STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County
Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2016-001143

LORETTA GALLOWAY BRANYON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General
Bar No. 79054

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

RESPONDENT'S QUESTIONS PRESENTED

I. Is there any probative evidence in the record to support the PCR court's finding Counsel did not err in failing to object to the trial judge's comment to the jury that the bags in evidence contained methamphetamine where Counsel had a valid trial strategy to portray Petitioner as an addict instead of a dealer, the trial court's comments were not so severe as to undermine confidence in the trial, and the trial court properly instructed the jury to disregard any comment by him that could be interpreted as his opinion of the facts?

II. Is there any probative evidence in the record to support the PCR court's finding Counsel did not render ineffective assistance in failing to object to the solicitor's references during the opening and closing arguments to a mandatory presumption of intent to distribute due to the amount of methamphetamine involved, rather than merely a permissible inference, where Petitioner was not prejudiced because there was overwhelming evidence of guilt and the trial judge's instructions to the jury correctly stated the law?

STATEMENT OF THE CASE

The Anderson County Grand Jury indicted Petitioner in April 2011 for possession of methamphetamine with intent to distribute (2011-GS-04-0604). App. 328-29. Charles W. Whiten, Jr., Esquire, (Counsel) represented Petitioner. App. 1. Assistant Solicitor Lauren S. Hogan, Esquire, prosecuted the case. Id. On August 13, 2014, Petitioner proceeded to a jury trial before the Honorable R. Lawton McIntosh, and on August 14, a jury convicted Petitioner as indicted. App. 1-238. Judge McIntosh sentenced Petitioner to imprisonment for ten years and revoked her probation on an unrelated offense.[1] App. 250.

Petitioner filed a timely notice of appeal. Counsel also represented her on appeal. App. 320. The South Carolina Court of Appeals affirmed Petitioner's conviction on August 6, 2014. State v. Branyon, Op. No. 2014-UP-310 (S.C. Ct. App. filed August 6, 2014). The remittitur was returned on the circuit court on August 22, 2014. App. 320.

Petitioner filed her application for post-conviction relief on August 12, 2013, while her direct appeal was still pending. App. 252-57. Respondent made it Return on August 3, 2015. App. 258-61. Petitioner filed an Amended Application on February 5, 2015. App. 263-68. An evidentiary hearing into the matter was convened on February 8, 2016, at the Anderson County Courthouse before the Honorable Brooks P. Goldsmith. App. 269. Petitioner was present and represented by Donald Lewis "Chuck" Allen, Jr., Esquire. App. 269, 319. Respondent was represented by Patrick Lowell Schmeckpeper, Esquire, of the South Carolina Attorney General's Office. App. 269. By order filed May 10, 2016, Judge Goldsmith denied and dismissed

[1] Applicant had been sentenced on October 15, 2008, to ten years suspended with probation for five years for possession with intent to distribute (PWID) methamphetamine and PWID other controlled substance (2007-GS-04-2060, -2061). These sentences were to run concurrently. App. 250.

Petitioner's application in its entirety. App. 319-27. Petitioner filed a timely notice of appeal, followed by a Petition for Writ of Certiorari on March 8, 2017.

STATEMENT OF FACTS

On January 13, 2011, Officer Marty Robinson and other officers of the Anderson County Sheriff's Department executed a search warrant for Petitioner's address in Anderson County. App. 69-70. The purpose of the search warrant was to look for methamphetamine and meth-related materials. App. 70. Upon entering the premises, authorities found Petitioner sitting on a couch next to two pocketbooks. App. 78-79. The pocketbooks were zipped closed. App. 126. Authorities found another person, Charles Simpson, sitting in a small chair to the left of the front door. App. 105. A coffee table was on the right side of the front door, and a large set of digital scales and baggies were sitting on the table. App. 79. There appeared to be white specks of powder, believed to be drug residue, on the scales. App. 89. The authorities found within the pocketbooks a white container containing numerous pink and red baggies; a set of scales; a wallet containing Petitioner's South Carolina ID and four thousand thirty-three dollars ($4,033); and a wallet containing empty pink baggies, one white baggie, and two pink baggies containing a substance presumed to be methamphetamine. App. 79. Two drinking straws were also found within one of the bags. App. 88. The authorities conducted a field test on a small amount of the substance, and it tested positive for methamphetamine, after which they sealed it in a secured evidence bag with other items recovered during the search and submitted it to the Anderson-Oconee Regional Forensics Lab. App. 80. The authorities also found another set of scales, multiple smoking pipes, and another bag in the back bedroom. App. 80, 90. In total, the officers found five baggies containing methamphetamine weighing 7.5 grams, including the bag weight. App. 95. Of the five bags, one of them contained methamphetamine in block form and the other four contained powder. App. 116. Meredith Lanford, a forensic chemist with the Anderson-Oconee Regional Forensics Lab, conducted analysis on the substance within the five bags and

positively identified the substance as methamphetamine. App. 135-140. Ms. Lanford reported the methamphetamine equaled 6.18 grams in weight when removed from the bags. App. 142.

