RECEIVED
Jun 27 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MAURICE ROBERTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000652

BRIEF OF PETITIONER

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Cases

South Carolina Cases

Statutes

Constitutional Provisions

ISSUE PRESENTED

Whether the PCR court erred where it denied post-conviction relief where counsel did not object to a jury instruction that specific intent to kill was not an element of attempted murder, since attempted murder required proof of a specific intent to kill, and since Petitioner was prejudiced by the improper instruction?

STATEMENT

On February 13, 2013, a Richland County Grand Jury indicted Maurice Roberts, Petitioner, for murder, first-degree burglary, two counts of attempted murder, and attempted armed robbery. App. 1058 – 1067. Petitioner was tried before the Honorable Doyet Early, III, and a jury, from February 24 – 28, 2014. Petitioner was represented by Tivis Sutherland. Luck Campbell, Nicole Simpson, and Meghan Walker represented the State. App. 1. Petitioner was convicted as indicted. App. 920, l. 6 – 922, l. 18. He was sentenced to serve concurrent terms of imprisonment of forty-five years for murder, forty-five years for first-degree burglary, thirty years for each count of attempted murder, and twenty years for attempted armed robbery. App. 1068 – 1072; App. 937, ll. 6-18.

After he exhausted his direct appeal remedies, on July 26, 2017, Petitioner filed an application for post-conviction relief (PCR). App. 939 – 944. On May 14, 2018, the State made its return, partial motion to dismiss, and motion for a more definite statement. App. 945 – 960. On March 24, 2022, Petitioner amended his application. App. 961. On March 28, 2022, a hearing was held on the matter before the Honorable Grace G. Knie. Jonathan Waller represented Petitioner. David Spencer represented the State. App. 962. On May 5, 2022, the PCR court issued an order of dismissal. App. 1043 – 1057. On May 12, 2022, Petitioner served notice of intent to appeal.

Petitioner sought a writ of certiorari on two issues, and the State made its return. On March 30, 2023, the Supreme Court transferred the case to this Court pursuant to Rule 243(l), SCACR. On February 27, 2024, this Court granted the petition for writ of certiorari as to Question 2 and denied it as to Question 1. This brief of petitioner follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue raised on appeal. *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839–40 (2018). The reviewing court must defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. *Id.* (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016)). However, the appellate court reviews questions of law de novo, with no deference to the PCR court. *Id.*

ARGUMENT

The PCR court erred where it denied post-conviction relief where counsel did not object to a jury instruction that specific intent to kill was not an element of attempted murder, since attempted murder required proof of a specific intent to kill, and since Petitioner was prejudiced by the improper instruction.

Counsel provided deficient representation when he failed to argue that the attempted murder statute required a specific intent to kill. Defense counsel did not object to the jury being instructed that specific intent to kill was not an element of attempted murder and that only general intent need be shown. Counsel's performance was deficient since attempted murder required specific intent to kill.

Relevant facts

Petitioner stood accused of participating in a botched burglary with three other men: Demetrice James, Deshawn McClary, and Vincent Nelson. The case involved the death of Brandon Jones (Decedent), and the wounding of Trenton Scott and Joshua Williams. App. 1058 – 1067; App. 202, l. 16 – 205, l. 2.

The State alleged that at approximately 10:00 p.m. on January 25, 2013, Trenton Scott and Troy Scott were in their parents' basement with friends Joshua Williams and Decedent. The Scotts had music recording equipment in the basement and Decedent was recording music that night. Vincent Nelson, a friend of the family known as "J School," came over unexpectedly and was let in by the Scotts' stepfather. App. 232, l. 21 – 234, l. 7; App. 330, ll. 10-24. Joshua Williams and the Scott brothers thought Vincent Nelson's behavior was "odd." Nelson was on the phone a lot, which was strange because Nelson did not own a phone. Nelson also paced and repeatedly asked Decedent to come outside and smoke a cigarette. Eventually, Decedent went

outside with Nelson and Williams to smoke. App. 331, l. 2 – 332, l. 1; App. 233, l. 16 – 238, l. 5; App. 442, l. 11 – 447, l. 19.

