdict, where evidence merely raised a suspicion of guilt?

In this case, the state failed to prove the time and day of the murder, clearly time was a nature of offense. The state used phone records to pinpoint the time they say the victim was murdered. TR 178 (21-25); 179 (1-7)

“When time enters the offense then the date and time became necessary to prove murder” *State v. Rutledge*, 101 S.E. 2d 289 (1957) None of the State witnesses testified to the exact date or time of the murder. TR 683-685 The date and time, place was not alleged in the Indictment or was it proved at trial. TR 22 (13-22) **“A defendant is entitled to a direct verdict when the state fails to produce evidence of the offense charged.”** *State v. McHoney*, 544 S.E. 2d 30, 36 (2001)

The only evidence against Appellant is DNA and cell phone records. As for the DNA, Appellant stayed with the victim off and on and had sexual relationship. TR 156 (4-10) He admitted this to the detectives. His DNA should have been excluded. There was evidence of unknown party that should have been investigated more thoroughly. TR 551 (17-25); 552 (1-25)

The State tried to use cell phone records to prove date and time of death, as you can see, there was no testimony to the exact date and time, or place so date and time or place was never clearly established. TR 744 (10-20); See Exhibit State No. 149

As for the third party DNA, the trial court judge did not allow it. TR 546 (1-25) through 552 (1-25) through 605 (1-10); 606 (1-15) The State entered the DNA results into CODIS 15 and

found no matches. TR 610 (1-25); 611 (1-6). As for the cell phone records, the drug dealer testified to them but the Appellant's defense attorney was not allowed to cross-examine them. TR 633 (4-5)

**“Abuse of discretion occurs when a trial court ruling is based on error of law or when grounded factual conclusion is without evidentiary support.”** *State v. Pittman*, 647 S.E. 2d 144 (2007)

A detective testified that when she arrived at the crime scene it was still wet. TR 284 (21-25); 285 (1-6).

Logical reasoning the murder happened recently. The appellant had left the victims residence at full thirty-six hours earlier, clearly this creates doubt. At best there was suspicion of the Appellant. Trial judge should not refuse to grant the direct verdict motion, when evidence merely raises a suspicion that the accused is guilty. **“Suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which do not amount to proof”** *State v. Pearson*, 783 S.E. 2d 802 (2016) In this instant case, we have state witnesses who's testimony never establishes time and date or place of the murder, we have cell phone records that drug dealers testify to, who was given immunity. The defense was not able to cross-examine. We have evidence of third party DNA that was not allowed on the record. TR 128 (17-19) A detective who testified that the crime scene blood was still wet. A crime that was found thirty-six hours after the Appellant left the residence. All this doubt and the judge still let this case go to the jury. Where was the impartiality; where was the fair trial? Appellant states the trial court judge abused his discretion **“It is an equal abusive discretion to refuse to exercise discretionary authority, when it is warranted; as it is to exercise the discretion improperly”** *State v. Smith*, 280 S.E.

2d 200 (1981) Appellants motion for new trial should be given **“A motion for a direct verdict should be granted where evidence is such as to permit the jury to merely conjecture or to speculate”** *State v. Cain*, 795 S.E. 2d 846 (2017)

#### Argument (4d)

Did the trial court judge **abuse his discretion** when allowing autopsy photographs?

The trial counsel objects to Exhibits 144 and 145. Autopsy photograph Exhibit 144 is a black-and-white and Autopsy photograph Exhibit 145 is the color one of same photo. The autopsy photos are of the skull after the skin has been reflected back. TR 783 (12-16) The photographs were previously discussed in a motion the trial court judge for identification purposes only. TR 657 (13-14) The solicitor intentionally introduced the Autopsy Photographs to inflame the passions of the jury. TR 782 (25); 783 (1-16)

The exhibit numbers 137 through 143 that the trial counsel does not object to sufficiently allowed Doctor Ross to testify to the manner and cause of death but the solicitor deceitfully introduced Autopsy Photographs to inflame the jury. TR 782 (25); 783 (1-16); 787 (9-24).

Appellants argument is that the pictures were previously discussed and the autopsy photos were unnecessary. I appeal to the sympathy and prejudice for purpose of inflaming the passion of the jury. The autopsy photographs were of negligible probative value. **“Photograph should be excluded if the danger of unfair prejudice substantially outweighs its probative value”** Rule 403, SCRE *State v. Hawes*, 423 S.C. 118 (2018)

## **CONCLUSION**

For the foregoing reasons, this Court should deny counsel's request to be relieved and allow for further briefing on the issue(s) of merit.

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COUNTY OF LEXINGTON  
Honorable R. KNOX MCMAHON, CIRCUIT COURT JUDGE

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Case No. 2018-000491

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The State of South Carolina

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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Appellant purposes the following be included in the Record on Appeal:

1. True-billed Indictments
2. Transcript (March 12-15, 2018)

I certify that this designation contains no matter which is irrelevant to this appeal

*Peter L. Coffey* #226897

Peter L. Coffey #226897

Petitioner, Pro-se.

Lee C.I. [F6B-2253]

990 Wisacky Hwy

Bishopville, SC 29010

David Alexander  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
(803) 734-1330

THE STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
Peter Lynn Coffey )  
Applicant, )  
vs. )  
State of South Carolina )  
Respondent, )  
\_\_\_\_\_ )

IN THE COURT OF APPEALS  
FOR THE ELEVENTH JUDICIAL COURT

**CERTIFICATE OF SERVICE**

Case No. 2018-000491

The undersigned hereby certifies that a true copy of the Pro Se Brief and Designation of Matter in the above reference case has been served upon Melody J. Brown, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519 Columbia, SC 29201.

Done this 1<sup>st</sup>, Day of April, 2019

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Peter L. Coffey #226897

Peter L. Coffey #226897  
Petitioner, Pro-se.  
Lee C.I. [F6B-2253]  
990 Wisacky Hwy  
Bishopville, SC 29010

Peter L. Coffey #226897  
Lee C.I. [F6B-2253]  
990 Wisacky Hwy  
Bishopville, SC 29010

April 1, 2019

Honorable Jenny Kitchen  
Clerk of Court  
Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

**RECEIVED**  
APR 10 2019  
SC Court of Appeals

**RE: Peter L. Coffey #226897 v. State of South Carolina – App. Case No. 2018-000491**

Dear Clerk,

Please find enclosed a copy of Appellants pro se brief in response to appellant defenders Anders Brief and a copy Designation of Matter to be included in Record of Appeal. Also, I am appraising this court that I did not receive a copy of my Anders Brief until January 17, 2019 in case of a time limit issue. Thanks.

Sincerely,

---

Peter L. Coffey  
Lee C.I. [F6B-2253]  
990 Wisacky Highway  
Bishopville, SC 29010

cc:

Melody J. Brown, Esquire  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 10, 2019

The Honorable Jenny Kitchings  
Clerk, S.C. Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
APR 10 2019  
SC Court of Appeals

Re: The State v. Peter Lynn Coffey  
Appellate Case No. 2018-000491

Dear Ms. Kitchings:

Enclosed please find the *pro se* Anders brief written by my client, Peter Coffey. Mr. Coffey sent his *pro se* Anders brief to the Attorney General. Melody Brown was kind enough to forward his brief to me which I am sending to the Court on his behalf.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Sincerely,

David Alexander  
Appellate Defender

DAA/cnp

cc: Melody J. Brown, Esquire  
Peter Coffey, #226897