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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State,Respondent,

v.

Charles Dent,.....Appellant.

RETURN TO STATE’S PETITION FOR REHEARING

On August 18, 2021, this Court unanimously held that the trial judge filed to give the jury instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) and *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020). A majority of this Court further held:

There was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was “about circumstantial evidence.” Further, the State read part of the trial court’s planned charge on circumstantial evidence to the jury, noting that Dent “didn’t want to read out the [planned] definition of circumstantial evidence.” Considering the circumstantial nature of the evidence, we find these errors prejudiced Dent.

Slip Opinion, at 6. The dissent would have held the error harmless. *Id.*, at 7-8. On August 26, 2021, the State petitioned for rehearing (“State’s Petition”). Although conceding the trial judge erred by denying Mr. Dent the *Logan* charge, the State, relying on the dissent, argued the error was harmless. By letter dated August 27, 2021, this Court requested Mr. Dent respond to the State’s motion. This return follows.

STANDARD OF REVIEW

“In criminal cases, this court reviews errors of law only and is bound by the trial court’s factual findings unless they are clearly erroneous.” *State v. McBride*, 416 S.C. 379, 385, 786 S.E.2d 435, 438 (Ct. App. 2016). “Thus, on review, the court is limited to determining whether the trial court abused its discretion.” *Id.* “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.*

“The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “The evidence presented at trial determines the charged jury instruction. The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (internal citations and quotations omitted). “A jury charge is no place for purposeful ambiguity.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), *holding extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

“In reviewing jury charges for error, [an appellate court] must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003)). “Errors, including erroneous jury instructions, are subject to harmless error analysis.” *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (citing *Belcher*, 385 S.C. at 611, 685 S.E.2d at 809). “When considering whether an error with respect to a jury instruction was harmless, [an appellate court] must determine

beyond a reasonable doubt that the error complained of did not contribute to the verdict.”
Id. (internal quotations omitted).

DISCUSSION

As a threshold matter, the State concedes the trial judge did not provide the *Logan* charge. *See, e.g.*, Brief of Respondent, at 31; State’s Petition, at 1-2. The question, therefore, becomes whether this Court can conclude the error is harmless beyond a reasonable doubt. *See Burdette, supra*. Like the dissent, the State’s position rests on its contention the evidence against Charles Dent was direct and not circumstantial. The State’s own arguments do not support its position because (a) the Solicitor at trial argued the jurors should convict Mr. Dent based on circumstantial evidence and (b) the Brief of Appellant relied on circumstantial evidence when urging this Court to affirm the convictions.

A. This Court correctly held the Solicitor relied on circumstantial evidence.

“Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.” *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. “Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.” *Id.* The State argues its “case against [Mr. Dent] was based almost entirely, if not entirely, on direct evidence” and the Solicitor “merely responded to Mr. Dent’s ‘specious assertion’ the prosecution” relied “on a lot of circumstantial evidence.” State’s Petition, at 2, 4. This Court, therefore, must consider the State’s reliance on circumstantial evidence at trial. In addressing Mr. Dent’s closing argument, the Solicitor argued:

And he started talking about circumstantial evidence. And he said the Judge would talk to you about circumstantial evidence. And he didn’t want to read out the definition of circumstantial evidence that the Judge is going to read. But I’m going to do that because circumstantial evidence is

frequently viewed as a dirty word, I think. If you guys – you know – it’s viewed as not being serious. But – and I’m going to read it.

Crimes may be proven by circumstantial evidence. The State can rely on direct evidence, circumstantial evidence, or some combination of the two. The Judge is going to read that to you.

Circumstantial evidence is evidence. And it’s not a lesser type of evidence. And why – why is this case about circumstantial evidence? Why do we not have photos of Jaelynn licking the Defendant's penis? Why do we not have Jaelynn’s clothes covered in the Defendant's semen? We don’t have that because of the *grooming* process. Because sexual assault cases, these type of cases, they do not happen out in broad daylight with witnesses. They happen in private homes. They happen between two people who have a power difference. And that’s what happened here. It happened when Jaelynn was alone with the offender.

It happened in a private home. It happened after months of *grooming*. And that is why we must rely on circumstantial evidence.

Tr. 727-29 (emphasis added).

