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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MAURICE ROBERTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000652

APPENDIX

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1 your understanding of the allegations against Mr. Roberts?

2 A A bunch of kids went over and tried to rob a studio
3 and people got shot.

4 Q Okay. So Mr. Roberts was allege to be one of them
5 one of the people that went over there?

6 A He was.

7 Q All right. So as -- I guess, as you're preparing for
8 trial what -- other than the Denno hearing, what else did
9 you prepare as far as getting ready for trial?

10 A With him?

11 Q With him, on your own, you know, what were your
12 defenses?

13 A Basically, everybody's lying and they're trying to
14 put it on him the people that actually did this that kind
15 of thing.

16 Q Okay. Did you discuss that with Mr. Roberts?

17 A I'm pretty sure I was telling him what I was doing.
18 I mean, him and I did meet. We did talk. And like he
19 testified, he's 17 at the time, so he's probably scared to
20 death.

21 Q Let me ask you, I'm going to jump to the end of the
22 trial for a second. When it came time for the jury charge
23 or the jury charge conference with the judge in advance,
24 what was your understanding of attempted murder at the
25 time and what did you request, if you recall? I know,

1 it's been eight years?

2 A It has been, but I been able to look at this stuff.
3 I mean, it's like 900 pages, but I been able to sort of
4 flip through and look at stuff, you know, in response to
5 this. At the time I will say it must have been it was
6 just ABIK. You know, the old ABIK because that general
7 intent charge, you know, these days jump through the roof.

8 Q Okay. At the time what were you -- what was your
9 strategy in requesting that specific intent not be charge
10 or modifying the charge with the judge?

11 MR. WALLER: And, your Honor, we're on page 914
12 is what I'm referencing.

13 THE COURT: Thank you.

14 BY MR. WALLER:

15 Q What was your strategy in asking the judge to alter
16 or modify the charge that he would have normally used, if
17 you recall?

18 A I remember from reading -- and, you know, you can
19 show it to me. I remember from reading that he was going
20 to do something about a weapon or something similar to a
21 weapon, if that's what you're asking. Something --
22 because Belcher had come out a little while before, but
23 there was one charge that just seem too close to the
24 inference of malice from the weapon -- use of a weapon.

25 Q All right. I want to back up and get into some of

1 the actual specifics of the trial. Have you had a chance
2 to review the transcript of this trial?

3 A I have looked at it, yes.

4 Q Okay. Do you recall Mr. Duckette was the witness --
5 was a witness who was not charged, but was with the
6 individuals prior to them leaving for the incident, do you
7 recall that?

8 A I do remember that.

9 Q Okay. Mr. Duckette had been charged and pled guilty
10 to a purse snatching. He was originally charge with ---

11 A Strong arm.

12 Q Correct. He was charge and pled guilty just a matter
13 of days or weeks prior to the trial, the whole from arrest
14 to plea was three months. What was your strategy behind
15 not objecting in front of the jury or not asking that
16 impeachment question regarding his quick charge and plea
17 to a lesser-included offense?

18 A Did the judge not let me ask about the strong arm?

19 Q He let you ask about what he had been convicted of.

20 A Right, yeah. I don't think I was allowed to ask for
21 whatever reason, you know. I mean, I can't -- it's not my
22 decision. I don't think I was allowed to ask that he was
23 charge with this and then did that or was I. I don't
24 remember it that way.

25 Q Was there a strategy behind not asking about the time

1 frame in front of a jury or asking it that way?

2 A No, I mean, it's always that you got to deal with it,
3 you know, that kind of thing so...

4 Q Okay. Do you recall specifically the testimony of
5 two co-defendants Demetrius James and Vincent Nelson?

6 A I remember Vincent Nelson well. I mean, I can see --
7 you know, I remember things in pictures. I could see
8 Demetrius James on the stand not putting the words to it,
9 but I remember Vincent because I was thinking this is
10 going to be great and it started out great so.

11 Q Okay. When you say started out great, what do you
12 mean by that?

13 A He wasn't saying anything. And they tried to refresh
14 his recollection. I was like, Judge, he's not saying that
15 he doesn't remember. He's not saying anything so. And
16 they didn't get to do that, but then there was a break.
17 Tara was up there talking to him and I'm sure Maurice and
18 I are over there. But I thought it was going really well
19 until after and it just sort of broke so.

20 Q Okay. At numerous points during his -- during his
21 testimony, the State asked potential leading questions.
22 Is there a strategy -- a strategy you had of not objecting
23 to those?

24 A Okay. This I have an answer for. Any trial with Ms.
25 Campbell or any of her proteges, it is from start to

1 finish continuous leading. There is a point of
2 diminishing returns with objections. Look, she and I get
3 along fine. I mean, I consider her a colleague, but
4 there's a point of diminishing returns on where it starts
5 to make me look side ways is the way that I thought it.
6 There was one trial where Judge Cooper was on the stand
7 and he looks up over his glasses down at me and I shrug my
8 hands. So I don't -- I mean, the strategy was -- if that
9 is a strategy, I mean, I know the importance of the word
10 here, but I just thought there were diminishing returns
11 over time with objecting to their leading because they
12 weren't going to stop anyways.

13 Q Okay, when you say diminishing returns, you mean ---

14 A It means I start looking -- you know, if I'm sitting
15 here like -- it looks like I have something to hide or I'm
16 disrupting something. They're good at it, it makes me
17 look bad.

18 Q To the jury?

19 A Yes.

20 Q Okay.

21 MR. WALLER: And, your Honor, we -- Mr. Nelson's
22 testimony starts at page 515 of the transcript.

23 BY MR. WALLER:

24 Q You have any specific recollection about Mr. James
25 testimony?

1 A I don't. I don't. I can see him on the stand, but
2 I'm not getting the words.

3 MR. WALLER: Beg the Court's indulgence please.

4 (WHEREUPON, a pause in the proceedings.)

5 BY MR. WALLER:

6 Q Mr. Sutherland, and you say you have no specific
7 recollection regarding Mr. James' testimony. How about
8 any of the officers involved any specific recollection
9 about their testimonies?

10 A Chief Smith, you know, he and I actually get along.
11 It was McDonald. I remember them testifying, if that's
12 what you're asking.

13 Q Okay. All right. During -- speaking of Mr. McDonald
14 or Investigator McDonald, during his testimony, it was
15 discussing the statement given by Mr. Roberts that was
16 happening at the same time other individuals give their
17 statements?

18 A Yeah.

19 Q What was the strategy behind not objecting to his
20 testimony that other officers came in with information
21 saying what other individuals were saying at the time kind
22 of a hearsay and hearsay what was the strategy behind
23 that?

24 A What did he say? Did he say other officers came in
25 with information or other officers came in and said that

1 Vincent Nelson is saying this and Demetrius James is
2 saying that because that should have been objected to, if
3 that's what happened.

4 Q It's the latter.

5 MR. WALLER: And, your Honor, it's on page 739
6 beginning at the top of the -- well, 738, your Honor.

7 A Although, I will say if they had testified
8 previously, I guess, they were present and subject to
9 cross-examination and that play, and that wouldn't have
10 happened before so.

11 Q Mr. Sutherland, you been practicing criminal law for
12 how many years?

13 A Seventeen.

14 Q Okay. Was there a strategy behind asking, I believe,
15 Captain Smith if he found some of the witnesses that had
16 testified credible?

17 A Well, I remember he had testified something to that
18 effect before. And, again, he and I have a history and we
19 get along, but sometimes we mix it up in there. And I
20 remember running up there and saying, oh, so you found
21 these people credible something like that.

22 Q That's correct.

23 A And Judge Early was like stop.

24 MR. WALLER: And, your Honor, that's page 810
25 question was on line 22.

1 BY MR. WALLER:

2 Q What -- was there a trial strategy behind asking him
3 to give his opinion on the credibility of witnesses?

4 A Well, I mean, I was taking a dig at him at his prior
5 -- at his testimony on direct, I guess.

6 Q Okay.

7 A I wasn't expecting a sincere answer from him or an
8 answer at all really.

9 MR. WALLER: Beg the Court's indulgence please.

10 THE COURT: Yes, sir.

11 (WHEREUPON, a pause in the proceedings.)

12 BY MR. WALLER:

13 Q Mr. Sutherland, when Mr. Roberts was -- when you were
14 first appointed to represent Mr. Roberts and before the
15 trial started, did you have any reason to challenge the
16 sufficiency of the indictments?

17 MR. SPENCER: Your Honor, I object to raising a
18 new allegation.

19 MR. WALLER: I'll withdraw the question your
20 Honor. It is not a new allegation. I was just asking
21 preparation for the trial.

22 A Well, I mean, I guess, I would have looked at them if
23 they're ---

24 THE COURT: One second. I'll allow it, okay.
25 Yes, sir.

1 MR. WALLER: Thank you, your Honor.

2 A I can think of a reason because, I guess, I would
3 have done it, you know, if I saw an issue with it.

4 Q Okay. So if you had an issue, you would have raise
5 that prior to the jury being sworn?

6 A Yeah, I guess. I mean, I don't remember this. This
7 is what the problem is so.

8 MR. WALLER: Thank you, Mr. Sutherland. Please
9 answer any questions Mr. Spencer has.

10 THE COURT: Yes, sir.

11 MR. SPENCER: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. SPENCER:

14 Q Mr. Sutherland, I guess, where I will start with is
15 kind of trying to get a brief overview of the trial and
16 evidence presented. And I think we've heard your
17 testimony from three co-defendants?

