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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-517

Filed: 21 March 2017

Buncombe County, No. 13 CRS 055608

STATE OF NORTH CAROLINA

v.

MACK CHASON GLISSON

Appeal by defendant from judgment entered 18 December 2014 by Judge J. Thomas Davis in Buncombe County Superior Court. Heard in the Court of Appeals 11 January 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Jess D. Mekeel, for the State.

Sarah Holladay for defendant-appellant.

McCULLOUGH, Judge.

Mack Chason Glisson (“defendant”) appeals from his conviction of first-degree murder on the grounds that: (1) the trial court erred by denying his motions to continue and (2) he received ineffective assistance of counsel. For the reasons stated herein, we find no error.

I. Background

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On 3 February 2014, defendant was indicted for first-degree murder of his wife, Crystal Dawn Coomer-Glisson (the “victim”), with a superseding indictment issued 7 April 2014.

Attorney Faye Burner (“Burner”) had been appointed to represent defendant on 29 May 2013. At a 19 May 2014 hearing, Burner informed the trial court that she had a conflict of interest and filed a motion to withdraw. On 27 May 2014, the trial court allowed Burner to withdraw as defendant’s counsel.

On 27 May 2014, Susan Ciaravella (“Ciaravella”) was appointed as counsel for defendant. On 2 June 2014, Ciaravella filed a “Motion for Court to Set on Administrative Calendar Opportunity for Defense Counsel to be Heard and Motion to Continue States Proposed Trial Date.” Ciaravella stated that she had interviewed defendant on 29 May 2014, was in the process of obtaining discovery from the State, and objected to “any trial setting” until she could hire an expert to examine defendant, review discovery, and have an opportunity to secure records. The trial court denied her motion to continue and agreed to the State’s proposed dates of 4 August 2014 for the motion and plea deadline and 6 October 2014 for the trial date. By an order entered 3 June 2014, Burner was to provide Ciaravella with her complete file by 5 June 2014.

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On 11 June 2014, Ciaravella filed a “Motion for Extension of Deadlines Pursuant to N.C.G.S. § 15A-905(c)(1)” to extend the deadline for giving notice of defenses to the State until thirty days prior to trial currently set on 6 October 2014.

On 4 August 2014, Ciaravella filed a “Motion to Continue Pretrial Motions and Trial Date.” Ciaravella stated that she was still in the process of obtaining defense discovery, needed to subpoena additional records and conduct an ongoing defense investigation, and was still investigating the mental health history of defendant. Ciaravella requested a status conference in 60 days to determine if the defense had adequate time to explore the facts, prepare a defense, interview witnesses, and prepare defense experts. The trial court denied this second motion to continue.

On 7 August 2014, the State filed a discovery request. On the same date, Ciaravella filed a “Motion & Order to Produce Information Necessary to Adequately Prepare for Trial & Pursuant to N.C.G.S. § 15A-903.” Ciaravella sought the results of the medical examinations of defendant and the victim’s two children.

On 7 August 2014, the trial court entered an order finding as follows: defendant’s trial is scheduled for 6 October 2014; defendant permits the State to inspect the evidence in its possession and which defendant intends to introduce as evidence at trial; defendant shall produce for the State’s inspection and photocopying, all results or reports of physical and mental examinations made in connection with the case which defendant intends to introduce into evidence at trial; defendant shall

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permit the State to inspect, examine, and test any physical evidence if defendant intends to offer such evidence as an exhibit or evidence; defendant shall notify the State of his intent to offer a defense of alibi, mental infirmity, diminished capacity, self-defense, voluntary intoxication, and accident; defendant shall disclose to the State the identity of all alibi witnesses if using an alibi defense; defense shall notify the State of his intent to offer a defense of duress, entrapment, insanity, automatism, involuntary intoxication, and specification information as to the nature and extent of the defense; defendant shall notify the State of any expert defendant expects to call as a witness; and defendant shall give the State a list of the names of all witnesses defendant expects to call during trial.

