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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO DORCHESTER COUNTY  
Honorable Paul M. Burch, Circuit Court Judge

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Appellate Case No. 2024-000771

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DAMON RILEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

### **PETITIONER'S STATEMENT OF QUESTION**

Did the PCR court erred [sic] in finding counsel was effective when he failed to request a circumstantial evidence charge pursuant to *State v. Logan* in a case dependent upon circumstantial evidence and the credibility of a single witness?

### **RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS**

- I. Whether the PCR court correctly found Petitioner failed to prove he was prejudiced by Counsel not requesting a *State v. Logan* charge because the trial court gave a proper jury charge in conformity with *State v. Grippon* and *State v. Cherry*.
- II. Whether the PCR court correctly found Petitioner failed to prove prejudice by failing to prove there's a reasonable probability the result of trial would have been different if the *Logan* charge had been given because the State did not rely heavily on circumstantial evidence since there was direct evidence from the testimony of Petitioner's cousin that Petitioner shot her and her husband.

## STATEMENT OF THE CASE

In November 2016, the Dorchester County Grand Jury indicted Damon Riley (“Petitioner”) for two (2) counts of attempted murder (2016-GS-18-1105;-1106) and possession of a weapon during the commission of a violent crime (2016-GS-18-1107). On August 19-21, 2019, Petitioner proceeded to a jury trial before the Honorable Maite Murphy. Assistant solicitor Michael Spears prosecuted the case. Petitioner was represented by Chad D. Shelton, Esq. (“Counsel”). The jury convicted Petitioner as indicted. Judge Murphy sentenced Petitioner to a consecutive sentence of thirty (30) years for each count of attempted murder to run concurrent to a five (5) year sentence for the weapon charge.

On October 24, 2019, a notice of appeal was filed. Petitioner was represented on appeal by Appellate Defender Joanna K. Delany. On April 6, 2022, following briefing and without oral argument, the Court of Appeals affirmed the convictions and sentences, affirming the trial court’s admission of a video of Petitioner posing with a gun under the identity exception of Rule 404, SCRE, and finding the danger of unfair prejudice did not substantially outweigh the probative value of the evidence under Rule 403, SCRE. The Remittitur was sent on April 25, 2022.

On April 29, 2022, Petitioner timely filed a PCR, alleging ineffective assistance of counsel. On October 27, 2023, Respondent filed its Return. On February 8, 2024, an evidentiary hearing was convened before the Honorable Paul M. Burch. Petitioner was present and represented by Michael H. Lifsey, Esq. Assistant Attorney General Bryan T. Hall represented Respondent. Judge Burch denied and dismissed the application, finding Petitioner failed to meet his burden. This petition for a writ of certiorari followed.

## STATEMENT OF THE FACTS

Kimberlee Felder (“Victim” or “Felder”), Petitioner’s cousin, testified that she and her husband, Carsheme Dinkins (“Dinkins”) were driving after a night out. (App. 105). Felder testified while the couple was stopped at a red light, Petitioner pulled up next to their car and fired several gunshots at her and Dinkins. (App. 105-07). Felder testified that she was shot in the face, and Dinkins was shot in the arm. (App. 108; 136). Afterwards, Dinkins drove himself and Felder to the hospital. (App. 110).

Officer Jacob Cramer heard gunshots and responded to the scene, where he found shell casings. (App. 158). The vehicle that Felder and Dinkins had driven was towed from the hospital and searched by law enforcement. (App. 143). Officers found bullet projectiles and bullet holes in the vehicle. (App. 148). Officers obtained arrest warrants for attempted murder. (App. 202-04).

Sometime after, Cramer conducted a traffic stop on a vehicle matching the description of the vehicle Petitioner was seen getting into. (App. 162-63). When Petitioner was ordered out of the car and asked his name, he replied, “Damon Riley. I know I got warrants, just put me in the car.” (App. 166-67). Cramer found a Glock 19 gun beside Petitioner’s ID card in the location where Petitioner had been sitting. (App. 168).

Chad Smith, an expert in firearms analysis, testified that all thirteen (13) .9mm cartridges found at the scene were fired from Petitioner’s gun. (App. 283-83). Officers obtained a search warrant for Petitioner’s phone, which revealed that he was headed to Summerville, the location of the shooting, on the night of the shooting. (App. 239). A video of Petitioner holding and pointing a gun was found on his cellphone; it was determined that the gun in the video was a Glock 19. (App. 257).

## STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "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 (quoting *Strickland*, 466 U.S. at 694).

Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. When evaluating a claim for ineffective assistance of counsel, the court is to examine counsel's conduct by the law available at the time of trial and "every effort be made to eliminate the distorting effects of hindsight." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689).