18 A That's right.

19 Q And one of them being Vincent Nelson who ---

20 A He was my favorite for a while.

21 Q Yeah, so he was having -- he was not answering
22 questions, right?

23 A I don't remember if it was him that I talk to. I
24 don't think I talk to him downstairs, but, you know, I can
25 do that. But, yeah, he just kept his mouth shut which is

1 perfect. Don't say you can't remember.

2 Q And then as you mentioned kind of things broke down.
3 He talk to his lawyer, Ms. Shurling, was given an
4 opportunity to talk to Ms. Shurling.

5 A She was up by the stand talking to him.

6 Q And then he came back and he continued testifying?

7 A Right.

8 Q And is it fair to say that the State still had to
9 lead him quite a bit?

10 A Yes.

11 Q Still like pulling teeth a little bit?

12 A Yeah, he was not cooperative. The only thing is, I
13 think, Tara told him what to say to get them -- now, this
14 is just my recollection of it. The record may be
15 different. I think Tara told him what to say to get his
16 recollection refreshed maybe. Well, I don't remember
17 something like that. And then they could go into their
18 whole thing and go basically go through their whole
19 statement so.

20 Q And we didn't -- we don't actually know what Ms.
21 Shurling said to her client?

22 A Right.

23 Q Okay. Let me ask you this. And then, of course, the
24 other Demetrius James was the other co-defendant
25 testifying against him?

1 A Yes.

2 Q And he was fair to say minimizing his involvement?

3 A For whatever reason, all I'm able to do was see him.
4 Now, everybody's going to minimize their involvement as a
5 general matter. Everybody is going to say it was --
6 everybody said it was him not me, you know, so.

7 Q Certainly attacking his credibility was part of your
8 strategy?

9 A It's -- I don't know usually just pretty easy with
10 the co-defendants because you're looking at life in prison
11 and plus, you know, whatever.

12 Q And that's pretty much all you did was impeached
13 everybody with what time they were facing?

14 A Yeah, and it's also great because the jury gets to
15 hear what the potential sentence is because a lot of times
16 -- and this happen to me weeks -- this happen to me week
17 before last. My guy caught 30 on a murder. And I talk to
18 the jurors after and they said that they would have never
19 convicted if they knew he was going to catch 30. And I'm
20 like -- it's not like purse snatching, you know, but, I
21 mean, I don't do that. I just listen so.

22 Q Let me ask you this, I tried to discuss with
23 Mr. Roberts and understanding Mr. Roberts was a little
24 guarded with my questions, but basically there were two
25 brothers that were fighting with Mr. Roberts and Demetrius

1 Price inside the house, do you recall that testimony?

2 A That's what I remember from the testimony. I
3 remember something about a gun hitting the ground or
4 something or somebody said was that Demetrius James that
5 said he just picked up the gun because he didn't want
6 somebody to get hurt. Okay, now, I remember like, okay.
7 I was like, oh, so, you know, you didn't have the gun the
8 whole time.

9 Q Another thing you were going to attack?

10 A I remember.

11 Q But both of those brothers picked out Mr. Roberts
12 from the photo lineup?

13 A I do remember that. I don't know I'm getting this --
14 like this favorable weird vibe like something went maybe
15 kind of okay in one of those crosses or maybe both or
16 maybe it's just because one freaked out in front of the
17 jury. I don't know so.

18 Q And you're referencing a disturbance when one of the
19 brothers had a disturbance during the trial?

20 A Yeah, he starts cussing at my guy.

21 Q And so he was removed from the courtroom?

22 A Yeah.

23 Q And these are sort of positive things you see
24 developing?

25 A Well, you know, if a witness, you know, blows up like

1 that in front of the jury take anything you can get.

2 Q Okay. And you heard me read some -- a good part of
3 Mr. Roberts statement that was admitted at trial. And you
4 mention you gave him an opportunity to testify about that
5 statement during the ---

6 A We really wanted to keep that out. We spent a lot of
7 time at the trial getting ready. And I thought he did
8 great on the stand honestly because Ms. Campbell was --
9 she went with up my motion to suppress and she handed it
10 to him. And like -- she's like, oh, you know, it's like
11 you were reading this, where did you get that. Oh, no, no
12 she's like, oh, you're reading that where did you get
13 that. And he said from the motion. He's talking about
14 motion to discovery, right, and she hands the memorandum,
15 the motion to him. And he's like, no, the motion of
16 discovery so, but he did real well.

17 Q Okay. But unfortunately the statement came in --
18 from your standpoint unfortunately the statement in?

19 A Right.

20 Q Right. Before I move on to some specific things that
21 are allege, do you remember in your closing statement
22 where you were challenging the statement arguing that he
23 was really in custody?

24 A I remember saying, you know, somehow he was okie
25 doked, you know, that kind of -- I remember arguing

1 voluntariness.

2 Q Right. And you recall in your -- both when you made
3 your objection to the statement during the Denno hearing
4 and in closing, you referenced that one of the police
5 officers had used the term custody to describe when he was
6 brought over from the house to the police station?

7 A Oh, man, that was -- yeah, that was Smith because in
8 his weed report he said he was taken into custody, and
9 then on stand he said, no, he wasn't in custody. And I
10 was like what is this. In your weed your report, he's
11 like, well, it's just a word. I'm like, yeah, it's a
12 word, it's custody. I remember that now, yes.

13 Q So is it fair to say in, you know ---

14 A Oh, I'm sure I did something like that in front of
15 the jury. I'm sure so.

16 MR. SPENCER: And that would be on 877 of the
17 transcript, your Honor.

18 A I'm still baffled by some things. You know, the word
19 custody does not mean custody unless we want it to mean
20 custody. I mean, it's the word custody. You can say
21 something else like we told him, hey, came over here. No,
22 we took him into custody for the weed, that's what it
23 said.

24 Q And that's the point you were making to the jury?

25 A Yes.

1 Q Because the jury gets to decide if the statement is
2 voluntary before they consider it?

3 A Ultimately.

4 Q And also you challenged the two identifications by
5 the brothers?

6 A I do remember that.

7 Q And you, of course, we talked about the challenge --
8 -- the credibility of the co-defendants that testified?

9 A Right.

10 Q Okay. And I want to make a move on to Mr. Duckette
11 who was not a co-defendant, but he was the guy that's
12 found in the closet with the cell phone. And did -- and
13 you did -- he pled guilty to purse snatching. You made
14 sure that got brought up before the jury, right?

15 A Yeah, I feel like I remember being cut off from
16 asking about that. I don't know if it's in the record. I
17 feel like I couldn't ask about the strong arm for some
18 reason which was weird.

19 Q You weren't allowed to say that it started out as
20 common law, but you were allowed to say that he was
21 convicted of purse snatching?

22 A That's what I remember. You know, sometimes I
23 remember things the way that I want to remember them
24 honestly so.

25 Q And -- but do you recall that you also were able to

1 impeach him with the rest of his criminal record?

2 A Yeah, I'm sure. I'm sure I did.

3 MR. SPENCER: Your Honor, that's on 427 of the
4 transcript.

5 A I should say Chief Smith and I are tight. I may have
6 felt like I was coming down on him a little bit, you know,
7 but that's one of the reasons we are tight is we can do
8 that so.

9 Q You may agree with me that you impeach them with
10 other charges. You know, if I were to tell you you
11 impeached him with a 2011 -- I apologize this is actually
12 on direct examination. But basically the prosecutor
13 before you bringing it up first brought out a 2011
14 possession with intent to distribute cocaine in 2010, a
15 resisting arrest in 2010, and receiving stolen goods of
16 2008, burglary second of 2008, petty larceny in addition
17 to the purse snatching?

18 A It is smart of them to do that first.

19 Q Right. And so he had a substantial record other than
20 just this purse snatching any way?

21 A That's what I remember.

22 Q Okay.

23 MR. SPENCER: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. SPENCER:

2 Q Okay. And if I could just have you read page 738
3 starting on line 21. You can just read it yourself and
4 then I'm going to ask you some questions about it.

5 A 738 start on 21 over here?

6 Q Yeah. I think we can read down to page 12 -- line 12
7 excuse me on the next page and, you know, take your time.

8 MR. WALLER: What page?

9 MR. SPENCER: 739.

10 MR. WALLER: Thank you.

11 A Oh, yeah, I remember that. I did the waiver and then
12 the statement. Okay.

13 Q Thank you. And so would you agree with me the
14 situation was at the same time Mr. Roberts is being
15 interviewed. Mr. Duckette is being interviewed. And Mr.
16 Nelson is also being interviewed. And so when the
17 officers says we were -- both parties indicated Maurice
18 was involved in the incident, that officer is talking
19 about those two saying he's involved?