While they were outside, three strangers walked by several times before coming up to them. One of the strangers had a gun. According to Joshua Williams, the gunman pistol-whipped him and demanded keys from Decedent and from Vincent Nelson. According to Williams, Vincent Nelson said the keys were in the house. Combat broke out inside and outside the house. Williams claimed the gunman went into the house and the two remaining suspects beat him. Williams alleged he heard Decedent begging not to be shot. Williams did not identify any of the suspects. Williams was shot in the side during the melee. He stated he heard shots and felt himself get hit by one. App. 232, l. 21 – 244, l. 19.

Decedent was shot five times, with fatal wounds to his lungs and liver. App. 636, l. 9 – 641, l. 23. The wounds could have been inflicted by someone standing over him, according to a forensic pathologist. App. 644, ll. 11-14.

The State alleged Demetrice James shot Trenton Scott. According to Trenton Scott, a gunman ran into his basement, pointed the gun at him, and pistol-whipped him. Trenton Scott alleged he punched the gunman, and the gunman dropped the gun. Trenton Scott and the gunman scuffled for the gun before a second suspect came inside and grabbed the gun. Two suspects tried to get further inside the house, and Trenton Scott tried to barricade the door. The three men struggled, and the second suspect fired a shot through the open door, hitting Trenton Scott in the arm. Trenton Scott ran upstairs and heard five more shots. App. 332, l. 12 – 342, l. 25; App. 452, ll. 10-13. Trenton Scott identified Petitioner as the person who pistol-whipped him after chasing Decedent in at gunpoint. Trenton Scott identified Demetrice James as the man who picked up the gun during the scuffle and shot him (Trenton) through the doorway. App. 347, l. 1 – 353, l. 15.

Trenton Scott's brother Troy Scott also identified Petitioner as the person he saw scuffling with Trenton. Troy Scott also identified Demetrice James has the person he saw with a gun. App. 459, l. 1 – 461, l. 21.

Petitioner's codefendants (Demetrice James, Deshawn McClary, and Vincent Nelson) testified against him at trial. Codefendant Demetrice James claimed he, Petitioner, and Deshawn McClary went to meet up with Vincent Nelson. Demetrice James claimed Petitioner ran towards the men who were outside the Scott's house (Nelson, Decedent, and Joshua Williams) and he claimed Petitioner got in a fight. According to James, he went to help Petitioner and they were pulled into the house. James alleged Petitioner brandished a gun which went off twice during the scuffle. James claimed he ran outside and when he looked back, he saw Petitioner standing over Decedent, and he saw Petitioner shoot Decedent while Decedent was on the ground. App. 487, l. 21 – 496, l. 8. Finally, James claimed Petitioner threatened his father while the two were inexplicably being transported to the courthouse together. App. 506, ll. 8-23. According to James, he had no intent to commit any crimes and was simply in the wrong place at the wrong time. James had a juvenile adjudication for carrying a weapon on school grounds, and like Petitioner he faced the pending charges in this case. James also faced pending charges in additional cases of kidnapping, armed robbery, first-degree criminal sexual conduct, possession with intent to distribute marijuana, and possession with intent to distribute marijuana in proximity of a school. App. 508, l. 14 – 510, l. 24. James did not have a plea offer and admitted he hoped his testimony would "help him out down the road." App. 503, l. 8 – 505, l. 19.

Codefendant Vincent Nelson had just pleaded guilty to a reduced charge of voluntary manslaughter, as well as first-degree burglary, attempted armed robbery, and two counts of attempted murder for his conduct in this case. His sentencing was deferred and contingent upon

"truthful" testimony at Petitioner's trial. App. 515, l. 2 – 516, l. 22. Nelson was a reticent witness who consulted his attorney during his testimony and did not answer a number of questions posed to him by the solicitor. *See* App. 524, l. 3 – 527, l. 25. Nelson had told police that he took part in the attempted studio robbery, and he claimed Petitioner lent him a phone for his role. App. 528, l. 8 – 530, l. 14. Nelson claimed that after contact with Petitioner by phone, he went outside the Scotts' house with Joshua Williams and Decedent. According to Nelson, Petitioner came up to them with a .45 caliber gun and hit Decedent. Nelson alleged Petitioner and Demetrice James attempted to get into the house, but Nelson ran away. Nelson claimed he heard shots and heard either McClary or James yell, "Get that [expletive]." Nelson also claimed he later saw Petitioner put bleach on his clothes, and he claimed Petitioner told him not to "talk to anybody" about what happened. App. 534, l. 4 – 554, l. 7.

