

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

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KEIRON K. COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000088

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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**ISSUE PRESENTED**

Whether petitioner's conviction should be reversed because trial counsel's failure to request a proper circumstantial evidence charge pursuant to State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), constitutes ineffective assistance of counsel under the Sixth Amendment?

## STATEMENT

On May 30, 2013, an Horry County grand jury indicted petitioner for first-degree burglary. App. 590. On March 12, 2014, petitioner was tried before the Honorable Larry B. Hyman, Jr. and a jury. App. 1. George DeBusk, Jr. and Nancy R. Livesay represented the State. App. 2. J.M. Long, III, represented petitioner. App. 2. The jury convicted petitioner. App. 437, l. 1 – 441, l. 18. Judge Hyman sentenced petitioner to twenty-five years' imprisonment. App. 448, l. 11 – 449, l. 5. The Court of Appeals affirmed petitioner's conviction. State v. Coleman, Op. No. 2015-UP-386 (S.C. Ct. App. July 29, 2015).

On October 20, 2015, petitioner filed a PCR application. App. 453. On September 18, 2017, the Honorable William H. Seals held a hearing. App. 514. Daniel A. Selwa, II, represented petitioner. App. 514. Johnny Ellis James, Jr. represented the State. App. 514. On December 6, 2017, Judge Seals denied petitioner's application. App. 568. This petition follows.

## STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. A PCR court's findings of fact will be upheld if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). Questions of law are reviewed de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)). See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839–40 (2018).

## ARGUMENT

Petitioner's conviction should be reversed because trial counsel's failure to request a proper circumstantial evidence charge pursuant to *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), constitutes ineffective assistance of counsel under the Sixth Amendment.

On August 14, 2013, this Court decided *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), altering how juries are charged in circumstantial evidence cases. Nearly a year later, on March 12, 2014, petitioner was tried for a burglary in which petitioner testified and denied entering the dwelling. App. 1. App. 372, l. 20 – 373, l. 13. The State relied on the hand of one is the hand of all and circumstantial evidence to prove petitioner entered the dwelling. App. 414, l. 8 – 418, l. 13. Despite the trial judge noting at the charge conference that the circumstantial evidence “charge has been modified, as you all know, in the last year or so,” trial counsel did not request a Logan charge. App. 343, ll. 15 – 17. App. 348, ll. 13 – 15. Judge Hyman did not give a Logan charge. App. 423, l. 14 – 424, l. 8.

The PCR court erred in finding neither deficient performance nor prejudice. App. 575-576. See *Strickland v. Washington*, 466 U.S. 668 (1984). The court first erred as a matter of law in holding that because the charge from *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997) remains valid after Logan, it cannot be deficient performance not to request a Logan charge. This reasoning would mean that any failure to request an additional, favorable, valid jury instruction cannot be deficient performance. It also ignores that this Court would not create a superfluous charge that has no meaning. This reasoning conflates the deficient performance prong of Strickland with its prejudice prong. Trial counsel clearly was deficient in failing to request a Logan charge in a case with circumstantial evidence.

Trial counsel recognized the circumstantial nature of the State's case as is shown by his directed verdict argument. App. 323, l. 1 – 324, l. 15. Trial counsel argued the State produced no evidence to prove petitioner entered the dwelling. App. 323, l. 1 – 324, l. 15. He also argued that the stolen items found inside the car were “within the constructive and actual possession of the defendant, but that's not sufficient to prove an entry.” App. 323, l. 1 – 324, l. 15. The trial judge noted the specific circumstantial evidence in the case: “property was taken from the house, there were—there was mud on the floor, cigarette butts in the house[.]” App. 323, l. 1 – 324, l. 15. When the court denied the directed verdict motion, he cited the “wealth of circumstantial evidence here.” App. 323, l. 1 – 324, l. 15.

The State's circumstantial proof relied on piecing together the testimony of various witnesses. The State called Nancy Ross, who said she saw two black males and a black female in an unfamiliar silver sedan parked outside. App. 94, l. 1 – 99, l. 17. The two men went to her neighbor's house. App. 94, l. 1 – 99, l. 17. They then came to Ross's house and attempted to enter. App. 94, l. 1 – 99, l. 17. She described their clothing, but did not make an in-court identification of petitioner. App. 94, l. 1 – 99, l. 17.

Ross called the police and after the officer arrived, she saw the car again and the police officer gave chase. App. 94, l. 1 – 99, l. 17. App. 146, l. 17 – 162, l. 9. The officer stopped the car and detained the people inside, who were petitioner, his co-defendant Jordan Dudley, and the driver, Shakeera Cowan. App. 146, l. 17 – 162, l. 9. The officer's dashboard camera captured the stop and subsequent search and interrogation. App. 146, l. 17 – 162, l. 9. The officer found jewelry in the car and in petitioner's pocket. App. 146, l. 17 – 162, l. 9.

The State called Susan Marotte to prove that the items found in the car were taken from her house. Marotte lived in the same neighborhood as Ross and when she returned home,

noticed that her dog was acting strangely. App. 120, l. 1 – 125, l. 17. She found a Newport cigarette on her rug, a window ajar, the alarm tripped, and mud on her floor. App. 146, l. 17 – 162, l. 9. Jewelry, jewelry boxes, and a camera were among the items taken. App. 146, l. 17 – 162, l. 9.

