

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lexington County

MAR 30 2017

Perry H. Gravely, Circuit Court Judge **S.C. SUPREME COURT**

CARRIE CALLAHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001744

APPENDIX

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Testimony of Carrie Callaham - Direct Examination

1 Q. When's the first time you met Mr.
2 Madsen?

3 A. When he came in he said that he was
4 going to help my attorney.

5 Q. And what day was that?

6 A. That's the same day, May 23rd, when
7 they started my case.

8 Q. The day of your trial?

9 A. Yes, ma'am.

10 Q. Okay. So did you know going into
11 the trial what the trial strategy was?

12 A. No.

13 Q. Had you discussed it at all with Mr.
14 Casto?

15 A. No.

16 Q. Had you ever been in trouble with
17 that before this?

18 A. Just checks.

19 Q. Okay. So you didn't really know the
20 process of something like this?

21 A. No, ma'am.

22 Q. All right. So the day of the trial
23 comes about and they start going through the
24 pretrial hearings about your statement. And
25 just basically, to give the judge a little

1 background. You gave a statement to law
2 enforcement after this; correct?

3 A. Yes, ma'am.

4 Q. Okay. And they did what's called a
5 *Jackson v. Denno* hearing before the trial to
6 determine whether your statement should be
7 allowed in?

8 A. No.

9 Q. Well, do you know if they did that
10 hearing or not?

11 A. No.

12 Q. Okay. Do you know if Mr. Casto ever
13 discussed with you testifying before the
14 trial as to whether what you -- how you were
15 feeling that night when you gave the
16 statement to law enforcement?

17 A. He told me not to say nothing.

18 Q. Okay. So you'd previously stated
19 that you told him you were high and intoxi-
20 cated that night?

21 A. Yes, ma'am.

22 Q. If you had testified that day as to
23 your statement at the trial, what had you
24 been doing prior to these allegations? Or
25 not prior to the allegations, but prior to

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1 talking to law enforcement that night. Had
2 you been drinking or doing drugs of any kind?

3 A. Yes. I was drunk. Matter of fact,
4 they pulled up to my grandmother's house. My
5 mom was there. And my mom was like, 'Don't
6 go. You been drinking.' And I was like,
7 'oh, I'll be back.'

8 Q. Okay. And how much had you drank
9 that day?

10 A. I drank like all that day. I was
11 smoking marijuana all that day and I was x'ed
12 out all that day.

13 Q. And when you say x'ed out, what does
14 that mean?

15 A. It's ecstasy pills.

16 Q. And what had you been drinking?

17 A. Like wine and things like that, just
18 really light stuff. And probably like a beer
19 at the end of the night.

20 Q. And when you talked to law -- what
21 time did you start drinking that day, do you
22 remember?

23 A. Probably around about 3:00, maybe
24 4:00 in the afternoon.

25 Q. And you were arrested around 12:00

1 a.m. that night. And you were arrested out
2 of your car; correct?

3 A. That's correct.

4 Q. And had you been doing anything
5 while you were in the car, drinking or
6 smoking-wise?

7 A. Yeah. I was smoking a blunt.

8 Q. Okay. And when you were speaking
9 with law enforcement, were you still under
10 the influence of drugs or alcohol at that
11 time?

12 A. Yes, ma'am.

13 Q. And how were you feeling when you
14 were speaking with them?

15 A. I was tired. I was crying. I just
16 wanted a bed. One of the officers was, like,
17 'You going to jail. You going to jail. So
18 you've no reason to cry. The people you gave
19 the ride to, they say they know you.' But
20 they didn't know me. They knew me as
21 Courtney Callaham. They didn't know me as
22 Carrie Callaham.

23 Q. Okay. And at that time when you
24 were giving a statement, you said you were
25 still under the influence?

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1 A. Yes. I kept telling them I was
2 drunk.

3 Q. Okay. You said you kept telling
4 them that you were drunk?

5 A. (Affirmative nod), I was drunk. I
6 was high.

7 Q. And did you discuss any of this with
8 Mr. Casto?

9 A. Yes.

10 Q. And did you testify at the trial
11 regarding your statement?

12 A. No.

13 Q. And if you had, would you have
14 testified to what you just testified to now?

15 A. Yes.

16 Q. Okay. And there are several other
17 things that occurred during the trial that
18 you're not exactly sure about legal-wise but
19 that you think your attorneys did wrong?

20 A. Yes.

21 Q. Okay. And that includes objecting
22 to some testimony -- failure to object to
23 some testimony and some other things?

24 A. Yes, ma'am.

25 Q. Okay. And you were also alleging at

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1 this time that your appellate attorney
2 did not make a claim that she should have
3 made?

4 A. That's correct.

5 Q. Okay.

6 MS. GOOD: No further questions,
7 Your Honor.

8 CROSS-EXAMINATION

9 BY MS. VALENZUELA:

10 Q. Ms. Callaham, good afternoon?

11 A. Hi. How are you today?

12 Q. I'm good. Are you okay?

13 A. Yeah. My life's on the line right
14 now. So I think it's a little important.

15 Q. Okay. So let's jump right into,
16 okay?

17 A. Okay.

18 Q. I got a little confused when you
19 were talking about when you gave your
20 statement and the timeline. So we're just
21 going to back up to that. You were arrested
22 by police after you had been driving a
23 vehicle; correct?

24 A. While I was driving the vehicle.
25 They stopped me in the middle of me turning.

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1 So I was operating a motor vehicle at the
2 time.

3 Q. So you were operating a motor
4 vehicle. You get stopped by the police.

5 A. (Affirmative nod).

6 Q. And then after they discover some
7 things, they arrest you right then; correct?

8 A. Yes, ma'am.

9 Q. And then it's a few hours that they
10 take your statement; correct?

11 A. They took me to headquarters. They
12 was to question the people who I was in there
13 with. And that's when Detective Moore, this
14 lady, she came in and started telling me
15 'You're going to jail. You knew what was
16 going on.' I was like, 'I don't know what's
17 going on. I was just taking them to pick up
18 something.' And she was like 'you know what
19 that something is' and kept getting heavy.
20 But they kept me at headquarters almost like
21 until 4:00 in the morning.