Codefendant Deshawn McClary, whose charges were still pending, testified he was part of a burglary plan with Petitioner, Demetrice James, and Vincent Nelson. McClary claimed that he was the lookout, that Petitioner had a gun, and that after Petitioner and James ran back out of the house, he saw Petitioner standing over Decedent shooting him. App. 668, l. 5 – 677, l. 24. McClary had a strong-arm robbery conviction and pending charges for these offenses. McClary also faced unrelated charges of armed robbery, kidnapping, and third-degree criminal sexual conduct. App. 685, l. 9 – 687, l. 24.

Petitioner was interrogated by police and initially denied involvement. However, the State claimed Petitioner eventually confessed to being part of a "lick" at the "studio." According to Officer McDonald, Petitioner said he was part of the burglary but denied having a gun.

McDonald alleged Petitioner claimed an unidentified man called "600"[1] was the gunman. McDonald also claimed Petitioner said his clothing was stained with bleach while cleaning dishes. App. 738, l. 21 – 744, l. 13. Petitioner's alleged confession was not video or audio recorded despite the availability of that technology in 2013. App. 760, l. 18 – 762, l. 1.

Officer McDonald observed that Petitioner had a black eye. App. 745, ll. 8-17. McDonald also read into the record text messages between Petitioner's phone (allegedly possessed by Vincent Nelson at the time of the events) and Deshawn McClary's phone which included, "Come on. I got two outside." And, "On the way," in response. App. 751, l. 4 – 752, l. 15. Although the court found Petitioner's confession was admissible, Officer McDonald admitted that when explaining Petitioner's *Miranda*[2] rights to him and the meaning of the word coercion, he told Petitioner, "I'm not putting a gun to your head to make you talk today." App. 760, ll. 8-17.

Other evidence introduced at trial included the testimony of Jwuan Duckett, who claimed he heard Petitioner and Vincent Nelson discussing plans to burglarize a home to obtain studio equipment. App. 408, l. 8 – 409, l. 25. Duckett also claimed Petitioner asked him to pull up a local news website the day after the incident. App. 426, l. 18 – 427, l. 17. However, Duckett had prior convictions and/or adjudications for possession with intent to distribute cocaine, resisting arrest, receiving stolen goods, second-degree burglary, petit larceny, and purse snatching. App. 427, l. 20 – 428, l. 18. Authorities found clothing with bleach on it behind Petitioner's apartment

---

[1] References to "600" came up a number of times during the trial. For example, Joshua Williams said he heard someone yell, "600 don't do it" just before shots were fired, and Jwuan Duckett told police that he, Petitioner, James, McClary, and Nelson were part of a rap group called "600." App. 243, ll. 16-19; App. 403, ll. 6-14; App. 432, l. 22 – 433, l. 20.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

complex. App. 744, ll. 14-18; App. 435, l. 17 – 438, l. 17. Shell casings of .45 caliber were found at the crime scene. App. 569, l. 5 – 571, l. 7.

In opening statements, the State argued Petitioner was guilty of murder because he was the person who shot and killed Decedent. It argued he was guilty of the two counts of attempted murder under the theory that the hand of one is hand of all. Tr. 215, ll. 6-9. When the State rested, the defense did not put up a case. App. 811, l. 23 – 818, l. 6. During the charge conference, the solicitor asked the jury be charged that specific intent to kill is not an element of attempted murder. Defense counsel had no objection. App. 914 – 916, l. 20; App. 831, ll. 2-23. However, when the judge charged the jury, he forgot about this requested instruction. After the jury had been charged and exited the courtroom, the solicitor repeated her request for a jury charge that specific intent to kill was not an element of attempted murder. Defense counsel again did not object. App. 914, l. 9 – 918, l. 25.

