STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

SOSA MANDIEZ CROFT,

APPELLANT.

Appellate Case No. 2022-001771

FINAL BRIEF OF RESPONDENT

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APPELLANT'S ISSUE PRESENTED

I.

Whether the trial court reversibly erred by lowering the State's burden of proof in its jury instruction on proof beyond a reasonable doubt?

RESPONDENT'S ISSUE PRESENTED

I.

Was the trial court's jury instruction that fully recited the definition of "beyond reasonable doubt" from accepted precedent in *State v. Darby* nevertheless rendered unconstitutional by the trial court also explicitly instructing that evidence which merely establishes a suspicion or conjecture of guilt is insufficient to render a guilty verdict?

STATEMENT OF THE CASE

Sosa Mandiez Croft (hereinafter "Appellant") was indicted for murder, possession of a weapon during the commission of a violent crime, and armed robbery. (2019-GS-23-8760; 8761). Appellant proceeded to a jury trial before the Honorable Judge Perry H. Gravely on December 5, 2022 through December 8, 2022. Appellant was represented by attorney Susannah Ross, Esq. The State was represented by Assistant Solicitors Alexa Holloway and Britni McCall of the 13th Circuit. (R. p. 1; p. 13).

At the conclusion of the trial Appellant was found guilty of all three charges. (R. p. 505-520). Judge Gravely sentenced Appellant to a life sentence for the murder conviction, 30 years imprisonment for the armed robbery conviction, and 5 years for the possession of a weapon charge. (R. p. 520). This appeal now follows.

STATEMENT OF FACTS

The Crime

On the night of January 29, 2019, Appellant and Cruz Medero (hereinafter "Medero") were sitting in the breezeway of Appellant's apartment smoking weed and awaiting the arrival of Appellant's "plug" (dealer). Medero heard Appellant state that he had "a jug on his plug", which he understood to mean that Appellant intended to rob the dealer of his weed. (R. p. 185-191; p. 209). Appellant and Medero walked to the end of the neighborhood to meet the dealer. However, Medero remained at a distance while Appellant continued over and entered Victim's parked car. Medero then immediately heard two gunshots. When he ran to the car to investigate, Victim Joshua Meeks (hereinafter "Victim") was bleeding. Appellant pulled Victim onto the backseat, during which time Medero saw Appellant in possession of a gun. Medero ran from the scene, but not before seeing Appellant get into the driver's seat and start to drive away. (R. p. 190-197).

With the aid of his ex-girlfriend, Lyric Lawson, Appellant later attempted to clean the car with bleach and dispose of the body by leaving it off the side of a remote dirt road covered in a sheet and leaves. (R. p. 245; p. 251; p. 256-257; p. 261-267; p. 273-276). Both Medero and Lawson testified against Appellant at trial, and the State introduced video surveillance, DNA analysis, and latent fingerprint evidence all linking Appellant to the crime. (R. p. 415; p. 377).

ISSUE AS IT WAS PRESENTED AT TRIAL

Prior to the jury beginning its deliberations, the trial court charged the jury as follows regarding the State's burden of proving guilt beyond a reasonable doubt:

> That presumption of innocence is only removed if you, the jury, finds that the State has met its burden beyond a reasonable doubt. And up until that point, that presumption surrounds the Defendant. If you find that the State has not met its burden beyond a reasonable doubt, then that presumption stays with the Defendant.
>
> . . .
>
> What is reasonable doubt? You've heard that phrase thrown around. Let me give some definitions about that. You know, there's nothing in this world that we can know with absolute certainty. And our law does not require the State prove with absolute certainty. But the State's proof must be beyond a reasonable doubt. *The kind of doubt that makes a reasonable person hesitate to act.*
>
> Now, sometimes, *I compare that with a civil case*, in case you have been involved in a civil matter, maybe sat on a jury in a civil matter, been involved in a civil case. That is a different standard. That's kind of what we call more likely than not, greater weight of the evidence or preponderance of the evidence. *That's a much lower standard. That does not apply here.* This is a criminal matter and, therefore, it's beyond a reasonable doubt.
>
> *Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.* There are very few things, again, with absolute certainty. But if you must find – if you are firmly convinced that the Defendant is guilty of each of these charges, then you must find him guilty. *Well, on the other hand, if you find that there is a reasonable possibility he's not guilty or that the evidence just provides a mere suspicion or conjecture of his guilt, then you are to find him not guilty and give him the benefit of the doubt.*