22 Q. Okay. And I understand you have a
23 lot you want to get out, but we're trying to
24 establish the timeline right now. So I'm
25 just going to go back to that question.

1 After they arrest you, they took you to
2 headquarters and it was a few hours later
3 that they did the -- that they took your
4 statement. So probably within the same day?

5 A. Yeah. It was like back and forth,
6 back and forth, like thirty minutes here,
7 they was out. Thirty minutes in, they was
8 out, still like that.

9 Q. And did you have any access to drugs
10 or alcohol while you were the police
11 officer's custody?

12 A. Apparently not if you with the
13 police.

14 Q. And when you got pulled over by
15 police, did they give you a field sobriety
16 test?

17 A. No, they haven't. And it was a
18 female officer who gave me a ride, which they
19 told me she'd moved to California. And she
20 knew I was drunk as well. But they said that
21 they couldn't subpoena her or something like
22 that. So -- yeah.

23 Q. So they did not give you a field
24 sobriety test. Did they end up taking you to
25 take a breathalyzer?

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1 A. No.

2 Q. No. And do you remember, did they
3 charge you with driving under the influence?

4 A. Nope.

5 Q. And you said you met with counsel
6 two times ---

7 A. Twice, yes.

8 Q. --- before your trial?

9 A. Yes.

10 Q. And did you indicate to your counsel
11 that you did not want to take a plea but you
12 did want to go to trial?

13 A. That is correct.

14 Q. Okay. And did you review the
15 discovery in your case? What, for example,
16 the statement that they had or anything else
17 with your counsel?

18 A. All that came out during trial.

19 Q. Okay. Did you talk about that with
20 your attorney prior to trial?

21 A. All that came out during trial.

22 Q. Did you give your attorney any leads
23 for witnesses that you wanted him to talk to,
24 that you don't feel like he spoke to?

25 A. I asked him could he talk to my

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1 mother because she knew the fact that I was
2 under the influence of alcohol because she
3 told me not to leave. He said that she
4 wouldn't be a good witness. I also asked him
5 'well, why is we allowing somebody who was
6 staying in a certain place for almost two
7 years and now they're allowing him to testify
8 against me, not giving him the time to talk
9 to him.' So I felt like that wasn't right.
10 Also, the Judge was like 'well, since we
11 can't get in touch with this person who was
12 staying in the same place for two years, do
13 you want a mistrial?' And that was a no. He
14 didn't want to take a mistrial.

15 Q. Okay. So you did, in fact, talk
16 about potential witnesses with your counsel
17 prior to trial?

18 A. No. All of this was going on during
19 trial.

20 Q. Okay. So during trial was when you
21 asked your attorney to have your mother come
22 and testify?

23 A. Oh, no. For my mom, no, that was
24 like the second time I met him.

25 Q. Okay, so ---

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1 A. Yeah. Yeah, that was the only
2 witness I had. Yes. I apologize.

3 Q. No, you're fine. So in one of your
4 meetings with counsel you did talk about
5 potential witnesses, one of them being your
6 mother. And he said that he did not think
7 that she would be a good witness?

8 A. (Affirmative nod).

9 Q. Okay. So earlier your attorney
10 asked you if there was a *Jackson v. Denno*
11 hearing done before your trial; was there?

12 A. I don't know nothing about it. I
13 found that out when my attorney came to me
14 and asked me about it and I did not know what
15 was that about.

16 Q. Okay. So you don't know -- you
17 don't recall hearing testimony about your --
18 the voluntariness of your statement or what
19 happened at the time of your statement?

20 A. Not that, no.

21 Q. No. Okay.

22 MS. VALENZUELA: Your Honor, that's
23 all for Ms. Callaham.

24 THE COURT: All right.

25 MS. GOOD: Nothing further.

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1

2

THE COURT: All right. Thank you. You
my step down.

3

4

THE WITNESS: Yes, sir.

5

(WITNESS STEPS DOWN)

6

7

MS. GOOD: I Call Bennett Casto,
Your Honor.

8

(WITNESS TAKES STANDS)

9

10

BENNETT CASTO, having been duly sworn to
tell the truth, and nothing but the truth,
testified as follows:

11

12

DIRECT EXAMINATION

13

BY MS. GOOD:

14

15

Q. Mr. Casto, where are you currently
employed?

16

17

A. With the Public Defender's Office in
the Eleventh Circuit.

18

19

Q. And how long have you been employed
there?

20

A. Almost nine years.

21

Q. And doing strictly criminal work?

22

A. Exclusively. Yes, ma'am.

23

24

Q. And do you remember Carrie Callaham
and this trial?

25

A. Yes, ma'am. I do.

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1 Q. Okay. And basically, can you give
2 the Judge a little background as to what the
3 allegations of this trial were?

4 A. Sure. I remember that this was
5 essentially described as a home invasion type
6 scenario where it was alleged by the State
7 that Ms. Callaham's role in this was getaway
8 driver. That ultimately she'd transported
9 two codefendants to this trailer, I believe
10 in the West Columbia area, and it was --
11 inside was a Hispanic family. I think that
12 there was some thought that there were people
13 that were affiliated with drugs or something
14 like that involved. That didn't turn out to
15 be the case whatsoever.

16 Ultimately, beside Ms. Callaham in the
17 car, there were two males with her. And it's
18 my recollection that the two males went in
19 with weapons, held the family at gunpoint,
20 there was children present, and asked for
21 money. I think that it was -- I believe they
22 received some wallets, maybe some jewelry
23 kind of things. Maybe some watches,
24 necklaces, that type of thing.

25 The two gentlemen that went inside the

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1 residence came back out. The car left. I
2 think it was pulled over a couple of minutes
3 later, maybe two.

4 Q. Based on a description that was put
5 out?

6 A. That's right. And so, you know, I
7 think that when one of the males got out,
8 that some of the items that were taken were
9 found. I think Ms. Callaham had some bullets
10 in her pocket. And -- I think that was just
11 after midnight, if memory serves.

12 Q. And prior to this trial, you were
13 essentially Ms. Callaham's attorney the
14 entire time; correct?

15 A. That's right.

16 Q. And do you remember how many times
17 you met with her?

18 A. Not specifically, but I know it was
19 several face-to-face. It might have been --
20 it's certainly more than twice. And then I
21 spoke with her on the phone on several
22 occasions and we reviewed, you know, what the
23 State was attempting to prove against her.
24 And I believe that on at least two occasions
25 that we met face-to-face and just went

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1 through -- those were the long meetings where
2 we went through everything.