On 19 August 2014, Ciaravella filed a “Motion to Discover Department of Social Services Records.” Ciaravella sought records regarding defendant and the victim. On 27 August 2014, the trial court entered an order requiring Buncombe County Department of Social Services to disclose all records pertaining to defendant, the victim, and the victim’s two minor children.

On 8 September 2014, Ciaravella filed a motion entitled “Request for Disclosure of Witness Bias & Conflicts with Buncombe County Government[.]” stating that the victim was a former employee of the Buncombe County Sheriff’s office, the victim had personal relationships with potential witnesses, defendant had conflicts with Burner, several members of the victim’s family were Buncombe County

employees, and that one of the lead detectives had a personal relationship with one or more of the victim's children. By an order entered 16 September 2014, the trial court denied Ciaravella's motion.

At a hearing held on 11 September 2014, Ciaravella made a motion to continue the trial, which was denied in open court.

On 16 September 2014, Ciaravella filed a "Motion to Recuse Judge Marvin Pope" stating that Judge Marvin Pope and his wife had a relationship with one or more of the victim's family members and that this created "a significant appearance of impropriety in this case which would tend to undermine the judicial process." In an order filed 25 September 2014, Judge Bradley B. Letts denied Ciaravella's motion to recuse Judge Marvin Pope and "formally notified and cautioned" Ciaravella that "the filing of frivolous motions in the future will result in the imposition of sanctions against her[.]"

On 23 September 2014, Ciaravella filed a "Motion to Continue Trial Alternatively, Motion to Withdraw as Counsel." Ciaravella stated that she conducted her first interview of defendant on 29 May 2014 and discovered that he had a "significant mental health history[.]" On 5 June 2014, Ciaravella hired Dr. James Bellard ("Dr. Bellard"), a forensic psychiatrist, to evaluate defendant for capacity to proceed, capacity to waive *Miranda* rights, and his state of mind at the time of the offense. Ciaravella indicated that Burner had failed to have defendant evaluated by

a mental health professional. Dr. Bellard had not completed his evaluation of defendant and needed psychological testing to be conducted on defendant, additional time interviewing defendant, interviews with defendant's family members, and a more thorough review of recently received discovery documents. Ciaravella also stated that on 5 June 2014, she had hired Dr. Wilkie Wilson ("Dr. Wilson"), a neurpharmacology expert, to assist in her defense due to the fact that defendant was under the influence of several drugs at the time of the offense. By 17 June 2014, Ciaravella hired a private investigator to complete a fact investigation and interview necessary witnesses. The private investigator had not completed the fact investigation. Ciaravella maintained that Burner had not conducted a fact investigation in defendant's case. On 19 September 2014, Ciaravella hired a psychologist, Dr. James Noble ("Dr. Noble"), to conduct psychological testing on defendant. Ciaravella stated that Burner failed to conduct psychological testing on defendant, Dr. Noble had not completed his evaluation, and Dr. Noble had not begun testing on defendant.

Furthermore, Ciaravella asserted that she made a request for outstanding discovery on the State to include "DSS Records," "CME Videos," and "911 Calls; both from the defendant's Involuntary Commitment and his escape from Copestone Mission Hospital after commitment." Burner had failed to make these requests. Ciaravella claimed that she received the foregoing records on 11 September 2014 and

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had not had an opportunity to review them. In addition, Ciaravella stated that she had made several other records requests that were necessary to the defense and that she had not yet completed review of recently provided discovery by the State. Ciaravella claimed that the following work remained in order for her to competently and adequately represent defendant: outstanding records/discovery requests; outstanding fact investigation; and outstanding trial preparation.

On 24 September 2014, Ciaravella filed a “Notice of Defenses.” She listed the defenses as mental infirmity, diminished capacity, and voluntary intoxication and stated that she reasonably expected to call Dr. Bellard, Dr. Noble, and Dr. Wilson as witnesses at trial.