20 A Well, they do like to do that. Now, they also like
21 to fake it, but they like to put one guy over here and
22 put another guy over here. And they go to both guys and
23 say your buddy's out over here ratting you out, right,
24 when neither one is or maybe one is. And, you know, just
25 go around that way. Of course, sometimes the guy is over

1 here snitching. And, you know, yeah, they do that a lot.
2 Now, just, you know, but at the same time the officers not
3 saying what the involvement in the incident was that that
4 they were saying during -- not saying that ---

5 Q Right.

6 A --- just, I guess, he's recalling running from one to
7 the other or something like that so.

8 Q And so he's explaining, you know, we're confronting
9 Mr. Roberts with this and that's when Mr. Roberts says --
10 gives that statement that we've been referring to?

11 A That is that testimony, yes.

12 Q So the purpose was to give context to show how that
13 statement was from Mr. Roberts was produced?

14 A I guess, that, you know, that's what he was telling
15 the jury so.

16 Q So it's really not for the truth of the matter
17 asserted. It's really just to establish how the context
18 of the statement?

19 A Well, I mean, I can't -- oh, you're talking about why
20 didn't I object?

21 Q Object, yes.

22 A Okay. Well, it could be a couple of reasons, you
23 know, if the witness available. And actually I just, you
24 know, week before last got some stuff in this way. If the
25 witness available and subject to cross-examination, then

1 another witness, you know, that law enforcement witness
2 testifying about that witness said is okay.

3 Q Right. So, again, you didn't see this as really
4 being a problem worth objecting to?

5 A I guess not, you know, so.

6 Q Okay. And, in fact, both Mr. Duckette and Mr. Nelson
7 obviously testified at trial?

8 A Oh, yeah.

9 Q Okay.

10 MR. SPENCER: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (WHEREUPON, a pause in the proceedings.)

13 BY MR. SPENCER:

14 Q And then I wanted to turn to page 810. Now, if you
15 had a chance to look at that this is where -- this is --
16 starts at the end of Luck's direct examination of
17 Investigator Smith and she use that term came from the
18 credible evidence and ---

19 A Right. We're talking about when -- oh, you know,
20 it's credible that kind of thing.

21 Q Right. And so when you followed it up and say --
22 when you followed up and asked down towards the bottom of
23 the page. Okay, so they're credible to you. Basically,
24 you were attacking their investigation the implication?

25 A That's when the judge had had enough of all of it I

1 think. He was like everybody just stop.

2 Q That's when Judge Early gave a curative instruction?

3 A Right.

4 Q Right. And that actually -- that was when he said
5 the jury determines the credibility of the witnesses not
6 the witnesses?

7 A Right.

8 Q And so that certainly could apply to the testimony
9 that Mr. Campbell was eliciting at the end of direct
10 examination?

11 A Right. I think the appropriate thing to do would be
12 to object to it instead of mocking it, but, yes.

13 Q You got the best of both worlds, right. You got to
14 mock it and Judge Early basically give a curative?

15 A Yes, yes, that makes sense.

16 Q And do you recall you actually thanked Judge Early
17 for that curative?

18 A Probably sure.

19 MR. SPENCER: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (WHEREUPON, a pause in the proceedings.)

22 MR. SPENCER: Your Honor, I have no further
23 questions.

24 THE COURT: Redirect.

25 MR. WALLER: Just briefly, your Honor.

REDIRECT EXAMINATION

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BY MR. WALLER:

Q Mr. Sutherland, you were just asked about what you should have objected to Ms. Campbell's question regarding the credibility of witnesses?

A Yes.

Q But you, in fact, objectionable evidence?

A I testified I should have objected instead of mocking, yes.

Q But by mocking you asked Captain Smith to comment on the credibility of witnesses?

A That is a fair assessment of that.

Q All right. Turn back to the discussion of Mr. Roberts statement and other individuals coming in the room. Mr. Duckette and Mr. Nelson weren't coming in telling Investigator McDonald what they were saying -- it was other officers?

A That's cops, right.

Q Right. Okay. Do you recall where Sergeant Eisenhower testified during the trial?

A You know, I'm seeing him on the stand. I don't know if it's this trial sorry.

Q If I told you he didn't testify, would that surprise you?

A Then it would not be this trial.

1 Q Okay. So if he's coming in the room saying what
2 someone else said, it's being then repeated?

3 A Oh, I see what you're saying. Yes, then he wasn't
4 there and subject to cross-examination, okay.

5 Q He had not testified at that point and never
6 ultimately did?

7 A Right.

8 Q His testimony wouldn't be necessary if what he said
9 was already presented to the jury?

10 A Fair.

11 MR. WALLER: Thank you, your Honor. I have
12 nothing further.

13 THE COURT: All right. Anything else of this
14 witness?

15 MR. SPENCER: No, your Honor. I have no further
16 questions.

17 THE COURT: Okay. Thank you. Any objection to
18 this witness, Mr. Sutherland, being excused?

19 MR. WALLER: No objection, your Honor.

20 MR. SPENCER: If I'm to understand that's the
21 applicant's case, then I wouldn't have any objection.

22 MR. WALLER: It is, your Honor. Nothing further
23 from the applicant.

24 MR. SPENCER: He can be release then.

25 THE COURT: Okay. All right, thank you. Thank

1 you, sir.

2 MR. WALLER: Nothing further from the applicant,
3 your Honor.

4 THE COURT: Okay. Respondent.

5 MR. SPENCER: The State doesn't have anything to
6 present.

7 THE COURT: Okay. And just to be clear, so I am
8 looking at the original petition that was filed on
9 July the 26th of 2017. And I'm going to let you all make
10 your summaries, okay. I just want to make sure. And so
11 there was not an amended petition filed?

12 MR. WALLER: There was not, your Honor.

13 THE COURT: Okay. I just wanted to make sure
14 that I'm looking at everything. I got it pulled up on my
15 laptop and I've got the paper copies too that I been
16 trying to follow along with the transcript and whatnot,
17 okay.

18 MR. WALLER: Yes, your Honor. I guess, the one
19 thing I did leave out the relief request I believe on the
20 original application was for the sentence reduction.
21 Obviously, Mr. Roberts drafted that document before I was
22 appointed to represent him. We discussed it, and he
23 understands that's not an option in this case. So
24 certainly the relief we're seeking would be the vacation
25 of this conviction and a new trial. But other than that

1 clarification, what I presented to the Court was what me
2 and Mr. Spencer had discussed.

3 THE COURT: Okay. Is that correct?

4 MR. SPENCER: Not sure I hear you. Mr. Waller
5 sent me an e-mail that outlined the allegations, so I
6 accepted that as an amendment or an indication of where
7 things were going.

8 THE COURT: I know and you been referring to
9 that, but I didn't really have the benefit of that and
10 that's the reason if y'all want -- do you want that to be
11 your amendment?

12 MR. WALLER: I guess, I would, but I probably
13 need to make a motion to amend based on the evidence
14 presented, I guess 15(b), your Honor. There wasn't any
15 objection because Mr. Spencer knew it was coming, I guess,
16 but I believe I would move ---

17 THE COURT: And I think you all addressed it.
18 Any objection?

19 MR. SPENCER: No, no, nothing that was sent in
20 an e-mail. I didn't think it was my place to include that
21 e-mail in the judge's packet. And I think Mr. Waller had
22 tended to get a more formal amendment together, but, I
23 mean, these allegations in this e-mail I understood them
24 and expected to go forward on them.

25 THE COURT: Can you do me a favor? Can you

1 hand that e-mail to Mr. Waller? Let me just let him read
2 that into the record how about that?

3 MR. SPENCER: Okay, that's sounds fine.

4 THE COURT: And then the -- I know that there
5 was a Aiken vs. Byars issue as well in this matter, but
6 that was resolved. There was a stay, but he was 18.

7 MR. WALLER: Your Honor, he was 18, that was an
8 issue not in this case. This case was stayed while that
9 issue was resolved. I didn't represent Mr. Roberts.

10 THE COURT: Right, right, but I just wanted to
11 make sure there was an order issued?

12 MR. WALLER: There was, your Honor.

13 THE COURT: Okay. Okay. And so, yes, sir, if
14 you don't mind just -- let's just -- to clean this up a
15 little bit from my benefit if you all would just put that
16 on the record.

17 MR. WALLER: Sure. Your Honor, the allegations
18 that I have listed here ineffective assistance of counsel
19 for failing to preserve for appeal slash properly argued
20 for impeachment of co-defendant on page 399 of transcript,
21 ineffective assistance of counsel with missed objections
22 during the testimony of Demetrius James and Vincent
23 Nelson. In parenthesis, I have honestly those testimonies
24 were difficult at best. Three, miss objection during the
25 testimony of McDonald on page 739, another three

1 apparently no valid trial strategy to bring in credibility
2 of witnesses on page 810. Finally, no objection slash
3 valid trial strategy to incorrect jury charge regarding
4 attempted murder.

