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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

DEMETRIUS D. HENDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000443

APPENDIX

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during closing arguments, let me remind you all what the attorneys tell you is not evidence in this case. It is not evidence in this case.

The process or the procedure that we will go forward from here the State will close first, followed by Defense counsel, and then I will give you the charge on the law.

Therefore, at this time, I am going to recognize the State for closing argument.

MS. ALL: Thank you, Your Honor.

Ladies and gentlemen, when my co-counsel, Mr. Shenkar, spoke to you in his opening on Wednesday afternoon, he used language such as "caught in the act," "caught red-handed," "all of the evidence was there to see." And we worked together on that case, that was something that we -- we worked on together.

And so I looked up "caught red-handed." I didn't know what -- where the phrase came from. And it turns out that for hundreds of years, it was a very common crime for people to steal someone else's livestock and butcher it. And you were considered "caught in the act," -- could only be proven guilty if you were caught with the carcass of the animal and the animal's blood on your hands. Because see, if you only had one, if you only had the carcass, then maybe you just stole it. If you only had the blood on your hands, then maybe you just slaughtered it. But because you

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had both, you were definitely guilty.

Demetrius Henderson had the victim's belongings in his car and everything else in his pockets. Don't be confused or side-tracked by other issues in this case. It doesn't matter if there was a second person. There is no evidence that there was a second person and there is no second person on trial. Demetrius Henderson is on trial for this burglary.

It also isn't *State v. Travis Brimfield*. What Travis Brimfield did is not at issue today. It doesn't matter what Travis Brimfield did was right or wrong, whether he was charged or not charged, where he got his weapon, whether he actually hunts. None of that matters. What matters is that he caught the Defendant in the act, and by doing so, he completely froze the crime scene.

If Travis Brimfield hadn't shot the Defendant, we might not have had a suspect. If he hadn't shot the Defendant, the Defendant might have gotten in the car and driven away. In fact, Travis Brimfield testified that he didn't even remember there being a car when he pulled up. He also testified that he couldn't see the Defendant's face. We wouldn't have had an ID. We wouldn't have had a license plate. He would have gotten away with it, potentially.

If Travis Brimfield hadn't shot the Defendant,

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everything wouldn't have been frozen and preserved the way that it was. All of the evidence of a burglary in progress was completely preserved for y'all. He dropped right in place, and everything was exactly as if he'd been doing it at that moment. Just frozen.

So let's talk about that evidence. Let's talk about what was in his car. Now, remember he had the keys to the car in his pocket, right? And he had his ID in his pocket with his keys. So we know that he drove the car. We also know he drove the car because it's supported by GPS data. We know that he drove in a car to this location from nearby. We know where he was right before that. We also know it's his car because all his stuff is inside. His identifying documents, his records, all of that is located in the car.

And what else is in the car? Everything that was missing from April Jenkins's house. April Jenkins's belongings, not Brimfield's belongings, not Costell's current belongings. They were going to be Costell's, but April Jenkins's belongings. She recovered all of those items. In fact, the only things that were in the car, other than a few unclaimed electronics, that weren't April Jenkins, were the Defendants.

We also look at the evidence that was found on the Defendant. As I said, when he was shot, he went down.

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There was no time for him to pull anything out of his pockets or throw it away. Actually, there probably was time. But once you've been shot, the burglary is over. He pulls the glove off his hand. He's laying there trying not to die. He wasn't thinking about covering up his act.

He had everything else that he needed in the apartment in his pockets. Everything that was small enough for him to carry. It wasn't just TV remotes, he also had a portable speaker. If he could shove it in his pockets, he did. And when he fell, he fell on top of all of those items.

When EMS arrived, they cut his pants off, right? So as soon as they hear the shooting, we've got the people that come out and look right out the balcony and all they see is Costell Johnson run away. And then other than that, they don't see anybody. It's so dark that they can't even see the Defendant lying on the ground. They don't even know he's there because it's dusk, too dark to discern his presence, until they come down and hear him moaning.

So when he was moved by EMS, they left his pants behind. Those pants were not tampered with. Nobody else was there. Officer Everatt saw him wearing those pants when he arrived on scene. And in the pants was Costell Johnson's watch, jewelry that belonged to the victim's boyfriend, along with the Defendant's wallet and his ID and

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the car keys to the car parked right near there, which Investigator McCoy later used to open it, to execute the search warrant, and a 20-gram bag of cocaine within the pocket of the pants. That is the very definition of actual possession. It was physically on his person. You heard Doug Robinson testify about the weight. It was 20 grams.

I want to know that he had taken everything in the apartment that he wanted. Because recalling the pictures, there were some wrapped presents that he didn't take because those might have been like toys or something he didn't want, right? He wanted the cologne, the toothpaste, the stuff he could actually use. He took the unwrapped presents, loaded them in a crate, and put them in the front seat of his car. He went through her entire house. This was methodical. This was not a "grab and go." We know from the GPS data that he drove from the neighboring apartment complex. We don't know what he was doing there, but if he was familiar with that location, maybe he was familiar with this one.

And then we know, from the GPS data and because of where this particular building was located, that he drives all the way back to the very back, literally the farthest away that he can go. He passes by every other building. He doesn't know anybody in Building 5. Everybody testified that they didn't know Demetrius Henderson.

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He goes all the way to the back to the farthest one, which is by a cut that non-residents use, non-residents like the people that live at the neighboring Bentley Court Apartments. And then he parks his car in the last spot next to the dumpster. And then you could see, on the GPS dots (indicating) he's been over here, goes over here, this looks good.

It's no coincidence that he picks the one building that's shielded on two sides by woods and parks his car on the third side. It was just window to car, back and forth. That was intentional. It was also intentional that he parked his car right next to the dumpster at the very end of that parking lot. He could see everything coming at him and nobody could come from the other direction. It was intentional that there were no witnesses.

You heard Brimfield testify, when they got out of the car, they heard kind of like a scuffling, thought maybe it was an animal. He looked at his cousin, his cousin was, "I -- I don't know." They look over there. It's too dark for them to see Demetrius Henderson. Maybe he was hiding behind the building. He had that direct line of sight so that whenever somebody pulled up, he could shimmy behind the building. That's why nobody saw him.

It was from 5:30 to 6:30. It was intentional on his part to find a secluded spot that was covered by all these

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woods. Daryl Stallings said it was the most secluded wooded area in the apartment complex.

When he got there, he took off his shoe, he took off his sock, and he put his shoe back on. He was confident. Confident burglary: We're just going to pick this place. It's right over here. I forgot a glove, I'll use my sock.

And then he walks up to the window on the most removed isolated wall of the building, and he pops out the screen. There's a picture of it. And then he pushes the window until the latch breaks.

It was December. It was December 18th. I don't know where y'all are from, but in December, I am inside. I have huge heat bills. I'm -- got a space heater in the bathroom. I'm not putting the window open in December and neither was April Jenkins.

Demetrius Henderson opened the window, and then he climbed inside. And the first thing he did was take that chair and shove it up under the door knob because he was there without permission. Not only was he there without permission, he's going to prevent the people who had permission from coming in, which is exactly what happened.

But before they got home, he went through every single room and pulled out every drawer. Pulled them out from the chest and went through a lady's clothes, bunched them all up, dumped them on the floor. Some of them pulled all the

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way out onto the floor. He flipped over every shopping bag. He looked in every box. He went in every closet. He'd pick it up, he'd look at it, "I don't know if I want this one. I'll put this one on the bed. Maybe I'll just unplug this one." He shopped all the way around the entire apartment, and he was there for a long time.

Now, Mr. Pournaras asked the GPS data expert some really good questions and they were true. We don't know in what order those dots happened, and we don't know when he was inside and when he was outside. I mean, her wall is less than a foot, and you have the 10-foot error margin there. We don't know.

But those dots are moving all over the place. He was going in and out of the car, taking what he wanted from the apartment, and he took his time. He didn't have to hurry. There's a chair under the door. If somebody came home, he's going to know about it. It took a 400-pound man to push it open. You would hear that and jump out of the car -- or jump out of the window and run back to the car.

He also prioritized what he was going to take. He had moved certain items, and it's no coincidence that he loaded up the two nicer TVs and was coming back for the smallest one. He left an old laptop. There wasn't as -- wasn't as good as the tablet or notebook that he'd already loaded up into his car.

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He went through everything in her entire house because he had time, because he knew what he was doing. And he took exactly what he wanted and he put it in the car. He took so much time that he went back to get the remotes. He went back in the apartment, instead of buying a universal remote, to make sure that he had all of the accessories. That is a confident burglary.

He unloaded everything into the car and was keeping the small items in his pockets. When he was going back for the next trip, Brimfield and Johnson came home.

Now, let's talk about some of the other evidence that -- that we've provided. We've provided testimonial evidence, and you can assess those people's credibility. Assess whether they looked honest, assess whether they have a reason to lie, assess if there was a reason for them to be here, anything for them to get out of it.

There's also the physical evidence that we put in, all of those photographs. Obviously, y'all didn't get a lot of the physical evidence. You didn't all of it because a lot of it went back to April Jenkins.

And then there was the GPS data, which was not perfect, but it was probable and it was too good not to submit. Obviously, we can't tell exactly where he was. Nobody contended that we could draw a line for every action and every movement he made, but it corroborates the State's

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story.

We didn't need it to prove he committed burglary. We didn't need it to prove he made all those trips. There was no way he could load all that stuff up in his car at once. We didn't need to prove he stole it. The stuff's in his car. It's -- it's on his person. He admitted to Brimfield that he stole it.

We used it to prove that he was somewhere else before that, to give you a full story. We used it to prove how long he was there and when he got there. The evidence that is called into question, where we don't know exactly what these arrows mean or we don't know where exactly when -- which dot went where. We didn't submit it to prove that. It corroborates the evidence that we already have.

In fact, what it -- it doesn't corroborate is the Defense's theory. There were questions about technically, all of these dots could have happened if you had just been standing still, right? That is correct. All of those dots happening and you're standing still totally ignores the fact that all of that stuff ended up in his car. How did everything get loaded into his car? How did her apartment get broken into? How did he make so many trips back and forth if he was standing in the same place?

So let's talk about the law. The first charge is trafficking in cocaine, and the Judge will read this in the

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instructions. If I misstate anything, just -- just forgive me. But it is possession of the cocaine or you attempted to possess the cocaine, and that it weighed between 10 and 28 grams. It's not trafficking, like, we have to prove that he was actually driving it up from Mexico. We just prove the weight, that it was cocaine, and that he had it.

Actual possession is, in its definition, on your person. You are actually -- I am actually possessing this blouse. I'm constructively possessing those cough drops. I have dominion and control over them, but the cocaine in his -- actually, I don't have cough drops, but the dominion and control is in his pocket. There was no way for the cocaine to end up in his pants other than him putting it there because when people arrived on scene, they thought it was an attempted murder.

Nobody was tampering with him or messing with him. It was there because he put it in his pocket. EMS cut off the pants and they remained there the entire time. And you heard from Agent Robinson of the South Carolina Law Enforcement Division, that the weight of the cocaine -- it tested positive as cocaine and that the weight of it was 20 grams.

The second charge, possession with intent to distribute marijuana, is a little bit different. It's not as cut and dry as trafficking where you just prove the

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weight, but the weight is part of it. So it's the same theory that you possess it, you either have it on your person, in your pocket, or it's somewhere that you had custody and control over. Somehow you have dominion and control over the item. And you can infer that dominion and control if you were in possession of the property in which the substance was found.

Well, we've covered over and over that this was his car. I mean, the most obvious way to prove it was his car is that he arrived in it and he intended to leave in it. Because after he left with the ambulance and before he'd been working the scene for six hours, he said this car's been behind this crime scene tape this whole time. I wonder what's going on here? Because it was the Defendant's car. He had the keys. He couldn't leave because he'd been shot.

The marijuana was in his car. There was no indication that anybody else was in the car with him; but regardless, the law states that you can infer that knowledge and possession when the substance is found on the property, under the Defendant's control. He had the keys to the car. He controlled the car.

Also, as the second part proved, intent to distribute. And instead of just flat out weight, like with the trafficking, this one requires a little bit more finesse.

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The Legislature decides what is personal use. It set a number. If it's less than this number, you probably just had it for yourself. If it's more than that number -- that seems like a Sam's Club buy -- you might have intended to distribute it a little bit. 28 grams is that number.

But that's not enough. We don't just rely on that. We look for these other circumstances. Intent can be shown by the act and conduct from the Defendant in other circumstances. And the Judge will flesh that out more.

But one of those circumstances, which explains why Investigator McCoy made such a point to mention it to y'all, is scales. That is the biggest indicator that we have as prosecutors that somebody intends to distribute. So not only do you have more than what the law has defined as personal use, but you also have scales.

Another indicator is the presence of other drugs. He had cocaine on his person. He had more than one kind of drug in a very large quantity. He was also engaged in an entirely separate illegal activity. All of those indicators together prove possession with intent to distribute marijuana.

The grand larceny is similarly as simple. One of the elements of grand larceny is proving that the items are valued at more than $2,000. Ms. Jenkins -- "grand larceny" means stealing.

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Ms. Jenkins testified that the items were worth more than $2,000. She estimated them to be between 8 and 10. She's going off replacement value. Investigator McCoy told you that they were worth more than $2,000. And the key is -- and I -- you know, we listed out the items: It's a 60-inch TV, another TV, a tablet, an external hard drive, all of these brand new Christmas gifts.

The elements involve the taking of someone else's property without their permission. It's in his car. It's on his person. They did not know him. Even if there was some kind of crazy obtuse argument about that, he came in through the window. So even if there was some argument that somehow he was allowed to have these items, maybe they were on the side of the road, I don't -- he climbed in and out of a window whose latch he broke. That's an indicator.

And everything in the car that had an accessory was in his pocket because he physically, himself, was carrying away the property with the intent to keep it.

And the last one is burglary in the first degree. So we have several elements -- or several different levels of burglary in the South Carolina Code. This requires evidence that he entered a dwelling -- which is a place where somebody is actively living, -- without their permission, with the intent to commit a crime therein and that it occurs at nighttime. So we'll get the easy ones

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out of the way.

April Jenkins lived there. Arguably, Costell Johnson and Travis Brimfield also lived there, which again, doesn't even matter. Their domicile, whether they had a key, none of that matters. What matters is the shooting and that's how he got caught. April Jenkins stayed there. Her name was on the lease, clothes, her bed.

Without permission, well, we know he entered without permission because she said that she didn't know him. Travis Brimfield said that he didn't know him. And he came in through the bedroom window, with an intent to commit a crime therein, that being the larceny, that he broke in to steal things.

And then entering or remaining occurs at nighttime, that some part of the burglary occurs during the nighttime hours. So it can -- it started during the daytime and then you stayed until nighttime, or you could have started it at three o'clock in the morning and then you don't leave until 8 a.m.

But this nighttime issue is important because it was dusk. When we think of nighttime, we think, like, Halloween, pitch black. But there's really only these two choices: There's -- there's nighttime or burglary in the second degree, which is this, which is not nighttime. Well, does that mean daytime?

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This was burglary in the first degree even though it occurred at dusk because it wasn't day, because it was night. If we're deciding whether it was daytime or nighttime, it was nighttime.

We've got a definition of nighttime that the Judge will instruct you on. It is very typical of the law in that it is slightly confusing. But this is what we've got. This is the only definition of nighttime, so this is what y'all have to work with. And I'm going to break it down because I've thought about it a lot and I think it's really -- it's difficult, but it's clear. It's worth thinking about, that's y'all's job. But it's clear that it's nighttime.

It's this period between sunset and sunrise, during which there is not enough daylight -- but inference being that there can be some -- to recognize a person's face, except by artificial light -- like a street light or a motion detector light -- or moonlight.

We have data that the Judge has taken judicial notice of, that you'll be able to -- to take back when you go deliberate, that sunset was at 5:18. We know that civil twilight was over -- that time between sunset and the end of twilight was over at 5:45. So it was definitely past sunset because the instinct is that nighttime is after sunset, right? But then you have a case like this where

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the sun has set, but people can still see. So where -- where does that fall?

Well, the key here are those second two elements. There's not enough daylight to recognize a person's face except by artificial light or moonlight. The most important testimony was Travis Brimfield's.

So Travis Brimfield comes out of his house and is holding a gun. So you know somebody broke into your house, you realize you've heard scuffling outside, a lot of stuff is gone. Was it one person? Is it more? He grabs a gun that he, you know, may have never shot and we -- we don't really know.

At that moment, the amount of adrenaline, that is fight or flight. That is a life or death situation. He grabbed the gun because he was scared. That's one of those moments where your senses are heightened, where you notice everything. You see every different facial feature. He could not tell police if this man was white or black. He couldn't tell police if it was a man. He couldn't tell police that he had long dreadlocks. He couldn't see his face. He could not discern the features of Demetrius Henderson's face.

And Demetrius Henderson counted on that because when he got caught, Travis Brimfield said, "Were you up in my shit?" And Demetrius Henderson was silent. He knew that

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Travis Brimfield couldn't see his face. "Were you up in my shit?" And he was silent. He knew that he couldn't be identified. He was trying to think of where to go. That was with street lights.

One of the things that might come to mind in those first few witnesses that Mr. Shenkar and I called, Deputy Byrd, Officer Everatt, and Caliph Branham and Daryl Stallings. Well, they're telling you what they saw. The purpose of their testimony -- we're telling a story with these witnesses. The purpose of their testimony was, "I heard the shots, I came out, this is what I saw." Not it was so dark that this is what I couldn't see, but that it was light enough for them to see a 450-pound man, wearing a traffic-cone-orange shirt, running in the other direction.

The street lights were also on, that may have helped. And it was also, as you'll note in the document from the U. S. Navel Observatory, one day past the full moon.

But this is all still a little bit subjective, this part of the definition of nighttime, which is why it's hard; feels a little bit subjective. So it -- I don't know, eight o'clock last night, I left the office. Turns out -- I didn't notice at the time, but it turns out that sunset last night was at 8:12. So I stopped ---

MS. EIGENBROT: Your Honor.

THE COURT: Yes. Yes.

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(Bench conference.)

MS. ALL: So last night, watching outside, the sun set at 8:12. At 8:15, was at nighttime. It didn't seem quite like nighttime to me. But then at 8:20, it was a little bit darker, there was a little bit more royal blue. Remember Deputy Byrd said there was still a little bit of blue in the sky. It was a little bit more toward navy than sky blue. That seemed like nighttime. That's entirely subjective.

So if we think about how we can determine nighttime objectively, just thinking about how do you know when it's nighttime, well, you know it's nighttime when the street lights come on, right? Because why do we have street lights? We all pay at a -- tax for street lights because we need them to discern a man's face. We need the street lights because we're affected by that amount of darkness that we can't discern certain amounts of detail. The street lights were on.

How bout headlights, when you have to turn on your headlights? Under South Carolina Code, you have to have your headlights on 30 minutes after sunset, up until 30 minutes before sunrise because that's nighttime. It's not darkness.

The question is not the hours of darkness. It's nighttime. There's so much overlap with dark, night, but

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what this language requires is nighttime.

Why do you put your headlights on? So that you can see because there's enough darkness that you can't discern enough detail. And so the law requires that for 30 minutes after sunset, we have our headlights on.

If sunset was at 5:18, that means that at 5:48, you had to have your headlights on. At 5:45, that was end of twilight. Twilight is when the sun has dropped behind the horizon and you need artificial ---

MS. EIGENBROT: Your Honor.

THE COURT: Yes.

MS. EIGENBROT: I believe we had a discussion earlier about -- regarding the speculation about what twilight is.

THE COURT: Can y'all approach, please?

(Bench conference.)

MS. ALL: So according to the document from the U.S. Navel Observatory, twilight was over at 5:45. So this is past twilight. We know that he was shot at 6:22.

So these two kinds of burglary, the reason that nighttime is important -- so we charge it on both. This is burglary first, requires nighttime. This is burglary second, no nighttime. The reason that that's important is because nighttime is an aggravating factor. It's worse because we are vulnerable at nighttime.

The Defendant has the cloak of darkness to provide him

with that anonymity. We're vulnerable because we can't see or vulnerable because we are at home -- we are coming home between 5:30 and 6:30. It's more dangerous to break into somebody's house when they're home because somebody might get shot. And it's more dangerous because you can't see the suspect's face.

One thing that might become important -- it is important -- is that we don't know what time Demetrius Henderson started his burglary. According to the GPS data, he got there, I think, like 5:30/5:20, somewhere in there. But let's say for arguments sake that that's daytime. What matters is that when he was shot, it was nighttime. And the reason that that's important is because the entering or remaining has to occur at nighttime.

Well, how do we know that the burglary was ongoing? We don't know when he got there, but we know that when he was shot, he was going back in because, as we discussed earlier, he parked his car next to that dumpster. As we all acknowledge, people were coming home and in and out at 5:30. How was he not seen? He had an advantage point, and he was careful as he carried stuff back and forth. Maybe he didn't have his hoodie on then.

But when Travis Brimfield and Costell Johnson came home, they didn't notice that car, and Demetrius Henderson wasn't standing at that car. He was making noise and then

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it stopped. And they looked and they couldn't see anything because it was nighttime. And then Demetrius Henderson waited.

How many other people must have come and gone during the time that he was carrying stuff in and out? It was a Wednesday. 5:30 to 6:30 on a Wednesday. Demetrius Henderson banked on the fact that of all of the apartments in that building, what are the odds that this odd couple, these two men, belonged to the woman's apartment that he just ransacked. He could have gotten in the car and left.

Why didn't he leave? Why didn't he cut his losses and -- and get in the car and leave? Because he was confident. Because other people had come and gone and not seen him, and he hedged his bets and he wasn't done. He had that last TV, maybe a room left. He thought he could get more. The window was still open. The sock was still on his hand. The stuff was still in his pockets. The burglary was ongoing.

Travis Brimfield had the time to get out of the car, go to the door, which was in the back of the -- the building, right, mess with the door, put the key in. "Costell, wonder what's going on here?" Costell comes over, takes 400 pounds to get the door open. Then the time that it takes them to go from room to room to room and figure out what happened.

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That entire time Demetrius Henderson stood in the darkness, under the cover of the woods, and waited. He didn't leave because he wanted to go back. And he thought that they probably belonged to a different apartment. There's no other reason.

When he was shot at 6:22, the burglary was still going on. He was caught in the act. The only way that the burglary wasn't still going on is if he was finished. And if he was finished, he would have gotten in the car.

In fact, it was so dark at that time that Travis Brimfield could not tell whether he was wearing a sock on his hand or a glove. Now, we know that he went to the hospital with EMS with two shoes on because they got two shoes back. And they also only got one sock back and then he was laying next to the sock.

And we also heard Travis Brimfield saying that all he could see was that white. He didn't notice a red hoodie, he noticed a white hand. It was so dark that he couldn't even tell if it was gloves, like a white glove, or if it was a sock. Remember, he said that he could tell it was a sock because how far it came up his arm, because it's a tube sock.

That moment when he was shot, when it was too dark for Demetrius Henderson [sic] to see his face, when it was too dark to be able to tell if he was wearing a glove or a

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sock, when it was past the end of twilight, when the sun had long since set in the sky, when there was artificial light and he still couldn't see his face, that's not daytime. That's nighttime.

And at the end of it, Demetrius Henderson gave a confession. He may not have intended on going in during the nighttime. He may not have intended on staying into the nighttime. But when it came time to use the nighttime, he did. If it's daytime and you're confronted, they can see your face. If he was confronted at nighttime -- and so those first two questions, "Were you up in my shit? Were you up in my shit," he was silent and didn't look back because he knew that they couldn't see his face. And it's that moment of decision, "I can't leave because this guy's got a gun. But I know it's really dark. Maybe I should run that way." And he realizes there's nothing he can do.

"Were you up in my shit?" "Yes." He confesses to Travis Brimfeild. Brimfield didn't need that to feel justified by what'd done. We let him testify about how he had seen the white hand reaching into the front of his waistband. He didn't make that up. That happened. Demetrius Henderson confessed to Travis Brimfield.