At trial, the Defense sought to convince the jury that Petitioner was merely an addict and did not have the intent to distribute. App. 61-62, 224, 230-32. Officer Robinson testified at trial that in his experience as a narcotics officer, methamphetamine addicts do not normally have large amounts of methamphetamine, usually no more than a gram on them. App. 71. He stated users typically do not possess more than they intend to use right then. App. 77. He also stated they usually do not have money, because they spend the money they do have to buy drugs. App. 77. He testified one who possesses with the intent to distribute, however, usually has bulk baggies, quantities in different baggies, "bulk currency," and "usually multiple scales." App. 77. According to Officer Robinson, one gram of methamphetamine was worth around one hundred dollars. App. 71. Based on this estimate, Petitioner possessed over six hundred dollars ($600) worth of methamphetamine.

Petitioner did not testify and did not call any witnesses. App. 171-172. Following the charge conference, the jury was charged and closing arguments were conducted. App. 172-233. Petitioner was subsequently convicted of possession with intent to distribute. App. 238.

STANDARD OF REVIEW

The PCR court's findings of fact and conclusions of law receive great deference on appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review in a PCR action is whether "any evidence of probative value" exists to sustain the post-conviction relief court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The reviewing court will affirm if there is any evidence to support the post-conviction relief court's ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012). This Court will reverse the PCR court's decision when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007) (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004)).

ARGUMENT

I. There is probative evidence in the record to support the PCR court's finding Counsel did not err in failing to object to the trial judge's comment to the jury that the bags in evidence contained methamphetamine, where Counsel had a valid trial strategy to portray Petitioner as an addict instead of a dealer, the trial court's comments were not so severe as to undermine confidence in the trial, and the trial court properly instructed the jury to disregard any comment by him that could be interpreted as his opinion of the facts.

Petitioner contends the PCR court erred in finding Counsel was not ineffective for failing to object to the trial judge's remark about the bags containing methamphetamine. PWC, p. 3-5. After the jury was instructed and the attorneys' delivered their closing arguments, the assistant solicitor suggested to the judge that the jury should be told not to open the individual bags, as a way to make sure all of the evidence remained accounted for. App. 234. The judge also noted the danger that the substance could get on someone's hand if the bags were opened. App. 235. After a short discussion with both the Solicitor and Counsel, the judge said the following to the jury, framed as a "housekeeping matter":

> When you [get] back in deliberations, we are going to send these [drug] exhibits back with you, which will include the baggies of drugs. . . You can take those smaller bags out but do not open the smaller bags. . . Just remember that's methamphetamine and you don't need to have it on your fingers. It's accounted for going in, it's accounted for coming back out. So just don't handle it that way. App. 235-36.

Petitioner contends "whether the baggies found at petitioner's home contained methamphetamine was a factual question for the jury to decide," and therefore, counsel should have objected as an erroneous comment on the facts. PWC, p. 4-5. Because Counsel did not object or move for a new trial, Petitioner contends she was prejudiced by Counsel's ineffective assistance. PWC, p. 4-5. Counsel testified during the PCR hearing that the comment prejudiced the jury, and he felt he was ineffective in failing to object to the comment. PWC, p. 4.

Regardless of Counsel's assessment of his performance, Petitioner was not prejudiced by the judge's comments because Counsel's trial strategy did not dispute whether the bags contained methamphetamine, but instead focused on convincing the jury Petitioner was merely an addict and did not intend to distribute the drugs. This Court has long held that "[w]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." State v. Stokes, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992); see also Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.") (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)); Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.") (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)). "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.'" Strickland, 466 U.S. at 690.

Additionally, courts must make "'every effort . . . to eliminate the distorting effects of hindsight' and evaluate counsel's decisions at the time they were made." Edwards v. State, 392 S.C. 449, 456-57, 710 S.E. 2d 60, 65 (2011) (citing Strickland, 466 U.S. at 689). Reviewing courts must be wary of second-guessing trial counsel's tactics. Id. Strickland itself recites that there are countless ways to provide effective assistance, and even the best lawyers would not defend a particular client in the same way. 466 U.S. at 689. There is a strong presumption that

trial counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003).

