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**Sep 29 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County  
Court of General Sessions

Daniel D. Hall, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ISRAEL MENDOZA CERVANTES,

APPELLANT.

APPELLATE CASE NO. 2022-001214

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**REPLY BRIEF OF APPELLANT**

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## REPLY

### **I. The State correctly cites the new standard for reviewing the voluntariness of a criminal defendant's statement.**

Cervantes' initial brief stated part of the Standard of Review as follows: "When reviewing a trial court's ruling concerning voluntariness, [the appellate court] does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial courts ruling is supported by any evidence." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

Cervantes initial brief was filed on May 30, 2023. On September 13, 2023, the Supreme Court of South Carolina refined it's standard of review for the voluntariness of a criminal defendant, stating, "We agree with those jurisdictions that have found the question of voluntariness presents a mixed question of law and fact. Accordingly, we take this opportunity to refine our standard of review. Going forward, we will review the trial court's factual findings regarding voluntariness for any evidentiary support. However, the ultimate legal conclusion – whether, based on those facts, a statement was voluntarily made – is a question of law subject to de novo review." State v. Miller, Op. No. 28178 (S.C. Sup. Ct. filed September 13, 2023) (Howard Adv. Sh. No. 36 at 10).

The State cites this authority in its initial brief and Cervantes agrees that this authority is now controlling.

**II. The erroneous admission of Cervantes' custodial statement to law enforcement was not harmless error.**

“Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. Error is harmless beyond a reasonable doubt *where it did not contribute to the verdict obtained*. Thus an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.” *Id.* (quoting State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006))(emphasis added).

Here, admission of Cervantes' custodial statement was not harmless error. It is undisputed that the drugs were found in and on property owned by Cervantes' co-defendant, Angel Ibarra. Therefore, the erroneous admission of Cervantes' statement admitting to co-ownership of the drugs is highly likely to have contributed to the verdict convicting him of trafficking and possession of said drugs. See State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (1993), (holding it was not harmless error to erroneously admit the defendant's statement when it likely influenced the jury's verdict because one of the facts in dispute was whether the defendant had reached for an officer's gun and defendant's erroneously admitted statement was that he had.)

**CONCLUSION**

For the reasons stated in Cervantes' initial brief, as well as above, this Court should reverse Cervantes' convictions for trafficking heroin, 28 grams or more, possession of a weapon during a violent crime, and possession with intent to distribute cocaine, and remand this matter for a new trial with instructions that the Trial Court suppress Cervantes' statement given to law enforcement.

Respectfully Submitted:

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