5 THE COURT: Thank you. And if you all don't
6 mind, I didn't -- if somebody can forward that to my law
7 clerk.

8 MR. WALLER: Certainly, your Honor.

9 THE COURT: Then I'll have the benefit of that
10 in writing as well, okay.

11 MR. WALLER: Certainly, your Honor.

12 THE COURT: Okay. And so anything before I hear
13 your summaries -- summation?

14 MR. WALLER: Nothing further.

15 MR. SPENCER: Nothing from the State, your
16 Honor.

17 THE COURT: Okay. All right. Do you all need a
18 minute or you ready?

19 MR. WALLER: Mine is going to be very brief,
20 your Honor. I'm ready.

21 THE COURT: Okay. Yes, sir.

22 MR. WALLER: Judge, this was, obviously, a
23 difficult trial and a difficult situation. There were
24 numerous witnesses three of which were co-defendants in
25 the case. Judge, the trial took place over eight years

1 ago. And our allegations revolved specifically around
2 what took place in the courtroom, and so, your Honor, I
3 would ask that you review the transcript, review what's
4 been read into the record today as well as what will be
5 supplemented to your law clerk in a copy of that.

6 Judge, some of the page numbers on the
7 transcript we discussed today page 398 was one of the
8 impeachment issues. 739 I believe has been discussed,
9 810. The jury charge issue is on page 914. And the
10 testimonies of Mr. James was -- the allegations we're
11 making were from pages 493 to 497. And then with
12 Mr. Nelson his direct examination was 515 through 555.
13 With those two in particular, Judge, we argue there were
14 numerous leading questions and inappropriate questions
15 that were not objected to. There was testimony by
16 Mr. Sutherland as to why he did not object. Your Honor,
17 we would just ask that you review the transcript and we
18 ask that you grant Mr. Roberts relief. Thank you.

19 THE COURT: Okay. Thank you. Mr. Spencer.

20 MR. SPENCER: I think I'm going to get to the
21 last point first, which was the leading questions because
22 I think if you look at Rule 611, which talks about leading
23 questions normally shouldn't be used on direct
24 examination. However, when a party calls a hostile
25 witness, an adverse party or a witness identified with the

1 adverse party interrogation made by leading questions,
2 that in particular I think applies to Mr. Nelson.
3 Obviously, it was his connection with Mr. Roberts that was
4 causing him to hesitate. It was -- he was a difficult
5 witness, and I think Judge Early in this discretion could
6 allow the leeway he did with the leading questions. So I
7 don't think there's anything there to -- to which
8 Mr. Sutherland could have objected that would have been
9 beneficial or would have altered any result in as he
10 mentions sometimes it's just pointless to object to
11 leadings questions.

12 As to any -- I didn't quite understand the
13 allegations with the Demetrius James. I don't think -- I
14 mean, I'm sure there was some leading in there. Mr. James
15 actually was another witness who maybe not have been --
16 who was probably not going to according to the State's
17 plan because he was minimizing his conduct a little bit
18 which I think anyone could see reading that transcript.
19 However, I don't think there's been anything identified
20 that was improper in the examination of Mr. James as far
21 as that allegation goes.

22 In terms of impeaching the co-defendant -- well,
23 it's not -- in terms of impeaching Mr. Duckette, who
24 actually wasn't a co-defendant, but who testified that he
25 had heard the plans about this burglary decline to

1 participate but later was -- became part of this case
2 because he was found in the closet at the time they came
3 over to arrest Mr. Nelson.

4 Mr. Duckette did have the common law robbery
5 charge reduced to a purse snatching when he pled guilty.
6 He also had numerous other charges as someone through --
7 on examination or excuse me -- numerous other convictions,
8 that he was impeached with. There's been no showing that
9 this reduction of a charge to purse snatching was pursuant
10 to any kind of deal and negotiation involving this case in
11 which he testified, so I don't think there was anything
12 improper about not allowing Mr. Sutherland to go into
13 effect that he was charged with common law robbery
14 originally for that purse snatching conviction. Even so,
15 I mean, it would be -- it's not the sort of thing that
16 would be prejudicial that would have altered the outcome
17 of this trial given the other -- the actual co-defendants
18 that testified given the evidence in this case and given
19 the fact that we -- that Mr. Sutherland got to show this
20 guy's not a **stellar** citizen himself in regards to what was
21 on 810, which I think was Officer Smith if I recall right.

22 MR. WALLER: That's correct.

23 THE COURT: You do.

24 MR. SPENCER: And that statement is not hearsay
25 because it's not for the truth of the matter asserted.

1 It's to show the evolution of Mr. Roberts' statement. He
2 start denying involvement. The two other guys are being
3 interviewed said he was involved. Of course, how he was
4 involved is not something that Officer Smith testifies to.
5 When he testifies to that and then the result of that he's
6 being confronted with that information and he admits his
7 involvement and goes into the statement that I read parts
8 of into the record previously, so I don't think that's
9 even objectionable. It is -- we got to hear from
10 Mr. Nelson and Mr. Duckette about what they knew about
11 this case and what they knew about him being involved and
12 he was subject to cross-examination and all that. So
13 certainly would be harmless in light of the minimal
14 information that Investigator Smith offered, that would be
15 potentially hearsay.

16 Before you got to the -- the last issue and I
17 think I've covered all these issues, but the last issue
18 would be the attempted murder, and the fact that there was
19 a jury instruction that only a general intent was required
20 for attempted murder. Before I got to that, I did want to
21 kind of trying to get it through the witnesses.
22 Mr. Sutherland memory was, you know, a little bit -- he,
23 obviously, didn't reread the whole transcript.
24 Mr. Roberts I think when I was trying to get that
25 testimony he was again guarded a lit bit, but, you know,

1 basically what happened in this case is these individuals
2 planned to do a burglary. Vincent Nelson is somebody who
3 the Davis family has sort of taken under their wing and
4 provided him -- gave him a place to stay sometimes. You
5 know, gave him money, clothes all kinds of things like
6 that, that that was kind of the nature of the Davis
7 family. They had an upstairs residence. Downstairs they
8 had a salon and on top of that, they had a recording
9 studio sort of this gym rec area, and sort of just a nice
10 gathering place for some, you know, young kids some of
11 whom are trouble like Mr. Nelson.

12 Well, they plot this burglary. Mr. Nelson comes
13 over first. He has Mr. Roberts cell phone. He makes a
14 call out to one of them to let them know that he's inside
15 and what happens is the three remaining co-defendants come
16 walking up to the house there. In the meantime,
17 Mr. Nelson had walked outside with a couple other
18 individuals. One of the individuals that ends up being
19 the shooting victim who is murdered. And the other being
20 witness to all this who himself, I think, he was the
21 second attempted murder charge because he had both graze
22 his leg, if I'm recall that part correct. But basically
23 he testified that Mr. Roberts and Mr. Maurice James went
24 inside the house. What happens at that point is one of
25 the two brothers, the two Davis brothers, stumbles onto

1 Mr. Roberts, and they end up engaged in a fight. I think
2 Mr. Roberts had pointed the gun. And the brother actually
3 after getting hit with the gun, getting pistol whipped
4 with the gun, falls down. He gets up, tackles
5 Mr. Roberts. They go through a glass coffee table. The
6 gun drops. Demetrius James picks up the gun. I think
7 that was what Mr. Sutherland was talking about during his
8 testimony.

9 Meanwhile, the other brother comes into the
10 fracas. They're both fighting him. They manage to eject
11 them out of the house, but not before a gunshot goes off
12 that's the other attempted murder charge because it hits
13 one of the brothers in the arm. They're ejected out of
14 the house ultimately, but the testimony from the one
15 witness who is on the outside is that Mister -- well, the
16 person who we can infer is Mr. Roberts basically has the
17 gun pointed to the victim, the murder victim. The murder
18 victim is saying don't shoot me, don't shoot me. And he
19 shoots him, I think, multiple times. So that's how the
20 incident played out. We have both brothers picking Mr.
21 James out of the photo lineup.

22 We had the three co-defendants testifying
23 against him. The most damaging went on without a hitch
24 was the third one who was, I think, on the outside
25 Deshawn. He was known as Six Hundred. There's also a

1 question as to, you know, there's a rap group Six Hundred
2 that these members are -- just conflicting testimony about
3 whether Mr. Roberts is a member of that group or not.
4 And, you know, in addition to the co-defendant's
5 testimony, the brother's testimony, the third thing, of
6 course, is that statement that I was reading parts of from
7 which he admits that there -- he knew about the burglary.
8 They were over there for a burglary. For his version of
9 events, Mr. Roberts, of course, is that he was involved in
10 the fracas on the outside and wasn't the guy who shoot
11 him. I think he puts it on Six Hundred. But, you know,
12 obviously, hand of one hand of all looms large in this.
13 Again, puts them in the winter circle as far as being
14 guilty of all these charges. With just that background, I
15 didn't get to fill out through testimony the way I wanted.
16 I wanted to put that on the record, so thank you for
17 indulging me on that.

18 Turning to the last issue which is the charge,
19 it was a bit unorthodox. If you look at the record
20 actually, Mr. Sutherland is -- and I'll give you the page
21 numbers for this, but Mr. Sutherland is taking quite a bit
22 of time during the charge conference. He has the judge
23 tinker with the language on hand of one hand of all, which
24 is probably the most important charge in this case. He
25 also had some language taken out that -- about the

1 character of the instrument used which he had told the
2 judge he thought was a little bit to close to Belcher and
3 they went along with that.

