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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE

PETITIONER,

V.

VICTORIA LORRAINE SANCHEZ

RESPONDENT

APPELLATE CASE NO. 2022-000250

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Court of Appeals correctly find that the trial judge's error in her refusal to give the requested jury instruction on circumstantial evidence as mandated by this Court in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) and again in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020) was not harmless where the state relied exclusively on circumstantial evidence in its attempt to prove the element of knowledge?

STATEMENT OF THE CASE

Respondent was indicted by the Greenville County grand jury for trafficking more than 28 grams of heroin and unlawful conduct towards a child. App. 235-238. Respondent's jury trial was held before the Honorable Letitia H. Verdin from December 4, 2018 through December 5, 2018. App. 1. Respondent was represented by Michael Martinez and Stuart Sarratt and the state was represented by Katrina Owens. App. 1.

Respondent was driving a silver Kia on the interstate through Greenville County when Deputy Andrew Reese ("Reese") with the Greenville County Sheriff's Office ostensibly stopped her for crossing over the dotted line and traveling too close behind a tractor trailer. App. 9, ll. 4 – 21. However, prior to initiating the traffic stop on Respondent, Greenville County Sheriff's Office received a tip from the Department of Homeland Security that a silver Kia left a suspected drug location in Atlanta, Georgia. App. 9, l. 22 – 10 l. 7. The tip did not include any information about the identity of the driver or whether there was anything illegal in the car. App. 18, ll. 18 – 22.

Homeland Security asked Greenville Sheriff's Office if they could "intercept" the car. App. 33, l. 23 – 34, l. 2. The plan of the Greenville County deputies was to keep an eye out for this car and stop the car "if [they] can find a reason." App. 18, l. 23 – 19, l. 2. Deputy David Harrison ("Harrison") with the Greenville County Sheriff's Office referred to their attempting to initiate a traffic stop as "just a poke and a hope." App. 34, ll. 4 – 5.

Reese ultimately made the decision to issue Respondent warning tickets. App. 13, l. 17 – 14, l. 4. However, before Reese handed her the warning tickets, he asked Respondent for permission to search the car to which she responded "sure." After Reese and Harrison conducted an extensive search of the vehicle, a hidden compartment was discovered that had been welded

to the underside of the vehicle between the gas tank and the chassis. App. 40, ll. 1 – 11. Harrison testified that in order to have installed the hidden compartment, a person would have had to remove the fuel tank from underneath the car, then weld the compartment to the underside of the car's frame and then reinstall the fuel tank using extended screws and bolts to hold it in. App. 139, l. 11 – 141, l. 5. Heroin was discovered inside of the hidden compartment. App. 16, ll. 13 – 15; App. 165, ll. 21 – 25.

At the close of the state's case, defense counsel requested the specific circumstantial evidence charge derived from State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). App. 143, l. 11 – 144, l. 2. The trial judge refused to charge the requested instruction but marked Respondent's proposed charge as Court's Exhibit 1. App. 144, ll. 3 – 9; App. 230. The jury found Respondent guilty of both counts and the judge sentenced her to thirty-two years imprisonment on the drug trafficking and concurrent ten years imprisonment on the unlawful conduct charge.

On December 8, 2021, the Court of Appeals reversed Respondent's convictions and remanded her case because the trial judge failed to give Respondent's requested jury instruction on circumstantial evidence which was mandated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) and again in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). State v. Sanchez, 435 S.C. 468, 867 S.E.2d 595 (Ct. App. 2021).

The state filed a petition for rehearing with the Court of Appeals on January 4, 2022 which was denied on February 1, 2022. On March 29, 2022 the state filed a petition for writ of certiorari to the Court of Appeals seeking review of the Court of Appeals' decision.

ARGUMENT

The Court of Appeals correctly found that the trial judge's error in her refusal to give the requested jury instruction on circumstantial evidence as mandated by this Court in *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) and again in *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020) was not harmless because the state relied exclusively on circumstantial evidence in its attempt to prove the element of knowledge.

In State v. Logan, this Court clarified the rule regarding jury instructions on circumstantial evidence. The circumstantial evidence jury instruction had been the subject of some modifications and Logan clarified the proper instruction to be given. See State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2005); State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997); State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955).

This Court held in Logan that a trial judge should give the following jury charge on circumstantial evidence, *in addition to* a proper reasonable doubt instruction, when the defendant requests it:

> 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.