3 Q. And you don't remember when those
4 were?

5 A. No, not specifically. No, ma'am.

6 Q. And during -- I'm going to get to
7 the trial at this point. During the trial, I
8 guess, pretrial there was a *Jackson v. Denno*
9 hearing; correct?

10 A. That's right.

11 Q. And a lot was done revolving around
12 her statement to law enforcement?

13 A. That's correct.

14 Q. And did you ever discuss with Ms.
15 Callaham about testifying during this *Jackson*
16 *v. Denno* hearing as to her voluntariness?

17 A. I don't recall specifically having
18 that conversation or the content of -- I'm
19 not saying it didn't happen, but I just don't
20 have any specific memory of speaking with her
21 about that.

22 Q. And as part of this statement, it
23 was kind of an issue that she had been
24 drinking. And it was mentioned during the
25 statement to law enforcement?

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1 A. That's right.

2 Q. Okay. And was there any evidence
3 put up from the defense side as to any
4 alcohol or drugs she may have been on during
5 this statement?

6 A. There was not.

7 Q. Okay. And you don't remember
8 specifically if you spoke to her about that
9 or not?

10 A. We had conversations about where,
11 you know, when we met and we just fleshed
12 everything out. And that she said that she
13 had been drinking and was intoxicated. But
14 there were a couple of things. The delay, I
15 think, in between -- the length of time from
16 the stop and then the interview. And then
17 also the -- it did not seem, based on the
18 evidence, that that was very credible.

19 Q. Okay. Did you ever put her up to
20 testify as to what she'd been drinking or
21 what drugs she'd been doing that day?

22 A. No, I did not.

23 Q. And you just stated you're not sure
24 if you had that conversation with her about
25 whether to testify or not; correct?

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1 A. That's correct.

2 Q. And then during the trial, I guess
3 the first thing -- y'all did get the bullets
4 suppressed; correct? Based on chain of
5 evidence?

6 A. I believe that's correct.

7 Q. Okay. And so it basically came down
8 to her statement as well as statements of
9 some witnesses; correct?

10 A. That's right.

11 Q. And one of those witnesses that
12 testified at trial was an Abdul Bargas. Do
13 you remember him?

14 A. I believe so, yes.

15 Q. Okay. And do you recall that during
16 the testimony he began testifying about what
17 the neighbors saw happen and that's how he'd
18 had gotten his information?

19 A. I believe so. That's right.

20 Q. And at that time, did you object to
21 that?

22 A. I don't recall objecting to that.

23 Q. And he testified about that several
24 times; correct?

25 A. I don't recall how many times.

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1 Q. Okay. But you do remember that you
2 did not object to it?

3 A. That's right.

4 Q. All right. And then again later,
5 Sergeant Robert McIntyre testified and he
6 testified again as to this testimony from a
7 neighbor?

8 A. I believe so. That's right.

9 Q. And at that time did you or Mr.
10 Madsen object to that neighbor's testimony?

11 A. I don't recall whether we did or
12 not.

13 Q. And at that time, let me kind of
14 talk about this neighbor. This is Marcelo
15 Prado. Do you remember the kind of events
16 surrounding this surprise witness coming
17 about during the trial?

18 A. I do not.

19 Q. Okay. So I guess originally on the
20 witness list -- was Marcelo Prado originally
21 on the witness list for the State?

22 A. You know, I can't remember whether
23 he was or he wasn't.

24 Q. And then ultimately if I -- have you
25 ever reviewed the transcript for this?

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1 A. I have the parts raised in the PCR
2 but not in its entirety.

3 Q. Okay. And there was an in-camera
4 hearing regarding Mr. Prado's testimony as
5 the State added him to the witness list
6 halfway through the trial; correct? He was
7 this neighbor that everybody had been
8 alluding to, that they said they couldn't
9 find until then?

10 MS. GOOD: I have no objection
11 with him reviewing this portion of the
12 transcript if -- understanding ---

13 DIRECT EXAMINATION CONTINUED

14 BY MS. GOOD:

15 Q. I hand you the transcript.
16 (Tenders)

17 MS. GOOD: And, Your Honor, it's
18 Page 79 of the May 24th, 2012 transcript.

19 THE COURT: Page 79?

20 MS. GOOD: Yes, sir. Where the
21 in-camera testimony begins.

22 THE COURT: All right.

23 DIRECT EXAMINATION CONTINUED

24 BY MS. GOOD:

25 Q. Does this refresh your memory?

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1 A. (Upon review), yes. I do remember
2 the events surrounding that.

3 Q. And basically the entire trial,
4 there was talk of this neighbor and he was
5 not on the witness list. Then ultimately
6 they try adding him to the witness list,
7 halfway through the trial; correct?

8 A. That's right.

9 Q. Okay. And y'all successfully -- or
10 not successfully, but you argued profoundly
11 that he should not be allowed. That there
12 was testimony, I think, he'd been living
13 there for two years and nobody had ever come
14 to talk to him before?

15 A. That's my understanding. Yes,
16 ma'am.

17 Q. Okay. And y'all objected to that
18 testimony; correct?

19 A. I believe so. Yes, ma'am.

20 Q. And asked that it was not allowed to
21 come in; however, the Judge allowed it;
22 correct?

23 A. That's right.

24 Q. And then you also objected to the
25 fact that what he was saying his friend told

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1 him on the phone was hearsay because he said
2 that it was calm and he was not overly
3 enthusiastic or anything; correct?

4 A. That's what I believe I see here in
5 the transcript; correct.

6 Q. So you preserved the record as to
7 that issue?

8 A. I believe so. Yes, ma'am.

9 Q. Okay.

10 MS. GOOD: I beg the Court's
11 indulgence.

12 DIRECT EXAMINATION CONTINUED

13 BY MS. GOOD:

14 Q. Oh, and finally, after the trial
15 when the verdict came down, do you remember
16 polling the jury?

17 A. I don't believe that we polled the
18 jury?

19 Q. Okay. And what was the reason for
20 that?

21 A. I believe that in this case that the
22 jury came back very, very fast. And that
23 was, you know, the reason, therefore. I
24 can't specifically remember. They might have
25 eaten lunch also, but came back very fast.