4 This charge conference which I think is
5 important to read for the context is on pages 822 to 835
6 of the trial transcript. The judge does spot excuse me --
7 the judge does instruct the jury on specific intent at one
8 point. I think he has some context maybe of attempted arm
9 robbery, but he also at the conclusion and I think we
10 cover that during testimony. At the conclusion of the
11 instructions Ms. Campbell, the prosecutor, asked for a
12 further charge and that's when the judge charged general
13 intent as a -- or that basically specific intent is not
14 required for attempted murder.

15 Your Honor, this is 2014 trial. In 2015, we
16 actually got -- is when the clarification started where
17 then Chief Judge Few had held an opinion -- published
18 opinion that, that attempted murder is a specific intent
19 crime and that opinion came out on April 22nd of 2015.
20 The Supreme Court then reviewed that case and affirmed is
21 modified in 2017. And, your Honor, that's the cases I
22 have a copy of for you, so I'm going to bring those cases
23 up now. And I'm also bringing the third case up I
24 explain.

25 THE COURT: Thank you. Mr. Waller, any

1 objection to the case law?

2 MR. WALLER: No, your Honor. I have no
3 objection to the case law. No objection, your Honor.

4 THE COURT: Thank you.

5 MR. SPENCER: The third case I brought up to you
6 is Courthouses vs. Abbott and that's a Fourth Circuit
7 federal case. Of course, we're here on a federal issue
8 which is Stickland, but it's actually also consistent with
9 South Carolina law but counsels not required to be
10 clairvoyant in anticipating changes in the law. And at
11 the time of 2014, we didn't really know for sure whether
12 attempted murder was specific intent crime or general
13 intent crime. I think Mr. Sutherland during his testimony
14 even said -- talked about, you know, he thought about it
15 as something like ABWIK. And I think that was an
16 interesting comment that I, you know, didn't expect, but
17 it actually ties very closely to the concurring opinion in
18 the Supreme Court's holding in King. And the concurring
19 opinion was written by Justice Kittredge. And, you know,
20 just put this into the record, he agreed the statutory
21 language created an ambiguity because of the intent to
22 kill language in the statute, but he also felt that the --
23 reiterated, you know, first of all that the task of the
24 Supreme Court was to discern what the general assembly
25 intended. He concluded that the legislature intended to

1 repeal ABIK and replace it with attempted murder. And he
2 was persuaded in his analysis that the legislatures use of
3 what the verbatim definition of assault and battery with
4 intent to kill into attempted murder and was that the
5 legislature intended to codify attempted murder as a
6 general intent crime. And so I think Justice Kittredge is
7 doing this in 2017 concluding that he feels like it was
8 suppose to be a general intent crime. Then I don't think
9 we can say that Mr. Sutherland analysis of the issue was
10 failure to raise an objection in 2014 before anybody had
11 actually issued an opinion on whether it was specific
12 intent or a general intent crime. I don't think it could
13 be considered to be ineffective assistance of counsel.

14 Strickland itself reminds us that we're suppose
15 to try to remove -- try and remove the distorting effects
16 of hindsight when we're analyzing counsel's conduct, and
17 we're suppose to look at the time of trial. And I think
18 what we have here in the trial record is obviously Mr.
19 Sutherland trying to get the best charges he can and not
20 anticipating a change in law that had not occurred yet,
21 which certainly a clarification, and therefore his
22 performance doesn't fall below professional norms.

23 And I would also note that this would only go to
24 attempted -- the attempted murder conviction. It wouldn't
25 go to the murder conviction and wouldn't go to the

1 burglary first conviction, which those charges he receive
2 45 years on attempted murder. He received a 30 year
3 sentence.

4 With that, your Honor, I would ask that this
5 application be denied. I think the remaining items, I
6 think, clearly show no deficiency. I think, this clearly
7 is no deficiency. There's no prejudice. At the end of
8 the day, I think Mr. Sutherland did an excellent job of
9 attacking all three sort of components of this trial to
10 the best of his ability, but at the end of the day these
11 three components really combined and created overwhelming
12 evidence. None of the errors discussed would have change
13 the outcome of trial or to accept those deficiencies of
14 counsel. Thank you, Your Honor.

15 THE COURT: Okay. Thank you. Anything else,
16 Mr. Waller?

17 MR. WALLER: Your Honor, just a very brief
18 clarification, the issue with the jury charge is not that
19 Mr. Sutherland didn't object to it, it's that my reading
20 of the transcript particularly on page 914 is that the
21 language that was recharge to the jury was at his request,
22 so it's not anticipated. He's actually requesting the
23 change, so that's what our argument centers on.

24 THE COURT: Okay. And so your argument is that
25 counsel for Mr. Roberts was ineffective because he

1 requested that Judge Early -- after Judge Early gave a
2 charge which was the law at the time on attempted murder
3 as well as the full charge on the other charges. Miss
4 Attorney -- was the deputy solicitor here Ms. Luck
5 Campbell. Anyway, okay, Deputy Solicitor Luck Campbell or
6 Assistant Solicitor Luck Campbell and Defense Counsel
7 Tivis Sutherland, IV, either agreed in a charge conference
8 that was on the record for Judge Early to recharge part of
9 the law to the jury, but I thought that it was the
10 Solicitor's idea for there to be an amended charge. Am I
11 wrong about that?

12 MR. WALLER: My understanding of when they
13 brought the jury back out to recharge them was that the
14 language that was recharged was Mr. Sutherland's request.

15 THE COURT: Okay. And maybe I was just confused
16 that in reading it but anyway -- but it's your position
17 that Mr. Sutherland even though King had not been appealed
18 yet and the Court of Appeals had not made a ruling on it
19 that was later affirmed by the Supreme Court with more --
20 I guess, more detail, that Mr. Sutherland was ineffective
21 or deficient for agreeing for or requesting the charge --
22 the amended charge.

23 MR. WALLER: Yes, your Honor.

24 THE COURT: Okay. All right. I just wanted to
25 be clear. Okay. Anything else?

1 MR. SPENCER: And, your Honor, and I thought --
2 and this is a very confusing record, but I thought
3 specifically what Ms. Campbell was talking about was the
4 request that Mr. Sutherland had made on 8-31, which was
5 to -- which was the proposed charge that included a
6 mentioning of the character the instrument used. On 830,
7 Judge Early gives the charge that he plans to give. 831
8 lines 20 to 23, Mr. Sutherland says he has a problem with
9 the instrument used charge. Now, I think it was part of
10 that general intent charge, I guess, and so he's objecting
11 as part of the charge, but not the part of the charge that
12 King addresses. That's my understanding of it. To me, it
13 gets a little bit convoluted trying to read through that
14 actually.

15 THE COURT: But do you all agree that the charge
16 was the law at the time?

17 MR. WALLER: I do, your Honor. I think my --
18 the question in my mind was that there is no valid trial
19 strategy to requesting a charge or requesting an
20 alteration of the charge at that time. No articulable
21 valid trial strategy.

22 THE COURT: Okay.

23 MR. SPENCER: I think when you have a jury
24 instruction and there's no law that gives you notice that
25 you need to object it or decline it or whatever, you know,

1 I think that falls -- that's a question of professional
2 judgment and questions whether it falls below the norms.
3 It doesn't have to be a strategic reason for not objecting
4 to something that no laws counting we need to object to.
5 And certainly a lot of judges -- and the State felt that
6 that was a general intent crime at the time of trial.

7 THE COURT: Okay. Okay. It is an interesting
8 case. I've read it. I note that Judge Benjamin and Judge
9 Mark Hayes both circuit judges sat with the Supreme Court
10 when they heard that case. Okay. Anything else?

11 MR. WALLER: Nothing from the applicant, your
12 Honor.

13 MR. SPENCER: Nothing from the State.

14 THE COURT: Okay. And so I will say this then
15 for the benefit of Mr. Roberts. Sir, I certainly do
16 understand that this is important to you and I'm much
17 impressed with the lawyers for both sides because they had
18 a lot of information to go through and neither one of them
19 were part of this of the record that was being made. And
20 so I know it's your focus is to go through and review
21 everything. And they also have spent a lot of time doing
22 that and have tried to highlight for me the important
23 parts of the record. I am going to re-read the entire
24 record, sir, before I issue my written instructions
25 regarding my decision. I routinely handle post-conviction

1 relief matters this way because I like to prepare by
2 reviewing. I like to hear the testimony and arguments,
3 and then I'm going to review it again before I issue those
4 instructions in writing. They will be forwarded to both
5 lawyers via electronic mail, and I will do so quickly as
6 possible. I try to do these in order that they are heard.
7 And the first case today, the record is five of these, and
8 so I'm going to review that one and rule on it. And then
9 I will get to yours. And I'm going to tell everybody this
10 week that I generally rule in the order that the cases are
11 heard. And so the good news is I will review it and I'm
12 not going to rule today though. Okay, that's the bad
13 news, okay.