The court brought the jury back in to charge this incorrect point of law. The judge therefore not only charged the wrong thing, he charged the wrong thing in a manner that emphasized it. Moreover, the court twice repeated part of the incorrect instruction that specific intent to kill was not an element of attempted murder. It instructed the jury,

> Dealing with the offense of attempted murder, **a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury.**
>
> Intent means intending the result which actually occurs and not accidentally on [sic] involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.
>
> Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural

> tendency of which is to destroy another's life. So that's an element of attempted murder I've left out of the charge.

App. 917, ll. 9-24 (emphasis added). The solicitor incorrectly argued in closing that specific intent to kill was not an element of attempted murder. App. 845, l. 15 – 846, l. 846, l. 2. The jury deliberated for about an hour and a half before it convicted Petitioner as indicted. App. 920, l. 6 – 922, l. 18.

At the PCR hearing, trial counsel testified that he did not object to the erroneous jury instruction because he (incorrectly) thought attempted murder had the same elements as the already-repealed offense of assault and battery with intent to kill (ABIK or ABWIK). App. 1001, l. 21 – 1002, l. 7. "[W]hat was your understanding of attempted murder at the time[?]" App. 1001, ll. 22-25. "At the time I will say it must have been it was just ABIK. You know, the old ABIK . . ." App. 1002, ll. 5-7.

The PCR court's order of dismissal addressed Petitioner's claim that counsel's performance was deficient when he failed to object to a jury instruction that only a general intent was required for attempted murder. 1054 – 1056. The order noted that the trial occurred in 2014, which was prior to either this Court's 2015 decision in *State v. King*, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015) or the Supreme Court's 2017 decision in *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), decisions that concluded specific intent to kill was an element of attempted murder. App. 1054. The order noted that counsel was not required to be "clairvoyant" or to "foresee successful appellate challenges to novel questions of law." App. 1055. The order cited to Justice Kittredge's concurrence in *King* as proof that "counsel's failure to object to the general intent language does not fall below professional norms."[3] App. 1055 – 1056. The order of

[3] Justice Kittredge concurred in result in *King*, and concluded that the attempted murder statute "represents the codification of the common law offense of ABWIK," and "that a specific intent

dismissal also concluded that Petitioner was not prejudiced "in light of the overwhelming evidence of guilt." App. 1056.

Deficiency

S.C. Code Ann. § 16-3-29 was enacted in 2010, and it provides in relevant part that, "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." The statute contained the words "with intent to kill." At the time of Petitioner's trial, specific intent to kill was an element of attempted murder. *King*, 422 S.C. at 63-64, 810 S.E.2d at 26-27, later confirmed this. However, *King* did not change the law. The statute's 2010 enactment changed the law. *King* merely clarified what the statute mandated.

"Attempted murder was codified as part of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which abolished several common law assault and battery offenses including assault and battery with intent to kill, also known as ABWIK. *See* Act No. 273, 2010 S.C. Acts 1947-49." *State v. Taylor*, 434 S.C. 365, 369, 862 S.E.2d 924, 927 (Ct. App. 2021). "It replaced these with new, codified offenses including the crime of attempted murder." *Id.* "[A] specific intent to kill is an element of attempted murder." *State v. King*, 422 S.C. at 56, 810 S.E.2d at 22. "[T]he General Assembly created the offense of attempted murder by purposefully adding the language 'with intent to kill' to 'malice aforethought, either expressed or implied' to require a higher level of *mens rea* for attempted murder than that of murder." *Id.*, 422 S.C. at 61, 810 S.E.2d at 25. That an attempt crime requires "a higher level of *mens rea* than that of the completed crime, [] is the majority rule and a rule that our appellate courts and General Assembly have followed." *Id.*, at 56, 810 S.E.2d at 22.