During opening statements, Defense said, you know, there's not a lot of people that know what happened that night and questions will be raised. But they weren't going

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to be raised right then. Perhaps that's because they didn't have an alternate theory at that time. Perhaps that's because they had to wait as we presented our evidence to just do what they could with it.

And that's because there is no alternate theory. There's just the evidence and the evidence is the truth. And the truth is that Demetrius Henderson is guilty of trafficking cocaine, possession of marijuana with the intent to distribute, grand larceny valued between two and $10,000, and committing a burglary during nighttime.

Thank you, Your Honor.

THE COURT: Defense counsel?

MS. EIGENBROT: Thank you, Your Honor.

Good afternoon, members of the jury. Now, my co-counsel, Mr. Pournaras, came before you at the beginning of this trial and told you that the State was going to attempt to present a simple story about what happened on December 18th, 2013, and that there would be some questions.

And I'm going to go over some of those questions with you during this closing argument. But I want to keep -- I want you to keep in mind about what we've all heard over the past couple of days.

First and foremost, we have an individual get up here and testify about GPS data. He's qualified as an expert, so he could give you his opinion of what the GPS data

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represented. And the State made a big deal about the fact that it showed my client present at the scene, that he was there, that he was moving around.

We have never once denied my client was present at the scene. Mr. Henderson -- there was -- without question, was shot. He was -- his body was found in the cut, by the apartments, with four bullet wounds, rushed to the hospital. That has never been a question here today, not once.

Essentially, the GPS expert eventually tells you that the only real thing that he can tell you with certainty was that my client was in the general area, which again, we never disputed.

Now, I will submit to you that something else was going on here. I don't know what it was. We weren't there. There was two individuals that could have told us what else happened that evening. Mr. Johnson, who unfortunately passed away, which is out of my and the State's control. There was also Mr. Brimfield, which you heard from during the course of this trial.

Now, I want to talk about Mr. Brimfield. Ms. All pointed out that, no, he was not charged. He is not on trial. That's absolutely right.

However, she brought up a point that it doesn't matter if he was right or wrong. I submit to you that's

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incorrect. I say that is incorrect because if he is wronged, he has every motivation to get up on that stand and tell you a different version of events than what actually happened that night. If he would have given a different story, he could have been charged with attempted murder. He could potentially have been charged with a weapons violation.

I submit to you that he had every reason to get on that stand and tell you a different story. He tried to tell you that he had this weapon for hunting purposes.

You heard -- the State's ballistics expert testified that, sure, it could have been used for hunting. But then he also admitted the stock of that weapon is missing, and the stock is used to help you with aim and accuracy. Who goes hunting without trying to have an accurate shot? That doesn't make any sense.

He also told you that he stayed, probably, at Ms. Jenkins's apartment at least once a week, that he -- had his own key. Right afterwards, Ms. Jkenkins got on the stand and said, no, he rarely stayed there. He did have his own key, shouldn't have had his own key; had no idea he was keeping an assault rifle in the spare bedroom. And she also tells you that she had no -- no idea what else he could have been keeping there.

His testimony is the only -- he was the only person

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that was there before my client was shot. My client was gunned down, he fled the scene, and he was faced -- facing potential criminal charges. Again, he has every reason to get up on the stand and tell a different version of events than what actually happened that night.

Now, we made a really big deal about this nighttime issue, and there's a reason for that, as Ms. All told you. It's a very big difference.

And I want you to think about some of the witnesses the State's presented. The first one was Mr. Branham. He was one of the first people that called 911, the first people to look outside and recognize there was somebody hurt when he was moaning. He got on that stand and testified that when he looked outside, after hitting the ground, getting back up, walking to the window, that he -- it was so light outside that he could see clear across the parking lot. Okay. Clear across the parking light.

Now, he did say that the street lights were on. Sure. But street lights come on very early on because they take time to warm up. They have to get -- come on a little bit early, otherwise they don't work it -- work right away. You have to let them warm up.

So I -- I would submit to you it was still light enough outside for people to see. And as Ms. All stated to you, the law states that nighttime is between sunset and

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sunrise and at the time where a man's face is not discernible without aid of artificial light or moonlight.

Now, you've heard a lot about street lights and artificial light. In that area, down the hill behind -- hidden behind the dumpster -- and in a few of the pictures, you can see a light in front of the dumpster. That is the only artificial light available in that section, the section of area, right?

And again -- now, Mr. Brimfield is the only person that says, "I couldn't see his face." There are several reasons for that. I would submit to you again that his version of the events is not the truth, and that he immediately gunned down Mr. Henderson when he walked out there, which is the reason he couldn't ID him or recognize him. He went outside and shot him. He didn't have time to discern what was on Mr. Henderson or what his face looked like.

Now, you also had two officers, two responding officers, that arrived on scene, both of which say it was dusk to dark. Neither said that it was too dark, you couldn't see details on someone's face. Neither said it was so dark that they had trouble seeing any type of detail. And they were called -- and they arrived on scene 10, 15, 20 minutes later than the shooting actually occurred.

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Now, we've also made a big deal about this continuing burglary issue. When Mr. Henderson was shot, whatever may have been happening before that was then over. He is now laying on the ground. He is not capable of getting up and running. At that point in time is when you have to determine whether it was light or dark, whether it was nighttime, whether somebody could have discerned the details of his face. And I would submit to you that someone could. He just got on the stand and lied about it.

Now, there was also an issue made about some of the witnesses that called 911 or heard the shots not being able to see Mr. Henderson. And we've seen a lot of pictures today or over the past -- over the course of the last few days of the scene itself. And as you can see from these pictures, his body is located at the bottom -- the base of a small hill, right over here (indicating.)

So someone looking out their window is not going to see his face. They're not going to be able to see where he is or what he's looking like. You almost have to walk up -- come down this hill or walk around this area in order to see his body. So them not being able to see Mr. Henderson initially has no bearing on whether or not it was light or dark for this nighttime issue.

Now, we also heard Investigator McCoy testify. And while eventually his investigation became a burglary

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investigation, at some point, this -- there was -- there were other possible theories bouncing around. I'm not an investigator, not a cop, but that doesn't mean that there aren't a range of different things that could have been happening.

There are circumstances in this case, like the cocaine, the marijuana, that make it likely something else was going on. Those questions were never answered.

Two days after Mr. Brimfield and Mr. Johnson flee the scene of the shooting, instead of calling the police and reporting the issue like they should have, they come in and give statements. Once those statements are given, arrest warrant's taken out for Mr. Henderson. There's no further questioning to their background. There's no further investigation as to what else could have possibly been going on. It was left at that.

Mr. McCoy also testified that he made the assumption it was dark out based on the time he received the call and what he heard other officers say. And again, those other officers were not on the scene of the shooting when it actually occurred. It was minutes later.

And sure, when the -- at night, when that sun starts to set and things start to turn dark, it can happen pretty quickly. It happened in the course of minutes. Your job is to determine when he was shot, if it was light enough

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outside for someone to see his face and to give details. And the only person that can tell you differently is Mr. Brimfield, who again has every reason to get on that stand and lie to you all.

And to address a few of the other charges, yes, Ms. Jenkins gave a -- an estimate as to how much her possessions were worth. Generally, people tend to overvalue some of their things because we've worked hard for those items, because we have paid for them, because we -- they're ours. They're -- it's our stuff. Nothing today has presented that gives receipts of when she -- when items were purchased, how much they were worth. We have no -- no value estimates, nothing. It was just her word. And again, we tend to overvalue things that are ours because we worked so hard for them.

The marijuana, Ms. All mentioned that the law for possession with intent to distribute depends upon, one, an inference weight; another, acts of conduct. Yes, the marijuana is over the inference weight.

But you also heard a few things about the policies and methods how it was weighed, and you heard that the expert in this situation checked his scale once a week. But then he also mentioned that there was no plus or minus. That's not standard policy. There's -- he -- they said -- he was -- there was no room for error on those Monday checks. And

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he only had a professional, possibly, come calibrate that machine quarterly or every six months. It's not very often.

And sure, yes, there was a digital scale found in Mr. Henderson's vehicle. It was there, we're not denying it. Again, though, the weight itself is only an inference weight. That is it.

Ladies and gentlemen, the State has the burden in this case. They have to prove all of these elements, all of these crimes to you beyond a reasonable doubt, which practically means that, as the Defense, we can sit at that table and do absolutely -- do nothing the entire course of the trial. We chose not to do that, but we could have.

And reasonable doubt, ladies and gentlemen, the Judge is going to instruct you on reasonable doubt. It is not beyond all doubt. They don't have to answer every single question. However, I do think there are certain questions -- again, it's not every single question has to be answered, but if there's substantial amounts of questions, which I think there are in this case, I submit to you there are, that is reasonable doubt, especially this nighttime issue.

You've got a couple witnesses saying different things about what -- how light it is outside. That is reasonable doubt. Not a single witness could agree how dark or how

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light it was, whether they could discern a man's face without the aid of artificial light or moonlight. That is reasonable doubt as to the issue of nighttime.

And these other questions, the other things that were not investigated, were not done, is reasonable doubt. Yes, this apartment is at the very end. This building is off at the very end of the apartment building, very end of the complex. Sure, it's a little bit more secluded than maybe some of the other areas are. There are plenty of things people can do in secluded areas, plenty of things they are not supposed to be doing or could -- or are supposed to be doing. They just want privacy.

It is approximately between 5:30 and 6:30 when most working Americans are getting off of work. It's an apartment complex. It's not a residential area. It's not a private area. And Ms. All made a big deal about there being a line of sight as to who's coming and going.

One of the items they're alleging he carried to his car is a 50-inch TV. That's a big television. If someone was driving in, it's not like you pick up the TV and run back and hide. It's not like you can shove it in a car really fast without damaging it.

So I think this -- the theory that he was so comfortable that he was able to see what was coming at him, which is why he was able to take so many items, is false.

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You also heard -- heard Investigator McCoy agree with me that, generally speaking, burglaries are done in -- in and out. People grab what they can and go. They don't take all the valuable items. They can't take all the valuable items. So again, I think there are some questions that have not been answered, and those, ladies and gentlemen, are reasonable doubt.

Beg the Court's indulgence.

(Brief pause.)

MS. EIGENBROT: Thank you for your service and time.

THE COURT: All right. Ladies and gentlemen, it is now my duty as the trial judge, under the constitution of this State, to charge and instruct you on the law applicable to this case. It is your duty as jurors to accept and apply the law as I will now state it to you.

Furthermore, it is your exclusive duty to decide all the issues of fact in this case and to determine the effect, the value, the weight, and truth of the evidence.

Both the State and the Defendant have a right to expect that you will carefully consider and -- and evaluate the evidence and apply the law of this case to it, so that in the end, both the State of South Carolina and the Defendant will receive a fair and impartial trial.

I want you to understand that when I use the word "defendant," I refer to Mr. Demetrius Derrick Henderson.

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The charges alleged in the indictments are burglary first degree; grand larceny, 2,000, but less than 10,000; trafficking in cocaine, 10 to 28 grams; and possession with intent to distribute marijuana.

Now, to these charges, the Defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove the guilt of the Defendant to you, the jury, beyond a reasonable doubt.

I remind you, ladies and gentlemen, that the fact that the Defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case. Nor does it create any presumption or inference of guilt. The indictment, ladies and gentlemen, is simply the formal written instrument which contains the charges made against the Defendant. It is the formal document by which this case is brought into this court.

As I mentioned above, ladies and gentlemen, the indictment in this case alleges four separate and distinct offenses against the Defendant. You must decide each charge separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other charge.

The Defendant may be convicted or acquitted on any or all of the offenses charged. As stated previously, you will be asked to write a separate verdict of guilty or not

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guilty for each charge alleged in the indictment.

It is vital, ladies and gentlemen, that you understand that the Defendant is presumed under the law to be innocent of these charges. The Defendant has no obligation to prove his innocence. It is a fundamental rule of our law that a defendant, irrespective of the seriousness of the charges against him, is always presumed innocent of the crimes for which he is charged, unless and until his guilt has been proven by evidence that satisfies you, the jury, beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory or a legal phrase. The presumption of innocence is very important, and you need to understand that this presumption accompanies the Defendant from the time of his arrest and appearance in this court and continues with the Defendant even after you retire to the jury room to deliberate.

In other words, the Defendant receives the benefit of the presumption of innocence until the very end of this trial when you, the jury, will deliberate upon the evidence and decide whether the State has proven his guilt beyond a reasonable doubt.

Now, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a

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reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty. So even in criminal cases, the law does not require proof that overcomes every possible doubt. However, if based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Jurors, please understand that reasonable doubt may arise from evidence which has been presented in the case or from the lack of evidence in the case. It is your responsibility to determine whether or not reasonable doubt exists as to the guilt of this Defendant. I charge you that the Defendant is entitled to every reasonable doubt arising in the whole case.

Now, if, upon any issues of fact essential to conviction and a verdict of guilty, you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the Defendant.

Now, during this trial, ladies and gentlemen, you and I have had separate duties to perform. As the trial judge,

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it is my responsibility to preside over this trial. And I also have the duty to rule upon the admissibility of the evidence offered during the process of this trial. In that regard, you are to consider only the competent evidence before you; and you are to disregard from your mind any testimony ordered stricken from the record of this case during the progress of the trial if there was any. And you are to consider only the testimony which has been presented from this witness stand, together with any exhibits admitted into the record of this case, and any stipulations of counsel made into the record.

Furthermore, I have the additional duty to charge you on the applicable law in this case. And in that regard, I am the sole judge of the law in this case. It is your duty to accept and apply the law as I state it to you. If you have any preconceived ideas as to what the law is or what the law ought to be and it does not agree with what I tell you the law is, you are obligated, under your oath, to abandon these preconceptions because you are sworn to accept the law precisely as I state it to you.

Now, in this trial, you, ladies and gentlemen, you are the sole and exclusive judge of the facts and I am the judge of the law. Do not infer that I have any opinion about the facts in this case from anything that I have said during the course of this trial in ruling upon the

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admissibility of evidence or otherwise, or from anything that I say during the course of this charge to you.

In this regard, the law simply does not permit me to have an opinion about the facts. As jurors, it is your duty alone to determine the effect, value, weight, and truth of the evidence presented during the course of this trial.

Now, in determining what the facts in this case are, you must judge, ladies and gentlemen, the credibility, which simply means the believability of the witnesses and the value of weight to be given to their testimony. You alone must decide the force, effect, and truth of the testimony.

Now, in making this decision, there are many things that you may and should take into consideration, such as the appearance and manner of the witness on the stand, a characteristic often referred to as the "demeanor of the witness." Was the witness forthright or hesitant? Was the witness's testimony consistent or did it contain discrepancies? What was the ability of the witness to know the facts about which he or she testified? Did the witness have a cause or reason to be biased and prejudiced in favor of the testimony he or she gave? Was the testimony of the witness corroborated or made stronger by other testimony and evidence, or was it made weaker or impeached by such

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other testimony and evidence?

As jurors please understand that you have the right to believe a small portion of a witness's testimony and discard the larger portion or vice versa. You may believe all of a witness's testimony or none. You may believe the testimony of a single witness against that of many witnesses or the other way around. In exercising your mental processes and attempting to decide the truth, the law simply requires that you exercise your good judgment, your common sense, your sense of logic and reason, and your experiences in life. You then apply these attributes to the evidence and apply the law as I state it to you, and thus arrive at a verdict.

Now, there are two types of evidence, ladies and gentlemen, which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence, and the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

However, to the extent the State relies on circumstantial evidence, all of the circumstances must be

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consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence or circumstantial evidence or some combination of the two.

Now, during the course of the trial, you heard the testimony of an individual who has a past or a prior criminal record. Let me instruct you that an individual who has a prior or a past criminal record is competent to testify during a trial. A prior or past criminal record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness's believability. Remember, you are the sole judge of the facts in this case and of the believability of any and all of the witnesses.

You also heard the testimony of individuals that were qualified as experts. I previously gave you a charge on that, but I am going to give you another charge.

As I told you, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses that we call

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"expert witnesses." A witness, who by education and experience has become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

Now, ladies and gentlemen, in this case, the Defendant chose not to testify. I instruct you, ladies and gentlemen, and I emphasize to you that the fact that the Defendant did not testify is not a factor, is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or the innocence of the Defendant. It must not be considered by you in any manner whatsoever.

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A defendant has the constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusions whatsoever from the fact that the defendant in this case did not testify.

The fact that this -- that this defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, ladies and gentlemen, in order -- in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way, ladies and gentlemen, to prove intent to a mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances

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shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

Now, the Defendant, ladies and gentlemen, in this case is charged with first degree burglary. The State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary. But a building is a dwelling even if the residents are temporarily absent from the building.

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In order to prove that the Defendant entered the dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or foot; or even an instrument, such as a hook or other instrument.

In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick, or misrepresentation to -- to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary.

On the other hand, if the Defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, ladies and gentlemen, the State must prove

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beyond a reasonable doubt that the Defendant entered or remained in the dwelling in the nighttime. Nighttime is defined as the period between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight.

Now, ladies and gentlemen, if you find that the State has failed to prove beyond a reasonable doubt that the Defendant committed first degree burglary, you may also -- you must also consider whether the State has proven beyond a reasonable doubt that the Defendant committed second degree burglary. To prove burglary in the second degree, the State must prove all of the elements of first degree burglary, except that the Defendant entered or remained in the dwelling in the nighttime.

Now, the Defendant is also charged with grand larceny. The State must prove beyond a reasonable doubt that the Defendant took and carried away the property of another against the will or without the consent of the other person. The slightest removal of the property or the complete possession of the property, even for an instant by the Defendant, is enough to show a taking and carrying away of the property.

The State must also prove beyond a reasonable doubt that the Defendant intended to permanently deprive the owner of the property.

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Finally, the State must prove that the value of the thing taken was between 2,000, but less than $10,000.

The Defendant is also charged with trafficking in cocaine. The State must prove beyond a reasonable doubt that the Defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into the state, provided financial assistance, or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase or bring into the state, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of cocaine.

Now, there are three elements to the offense of trafficking in cocaine that the State must prove beyond a reasonable doubt. They are, number one, that the substance involved was in fact cocaine. Two, that the Defendant had possession of that cocaine, either actual possession or constructive possession. And three, that there was in fact 10 grams or more, but less than 28 grams of cocaine involved.

To prove possession, the State must prove beyond a reasonable doubt that the Defendant had both the power and the intent to control the disposition or use of the cocaine. Possession may be either actual or constructive. Actual possession means that the cocaine was in the actual physical custody of the Defendant. Constructive possession

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means that the Defendant had dominion and control or the right to exercise dominion or control over either the cocaine itself or the property in which the cocaine was found.

Mere presence at the scene where the drugs were found is not enough to prove possession. The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with other evidence in the case, and to be given the weight you decide it should have.

Now, the Defendant is also charged with possession with intent to distribute marijuana. The State must prove beyond a reasonable doubt that the Defendant possessed marijuana with the intent to distribute it. To prove this, the State must prove the same elements as I have explained in my earlier charge regarding possession with intent -- excuse me. To prove this ...

(Brief pause.)

THE COURT: Can the lawyers approach a minute, please?

(Bench conference.)

THE COURT: Bear with me just a minute, ladies and gentlemen.

(Brief pause.)

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THE COURT: Let me -- the Defendant, ladies and gentlemen, is also charged with possession with intent to distribute marijuana. The State must prove beyond a reasonable doubt the Defendant possessed marijuana with the intent to distribute it. Distribute means to deliver other than by administering or dispensing a drug. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

In determining whether the Defendant had the intent to distribute the marijuana, you may consider the circumstances surrounding the Defendant's alleged possession. You may also consider the amount of the substance alleged to have been possessed, the manner in which it was allegedly possessed, the place where it was allegedly possessed, and other factors which you consider to be important. You must find that the Defendant did not intend to have the marijuana solely for his own use.

Furthermore, possession of more than 28 grams or one ounce of marijuana creates an inference that the Defendant possessed the marijuana with the intent to distribute it. Again, this inference does not relieve the State from proving beyond a reasonable doubt that the Defendant had the intent to distribute. It is simply an evidentiary fact to be taken into consideration by you, along with the other

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evidence in the case, and to be given the weight you decide it should have.

(Brief pause.)

THE COURT: If you find, ladies and gentlemen, that the State has failed to prove beyond a reasonable doubt that the Defendant is guilty of possession with intent to distribute marijuana, you may also consider whether the State has proved beyond a reasonable doubt that the Defendant is guilty of simple possession of marijuana.

Simple possession does not require an intent to distribute the marijuana. To prove simple possession of marijuana, the State must prove beyond a reasonable doubt that the Defendant knowingly or intentionally possessed marijuana. Knowingly means that knowledge -- knowingly means with knowledge, consciously, not accidentally. Intentionally means willfully, intending the result which actually occurs, not accidentally or involuntary.

Again, possession, actual or constructive possession as previously defined of marijuana, is a crime unless the marijuana was obtained directly from or through a valid prescription or order of a practitioner acting in the course of professional practice. A practitioner is a physician, dentist, veterinarian, podiatrist, scientific investigator, pharmacy, hospital, or other person or institution licensed, registered, or otherwise permitted to

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distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice of research in this state.

Now, ladies and gentlemen, I'm drawing near -- I am now drawing near the conclusion of this charge. And I want you to understand that you -- that you are not partisans or advocates for the State of South Carolina or the Defendant. It is your duty, by your joint deliberations, to determine the truth in this case, giving to the Defendant the benefit of every reasonable doubt on each and every issue. Then to the facts, which you determine to be true, you should take and apply the law which has been given to you by this Court, and thus arrive at a verdict which speaks the truth in this case. In fact, the word "verdict," which has a Latin derivative, means "a true saying." Thus when you have accomplished these responsibilities, you will have satisfied your oath as jurors, and you will have discharged your duty to this Court.

Once you retire to the jury room, the bailiff will give the verdict form to you, Madam Forelady.

When you, the jury -- when you, the jury, arrive at a verdict as to the offenses charged in this case, you, Madam Forelady, will select the verdict as to each charge on the verdict form.

If the State has failed to prove the guilt of the

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Defendant beyond a reasonable doubt, your verdict, ladies and gentlemen, will be not guilty. Likewise, if the State has proven the guilt of the Defendant beyond a reasonable doubt, your verdict will be guilty.

Now, once a decision has been made, the forelady will check whichever choice is the verdict of the jury to the charge.

Let me explain to you all and let me emphasize, ladies and gentlemen, that the verdict that you render in this case must be, must be the verdict of each and every juror. It must be your unanimous verdict. All 12 jurors must agree on the verdict which you authorize the forelady to write for the jury.

I want you to further understand, ladies and gentlemen, that the order in which the choices of verdict appear on the verdict form are not suggestive of any verdict on the part of this Court. The verdict in this case is to be determined by you, the jury, not the Court.

Furthermore, ladies and gentlemen, please understand that even though I will give the verdict form to the forelady, it is not her verdict alone. It is the verdict of all 12 of you, and I again emphasize that it must be your unanimous verdict.

I am, also, ladies and gentlemen, going to give you a copy of these instructions in written form. During your

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deliberations, you may refer to the instructions to guide your decision making. However, you must consider the instructions as a whole and not follow some and ignore others.

Please, Madam Forelady, return these instructions to the Court at the time that your verdict is rendered.

Now, I am going to ask you all to retire to the jury room, but do not, do not begin your deliberations until you're instructed to do so. The law requires that I consult with the attorneys to ensure that I have not left any -- anything out of these instructions.

After I have consulted with the attorneys, the bailiff will bring in a copy of these instructions, along with the verdict form and the items of evidence that have been introduced, and will instruct you to begin your deliberations.

During your deliberations, if you should have any questions, Madam Forelady, it will be your responsibility to reduce such questions to writing, knock on the door, let the bailiff know that you have a question, give it to them. They will get it to me, and I will answer it however the Court deems appropriate.

Once you all have reached a verdict in this case, ladies and gentlemen, and filled out the verdict form, signed and dated, Madam Forelady, please knock on the door.

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Let the bailiff know that you all have reached a verdict, and we will get you back in the courtroom as promptly as possible.

Before I excuse you all to the jury room, does everyone on the jury feel okay? Anyone not feeling well?