During the trial, Counsel essentially conceded in his arguments and questions that the bags contained methamphetamine. Counsel did not put forth any witnesses or evidence to refute Officer Robinson or Ms. Lanford's testimony that the substance found in the bags was methamphetamine. App. 171-72. In his opening statement, Counsel stated the case centered on methamphetamine, and it was the jury's responsibility to require the State to prove beyond reasonable doubt that Petitioner intended to distribute, rather than merely use, the methamphetamine. App. 61-62. Counsel informed the jury the State would present evidence that approximately seven grams of methamphetamine were found in Petitioner's home, and Counsel did not argue the substance was anything other than methamphetamine. App. 62. Counsel referred to Petitioner as an addict, saying, "This is the face of a methamphetamine addict. An addict. This will be in evidence." App. 62.

During cross-examination, Counsel questioned Officer Robinson whether "the rest of the meth that [Officer Robinson] found . . . was inside the pink bag," to which Officer Robinson answered in the affirmative. App. 111. Counsel also questioned Officer Robinson as to what form of methamphetamine the bags contained, and Counsel referred to the living room as "that room where the methamphetamine was found." App. 117-19. In his closing argument, Counsel argued the amount of methamphetamine found at Petitioner's home was a small amount. App. 225. Counsel even stated the Petitioner admitted to using what was in the bags, and there was "evidence that she was using meth." App. 230. Counsel concluded his closing argument by stating that Petitioner was an addict, and she possessed the methamphetamine for her personal use. App. 232.

At the evidentiary hearing, Counsel admitted during cross-examination his trial strategy was to convince the jury Petitioner was an addict and not a dealer, and Petitioner possessed the methamphetamine for her own use. App. 298-99. He explained "[t]he evidence against [Petitioner] was pretty solid," and law enforcement found methamphetamine, roughly four thousand dollars in cash, and her ID in her pocketbook, plus scales and more methamphetamine throughout the house. App. 302-04. He stated the substances tested positive for methamphetamine, and the chain of custody appeared to be "a valid chain." App. 305. When Counsel was asked whether he challenged "that the substance found in [Petitioner's] apartment was methamphetamine," Counsel responded:

> My strategy was that there were three bags, a small amount in each bag. That's the way you purchase methamphetamine. You don't usually buy it in one bag. Sometimes you buy it in three or four small bags. I tried to show the jury it was about that much and added all together, which she could use in one day. It was in her pocketbook, and the way it was around the house, it wouldn't be sold or used by anyone but her. *It was her meth.* So it seems to me that you would say that *this was her meth for her use; that was the whole strategy.*

App. p. 307 (emphasis added).

Petitioner relies heavily on Counsel's second-guessing of his strategy to support her contention that the trial judge's comment was prejudicial. PWC, pp. 4-5. However, the PCR court correctly found Counsel's failure to object to the trial judge's comment was not deficient performance and did not prejudice Petitioner because Counsel, for strategic reasons, did not contest the identity of the drugs found. App. 315. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)); see also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such

conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy).

This court held in State v. Kennedy the trial judge must refrain from comments that tend to indicate his opinion regarding the weight or sufficiency of evidence, credibility of witnesses, and the guilt of the accused, as to *controverted* facts. 272 S.C. 231, 250 S.E.2d 338 (1978) (emphasis added). In the present case, the judge stated the bags contained methamphetamine: an uncontroverted fact Counsel conceded for strategic purposes. It did not indicate the judge's opinion on the evidence presented as to whether Petitioner was merely a user or intended to deal the drugs, and it did not contradict any evidence offered at trial. Because Counsel did not contest that the bags contained methamphetamine, the identity of the substance was not a fact presented to the jury for determination. App. 315. Therefore, the judge's statement was not an affirmative comment upon the evidence and did not prejudice Petitioner. See State v. Brisbon, 323 S.C. 324, 332, 474 S.E.2d 433, 437-38 (holding that a "slip of the tongue," if not an affirmative comment upon the evidence, does not produce prejudice). Because the judge's comment was not an affirmative comment on the evidence, there was no basis for Counsel to object to the statement, and therefore, Counsel was not ineffective.