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1 Q. Okay.

2 MS. GOOD: No further questions,
3 Your Honor.

4 CROSS-EXAMINATION

5 BY MS. VALENZUELA:

6 Q. Okay, Mr. Casto, did you mention
7 that you had met with the Applicant two times
8 or was it more than that?

9 A. It was certainly more than two.

10 Q. Okay. And do you have an estimate
11 about how many times you met with her?

12 A. I do not. I know it was more than
13 that. But then also I remember us having,
14 you know, significant lengthy phone calls
15 where we would, you know, review everything
16 again. Just to flesh it out, just to have a
17 full picture. I mean, as we were getting
18 close to trial.

19 You know, Ms. Callaham had spoke
20 about her mother. And ultimately Ms.
21 Callaham's being in agreement that mom sat in
22 while we met just so, you know, they could
23 both listen to, you know, the evidence, what
24 trial would look like. And that was a pretty
25 lengthy meeting as well.

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1 Q. And when you say lengthy phone calls
2 and lengthy meetings, are we talking about
3 under an hour or over an hour?

4 A. Under an hour but, you know, some, I
5 mean, twenty or thirty minutes approximately.
6 That's right.

7 Q. And I think you just -- y'all talked
8 about the evidence there?

9 A. Yes. That's correct, in the phone
10 calls. But then I'm pretty sure that you
11 know, the face-to-face times were longer than
12 that.

13 Q. And you talked about the decision to
14 go to trial and what to expect at trial?

15 A. That's correct.

16 Q. And did you talk about any offers?

17 A. Yes, ma'am.

18 Q. And did your client indicate that
19 she did not want to accept an offer, she
20 wanted to go to trial?

21 A. That's correct.

22 Q. Did you file a Rule 5 and *Brady*
23 Motions in this case?

24 A. Yes, ma'am.

25 Q. And as part of those meetings you

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1 reviewed discovery with your client; right?

2 A. That's correct.

3 Q. And you discussed her version of the
4 facts?

5 A. Extensively. Yes, ma'am.

6 Q. And any possible defenses that she
7 may have?

8 A. That's right.

9 Q. Okay. And you discussed the
10 elements of the charge that she was facing,
11 charges?

12 A. That's correct.

13 Q. Now, Ms. Callaham indicated that she
14 had asked you, that she wanted her mother to
15 testify on her behalf. Do you recall a
16 conversation with her about that?

17 A. Possibly, you know. If memory
18 serves, her -- I remember her mother was at a
19 location where Carrie was a few hours before.
20 And it didn't really seem like she had seen a
21 lot of what Carrie was up to. And she
22 certainly wasn't a witness to the events that
23 came after that. So, you know, we had this,
24 you know, length of time that mom didn't see.
25 And, you know, the problem I think you run

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1 into with family members is they're related
2 to the person. And so, you know, it makes
3 them fairly impeachable, I think, too.

4 Q. So you considered it.

5 A. I did.

6 Q. And as a strategy decision thought
7 that that was not the best thing to do?

8 A. That's correct.

9 Q. Okay. Did your client give you any
10 other names or witnesses that you weren't
11 able to speak with or pursue?

12 A. No, ma'am, not to my recollection at
13 all.

14 Q. Did she ever indicate to you that
15 she didn't understand anything going into the
16 trial?

17 A. No, ma'am. She never did.

18 Q. So going to the *Jackson v. Denno*
19 hearing -- and you did not put your client
20 up. How often do you put your clients up to
21 testify during *Jackson v. Denno* hearings?

22 A. It's hard to say. You know, it's
23 really one of those things that kind of turns
24 on the facts of the case. You know, it --
25 (pause).

1 Q. When looking at the facts of this
2 case, what was it about the facts of this
3 case that lead you decided not to put her up?

4 A. It didn't seem like there was a lot
5 of benefit to that. I remember specifically
6 one of the issues that we had was, I believe
7 that Ms. Callaham gave three different names,
8 you know, and incorrect Socials before they
9 found out who she was. And so I think that
10 that would have kind of cut through her claim
11 of being intoxicated, you know. In other
12 words, you know, she's kind of "with it"
13 enough to do that. And, you know, she could
14 answer questions and things.

15 And, you know, another issue was that no
16 officer smelled alcohol. There was never any
17 -- I don't believe there's any testimony
18 about any officer stating that they even
19 smelled alcohol or marijuana or anything on
20 her. And so that weighed into my decision as
21 well.

22 Q. Okay. And then -- and your client
23 was actually pulled over while driving a
24 vehicle and did not have any DUI charges
25 associated with that event?

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1 A. That's correct.

2 Q. Okay. Okay. Turning to the
3 objections in this case. Can you talk to me
4 about, you know, what your strategy is in
5 trial when it comes to what you consider
6 before making an objection in front of a
7 jury?

8 A. Just, you know, is this -- you
9 definitely want to not overly object. I
10 think it kind of has from a strategy
11 standpoint kind of tends to negatively impact
12 you even more so, the client. There are
13 times when you absolutely have to object.
14 But, you know, you kind of weigh each time
15 with regard to whether it's really hurting
16 you, that kind of thing.

17 Q. Do you have the transcript in front
18 of you?

19 A. Part of it.

20 MS. VALENZUELA: May I approach the
21 witness?

22 THE COURT: Yes, you may.

23 CROSS-EXAMINATION CONTINUED

24 BY MS. VALENZUELA:

25 Q. I'm going to give you page numbers.

1 Okay. Turning to Page 106.

2 THE COURT: Of which portion, May
3 23rd or 24th?

4 MS. VALENZUELA: I think it's the
5 23rd. I'll have to see. I'll have to look.
6 (Upon review), actually, sir, it's May 23rd
7 and it's Page 108.

8 THE COURT: Thank you.

9 CROSS-EXAMINATION CONTINUED

10 BY MS. VALENZUELA:

11 Q. And then I think it tells you at the
12 top we're looking at Abdul Bargas' direct
13 examination. Do you see that you objected to
14 hearsay and asked for hearsay to be stricken
15 from the record?