---

to kill is not an element of the offense of attempted murder[.]" *King*, 422 S.C. at 73, 810 S.E.2d at 32 (Kittredge, J., concurring in result).

The South Carolina Supreme Court had already explained that the offense of attempted murder was a specific intent crime at common law. *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000), was published fourteen years before Petitioner's trial. Sutton was tried for both attempted murder and ABWIK. The Supreme Court addressed the issue of whether attempted murder was an offense in this state, and found it was not. However, the Supreme Court explained that if the offense of attempted murder was recognized, it would require a specific intent to kill. "Attempted murder would require the specific intent to kill and conduct towards that end." *Id.* at 397, 532 S.E.2d at 285. In contrast, ABWIK had only been held to be a general intent crime. *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996). As the Supreme Court explained in *King*, the appellate decisions of this state, when read as a whole, reflected that specific intent was an element of attempted murder. *King*, 422 S.C. at 57, 810 S.E.2d at 23. That was true at the time of Petitioner's trial.

The PCR court incorrectly applied the rule that counsel is not required to be clairvoyant and anticipate changes in the law. App. 1055. Counsel was not required to be clairvoyant—counsel was required to read English. This was black letter law. The element was listed in the statute and there was caselaw holding that attempted murder required specific intent to kill. *King* was not a change in the law. *King* merely confirmed that attempted murder required proof of specific intent to kill. *King*, 422 S.C. at 56, 810 S.E.2d at 22. In its return to petition for certiorari, the State argued that a reasonable attorney could have concluded attempted murder was a general intent crime. However, this position wrongly assumes that such a reasonable attorney would not know published law. It also wrongly assumes an attorney can permissibly advocate against his client. An attorney has a duty to advocate for his client. Assuming arguendo that both interpretations of the statute were reasonable: attempted murder was a specific intent

crime or attempted murder was a general intent crime, counsel had the duty to take the position that was favorable to his client, which was that specific intent applied. Petitioner's defense in this case was to hold the State to its burden of proof. App. 889, ll. 7-14. Specific intent was an additional element the State needed to prove, and counsel missed it. Given counsel's strategy of choice, he would have contested the element had he known it was an element.

This was deficient performance. The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and the deficient performance prejudiced Petitioner. *Id.* at 687. The statutory language, the existence of *Sutton* at the time of Petitioner's trial, and the appellate decisions of this state when read as a whole should have put counsel on notice to object to the State's request that only general intent was required and instead request that the jury be charged on specific intent to kill. *Strickland*, 466 U.S. at 687-88; S.C. Code Ann. § 16-3-29; *Sutton*, 340 S.C. at 397, 532 S.E.2d at 285; *King*, 422 S.C. at 57, 810 S.E.2d at 23.

Prejudice

"To show prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability the result of the trial would have been different." *Patrick v. State*, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002). "[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. "A reasonable probability is a probability sufficient to

undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The PCR court erred by finding overwhelming evidence precluded Petitioner from proving prejudice. *See* App. 1056. "Ordinarily, the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). "In rare cases, using "overwhelming evidence" as a categorical bar to preclude a finding of prejudice is not error." *Id.*, 422 S.C. at 190, 810 S.E.2d at 844.

> However, for the evidence to be "overwhelming" such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of "a reasonable probability . . . the factfinder would have had a reasonable doubt" cannot possibly be met.

Id., 422 S.C. at 191, 810 S.E.2d at 845.

"In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed in its entirety and not in isolation." *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (quoting *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009)) (internal quotations omitted). "A charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003)). "The substance of the law is what must be charged to the jury, not any particular charge." *Id.*

The evidence in this case was not overwhelming on attempted murder. The State did not prove Petitioner shot Joshua Williams or Trenton Scott, much less prove he had a specific intent to kill either of the men. Trenton Scott testified he was shot by Demetrice James, not by