Following a hearing held on 25 September 2014, the trial court filed an order on 29 September 2014. The trial court granted Ciaravella’s 23 September 2014 motion to continue, continuing defendant’s trial to the 8 December 2014 term of Buncombe County Superior Court. The trial court ordered that “[t]his matter shall not be continued again for any reason other than those proscribed by the North Carolina General Statutes.” Reports from Dr. Bellard, Dr. Noble, and Dr. Wilson were ordered to be submitted to defendant and the State on or before 17 November 2014 at 9:30 a.m. Ciaravella’s alternative motion to withdraw as counsel was denied.

On 25 November 2014, Ciaravella filed a “Motion to Continue Trial.” Ciaravella provided that: she had issued a subpoena to Cindy McJunkin, a forensic interviewer who was a necessary witness for the defense, and had been informed that she was on extended medical leave and unable to testify at trial on 8 December 2014; she had only recently, in the past week, received discovery from the State and needed additional time to interview a State’s witness – inmate Warren Newell; and she needed to obtain data from defendant’s phone, to obtain data from a computer drive, and to view the evidence in the case.

By an order filed 4 December 2014, the trial court denied Ciaravella’s motion to continue, concluding that defendant would not be prejudiced and that Ciaravella had adequate time to prepare for trial. The trial court concluded that defendant received original discovery prior to 17 November 2014, including interviews conducted by Cindy McJunkin, “who defense counsel reports is out on ‘extended leave’ and ‘unavailable’, the defendant having subpoenaed her on November 7, 2014.” Furthermore, the trial court held that Cindy McJunkin was not a necessary witness and the State did not intend to offer evidence concerning inmate Warren Newell. Regarding the cell phone and computer drive data, the trial court held that Ciaravella knew of her alleged need of possible information from these sources early on and prior to 17 November 2014 and there was no effort on her part to obtain these items prior to her latest motion to continue.

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Defendant's trial commenced at the 8 December 2014 criminal session of Buncombe County Superior Court, the Honorable J. Thomas Davis presiding. The State's evidence tended to show that defendant and the victim (the "Glissons") were married and lived together with two daughters. At approximately 5:00 a.m. on 22 May 2013, Boyce Hollifield ("Hollifield"), a neighbor, heard arguing coming from the Glisson's home. Shortly thereafter, he heard two gunshots. Hollifield went outside and saw a white truck leaving the Glissons' driveway. Adrian King ("King"), a neighbor of the Glissons, testified that in the early morning hours of 22 May 2013, she went out on her porch and heard the Glissons' alarm clock. King noticed that the white truck was gone. King went back into her house and the Glissons' two daughters came into her bedroom "screaming, you know, and hollering that their mother was dead." King called 911.

The victim was found lying face down on the master bedroom bed. The victim sustained two gunshot wounds; one on the outside of her upper right arm and the other towards the back of the neck. The cause of death for the victim was the two gunshot wounds. Blood testing revealed the presence of methamphetamine, oxycodone, oxymorphone, and phentermine in the victim's body at the time of her death.

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Officers searched the Glissons' home and found pill bottles in several locations of the house. In the master bedroom, officers discovered shell casings, a box of ammunition, and a rifle. A bullet was found lodged in the mattress.

Around 6:30 a.m. on 22 May 2013, defendant stopped at a convenience store in Fairview, North Carolina, and shoplifted food and cigarettes. The location of defendant's cell phone was tracked to McDowell County by officers from the McDowell County Sheriff's Office. The officers located defendant's vehicle, a white Chevrolet pickup truck, abandoned. There was a lever action rifle with two live rounds and one fired casing found under the seat of the truck. The rifle's class characteristics matched the bullet found in the mattress at the Glissons' residence.

On 24 May 2013, after receiving a call that a "suspicious person" was sitting behind a convenience store in Old Fort, North Carolina, officers located defendant. Defendant was secured with handcuffs and patted down. Officers located marijuana, two pill bottles, wire, keys, a lighter, and cigarettes on defendant's person. Defendant informed officers that his name was "Terry" and that he was from Tennessee.