(No audible response.)

THE COURT: All right. I'm going to ask that all of you step to the jury room, but do not begin your deliberations until you're instructed to do so.

(Jury exits the courtroom at 12:41 p.m.)

THE COURT: (To the bailiff) Close that door, please. Thank you.

Any exception or objection to the charge by the State?

MR. SHENKAR: Nothing from the State, Your Honor.

THE COURT: Defense counsel?

MS. EIGENBROT: Nothing from the Defense.

THE COURT: All right. If you all would come up here and make sure all of the items of evidence are here.

(Brief pause as attorneys confer with the court reporter regarding exhibits.)

THE COURT: I'll be right back.

(Briefly off the record.)

THE COURT: The two alternates are back here on the hall, out of the room. Any objection to me releasing them back here?

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MS. EIGENBROT: No objection.

MS. ALL: No, Your Honor.

THE COURT: And on the possession with intent to distribute cocaine, because it was so convoluted, what had happened, when I pulled out the possession with intent to distribute cocaine, which had all of the elements, leaving in possession with intent to distribute marijuana, reference back that portion of the charge, which had all the elements except the change in the drugs. Okay.

But I need to bring them back out because I -- I did not charge them, you know, the 28 grams or one ounce creates that inference. I charged them on the trafficking on the inference, but I didn't charge them, I don't think -- —

MR. SHENKAR: I believe you did.

MR. POURANARAS: I think you did.

MS. ALL: I thought you did as well.

MR. SHENKAR: Yeah. You did charge them on the inference.

THE COURT: Okay. Well, are y'all satisfied whether I charged them on the PWID marijuana?

MR. POURNARAS: Yes, Your Honor.

THE COURT: Okay.

MR. SHENKAR: That ---

THE COURT: Let me get it printed and I'll look at it

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again, and we'll -- we'll send it all back and tell them to start their deliberations.

MR. SHENKAR: Okay. Thank you, Your Honor.

(Briefly off the record.)

THE COURT: Y'all have looked at the verdict form, good to go.

MS. ALL: Yes.

THE COURT: Looked at the charge, good to go.

(No audible response.)

THE COURT: (To the bailiff) You can take the items of evidence in there.

Do we have any -- I don't recall -- there aren't any unspent ---

MR. POURNARAS: No, Your Honor.

THE COURT: --- casings. Okay.

MR. POURANARAS: Six casings and the one ---

THE COURT: Do y'all have any objection to the firearm going back?

MR. POURNARAS: Absolutely not.

MR. SHENKAR: No, Your Honor.

(Off the record at 1:11 p.m. Verdict form and exhibits taken to the jury room at 1:12 p.m.)

(On the record at 1:45 p.m.)

THE COURT: I'm going to mark this note as a Court's exhibit requesting a list of items for the grand larceny.

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No list was introduced ---

MR. POURANARAS: Right.

THE COURT: --- into evidence. I mean, the only -- do you disagree with that?

MS. ALL: I'm sorry, Your Honor, I didn't hear you.

THE COURT: I said no list was introduced into evidence. They're asking for a list of items for the grand larceny.

MS. ALL: That's correct. We -- we introduced it through testimony ---

THE COURT: Ms. Jenkins.

MS. ALL: --- and pictures. And instead of -- yes. And through Investigator McCoy and Investigator Moore. And instead of listing it out as a list, we simply referenced items and then testified, through multiple witnesses, as to the value, that it was over $2,000.

THE COURT: Well, I can just tell them there's a -- there has been no list of such introduced into evidence, it was through testimony. If they want to hear all this testimony again, that's their option. Fair enough?

MS. ALL: And the --

MS. EIGENBROT: Fair enough.

MS. ALL: --- and the photographs. I mean, everything's -- would be photographed in the car.

THE COURT: Okay. All right. I'm going to go get my

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robe.

(Brief pause.)

THE COURT: All right. The Defendant is back in the courtroom with his attorneys.

The jury had sent out a note requesting a list of items for the grand larceny charge. Discussing such with the lawyers, no such list had been introduced into evidence.

I'm going to bring the jury back out and inform them that no such list was introduced into evidence; however, it was introduced through testimony of various witnesses. If they want to rehear testimony, we will certainly accommodate them.

Any exception or objection by the State?

MS. ALL: None, Your Honor.

THE COURT: Defense counsel?

MS. EIGENBROT: None, Your Honor.

THE COURT: (To the bailiff) Will you bring me the jury, please, sir?

All right. I'll say through testimony and/or exhibits.

(The jury enters the courtroom at 1:55 p.m.)

THE BAILIFF: The jury's seated, Your Honor.

THE COURT: Thank you, sir.

Madam Forelady, ladies and gentlemen of the jury, I

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received a note that you handed -- or sent out requesting a list of items for the grand larceny charge. I will tell you that a specific list was not introduced into evidence during the course of the trial. There was -- with regards to the grand larceny, there was testimony from witnesses concerning such, along with exhibits introduced into evidence.

Therefore, the Court -- since a list was not introduced, you cannot get a list. It was not introduced into evidence; therefore, the Court cannot provide you with a list of such.

You are to consider, in your deliberations, only the testimony that's been elicited from this stand, along with any exhibits that have been introduced. If you wish to hear the testimony of any witnesses to assist you in your decision pertaining to any of the charges, the Court will -- not the Court, but Madam Court Reporter over here will accommodate.

I'll ask that you all return to your jury room, continue your deliberations. If you have any further questions, again, please reduce them to writing, sign, Madam Forelady, and date, and let us know. Okay. Thank you. You all may return to the jury room.

(The jury exits the courtroom at 1:57 p.m.)

THE COURT: Any objection or exception to anything

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that I said to the jury by the State?

MS. ALL: None, Your Honor.

THE COURT: Defense counsel?

MS. EIGENBROT: None, Your Honor.

THE COURT: All right. We will stand down. I have made that note, I think I told you all, a Court's Exhibit. All right. We'll stand down.

(Marked Court's Exhibit No. 2, juror note.)

(Off the record at 1:58 p.m.)

(Back on the record at 2:48 p.m.)

THE COURT: All right. It's my understanding the jury has a verdict. I would remind everyone, regardless of what the verdict is, to keep your emotions in check. Failure to do so could result in being held in contempt, either by virtue of fine and/or incarceration. If you do not believe that you can keep your emotions in check, now is your time to leave the courtroom.

Anything from the State before I bring the jury in?

MR. SHENKAR: Nothing from the State, Your Honor.

THE COURT: Defense counsel?

MS. EIGENBROT: Nothing from the Defense.

THE COURT: All right. (To the bailiff) Bring me the jury, please, sir.

Madam Clerk, you're going to publish the verdict?

MADAM CLERK: Yes, sir.

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THE COURT: If you'll retrieve it, let me look at it, make sure it's in order, and then I'll give it back to you to publish it.

(Jury enters the courtroom at 2:49 p.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Madam Forelady, ladies and gentlemen of the jury, have you all reached a verdict?

MADAM FORELADY: We have, Your Honor.

THE COURT: Madam Clerk, would you obtain the verdict, please -- verdict form? Thank you.

THE COURT: (To the forelady) You may be seated, ma'am.

(The court clerk complies, hands the form to the Court, and after looking over the form, the Court hands the form back to the court clerk.)

THE COURT: All right. Madam Clerk, you may publish the verdict.

COURT CLERK: Thank you, Your Honor. (As read) "The State of South Carolina, in the Court of General Sessions, in the matter of the *State of South Carolina vs. Demetrius Derrick Henderson*, on Indictments Nos. 2014-GS-40-6872, 2014-GS-40-6873, 2014-GS-40-6874, 2014-GS-40-6877, as to the charge of burglary first degree, we, the jury, unanimously find the Defendant, Demetrius Derrick

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Henderson, guilty.

"As to the charge of grand larceny, 2,000, less than 10,000, we, the jury, unanimously find the Defendant, Demetrius Derrick Henderson, guilty.

"As to the charge of trafficking in cocaine, 10 and less than 28 grams, we, the jury, unanimously, find the Defendant, Demetrius Derrick Henderson, guilty.

"As to the charge of possession with intent to distribute marijuana, we, the jury, unanimously find the Defendant, Demetrius Derrick Henderson, guilty."

Signed by the Forelady and dated May 8, 2015.

Madam Foreperson, is this your verdict and the verdict of the entire jury?

MADAM FORELADY: It is.

COURT CLERK: Thank you.

THE COURT: All right. Anything from Defense counsel at this time?

MS. EIGENBROT: Your Honor, we'd ask that the jury be polled, please.

THE COURT: Madam Clerk.

COURT CLERK: Madam Forelady and ladies and gentlemen of the jury, I'm going to call out your name. As I call out your name, I'm going to ask you two questions and I need you to answer me "yes" or "no" to both the questions.

Steve Sprowls, was this your verdict?

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MR. SPROWLS: Yes.
COURT CLERK: Is it still your verdict?
MR. SPROWLS: Yes.
COURT CLERK: Thank you.
THE COURT: (To the jury) And you all do not have to stand if you don't want to, okay.
Go ahead, Madam Clerk.
COURT CLERK: Natalie Carter, was this your verdict?
MS. CARTER: Yes.
COURT CLERK: Is it still your verdict?
MS. CARTER: Yes.
COURT CLERK: Lisa Drakes, was this your verdict?
MS. DRAKES: Yes.
COURT CLERK: Is it still your verdict?
MS. DRAKES: Yes.
COURT CLERK: Terry Morgan, was this your verdict?
MR. MORGAN: Yes.
COURT CLERK: Is it still your verdict?
MR. MORGAN: It is.
COURT CLERK: Terry Hicks, was this your verdict?
MR. HICKS: Yes.
COURT CLERK: Is it still your verdict?
MR. HICKS: Yes.
COURT CLERK: Rebecca Perryman, was this your verdict?
MS. PERRYMAN: Yes.

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COURT CLERK: Is it still your verdict?

MS. PERRYMAN: Yes.

COURT CLERK: Kenneth Barr, was this your verdict?

MR. BARR: Yes.

COURT CLERK: Is it still your verdict?

MR. BARR: Yes.

COURT CLERK: Maria Sophocleous, was this your verdict?

MS. SOPHOCLEOUS: Yes.

COURT CLERK: Is it still your verdict?

MS. SOPHOCLEOUS: Yes.

COURT CLERK: Omar Haygood, was this your verdict?

MR. HAYGOOD: Yes.

COURT CLERK: Is it still your verdict?

MR. HAYGOOD: Yes.

COURT CLERK: Thomas McCullough, was this your verdict?

MR. MCCULLOUGH: Yes.

COURT CLERK: Is it still your verdict?

MR. MCCULLOUGH: Yes.

COURT CLERK: Joseph Guy, was this your verdict?

MR. GUY: Yes.

COURT CLERK: Is it still your verdict?

MR. GUY: Yes.

COURT CLERK: William McLeod, was this your verdict?

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MR. MCLEOD: Yes.

COURT CLERK: Is it still your verdict?

MR. MCLEOD: Yes.

COURT CLERK: The jury's polled, Your Honor.

THE COURT: All right. Anything further from Defense counsel at this time?

MS. EIGENBROT: No, Your Honor.

THE COURT: (To the jury) All right. Ladies and gentlemen, you all have fulfilled your responsibilities as jurors this week. When I release you this week, you cannot be summoned back up here for jury duty at -- at least for the next three years.

Now, that does not mean that you can't be summoned for city court, magistrate's court, or federal court. You just can't be summoned back up here to this court to serve as jurors for common pleas or general sessions.

I want to thank each of you for your service this week. I appreciate your attentiveness throughout the trial of this case. I hope you all learned that this isn't television. This is a lot different than television.

But I want to thank you for your service. There is absolutely no price that can be put upon the value of your service to this country, to this state, and to this county.

Jury service never ever comes at a convenient time. It is only -- it is the only truly remaining service that

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we all have as citizens in this country anymore. It is not a situation wherein individuals are drafted in the military, such as our grandparents, et cetera, to -- to serve for a couple of years. This is truly the only remaining service.

Jury service never comes at a convenient time and it takes sacrifice -- sacrifice from you all to be here this week. I know that it pulled you out of your ordinary, daily lives, and I appreciate the sacrifices you all made to be here this week.

As you all went through that qualification process on Monday, I believe, with Judge Hood, you had a glimpse -- from each potential juror, just a small glimpse of your back -- what you do, if you're married, what your spouse may do. But as you sat through that qualification process, you would see that everybody comes from a little bit different background, so to speak, and that's what it takes. It's not a situation where me or any other judge in this state or -- or country, for that matter, comes in on a Monday morning and looks at one of the sheriff's deputies or other law enforcement officers and says, "Go out and find me the first 12 people you can find and let's try this case." It is not that type of situation at all.

I can promise you, if you all were seated as an individual at one of these two tables, whether it be a

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plaintiff or a defendant in a criminal case or a victim or a defendant in a criminal case for that matter, you would want people such as yourselves serving on juries, just like you all did this week.

Now, when I release you here today, I know that the clerk will have a work excuse for you. She may have checks --

Do you already have checks printed?

MADAM CLERK: Yes, sir.

THE COURT: She has checks that have been printed for your service this week. I will tell you that it in no way, shape, or form can come close to what your -- the value of your service has been this week. It is a small, small token.

As I've told you -- throughout the last few days that you've served as jurors, I told you not to talk about the case. When I release you here today, you may talk about the case, but only if you so desire to talk about the case. No one, and I repeat, no one can make you talk about this case if you do not wish to. All right. If someone approaches you and asks you to talk about this case and you tell them you don't want to talk about it, you let the clerk's office know, and me or some other judge or -- or law enforcement will make sure that it is handled. Okay.

Anything -- well, after you all have completed your

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responsibility as jurors, it will -- now -- the responsibility of sentencing will now fall to the Court. That will be my responsibility at this stage. You all, ladies and gentlemen, are free to go at this time if you so desire. However, you may stay if you wish to stay for that -- for that procedure to take place.

But if -- if you wish to go, I will allow you and give you the opportunity at this time to leave. If you wish to leave, you can go.

Madam Clerk, you can give them their work excuses. All right.

(The jury exits at 2:58 p.m.)

THE COURT: Madam Clerk, does the Forelady need to sign the indictments?

MADAM CLERK: Some judges have them sign them and some don't ---

THE COURT: Well, I was here before and the clerk -- we don't in Florence, but I was here before and they wanted them signed. Up here after I left, I think they were scrambling trying to find the forelady. So if you'll take those back.

All right. Does the State have sentencing sheets?

MS. ALL: Yes, Your Honor.

THE COURT: Let me ask this before we proceed:

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Anything from Defense counsel before we proceed with sentencing?

MS. EIGENBROT: Yes, Your Honor. At this time, the Defense would make a motion for a new trial based on all of our prior objections, our prior motions, including -- particularly the mistrial motion in regards to the mention of an ankle bracelet, including the brevity of the deliberation by the jury, Your Honor.

THE COURT REPORTER: Including the brevity of ...?

MS. EIGENBROT: The deliberation of the jury.

THE COURT: As previously stated by this Court, such objections are so noted for the record, but are respectfully -- the Court's prior rulings remain the same.

Defense counsel's motion for a new trial is hereby denied. I think there was more than sufficient evidence for this jury to return the verdict that they returned as to each of these counts. Therefore, based upon the sufficiency of the evidence, I respectfully deny Defense counsel's motion, but I do so make a note of the motion as well as objections. All right.

(Brief pause.)

THE COURT: All right. Anything from the State?

MR. SHENKAR: Nothing at this point, Your Honor.

THE COURT: The State have any position with regard to sentencing?

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MR. SHENKAR: Yes, Your Honor. May it please the Court. We will, obviously, defer to Your Honor with regards to the length of sentencing, but I do want to mention to the Court related to some of the issues that we discussed earlier.

We put the various offers that the State made on the record, by notifying the Court of all the history of Mr. Henderson and burglaries. He has a conviction for a burglary back in 2010, for which he received a suspended YOA sentence. And in addition to that, from 2010, he also has a conviction for obtaining goods under false pretense, as well as simple possession of marijuana. That YOA sentence was --

THE COURT: Hold on a minute. Individuals walking back in here -- jurors.

(Brief pause.)

THE COURT: All right. Go ahead, Mr. Shenkar.

MR. SHENKAR: Yes, Your Honor. That burglary that he pled guilty to, back in 2010, he received a Youthful Offender Act sentence for six years and that was suspended. I guess it was before the omnibus was passed, so he was allowed to go on probation for five years.

In addition to that, he also has a conviction for trespassing, between that conviction and the new set of burglary charges that he had in our office, which we were

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going to try initially. That charge consisted of a burglary second degree, nonviolent, and a petit larceny.

At this point, he refused to accept a plea offer that would have suggested to revoke his YOA sentence and give him an active YOA of three years, and elected to proceed to trial.

Based on my motion, the judge then ordered him to get on electronic monitoring, which he was wearing at the time of this particular burglary from December 18 of 2013.

Your Honor, this pattern, based on the State's opinion and his failure to accept responsibility on all these various burglaries, the one that was reduced from burglary to trespassing because of lack of evidence, show a pattern of his behavior. He was never -- never taken the chances that were given to him, never accepted responsibility, continued to break into people's homes, continued to steal their things. We feel that based on his failure to accept responsibility and of the fact that he was on electronic monitoring after he had been in front of circuit court judge that put him on electronic monitoring, and still elected to proceed and burglarize people's homes should give him the sentence that Your Honor would give him. We ask that that sentence would be lengthy.

THE COURT: All right. Anything further? Ms. All, anything from you?

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MS. ALL: Yes, Your Honor, if I may approach, I have that final fine sheet.

(Ms. All hands a document to the Court.)

THE COURT: All right. Be happy to hear from Defense counsel.

MS. EIGENBROT: Thank you, Your Honor. May it please the Court. Your Honor, Mr. Henderson's 24 years old. At the time of this incident, when he was shot, he was in school. He was attending school for business administration. I do have some school records if Your Honor would like to see those.

He was working at the time.

Your Honor, I know he's got a little bit of a history. I disagree with Mr. Shenkar's belief that Mr. Henderson's never taken responsibility, as he pled to his 2010 charge.

Further, Your Honor, the 2012 pending charge, we had initially planned on taking that one to trial be -- because the lack of evidence in that case was so outstanding.

Your Honor, Mr. Henderson has always maintained his innocence in these matters, which is why he rejected the offers. I think that is his constitutional right. He has a right to -- to be in trial. He does not have to accept an offer, especially when he's maintained his innocence the entire time, which he still does today.

And Your Honor, most importantly though, I think I

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would like Your Honor to take into consideration the fact that even though he's maintaining his innocence right now, he did almost pay the ultimate price. He almost lost his life.

He is now forever disabled. He is unable to pretty much get around on his own. He -- he pretty much always needs assistance, either with a wheelchair or a walker. He has a colostomy bag he will forever have to deal with. He still has some impending surgeries to continue his care that he will not receive, especially while at the Department of Corrections or at the jail. I'm hoping to make those happen, but at this time, there's no guarantee that he can receive the care that he needs.

And Your Honor, my understanding is those surgeries are pretty serious as he does have some bullet fragments still floating around his body.

And Your Honor, it's no -- no secret that Mr. Henderson and I have not always seen eye to eye on everything, but I think that comes from a critical thinking and challenging me standpoint. It's not because he wanted to be difficult. It's because he wanted to ask questions because he thinks critically, because he is an intelligent young man despite the fact that he's maybe made some stupid decisions in his past.

I think he is capable. I think he could do great

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things given the opportunity. I think he was on the right path until this happened, Your Honor. And despite everything, it has been a pleasure to represent him.

I believe his uncle would like to speak on the family's behalf, Mr. Brown, at the appropriate time, Your Honor.

(Audience member stands.)

MR. BROWN: My name is Bobby Brown.

THE COURT: Yes, sir.

MR. BROWN: Your Honor, the Court, I am Mr. Henderson's uncle. And I would just like to start by saying as an uncle, I kind of feel like I failed, but I know my sister did not fail, as she has been a single parent the majority of her life, raising her children. She did raise them with integrity, decency, and to care about other people and their belongings.

Now, my nephew, he's an impressionable -- impressionable young man. He is definitely a follower, not a leader, and we have discussed that term on many cases, even when he was a youngster in high school. And I would always try to convince him, you know, you got to think for yourself, and sometimes you can't run with the in crowd all the time, you know.

And upon him getting in some of that trouble early on in 2010, I think once he found out the severity of it, he

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did start turning hisself [sic] around.

He was working on the job. And I know for a fact that they arrested him on some, like, hearsay because of appearance. There's a lot of young men that look like him. But his job, they kept it open for him. So that should speak a little bit about his character. If he was incarcerated and his boss still held the position open because they wanted him to come back to work, because they had that much faith in him.

And I think being young, he has made some -- some decisions that haven't been beneficial to him, but I don't think that should cost him the rest of his life.

As I expressed to him, myself, I am now a prosthetic person. I have a right leg prosthetic. And -- and that's probably due to some of the stuff that I did in my youth. And I was explaining to him that, you know, my leg got amputated, but that didn't stop the fact that I wanted to turn my life around and do something different and better.

And I was expressing that with him also, because when he was shot, Your Honor, I do believe that he -- he should not have survived that shot. So I think that there's something in store for him that my Higher Power, which I choose to call "God," has something more in store for Demetrius.

So I just ask the Court to -- to -- to please show

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leniency, even though it may seem like this terrible convict is sitting there in front of you. But he is not a terrible convict, Your Honor. He's a decent young man. He's a decent human being. He's just made some -- some bad decisions and -- and followed a difficult crowd to follow.

And I know I may sound repetitious, but it's -- it's just heart wrenching because my sister really did try her best to do what she needed to do for her kids.

And as the Defense stated, that he did enroll in college. He started, you know, participating in other activities along. And -- and I mean, it has rubbed off because my other nephew, who's in the courtroom, that favors him, he's working towards becoming a manager at Auto Zone and raising his little young son.

So you know, it's -- it's about the choices that we make, Your Honor. And I think Demetrius made some pretty bad choices that have severely affected him and going to affect him for the rest of his life.

As I told him about myself, I don't like having to get up every morning and strap my leg on, but I -- I have to do it, sir, if I want to get out there and -- and continue on life because I could have gave up a long time ago.

And -- and I want him to understand that his life is not over. Irregardless of -- of the sentences, he still can come out and be a productive member in society and --

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you know, and continue on that path that he was on before this tragic incident happened.

And I -- I'm just nervous, Your Honor. I just want to say on behalf of -- of my family that we love and we totally support Demetrius. This was a hard decision for us to follow with because I didn't know all the facts of the case, and -- and I was struggling, arguing with him about some stuff.

And I just have to respect the fact that he -- he -- he's doing what he feel is right for himself, and I have to respect him as a man for that.

And I just pray that from this experience, that he just take a different path. Whatever the outcome may be, that -- that this is not life -- your life is not worth getting ended over something so trivial, basically, when it's so much more out there and many more opportunities that he's capable of -- of obtaining, considering he is at an age that he can still get out and do some productive stuff in society and for society, you know, as far as -- hopefully, he may be able to have a family.

I'm not sure about the extent of -- the extent of his injuries, but I know they're pretty bad. So he may not have a family in his future, but he can definitely reach out and help other youngsters, and keep them from something tragic like this happening in their lives.

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THE COURT: All right.

MR. BROWN: Thank you, sir.

THE COURT: Thank you.

MS. EIGENBROT: And Your Honor, I just wanted to point out that his family has been here in support of him throughout the entire trial. And again, we would ask for the minimum in consideration of all those things, especially his health, Your Honor.

THE COURT: Mr. Pournaras, anything you want to add, sir?

MR. POURNARAS: Nothing further, Your Honor.

THE COURT: Anybody else from his family wish to speak?

MS. EIGENBROT: No, Your Honor.

THE COURT: How much time has he done in jail? How much time is he entitled to credit on?

MS. EIGENBROT: Your Honor, he has credit from the day he was arrested, the end of April of 2014. The reason it took so long to arrest him was because he was in the hospital.