Petitioner. Joshua Williams did not identify who shot him.[4] App. 243, ll. 16-22; App. 341, ll. 4-9. The impact of counsel's error in this case was that the correct law on intent was not charged. The jury was instead charged incorrect law. Petitioner was not on trial for ABHAN, he was on trial for attempted murder. The State therefore had to prove Petitioner had the intent to kill Trenton Scott and Joshua Williams and the jury was charged the opposite. The erroneous charge had to have affected deliberations. Compounding the error, the jury had already been sent out of the courtroom before it was brought back in and recharged solely on this erroneous point of law. The judge repeated a portion of the erroneous charge twice. *E.g.*, *State v. Blassingame*, 271 S.C. 44, 47, 244 S.E.2d 528, 530 (1978) (additional erroneous jury charge would be given special consideration by the jury since it was in response to jury's own inquiry); *State v. Rothell*, 301 S.C. 168, 169–70, 391 S.E.2d 228, 229 (1990) ("It is error to give instructions which may confuse or mislead the jury.").

The jury was wrongly told it did not have to find Petitioner possessed a specific intent to kill Joshua Williams and Trenton Scott. *See State v. Perry*, 440 S.C. 396, 409, 892 S.E.2d 273, 280 (2023) (trial courts must be explicit in their charges that State must prove specific intent for

---

[4] Intent aside, the evidence against Petitioner as to the attempted murders, and even as to the murder, burglary and attempted armed robbery, was not overwhelming. Jwuan Duckett's credibility was impeached with an extensive prior record. App. 427, l. 20 – 428, l. 18. The bleached clothing found behind Petitioner's apartment complex could have been accidentally bleached during cleaning, as law enforcement claimed Petitioner said during interrogation. App. 744, ll. 14-18; App. 435, l. 17 – 438, l. 17; App. 738, l. 21 – 744, l. 13. Petitioner's alleged confession was suspect as it was not video or audio recorded despite that technology being widely available in 2013. In the modern age, law enforcement refuses to record interrogations at its own peril. App. 760, l. 18 – 762, l. 1. Regardless, Petitioner initially denied any involvement in the crime according to Officer McDonald. Officer McDonald also admitted he told Petitioner, "I'm not putting a gun to your head to make you talk today." App. 760, ll. 8-17. That statement could be interpreted by the jury as a veiled threat. Finally, the Scott brothers' identifications may have been viewed with skepticism. *See generally State v. Whaley*, 305 S.C. 138, 142, 406 S.E.2d 369, 372 (1991) ("certain aspects of every day experience shown by the record can affect human perception and memory, and through them, the accuracy of eyewitness identification").

attempted murder); *In re Winship*, 397 U.S. 358, 364 (1970) (Due Process Clause protects accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged); *Sandstrom v. Montana*, 442 U.S. 510 (1979) (jury instruction which relieved State of burden of proof on the critical question of intent was constitutional error). The State was relieved of its burden of proof as to this essential element of the offenses. The charge as a whole failed to correctly define the offense as requiring a specific intent to kill and failed to adequately cover the law; Petitioner was prejudiced. *Strickland*, 466 U.S. at 695.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court reverse the PCR court and grant Petitioner a new trial.

Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 27th day of June, 2024.

RECEIVED
Jun 27 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MAURICE ROBERTS,

PETITIONER

V.

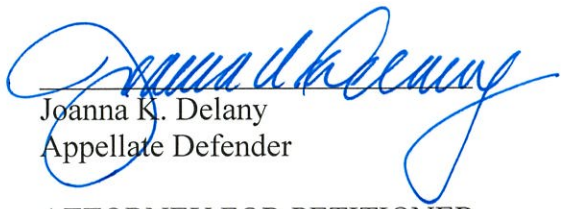
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000652

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Petitioner in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Maurice Roberts, #359058, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 27th day of June, 2024.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

From:	Warren, Kaylynn
To:	Mark Farthing
Cc:	Delany, Joanna; Caroline Collins
Subject:	2022-000652 Maurice Roberts v. The State
Date:	Thursday, June 27, 2024 2:07:00 PM
Attachments:	2022-000652 Maurice Roberts v. The State Brief of Petitioner.pdf

Good Afternoon,

Attached for service in the above-referenced case is the Brief of Petitioner which will be filed today, June 27, 2024, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330