## ARGUMENT

- I. The PCR court correctly found that Petitioner failed to prove he was prejudiced by Counsel not requesting a *State v. Logan* charge because the trial court gave a proper charge on circumstantial evidence in conformity with *State v. Grippon* and *State v. Cherry*.**

Petitioner failed to meet his burden of proving Counsel was ineffective for not requesting a *State v. Logan* charge on circumstantial evidence because the trial court gave a correct and proper charge on circumstantial evidence. A jury charge is correct if, when read as a whole, contains the correct definition and adequately covers the law. *State v. Adkins*, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003). A jury charge that is substantially correct and covers the law does not require reversal. *Id.* In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed in its entirety and not in isolation. *Gibbs v. State*, 403 S.C. 484, 495-96, 744 S.E.2d 170, 176 (2013) (affirming the PCR court's finding that an applicant failed to prove prejudice for counsel's failure to request an alibi jury charge given the clarity of the trial court's jury charge on the State's burden to prove identity beyond a reasonable doubt (citation omitted)).

In *Logan*, the Supreme Court held that criminal defendants *may* request that the trial court add the following language to its jury charge on circumstantial evidence as follows:

“...to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, must point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.”

*State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013).

The Court stated that its holding does *not* prevent the trial court from instructing the jury using the circumstantial evidence charge provided in *Grippon* and *Cherry* but *if requested* by the defendant, the trial court *must* give the circumstantial evidence charge from *Logan*. *Id.* at 99-00,

747 S.E.2d at 452-53 (emphasis added). The circumstantial evidence charge from *Grippon*, and reaffirmed by *Cherry*, is as follows:

There are two types of evidence which are generally presented during a trial – direct and circumstantial evidence. Direct evidence is testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

*State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997); *State v. Cherry*, 361 S.C. 588, 601, 606 S.E.2d 475, 482 (2004) (holding the *Grippon* charge as “the sole and exclusive charge to be given in circumstantial evidence cases...along with a proper reasonable doubt instruction.”). Unless a defendant requests the *Logan* charge, the trial court is required to give a circumstantial evidence charge in conformity with *Grippon* and *Cherry*. *Logan*, 405 S.C. at 99-00, 747 S.E.2d at 452-53.

In Petitioner’s trial, Counsel did not request a *Logan* charge, and the trial judge charged the jury on circumstantial evidence using the language from *Grippon* and *Cherry* verbatim, as follows:

There are two types of evidence which generally are presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of the facts, such as an eyewitness.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight, or value given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than direct evidence.

You should weigh all of the evidence in this case. After weighing all of the evidence, if you’re not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

(App. 344). The trial court prefaced this jury charge with a proper charge on reasonable doubt. (App. 343-44).

Petitioner failed to prove he was prejudiced by Counsel not requesting the *Logan* charge because the trial court's circumstantial evidence charge conformed to *Grippon* and *Cherry* and thus, was a proper charge. *Logan*, 405 S.C. at 94, 747 S.E.2d at 449 ("the trial court did not err in providing a circumstantial evidence charge consistent with *Grippon*."); *State v. Jenkins*, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Ct. App. 2014) ("any error in the omission of other language from the *Logan* instruction was harmless beyond a reasonable doubt because the trial court's instruction, as a whole, properly conveyed the applicable law.").

As a matter of law, Petitioner cannot be prejudiced from a jury charge where the trial court gave a proper jury charge on the law. This Court need not address whether Counsel was deficient where Petitioner failed to prove prejudice. *Strickland*, 466 U.S. at 670 ("A court need not first determine whether counsel's performance was deficient.... If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.").

However, addressing deficiency, since the *Logan* charge request is *permissive* and *not mandatory*, Petitioner failed to prove Counsel was deficient for failing to request it. The *Logan* opinion states that the *Logan* charge must be given *when requested* by the defendant. *Logan*, 405 S.C. at 99-100, 747 S.E.2d at 452-53 (emphasis added). Petitioner argues Counsel *should have* requested the *Logan* charge in Petitioner's case since there was circumstantial evidence presented. However, the *Strickland* standard for deficiency is what is reasonable under prevailing professional norms not what is "best practice" or "common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) ("The question is whether an attorney's representation amounted to incompetence under

‘prevailing professional norms,’ not whether it deviated from best practices or most common custom.” (citing *Strickland*, 466 U.S. at 690.)).

Respectfully, Petitioner exaggerates by arguing that the PCR court’s ruling indicates that counsel can *never* be deemed ineffective for failing to request a *Logan* charge. The evaluation of effectiveness depends on the facts of the case, but to prove deficiency, the burden is on Petitioner to prove that not requesting the *non-mandatory Logan* charge *in his case* is a decision that *no competent lawyer* would have taken. *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (“[E]ven if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” (emphasis added and citation, internal quotations, and brackets in original omitted)). Based on the facts and evidence presented, Petitioner failed to prove Counsel not requesting the charge was a decision that *no competent lawyer* would have taken. Thus, Petitioner failed to meet his burden.