MR. POURNARAS: And he was in the hospital since the night of the incident we've been discussing, Your Honor. That would be December the 18 of 2013.

MS. ALL: And the day he was booked was April 18, 2014.

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THE COURT: I'm sorry, what was that? The day ---

MS. ALL: The day he was booked. I was just volunteering. I just happened to have it printed out because -- it was April 18, 2014.

MR. POURNARAS: Was when he was discharged from the hospital ...

THE COURT: All right.

(Brief pause.)

THE COURT: Make sure, Madam Solicitor, that I am correct on this: Trafficking cocaine, 28 grams -- excuse me, 10 grams or more, but less than 28 grams, 0 to 10? Is that -- 3 to 10, excuse me, 3 to 10?

MS. ALL: That's correct, Your Honor, and it's serious and violent. And 85 percent under 17-25-45.

THE COURT: Burglary first carries a mandatory minimum of 15 years up to life imprisonment?

MS. ALL: Yes, Your Honor. Violent, most serious in 25 -- 17-25-45.

THE COURT: Possession with intent to distribute marijuana, 0 to 5?

MS. ALL: Yes, Your Honor, those are the statutory qualifications.

THE COURT: Grand larceny is 0 to 5.

MS. ALL: Yes, Your Honor, the same.

(Brief pause.)

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THE COURT: Mr. Shenkar, let me ask you this real quick. I want to make sure that I have documented my review. In March of 2010, he was charged with burglary third degree; and that's what he pled guilty to, received a sentence, under the Youthful Offender Act, looks like in November of 2010. Is he still on YOA supervision?

MR. SHENKAR: Yes. It was a burglary second, Your Honor, not a burglary third.

THE COURT: A burglary second.

MS. EIGENBROT: Your Honor, that is still a matter we're going to have to deal with at some point.

THE COURT: Have y'all been before the YOA parole group? Did he do any time on that?

MS. EIGENBROT: No, Your Honor, he was allowed to remain on probation ---

THE COURT: His probation with deal with the revocation of that.

MS. EIGENBROT: Yes, Your Honor ---

THE COURT: And he was -- I'm sorry, go ahead.

MS. EIGENBROT: Generally, what they'll do is they'll just send paperwork over and run whatever it is concurrent.

THE COURT: All right. He was also convicted of possession of marijuana, as well as receiving stolen goods as a result of that?

MR. SHENKAR: Yes. I think those were separate

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incidents, but he has those convictions from 2010.

THE COURT: All right. Also, on his rap sheet that I was provided earlier, it was no -- excuse me, it was a December 27, 2010 arrest for burglary.

MR. SHENKAR: Yeah. That burglary was reduced to a trespassing, which he pled to. It is not reflected on the rap sheet, but --

THE COURT: Okay.

MR. SHENKAR: -- it was reduced to a trespassing.

THE COURT: And he was also convicted of a marijuana charge at that time, as well as giving false information to law enforcement?

MR. SHENKAR: Yes, Your Honor.

THE COURT: All right. Then in November of 2012, he was arrested again on a burglary second.

MR. SHENKAR: Yes. Non-violent.

THE COURT: And that was the one that's still pending for which he was out on bond when he was convict -- or arrested for this charge.

MR. SHENKAR: Yes, Your Honor.

THE COURT: So in essence this is his -- albeit one was reduced to trespass, his fourth burglary?

MR. SHENKAR: Yes, Your Honor.

THE COURT: Mr. Henderson, I will give you an opportunity to say -- say anything if you so desire;

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however, I don't want you to say anything that could affect any appellate rights that you may have. Do you wish -- do you wish to address the Court?

THE DEFENDANT: No, sir.

THE COURT: Okay.

(Brief pause.)

THE COURT: All right. On indictment 2014-GS-40-06784, trafficking cocaine charge, the Defendant's hereby committed to the State Department of Corrections for a period of 10 years, given credit for 386 days.

On the 2014-GS-40-06877, possession with intent to distribute marijuana, the Defendant's hereby committed to the State Department of Corrections for a period of one year.

On indictment 2014-GS-40-06872, grand larceny, the Defendant's hereby committed to the State Department of Corrections for a period of three years.

On indictment 2014-GS-40-06873, as it relates to his burglary first, the Defendant's hereby committed to the State Department of Corrections for a period of 15 years.

Each of these charges are to run consecutive, consecutive.

MR. SHENKAR: Thank you, Your Honor.

THE COURT: Thank you. Anything further from the State?

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MR. SHENKAR: Nothing from the State, Your Honor.

THE COURT: Defense counsel?

MR. POURNARAS: Nothing other -- just a matter of clarity. I believe Ms. All said that the trafficking charge would be a no parole offense and I -- and I'm --

THE COURT: No parole offense is the burglary first, as well as the trafficking cocaine. Both of those were serious, most -- most serious offenses, I believe.

MR. POURNARAS: Thank you, Your Honor.

THE COURT: Thank you.

(Marked Court's Exhibit No. 2, Juror note.)

(Off the record at 3:26 p.m.)

-- END OF TRANSCRIPT RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 6 - 8 days of May, 2015.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

_____

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

December 31, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS HENDERSON,

APPELLANT

APPELLATE CASE NO. 2015-001075

ANDERS BRIEF OF APPELLANT

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing the State to introduce evidence and testimony derived from a GPS ankle monitor Appellant was wearing on the evening in question when the evidence was confusing and any possible probative value was outweighed by the prejudicial effect?

STATEMENT OF THE CASE

In October of 2014, the Richland County Grand Jury indicted Appellant Henderson for grand larceny, burglary first degree, trafficking in cocaine, 10-28 grams and possession with intent to distribute marijuana, indictments #2014-GS-40 -6872, 73, 74, 77. On May 6, 2015, Henderson proceeded to jury trial before the Honorable D. Craig Brown. Megan Eigenbrot and Constantine Pournaras represented Henderson at trial. Britton All and Joseph Shenkar prosecuted the case. On May 8, 2015, the jury returned verdicts of guilty as charged. Judge Brown sentenced Henderson to fifteen (15) years for burglary first degree, three (3) years consecutive for grand larceny, ten (10) years consecutive for trafficking in cocaine and one year consecutive for possession with intent to distribute marijuana, resulting in an aggregate sentence of twenty nine (29) years. A timely notice of intent to appeal was served on May 18, 2015. This appeal follows.

ARGUMENT

The trial judge erred in allowing the State to introduce evidence and testimony derived from a GPS ankle monitor Appellant was wearing on the evening in question when the evidence was confusing and any possible probative value was outweighed by the prejudicial effect.

On December 18, 2013, at 6:24 PM officers with the Columbia Police Department responded to the Reserve at Riverwalk Apartment complex after receiving a call about shots being fired. (R. pp. 121-123). When the officers arrived at the apartment complex they found Appellant lying face down with multiple gunshot wounds. (R. p. 126, line 21 – p. 127, lines 1-21). Appellant was taken to the hospital for treatment and the police began to investigate. Police learned that the boyfriend of the woman who lived in apartment #51-10 was seen talking with another individual in a Dodge Intrepid just after the shots were fired. (R. pp. 99-100; p. 388, line 19 – p. 389, lines 1-18). The woman, April Jenkins, pulled into the apartment complex as police were on the scene still investigating. (R. p. 389, lines 10-18). Her boyfriend, Costell Johnson, contacted the police shortly after the shooting and later gave a statement to police. (R. p. 389, line 19 – p. 390, lines 1-5). Johnson died prior to the trial. (R. p. 204, lines 15-21). The police learned that the individual seen driving the Dodge Intrepid was Johnson's cousin, Travis Brimfield. (R. p. 415, lines 12-16).

Brimfield admitted shooting Appellant with an assault rifle and fleeing the scene. (R. pp. 194-197). According to Brimfield, when he and Johnson returned to Jenkins' apartment they had difficulty entering because there was a chair pushed up against the door. (R. p. 190, line 20 –p. 191, lines 1-7). Once inside the apartment the men realized that the apartment had been burglarized. (R. p. 175, lines 25 – p. 176, lines 1-24). Brimfield testified that he went to the room in the apartment where he sometimes stayed, grabbed his assault rifle and went outside. (R. p. 176, line 25 – p. 177, lines 1-14). Once outside Brimfield saw Appellant and asked him

three times, "Have you been in my shit?" (R. p. 177, lines 16-24). According to Brimfield, when asked a third time Appellant answered, "Yeah" and started moving backward and reaching. (R. p. 179, lines 3-18). Brimfield testified, "So that's when – when it came in my head I was terrified and I was scared. So I just started shooting because either I was going to get shot or he was going to get shot." (R. p. 179, lines 19-22). Appellant was unarmed.

The police found Appellant's car near the scene. (R. p. 401, line 19 – p. 402, lines 1-17). Inside the car the police found televisions and other items belonging to Jenkins. (R. pp. 402-403). The police also found marijuana and a digital scale in the car. (R. p. 239, lines 17-21). A bag of cocaine and some television remotes were found on Appellant at the scene. (R. p. 416, line 14 – p. 417, lines 1-7).

At the time of the incident, Appellant was on probation and was wearing a GPS ankle monitor maintained by the South Carolina Department of Probation, Parole and Pardon Services [PPP]. (R. p. 29, lines 15-18). Appellant moved to prevent the State from referencing the fact that Appellant was on probation and prevent the State from using any information from the ankle monitor. (R. pp. 29-32). Appellant argued that the evidence constituted impermissible character evidence and was not needed to establish that Appellant was at the scene as Appellant was found at the scene, suffering from multiple gunshot wounds. Appellant argued that any probative value of the GPS evidence was outweighed by its prejudicial effect. (R. p. 32, lines 20-22). The State argued that the evidence showed that Appellant was "scoping" the apartment prior to the burglary. (R. p. 33, lines 13-16). The State agreed not to use certain terms that would indicate that Appellant was on probation but would refer to GPS data generally. (R. pp. 34-35). The trial judge withheld a formal ruling.

One of the responding officers testified before the jury that he remembered that Appellant was wearing an ankle bracelet. (R. p. 129, lines 18-20). Appellant moved for a mistrial which the judge denied. (R. p. 131, lines 3-17). The judge later admitted the GPS evidence stating, "I'm going to allow it in. Now, I think it's highly, highly probative, okay? Now defense counsel can stipulate that it's applicable to him or they got to have some leeway to make that connection." (R. p. 299, lines 11-15). The judge did not state specifically how the evidence was probative.

Prior to admission of the GPS testimony before the jury, the State proffered the testimony of Agent Mitchell Tucker with PPP. (R. pp. 301-317). After the proffer Appellant again objected arguing that the testimony was irrelevant and confusing. (R. p. 319, line 2 – p. 320, lines 1-17). The judge stated, "I think the probative value far outweighs any prejudicial effect to your client. It is highly probative in this case."(R. p. 321, lines 1-3). Again, the judge did not state specifically how the evidence was probative. Tucker, without objection, was qualified as an expert in GPS data and interpretation. (R. p. 327, lines 9-14). When Tucker testified before the jury Appellant objected to the admission of State's Exhibits #56 - #61, data and graphs from the ankle monitor worn by Appellant at the time of the incident. (R. p. 329, line 22 – p. 330, lines 1-14). The judge again overruled the objection. (R. p. 330, lines 3-5). At the close of the State's case Appellant again objected to the GPS testimony and evidence. (R. p. 479, lines 8-12). The judge again overruled the objection. (R. p. 489, lines 16-17). The trial judge erred in admitting the GPS testimony and evidence. The testimony and evidence was confusing and any possible probative value was outweighed by the prejudicial effect.

Rule 403, SCRE, provides that, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003). Exceptional circumstances in the present case warrant this Court reversing the decision of the trial judge in regard to the admission of the GPS testimony and evidence.

As to any possible probative value, the GPS testimony and evidence was confusing and failed to establish that Appellant was scoping the apartment, as argued by the State. The State did not need the evidence to establish that Appellant was at the scene because police found Appellant at the scene suffering from multiple gunshot wounds. The judge did not specifically state how the GPS testimony and evidence was probative.

As to prejudicial effect, although the GPS testimony was general without reference to probation, the inference from the testimony was that Appellant was either on bond for a serious offense, on probation for a serious offense or required to register as a sex offender and wear a GPS ankle monitor. (R. p. 30, lines 8-19). This is especially true in light of the officer's improper testimony that Appellant was wearing an ankle bracelet. (R. p. 129, lines 18-20). When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876, (2007) (citing State v. Bell, 302 S.C. 18, 30, 393 S.E.2d 364, 371 (1990)). While Appellant was required to wear the ankle monitor as a condition of probation, this information was properly excluded and any inference in regard to Appellant's probationary status should also have been excluded. The inferences from the GPS testimony and evidence created unfair prejudice to Appellant, far out-weighing any possible probative value. "Unfair

prejudice means an undue tendency to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.App.1998). The trial judge erred in admitting the confusing and unfairly prejudicial GPS testimony and evidence.

CONCLUSION

Based on the above argument this Court should reverse Appellant conviction and sentence and remand the case for a new trial.

Respectfully submitted,

Susan B. Hackett for
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS HENDERSON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Demetrius Henderson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge D. Craig Brown, which was held on May 6-8, 2015 (Trial), and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Demetrius Henderson.

Respectfully submitted,

Susan B. Hackett for
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 5th day of July, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS HENDERSON,

APPELLANT

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictments and sentencing sheets;
(2) Trial transcript;
(3) State's Exhibit #56 – 5 page GPS report;
(4) State's Exhibits #57-61 – GPS maps – To be transported to the Court.

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

Susan B. Hackett for

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

This 5th day of July, 2016.

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Susan B. Hackett for

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

This 5th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS HENDERSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Demetrius Henderson, #363944 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 5th day of July, 2016.

Susan B. Hackett for
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me this
5th day of July, 2016.
Laura Mueller (L.S.)
Notary Public for South Carolina
My Commision Expires: July 3, 2023.

2018CP4002755

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Demetrius Derrick Henderson 363144
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

RICHLAND COUNTY FILED
2018 MAY 22 PM 2:38
JEANNETTE W. McBRIDE C.C.P. & G.S.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis,* it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, **the original** shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Correctional Institution 430 Oaklawn Rd Pelzer SC, 29669

2. Name and location of Court which imposed sentence Court of General Sessions 5th Judicial Circuit Richland County, Columbia SC

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2014-GS-40-06872 Grand Larceny 3years
   (b) 2014-GS-40-06873 Burglary 1st Degree 15years
   (c) 2014-GS-40-06874 Drugs/Trafficking Cocaine 10years
   (D) 2014-GS-40-06877 Marijuana 1 year

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) 5-8-15 3 years
   (b) 5-8-15 15 years
   (c) 5-8-15 10 years
   (D) 5-8-15 1 year

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5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. May 31, 2017

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No 2017-UP-231

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel 6th Amendment

(b) Due Process Violation 5th, 14th Amendment

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attachment

(b) See Attachment

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Megan Eigenbrot, Constantine Pournaras. Public Defender Off P.O. Box 192 1701 main street Columbia, SC 29202

ii. Megan Eigenbrot, Constantine Pournaras. Public Defender Offi P.O. Box 192 1701 main street Columbia, SC 29202

iii. Katherine H. Hudgins SCCID Division of Appellate Defense. P.O. Box 11589 Columbia, SC 29211-1589

(b) the proceedings at which each such attorney represented you:

i. Arraignment and Plea

ii. Trial and sentencing

iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

Reversal of conviction and Remand for a New Trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA
County of Richland

VERIFICATION

I, Demetrius Derrick Henderson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

D. Henderson

SWORN to and subscribed before me this 2nd day of May, ~~19~~ 2018

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: September-25-2023

RICHLAND COUNTY
FILED
2018 MAY 22 PM 2:39
JEANNETTE W. McBRIDE
C.C.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Demetrius Derrick Henderson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

D. Henderson
Applicant

SWORN or affirmed to and subscribed before me this 2nd day of May, ~~19~~ 2018

Tamara Conwell
Notary Public

My Commission Expires September-25-2023

9 State Concisely the grounds on which you base your allegation that you are being held in Custody Unlawfully:

9(a) I am being held in Custody unlawfully in violation of my 6th Amendment right to effective assistance of Counsel.

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

10(a) First Ground Ineffective Assistance of Counsel

Pursuant to the first Prong test of Strickland V Washington 466 US 668. 687-88 (1984) My trial Counsels Megan Eigenbrot and Constantine Pournaras performance fell below an objective standard of reasonableness in reference to Indictments 2014-GS-40-06873 Burglary First Degree, Indictment 2014-GS-40-06874 Trafficking in Cocaine; 10G or more but less than 28G - 1st offense, Indictment 2014-GS-40-06872 Grand Larceny Value more than $2000 but less than $10.000. and Indictment 2014-GS-40-06877 Poss of Marijuana. In failing to object to the trial Judge unconstitutional Mandatory presumption charge that relieves the state of proving the element of criminal intent in his charge to the jury.

Criminal Intent may be inferred from the circumstances shown to have existed

9(a) ... Id Trial Transcript page 544 line 25 through page 545 line 1.

Intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case Id Trial Transcript page 545 line 5-8

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent. See Id at Trial Transcript page 545 line 9-16.

Memorandum of law

Instructions which constitute either a burden shifting presumption or a conclusion presumption are unconstitutional Francis v Franklin, 471 U.S. 307 105. 61 5 Ed. 2d 39 (1979) The Judge should make it clear to the jury that it is free to accept or reject these permissive inferences on criminal Intent and Intent depending on it view of the evidence State v Peterson 287 S.C. 244, 385 S.E. 2d. 800 (1985)

9(b) Pursuant to the Second prong test of Strickland v Washington

9(b)...> 466 U.S 668, 687-88 (1984) Applicant claims that he was Prejudice by counsels failure to object to trial Judges Burden shifting Charges to the jury on criminal Intent, That as lessened the states burden of Proof in violation of his Due process of rights to a fair trial in violation of 5th, 14th U.S.C.A Right, Pursuant to in re Winship 397 U.S. 358 (1970) and that had it not been for trial counsel's Megan Eigenbrot and constantine Pournaras deficient performances in failing to object to trial Judges unconstitutional mandatory presumption charge Id at Trial Transcript pages 544 line 25 through page 545 line 1. page 545 lines 5-8; Trial Transcript page 545 line 9-16. There is a reasonable probability that the outcome would have been different. Gibson V State 416 S.C 260. 786 S.E 2d. 721 and Lowry V State. 376 SC 499 657 S.E, 2d 760; Strickland V Washington 466 U.S. 668. 687-88 (1984)

In conclusion based on the perplexed evidence Applicant has presented Fraser V State, 351 SC 385, 389, 570 S.E 2d 172, 174 (2002) Applicant believes he has met the requirement of the 2 prong test of Strickland V Washington 466 U.S 668 687-88 (1984) and has proved that his counsels Megan Eigenbrot and Constantine Pournaras Performance was ineffective assistance of Counsel and that their ineffectiveness prejudiced him. Strickland V Washington Supra, and Lowry V State 657 S.E. 2d 760; Gibson V State 786 S.E, 2d 721

... And therefore request in the of vacating or Reversing conviction and sentence and granting Applicant a New trial for Indictment 2014-GS-40-06873 Burglary 1st Degree and Indictment 2014-GS-40-06874 Trafficking in Cocaine, Indictment 2014-GS-40-06872 Grand larceny and Indictment 2014-GS-40-06877 Possession of Marijuana

9 State Concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

9(a) Im being held in custody unlawfully in violation of my 6th Amendment right of the United States Constitution to effective assitance of Counsel

10 State Concisely and in the same order the facts which support each of the grounds set out in (9)

10(a) Second Ground

Pursuant to the first prong test of Strickland v Washington 466 US. 668, 687-88 (1984) My trial Counsel(s) Megan Eigenbrot and Constantine Pournaras performance fell below an office standard of reasonableness in failing to object to trial Judges charge to the jury in refrence to indictment 2014-GS-40-06874 Trafficking in Cocaine 10G or more but less than 28G first offense. That knowledge and possession may be inferred when a substance is found on the property under the Defendants control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in the case, and to be given the weight you decide it should have. Id at Trial Transcript page 549 lines 6-12

Memorandum of law

S.C. Supreme Court in State V Peterson 287 SC 244, 335 SE 2d 800 (1985) held that burden shifting presumptions are unconstitutional. The trial Judges charge to the jury that knowledge and possession maybe inferred when a substance is found on the property under the defendants control is permissive, if the trial Judge in his charge specifically charge the jury that it may accept or reject the inference was burden shifting and impermissible. see State V Peterson Supra. and Burden shifting charge to the jury is unconstitutional. Francis V Franklin, 471 U.S. 307. 315-316

9(6) Pursuant to the second prong test of Strickland V Washington 466 U.S. 668 687-88 (1984) Applicant was prejudiced by trial Counsels Megan Elgenbrot and Constantine Pournaras deficient performance in failing to object to trial Judges mandatory presumption charge to the Jury Id at Trial Transcript page 649 lines 6-12, that knowledge and possession requires a jury to infer the element knowledge and Possession if the state proves the substance is found on the property under the Defendants control, which is an instruction that violates due process 5th, 14th Amendment because it shifts the burden of proof from the state to the Applicant and does not permit the jury to reject the inference based on it independent evaluation of the other evidence in the record but rather, requires the jury to infer

...that the prosecution has proven the requisite basic facts beyond a reasonable doubt, which is unconstitution because judge did not include in his charge that jury can reject or accept the inference State V Peterson. 278 SC 244, 385 SE. 2d. 800 (1985) Therefore the charge is unconstitutional invalation of Due Process. In re Winship. 397 US 358 1970 and had it not been for Applicants Counsels Megan Eigenbrot and Constantine Pournaras defiaent performance there is a reasonable probability the outcome of the trial in reference to Indictment 2014-GS-40-06874 Trafficking in Cocaine... would have been different. Strickland V Washington 466 US 668 687-88 (1984); Gibson V State 416 SC 260, 786 SE 2d 724, Lowry V State 376 SC 499, 657 S.E. 2d. 760

Based on the preponderance of the evidence presented Applicant believe he is entitled to the relief of the reversal of his conviction and sentence under Indictment 2014-GS-40-06874 and the issuing of an order Granting him a new trial.

9 State Concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

9(a) I am being held in custody unlawfully inviolation of my 6th Amendment Right of the United States constitution to effective assistance of counsel:

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

10(a) Third Ground Claim

In reference to indictment 2014 GS-40-06877 Possession of Marijuana with the intent to distribute 3rd offense and above, My trial Counsel Megan Eigenbrot and Constantine Pournaras performance pursuant to the 1st prong test of Strickland V Washington 466 U.S. 668, 687-88 (1984) fell below an objective standard of reasonableness in failing to object trial court Judge D Craig Brown Mandatory presumption charge to the jury that: Poss of more than 28 grams or one Ounce of Marijuana creates an inference that the defendant Possessed the marijuana with the intent to distribute it, again this inference does not relieve the state from proving beyond a reasonable doubt that the defendant had intent to distribute: It is simply an evidentary fact to be

... taken into consideration by you, along with the other evidence in the case and to be given the weight you decide it should have. Id at Trial Transcript page 550 lines 19 through page 551 line 2, and that intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. Id at Trial Transcript page 550 line 6-9, and that: In determining whether the defendant had intent to distribute the marijuana, you may consider the circumstances surrounding the defendant's alleged Possession. You may also consider the amount of substance alleged to have been Possessed the manner in which it was allegedly Possessed and other factors which you consider to be important. You must find that the defendant did not intend to have the marijuana solely for his own use. Id at Trial Transcript page 550 lines 10 through line 18

Memorandum of law

An Evidentiary Presumption must be charged as a permissive inference with specific instruction that the Jury may accept or reject them State V Peterson, 287, SC 244, 385 SE 2d 800 A Jury instruction violates due process if it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the state proves

... Certain predicated facts; Thereby relieving the state of proof on an element of the offense U.S.C.A. Amend. 14th Lowry V. State 376 S.C. 499 Francis V Franklin 471 U.S. 307, 315 316 (1985) Mullaney V Milbur 421 US 684, 702 n. 3 (1975)

Pursuant to the second prong test of Strickland V Washington 466 U.S. 668, 687-88 (1984) had it not been for my trial counsels deficient performances in fail to object to Trial Judge improper Mandatory presumption charge that was impremissive, there is a reasonable probability that the outcome of this conviction for this charge would have been different Strickland V Washington 466 US 668 687-88 (1984)

Based on the preponderance of the evidence Frasier V State 351 S.C. 385, 389, 570 SE. 2d. 172-174 (2002) Applicant believes he has met the requirement of the two prong test of Strickland V Washington 466 US. 668. 687-88 (1984) and therefore request relief in the reversal if his conviction for Possession of Marijuana with the intent to distribute 3rd Offense and above under indictment 2014-GS-40-01877 and remand for a new trial.