Defendant was taken to the Buncombe County Sheriff's Office where he provided officers with a statement. Defendant admitted that he and the victim had been taking pain pills and smoking methamphetamine. At about 10:00 p.m., he had heard noises near his window and walked outside with his rifle. He checked around his residence, but did not find anything. Defendant and the victim started arguing

about whether defendant was the father of one of their daughters when he closed his eyes and “pulled the trigger twice” while the victim was in the bed. After he shot the victim, defendant grabbed a few of his belongings, got into his pickup truck, and drove to a convenience store. Defendant stated that he was eventually caught by a McDowell County deputy.

On 18 December 2014, a jury found defendant guilty of first-degree murder. Defendant was sentenced to life imprisonment without parole. Defendant appeals.

II. Discussion

Defendant presents two issues on appeal. First, defendant contends that the trial court erred in denying his motion to continue. Second, defendant argues that he received ineffective assistance of counsel. We address each argument in turn.

A. Denial of Defendant’s Motion to Continue

Defendant argues that the trial court violated his rights to present a defense, due process, confrontation, and effective assistance of counsel when it denied his motion to continue.

Ordinarily, a motion to continue is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court’s ruling is not subject to review. When a motion to continue raises a constitutional issue, the trial court’s ruling is fully reviewable upon appeal. Even if the motion raises a constitutional issue, a denial of a motion to continue is grounds for a new trial only when defendant shows both that the denial was erroneous and that he suffered prejudice as a result of the error.

State v. Taylor, 354 N.C. 28, 33-34, 550 S.E.2d 141, 146 (2001) (internal citations omitted).

The right to present evidence in one's own defense is protected under both the United States and North Carolina Constitutions. . . [T]he right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. In addition, the right to face one's accusers and witnesses with other testimony is guaranteed by the sixth amendment to the federal constitution, applicable to the states through the fourteenth amendment, and by Article I, sections 19 and 23 of the North Carolina Constitution. Improper denial of a motion to continue in order to prepare a defense may also constitute violation of a defendant's Sixth Amendment right to effective assistance of counsel.

State v. Barlowe, 157 N.C. App. 249, 253, 578 S.E.2d 660, 663 (2003) (citations and internal quotation marks omitted). Our review "requires scrutiny of the record and consideration of the circumstances of the individual case." *Id.*

First, we note that although defendant contends that the trial court denied his motion to continue, there were a total of five motions to continue made in his case: 2 June 2014; 4 August 2014; 11 September 2014; 23 September 2014; and 25 November 2014. The 11 September 2014 motion was made in open court. The 2 June 2014, 4 August 2014, 11 September 2014, and 25 November 2014 motions to continue were denied. The fourth motion to continue, made on 23 September 2014, was granted and continued the trial from 6 October 2014 to 8 December 2014.

Here, defendant claims that his motions to continue should have been granted under the test discussed in *Barlowe* because Ciaravella was given “an unreasonably short period of time” in which to investigate, prepare and present a defense and that defendant was materially prejudiced by the denial of his motions to continue. We disagree.

In *Barlowe*, the defendant was convicted of the first-degree murder of her mother and sentenced to life imprisonment without parole. *Barlowe*, 157 N.C. App. at 249, 578 S.E.2d at 660-61. The evidence at trial indicated that the defendant’s mother’s was murdered in the garage of her home by the defendant’s then-boyfriend, that the defendant was present at the house at the time of the murder, and that the defendant participated in the cleaning of the garage and disposal of her mother’s body. *Id.* at 250, 578 S.E.2d at 661. The evidence conflicted as to whether the defendant joined the defendant’s then-boyfriend in planning and committing the murder. *Id.* The State presented expert testimony from a bloodstain expert that the defendant’s pants tested positive for blood and appeared to be spatter stains, “created when blood is impacted and sprays out from the point of impact[,]” instead of transfer stains. *Id.* at 252, 578 S.E.2d at 662.