**II. The PCR court correctly found Petitioner failed to prove prejudice by failing to prove there’s a reasonable probability the result of trial would have been different if the *Logan* charge had been given because the State did not rely heavily on circumstantial evidence since there was direct evidence from the testimony of Petitioner’s cousin that Petitioner shot her and her husband.**

Petitioner failed to prove he was prejudiced by Counsel’s failure to request the *Logan* charge because the State did not rely heavily on circumstantial evidence since there was direct evidence from Victim’s testimony that Petitioner shot her and her husband. The *Logan* opinion stands for the proposition that a defendant could request the *Logan* circumstantial evidence charge in cases in which the State *relies on* circumstantial evidence. *See Logan*, 405 S.C. at 99, 747 S.E.2d at 452 (“to the extent the State relies on circumstantial evidence...” (emphasis added)).

In its analysis, the *Logan* Court cited *Bostick* to illustrate a case in which the State relied exclusively on circumstantial evidence. In *Bostick*, the State presented circumstantial evidence of an inconclusive DNA analysis from blood, chemical analysis of the defendant's shoes revealing a fresh gasoline pattern, and items belonging to the victim that were found at a house that neighbored the defendant's mother. *Id.* at 91-92, 747 S.E.2d at 448 (citing *State v. Bostick*, 392 S.C. 134, 136-41, 708 S.E.2d 774, 775-78 (2011)). There was *no direct evidence* presented in *Bostick*. *See id.* (emphasis added). As noted by the *Logan* Court, the evidence in *Bostick*'s case did not constitute substantial circumstantial evidence necessary to submit the case to a jury. *Id.* (citing *Bostick*, 392 S.C. at 138-39, 708 S.E.2d at 776).

Petitioner cites *Hendon* to support his position that Petitioner was prejudiced by Counsel not requesting the *Logan* charge since the State relied on circumstantial evidence. *State v. Hendon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020) ("When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence."). However, the State submits that *Logan* supports the proposition that *the extent to which the State relies on circumstantial evidence* matters in evaluating prejudice from Counsel's failure to request the charge, as evidenced by both the *Logan* Court's *Bostick* analysis and *Hendon*. *See Hendon*, 430 S.C. at 373, 845 S.E.2d at 502 (acknowledging that there may be a case in which the trial court's failure to give the *Logan* charge when the defendant requested might be harmless, but it was not harmless in *Hendon*'s case because the case "*was almost exclusively circumstantial.*" (emphasis added)).

In Petitioner's case, the State did not rely exclusively or heavily on circumstantial evidence since there was direct evidence from Victim's testimony. Victim testified that her cousin, Petitioner, pulled up next to her vehicle at a red light and shot her and her husband. (App. 105-07).

Victim's testimony is direct evidence. *Logan*, 405 S.C. at 97, 747 S.E.2d at 451 ("Direct evidence is evidence that proves the fact in dispute without inference or presumption." (citation omitted)).

Petitioner argues that circumstantial evidence had an impact on the case because Victim's story had "significant credibility issues." However, the credibility of a witness is a question exclusively for the jury. *State v. Reyes*, 432 S.C. 394, 401, 853 S.E.2d 334, 338 (2020) ("the credibility of a witness is exclusively for the jury to decide" (citations omitted)). In Petitioner's case, the jury weighed the evidence and found Victim's testimony credible regardless of any of the alleged inconsistencies in her story that Petitioner argues. Victim's identification of Petitioner is reliable because they are related; she testified that she has known Petitioner all his life and had recently seen him. (App. 106). Victim testified that she could see his face [at the time of the shooting]. (App. 107:4-5). Victim testified that Petitioner was shooting at her and her husband, and it was a shock. (App. 108:9-11).

Victim's testimony, as direct evidence, was sufficient to support the jury's finding of Petitioner's guilt beyond a reasonable doubt. As a result, the State's case did not hinge on the circumstantial evidence. The circumstantial evidence presented (the ballistics, shell casings recovered from the scene, the gun recovered from Petitioner, and Petitioner's text messages) *merely corroborated* Victim's testimony that Petitioner was the shooter.

At the PCR hearing, Counsel testified that he did not see Petitioner's case as a circumstantial case [since] there was direct testimony from the Victim that Petitioner was the shooter. (App. 438:18-21). The PCR court found this testimony *credible* and made a finding that the State did not have to rely on circumstantial evidence because of the direct evidence presented. (App. 459).

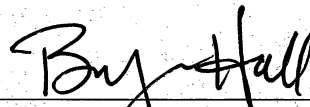
Petitioner also argues that Petitioner's first trial which resulted in a deadlocked jury evidences a finding that circumstantial evidence had an impact on trial. However, Petitioner's first and second trials are two separate proceedings. The fact that the first trial resulted in a deadlocked jury is neither dispositive nor supports a finding of prejudice in the second trial.

Based on the foregoing, Petitioner failed to prove there's a reasonable probability that the result at trial would have been different but for Counsel not requesting the *Logan* charge. Thus, the PCR court correctly found that Petitioner failed to meet his burden and correctly denied relief.

**CONCLUSION**

Based on the foregoing argument, the PCR court correctly found Petitioner failed to meet his burden. Accordingly, the State respectfully requests that this Court affirm the PCR court's rulings and deny Petitioner's writ for certiorari.

Respectfully submitted,



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