16 A. Yes, I do see that.

17 Q. Okay. And then the page before, it
18 has the discussion that had the witness
19 testifying about a neighbor? Let me see. So
20 if you could read on page 106 and 107 about,
21 you know, looking at that for potential
22 hearsay objections.

23 A. (Upon review), okay. I've reviewed
24 it.

25 Q. You've read it. So what did you

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1 keep in mind in reading through that when you
2 decide to make an objection?

3 A. You know, basically the person, I
4 believe testifying in this is talking about
5 what happened when they entered his trailer.
6 The attention is just front and center on
7 him. The neighbor doesn't seem to really
8 make a statement. But says the neighbor was
9 watching everything at one point. But, you
10 know, at that point the neighbor had realized
11 they went inside and he'd already called the
12 police.

13 But, you know, these are facts scattered
14 in this narrative of what happened to the
15 victim once these folks were inside his
16 house. And it's just going step-by-step.
17 They grabbed the kids and pointed guns and
18 all of that stuff. So I just don't think it
19 would have been worth it to object at that
20 place.

21 Q. And that's even reading it in hind-
22 sight?

23 A. That's correct.

24 Q. Okay. And then later, in fact, you
25 did object when that same witness started

1 discussing specifically something that was
2 outside of his knowledge and said by someone
3 else?

4 A. That's right.

5 Q. Okay. And asked for that to be
6 stricken from the record?

7 A. That is correct.

8 Q. Okay. And then I need to ---

9 MS. VALENZUELA: May I approach
10 freely the witness?

11 THE COURT: Yes. Yeah, that's
12 fine.

13 CROSS-EXAMINATION CONTINUED

14 BY MS. VALENZUELA:

15 Q. Okay. And looking at Page 136 of
16 the transcript dated May 23rd, with Robert
17 McIntyre, do you see there that you did call
18 for objections on hearsay, on Page 136?

19 A. Yes. I see that.

20 Q. And so it wasn't that you didn't
21 object to Sergeant McIntyre, but you
22 strategically chose when it would be -- when
23 you would need to object and whether it was
24 going to negatively affect your case?

25 A. That's right.

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1 Q. Now, moving to Marcelo Prado, the
2 witness who is outed after the trial started.
3 You all did make an objection to him being
4 added after not being on the witness list and
5 were heard by the Judge on that issue?

6 A. That's correct.

7 Q. Okay. And what was the prejudice,
8 if any, that you felt that you suffered by
9 having Prado added to the trial?

10 A. Um ---

11 Q. Was there anything that he provided
12 that you had no knowledge of before the
13 trial?

14 A. I don't believe so, that I can
15 recall. It was the neighbor so we had the
16 testimony of the folks that were actually
17 inside the victim's home, as best I can
18 remember.

19 Q. And would you have had -- I believe
20 Mr. Prado made the call, the 9-1-1 call in
21 the case. Would you have had that and Mr.
22 Prado's information prior to the trial?

23 A. I believe so. That's right.

24 Q. And so turning to -- so negative
25 effect by having Prado present at the trial,

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1 but you did make your objection. And then,
2 of course, you followed it by making an
3 objection under the excited utterance hearsay
4 exception?

5 A. That's correct.

6 Q. Okay. And the Judge heard you on
7 both of those issues. As to polling of the
8 jury ---

9 MS. VALENZUELA: And I just direct
10 the Court's attention to Page 253 of the
11 second transcript.

12 CROSS-EXAMINATION CONTINUED

13 BY MS. VALENZUELA:

14 Q. The jury went out at 4:25 and came
15 back at 5:05, so a forty-minute deliberation.
16 Does that sound like how long it felt when
17 you were sitting in the courtroom?

18 A. It does. I actually thought it
19 happened earlier in the afternoon. I just
20 remember it being pretty quick.

21 Q. Really fast. And what did that
22 indicate to you in terms of helping you make
23 the decision not to poll the jury?

24 A. I think, you know, it kind of
25 indicated that the jurors, I think were all,

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1 The first thing he says is he was sleeping,
2 along with his family; correct?

3 A. That's right.

4 Q. And then everything from there down
5 to (Line) 20 is something that he heard from
6 somebody else because he said when they
7 opened the door, at Line 20, "we were there
8 sleeping." So everything prior to that that
9 happened, he heard from somebody else;
10 correct?

11 A. That's right.

12 Q. All right. And that would be
13 hearsay; wouldn't it?

14 A. It would.

15 Q. As to the actual burglary into the
16 home and what happened as to somebody being
17 hit over the head with a pistol.

18 A. That's right.

19 Q. Okay. And then later on, on Page
20 107, Line 12, he is speculating as to what
21 the neighbor had realized and about calling
22 the police; correct?

23 A. I'm sorry, which?

24 Q. Page 107, Line 12.

25 A. And what was your question?

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1 Q. On Line 12 where it talks about what
2 the neighbor had realized. And he called the
3 police based on what he saw; correct?

4 A. That's right.

5 Q. Okay. So basically everything on
6 Page 106 and about the neighbor called the
7 police was all hearsay because he was asleep
8 up until that point, based on his testimony;
9 correct?

10 A. That's right.

11 Q. And you didn't object to any of
12 that; did you?

13 A. That's right.

14 Q. And regarding the prejudice as to
15 Mr. Prado, he's basically this neighbor that
16 everybody was talking about who saw what
17 happened?

18 A. That's right.

19 Q. And prior to trial he was not on
20 this witness list. So his testimony would
21 have never come into trial if they had never
22 called him; correct?

23 A. That's right.

24 Q. Okay. So any time this neighbor's
25 testimony would have been referred to, it

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1 would have been hearsay?

2 A. That's correct.

3 Q. And that's why you did not want him
4 testifying; correct?

5 A. That's right.

6 Q. In addition to the fact that you
7 also objected that what he was testifying to
8 was what a friend told him on the phone, the
9 excited utterance part of the objection;
10 correct?

11 A. I believe that's right.

12 Q. Okay. And so it would have been a
13 negative -- it was a negative effect on the
14 trial that this neighbor was all of a sudden
15 found that day and added to the witness list?