The defendant’s counsel in *Barlowe* made a motion to continue, asserting that the State had produced a bloodstain pattern report containing the expert’s findings nine days before trial was to commence. The defendant’s counsel stated that it had

contacted an expert but that the expert would not be able to do an analysis, prepare counsel for cross-examination, or be able to testify on the scheduled trial date. *Id.* at 255, 578 S.E.2d at 664. The trial court denied the motion to continue. *Id.* Two days prior to trial, the defendant's counsel submitted a renewed motion to continue, stating that no expert witnesses were reasonably available to become prepared to testify on behalf of the defendant on such short notice. This was also denied. *Id.* at 255-56, 578 S.E.2d at 664-65.

The *Barlowe* Court stated that some of the factors considered by North Carolina courts in determining whether a trial court erred in denying a motion to continue have included:

(1) the diligence of the defendant in preparing for trial and requesting the continuance, (2) the detail and effort with which the defendant communicates to the court the expected evidence or testimony, (3) the materiality of the expected evidence to the defendant's case, and (4) the gravity of the harm defendant might suffer as a result of a denial of the continuance.

Id. at 254, 578 S.E.2d at 663 (citations omitted).

The Court then held that the denial of the defendant's motion to continue was error and violated her constitutional rights to confront her accusers, effective assistance of counsel, and due process. *Id.* at 257, 578 S.E.2d at 665. Our Court provided as follows: that it did not appear that the defendant unreasonably delayed discovery efforts; the defendant showed that none of the experts contacted by her

counsel would have been available for trial; the three day delay between when the defendant claimed to have received the State's expert witness report and filing of the motion to continue was not unreasonable; that the defense counsel provided the names of witnesses and substance of testimony they hoped to obtain by virtue of a continuance; and it was "clear that the blood spatter evidence was critical" to the State's case because it was the only physical evidence potentially placing the defendant at the scene at the time of the murder. *Id.* at 257-58, 578 S.E.2d at 665.

Defendant contends that because Ciaravella "immediately" filed a motion to continue after she was appointed and renewed it throughout her representation, the first factor in *Barlowe* was satisfied. Next, defendant asserts that the second factor in *Barlowe* was satisfied because Ciaravella identified three necessary expert witnesses by name and profession and laid out the specific tasks these experts would need to complete, questions they would address, and the time required to do so. As to the third factor in *Barlowe*, defendant argues that because the question before the jury was "what type of homicide he had committed," a material determination would turn on defendant's mental state at the time of the victim's murder. For the final factor, defendant argues that like the *Barlowe* defendant, defendant faced life without the possibility of parole, "no greater penalty in our criminal justice system short of execution."

After thorough review, we find the circumstances of defendant's case to be distinguishable from those found in *Barlowe*. In *Barlowe*, the defendant's counsel received a bloodstain pattern report just nine days before trial and attempted unsuccessfully to obtain its own expert. Here, Ciaravella was appointed to serve as defendant's counsel on 27 May 2014 and had approximately six months to prepare for trial. There was no last minute evidence presented by the State that defendant needed to refute. In *Barlowe*, the defendant demonstrated that none of the experts she had contacted would have been available for trial. In the present case, Ciaravella asserted in her fourth motion to continue that necessary expert witnesses, Dr. Bellard, Dr. Noble, and Dr. Wilson, had not completed their evaluations of defendant and that Ciaravella needed additional time to receive and review discovery requests, complete her fact investigation, and complete trial preparation. The trial court granted this motion, continuing the matter from 6 October 2014 to 8 December 2014, and ordered that reports from Dr. Bellard, Dr. Noble, and Dr. Wilson be submitted to counsel for defendant and to the State on or before 17 November 2014 at 9:30 a.m. Significantly, the trial court also included as follows: "This matter shall not be continued again for any reason other than those 'proscribed' by the North Carolina General Statutes." In her fifth and final motion to continue, Ciaravella stated that a forensic interviewer, Cindy McJunkin, was a necessary witness, was on extended medical leave, and was unavailable to testify on 8 December 2016. She also argued

that she needed additional time to investigate and interview Warren Newell, an inmate, whose audio interviews were turned over to the defense on 17 November 2014. However, the trial court concluded that Cindy McJunkin was not a necessary witness in the defense, that the State would not be relying on or offering evidence concerning Warren Newell, and that defendant would not be prejudiced by the denial of this motion to continue.