> . . .
>
> Circumstantial evidence is a little different. That's where there's a string of evidence that may be needed to prove a particular fact, kind of by inference. However, to the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together, point conclusively to the guilty of the Defendant beyond a reasonable doubt. *If the circumstances merely portray the Defendant's behavior as suspicious, then that proof has failed.*

(R. p. 480-482). At the conclusion of the jury instructions, defense counsel argued to the court that his instruction on reasonable doubt and circumstantial evidence "talk[ed] about mere suspicion is not enough" and that such "wording makes – diminishes the level of proof the State needs to present to create proof beyond a reasonable doubt." (R. p. 495). The trial court disagreed with counsel's argument and denied the objection, such that it was.

After beginning deliberations, the jury presented the trial court with a number of questions, one of which asked: "What is the definition of reasonable doubt?" (R. p. 497). After consulting with the attorneys in the case, the trial court proceeded to recharge the jury as to reasonable doubt, and stated as follows:

> All right. As I told you, the State's burden is beyond reasonable doubt. And some of you may have served as jurors on civil cases. Again, as I said, the standard for civil cases is much different. In criminal cases, the State's proof must be more powerful than that. It must be proof beyond a reasonable doubt. Reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.
>
> There are very few things in the world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crimes charged, you must find the Defendant guilty. But on the other hand, you think there's a real possibility the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty. Facts and circumstances that merely place upon the Defendant a grave suspicion of the crimes charged or that merely raise a speculation

> or conjecture of the Defendant's guilt are not sufficient to authorize a conviction of the accused.

(R. p. 498-499).

STANDARD OF REVIEW

"The role of the trial court is to charge the jury correctly based on the evidence presented at trial." *State v. Marin*, 404 S.C. 615, 623, 745 S.E.2d 148, 153 (Ct. App. 2013), aff'd as modified, 415 S.C. 475, 783 S.E.2d 808 (2016) (citing *State v. Brandt*, 393 S.C. at 549, 713 S.E.2d at 603). "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)(citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)(citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Adkins,* 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003).

ARGUMENTS

The trial court did not err in instructing the jury as to the definition of "beyond reasonable doubt." The trial court provided the long-established definition of beyond reasonable doubt to the jury, and then did no more than identify other degrees of evidence that *do not* satisfy the beyond reasonable doubt standard that it had just articulated. As a result, the court did not dilute the State's burden for criminal conviction, it did not conflate it with the standard for directed verdict, and Appellant's argument to the contrary drastically misinterprets the information conveyed by

the court. The jury was fully and properly advised of the burden of proof that the State must satisfy and Appellant's conviction should therefore be affirmed.

Pertinent to the issue presented, the controlling law derives from three cases: *Victor v. Nebraska*, 511 U.S. 1 (1994), *State v. Darby,* 324 S.C. 114, 477 S.E.2d 710 (1996), and *State v. Manning*. In *Victor v. Nebraska* the United States Supreme Court held that:

> The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof. Rather, "taken as a whole, the instructions [must] correctly conve[y] the concept of reasonable doubt to the jury."