State v. Logan, 405 S.C. at 99, 747 S.E.2d at 452.

This Court further clarified that a trial judge may still issue the circumstantial evidence charge approved of in Grippon and Cherry but that the trial judge cannot rely exclusively on that charge when a defendant objects to it. Logan, 405 S.C. at 100, 747 S.E.2d at 453. This Court went on to state, "[t]hus, we modify Grippon and Cherry to allow the additional language provided above if requested by a defendant." Id.

Defense counsel requested the exact jury instruction that was mandated in Logan. App. 143, l. 11 – 144, l. 2; App. 230. The trial judge refused to charge the requested instruction. Instead, the judge gave the following instruction to the jury on circumstantial evidence:

> There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.
>
> Circumstantial evidence is proof of the chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.
>
> 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 of 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.

App. 211, ll. 1 – 24.

The Court of Appeals correctly found that the refusal to grant Respondent's request for the approved circumstantial evidence charge was error. Logan, 405 S.C. at 99, 747 S.E.2d at 452. This Court plainly held in Logan that this instruction should be given when requested by a defendant and the trial judge's failure to do so was improper. Id.

After Respondent's trial but before the oral argument of this case in the Court of Appeals, this Court decided State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). In Herndon, this

Court reaffirmed the jury instruction in Logan and stated that "[w]hen requested, the Logan charge must be given in cases based in whole or part on circumstantial evidence." Id. at 371, 845 S.E.2d at 501. While a trial judge's failure to give a requested Logan charge is still subject to a harmless error analysis, the Court of Appeals correctly found that the error in Respondent's case was not harmless.

The state argued in its petition for writ of certiorari that the required Logan instruction "would not have altered or impacted the jury's analysis since the instruction merely constituted an additional explanation of the reasonable doubt standard, which had already thoroughly been covered by the instructions as presented." Petition for writ of certiorari at 12. The state further argued that "the missing language viewed as pivotal by the Court of Appeals does not constitute an explanation of what circumstantial evidence is or how the process for evaluating circumstantial evidence is analytically different from the process for evaluating direct evidence in light of the inferential nature of circumstantial evidence." Petition for writ of certiorari at 19. The specific portion of the Logan charge that the Court of Appeals noted was absent from the trial judge's instructions was the portion that states that "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." Sanchez, 435 S.C. at 475, 867 S.E.2d at 598.

Contrary to the state's assertion, this language is not simply an additional explanation of the reasonable doubt standard and is instead a part of the judge's required explanation on how circumstantial evidence is different from direct evidence. The missing language from the judge's charge on circumstantial evidence in Respondent's case was a necessary and important guide for the jury to understand how to analyze circumstantial evidence and to apply the law to the facts of

the case before them. Furthermore, accurately charging the jury on other matters of law, like reasonable doubt, does not obviate the requirement that the judge also give an accurate charge on circumstantial evidence. See Herndon, 430 S.C. 367, 371-73, 845 S.E.2d 499, 502-03 (2020).

As the Court of Appeals noted, Respondent's case was like Herndon in that the state relied very heavily on circumstantial evidence. Just like in Herndon, there were "competing inferences" that could be drawn from the circumstantial evidence presented in Respondent's case. The competing inferences that Respondent either did or did not know about the drugs in the car "illustrate well the need for the Logan charge." Herndon, 430 S.C. at 373, 845 S.E.2d at 503.

The Court of Appeals correctly applied clearly established precedent from this Court's opinions in Logan and Herndon and correctly concluded that the judge's error was not harmless because "there was no direct evidence of [Petitioner's] knowledge of the hidden compartment or drugs." Sanchez, 435 S.C. at 475, 867 S.E.2d 598-99 (Ct. App. 2021). Without any direct evidence to prove the element of knowledge, the judge's error in its failure to charge the Logan instruction on circumstantial evidence could not have been harmless. As this Court stated in Herndon, "the Logan charge *must* be given in cases based *in whole or part* on circumstantial evidence." Herndon, 430 S.C. at 371, 845 S.E.2d at 501. The Court of Appeals correctly followed the law of this Court and correctly applied the law to Respondent's case. Therefore, the petition for writ of certiorari to the Court of Appeals is meritless, and should be denied.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court to deny the state's petition for writ of certiorari to the Court of Appeals.

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Appellate Defender

ATTORNEY FOR RESPONDENT

This 27th day of April, 2022.