9 State Concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

9(a) I am being held in custody unlawfully in violation of my 6th Amendment right of the U.S. Constitution to effective assistance of counsel

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

Fourth Ground

Pursuant to the first prong test of Strickland V Washington 466 US. 668 687-88 (1984) Applicant claims that his trial Counsel(s) Megan Eigenbrot and Constantine Pournaras performance fell below an objective standard of reasonableness in failing to adequately and properly request a motion for a directed Verdict on grounds that the state pursuant to In re Winship 397 US. 358 (1970) failed to prove each and every element in the indictments as charged beyond a reasonable doubt In reference to Indictment 2014-CS-4006873 Burglary first degree and Indictment 2014-CS-4006874 Trafficking in Cocaine... See Id at Trial Transcript page 479 line 13-488 line 22, Trial Judge was not held to applying the standard of law pursuant to In re Winship 397 US 358 in determining a directed verdict motion for acquittal, but instead denied

... The direct verdict motion on grounds that the law requires the court to view the evidence in the light most favorable to the non-moving party, which is the state and that if there is any direct or substantial circumstantial evidence, resonably tending to prove the guilt of the accused, the case must be submitted to the jury see Id at Trial Transcript page 488 line 23 through Pg. 489 line 77 counsel failed to even concerning his inadequate grounds for a motion directed verdict was not preserved for review by the SC. court of Appeals, because he was ineffective assistance of counsel to even object the trial Judges denying his pretrial Motions and Directed Motions see Id at Trial Transcript page 488 lines 23 Through page 489 line 19. The objection must not only be made but it also must be made on the record to preserve issues for appeal. State V West 438 S.E.2d. 256 (ct App. 1993)

4(b) Pursuant to the second prong test of Strickland V Washington 466 US. 668, 687-88 (1984) Applicant was prejudiced by trial counsel Constantine Pourraras deficient performance in failing to apply the correct standard of law pursuant to In re Winship 397 US 358 (1970) for a motion for a directed verdict and objecting to trial Judge denying the directed Verdict motion, Because it denied him of review of the trial Judges denial of his motion for a directed on direct Appeal in the S.C.

Court of Appeals on grounds pursuant to In re Winship 397 US 358 and that had it not been for counsel deficient performance there is a reasonable probability the outcome of the trial would have been different concerning Indictment 2014-GS-40-06873 and Indictment 2014-GS-40-06874 Strickland V Washington 466 U.S 668, 687 88 (1984)

Relief sought based on the preponderance of evidence presented reversal of conviction, and granting of a new trial

9(b) In Violation of my Due Process of rights of 5th, 14th Amendment

10 Fifth ground

(b) Applicant Demetrius Henderson claims he is being held unlawfully in violation of his 5th, 14th Amendment Right of the United States Constitution and S.C. Constitution article 1 section 3 of the Due Process Clause

Applicant states that under the Protection of the Due Process Clause, He has a right to have the prosecution prove each and every element in Indictment #2014 GS-40-06873 Burglary 1st Degree, Indictment # 2014 GS-40-06874 Trafficking in Cocaine, Indictment # 2014 GS-40-06877 Drug Manuf. Poss of other sub in Sch I, II, III, or Possession W.I.T.D 3rd or Sub (marijuana) citing In re Winship, 397 U.S. 358 This right was Violated when the trial Judge charge the jury in reference to the above aforementioned offense unconstitutional mandatory presumption charges, that shifted the prosecutions burden of proof an lessened the states burden of proof on the essential elements of these charges.

In reference to Indictment # 2014 GS-40-06872 Grand Larceny See Id at Trial Transcript page 347 line 19-22 in reference to Indictment # 2014 GS-40-06873 Burglary 1st Degree See Id at Trial Transcript Page 544 lines 25 through page 545 line 3, lines 5-8 page 546 lines 21-24

... In reference to Indictment 2014 GS-40-06874 Trafficking in Cocaine See Id at Trial Transcript page 549 lines 6-12. In reference to Indictment # 2014 GS-40-06877 Poss with Intent to distribute Marijuana 3rd Sub Offense. See Id at Trial Transcript page 550 lines 6-9, lines 17-18; lines 19 through page 551 line 2

The Record in whole shows that the prosecution failed to produce sufficient evidence to prove beyond a reasonable doubt each and every essential element in Indictments # 2014 GS-40-06872, 73, 74, 77 as charged by the grand jury, and trial Counselors failed to object to preserve the directed verdict motion for review by the S.C. Court of Appeals, by failing to object to trial Judges denial of his Motion for a directed verdict. see Id at Trial Transcript page. 479 lines 20 through page 489 line 17. Because the prosecution, based on the record failed to meet it burden of proof, the trial Judge in his charge to the jury, shifted the burden of proof in his charge to the jury on all the above aforementioned offenses in violation of Applicants Due Process of Rights of the 5th, 14th Amendment of the United States Constitution and S.C. Constitution article 1 section 3. Trial Judge Mandatory Presumption Charges to the jury Denied Applicant of his Due Process of Right to a fair trial, violating Applicants Due Process of Rights and Equal Protection of Rights

... to have the prosecution prove each and every element in the indictment as charged by the Grand Jury, in order for him to be legally convicted of those charges and sentenced to SCDC for a period of 15 years for Burglary 1st Degree Indictment# 2014 GS-40-06873, 10 years for Trafficking in Cocame Indictment # 2014 GS-40-06874, 3 years for Grand Larceny Indictment# 2014 GS-40-06872 and 1 year for Poss w/intent to distribute Marijuana 3rd offense. Indictment# 2014 GS-40-06871 to run consecutive totalling 29 years

The due Process clause of the 14th Amendment Safe guards against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. Taylor V Kentucky. 436 U.S. 478, 98 S.Ct 1930, 1935. An instruction is defective if a reasonable juror would interpret it to allow a finding of guilt based on a degree of proof below that required by the Due Process clause, Cage V Louisana, 498 U.S. 39 111 S Ct. 328. A mandatory Presumption requires the Jury to infer the elemental fact of the prosecution proves certain basic facts beyond a reasonable doubt Allen 442 U.S. I'd at 157 it does not permit the jury to regect the inference based on its independent evaluation of the evidence in the record, but rather requires the jury to infer the elemental facts when

... it finds that the presecution has proven the requisite basic facts beyond a reasonable doubt such instructions is unconstitutional because it shifts the burden of proof, and also relieves the prosecution of it burden of proof... In violation of U.S.C.A 5th, 14th

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Demetrius Derrick Henderson, #363944 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-40-2755 **RETURN**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on May 22, 2018, would respectfully show this Court:

I.

Demetrius Derrick Henderson (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2014, the Richland County Grand Jury indicted Applicant for grand larceny – value more than $2000 but less than $10,000 (2014-GS-40-6872); first-degree burglary (2014-GS-40-6873); trafficking in cocaine – more than 10 grams but less than 28 grams, first offense (2014-GS-40-6874); and possession of marijuana with intent to distribute (PWID), third offense (2014-GS-40-6877). Megan Eigenbrot and Constantine Pournaras, Esquires, represented Applicant. Assistant Solicitors Joseph Shenkar and Britton All, Esquires, prosecuted the case. Applicant proceeded to trial before the Honorable D. Craig Brown and a jury on May 6-8, 2015. The jury found Applicant guilty as indicted. On May 8, 2015, Judge Brown sentenced Applicant to imprisonment for consecutive terms of three years for grand larceny, fifteen years for first-degree burglary, ten years for trafficking cocaine and one year for PWID marijuana.

Applicant filed a timely notice of appeal. Kathrine Hudgins, Esquire, of the South Carolina

Commission on Indigent Defense - Appellate Defense Division perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction on May 31, 2017. State v. Henderson, Op. No. 2017-UP-231 (S.C. Ct. App. filed May 31, 2017). The remittitur was returned to the circuit court on June 16, 2017.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
   a. Failure to object to jury charge regarding criminal intent as burden-shifting;
   b. Failure to object to jury charge on constructive possession in relation to trafficking charge as burden-shifting;
   c. Failure to object to jury charge regarding permissible inference of intent to distribute based on weight of drugs as burden-shifting;
   d. Failure to properly argue motion for directed verdict;

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered

at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

V.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

8/24, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2018-CP-40-2755
	)	
DEMETRIS HENDERSON, #363944	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, South Carolina 29730

DATED this the 24th day of August, 2018.

Carmen A. Nord, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2018-CP-40-2755
	)	
	)	
DEMETRIUS HENDERSON,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

April 3, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE J. DERHAM COLE, JUDGE.

APPEARANCES:

LEAH MOODY, ESQ.
Attorney for the Applicant

LINDSAY MCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

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No exhibits were introduced

MS. McALLISTER: May it please the Court, Your Honor. Demetrius Derrick Henderson vs. the State of South Carolina, 2018-CP-40-2755.

Your Honor, in October of 2014, the Richland County grand jury indicted Mr. Henderson for one count of grand larceny with a value between 2,000 and $10,000; one count of first degree burglary, one count of trafficking in cocaine more than 10 grams, but less than 28 grams as a first offense; and possession of marijuana with intent to distribute, third offense.

He was represented on those charges by Megan Eigenbrot and Constantine Pournaras, and Assistant Solicitors Joseph Shenkar and Briton Aul prosecuted the case.

He proceeded to trial before the Honorable D. Craig Brown and a jury on May 6th through 8th, 2015, and the jury found him guilty as indicted. On May 8th, 2015, Judge Brown sentenced him to imprisonment for consecutive terms for three years for grand larceny, 15 years for first degree burglary, ten years for trafficking and one year for the PWID marijuana.

He filed a timely Notice of Appeal, and Katherine Hudgins of the South Carolina Commission on Indigent Defense, Appellate Defense Division, perfected the appeal pursuant to Anders.

The South Carolina Court of Appeals affirmed his conviction on May 31st, 2017, and the remittitur was returned to the circuit court on June 16th, 2017. He timely filed this application for Post Conviction Relief on May 22nd, 2018, and Ms. Leah Moody has been appointed to represent him in this action.

Your Honor, he has filed, I think it's four allegations, Your Honor. The first three are regarding jury charges; that the jury charges were burden shifting as to the jury charge on criminal intent, the charge on constructive possession in relation to trafficking and failure -- I'm sorry, and the jury charge regarding the permissible inference of intent to distribute based on the weight.

He objects to those as being burden shifting and alleges that his counsel should have objected to those charges, and then he also alleges that his trial counsel has failed to properly argue the motion for a directed verdict.

Your Honor, Mr. Henderson and Ms. Moody are both present in the courtroom today. At this time, I will turn it over to Ms. Moody.

MS. MOODY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. MOODY: Yes, this is Mr. Henderson. And the allegations that the State has presented are the allegations that were in his application and that I was aware of.

Since he's come into the courtroom, Your Honor, he has asked me to request a continuance in this matter because he has other issues he would like to present in his application for amendment and he feels that we are not prepared to go forward.

THE COURT: When was the application filed?

MS. McALLISTER: May 22nd of 2018, Your Honor.

THE COURT: So almost a year ago?

MS. MOODY: Yes, sir.

THE COURT: And these new allegations, are they something that's just developed very recently or something that always existed?

THE APPLICANT: It was --

THE COURT: Excuse me, I'm talking to Ms. Moody.

MS. MOODY: Your Honor, when we had our phone conversation, I went through each one of his allegations and he asked if there were -- if there was an opportunity to amend, and that was last week. And I will be honest with the court that I have only talked to him verbally on the phone once, but I have communicated with him in writing and sent all documents that I received from his

previous counsel from the State, from the Clerk's Office to him.

THE COURT: And what is it he wishes to add?

MS. MOODY: Your Honor, beg the Court's indulgence.

(Pause.)

Your Honor, the issues, if I may just simply state them for the court, they deal with -- well, first off, understanding that this is about what his trial counsel performance was and whether it prejudiced him or not.

He indicates how did the testimony about the GPS affect his trial. The attorney should have objected to testimony to preserve for an appeal, preservation issue.

The probative and prejudicial test done on the character evidence and how did it affect his trial, whether he was denied a fair trial. I think that's the whole purpose of the PCR.

The trial counsel was ineffective for failing to object to the admissibility of the alleged GPS expert credentials and testimony, and trial counsel was ineffective for stipulating to the chain of custody.

THE COURT: All right. Ms. McAllister, what's your position on the amendment?

MS. McALLISTER: Your Honor, to the extent that the amendments only require testimony from trial counsel to answer them, the State would have no objection to going

forward on the amendments today, assuming that I feel comfortable that these two witnesses that we have subpoenaed can answer them. If he starts getting into other things, I mean --

THE COURT: Well, she stated what --

MS. McALLISTER: Well, they sound like things that trial counsel should be able to answer, so...

THE COURT: Okay. So the State does not object to the amendment.

MS. MOODY: At this time, Your Honor, proceeding forward, I would call Mr. Henderson to the stand.

THE COURT: All right. Mr. Henderson, come around to the witness stand, please, sir.

MS. McALLISTER: I'm sorry, Your Honor, before --

MS. MOODY: Beg the Court's indulgence.

(Pause.)

Your Honor, he is telling me that he has more amendments and he needs, at least, three months to prepare.

THE COURT: Well, he's had plenty of time to amend it. Are these all things that existed at the time of the trial? It's not something he learned later? These are things he's known about for the last year?

MS. MOODY: Yes, sir.

THE COURT: I'm going to deny the motion for a

continuance.

DEMETRIUS HENDERSON, after being duly sworn, testified as follows:

THE COURT: Have a seat in that witness chair, please, sir.

MS. McALLISTER: Your Honor, just before Ms. Moody begins, I was trying to write down the issues as she was saying them. I have that we're adding an issue that trial counsel failed to preserve the GPS data; that trial counsel failed to object to the prejudicial versus probative analysis on character evidence that was admitted; that trial counsel should not have stipulated to the chain of custody of the marijuana evidence or what --

MS. MOODY: Yes.

THE COURT: And then what was the fourth thing? You said a failure to object to something else.

MS. MOODY: Objecting to the credentials of the GPS testimony.

MS. McALLISTER: Credentials, okay. Thank you.

THE COURT: All right Ms. Moody.

DIRECT EXAMINATION:

BY MS. MOODY:

Q Mr. Henderson, can you please state your full name for the record?

A Demetrius Derrick Henderson.

Q And where are you currently incarcerated?
A Perry Correctional Institution.
Q And how long have you been incarcerated there?
A Since 2000 -- well, since I've been incarcerated at SCDC or at Perry?
Q SCDC?
A 2015.
Q Okay. And you're there for the charges of grand larceny, burglary first, trafficking cocaine and possession with intent to distribute, excuse me, possession with intent to distribute marijuana?
A Yes, ma'am.
Q And who was your attorney on those charges?
A Ms. Megan Eigenbrot and Constantine Pournaras. I guess that's how you pronounce his name.
Q And were they your only attorneys on this case?
A Not from off the start. Not from the jump. Like, it was -- I had two different attorneys before they was on my -- they took me to trial. I had two previous attorneys before then.
Q Okay. So what -- do you remember at what point you met Ms. Eigenbrot?
A Probably like two, three months before my trial date.
Q Okay. And did you have a preliminary hearing?
A I don't think I had one with them.

Q So that would have been with your previous attorneys?
A Yes, ma'am.
Q Do you recall your previous attorneys' names?
A I can't recall their name.
Q Were they with the public defender's office?
A Yes, ma'am.
Q Okay. So, essentially, this case got assigned to Ms. Eigenbrot?
A Yes, ma'am.
Q And was it assigned to Mr. Pournaras? I'm saying his name wrong, Constantine.
A No. No, ma'am. I hadn't seen him until I was like adequate -- like, I was letting them know that I was going to trial and not when -- I kept saying I'm going to trial. I just start -- that's when he just appeared out of nowhere.
Q So he assisted Ms. Eigenbrot on your trial?
A Yes, ma'am.
Q So your main attorney that you met with was Ms. --
A Eigenbrot.
Q All right. And so you decided you wanted to go to trial on this case?
A Yes, ma'am.
Q Okay. And at what point did you let Ms. Eigenbrot know that you wanted to go to trial?

A She should have already known that from my previous attorneys because I already -- I've always been saying I wanted to go to trial and I wasn't accepting no plea, no plea deal.
Q But did you receive any plea offers?
A Yes, ma'am, I received plenty of plea offers.
Q And when you spoke with Ms. Eigenbrot, did you all have an opportunity -- what, if any, opportunity did you have to prepare for trial?
A The time, how much time did we have?
Q Did you have an opportunity to prepare for trial?
A No, they was just so -- they was just so convinced on getting me to plea. You know, instead of trying to work up a defense, they was just so -- just trying to get me to plea, basically, that was their main objective.
Q I understand that may be how you feel, but did you all have an opportunity, did y'all prepare for trial?
A We never prepared for trial.
Q Did you go over any discovery?
A If I can remember -- we probably did. I'm not that sure, but we probably went over things that I already knew. I mean, you know, as in trying to find an angle to make a case for trial. And we hadn't did anything of that kind of nature there, but we probably went over like my motion of discovery, simple stuff, you know.

Q I understand. Did -- did you have an opportunity to discuss what the State would present against you in a trial?
A No, ma'am.
Q Okay. So you didn't -- going into trial, you didn't know what the State was going to present against you?
A I mean, I was told that if I was to testify -- if I was to get on the stand, the State can bring up my previous history, like, for instance, my ankle monitor or my prior burglary, my prior charges, you know what I'm saying. So that kind of stopped me from getting on the stand, you know.
Q Did she go over any witnesses the State would call against you?
A No, I didn't even have any idea the State had that many witnesses against me. You know, I didn't -- that was new to me when I seen the witness list. You know, I mean except for the -- well, I didn't even know the shooter was going to be present. I didn't know who was going to be testifying. I didn't know none.
Q So your testimony here today -- I'm just trying to make sure I'm clear on this. When you met with Ms. Eigenbrot, you went into the trial. You didn't know what the State was going to present or their theory that they had as to how this particular -- all these charges

occurred?
A No, ma'am.
Q Okay.
A I didn't have any clue.
Q All right. So what, if anything, did you discuss with Ms. Eigenbrot?
A Say that -- can you ask the question again?
Q What, if anything, did you discuss with your attorney?
A I'll tell you, like, it was so -- it was just so -- them trying to convince me to get me to plead, like, that was the only thing we was talking about, pleading guilty, like, I mean, pleading to these sentences that the -- I guess the Attorney General or the solicitor had been offering and I was just denying them. And it got to the point that they tried to get my family to talk me into pleading guilty, you know what I'm saying.

So I was still -- I was stuck on I'm going to trial, you know what I'm saying. I wanted to fight these charges, these allegations against me.
Q All right. So you went to trial. And your first ground in your application that you cite is -- you indicate that your attorney was ineffective assistance of counsel for failure to object to the jury charge regarding criminal intent as burden shifting?

A Yes, ma'am.
Q Can you please explain to the court what you mean by that?
A All right. When the judge made the instructions, gave the jury the instructions to let them know what my intent was, they, basically, gave them like a negative intent in my character, you know what I'm saying.
Q In your -- what?
A In my character. The judge was, basically, letting them know that I had a negative intent, you know what I'm saying, off the top. So that was my intentions to be a criminal, you know what I'm saying.

So that right -- that right there, I believe that it was already put in the jury's head that my intention was negative, you know what I'm saying, to commit these crimes.

I mean, that's what I feel, as though it made a burden shift, you know what I'm saying, with the charge of the judge. The judge was -- he could have let the jury know to feel free to accept or reject the inference of criminal intent, which he didn't. So, you know, I believe that it was a major impact on my -- on the outcome as to the results of the trial.
Q Okay. Your next ground, you state that your counsel was ineffective for failure to object to the jury charge

on constructive possession in relation to trafficking charge -- the trafficking charge as burden shifting.

Could you please explain what you mean by that?

A Can you state it one more time, please?

Q Your grounds that you have, you indicate that your attorney was ineffective assistance of counsel for failure to object to the jury charge on constructive possession in relationship to the trafficking charge, and you call it burden shifting?

A All right. I'd rather go to another one other than that. Can we go to a different --

Q Are you waiving that ground?

A Yes, ma'am. I'm waiving that ground.

Q Your next allegation against your attorney is they failed to object to the jury charge regarding permissible inference of intent to distribute based on the weight of the drugs as burden shifting?

A I didn't mean the weight of the drugs. I'm talking about the weight of the situation, you know what I'm saying. Like, y'all got that confused. It's not the weight of the drugs. It's the weight of the situation, you know, by -- let me see.

Q Well, I'm asking you to explain it to the court. What do you mean?

A Yeah, I'm about to. All right. An evidentiary

presumption must be charged as a permissive inference with specific instructions that the jury may accept or reject.

A jury instruction violates due process if it is reasonably likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense.

If the State proves certain predicated facts thereby relieving the State of proof on the element of the offense. So pursuant -- that was the first prong to that issue.

Q So what does that mean?

A Well, I believe that --

MS. McALLISTER: Your Honor --

THE WITNESS: I believe I was denied a fair chance at trial.

MS. McALLISTER: I'm withdrawing my objection.

THE COURT: All right. We're moving on to the next one.

BY MS. MOODY:

Q All right. Your next ground, you indicate that your attorney was ineffective assistance of counsel for failure to argue a motion for a directed verdict. And I believe in your application, you state it's the way they argued the directed verdict motion?

A Yes, ma'am.

Q Can you please tell the court what you mean by that?
A I guess it's all right for me to read off this?
Q Tell the court what you mean.
A Is it all right for me to read my grounds off my paperwork?

THE COURT: Well, if that's what you need to do, but understand, that's been filed. I can read that myself. I just need your explanation of what you think the error was or the ineffective assistance was. Because I can read that myself. It's in the record.

THE WITNESS: See, that's why I feel as though we haven't been -- I haven't properly been coached through this. You know, we haven't had enough adequate time to even go through these proceedings, you know. That's why I feel like we haven't had enough time. Like, she's letting me know that she would keep in touch with me and let me know everything.

Like, I got evidence in my -- over there in the letter that she wrote -- written me saying that she was going -- she had so many cases that she's going to keep in touch with me and let me know everything that she -- she will let me know, basically, when I'm on the court docket. This came to me out the blue, you know what I'm saying. I'm so totally unprepared.

THE COURT: All right. Well, did you file that

application?

THE WITNESS: I filed the application.

THE COURT: Well, then you ought to know what's in it?

THE WITNESS: I had help, as well. I mean --

THE COURT: All right.

THE WITNESS: -- we haven't discussed the angle of how we was going to present this. I mean, I'm new to the law, so I mean, I thought she was going to help me.

THE COURT: Well, that's why you got a lawyer. That's why Ms. Moody is asking the questions. So listen to her questions.

Go ahead, Ms. Moody.

BY MS. MOODY:

Q My question was what do you mean by your lawyer failing to argue the directed verdict?

A All right. Pursuant to the first prong, Megan Eigenbrot and Constantine Pournaras' performance fell below the standard of reasonableness in failing to adequately and properly request a motion for a directed verdict on the grounds that the State pursue to any relinquishment, failed to prove each and every element of the indictments as charged beyond a reasonable doubt, inference, burglary first, trafficking cocaine.

The judge was not held to applying the standard of

law pursuant to any relinquishment in determining a directed verdict motion for acquittal, but instead the directed verdict on the grounds that the law requires the court to view the evidence in the light most favorable to nonmoving party. All right.