Cowan testified for the State. Cowan was from North Carolina, but sometimes worked as a stripper in Myrtle Beach on the weekends. App. 284, l. 6 – 285, l. 20. She met petitioner at her motel and they became acquainted. App. 285, l. 11 – 290, l. 15. Cowan claimed that on Monday morning, petitioner asked her to take him somewhere. App. 290, ll. 7 – 25.

Dudley was with petitioner and sat in the backseat while Cowan drove. App. 291, ll. 1 – 13. Cowan denied knowing Dudley. App. 291, ll. 9 – 13. She drove them to a neighborhood where they got out of the car and went to a house. App. 292, l. 12 – 293, l. 295, l. 22. They went to the back of the house, then returned to the car and they went to another house. App. 292, l. 12 – 293, l. 295, l. 22. According to Cowan, petitioner returned for a cigarette, then they went to the back of the house where she could not see them. App. 292, l. 12 – 293, l. 295, l. 22. When they came back, Cowan claimed petitioner had items in his pocket. App. 292, l. 12 – 293, l. 295, l. 22. She then described getting stopped by the police. App. 299, l. 23 – 301, l. 14.

Petitioner testified in his own defense. He formerly lived in the same apartment complex as Dudley. App. 357, ll. 8 – 18. Dudley called petitioner Sunday night, but did not mention Cowan. App. 360, l. 6 – 362, l. 2. The next morning, Dudley arrived at Petitioner's apartment with Cowan. App. 362, ll. 3 – 11. Dudley indicated he was romantically interested in Cowan. App. 362, l. 8 – 363, l. 6. Someone owed Cowan money and Dudley wanted petitioner to help him collect it. App. 363, l. 21 – 364, l. 11.

Petitioner admitted getting out of the car at the Ross house and knocking on the door, but denied getting out of the car at the Marotte house. App. 365, l. 8 – 367, l. 10. Dudley went to the back of the Marotte house alone and returned with items. App. 366, l. 19 – 367, l. 10. Petitioner was sitting in the front seat and Dudley handed petitioner the items from the house and told him to put them away. App. 366, l. 19 – 367, l. 10.

Petitioner strenuously denied conspiring with Dudley. App. 372, l. 17 – 373, l. 13. He saw Dudley break into the Marotte house. App. 372, l. 17 – 373, l. 13. He denied entering the house. App. 372, l. 17 – 373, l. 13. He denied having any cigarettes when the police arrested him. App. 372, l. 17 – 373, l. 13. Petitioner also testified that the police took his shoes, put them into property, and there was no mud on his shoes. App. 370, l. 7 – 371, l. 16.

Under these facts, it is clear that the State relied on circumstantial evidence to prove their case and to contradict petitioner's testimony. Had trial counsel requested the Logan charge on circumstantial evidence, the trial judge would have been required to give it. Logan at 99, 747 S.E.2d at 452. The charge that should have been given to the jury at petitioner's trial is:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, **to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.**


The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. (emphais added).

The above-emphasized language in the Logan charge would have been critical in this circumstantial evidence case because, given petitioner's testimony, his behavior could, **at best**, be described as suspicious. The jury would have seen that the inferences to be drawn from the State's circumstantial evidence pointed just as consistently at Dudley and this would have created reasonable doubt. The PCR court erred in holding petitioner could not prove deficient performance and prejudice under Strickland and this Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's conviction.



David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of September, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

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KEIRON K. COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

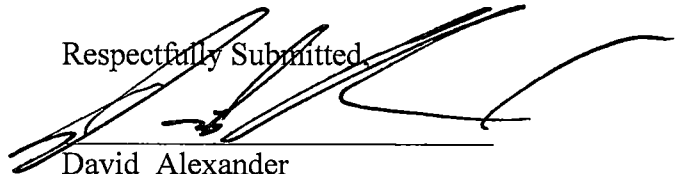
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Counsel for Keiron K. Coleman states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge William H. Seals, which was held on September 18, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Keiron K. Coleman.

Respectfully Submitted,



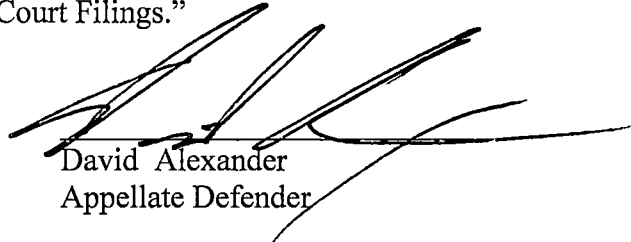
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 21st day of September, 2018.

**CERTIFICATE OF COUNSEL**

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



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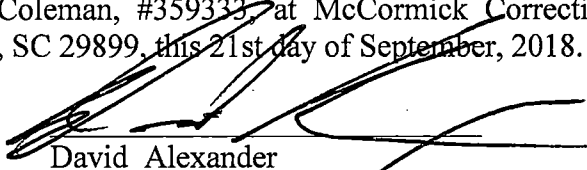
RESPONDENT

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CERTIFICATE OF SERVICE

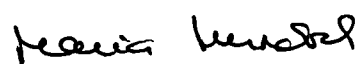
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Keiron K. Coleman, #359333, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 21st day of September, 2018.



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 21st day of September, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: 7/3/2023