16 A. That's right.

17 Q. Okay.

18 MS. GOOD: No further questions,
19 Your Honor.

20 MS. VALENZUELA: Nothing further.

21 THE COURT: All right. Thank you.
22 You may step down.

23 THE WITNESS: Yes, sir.

24 (WITNESS STEPS DOWN)

25 THE COURT: Any reason why this

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1 witness can't be released?

2 MS. VALENZUELA: No objection.

3 MS. GOOD: No, sir.

4 WITNESS: Thank you.

5 MS. GOOD: The Applicant rests,

6 Your Honor.

7 THE COURT: All right. Anything
8 from the State?

9 MS. VALENZUELA: Yes, Your Honor.
10 We call Kathrine Hudgens to the stand.

11 (WITNESS TAKES STAND)

12 KATHRINE HUDGENS, having been duly
13 sworn to tell the truth, and nothing but the
14 truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. VALENZUELA:

17 Q. Ms. Hudgens, where do you currently
18 work?

19 A. I work at Appellate Defense.

20 Q. And how long have you been with
21 Appellate Defense?

22 A. Ten years.

23 Q. And have you been handling appellate
24 -- has your practice been focused on
25 appellate defense issues for that entire

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1 time?

2 A. I've been handling criminal appeals
3 the entire time I've been with Appellate
4 Defense.

5 Q. Thank you. And then did you handle
6 the appeal for Carrie Callaham?

7 A. I did.

8 Q. Okay. And can you walk the Court
9 through the process of how you make your
10 determination after reviewing the record on
11 what to appeal?

12 A. Sure. Read through the transcripts,
13 identify any issues that I think are objected
14 to by trial counsel and then ruled upon by
15 the trial judge. Then based upon reviewing
16 those issues that may have been preserved for
17 appellate review, pick the strongest issues
18 that I think might result in relief at the
19 appellate level.

20 Q. Why do you pick the strongest issues
21 and not just all of the issues that you
22 identified?

23 A. Sometimes if you are raising issues
24 that are marginal, that it dilutes the
25 strength of your arguments that you think are

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1 strong and may actually result in relief. I
2 mean, some objections and some rulings,
3 although incorrect and preserved, are simply
4 not going to result in relief at the
5 appellate level.

6 Q. Did you have an opportunity to
7 review the objection about the excited
8 utterance exception to hearsay for the
9 neighbor who was on the phone with someone
10 who saw the robbery and was able to testify
11 about what that person told him under the
12 excited utterance exception?

13 A. I did review that.

14 Q. And did you elect to appeal on that
15 issue?

16 A. I chose not to raise that as an
17 issue.

18 Q. And why is that?

19 A. Well, first of all, I could be
20 wrong. I've been wrong before. I thought it
21 fit as an excited utterance. If it wasn't an
22 excited utterance, it was certainly another
23 exception to the hearsay rule to be a present
24 sense impression. And even if I'm wrong on
25 that, which I could be, it seemed to me that

1 Ms. Callaham's defense was not that a robbery
2 was not taking place, but rather that she was
3 merely present and was acting under duress.
4 So even if there had been error in allowing
5 that and it was improper hearsay, I didn't
6 see that it was harmful.

7 Q. And you took the strategy of the
8 defense from reviewing the entire transcript
9 and seeing what evidence was presented and
10 what challenges the defense was making in
11 front of the jury?

12 A. That's correct.

13 Q. Okay. And do you still feel like
14 the issues that you raised on appeal were the
15 strongest ones and the right ones to appeal?

16 A. I do. I raised two meritorious --
17 or what I thought were meritorious issues.
18 The Court of Appeals didn't think that. But
19 I thought they were good issues for Ms.
20 Callaham. One had to do with the mere
21 presence. The other one had to do with no
22 corroboration of her statement. I thought
23 those two issues fit nicely together.
24 Unfortunately, the Court of Appeals didn't
25 agree with us.

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1 Q. Okay. Please answer any questions
2 that Ms. Good has.

3 CROSS-EXAMINATION

4 BY MS. GOOD:

5 Q. Ms. Hudgens, when you review a
6 transcript, there's certainly times that you
7 see things that you think could be an issue
8 but they're not properly preserved; correct?

9 A. That's correct.

10 Q. So, in that sense, cases where
11 hearsay should have been objected to that
12 were essential in the testimony but they were
13 never objected to?

14 A. That would not be something I could
15 raise on direct appeal.

16 Q. And if it was properly preserved,
17 that's something you could raise on appeal if
18 it was overruled at trial?

19 A. It could be.

20 Q. And in this case you said you picked
21 mere presence and no corroboration of
22 statement; correct?

23 A. Those were the two issues I
24 presented.

25 Q. Did you ever look at the whole

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1 admissibility of Marcelo Prado's testimony?
2 Not just the excited utterance portion of it,
3 but the fact that the judge even let this in
4 in the middle of a trial when he was no
5 longer on the witness list?

6 A. Yes. *State v. Nicholson* says that
7 the State's not even required to provide a
8 witness list. Now, I don't agree with that,
9 but that's what our law says. So I didn't
10 think we had a grounds to even -- to raise
11 that.

12 Q. Okay. And so that's why you chose
13 not to raise that; correct?

14 A. That's correct.

15 Q. And in your opinion -- well, not in
16 your opinion. But if you had been reading
17 this when you were reading the transcript and
18 all the hearsay from the neighbors, if that
19 was properly preserved for the record, would
20 you have looked to appeal that issue?

21 A. Probably not. Simply because,
22 again, her defense was mere presence and
23 duress. And the fact that the neighbors saw
24 two males six trailers down from where she
25 was seen committing a robbery certainly may

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1 even actually help with that defense of
2 mere presence and duress.

3 MS. GOOD: No further questions,
4 Your Honor.

5 THE COURT: Any redirect?

6 MS. VALENZUELA: Nothing further
7 for this witness.

8 THE COURT: All right. Thank you.

9 (WITNESS STEPS DOWN)

10 THE COURT: Any reason why she
11 can't be released?

12 MS. VALENZUELA: No.

13 Thank you very much, Ms. Hudgens.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: All right. Anything
16 else from the State?