Defendant was persistent in that five separate motions to continue were made. Yet, we are mindful that defendant's fourth motion to continue was granted, providing defendant with a two month continuance. Defendant also provided detail in the communications to the court regarding the expected evidence or testimony but defendant was ultimately unable to establish the materiality of the expected evidence to defendant's case. Defendant argues that he was prevented from establishing a mental health defense absent expert testimony. However, the record shows that Ciaravella submitted a completed report to the State from Dr. Bellard on 16 November 2014. In the last motion to continue, made on 24 November 2014, defendant did not indicate that Dr. Bellard's report was incomplete or that Dr. Noble and Dr. Wilson needed additional time for evaluations and reports. At trial, Dr. Bellard was on defendant's proposed witness list and Ciaravella stated in her opening statement that Dr. Bellard would testify. Ciaravella's decision in not calling Dr. Bellard to testify appears to have been a strategic one. Defendant was also unable to

demonstrate how he would be prejudiced as a result of the denial of the motions to continue.

Considering the factors our courts have said are relevant to a determination of whether the denial of a motion to continue implicates constitutional guarantees, we hold that the denial of defendant's motions to continue did not amount to error.

B. Ineffective Assistance of Counsel Claim

Defendant argues that his conviction should be vacated because his first appointed counsel, Burner, rendered ineffective assistance of counsel. Specifically, defendant contends that the year in which she served as defense counsel, she failed to conduct an investigation, interviewed no witnesses, and did not consult with mental health experts. Defendant asserts that when Burner withdrew, "it was for reasons she would have been aware shortly after her appointment[]" and that she did not provide effective assistance of counsel because "she was paralyzed by her conflict of interest." Moreover, citing to *United States v. Cronin*, 466 U.S. 648, 80 L. Ed. 2d 657 (1984), defendant argues prejudice is presumed because Burner's deficient performance rendered Ciaravella "unable to subject the State's case to a meaningful adversarial testing."

To prevail on a claim for ineffective assistance of counsel, a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense. Deficient performance may be established by showing that counsel's representation fell below an objective standard of

reasonableness. Generally, to establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

State v. Allen, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citations and quotation marks omitted). "This Court has held that [c]ounsel is given wide latitude in matters of strategy, and the burden to show that counsel's performance fell short of the required standard is a heavy one for defendant to bear. Moreover, this Court indulges the presumption that trial counsel's representation is within the boundaries of acceptable professional conduct." *State v. Campbell*, 359 N.C. 644, 690, 617 S.E.2d 1, 30 (2005) (citations and quotation marks omitted).

In *Cronic*, the United States Supreme Court identified three instances "so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Cronic*, 466 U.S. at 658, 80 L. Ed. 2d at 667. Such circumstances include when (1) there is a "complete denial of counsel"; (2) "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing"; and (3) "when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Id.* at 659-60, 80 L. Ed. 2d at 668-69.

Reviewing the record, we reject defendant's argument that his case falls under any of the circumstances enumerated in *Cronic* where prejudice is presumed. Defendant was not under a complete denial of counsel; there was evidence that at the very least, Burner met with defendant multiple times and had requested and reviewed discovery; and defendant's situation was not one in which any lawyer could not provide effective assistance. Accordingly, defendant must show that his defense was prejudiced, but merely argues that six months was insufficient for Ciaravella to investigate and prepare a mental health defense with experts and that he was "forced to trial with no experts[.]" As previously discussed, the record demonstrated that although Ciaravella was prepared to submit testimony from Dr. Bellard and stated the intent to do so, she abstained from calling him as a witness. Thus, we hold that defendant's ineffective assistance of counsel claim must fail.

III. Conclusion

For the reasons discussed above, we hold that defendant received a fair trial, free of prejudicial error.

NO ERROR.

Judges CALABRIA and INMAN concur.

Report per Rule 30(e).