Q So what did you want your attorneys to argue?

A They should have argued that when they object, they made it preserved. They should have preserved it on record, the issues for appeal, which they didn't do.

Q No, you just stated that your attorneys did not argue the directed verdict motion the way they should have.

What about the State's case would have justified the court dismissing the case at that point?

A Can you --

Q What was missing?

A What was missing from my attorneys?

Q No, what was missing from the State's case that would have justified the judge dismissing your charges at that juncture in the trial?

A I don't get the question you're trying to ask me.

Q What evidence do you feel the State didn't present to be able to move forward in your trial?

A I believe that the evidence was -- wasn't -- I don't know. I believe that if I would have testified -- if I would have got on the stand and testified, it probably

would have made -- it probably would have made a difference.
Q Well now, do you realize that that goes against what you just said your attorney should have done on directed verdict? The State had presented their case.
A Yes.
Q You remember that?
A Okay, yes.
Q And when they presented your case, you felt like you were not guilty based on their presentation; is that correct?
A I felt that I was not guilty?
Q Yes.
A Yeah, I felt as though I wasn't guilty.
Q So then if you were not guilty at that point, you wanted the judge to dismiss your case, correct?
A Yes, ma'am.
Q Okay. So then, it doesn't have anything to do with whether you testified or not?
A Okay.
Q What should your attorneys have said at that point before even getting into you presenting a defense? What should they have said?
A Well, he should have kept on presenting the argument, like, letting the judge know that it was a mistrial, you

know what I'm saying. Due to the fact that one of the State's witnesses brought up, mentioned something about my ankle monitor. That was the only thing I remember him objecting to.

So I mean, he just, basically, let the judge give him -- I forgot what the judge did, but, basically, overruled him, you know what I'm saying. So I mean, the issue -- if he would have kept on pushing the issue, I guess we probably would have gotten a mistrial or something.

Q Okay. All right. So you were getting ready to talk about your testifying on your own behalf?

A Yes, ma'am.

Q All right. That occurred after the directed verdict. And you testified earlier that you did not get to prepare...

MS. McALLISTER: Your Honor, I'm sorry. Allegations regarding his testimony were not raised in the application or in those four amendments that were put on the record earlier.

MS. MOODY: I believe he talked about his character, probative and prejudicial.

MS. McALLISTER: Is that where we're going with this?

MS. MOODY: That's where I'm going.

MS. McALLISTER: Okay. I'll withdraw it if that's

where we're going.
BY MS. MOODY:
Q You said you didn't prepare with your attorney, you didn't have a defense or anything. And you've amended your application and you talked about your ability to testify.
What specifically are you alleging against your attorneys in terms of prejudicial -- well, probative and prejudicial value regarding your character?
A You might have to simplify that question for me again.
Q You just amended your application and you said that your attorneys were ineffective assistance of counsel for failure to object to the probative and prejudicial character. What does that mean?
A Well, I feel as though they let the State have a field day with my history, my past -- my past criminal -- well, my criminal record, you know what I'm saying, by letting it be all right to let them know that I was on a GPS ankle monitor, letting them know that I was a criminal already, you know what I'm saying. So I mean, that's abusing my character off the top.
Q And you felt like they should have objected to any testimony?
A Yes. Anything dealing with the GPS monitoring, they

should have objected to it.
Q And so --
A Instead of proceeding through with trial, we should have had a mistrial.
Q So in the State's case, you feel that they should not have been able to present any evidence or have any witness testify about your GPS?
A Yes, ma'am.
Q All right. Did you discuss any of that with your attorneys?
A I mean, it was during trial when it happened, so I mean, I don't know -- I didn't know anything. I just know after the witness mentioned something about my ankle monitor that they had -- they dismissed the jury and they had -- they called both of the attorneys, both the State and the defendants come to talk to the jury -- I mean, to the judge. I don't know what was discussed, you know what I'm saying, but they was talking to each other. And the next thing you know, they mentioned something about changing that statement that the witness made from ankle monitor to ankle bracelet.

So I don't know, but it was already in the jurors' mind that I was on an ankle bracelet, you know what I'm saying, so you couldn't take that back. They already heard that I was on an ankle bracelet, you know what I'm

saying. I already believe -- by that being mentioned, I believe that that already tainted my character.
Q Okay. So they failed to object to it on the basis of you have probative and prejudicial character?
A Yes, ma'am.
Q Okay. Is there anything else as to the GPS monitor?
A I just believe that GPS monitor issue was a major burden shifting on my behalf dealing with my case, but that's it. No other issues, no other concerns.
Q But now, you indicated you had -- I read from your sheet that you had as far as like your amended issued?
A Yes, ma'am.
Q So do you have any other issues?
A All right. Trial counsel was ineffective for denying Applicant's procedural and substantial due process rights by not requesting a 403 and 404 determination as required with character evidence. Is that basically the same thing?
Q Yes, sir.
A Same thing. All right, let me see. No, that's about -- I think that about sums it up with the GPS monitor.
Q So do you have any other issues as relates to your counsel's ineffective assistance of counsel?
A Oh, yeah, okay, yeah. They gave me erroneous advice,

which based my discretion not to testify -- I mean, which based my decision on not to testify.

MS. McALLISTER: Well, Your Honor, I would object at this point. I think that's an allegation that has not been pled at this point.

MS. MOODY: Your Honor, I would say that he indicated that he had more amendments.

THE COURT: Well, I know, but we can't just leave this open ended now. He's had plenty of time. The lawyers are here. He's claiming that they improperly advised him on testifying or not?

MS. MOODY: Yes, sir.

THE COURT: Okay. You object to that?

MS. McALLISTER: That's fine, Your Honor.

THE COURT: Okay. Go ahead and tell us about it.

THE WITNESS: Well, during my -- before I start -- well, when I was consulting with my attorneys, they was, basically, letting me know that the State was -- would have a field day with me because of my previous history, criminal history, so that changed -- I had already had in my head that I wanted to testify.

So by them telling me all this news that the State would bring up my previous record and it would have a -- it would be a major downward spiral for our defense, which they failed to come up with, you know what I'm saying. So

they, basically, just scared me into not testifying, not getting on the stand to testify, let the jurors know on my behalf, I mean, my story, so I didn't testify.

BY MS. MOODY:

Q So you're saying that your testimony would have -- you just mentioned the downfall of your defense?

A Yes, ma'am.

Q So did you have a defense or you didn't have a defense?

A I mean, I would have -- I would have went out fighting, you know what I'm saying, if it was up to me, but, you know, they're supposed to be my -- they're supposed to be more experienced at this than I am so they --

Q I guess I'm asking what -- did you have a defense or did you not have a defense?

A I believe we did, but it was just so -- yeah, they was just so -- had gone off getting me to plead guilty.

Q So anything else about the instructions -- your erroneous instructions about testifying?

A No, that's it on testifying. And I got another issue. Trial counsel was ineffective for failing to investigate and interview the State's witnesses and potential witnesses prior to trial.

Q And what should they have done, investigate?

A Yes, ma'am, like the shooter, the first responders on the scene. It was plenty of the State witnesses that they could have interviewed -- by us not having any witnesses, they could have interviewed the State witnesses.
Q Did you ask them about any kind of investigation they had done when you first met with them?
A Yes. But like I say, it was -- they would tell me one thing, but they was so strong on getting me to plead guilty, so they didn't care about what I had -- what I was trying to let them know to do on my behalf on our defense. They just --
Q Well, what were you trying to let them know to do on your behalf?
A Like, interview, interview the witnesses, like the shooter. I didn't even know that they could, but they know that they could, you know what I'm saying, so I just wanted a fighting chance, you know what I'm saying. So -- which they failed to give me.
Q So your purpose in telling them to interview the witnesses, it was to advance the theory of your case?
A Yes, ma'am.
Q What was that theory?
A To let them know that it was a drug deal gone bad.
Q Did you ever tell your attorney that that was your theory?

A Yes, ma'am.
Q Okay. And what did they say about your theory?
A That the solicitor offered you ten years. That's what they kept coming at me with, plea offers.
Q So in response to you giving them a theory, they would come back --
A With a plea offer.
Q Let me finish the question.
A Okay.
Q In response to you giving them a theory, they would come back to you and give you -- their response, their direct response was the plea offer?
A Yes, ma'am.
Q They said nothing about whether your theory was plausible or not?
A I mean, they just said it sounded like a whole bunch of bologna, you know what I'm saying. So that, basically, told me there that they are not trying to fight for me, you know what I'm saying. So...
Q So they did respond to your theory?
A I mean -- so I could read between the lines, you know what I'm saying. I mean, they didn't have to necessarily say it, you know what I'm saying, but by you keep coming at me with a plea offer, you're, basically, just letting me know that you're not trying to fight.

Q Okay. Is that all as it relates to your allegations against your attorneys?
A No, ma'am -- yeah, that's it. That's it.
Q What relief are you seeking from the court here today?
A New trial. New trial or any kind of relief.
Q All right. Well, now, the court can't give you any kind of relief. So are you seeking just a new trial?
A No. New trial, charges dropped, let me see. New plea offers. I'm willing to take anything -- well no, not the plea offers, new trial or new -- dropped charges.
Q And you recognize the court can only say that your counsel was ineffective assistance and start your case all the way back over?
A Say it again.
Q The court can only say that your counsel was either ineffective assistance of counsel or not, and as a result, your case starts all the way over. The court cannot dismiss your charges. You understand that?
A Okay, yes, ma'am.
Q That means they can't dismiss any of the charges that you went to trial on?
A Okay.
Q You understand that the court cannot give you a plea offer?

A Okay, yes, ma'am.
Q Is there anything else you'd like to tell the court?
A I mean, I just want a fair fight, you know what I'm saying. That's all I want is a fair chance, just like any other man would.
MS. MOODY: No further questions for this witness, Your Honor.
MS. McALLISTER: No questions from the State, Your Honor.
THE COURT: Okay. You may step down.
All right. Any other witnesses?
MS. MOODY: No, sir, Your Honor.
MS. McALLISTER: Your Honor, the State would call Megan Eigenbrot.
MEGAN EIGENBROT, after being duly sworn, testified as follows:
THE COURT: Thank you. Be seated.
DIRECT EXAMINATION:
BY MS. McALLISTER:
Q Ms. Eigenbrot, am I saying that correctly?
A It's Eigenbrot.
Q Eigenbrot, okay.
THE COURT: Eigenbrot.
THE WITNESS: It's hard.

BY MS. McALLISTER:
Q I'm probably going to mess that up again. Okay, Ms. Eigenbrot --
THE COURT: Is it Eigenbrot?
THE WITNESS: Eigenbrot.
THE COURT: Eigenbrot, okay. Eigenbrot.
BY MS. McALLISTER:
Q Where do you currently work?
A The Richland County Public Defender's Office.
Q Okay. And do you recall representing Mr. Henderson on these charges?
A I do.
Q And were you appointed to represent him as part of your employment with the public defender's office?
A I was.
Q Okay. Were you the first attorney on this case?
A I was not. Ms. Joanna Delaney originally represented him. She left the office and it was then reassigned to me.
Q Do you recall approximately when that was?
A She left or, at least, made a transfer memo note the end of January 2015.
Q Were you involved in the case at all while Ms. Delaney was still here?
A I was not.

Q Okay.
A My second chair during trial, Mr. Pournaras, had been helping her prep for trial up to that point, though.
Q Okay. So Ms. Delaney leaves in January of 2015 and you take over the case. And you go to trial in March of 2015?
A May of 2016.
Q Okay.
A Or no, it would have been 2015, I apologize.
Q Okay. 2015, okay. And you had Mr. Pournaras as your second chair?
A Correct.
Q Okay. In the time between when you took over the case and trial, do you recall approximately how many times you met with Mr. Henderson?
A I can count according to my notes. Prior to trial, I met with him eight times and then we were together the week of trial.
Q When you say you were together the week of trial, what do you mean by that?
A So we were not the first trial scheduled that week.
Q Okay.
A However, Mr. Henderson had been transported just in case the other trial fell through. So we were prepared to go forward if that happened. So we were able to meet with

him here at the holding cells until it was called, I think Tuesday afternoon.

Q Can you just explain a little bit about some of the facts of the case and the State's evidence?

A Yes. Mr. Henderson was charged with a burglary in the first degree, trafficking cocaine, PWID marijuana first and grand larceny. Essentially, there was a shooting call at this apartment complex for shots fired. It was later discovered that Mr. Henderson had been shot several times. He was laying in a grassy area right by the parking lot.

As the investigation progressed, a woman by the name of April Jenkins arrived home. It was believed at that point in time that her boyfriend and I believe either some type of family member or friend may have been involved in the shooting. They spoke to her. She goes into her home and realizes that all of her things are missing. It was around Christmas time and she had lots of Christmas presents along with other valuable electronics that had been removed from the home.

On scene, the officers locate a vehicle that they determined to belong to Mr. Henderson. In that vehicle are, essentially, the items that would have been in Ms. Jenkins' home. So the theory then became that Mr. Henderson may have been involved in some type of burglary.

I believe a back window had been opened up that was not normally opened.

Q And how did the drug charges come in?

A On Mr. Henderson's person was a baggy of what they believed to be at the time cocaine. It later tested positive for cocaine. Also, in the vehicle was a jar of green plant-like material, which was later tested and determined to be marijuana.

Q Okay. You have heard Mr. Henderson's testimony here today. Do you recall talking to him about the State's case and evidence they had?

A We discussed the State's case at length. I was of the opinion that he should accept a plea deal. He is correct on that point. We did discuss plea deals quite often.

The solicitor kept making new ones and as part of my job requirement, I have to relate each new one to him, which is part of the reason we discussed it so often. He is also correct that he kept telling me, continued to tell me that he wanted trial, so during those discussions, we were also prepping for trial. But I was required to relay to him every and all offers made by the State.

Q And while you're having these discussions about the State's case and whether you should go to trial or not, did he offer you any kind of potential defense or

witnesses or avenues of investigation that he wanted you to pursue?

A He wanted us to present -- he indicated to us that it was a drug deal gone bad; that they shot him during the course of the bad drug deal and had framed him. I explained to him the biggest issue with that situation and presenting that mode of defense at trial was the first -- I believe the first witness they called was the 9-1-1 caller.

This is an individual that lived in the apartment complex. Almost immediately after shots are fired, he is calling law enforcement, which based on the timeframe and based on the way it all played out, there was absolutely no way these two individuals that we later learned were the ones that shot him could have placed all of these stolen items in his car. And that was one of the biggest issues I think with the defense he presented.

Now, earlier in the case when I was not representing him, Mr. Henderson had sent a letter to the clerk of court's office with all of this detail, so it would also be problematic necessarily changing or trying to present some type of defense because he had, essentially, told his story to the clerk of court, which is then forwarded to our office and the solicitor's office.

Q So, essentially, he was kind of locked into this

defense because he had made that kind of a public statement?
A Correct.
Q And you discussed with him why you felt like that defense was problematic?
A Yes. And a lot of his major issues with the facts were issues that we would bring up on cross-examination. And I explained that to him, those are points we would cross a witness on, but that doesn't necessarily mean we win at trial.
Q Did you talk to him about his right to testify at trial?
A Yes. I know we discussed at a couple of our meetings at the detention center that he was considering it, but at that point did not feel like he needed to testify. It was not until, I believe, the week of trial that he decided he had changed his mind. If I may just check my notes really fast.
(Pause.)
I know at some point, we did discuss him wanting to testify. I believe in holding, we even did a practice cross and direct examination with him. I do believe during the course of trial that he became nervous about that idea and when it came time to determine whether he was going to testify or not, he chose not to.

BY MS. McALLISTER:
Q Okay. Did you explain to him the fact of his previous record and how that might be used against him if he did choose to testify?
A I did discuss it with him, yes.
Q Mr. Henderson has alleged also that -- well, okay. Let's just start with the jury instructions. Did you have a charging conference or was there some discussion about what the jury instructions would be that would be given?
A We did. If I recall correctly, the day before closings, Judge Brown, essentially, gave us what are his standard jury instructions for us to review. Mr. Pournaras and I did review those.

I do think we had one objection to the burglary charge based upon some issues that had come up at trial regarding whether it was nighttime or light outside and how that would affect his guilt on the burg first.

I believe we did eventually get a burglary second degree nonviolent charge based on some of those arguments. But they were his standard jury instructions. We did have a chance to review them. I believe they were mainly standard jury instructions from the charge books that the judges use.
Q So you got the charges, you were able to review them. You had some additions or objections that you wanted and

you were able to argue that?
A Correct.
Q And you were eventually able to get a lesser included instruction?
A That's correct.
Q Okay. Other than that, in terms of the jury instructions on criminal intent, do you recall seeing any issues regarding criminal intent?
A No.
Q Do you recall any issues regarding any instructions on the permissive inference of the intent to distribute based on weight?
A I do not recall any problems, no.
Q Did you explain to Mr. Henderson what the permissive inference was?
A I actually don't remember specifically discussing something like that with him. I know at some point, we discussed why they could charge trafficking as opposed to possession with intent to distribute or just possession of cocaine.
Q Okay.
A And why they didn't necessarily need evidence of him dealing drugs in order to charge that defense.
Q Okay. So you were able to explain to him how the weight of the drugs would be used against him to prove the

charges?
A Yes.
Q Did you argue the directed verdict motion or did Mr. Pournaras?
A Mr. Pournaras did.
Q And I believe Mr. Pournaras also did the cross-examination of the GPS expert; is that correct?
A He did. He also did the pretrial motions. We were objecting to any mention of the GPS and/or ankle monitor.
Q So you did have pretrial arguments about that?
A That's correct.
Q In terms of your investigation and preparation, did you have statements from the State's witnesses?
A We had the statements provided by the State in discovery. Prior to my taking over the case, I know Ms. Delaney had hired Investigator Lee Connolly. She's a private investigator our office utilizes quite regularly.
I had an opportunity to review all of her notes and all the things she had done at that point. Her and I did have a conversation about the things she had done up to that point. There is nothing that I thought she should have done more of. And so no, we did not do any further investigation once I took over the case.
Q Okay. Did you feel like you were adequately prepared with -- along with Mr. Henderson to go to trial?

A Yes.

MS. McALLISTER: Your Honor, I believe that's all the questions I have.

MS. MOODY: Thank you. May it please the Court.

CROSS-EXAMINATION:

BY MS. MOODY:

Q Say your last name one more time for me?

A Eigenbrot.

Q Eigenbrot. Okay. Ms. Eigenbrot. When you met with Mr. Henderson and you discussed the case, did you have in mind that there was a defense or there was no defense?

A I did not see a solid defense, nothing that we could present to a jury as a good story in my mind. There was definitely little bits and pieces we could play with, but nothing that painted a whole picture that I would prefer to show a jury at trial.

Q All right. And did you explain the -- I guess what the bits and pieces did in this case for Mr. Henderson versus what they didn't do?

A Yes. And that's what I mean by we would discuss little bits of what people said or what they did and how those could be used in cross-examination to punch holes in their credibility. But as far as, like I said, painting another idea of what might have happened here, we did not have much to go on.

Q All right. And at the time of the -- well, when you took over the case, you felt at that time after reviewing the case, is it your testimony here today you felt he should have taken a plea offer?
A Yes.
Q All right. What were the plea offers given?
A I cannot remember all of them. I know prior to trial and I believe up until May 1st -- they gave me a deadline. I think it was May 1st. The offer was to reduce the burglary first to a burg second violent and plead to the burglary and the grand larceny for a negotiated range of ten to 15 years. That was going to remain open until May 1st at 12:00. So the morning of May 1st, I sat with Mr. Henderson at the jail until noon making sure he did not change his mind.

And then prior to trial beginning, they also then offered him 15 on burg second violent as opposed to the burg first and he also refused that, that plea.
Q And you all discussed that particular?
A Yes.
Q And at that time, was the -- there any evidence that supported his position -- well, his theory of the case?
A I did believe that the drugs found on his person probably came from inside house. I did believe that the individuals involved -- there was nothing direct,

certainly, circumstantial stuff that you could play with to suggest they may have been drug dealers, but nothing solid.

And again, the timing issue is our biggest thing. It was hard to argue it was a setup when the 9-1-1 dispatch is being called seconds after he was shot. And that person also witnessed who we believed to be the shooter flee the scene almost immediately.

Q And what happened to those individuals -- who -- did they ever catch the person who shot --

A They did. They eventually came forward. It was Mr. Costell Johnson and Travis Broomfield. Costell Johnson was dating the young lady that rented the apartment.

Mr. Johnson, unfortunately, passed away prior to trial. We also made pretrial motions to keep his statement from coming in, which was granted. So we didn't hear any technical testimony from him or anything he had to say about the matter.

Mr. Broomfield also gave a statement to law enforcement with an attorney present. Their statements, essentially were they came home, had to shove a -- had a hard time getting in because a chair had been shoved up underneath the door as though to block somebody from coming in.

When they get in the residence, they realize stuff is missing. Mainly, they notice a big, huge flat screen television has been removed from the living room.

At that point, Mr. Broomfield had grabbed his assault rifle and went outside and heard a noise, saw Mr. Henderson. In his statement, he said that he asked him what he was doing twice. The third time is when he says Mr. Henderson went to reach for something which he believed to be a gun and opened fire.

Mr. Henderson had a bunch of TV remotes on his person when he was shot. Law enforcement believed that's probably what he had in his hand or what he may have been reaching for at the time, but they determined that Mr. Broomfield's shooting was in self-defense.

Q Where was Mr. Henderson shot?

A I couldn't tell you. I know that he had some pretty significant injuries. He was in the hospital for a substantial amount of time prior to being arrested. He has permanent injuries. I'm not sure he's even had the followup surgery he's supposed to have.

Q So at the time that he was found in the grassy area, the TV remotes?

A (Nods in the affirmative.)

Q Okay. So did you discuss all this with Mr. Henderson before the trial?

A Yes.
Q Did you discuss like the use -- or the perception that it might give to the jury?
A Yes.
Q And I believe you testified earlier that you received the file from Joanna?
A Delaney.
Q Delaney. And when you received that, all the investigation had been done?
A She had been working on it. Like Mr. Henderson testified, he had been telling her he wanted a trial, so she had already been doing a lot of the prep work.
Q Were you able to go over like list of things that she had done in preparation of his trial?
A Yes. She was -- she stayed here in Columbia. She was readily available to me when I had questions.
Q As to the testimony -- I believe you testified that he decided not to testify. Do you recall what your advice would have been regarding testifying?
A I did advise him it was not necessary for him to testify. I did not think it was a good idea.
Q Why did you not think it was a good idea?
A I was concerned about what Mr. Henderson would say on the stand, what kind of doors he could potentially open. As he mentioned, he does have a criminal record. I do not

believe he is an individual that I could have controlled on the stand to the point where he would not open the door and say something damaging. So I advised him I did not think it was a good idea.

Q All right. As to the directed verdict, you didn't argue that one?

A Correct, Mr. Pournaras did.

Q Did you discuss with him mere presence?

A I do not believe so, no.

Q Maybe I should ask this, did you discuss with him any other jury instructions that the judge was going to give to the jury?

A Thinking on it now, I do not think we discussed it with Mr. Henderson. I know Mr. Pournaras and I discussed it amongst ourselves, but I don't think we actually went over the specifics with Mr. Henderson.

Q Beg the Court's indulgence.

(Pause.)