17 MS. VALENZUELA: There's nothing
18 else unless you want to ---

19 THE COURT: Well, let me -- all
20 right. Ms. Good, I'm back to you.

21 MS. GOOD: Yes, sir.

22 THE COURT: All right. Your first
23 issue is failure to prepare defendant in
24 reviewing discovery. There's obviously a
25 discrepancy in the testimony there, but

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1 anything that you put in that shows that the
2 applicant prejudiced by this?

3 MS. GOOD: Well, Your Honor, I
4 think it comes down to partially as to her
5 statement, what was told to police about her.
6 It kind of goes in connection with number
7 two, the ineffective assistance as to her
8 statement, Your Honor.

9 THE COURT: Right. And she
10 testified she doesn't even remember a *Jackson*
11 *v. Denno*. In looking at the transcript
12 there's clearly a break from Mr. Casto's
13 calling her and then breaks. And obviously
14 has a brief discussion with her. And then
15 says "we've elected not to put her on the
16 stand." I mean, so there was some discussion
17 at least, based on what it looked like from
18 the transcript.

19 MS. GOOD: Yes, sir.

20 THE COURT: All right. Now, is
21 there any requirement whatsoever -- I mean,
22 how does failing to poll a jury in any way
23 prejudice?

24 MS. GOOD: At this point, it
25 probably doesn't, Your Honor.

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1 THE COURT: I mean, the jury was
2 asked 'is this your verdict?'

3 MS. GOOD: Yes, sir. It's more
4 so B, C, and E that we're focusing on Your
5 Honor.

6 THE COURT: All right. And again,
7 is that in light -- I mean, I think that the
8 whole matter hinges on whether that statement
9 was properly admitted?

10 MS. GOOD: Yes, sir. That, as
11 well as the hearsay objections.

12 THE COURT: Right. Because like
13 Ms. Hudgens said that, you know, based on her
14 statement she admits, 'yeah, I was there. I
15 was riding around. And if something
16 happened, I'm not sure what happened.'

17 So, therefore, if anything, as far
18 as she's concerned, it's either cumulative or
19 harmless because it doesn't actually go to
20 what's her involvement in that. Doesn't this
21 -- I mean, doesn't it really -- your whole
22 real argument hinges on was her statement
23 properly admitted?

24 MS. GOOD: Yes, sir.

25 THE COURT: You know, there was a

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1 very involved *Jackson v. Denno*. And I know
2 she indicates here today that she was under
3 the influence but the officers testified
4 extensively about the fact that, you know, in
5 their opinion, based on everything, that
6 there was not any appearance of under the
7 influence, no smell of alcohol. They went
8 into great detail on that.

9 MS. GOOD: Yes, sir. That's the
10 point of our argument is that the only way to
11 show that she would have been under the
12 influence would have been to put her on the
13 stand to state that she had been doing drugs
14 and had been under the influence of alcohol
15 that day, which they failed to do.

16 THE COURT: All right. Anything
17 else?

18 MS. GOOD: No, sir, Your Honor.
19 It's based on the testimony.

20 THE COURT: All right. And I
21 believe based on what, you know, my review --
22 and I have to rely on the record -- and, you
23 know, I believe that the Applicant has failed
24 to meet the burden that there was ineffective
25 assistance of counsel; and if there was, then

ORIGINAL

FILED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2016 AUG 12 11:30 AM FOR THE ELEVENTH JUDICIAL CIRCUIT
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

Carrie Callaham,
 S.C.D.C. No. 328469,
 Applicant,

C.A. No. 2014-CP-32-1177

v.

ORDER OF DISMISSAL

State of South Carolina,
 Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 21, 2014, and amended on or about November 13, 2015. Respondent made its return on or about August 18, 2015. An evidentiary hearing was held on April 19, 2016, at the Lexington County Courthouse. Applicant was present and represented by Anna Good, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; her trial counsel, Bennett Casto, Esquire; and her appellate counsel, Kathrine Hudgins, Esquire, testified at the hearing. The Court had before it Applicant's trial transcript, the Lexington County Clerk of Court records, Applicant's appellate records, the South Carolina Department of Corrections records, the PCR application, the PCR amendments, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the May 2012 term of the Lexington County Grand Jury for burglary, first degree (2012-GS-32-

1216) and armed robbery (2012-GS-32-1218). Applicant was represented by Robert Madsen, Esq., and Bennet Casto, Esquire. On May 29, 2014, the Applicant proceeded to trial before the Honorable George C. James, Jr. and a jury. She was found guilty as indicted. Judge James sentenced Applicant to a term of fifteen (15) years imprisonment for burglary, first degree, and to a term of fifteen (15) years imprisonment for armed robbery. These sentences were to be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf. Kathrine Hudgins, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Callaham, Op. No. 2014-UP-035 (S.C. Ct. App filed January 29, 2014). The Remittitur was issued on February 25, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCF 71.1(e)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a

just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel’s performance “fell below an objective standard of 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). The 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 the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant’s case.”).

And “where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Watson v. State, 370 S.C. 68, 72,

634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). “Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). “Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

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

Applicant alleged trial counsel failed to properly prepare for trial with the defendant, including not reviewing discovery with her; failed to properly advise her as to testifying in her Jackson v. Denno hearing and failed to call her to testify as to her voluntariness; failed to properly object to hearsay with witnesses Abdul Bargas and Sergeant Robert McIntyre; and failed to poll the jury. As to appellant counsel, Applicant alleges she failed to properly appeal the issue of witness Marcello Prado’s testimony admissibility.

I. Alleged failure to properly prepare and review discovery

Applicant claims she met with her trial counsel twice and only to do an introduction, get advice to plead, and for roll call. Trial counsel testified he met with Applicant at least two times and that they were long meetings. Trial counsel also noted he had significantly lengthy calls with

Applicant prior to trial. Trial counsel said he reviewed evidence and what to expect at trial.

This Court finds Applicant has failed to meet her burden of establishing trial counsel was ineffective and failed to establish any prejudice from trial counsel's strategy.

II. Jackson v. Denno Hearing

Applicant asserts she was intoxicated the night of her arrest and when she gave her statement to police. Applicant states she had taken ecstasy, marijuana, and wine before she spoke to detectives. Applicant claims to have smoked "a blunt" around midnight of that night and claims she informed law enforcement she was drunk that night. Applicant also says she told trial counsel she was intoxicated as well. Applicant argues she should have testified at her Jackson v. Denno hearing about the voluntariness of her statements based on her intoxication.