The Solicitor thus equated “circumstantial evidence” and “grooming.” In doing so, the State sought to prove a “chain of facts and circumstances indicating the existence of a fact,” *Logan*, 405 S.C. at 96, 747 S.E.2d at 451—*i.e.* that grooming was evidence of criminal sexual conduct. The State, in fact, heavily relied on “grooming”—and, therefore, circumstantial evidence—during its initial closing argument. *See, e.g.* Tr. 696 (discussing Tessa Trask’s testimony about “grooming”); 697 (“grooming is his normalized sexual touch though exposure”); 698 (discussing the process of grooming); 698 (linking grooming to delayed disclosure). The Solicitor followed up her discussion of grooming by reminding the jurors about John Comelo’s testimony about “red flags” he claimed he witnessed regarding the child complaining witness. Tr. 698. The Solicitor next discussed testimony of Lori Mayo and Mr. Comelo that the State claimed evidenced “outward signs of abuse” and “trauma” that the child exhibited in this case. Tr. 698-99. In fact, the prosecution’s use

of Mr. Comelo's testimony prompted Mr. Dent to address circumstantial evidence during his closing argument. Immediately after referencing circumstantial evidence, Mr. Dent addressed the allegations of "sexualized behavior" alleged in the child's relationship with Mr. Comelo. Tr. 707.

During her initial closing, the Solicitor also discussed the photographs that were entered onto evidence. Tr. 699-700. These photos are not direct evidence of any of the crimes for which Mr. Dent was convicted. Indeed, Mr. Dent challenges the admission of the photographs on appeal as not relevant and unduly prejudicial. Brief of Appellant, at 46-47, 52, and Reply Brief of Appellant, at 8-10, 14. The State, in fact, acknowledged these photographs "were not offered to prove [Mr. Dent] was guilty of disseminating obscene material to a minor," but rather, "The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship [Mr. Dent] had with Victim." Brief of Respondent, at 38. In relying on the photographs in this manner, the State once again sought to prove a "chain of facts and circumstances indicating the existence of a fact." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words "circumstantial evidence," the State argued the photographs were circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

B. On Appeal, the State relies on circumstantial evidence.

As seen in Section A above, the prosecution relied on circumstantial evidence at trial, and the State acknowledged in its brief to this Court that it introduced photographs of the child as circumstantial evidence to support the criminal sexual conduct conviction. On appeal, the State also relied on circumstantial evidence when urging this Court not to direct

a verdict of acquittal regarding the charge of first-degree criminal sexual conduct with a minor. *See, e.g.*, Brief of Respondent, at 8-9 (arguing the jurors could infer fellatio occurred “during the relevant timeframe in indictment 2014-GS-07-1673” based on inferences drawn from the child’s vague and inconsistent statements), 9 (“The logical implication of Victim’s second forensic interview is that she performed fellatio on Appellant more than one time and at least one of those incidents happened at the first townhouse during the time frame limited in indictment 2014-GS-07-1674”), and 10 (arguing inferences from “a broad question by the assistant solicitor: ‘But do you remember anything about what was done to you while you lived in *those houses?*’” (emphasis supplied by State’s brief)). In arguing inferences in this manner, the State once again sought to prove a “chain of facts and circumstances indicating the existence of a fact.” *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words “circumstantial evidence,” the State argued these inferences as circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

CONCLUSION

For the foregoing reasons, this Court should deny the State’s petition for rehearing. Because the evidence presented at trial supported a jury instruction on circumstantial evidence, the trial judge was obligated to provide the *Logan* instruction. The State concedes this legal error. Based on this record, it is impossible for this Court to “determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.” *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578. The Solicitor argued the State’s view of the circumstantial evidence during her closing. Although avoiding the use of the term

“circumstantial evidence,” the State relies on circumstantial evidence when urging this Court to affirm the conviction for first-degree criminal sexual conduct.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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September 2, 2021
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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel’s primary email address listed in the Attorney Information System (AIS),¹ as reflected below, on the date reflected below:

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¹ A copy of the email is attached to the certificate of service filed with this Court.

Subject: State v. Charles Dent, Appellate Case No. 2018-001257
Date: Thursday, September 2, 2021 at 6:26:46 PM Eastern Daylight Time
From: Charles Grose
To: Scott Matthews
CC: Laura Wingard
Attachments: 2021 09 02 Grose to CoA.pdf, Dent - Cross-Petition for Rehearing.pdf, Dent - Return to State's Rehearing Petition.pdf

Attached please find Mr. Dent's cross-petition for rehearing, return to the State's petition for rehearing, certificates of service, and cover letter, which I about to file electronically with the SC Court of Appeals, along with a copy of this email.

I hope you are well. Please let me know if you have any questions.

Best,
Charles

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