In the alternative, even if this Court finds the trial judge's statement was an improper comment upon a fact in dispute to which Counsel should have objected, Petitioner was not prejudiced because there was overwhelming evidence the substance was in fact methamphetamine; the jury could find both that the substance was methamphetamine but Petitioner did not intend to distribute it; and the judge repeatedly instructed the jury they were the sole arbiters of the facts and should disregard any comment or gesture from him that might

indicate his feelings on the facts, which cured any potential prejudice to Petitioner. For example, the judge explained the jury's role as factfinder, specifically instructed them to disregard "anything [he said] during the course of this trial to indicate . . . that [he had] feelings one way or the other of how . . . to find the facts" of the case, clearly stated he had "no feelings one way or the other," and emphasized the jurors "alone [were to be] the finders of facts." App. 51, 184. Further, the judge instructed properly instructed the jury on the State's burden to "prove beyond a reasonable doubt that [Petitioner] intended to distribute" the methamphetamine. App. 198. "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions that might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 536, 377 S.E.2d 570, 572 (1989). Although the comment at issue in this case was made as a follow up to the formal recitation of instructions on the law, the same reasoning applies. Because the judge had properly instructed the jury on its role as the decider of the facts and the elements the State was required to prove, any prejudice that might have resulted from his comment was cured. Therefore, even if Counsel was deficient in failing to object to the comment, Petitioner cannot meet her burden of proving she was prejudiced.

The identity of the substance in the bags was not disputed by Counsel as part of a strategy to portray Petitioner as an addict who possessed the methamphetamine for her own use, rather than for distribution. Therefore, Counsel had no basis for an objection to the judge's comment that the bags contained "methamphetamine," and even if the failure to object to such comment constitutes deficient performance, Petitioner was not prejudiced because the trial court thoroughly, correctly, and repeatedly instructed the jury that they were the finders of fact, and they should disregard any outside influences, including his own comments, in determining the facts. Therefore, because Petitioner has not met her burden of proving either deficiency or

prejudice resulting from Counsel's representation, the Petition should be dismissed as to this question.

II. There is probative evidence in the record to support the PCR court's finding Counsel did not render ineffective assistance in failing to object to the solicitor's references during the opening and closing arguments to a mandatory presumption of intent to distribute due to the amount of methamphetamine involved, rather than merely a permissible inference, where Petitioner was not prejudiced because there was overwhelming evidence of guilt and the trial judge's instructions to the jury correctly stated the law.

Petitioner also contends the PCR court erred in denying relief for Counsel's failure to object to the Solicitor's statements during opening and closing arguments regarding a mandatory presumption of intent to distribute based on the amount or weight of drugs confiscated. PWC, p. 5-6. In her opening statement, Solicitor Hogan told the jury Petitioner was charged with possession with intent to distribute methamphetamine because of the amount of methamphetamine Petitioner possessed. App. 58. The solicitor then said, "[w]hat this means is that because she was found in possession of more than one gram of methamphetamine, the law requires the assumption that she intended to sell it." App. 58. At closing, the solicitor made the following statements:

> [T]he law allows a permissive inference that the weight of the drugs. . . is evidence that she intended to distribute the drugs. . . you are allowed but. . . are not required to assume. . . that she intended to sell them. . . . You are allowed to assume simply based on the weight of the drugs, based on the fact that she had 6.18 grams of meth, you are allowed to assume that she intended to sell those drugs. App. 215-16.
>
> [Y]ou're allow[ed] to presume that solely based on that weight she was intending to sell the drugs, the methamphetamine.

App. 223.

The law, however, merely creates a permissible inference that possession of a certain amount of drugs constitutes intent to distribute, not a presumption. See, e.g., Brightman v. State, 336 S.C. 348, 351, 520 S.E.2d 614, 615 (1999) ("S.C.Code Ann. § 44-53-375(B) (Supp.1998) states: 'Possession of one or more grams of ice, crank, or crack cocaine is prima facie evidence of a violation of this subsection.' This statutory language creates a permissible inference which the jury may accept or reject as a conviction of PWID does not hinge upon the amount involved.") (citations omitted). At the PCR hearing, Counsel testified that this mischaracterization of a "presumption" rather than a "permissible inference" was an unconstitutional violation of due process that prejudiced Petitioner because "there is a difference between inference and presumption." App. 287-90. Counsel also testified he was ineffective for failing to object to these comments, and Petitioner was prejudiced by his ineffective assistance. App. 290-91. The PCR court found Counsel's performance was deficient for failing to object to the improper comments, but the PCR court declined to grant relief, finding Petitioner was not prejudiced because the judge's instructions on the law cured the error and because the evidence against Petitioner was overwhelming. App. 323.

Review of alleged improper arguments by a solicitor must be viewed in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "Improper comments do not automatically require reversal if they are not prejudicial to [Petitioner], and [Petitioner] has the burden of proving she did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Instead, "[t]he relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting

conviction a denial of due process." Id. In this case, Petitioner was not unfairly prejudiced by the solicitor's comments because the judge's instructions adequately cured the improper argument, and evidence of Petitioner's guilt was overwhelming.