On cross-examination, Applicant admitted she was arrested that night while driving a vehicle, that she was not given any field sobriety tests, and that she was not charged with driving under the influence that night. Trial counsel also explained there were several factors that did not lead him to believe her claim of intoxication would be credible: (1) there was a delay from the traffic stop to the interview with law enforcement and (2) the night she was arrested, she had the foresight and ability to give police a false name (Trial Tr. p. 157, l. 22 – p. 158, l. 4) and change one digit in her social security or driver's license number. Additionally, no officer stated he smelled alcohol and there was not a driving under the influence charge.

This Court finds Applicant has failed to meet her burden of establishing trial counsel was ineffective and failed to establish any prejudice from trial counsel's strategic decision regarding Applicant's credibility and how to address the Jackson v. Denno hearing.

PWH

III. Failure to properly object based on hearsay to portions of Abdul Bargas and Sgt. Robert McIntyre's testimony

Applicant argues trial counsel should have objected to portions of Abdul Bargas and Sgt. McIntyre's testimony that allowed each of those witnesses to talk about what a neighbor saw. Trial counsel agreed he did not make any objections at the specific instances noted by PCR counsel. Trial counsel did, however, object at other points in those witnesses' testimony, (Trial Tr. p. 128, l. 7 – p. 129, l. 5) specifically to hearsay when the witness stated he only heard something instead of observing it on his own (Trial Tr. p. 108, ll. 18-25.) Trial counsel explained he does not like to overly object in front of a jury for strategic reasons.

It was also noted that based on the statements being made as events occurred or shortly thereafter, the objection may have been overruled based on the excited utterance exception. Appellate counsel also noted that she would not have appealed the hearsay issue.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet her burden of proving trial counsel was ineffective or that she suffered any prejudice.

IV. Marcello Prado

Appellate counsel testified that she appeals her strongest issues because she has found that to plead every single issue can dilute the strength of the main issues you want the court to review. Appellate counsel stated that pursuant to State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (2005) ("The State . . . is not required to provide its witness list to a criminal defendant . . .") the State does not even have to produce a witness list; so, she did not think it was a strong argument to appeal the addition of Marcello Prado to the witness list.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet her burden of proving appellate counsel was ineffective or that she suffered any prejudice.

V. Failed to poll the jury

Applicant argues trial counsel failed to poll the jury. Trial counsel explained that he did not poll the jury, in part because the jury rendered a verdict so quickly. No evidence was presented as to the potential prejudice caused by failure to poll the jury.

This Court finds Applicant has failed to meet her burden of establishing plea counsel was ineffective or that the ineffectiveness caused her prejudice.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during her trial or her appeal. Trial and Appellate counsel were not deficient in any manner, and Applicant was not prejudiced by their representation. Therefore, this PCR application must be denied and dismissed with prejudice.

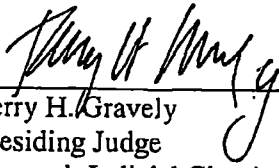
This Court advises Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if she wants to secure appropriate appellate review. Her attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of August, 2016.



 Perry H. Gravelly
 Presiding Judge
 Eleventh Judicial Circuit

Greenville, South Carolina.

FILED
 2016 AUG 12 A 11:00
 BETH A. CARRIGG
 CLERK OF COURT
 GREENVILLE, SC

WITNESSES

West Columbia Police Department

P. Moore

Law Enforcement Case #: 1016637

LGW

ARREST WARRANT NUMBER

12-STR-00044

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 5-7-2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3201216

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2012

THE STATE
vs.

Carrie Denise Callaham

CDR #: 0079

Indictment for

BURGLARY 1ST DEGREE

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 BURGLARY 1ST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on MAY 2012, the Grand Jurors of Lexington County present upon their oath:

That **Carrie Denise Callaham** did in Lexington County, South Carolina on or about June 16, 2010 did knowingly and willfully enter a dwelling or did conspire with others to enter a dwelling, to wit: West Columbia, SC, being the dwelling of Rigiberto Ramirez, without consent and with the intent to commit a crime therein and was armed with a deadly weapon, in violation of § 16-11-311 of the 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.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
Carrie Denise Callaham
AKA:
Race: Sex: F Age: 30
DOB: SS#:
Address:
City, State, Zip: Columbia, SC 29203-5574
DL#: SID#:

INDICTMENT/CASE#: 2012GS3201216
A/W#: 12-STR-00044
Date of Offense: 6/16/2010
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 2012GS-32-1218
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$130.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge
Judge Code:
Sentence Date: 5/29/12

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

WITNESSES

West Columbia Police Department

P. Moore

Law Enforcement Case #: 1016637


LGW

ARREST WARRANT NUMBER

12-STR-00045

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury
Date: 5-7-2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3201218

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2012

THE STATE

vs.

Carrie Denise Callaham

CDR #: 0139

Indictment for

**ROBBERY WHILE ARMED WITH A
DEADLY WEAPON**

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

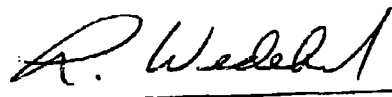
INDICTMENT FOR
ROBBERY WHILE ARMED WITH A DEADLY
WEAPON

§ 16-11-0330(A)

At a Court of General Sessions, convened on MAY 2012, the Grand Jurors of Lexington County present upon their oath:

That **Carrie Denise Callaham** did in Lexington County, South Carolina on or about June 16, 2010 knowingly and willfully while armed with a deadly weapon or did conspire with others armed with deadly weapons, to wit: a handgun did feloniously take from the person or presence of Rigoberto Ramirez and Adul Bargas, by means of force, threats or intimidation goods or monies being described as follows: wallets and its contents with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina 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.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Carrie Denise Callahan)
 AKA: _____)
 Race: _____ Sex: F Age: 30)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: Columbia, SC 29203-5574)
 DL#: _____ SID#: _____)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3201218
 A/W#: 12-STR-00045
 Date of Offense: 6/16/2010
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Ram Waddell 13984
 Solicitor SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 2012-GS-32-1216
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>130.00</u>

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

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Beth Carrington
 Court Reporter: Chatsara
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2143
 Sentence Date: 5/24/12