14 MR. ROBERTS: Thank you. I say thank you.

15 THE COURT: Oh, sure. Okay. And so -- and to
16 family members that are here, I know this is a difficult
17 thing for everybody, and thank you all for being here.
18 Thank you counsel for your professionalism and your
19 efficient manner in handling this. It's a lot of
20 information to cover very quickly, so thank you. Anything
21 else?

22 MR. WALLER: Nothing, your Honor. Thank you.

23 THE COURT: Okay. All right, good luck to you
24 all.

25 END OF REQUESTED TRANSCRIPT

murder (2013-GS-40-01458, 2013-GS-40-01460), murder (2013-GS-40-01452), attempted armed robbery (2013-GS-40-01481), and first-degree burglary (2013-GS-40-01449). These charges resulted from a home invasion and armed robbery attempt that resulted in a murder and two counts of attempted murder. The State's theory of the case at trial was Applicant was one of four participants, and one of two that entered the house and made an attempted robbery. Once ejected from the house, Applicant shot and killed a bystander in the driveway outside the house.

On February 24, 2014, Applicant's case was called to trial before the Honorable Doyet A. Early, III, circuit court judge. Tivis C. Sutherland, IV, Esquire represented Applicant. Assistant Solicitors Luck Campbell, Nicole M. Simpson, and Meghan L. Walker of the Fifth Circuit Solicitor's Office prosecuted the case. On February 28, 2015, the jury found Applicant guilty as indicted of all charges. Judge Early sentenced Applicant to imprisonment for concurrent terms of forty-five years for first-degree burglary, thirty years for each count of attempted murder, forty-five years for murder, and twenty years for attempted armed robbery.

Applicant appealed. Chief Appellate Defender Robert M. Dudek of the South Carolina Commission filed a brief on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction on July 13, 2016. State v. Roberts, Op. No. 2016-UP-358 (S.C. Ct. App 2016). The remittitur was returned to the circuit court on August 11, 2016.

At the hearing, Applicant raised several allegations of ineffective assistance of counsel. Applicant did not pursue any allegations of ineffective assistance of appellate counsel, prosecutorial misconduct, or due process, and this Court finds those allegations were waived.

FACTS AT TRIAL

Applicant's friend, Jwaun Duckett, and all the codefendants: Demetrice James, Vincent Nelson, Jr., and Deshawn McClary, testified against Applicant. Testimony conflicted on the

exact membership of the group, but Applicant and his codefendants were alleged to be members of a rap group named "600." Tr. p. 403; pp. 410-11; pp. 663-64. Duckett testified Applicant, James, Nelson, and McClary were present when Applicant discussed committing a robbery. Duckett declined to participate. Tr. pp. 408-12.

The robbery discussed was the robbery of the Davis's. Trenton Scott, one of the two sons who became victims of the burglary and robbery, explained that the household had a recording studio, hair salon, and athletic room on the first floor of the house, with the living quarters upstairs. Brandon Jones, the murder victim, was a cousin who recorded at the house. The Davis household was a place youth would hang out at and the family members helped friends that were having a hard time by providing food and clothes or maybe paying them for household cleaning. Trenton's mother took Nelson under her wing and the family helped him out. They treated him like family. Tr. pp. 324-27.

Joshua Williams testified he spent a lot of time at the Davis's and saw Nelson there on occasion. Nelson came over around 10 p.m. He testified Nelson's demeanor seemed odd and when Nelson answered his phone, he said, "I'm inside." Then William, Nelson, and Brandon (the murder victim) went outside to smoke. While outside, Williams saw three men in a sort of formation headed to the house. One of them giggled, then made a sudden turn and pointed a gun at Williams and told him to get on the ground. Williams was then hit with a pistol. Tr. pp. 231-40. The gunman went in the house and Williams heard glass breaking. Meanwhile, two individuals were beating on Victim. Williams then heard Nelson yelling "let's go, let's go." Williams heard someone say "600, don't do it" before he then heard gunshots. Tr. pp. 242-43.

Applicant was identified by both Trenton and Troy Scott and one of two men who broke into the house and engaged in a fight with them. Trenton testified Nelson was acting "out of

character"—he was pacing back and forth, and he received a number of phone calls, which was odd since Nelson did not normally have a cell phone. Tr. p. 331, lines 2–16. Nelson pressured Jones to go outside to smoke a cigarette, and Jones eventually gave in. Tr. pp. 331-32.

Trenton carried some hangers when he ran into Applicant, who pointed a gun at him. Applicant hit Trenton with a gun, but Trenton got up, hit Applicant and Applicant fell through a glass table and dropped his gun. Demetrice James picked up the gun and passed it to Applicant. Trenton did not know James, but recognized him from the neighborhood. Trenton then fought with James and Applicant passed the gun to James. When Trenton's brother, Troy, joined the fight, they pushed James and Applicant out of the room, tried to push the door as the gun poked out, and then opened the door and rushed James and Applicant, who both fled. However, James fired the gun as he departed and shot Trenton in the arm. Tr. pp. 332-41. Trenton picked both James and Applicant out of photo lineups. Tr. pp. 347-49.

Troy testified how they treated Nelson like family. He likewise noticed Nelson acted nervous that night and wanted a smoke. Troy heard glass breaking and went into the basement room to see Trenton and Applicant fighting. He testified similarly as Trenton, although when he first ran into the room, James had the gun. Troy confirmed Trenton was shot, but they managed to eject Applicant and James from the house. Troy then heard five or six more shots outside the house. When he went outside, he discovered Brandon (Victim). They called for help. Tr. pp. 448-53. Troy also picked Applicant and James out of photographic lineups. Tr. pp. 459-60.

Nelson testified he told the group about studio equipment in Davis's house. Applicant gave him Applicant's phone. The plan was for Nelson to visit the Davis's house and call once he was inside. Tr. pp. 521-30. When things did not go as planned, Nelson ran away and heard shots fired as he fled. He later met Applicant and McClary back at Applicant's house. Applicant

went upstairs and used bleach on the clothes Applicant wore during the burglary. Tr. pp. 543-548.

Chandler Davis, father to the two Davis brothers, found Victim and called EMS. Tr. pp. 252-55. Cari Pearson dated Troy. She testified similarly that Nelson acted strange. She told this to law enforcement, and she pulled up Nelson's Facebook page which talked about robbing people. Tr. pp. 468-77.

James testified he agreed to go with Applicant and McClary to meet Nelson at the studio. James admitted becoming involved in an altercation inside the house because Applicant was a "dear friend." James testified Applicant had a gun, dropped the gun during fighting, and James picked it up. James testified his arm was caught in the door and the gun went off while they were trying to leave the house. James testified as he ran away, he saw Applicant standing over the victim and fire a shot. He heard more shots as he ran away. Tr. pp. 489-97.

McClary testified he remained outside during the failed robbery. He heard a gunshot a couple of minutes after Applicant and James entered the house. Then applicant and James ran out of the house. Applicant had the gun at this point. McClary saw Applicant standing over Victim, shooting. Tr. pp. 672-77. McClary admitted he has a "600" tattoo on his arm and counsel argued McClary's nickname was 600 and he was the shooter. Tr. p. 219; p. 663.

Applicant's statement to law enforcement admitted he was at his house with Nelson, McClary, and James, when Nelson discussed doing a lick at a house with a studio. Nelson left five minutes before everyone else with Applicant's phone. Applicant confirmed, "the plan was that [Nelson] would get inside and then call us to let us know when to come." Tr. pp. 740-41. Applicant claimed McClary went with James in the house. He admitted though to helping his codefendants when they were "tussling" with someone in front of the house. He claimed during

the tussle, he was hit in the eye. Tr. p. 741. Trenton previously testified he hit Applicant in the face. Tr. p. 334. Applicant testified McClary shot Victim. Applicant also claimed he accidentally bleached his clothes while washing the dishes. Tr. p. 741.

Investigator McDonald, who took Applicant's statement, confirmed that law enforcement found bleached clothes at Applicant's residence. He also confirmed that Applicant had a black eye. Tr. pp. 744-45.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

DISCUSSION

In a post-conviction relief action, an applicant carries the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to

receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Padilla v. Kentucky, 559 U.S. 356, 371 (2010) (“Surmounting Strickland’s high bar is never an easy task.”).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court will now address each allegation of ineffective assistance of counsel:

Impeachment of Jwaun Duckett

Duckett was present at the Roberts’ house when law enforcement arrived looking for codefendant Vincent Nelson, who was an immediate suspect in the burglary. Duckett was found hiding in the closet with Applicant’s cell phone. Previously, he was present when the plan to rob the Davis residence came about, but he declined to participate. Tr. pp. 400-10. At trial, the prosecution agreed Duckett should be impeached with his recent conviction for purse snatching, but objected to defense counsel eliciting testimony that he was originally charged with common law robbery. The trial court sustained the prosecution’s objection and allowed Duckett to be impeached only with purse snatching and not the fact that he was originally charged with common law burglary. Tr. pp. 397-99. Applicant alleges counsel was ineffective for failing to preserve the issue for appeal.