The judge's instructions clearly set forth the standard of proof the jury was to apply to facts of the case. During his instruction to the jury, the judge delivered the following charge:

> In determining whether [Petitioner] had the intent to distribute the methamphetamine, you may consider the circumstances surrounding [Petitioner's] alleged possession. You may consider the amount of substance alleged to have been possessed, the manner in which it was allegedly possessed, the place where it was allegedly possessed, and other factors in evidence which you consider to be important. You must find that [Petitioner] did not intend to have the methamphetamine solely for her own use.
>
> Possession of one or more grams of methamphetamine creates an inference that [Petitioner] possessed the methamphetamine with intent to distribute. This inference does not relieve the State from proving beyond a reasonable doubt that [Petitioner] had the intent to distribute drugs. It is simply an evidentiary fact to be taken into consideration by you along with the other evidence in this case and to be given the weight that you decide that it should have.
>
> Ladies and Gentlemen, if you find that the State has failed to prove beyond a reasonable doubt that [Petitioner] is guilty of possession with intent to distribute methamphetamine, you may then consider whether the State has proved beyond a reasonable doubt that [Petitioner] is guilty of simple possession of methamphetamine.

App. 198-200. The judge also instructed on the jury on two occasions to apply the law as he gave it to them. App. 52, 183. The judge further instructed the jury that the lawyers' arguments and comments were not evidence. App. 186. This Court has held "jurors are presumed to follow the law as instructed to them," and "an instruction to disregard incompetent evidence is usually deemed to have cured the error." State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (internal citations omitted). Because the judge properly instructed the jury that the inference of intent to distribute was permissible but not required, and such inference did not

relieve the State of its burden of proof beyond a reasonable doubt, the PCR judge correctly found the improper argument was cured, and Petitioner was not prejudiced. App. 323.

The PCR judge also found that the misstatement did not unfairly prejudice Petitioner because overwhelming evidence of her guilt was provided during trial. App. 316, 323. Officer Robinson testified that distributers typically have "bulk baggies" with different quantities of the drug, "bulk currency," and "multiple scales" for weighing the drugs. App. 77-78. He also testified that users typically have a small amount (usually no more than a gram), a tool or "some facilitation for ingesting the drug, and don't usually have "bulk money." App. 71. Although the authorities did find pipes and straws in Petitioner's home that could have been used to ingest the drug, at the time of her arrest, Petitioner was sitting next to a purse containing her South Carolina ID, over four thousand dollars cash, three bags containing various quantities methamphetamine, and a small set of scales. App. 79-80, 88-90. Law enforcement also found a number of empty baggies and multiple sets of scales in Petitioner's home. App. 79-91. The PCR judge found the evidence of Petitioner's guilt to be overwhelming. App. 316, 332. The PCR judge further held there was "no reasonable probability that counsel's failure to object to the solicitor's improper [comments] contributed to the outcome of the proceeding." App. 324. Because the evidence indicating Petitioner's guilt was overwhelming, the solicitor's comments did not so infect the trial with unfairness as to violate Petitioner's right to due process and warrant a new trial. See Council v. Catoe, 359 S.C. 120, 128, 597 S.E.2d 782, 786 (2004) (finding admission of inappropriate evidence did not prejudicially influence trial's outcome where evidence of guilt was overwhelming). Therefore, the Petition should be dismissed as to this question.

CONCLUSION

The PCR court correctly found Counsel was not deficient in failing to object to the judge's comment that bags being sent back to the jury contained methamphetamine because Counsel concede the identity of the substance as part of a valid trial strategy to portray Petitioner as merely an addict rather than a dealer. Furthermore, even if Counsel should have objected, any resulting prejudice was cured by the trial judge's extensive and proper jury instruction on the jury's role as the finder of facts. Additionally, the PCR court correctly denied relief and found Petitioner was not prejudiced by the solicitor's misstatement during opening and closing arguments that the law required a presumption of intent to distribute due to the amount of drugs found because there was overwhelming evidence of Petitioner's guilt and the trial judge cured any error with his jury instructions. For the foregoing reasons, the Petition for a Writ of Certiorari should be denied. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

BY: _____
Lindsey A. McCallister

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
#79054

ATTORNEYS FOR RESPONDENT

7/24, 2017

STATE OF SOUTH CAROLINA
In the SUPREME COURT

Certiorari to Anderson County
Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2016-001143

LORETTA GALLOWAY BRANYON, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent,

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29211

This 24th day of July, 2017

DEONNA ROGERS
LEGAL ASSISTANT