Id., at 5 (quoting *Holland v. United States,* 348 U.S. 121, 140, 75 S.Ct. 127, 137, 99 L.Ed. 150 (1954)) (internal citations omitted). Justice Ginsburg's concurrence discusses the pitfalls of both defining and leaving undefined the "beyond reasonable doubt" standard. She noted that the Federal Judicial Center's proposed definition provided a clear, straightforward, and accurate definition that surpasses the others she had occasioned to see. The proposed definition reads as follows:

> [T]he government has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government's proof must be more powerful than that. It must be beyond a reasonable doubt.
>
> Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible

> doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Id., at 27 (quoting Federal Judicial Center, Pattern Criminal Jury Instructions, at 17–18 (instruction 21). The South Carolina Supreme Court has fully endorsed the language used to define reasonable doubt set forth in Justice Ginsburg's concurring opinion, and has explicitly held that the "real possibility" language does not lessen the government's burden "in the context of the proceeding language requiring that the juror be 'firmly convinced' of the defendant's guilt."[1] *State v. Darby*, 324 S.C. 114, 116, 477 S.E.2d 710, 711 (1996); *Brightman v. State*, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999) (noting explicitly the Court's endorsement of Justice Ginsburg's concurring opinion). Lastly, the "hesitate to act" language was approved by the South Carolina Supreme Court in *State v. Manning*, 305 S.C. 413, 409 S.E.2d 372 (1991), cert. denied, 503 U.S. 914, 112 S.Ct. 1282, 117 L.Ed.2d 507 (1992), in light of the Supreme Court precedent set forth in *Holland v. United States*, 348 U.S. 121, 140, 75 S. Ct. 127, 138, 99 L. Ed. 150 (1954), and later in the majority opinion in *Victor v. Nebraska.*

As is plainly evident, the components discussed by these cases are all present within the trial court's charge, and the propriety of the charge is rendered *well* satisfied "when taken as a whole." See *Holland*, at 140. But moreover, Appellant's argument is simply not an accurate or reasonable interpretation of the charge. Appellant argues that the charge given presents an "only if" scenario for the jury such that 1) "real possibility" of innocence and 2) "mere suspicion or

[1] The Court in *Darby* was also called upon to determine whether the nature of the charge had shifted any of the burden of proof onto the defendant to prove the "real possibility" of innocence. The Court found that the trial court's instruction did not shift the burden of proof to the defendant.

conjecture of guilt" are the only instructed avenues in which the jury could find Appellant not guilty. (Brief of Appellant, p. 11). Such an interpretation is problematic for multiple reasons.

First, the court's instruction simply does not instruct the jury as Appellant argues – there is no "only if" language, nor any remote inference that only the listed possibilities may be selected to render a not guilty verdict. Second, *by Appellant's method of interpretation* Justice Ginsburg's adopted charge would be even more problematic than Judge Gravely's, as it uses the same sentence structure and syntax, but provides the jury with only *one* option as a means of rendering a not guilty verdict: the "real possibility of innocence" language.[2] Third, there is no error in the court articulating that mere suspicions or conjectures of guilt are insufficient to satisfy the beyond reasonable doubt standard. All the court has done is properly articulate the definition of "beyond reasonable doubt" and then articulate that suspicions and conjectures of guilt do not satisfy it – such is the logical equivalent of A ≠ B or C, which was readily obvious from the charge given. Mere suspicion is unquestionably the directed verdict standard, but there is nothing to suggest this standard was conflated with beyond reasonable doubt, or that the jury was otherwise led to apply any standard other than the beyond reasonable doubt standard as defined by established precedent. As such, there is no error on the part of the trial court in this matter.

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[2] Respondent is of the opinion that "real possibility of innocence" is an exceptional mirror image to "guilt beyond reasonable doubt" standard, such that no other instruction could detract from or dilute the burden of proof if a jury is so instructed. This is especially so in the context of a court mentioning mere suspicions or conjectures of guilt, as such measures are quite clearly an even lesser valuation of the evidence of guilt than the "real possibility of innocence" threshold. However, Respondent's sentiment is superfluous to the fact that the court's charge in this case simply does not do what Appellant suggests, which is to give license to the jury to find Appellant guilty on some conflated standard involving mere suspicion.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 28th day of May, 2024.

s/ W. Joseph Maye
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ATTORNEY FOR RESPONDENT

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CERTIFICATE OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent and Certificate of Compliance has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, May 28, 2024 to jdelany@sccid.sc.gov, and to her assistant at kwarren@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 28th day of May, 2024.

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