This Court finds that Applicant was not prejudiced by the alleged deficiency. Duckett testified not only to the purse snatching conviction, but also to several other convictions,

including possession with intent to distribute cocaine, resisting arrest, receiving stolen goods, second degree burglary, and petty larceny. Tr. pp. 427-29. This Court notes there is no indication the reduction of Duckett's charge from common law robbery to purse snatching was connected to his cooperation in the present case. Further, this Court does not believe that impeachment for common law robbery instead of purse snatching carries any more weight for impeachment purposes. Finally, although it is easier to determine this issue on prejudice, this Court does not believe counsel's performance was deficient. Counsel did inquire about the possibility of referencing the original common law robbery charge, and the trial court declined to allow it. This Court does not believe that the ruling would constitute an abuse of discretion such as would alter the result. The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "An error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence." State v. Stephens, 398 S.C. 314, 320, 728 S.E.2d 68, 71 (Ct. App. 2012).

Accordingly, this Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

"Missed objections during the testimony of Demitrice James and Vincent Nelson."

Applicant makes a general claim about missed objections by two codefendants that testified against Applicant – James and Nelson. James seemed to minimize his own conduct

during his trial testimony, leading trial counsel to ask: “The way that I hear your testimony here today is that this is all sort of by happenstance. That you were just in the wrong place at the wrong time, and that you had no criminal intent. Is that what your testimony is?” Tr. p. 508, line 22 – p. 509, line 3. Applicant failed to point to specific testimony requiring an objection and this Court finds little worthy of objection.

As for Vincent Nelson, at trial, Nelson would not answer questions. The trial court recessed during direct examination to allow Nelson’s attorney to confer with him. Upon returning to the stand, Nelson improved somewhat, but remained a hesitant witness for the State and the State asked leading questions throughout to pull answers out of Nelson. Trial counsel testified he felt Nelson not cooperating on the stand was good for the defense. This Court notes in reviewing the trial transcript, Nelson’s level of cooperation with the State remained tenuous and halting; and the frustration from the prosecution is apparent even in the cold record. From Applicant’s presentation at the PCR hearing, it appears perhaps the complaint was with the prosecution asking leading questions without objection. This Court notes under Rule 611 (c), SCRE, leading is allowed for a witness identified with an adverse party. In the present case, Nelson admitted to being close friends with Applicant and may properly be identified with Applicant as an adverse party. Further, under Rule 611(a), the trial court is allowed to control the mode of interrogation of a witness to “(1) make the interrogation and presentation effective for the ascertainment of the truth.”

This Court finds that for both witnesses, the prosecution’s presentation fell short of what it would expect and trial counsel’s assessment of the situation was reasonable. This Court finds that trial counsel did not make any omissions during direct examination that fell below professional norms and finds his performance was not deficient. Further, this Court finds

Applicant did not meet his burden of showing prejudice, especially in light of the overwhelming evidence of guilt in this case. McClary and Duckett confirmed Applicant's role in the burglary and robbery, and Applicant's admission incriminates him for all the crimes committed by himself and his confederates. Applicant was picked out of the photographic lineup by both Troy and Trenton as the intruder with the gun that they ejected from the house. Evidence of guilt was overwhelming.

Testimony of Investigator McDonald

Applicant complains trial counsel should have objected to testimony from Investigator McDonald concerning his interrogation of Applicant. Investigator McDonald testified as follows:

[Applicant] initially told us he didn't have any involvement or knowledge in this incident. We talked a little bit about this, kind of laid it out. . . . Sergeant Isenhoward would periodically check back with us. He was interviewing Mr. Duckett, as well as Major Smith and Investigator Boland were interviewing Nelson. So, information was starting to flow about the incident, and we're starting to get some more information about parties involved. Of course, both of those parties indicated Maurice was involved in this incident. As we started to confront Maurice with some of these facts, his story started to change.

Tr. p. 738, line 21 – p. 739, line 9.

Trial counsel explained the testimony was not significant to him because both Nelson and Duckett testified at trial and were cross-examined. Applicant contends the testimony was hearsay. However, this Court notes the testimony was not for the truth of the matter asserted, but rather to explain the context leading to Applicant's admissions, which included his involvement in the robbery and the struggle that ensued. This Court finds trial counsel made a reasonable professional judgment in declining to object to the testimony. Further, this Court finds the statement was not for the truth of the matter asserted, but to explain what led to Applicant's

subsequent admission to his involvement in the burglary. Finally, this Court does not believe Applicant was prejudiced because Investigator McDonald did not relate specifically what Nelson or Duckett said about Applicant's involvement in the case. This Court finds Applicant did not meet either prong of Strickland and denies the allegation.

Counsel's impeachment of Deputy Smith (p. 810)

The prosecutor went through the steps with Deputy Smith that he took during the investigation and asked Deputy Smith, "And from the credible evidence, [who was] the shooter?" Deputy Smith responded it was the Applicant. Tr. p. 810, lines 1-2. On cross-examination, counsel interrogated Deputy Smith as follows:

Q: Well, you testified that the credible evidence points to Maurice as shooting outside?

A: Yes.

Q: And that's – those fellows right there, Deshawn McClary, Demetrice James, and Vincent Nelson ---

A: I believe they all indicate that.

Q: Okay, and so they're credible to you?

A: In this particular instance they are, yes, sir.

Q: Okay. Fair enough.

A: They all defined their involvement. Demetrice James ---

Court: All right. Hold, hold on one second. Let's – listen, fellows, ladies. This jury determines the credibility of the witnesses. Not the witnesses. So, that is y'all's sole responsibility to determine who's telling the truth. Not this witness. So, move on to another area.

Sutherland: Yes, indeed. Thank you, Your Honor.

Tr. p. 810, line 16 – p. 811, line 6.

Applicant alleges counsel was ineffective by attempting to elicit testimony from the deputy about the credibility of the codefendants. This Court finds “and so they’re credible to you?” is clearly a rhetorical question that is calculated to undermine the prosecution by focusing on the prosecution’s dependence on co-defendants the jury might find unsavory in character. This is clearly a reasonable trial strategy. Counsel, in hindsight, testified he should have objected rather than “mock” the deputy. This Court, however, believes it was an effective display of advocacy for his client and does not find his performance in this regard deficient. It was well done, and was a reasonable approach the prosecution’s question about the “credible evidence.” In the end, as counsel acknowledged, the trial court provided a curative instruction that only the jury determined the credibility of witnesses, a curative instruction defense counsel adopted by thanking the trial court. Neither prong of Strickland was proved. Accordingly, this allegation is denied.

Jury instruction for attempted murder that only a general intent was required

Applicant alleges counsel was ineffective for failing to object to a jury instruction that only a general intent was required for attempted murder. This trial occurred in 2014. In 2015, the Court of Appeals determined that a specific intent to commit murder was required to prove attempted murder. State v. King, 412 S.C. 403, 410-12, 772 S.E.2d 189, 193 (Ct. App. 2005). Subsequently, the Supreme Court affirmed as modified the Court of Appeals’ opinion. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017). However, the opinion was not unanimous as to whether attempted murder was a specific intent crime. Justice Kittredge noted:

The majority and I agree that the statutory language creates an ambiguity – “with intent to kill” speaks to a specific intent crime while “malice aforethought, either expressed or implied” points to a general intent crime. I would resort to legislative history to resolve the tension between the two phrases.

Id. at 72, 810 S.E.2d at 31 (Kittredge, J., concurring). Justice Kittredge favorably cited State v. Foust, 325 S.C. 12, 14-15, 479 S.E.2d 50, 51 (1996), which held the then-existing offense of assault and battery with intent to kill (ABWIK) required only a general intent. Justice Kittredge found section 16-3-29 was the “verbatim” codification of the common law offense of ABWIK, and then queried, “If the legislature intended to create a specific intent crime, why did it use verbatim the language of the repealed common law offense of ABWIK that had a settled understanding as a general intent crime?” Id. at 73, 810 S.E.2d at 32. Justice Kittredge concluded he would find the legislature intended for the offense to be a general intent crime. Id. at 74, 810 S.E.2d at 32.

This Court understands that a central tenet of Strickland is it must eliminate the distorting effects of hindsight in analyzing counsel’s conduct. In keeping with this, both the Fourth Circuit and our own State court understands Strickland does not require counsel to be clairvoyant and anticipate changes in the law. Harden v. State, 360 S.C. 405, 409, 602 S.E.2d 48, 50 (2004). The Supreme Court found the lower court erred in granting relief on the basis that defense counsel should have objected to an instruction contrary to State v. Daniels, 401 S.C. 251, 254, 737 S.E.2d 473, 474 (2012), five years before Daniels was issued. Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016). The Supreme Court held “that the PCR court erred in finding trial counsel ineffective for failing to object to the jury instruction when no case law existed rendering the instruction improper per se.” Id. In reaching this result, the Supreme Court declared the following:

This Court has previously held that reasonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law. E.g., Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law. . . .” (citing Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764,

765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *Thornes*, 310 S.C. at 309-10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”).

Id.; see *Kornaharens v. Evatt*, 66 F.3d 1350 (4th Cir. 1995) (holding “the case law is clear that an attorney's assistance is not rendered ineffective because he failed to anticipate a new rule of law.”).