I'm going to ask this last question here. As far as the testimony as to whether to try and discuss with him whether he would be a good witness on the stand, is it your testimony here today that you discussed the testifying, but you didn't -- did you ever share with him you didn't think he was a -- you didn't know what he might say or whether you could control him as a witness or what

door he might open?
A I doubt I said that to him specifically, but I did explain to him my biggest concern was him opening the door to his prior criminal record. And we started those discussions at the detention center probably about two weeks before trial started.
MS. MOODY: Thank you. No further questions for this witness.
MS. McALLISTER: Nothing further.
THE COURT: Step down.
MS. McALLISTER: The State calls Constantine Pournaras.
CONSTANTINE POURNARAS, after being duly sworn, testified as follows:
DIRECT EXAMINATION:
BY MS. McALLISTER:
Q Mr. Pournaras, are you currently employed by the public defender's office in Richland County?
A Yes.
Q And were you employed by them at the time of Mr. Henderson's -- the time you represented Mr. Henderson?
A Yes.
Q You recall your representation of him?
A Yes.
Q Okay. I believe Ms. Eigenbrot testified that you

actually handled the issue of the directed verdict at trial?
A Yes. I focused on that, the GPS data and the issue of nighttime as it relates to burglaries.
Q Okay. And can you kind of explain that last one?
A The nighttime?
Q Yes.
A Yes. The allegations were at a period of time where it was called into question, based on data from the almanac and from Norad, as well as some of the statements made by the on-scene witnesses that there was a genuine question of whether this issue occurred during what our courts have defined as nighttime. So that was a big part of what my issue was.
Q Okay. So Mr. Henderson was charged with burglary first and sort of the way that it got to burglary first was that it was alleged to have occurred in the nighttime?
A Correct, that was the only aggravating factor, was the issue of nighttime.
Q So the issue of nighttime was, essentially, part of your defense to the burglary first charge?
A Yes.
Q Okay.
A That's how we focused on it.
Q Okay. And you said that you also handled the issue

regarding -- the issues regarding the GPS data?
A Yes.
Q Can you explain sort of what the GPS data was at trial?
A Yes. Mr. Henderson was on GPS monitoring through the Department of Probation. And we had a pretrial motion to discuss the admissibility of any of that testimony before the trial. And if I recall correctly, the judge instructed us to raise that issue should that individual witness be called. So we did actually have a hearing when the State intended to introduce that witness outside the presence of the jury.

We argued that any use of that data would impermissibly suggest that he has a criminal record. Even without any qualifying, the only reason someone would be wearing a GPS monitor as opposed to what we normally see, which is cell phone tracking, would be because they are accused or have been convicted of a criminal offense or are on the sex offender registry.

So our argument to the court was that any mention or use of that data would suggest that the person has a background and that it was, therefore, more prejudicial than probative.
Q Okay.
A The judge, I believe, decided that they could discuss

data, but not discuss the source of the data. And I argued that, you know, unless we fabricate that this is from a cell phone, the jury is going to question why it's discussed in such a vague fashion and that their mind would go to it being a GPS monitor.

Q Okay. But the judge's eventual solution or ruling on your motion about this data was that the State could say generally we have GPS data --

A Yes.

Q -- for Mr. Henderson, but they could not say that it came from an ankle monitor or a GPS monitoring pursuant to --

A Correct.

Q -- his previous charges?

A And that they would not -- I believe he also ruled the witness would not be identified as an employee of the Department of Probation, Pardon and Parole.

Q The expert witness that they brought?

A Correct.

Q Okay.

A If I'm not mistaken.

Q And --

A I'm sorry, we also argued that the use of that data was also not precise enough to add any value. And we actually spent quite a deal of time on that issue because

the expert had provided us a couple of demonstratives where the GPS plots were overlaid on top of two separate photographs. One was an aerial photograph that had somewhat of an angle and the other was a satellite image, but the exact same data points applied over those demonstrative maps moved individual data points significant distances away.

Our concern was that the State was -- their intent was to show the data points moving in and out of the house consistent with multiple trips in and out to load the car. We believed that that was what they intended to get the expert to say, but we also argued that the data itself was not accurate enough and that the jury could make impermissible, you know, conclusions based on the zig-zagging nature of the data points over time.

Because we also got the expert to testify to the fact that on top of, you know, those two maps showing significantly different locations, despite using the same data points, that the data itself was not so accurate that it could place an individual within, you know, a very small distance. I think -- I forget the number, but, you know, the inconsistency between the demonstratives on top of the margin of error that the unit itself could cause would have no value other than to say that he was generally in that area.

Q Okay.
A But we knew that he was generally in that area and that his body was lying full of bullet holes in that area.
Q Okay.
A So that was the other part of our argument.
Q Okay. So you had a two-part argument regarding the GPS monitoring that you made before the expert testified in front of the jury?
A Correct.
Q And the judge, ultimately, allowed the expert to testify with the caveats mentioned earlier about not specifically discussing the source of the data?
A Yes.
Q So then as to kind of your second argument regarding the data's reliability or, you know, whether it was precisely enough to be useful, the judge allowed them to present that data regardless of your objection, correct?
A Well, he said that that would be an issue that I could discuss during cross.
Q Okay. So he, essentially, ruled that went to the weight of the evidence not its admissibility?
A Correct.
Q So you made these motions, you made your objections. Did you then object again when the expert was testifying?
A I believe so.

Q Okay. So did you feel that you preserved this issue for appeal?
A Yes. And I believe I raised it again at the -- I think I renewed all my previous objections at the directed verdict, I believe.
Q And did you raise your objections again when the defense rested?
A I believe so. It would be in the record. I don't recall.
Q If the record reflects that you did, then you did, correct?
A Yes. Or Ms. Eigenbrot may have. I'm not sure.
Q Okay. So then there was this issue of the GPS and -- so let's back up little bit. When Mr. Henderson was found, he was wearing or he had on the GPS monitor, correct?
A Correct.
Q When he was found shot?
A Correct.
Q Okay. At one point -- at one point, I believe you heard Mr. Henderson's testimony, there was a witness who mentioned an ankle bracelet, correct?
A Yes, and we did object to that. He said bracelet. I think he said bracelet. I don't recall if he said ankle bracelet -- I actually believe he did say ankle bracelet.

We objected. And Mr. Henderson is correct, we did excuse the jury and I did ask for a mistrial, and that was denied.

The judge contemplated whether a curative instruction would only continue to bring attention to an issue that we had previously discussed should not come before the jury. That witness, I believe -- well, he stated it was an inadvertent slip of the tongue. But the judge did deny our mistrial request, even though I argued that, you know, that's something they can't unhear. The judge felt that telling them to ignore something would only make them think about it more. So he chose not to give a curative instruction as well as deny our mistrial motion.

Q And you didn't object to not giving the curative instruction?

A No, I agreed with him that bringing more attention to that -- it was something that is possible that they could forget, but in my opinion, it's not something that anyone could forget. I believe they probably -- that's correct.

Q So once the judge denied your mistrial, you made a strategic decision not to seek a curative instruction because you felt it would call attention to the issue?

A Yes.

Q And you also handled the argument on the direct verdict motion when the State rested their case, correct?

A Yes.
Q Can you talk a little bit about what your strategy was for that motion?
A We did not have a lot to work with on the directed verdict. Every issue we raised at trial was, essentially, a jury question. The State, in our opinion, did present evidence that a jury could reasonably consider. We disagreed with some of those, but, ultimately, the only -- we didn't have, in my opinion, any issues for the judge to rule in our favor on a directed verdict. We believed that there was sufficient evidence for every element they're required to present.
Q In terms of a directed verdict motion, what's your understanding of the standard in order to have that motion granted or denied?
A That there was not -- well, not a total absence of evidence.
Q Okay.
A But a lack of sufficient evidence for which the jury could consider, that prong or that element of the offense.
Q And so some of -- you, essentially, when you were arguing your directed verdict motion, the issues that you could raise in terms of the elements that they hadn't met or things that they hadn't presented and the judge, ultimately, denied that motion --

A Yes.
Q -- as being kind of, essentially, up to the jury?
A Yes.
Q And said that you could argue those things in your closing arguments?
A Yes.
Q Okay. Did you also have a chance to review the jury instructions --
A Yes.
Q -- in this case?
A We -- as Ms. Eigenbrot mentioned earlier, our really only issue with the instructions, and I argued back and forth a great deal with Joseph Shenkar with the State, they were opposed to our inclusion of the language regarding an exact, or a more exact definition of nighttime. And that was the main issue we argued over.

I think the judge's standard instructions just mentioned nighttime and we wanted language in there from previous case law that more specifically defines nighttime because our argument for it not being nighttime was some of the witnesses testified -- well one, it was an ongoing act that began quite some time before the shooting, at which time we believed it clearly was what would be defined as daytime. But the witness who was across the parking lot from their balcony shortly after the shooting

described a scene that the jury could have found consistent with a more specific definition of what is nighttime.

Q Okay. So you reviewed the instructions and spoke to your co-counsel about them and that was the only issue that you saw with the instructions?

A I believe so, yes.

Q Okay.

A The rest were very standard.

Q So you didn't see any basis to object to the jury instruction on -- regarding criminal intent?

A No.

Q Or regarding the permissive inference regarding the weight in terms of the drug charges?

A Not so much with the trafficking because it was well above the 10 grams.

Q Okay.

A So we -- that was not a -- as Ms. Eigenbrot testified earlier, that was strictly based on the weight, no other inference is needed.

Q Okay. So you felt that was an appropriate instruction for the judge to give to the jury based on those facts?

A Yes.

Q Okay.

A I may not agree with it, but that's the status of the law.
Q That's the status of the law in South Carolina?
A Yes.
Q Okay.
MS. McALLISTER: Your Honor, I believe that's all the questions I have for Mr. Pournaras.
THE COURT: Okay.
MS. MOODY: Thank you. May it please the Court.

CROSS-EXAMINATION:

BY MS. MOODY:
Q Mr. Pournaras?
A Yes, ma'am.
Q What conversation or meetings did you have with Mr. Henderson?
A As Ms. Eigenbrot testified earlier, I was not present from the beginning. I was brought on earlier with Ms. Delaney just to consult on those issues. Without discussing anything with Mr. Henderson, I was just working on those issues in the office.
Q Okay.
A When Ms. Eigenbrot took the case, I did start meeting with her when it looked like Mr. Henderson was definitely going to be set up on the trial docket. So we met a number of times together. As Ms. Eigenbrot also

mentioned, we had a lot of discussions the closer it came to the time of trial. We did go over a number of issues, including whether or not it would be a great idea to testify.

And what -- my role in that was Ms. Eigenbrot and I did a mock testimony where she directed and I, essentially, played the role of prosecutor and went through a mock cross-examination just to illustrate the difficulty of what he wanted to testify to.

Q All right. And at that time in that mock -- after you performed that mock testimony, what was Mr. Henderson's decision? Do you recall?

A I believe later he decided that it would not be a good idea for him to testify, but up until that point, he was very consistent in wanting to testify. I will say that.

Q Now, do you recall discussing with him at all any jury instructions?

A I don't believe so. I do recall that we -- in leading up to the trial date, one of the things we did talk about is -- and this is related to his defense, was going over the elements of all defenses, so we did discuss the specific elements of the offenses, but we didn't at the trial stage actually discuss the judge's jury instructions.

Q Okay.
A But we did have a lot of conversations about why burglaries are burglaries and aggravated factors and things of that nature.
Q Did you have an opportunity to discuss with him his theory of the case or what his defense might have been?
A Yes, we did discuss it.
Q And what, if anything, did you discuss?
A Well, you know, quite frankly, I was very blunt with him that I did not believe that would be a credible defense. He had put us in a difficult position by filing pro se, essentially, a statement that laid out what exactly his defense would have been. So any deviation from that on the stand would have opened him up to being impeached by that statement that he had previously written.

We went over a timeline of what the State would introduce as evidence that could be corroborated by the ankle bracelet, the time codes of the 9-1-1 calls, the time on the log sheets the police arrived and the statements made by the witnesses.

Going into his statement as written in his filing would have been very difficult for anyone to believe it's plausible. So I even went through a timeline of what the State not only would allege, but would present

corroborating evidence to substantiate and it would be difficult to fill in some of those timelines, the story that he laid out in his filing.

So for example, you know, there was not much time between 9-1-1 being called by a number of people after they heard the shooting to the time that police arrived and before then when a witness observed very soon after the shooting the two individuals involved in the shooting flee.

It was his intention that after the shooting, there was a period of time where the house would have been ransacked, televisions, Christmas presents and -- would have been removed from the house, placed in his car that would have required multiple trips even with two people and then drugs would have been planted on his person along with the remote controls. All that would have -- I'm sorry, in addition the window would have also had to have been forced open in the back.

So in order for that story to be plausible, in my opinion, the jury would have had to believe that two individuals would have spontaneously come up with that idea in the less than two or three minutes that the window of the State's evidence would have provided.

And we also discussed the fact that, you know, 20 grams of cocaine is quite valuable on top of all the

presents and the TVs. His allegations were that he was brought there to sell some quantity of marijuana and that those individuals shot him so that they could steal the marijuana, but then placed on his person and in his car goods that are incredibly more valuable than what he was alleging was stolen from him.

So we found that story to be a very, very difficult sell. But, you know, I didn't tell him you can't testify, I just told that his story would have been very difficult to align with what we, essentially, can't dispute as far as 9-1-1 calls and GPS data.

Q And did he appear to understand any of that?

A I thought that he understand that when he decided not to testify, but we also told him that, you know, absent his testimony, there will be no other information for the jury to consider.

So I recall specifically Ms. Eigenbrot and I discussed that yes, you know, it appears that this may have been involved in a drug deal in some way and we can only allude to those things.

We can only make suggestions, but the effectiveness of suggesting that the victims of a burglary were also drug dealers doesn't get us very far when the only facts the jury would consider would be that his car was full of items taken from the home and he was shot by the

homeowners.

I think we also discussed with the jury is more likely to follow a straight logical line from A to B and decide what happened than to create a third option through nothing more than inferences that we could suggest.

Q Okay.

A So if he did testify, in our opinion, it would be a story that would -- you know, the prosecution would have a field day challenging the believability of, and if he didn't testify, we were left with nothing but what appeared to be a fairly straightforward, you know, shooting after a home invasion burglary.

So I think I was pretty clear in saying that either option is not great, which is why the focus of our efforts were to get a better negotiation that he would be more comfortable with rather than a 15-year minimum no parole offense.

Q And you're saying all this to say that you felt he should have pled?

A Yes, and we made that very clear. He's not incorrect in that we were very -- we spent a great deal of time trying to convey the issue that a conviction at a trial on these charges would be one, fairly likely, but two, much, much, much less favorable than any of the offers that the State had presented.

Q What was the most favorable offer that the State offered?

A I believe at one point in time, we may have had an offer as low as eight years on a burglary second violent. But my position was that I didn't believe that he should have gone to trial on burg first.

My honest opinion was that the State should have, you know, offered a burglary second without the negotiated cap -- minimum, but, you know, we still had the other trafficking charge that actually had similarly significant sentencing penalties.

MS. MOODY: No further questions for this witness. Thank you.

MS. McALLISTER: Nothing further from the State.

THE COURT: All right. Step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Anything else?

MS. McALLISTER: Nothing further from the State.

MS. MOODY: Nothing further.

THE COURT: All right. I'll take it under advisement and issue an order.

MS. MOODY: Thank you.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 3rd day of April, 2019.

May 29, 2020

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Demetrius D. Henderson, #363944, Applicant, v. State of South Carolina, Respondent.	C. A. No. 2018-CP-40-02755 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 22, 2018, by Demetrius Derrick Henderson (Applicant). The State (Respondent) filed a Return on August 24, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened April 3, 2019, at the Richland County Courthouse before the undersigned. Applicant was present at the hearing and represented by Leah B. Moody, Esquire. Assistant Attorney General Lindsey A. McCallister of the South Carolina Attorney General's Office represented Respondent.

At the call of the case, PCR counsel for Applicant requested a continuance on his behalf. PCR counsel informed the Court Applicant did not wish to go forward with this hearing because he wanted to further amend his application, and he had only spoken with his attorney one time by phone. PCR counsel stated she was sufficiently prepared, had sent the file and documents to Applicant, and discussed the issues with him. This Court denied Applicant's motion for a continuance.

Applicant then testified on his own behalf. Megan Eigenbrot and Constantine Pournaras, Esquires, Applicant's trial counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina

Department of Corrections, the PCR application, Respondent's Return, the trial transcript, and Applicant's appellate records. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2014, the Richland County Grand Jury indicted Applicant for grand larceny – value more than $2000 but less than $10,000 (2014-GS-40-6872); first-degree burglary (2014-GS-40-6873); trafficking in cocaine – more than 10 grams but less than 28 grams, first offense (2014-GS-40-6874); and possession of marijuana with intent to distribute (PWID), third offense (2014-GS-40-6877). Megan A. Eigenbrot (Eigenbrot) and Constantine Pournaras (Pournaras), Esquires, represented Applicant. Assistant Solicitors Joseph Shenkar and Britton All, Esquires, prosecuted the case. Applicant proceeded to trial before the Honorable D. Craig Brown and a jury on May 6-8, 2015. The jury found Applicant guilty as indicted. On May 8, 2015, Judge Brown sentenced Applicant to an aggregate term of imprisonment of twenty-nine years –three years for grand larceny; fifteen years for first-degree burglary; ten years for trafficking cocaine; and one year for PWID marijuana, all to be served consecutively.

Applicant then filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense - Appellate Defense Division perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal on May 31, 2017. State v. Henderson, Op. No. 2017-UP-231 (S.C. Ct. App. filed May 31, 2017). The remittitur was returned to the circuit court on June 16, 2017.

SUMMARY OF FACTS ADDUCED AT TRIAL

On the night of December 18, 2013, officers responded to a shots-fired call at the Reserve at Riverwalk apartment complex at 6:24 p.m. Tr. pp. 119, 122-23, 166. When the officers checked the area, they discovered Applicant lying facedown on the sidewalk outside one of the apartment buildings, suffering from multiple gunshot wounds. Tr. pp. 108, 126-27. Applicant was taken to the hospital, and the officers began an investigation. Tr. pp. 134-35, 143.

Witnesses reported seeing the boyfriend of the woman who lived in one of the nearby apartments talking to another person in a white Dodge Intrepid just after the shots were fired. Tr. pp. 99-100, 389. The Dodge Intrepid then quickly drove off. Tr. pp. 103-04. While officers were still on the scene, April Jenkins (Jenkins) arrived home and reported her apartment had been burglarized. Tr. pp. 205-08. Jenkins' boyfriend, Costell Johnson (Johnson), contacted police later that evening and gave a statement. Tr. pp. 389-90. Johnson died before trial from unrelated health problems. Tr. pp. 167, 204. He reported the person driving the Dodge Intrepid was his cousin, Travis Brimfield.

Brimfield eventually gave a statement to law enforcement admitting to shooting Applicant and fleeing the scene. Tr. pp. 183-84, 186. According to Brimfield, he and Johnson returned to Jenkins' apartment, where they sometimes stayed, and had trouble entering because a chair had been pushed against the door. Tr. pp. 168, 171. Once inside, the men quickly realized the apartment had been burglarized. Tr. pp. 175-76. Brimfield went to his room in the apartment, grabbed his gun, and went back outside. Tr. pp. 176-77. Brimfield then saw Applicant coming from around the side of the building and confronted him, asking multiple times if Applicant had been inside the apartment. Tr. pp. 177-79, 182. Applicant said yes and began moving backwards and reaching toward his pockets. Tr. p. 179, 182. Brimfield testified, "So that's when – when it

came into my head I was terrified and I was scared. So I just started shooting because either I was going to get shot or he was going to get shot." Tr. p. 179. Applicant turned out to be unarmed, but a black TV remote control was found on or near his body. Tr. pp. 115, 129, 232, 385.

Law enforcement located Applicant's car in the apartment complex's parking lot. Tr. pp. 401-02. Several televisions and other items belonging to Jenkins were found inside the car, along with marijuana and a digital scale. Tr. pp. 239, 402-03. Cocaine was recovered from Applicant's pocket. Tr. pp. 234, 236, 273, 275-76.

Additionally, at the time of the incident, Applicant was on probation with a GPS ankle monitor issued by the South Carolina Department of Probation, Parole, and Pardon Services. Tr. p. 29. The State sought to admit the GPS data from the day of incident, arguing it showed Applicant "casing" the apartment prior to the burglary and placed him at the scene. Tr. pp. 33-36, 294-96. Applicant's counsel objected on the basis of unfair prejudice, but the trial judge ultimately admitted the evidence. Tr. pp. 29-32, 299. However, the testimony was limited, and the State was not permitted to refer to Applicant's probation, but rather referred to "GPS data" generally. Tr. pp. 321-22.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Failure to object to jury charge regarding criminal intent as burden-shifting;
    b. Failure to object to jury charge on constructive possession in relation to trafficking charge as burden-shifting;
    c. Failure to object to jury charge regarding permissible inference of intent to distribute based on weight of drugs as burden-shifting;
    d. Failure to properly argue motion for directed verdict.

At the hearing, PCR counsel for Applicant orally amended the application to include additional claims of ineffective assistance of counsel for: (e) failure to preserve the issue of admission of the GPS monitoring evidence; (f) failure to properly argue the prejudicial versus probative analysis under Rule 403, SCRE; (g) failure to object to the credentials of the State's GPS expert; and (h) for stipulating to the chain-of-custody of the marijuana. Further, at the conclusion of Applicant's testimony, he requested to add another amendment, alleging (i) his attorneys erroneously advised him not to testify. Because all of these issues arise from the trial record and did not require additional witnesses to be present, the State consented to the amendments.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant testified he was arrested in 2015, and he previously had two other attorneys before Eigenbrot and Pournaras. Applicant testified he did not meet Pournaras until Pournaras came to tell him the case was going to trial. Applicant further testified he wanted a trial, and he told Eigenbrot he would not accept a plea agreement, even though the State made several offers. Applicant opined, however, his attorneys had no opportunity to prepare for trial because they were set on convincing him to plead guilty.

Applicant stated he and his attorneys "probably" reviewed the discovery in his case, but they did not tell him anything he did not already know, and they were not trying to find any "angle" for trial. Applicant denied his attorneys discussed the State's case or evidence with him. Applicant testified his attorneys only told him he could not testify because doing so would allow the State to bring up his past criminal history. Applicant testified he was unaware of who would be testifying at his trial. According to Applicant, his attorneys merely kept trying to convince him to accept a plea agreement even though he repeatedly told them no.

Applicant explained he felt the jury instruction given by the trial court regarding criminal intent for trafficking was burden-shifting because it painted his character in a negative light. Applicant testified the instruction should have informed the jury they were free to accept or reject the inference of criminal intent. Applicant further testified he felt the jury instruction informing the jury they could infer criminal intent for trafficking based on the weight of the drugs was also burden-shifting. Applicant explained he believed the instruction should have been based on the weight of "the situation," not the weight of the drugs and the instruction as given denied him a fair trial.

Applicant further testified he believed his attorneys were ineffective because they did not properly argue a motion for a directed verdict. According to Applicant, he believed the State did not have enough evidence and his testimony would have made a difference. Applicant also testified his attorneys should have pursued the issue of a mistrial due to the State's witness who mentioned Applicant's ankle monitor.[1]

Applicant testified his attorneys "let the State have a field day" with his previous criminal record by letting the jury know he was wearing an ankle monitor. Applicant testified his attorneys should have objected to any testimony having to do with the ankle monitor as prohibited by Rules 403 and 404, SCRE, and the witness should not have been permitted to testify. Applicant acknowledged his attorneys asked for the jury to be dismissed to address the issue, but by that point it was already in the jury's mind that he was on an ankle monitor.

[1] The assistant solicitor asked the officer, "Did you notice anything about his clothing or was there -- was he wearing just regular clothes? Did you notice anything in his possession or do you remember anything in particular?" The officer answered, "I remember that there were TV remotes, which was highly unusual. I remember the *ankle bracelet*. Other than that, I remember a good bit of -- . . . . " Tr. p. 129 (emphasis added).

Applicant asserted this statement by the witness tarnished his character, which was burden-shifting.

Applicant also testified his attorneys gave him erroneous advice as to whether he should testify. Applicant explained his attorneys told him "the State would have a field day" with his previous record, which changed his mind about testifying. Applicant testified he believed he had a defense, but his attorneys did not investigate any of the State's witnesses or potential witnesses prior to trial. Applicant testified his defense was that he was shot in a "drug deal gone bad," but his attorneys told him no one would believe him and pushed him to plead guilty instead. Applicant testified he understood the PCR court could not dismiss the charges, and he just wanted to start over and have a fair chance at presenting a defense.