In the present case, Justice Kittredge’s disagreement on the intent element is proof that in 2014, counsel could believe that only a general intent was necessary to prove attempted murder. Justice Kittredge’s opinion is consistent with the State’s argument referenced in the Court of Appeals’ opinion. Reasonable minds back in 2014 certainly could disagree on what the statute required – the issue was not finally settled until 2017. Therefore, counsel’s failure to object to the general intent language does not fall below professional norms. Further, in light of the overwhelming evidence of guilt, including that his codefendant fired the shots constituting the charge while they were engaged in a violent home invasion and burglary, this Court finds Applicant was not prejudiced by the alleged error. Therefore, this claim, and the application itself, are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 25th day of April, 2022.



GRACE GILCHRIST KNIE
Presiding Judge
Fifth Judicial Circuit

Spartanburg, South Carolina

1058

WITNESSES

(S) J H Boland - Richland County Sheriff

DOCKET NO. 2013GSS4001452

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive them to the Grand Jury.
Defendant
I hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILED
JACQUETTE W. M. GARDNER
C.C.C.P.&G.S. CLERK
RICHLAND COUNTY
SOUTH CAROLINA

ARREST WARRANT NUMBER

2013A4010200350

42

FEBRUARY TERM 2013

COURT OF GENERAL SESSIONS

THE STATE vs.

Maurice A Roberts

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: FEB 13 2013

VERDICT

Indictment for MURDER

SC Code: 16-03-0010

CDR Code: 0116

Foreperson of Petit Jury Date:

WITNESSES

(S) J H Boland - Richland County
Sheriff

DOCKET NO. 2013GSS4001449

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

42

ARREST WARRANT NUMBER
2013AA4010200347

THE STATE
vs.

Maurice A Roberts

C.C.C. PLS. AND G.S.

Defendant

Witness:

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: FEB 13 2013

VERDICT

Indictment for
BURGLARY 1ST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive present to the Grand Jury.
Defendant
I hereby appear in my own proper person and plead guilty to the within indictment or to
CERTIFIED TRUE COPY OF ORIGINAL FILED,
Janette W. M. [Signature]
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

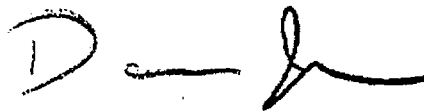
INDICTMENT

At a Court of General Sessions, convened on February 13, 2013,
the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Maurice A Roberts did in Richland County on or about January 25, 2013, enter the dwelling of Chandler Davis located at [REDACTED] Williamsburg Drive, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon, and/or displayed what was or appeared to be a knife or firearm and/or caused physical injury to a non-participant in the crime and/or the entering or remaining occurred during the nighttime hours or hours of darkness all in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) J H Boland - Richland County Sheriff

DOCKET NO. 2013GS4001458

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive present to the Grand Jury.

Defendant

CERTIFIED TRUE COPY OF ORIGINAL FILED, *Janeite White* C.C.C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2013A4010200348

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

42

Defendant

THE STATE vs.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Maurice A Roberts

TRUE BILL

Foreperson of Grand Jury FEB 13 2013 Date:

VERDICT

Indictment for ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury

Date:

WITNESSES

(s) - J.H. Boland - RCSD

DOCKET NO. 2013GSS4001481

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

42

ARREST WARRANT NUMBER

DP13042

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury **FEB 13 2013**
Date:

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised of my legal rights, I hereby waive the right to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILED
Jeanette W. M. [Signature]
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

Maurice A Roberts

THE STATE

vs.

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330(B)

CDR Code: 0026

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 13, 2013,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Maurice A Roberts did, along with co-defendants in Richland County on or about January 25, 2013, did attempt to take and carry away the personal property from or in the immediate presence of Trenton Scott with intent to deprive him of possession by use of force, threats, or intimidation, and while armed with a deadly weapon, and/or while alleging, either by action or words, that he was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon all in violation of 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF 1068 SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE VS.)
Maurice A Roberts)
 AKA:)
 Race: BLACK Sex: M Age: 18)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED] Marlboro St Apt [REDACTED])
 City, State, Zip: Columbia, SC 29203)
 DL#: [REDACTED] SID#: [REDACTED])
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2013GS4001452 ✓
 A/W#: 2013A4010200350
 Date of Offense: 1/25/2013
 S.C. Code § : 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Murder CONVICTED OF or PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The pleas: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 13009 [Signature] [Signature] 6965
 Campbell, Duck SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 45 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
 *Fine: _____ \$ _____
 § 14-1-206 (Assessments 107.5 %) _____ \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 _____ \$ _____
 § 14-1-211(A)(2) (DUI Surcharge) \$100 _____ \$ _____
 § 56-5-2995 (DUI Assessment) \$12 _____ \$ _____
 § 56-1-286 (DUI Breath Test) \$25 _____ \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 _____ \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 _____ \$ _____
 § 14-1-213 (Drug Court Surcharge) \$150 _____ \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 _____ \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 _____ \$ _____
 3% to County (if paid in installments) _____ \$ _____
 TOTAL _____ \$ _____

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 Jeannette Williams
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

Clerk of Court/ Deputy Clerk Jeannette Williams
 Court Reporter: E. Morris
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 0136
 Sentence Date: February 28, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE VS.)
Maurice A Roberts)
 AKA: _____)
 Race: BLACK Sex: M Age: 18)
 DOB: _____ SS#: _____)
 Address: Marlboro St Apt)
 City, State, Zip: Columbia, SC 29203)
 DL#: _____ SID#: _____)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2013GS4001449 ✓
 A/W#: 2013A4010200347
 Date of Offense: 1/25/2013
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Burglary 1st

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Campbell, Luck SC Bar# 13009 Maurice Roberts Defendant TC S D Attorney for Defendant 6965 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 45 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-GS-40-0145a
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

CERTIFIED TRUE COPY OF ORIGINAL FILED

Appointed PD or appointed other counsel § 47.12 requires \$500 be paid during probation.
Jeanette McBride
 C.C.C.P.&G.S.

RICHLAND COUNTY SOUTH CAROLINA

Clerk of Court/ Deputy Clerk Jeanette McBride
 Court Reporter: Morris
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 0136
 Sentence Date: February 28, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

Maurice A Roberts

INDICTMENT/CASE#: 2013GS4001458 ✓

A/W#: 2013A4010200348

Date of Offense: 1/25/2013

S.C. Code § : 16-03-0029

CDR Code #: 3410

AKA:

Race: BLACK Sex: M Age: 18

DOB: [REDACTED] SS#: [REDACTED]

Address: Marlboro St Apt [REDACTED]

City, State, Zip: Columbia, SC 29203

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Campbell, Lack SC Bar# 13009 [Signature] Maurice Roberts Defendant [Signature] Attorney for Defendant [Signature] SC Bar# 6968

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-GS-40-01452
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____
Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

CERTIFIED TRUE COPY OF ORIGINAL FILED, [Signature] Jeanette W. McBride C.C.C.P.&G.S. RICHLAND COUNTY SOUTH CAROLINA

Presiding Judge [Signature]
Judge Code: 0136
Sentence Date: February 28, 2014

Clerk of Court/ Deputy Clerk [Signature] Jeanette McBride
Court Reporter: [Signature] Harris
SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 1071

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2013GS4001460

Maurice A Roberts

A/W#: 2013A4010200349

AKA:

Date of Offense: 1/25/2013

Race: BLACK Sex: M Age: 18

S.C. Code §: 16-03-0029

DOB: SS#:

CDR Code #: 3410

Address: Marlboro St Apt

SENTENCE SHEET

City, State, Zip: Columbia, SC 29203

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Campbell Luck SC Bar# 13009 Maurice Roberts Defendant Attorney for Defendant SC Bar# 69690

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-GS-40-01452
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
*Fine: \$
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$
3% to County (if paid in installments) \$
TOTAL \$

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly prmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

CERTIFIED TRUE COPY OF ORIGINAL FILED,
Jocette W McBride
C.C.C.P.&C.S.
RICHLAND COUNTY SOUTH CAROLINA

Presiding Judge
Judge Code: 0136
Sentence Date: February 28, 2014

Clerk of Court/ Deputy Clerk Jocette W McBride B
Court Reporter: Harris

STATE OF ¹⁰⁷² SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE VS.)
Maurice A Roberts)
 AKA:)
 Race: BLACK Sex: M Age: 18)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED] Marlboro St. Apt. [REDACTED])
 City, State, Zip: Columbia, SC 29203)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4001481
 A/W#: DP13042
 Date of Offense: 1/25/2013
 S.C. Code § : 16-11-0330(B)
 CDR Code #: 0026

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Robbery / Attempted armed, or allegedly armed, robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The pleas: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 13009 [Signature] [Signature] [Signature]
 Campbell, Luck SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-GS-40-01452
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 Recipient: _____ May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

CERTIFIED TRUE COPY OF ORIGINAL FILED
 Appointed PD or appointed other county clerk
 § 47.12 requires \$500 be paid to Clerk during probation.
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

Clerk of Court/ Deputy Clerk Geonette Mckinney
 Court Reporter: Harris
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 0136
 Sentence Date: February 28, 2014