Eigenbrot testified she was appointed to Applicant's case through her position at the Public Defender's Office. Eigenbrot explained she was made first chair on the case when the previous attorney left in January 2015, but Pournaras had been involved as second chair the entire time. Eigenbrot testified she received the file from the previous attorney, who had been actively preparing the case for trial, and the attorney remained available to her for questions if needed. Further, Eigenbrot testified she met with Applicant eight times, including the week of trial.

Eigenbrot further testified she discussed the State's case with Applicant at length. Eigenbrot agreed she told Applicant she thought he should plead guilty, and the State made multiple plea offers. Eigenbrot testified the best offer was for burglary in the second degree, violent, plus grand larceny for a sentencing range of ten-to-fifteen years. Eigenbrot stated the offer had an expiration date of May 1, 2015, at noon, and she sat at the jail with Applicant to give him time to accept it.

Eigenbrot further testified Applicant told her it was a "drug deal gone bad," and the shooter framed him. Eigenbrot explained the problem with Applicant's version of events was that a witness in the apartment complex called 911 immediately after hearing the shots, so there was no way the shooter would have had time to put the items form the victim's apartment in Applicant's car. She explained it was difficult to argue this was a set-up because the witness who called 911 saw the shooter fleeing shortly thereafter. Eigenbrot testified she believed the drugs had come from the house, but there was no solid evidence to show the home's occupants were drug dealers. Eigenbrot also explained both the shooter and the person with the shooter gave statements to the police, and the shooter admitted to the shooting. However, law enforcement determined the shooting was self-defense.

Eigenbrot also testified she and Applicant discussed his right to testify, and the week of trial Applicant indicated he wanted to testify. Eigenbrot stated she and Pournaras practiced cross-examination with him and explained his prior record would be used, so Applicant ultimately chose not to testify. Eigenbrot explained she advised Applicant not to testify because it would open the door to his prior record. She also testified she was concerned with his demeanor on the stand and her ability to control his testimony.

Eigenbrot testified the attorneys were given proposed jury charges the day before closing arguments, she reviewed them, and she argued the first-degree burglary charge should not be given. Eigenbrot explained she argued for burglary in the second degree, nonviolent, instead. Ultimately, the judge gave both charges. She testified the instructions given were standard charges from the judge's charge book, and she did not see any basis for objection to the charges. Eigenbrot conceded she probably did not review the specific charges with Applicant, but she and

Pournaras discussed them together. Eigenbrot also testified she had previously explained to Applicant how the weight of the drugs would be used to prove trafficking and intent to distribute.

Pournaras testified he became involved in the case as second chair; he focused on attacking the GPS data, preparing the defense arguments regarding the "nighttime" element of the first-degree burglary charge, and he argued the directed verdict motion. Pournaras testified the defense believed there was a genuine issue of whether it was "nighttime" as defined by the statute, and he researched weather data for the incident date to help make the argument. Further, Pournaras testified he did not have much material to work with in making a directed verdict motion because every issue he argued was a jury question. Pournaras stated he believed the State presented enough evidence on each element for the case to be sent to the jury.

Pournaras also testified there was a pre-trial hearing on whether the GPS data should be admitted. Pournaras explained he argued the data was more prejudicial than probative because it came from a GPS ankle monitor, which suggested Applicant had a previous criminal record. In addition, Pournaras testified he argued the data was not precise enough to add any value. Pournaras testified the judge ruled the data could be admitted, but the State was not permitted to divulge the source of the data, and the testifying witness could not be identified as an employee of the Department of Probation, Parole, and Pardon Services. Pournaras further testified when the witness stated the data came from an "ankle bracelet," he asked for a mistrial, which was denied. Pournaras explained the judge offered to give a curative instruction, but both he and Eigenbrot felt it would draw more attention to the issue.

Pournaras agreed he and Eigenbrot reviewed the jury instructions together. Pournaras testified the defense wanted a more precise instruction regarding the element of "nighttime." Pournaras explained this was an ongoing act up until the shooting, at which time the witnesses

reported they were still able to see the scene outside. However, Pournaras testified he did not see anything objectionable in the instructions as given, and he believed them to be a correct statement of the law. Pournaras stated he did not recall reviewing the proposed jury instructions with Applicant, but they discussed the elements of the offenses.

Pournaras testified he started meeting with Applicant once the case was put on the trial docket. Pournaras further testified he discussed with Applicant Applicant's right to testify, and engaged in a mock direct and cross-examination of Applicant to illustrate the difficulty of testifying. Pournaras stated he did not tell Applicant not to testify, but he advised Applicant he did not think it would be a good idea for Applicant to take the stand. Pournaras also testified he was candid with Applicant that he did not find Applicant's version of events credible, but he also explained if Applicant did not testify, there would be no other evidence for the jury to consider. According to Pournaras, Applicant later decided not to testify at trial.

Pournaras explained the statements Applicant made after his arrest made it difficult to present any other version of the facts because those statements could be used for impeachment. Pournaras testified he reviewed the State's timeline with Applicant and how the State could corroborate its version of events through the 911 callers who saw the shooter flee, which did not give anyone time to plant evidence in his car. Further, Pournaras testified he explained to Applicant the fact Applicant was found with twenty grams of cocaine, which alone is very valuable, created a serious problem with the argument of a "drug deal gone bad" because it is not logical to assert Brimfield and Johnson shot Applicant in order to steal weed, but then planted the cocaine and other items recovered from Applicant's car. Pournaras testified the defense realized it did not have any good options between Applicant testifying without a credible story or not testifying at all and leaving the jury only with the State's evidence, so they focused on

negotiating a plea deal. According to Pournaras, he and Eigenbrot clearly advised Applicant they thought he should plead guilty and warned him he would have a less favorable outcome if convicted after a trial.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's appellate records, and the legal arguments made by the attorneys. This Court finds the combined record of the trial transcript and the testimony from the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2014).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 300 S.C. 115.

Allegations 1(a), 1(b), and 1(c) - Failure to object to jury charges regarding criminal intent, constructive possession, and permissible inference of intent to distribute based on weight of drugs as burden-shifting

The relevant jury instructions as given at trial were as follows:

> [I]n order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.
>
> Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way, ladies and gentlemen, to prove intent with mathematical certainty. There is no way that medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.
>
> It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case.
>
> Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by law to be the equivalent of criminal intent.
>
> ...

To prove possession, the State must prove beyond a reasonable doubt that the Defendant had both the power and the intent to control the disposition or use of the cocaine. Possession may be either actual or constructive. Actual possession means that the cocaine was in the actual physical custody of the Defendant. Constructive possession means that the Defendant had dominion and control or the right to exercise dominion and control over either the cocaine itself or the property in which the cocaine was found.

Mere presence at the scene where the drugs were found is not enough to prove possession. The Defendant's knowledge and possession may be inferred when a substance is found on the property under Defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with other evidence in the case, and to be given the weight you decide it should have.

...

[T]he Defendant, ladies and gentlemen, is also charged with possession with intent to distribute marijuana. The State must prove beyond a reasonable doubt the Defendant possessed marijuana with intent to distribute it. Distribute means to deliver other than by administering or dispensing a drug. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you naturally and reasonably infer intent.

In determining whether the Defendant had the intent to distribute the marijuana, you may consider the circumstance's surrounding Defendant's alleged possession. You may also consider the amount of the substance alleged to have been possessed, the manner in which it was allegedly possessed, the place where it was allegedly possessed, and other factors which you consider to be important. You must find that the Defendant did not intend to have the marijuana solely for his own use.

Furthermore, possession of more than 28 grams or one ounce of marijuana creates an inference that the Defendant possessed the marijuana with the intent to distribute it. Again, this inference does not relieve the State from proving beyond a reasonable doubt that the Defendant had the intent to distribute. It is simply an evidentiary fact to be taken into consideration by you, along with the other evidence in the case, and to be given the weight you decide it should have.

Tr. pp. 544-45, 548-51. Defense counsel did not object to the charges given, either before or after the judge read them to the jury. Tr. pp. 496-99, 555.

"A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). "The substance of the law is what must be charged to the jury, not any particular verbiage." State v. Adkins, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003). "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

After reviewing the specific instructions complained of by Applicant, and considering the instructions as a whole, this Court finds defense counsel were not deficient in failing to object. The instructions as given were not burden-shifting as they correctly state the law in South Carolina as to each of these issues, and therefore, counsel had no reason to object.

Applicant testified he believed the instruction should have informed the jury they were free to accept or reject the inference of criminal intent. The Court finds the instruction did just that. The instruction informed the jury, "Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. . . . [I]ntent *may be* established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case. . . . *It is up to you to determine* what the Defendant intended to do based on the circumstances shown to have existed." Tr. pp. 544-45 (emphasis added). As a whole, this instruction clearly informs the jury of their right to determine criminal intent based on a variety of considerations, and states merely that it can be inferred, not that it must be inferred.

Applicant's contention the instruction regarding the weight of the drugs should have been based on the weight of "the situation," not the weight of the drugs, is wholly without merit as

that is not the law in South Carolina. See S.C. Code Ann. § 44-53-370(d) (2015) (creating permissive inference that possession of more than one gram of cocaine constitutes possession of cocaine with intent to distribute). Further, Eigenbrot credibly testified she had previously explained to Applicant how weight would be used to prove trafficking and intent to distribute, and Pournaras credibly testified he and Eigenbrot discussed all of the elements of each charge with Applicant. Applicant was therefore on notice of these issues prior to the commencement of trial.

In any event, because defense counsel were not deficient in not raising objections to these charges, Applicant has failed to meet his burden of proof, and this Court finds defense counsel were not constitutionally ineffective on these grounds. These allegations are denied and dismissed.

Allegation 1(d) - Failure to properly argue motion for directed verdict

Applicant testified he felt his attorney did not properly argue a motion for a directed verdict, although he did not specify what he thought his attorney should have done differently. Rather, according to Applicant, he believed the State did not have enough evidence, and his testimony would have made a difference. Applicant also testified his attorneys should have pursued the issue of a mistrial due to the State's witness who mentioned Applicant's ankle monitor.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The role of the trial court is only to determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court

must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "In deciding motions for a directed verdict. . . the evidence and all reasonable inferences which may be drawn from it must be viewed in the light most favorable to the non-moving party. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury." Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

This Court has reviewed the relevant portion of the transcript and finds no deficiency in Pournaras's handling of this motion. Tr. pp. 478-89. At the close of the State's case, Pournaras renewed the defense motion for a mistrial, as well the objections to the testimony of the GPS expert. Tr. pp. 478-49. The trial judge declined to change his ruling on either of those issues. Tr. pp. 479-80. Pournaras then argued for a directed verdict as to the first-degree burglary charge, raising the issue of whether the State had sufficiently proved the "nighttime" element of the offense. Tr. p. 480. Pournaras noted although it was dark by the time the officers arrived on scene, the first witness testified it was light enough to see from his apartment window to the back of the parking lot. Tr. p. 480. Pournaras further argued the distribution case was insufficient because, although the drugs were found in Applicant's car, there was no testimony as to whether he knew it was there or why it was there. Tr. p. 481. Pournaras then argued the State had not presented any evidence to prove the value of the items taken from the apartment was over $2,000, nor had the State proved its trafficking case because those drugs were found in

Applicant's pants after the pants had been removed and handled by other parties. Tr. p. 481. The trial court denied the motions. Tr. pp. 488-89.

This Court finds there was a clear factual issue for the jury at the close of the State's evidence, and the trial court correctly denied the motion. As the trial court noted, the standard for a case to be submitted to the jury is an "any direct or circumstantial evidence" standard, which is a high bar for defense counsel to overcome. Further, whether Applicant's testimony would have made any difference is irrelevant because the appropriate time for a directed-verdict motion is after the State's case, but before the defense's. This Court finds no deficiency with Pournaras's handling of the motion. This allegation is therefore denied and dismissed.

Allegation 1(e) - Failure to preserve the issue of admission of the GPS monitoring evidence

At the start of the evidentiary hearing, Applicant indicated his intention to proceed on a claim of ineffective assistance of counsel for failing to preserve the issue of the admission of the GPS monitoring evidence. However, Applicant did not present any evidence or testimony as to this issue, either through his own testimony or that of his trial counsel. Because Applicant failed to present any evidence as to this issue, the Court finds it was waived.

In any event, the admission of the GPS evidence was raised by appellate counsel on appeal pursuant to Anders.[2] State v. Henderson, Op. No. 17-UP-231 (S.C. Ct. App. filed May 31, 2017). The Court of Appeals apparently considered the issue on the merits after receiving Applicant's *pro se* brief, indicating the issue was in fact preserved.

For both of these reasons, this Court denies relief and dismisses the allegation.

Allegation 1(f) - Failure to properly argue the prejudicial versus probative analysis under Rule 403, SCRE

[2] Anders v. California, 386 U.S. 738 (1967).

Applicant contends his attorneys did not properly argue the GPS evidence was more prejudicial than probative under Rule 403, SCRE. The trial transcript clearly refutes this allegation, and therefore, this Court denies relief on this ground.

At the time of the incident, Applicant was on probation with a GPS ankle monitor issued by the South Carolina Department of Probation, Parole, and Pardon Services. Tr. p. 29. The State sought to admit the GPS data from the day of the incident, arguing it showed Applicant "casing" the apartment prior to the burglary and placed him at the scene. Tr. pp. 33-36, 294-96. Applicant's counsel objected on the basis of unfair prejudice, but the trial judge ultimately admitted the evidence, characterizing it as "highly, highly probative." Tr. pp. 29-32, 299. The State was not permitted to refer to Applicant's probation, but merely referred to "GPS data" generally. Tr. pp. 321-22.

"'All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be [scrutinized under Rule 403].'" State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Rodriguez–Estrada, 877 F.2d 153, 156 (1st Cir. 1989)); see also United States v. Mohr, 318 F.3d 613, 619-20 (4th Cir. 2003) ("Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion...."). The admission of evidence is well within the trial judge's discretion, and his decision will not be overturned on appeal absent an abuse of that discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances." State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 501 (Ct. App. 2013).

Here, the trial court engaged in weighing the probative value of evidence placing Applicant at the scene of the crime versus the prejudicial effect of such evidence. In order to limit prejudice due to how the data was obtained, the trial court prohibited the State from referring to Applicant's prior conviction or his probation, and merely referred to "GPS data." Tr. pp. 321-22. Accordingly, this Court finds Applicant has failed to prove his attorneys were deficient in arguing for the exclusion of the evidence, nor has he proved any prejudice because he has failed to show the trial court abused its discretion by admitting the evidence. Therefore, this allegation is denied and dismissed.

Allegation 1(g) - Failure to object to the credentials of the State's GPS expert

Applicant alleges his counsel were constitutionally ineffective because they failed to object to the credentials of the State's GPS expert. However, Applicant offered no basis for an objection or put forth any evidence as to why the witness should not have been found qualified. Accordingly, this Court finds no deficiency in counsels' performance.

An expert may testify if such "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Rule 702, SCRE; see also Knoke v. South Carolina Dep't of Parks, 324 S.C. 136, 478 S.E.2d 256 (1996). However, expert testimony is not rendered inadmissible simply because it embraces an ultimate issue to be decided by the trier of fact. Id. (citing Rule 43(m)(3), SCRCP). Generally, "the qualification of an expert witness and the admissibility of an expert's testimony are matters within the trial judge's discretion. An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." Lee v. Suess, 318 S.C. 238, 285, 457 S.E.2d 344, 345 (1995).

Here, the GPS expert testified he had worked in the GPS field for eight years and had been trained by at least five GPS providers on the use and interpretation of GPS data. Tr. p. 326.

He further testified he keeps abreast the latest technology in the field, and he had retrained several times as the technology changed. Tr. pp. 326-327. Finally, he testified he had previously testified in court as an expert and had consulted with both the prosecution and defense in other cases regarding how GPS works and how to interpret the data. Tr. p. 327. Defense counsel did not object to his qualification as an expert. Tr. p. 327.

This Court finds Applicant's attorneys were not deficient in failing to object, as the State presented sufficient information for the witness to qualify. See id. ("The test for qualification is a relative one that is dependent on the particular witness's reference to the subject."). Even if defense counsel had objected to the witness's qualifications, "defects in an expert witness's education and experience go to the weight, rather than the admissibility, of expert's testimony." Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997). "The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion," and the objection is likely to have been overruled. Id. Accordingly, because this Court finds neither deficiency nor prejudice, this allegation is denied and dismissed.

Allegation 1(h) – Stipulation to the chain-of-custody of the marijuana

Although Applicant asserted prior to the evidentiary hearing he wished to raise an allegation his attorneys were constitutionally ineffective for stipulating to the chain-of-custody of the marijuana evidence introduced at trial, Applicant never mentioned the issue in his testimony or elaborated on any specifics of this allegation. Because Applicant failed to offer any proof to support this allegation, the Court finds it was waived and denies relief. In any event, the Court has reviewed the transcript and finds no deficiency with counsels' decision to stipulate to the chain of custody in this instance. Tr. p. 66. As previously discussed, Applicant's own testimony at the evidentiary hearing was that this incident was a "drug deal gone bad." Applicant has never

disputed that the drugs found at the scene were indeed cocaine and marijuana, and he has not presented this Court with any basis on which the Court could possible find counsel constitutionally ineffective for agreeing to this stipulation. The allegation is there for dismissed.

Allegation 1(i) – Advice regarding Applicant's right to testify

Applicant testified his attorneys gave him erroneous advice as to whether he should testify. Applicant explained his attorneys told him "the State would have a field day" with his previous record, which changed his mind about testifying. Applicant testified he believed he had a defense, but his attorneys did not investigate any of the State's witnesses or potential witnesses prior to trial. Applicant testified his defense was that he was shot in a "drug deal gone bad," but his attorneys told him no one would believe him and pushed him to plead guilty instead.

Pournaras explained the statements Applicant made after his arrest made it difficult to present any other version of the facts because those statements could be used for impeachment. Pournaras testified he explained to Applicant the fact Applicant was found with twenty grams of cocaine, which alone is very valuable, created a serious problem with Applicant's story of a "drug deal gone bad" because it is not logical to assert Brimfield and Johnson shot Applicant in order to steal weed, but then planted the cocaine and other items recovered from Applicant's car. Pournaras testified the defense realized it did not have any good options between Applicant testifying without a credible story or not testifying at all and leaving the jury only with the State's evidence.

Similarly, Eigenbrot testified she and Applicant discussed his right to testify, and the week of trial Applicant indicated he wanted to testify. Eigenbrot stated she and Pournaras practiced cross-examination with him and explained how his prior record would be used, so Applicant ultimately chose not to testify. Eigenbrot explained she advised Applicant not to

testify because it would open the door to his prior record. She also testified she was concerned with his demeanor on the stand and her ability to control his testimony.

The Supreme Court ably summed up the competing interests which contribute to a defendant's decision to testify or not in Brown v. State, 340 S.C. 590, 533 S.E.2d 308, (2000).

> The Fifth Amendment provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." The decision to testify or not is a perilous one. If a defendant does not testify, he forgoes the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions. If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations. A defendant's decision to testify or not must be made with knowledge of the consequences of either choice.
>
> Id. at 594, 533 S.E.2d at 310 (internal citations omitted).

A review of the record reveals the trial judge clearly explained Applicant's right to testify, how his prior record might be used against him if he did so, and the instruction to be given to the jury should Applicant decline to exercise his right. Tr. pp. 490-91. The trial judge also inquired whether Applicant had discussed the matter with his attorneys, and Applicant stated he had, and he did not need any more time to make his decision. Tr. p. 492. Applicant then informed the trial court he did not wish to testify. Tr. p. 492. Further, the Court finds Eigenbrot and Pournaras credible on this issue, while finding Applicant's testimony is not credible.

The Court finds Eigenbrot and Pournaras informed Applicant of his right to testify, as well as the consequences of exercising that right and of waiving it. The Court finds credible counsels' assessment the risks outweighed the benefits of Applicant's testimony, and they reasonably advised him not to testify. Further, Applicant has presented no evidence he was unconstitutionally prevented from testifying or that his decision to waive his right was not freely

and voluntarily made. Finally, this Court finds Applicant has failed to meet his burden of proving he was prejudiced by counsels' allegedly deficient advice not to testify. Applicant testified only that he would have presented a "drug deal gone bad" defense, but he offered no detail. Pournaras, on the other hand, credibly explained why the story Applicant planned to present to the jury had he testified was not believable and likely would not have resulted in a successful defense. See United States v. Rashaad, 249 F. App'x 972, 973 (4th Cir. 2007) ("[I]n order to prove ineffective assistance of counsel based on his claim that his attorney prevented him from exercising his right to testify at the pre-trial hearing, Rashaad must show both that his attorney violated his right to testify and that his testimony had a 'reasonable probability' of changing the outcome.").

Therefore, because neither Eigenbrot nor Pournaras was deficient, and in any event, Applicant did not prove he was prejudiced by his attorneys' allegedly deficient advice, this Court denies relief as to this ground and dismisses this allegation.

CONCLUSION

Based on the foregoing, the 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.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of December, 2019.

J. DERHAM COLE
Presiding Judge
Fifth Judicial Circuit

WITNESSES

(S) Matthew David Mccoy
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021600099

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: OCT 09 2014

VERDICT

Guilty

Rebecca S Perryman
Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4006872

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

73

THE STATE
vs.

Demetrius Derrick Henderson

Indictment for
LARCENY/GRAND LARCENY, VALUE MORE THAN $2000 BUT LESS THAN $10,000

SC Code: **16-13-0030(B)**
CDR Code: **3420**

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

Defendant

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

Defendant

Witness:

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

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

716

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 8 2014, the Grand Jurors of Richland County present upon their oath:

GRAND LARCENY
$2,000 BUT LESS THAN $10,000

That Demetrius Derrick Henderson did in Richland County on or about December 18, 2013, take and carry away the personal goods of APRIL JENKINS, valued at more than Two Thousand ($2,000.00) Dollars, but less than Ten Thousand ($10,000.00) Dollars, described as follows: Electronics and/or clothing and/or household goods, with the intent to deprive the owner permanently of such property and to convert the goods to his/her own use, in violation of Section 16-13-0030(B)(1), 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

WITNESSES

(S) Matthew David Mccoy
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021600098

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 09 2014

VERDICT

Guilty

man

DOCKET NO. 2014GS4006873

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER **TERM 2014**

73

THE STATE
vs.

Demetrius Derrick Henderson

Indictment for
BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

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

718

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

_____
Defendant

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

_____

_____
Defendant

Witness:
_____
C.C.C. PLS. AND G.S.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 8 2014, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Demetrius Derrick Henderson did in Richland County on or about December 18, 2013, enter the dwelling of APRIL JENKINS located at 4501 Bently Dr. Apt 5110, without consent and with the intent to commit a crime therein and the entering or remaining occurred in the nighttime, 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) Matthew David Mccoy
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021600100

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 0 9 2014

VERDICT

Guilty

Rebecca Perryman
Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4006874

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

73

THE STATE
vs.

Demetrius Derrick Henderson

Indictment for
DRUGS / TRAFFICKING IN COCAINE, 10 G OR MORE, BUT LESS THAN 28 G - 1ST OFFENSE

SC Code: 44-53-0370(e)(2)(a)1
CDR Code: 0278

720

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
C.C.C. PLS. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 8 . 2014, the Grand Jurors of Richland County present upon their oath:

TRAFFICKING IN COCAINE (10-28 GRAMS)

That Demetrius Derrick Henderson did in Richland County on or about December 18, 2013 was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

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

DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David Mccoy
– Columbia Police Department

ARREST WARRANT NUMBER

2014A4021600101

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 09 2014

VERDICT

Guilty

Rebecca Perryman
Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4006877

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER **TERM 2014**

73

THE STATE
vs.

Demetrius Derrick Henderson

Indictment for
DRUGS / MANUF., POSS. OF OTHER SUB. IN SCH. I, II, III OR FLUNITRAZEPAM, W.I.T.D. - 3RD OR SUB. OFFE

SC Code: **44-53-0370(b)(2)**
CDR Code: **0188**

722

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 8 , 2014, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

3RD OFFENSE & ABOVE

That Demetrius Derrick Henderson did in Richland County, on or about December 18, 2013, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law [and such being the defendant's second or subsequent offense], and in violation of Section 44-53-0370(b)(2), 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