STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-212240

THE STATE,

Respondent,

vs.

DOUGLAS BRET BISHOP,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Initially, any issue with the trial judge's failure to instruct the jury on the "reasonable hypothesis" language from the traditional circumstantial evidence jury charge was not properly preserved for appellate review because Appellant never requested a jury charge containing that language during trial and, instead, requested a jury charge that did not constitute a correct statement of law. However, regardless of any issue preservation concerns, the trial judge committed no error in instructing the jury on the law of circumstantial evidence because he instructed the jury in a manner expressly adopted as an appropriate charge on circumstantial evidence by the South Carolina Supreme Court. Furthermore, even if the trial judge somehow erred in instructing the jury on circumstantial evidence, any error was entirely harmless because the trial judge's jury instructions as a whole fully and correctly instructed the jury on the applicable South Carolina law, including on the State's burden of proving Appellant's guilt beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant Douglas Bret Bishop was arrested following an investigation into allegations that Appellant was in possession of child pornography on a computer in his home. In June of 2011, the Union County grand jury indicted Appellant for two counts of second-degree sexual exploitation of a minor and two counts of third-degree sexual exploitation of a minor. On May 14, 2012, a jury trial was commenced in the Union County court of general sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of two counts of third-degree sexual exploitation of a minor. Following the verdict, the trial judge sentenced Appellant to a concurrent term of imprisonment of ten years for each of the offenses. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On May 6, 2010, Investigator Roxie Belue of the Union County Sheriff's Office spoke with the wife of Appellant Douglas Bret Bishop and obtained information about Appellant that led her to obtain a search warrant for Appellant's residence. (Tr. pp. 52-53; pp. 55-56). Investigator Belue then searched Appellant's residence and located a number of electronic devices capable of storing images and videos of child pornography, including a desktop computer in Appellant's living room. (Tr. pp. 56-60). Following the search, the desktop computer and other items taken from the home were transported to the SLED computer crime center for analysis. (Tr. p. 60; p. 78; p. 80; p. 120). Upon receiving those items, Bart Cave, a computer forensic analyst, successfully made a duplicate copy of the hard drives taken from Appellant's computer, and Colin Duncan, an expert in forensic computer analysis, analyzed the hard drives. (Tr. p. 120; p. 130; p. 150; p. 154). Based on his analysis, Duncan determined that one of the hard drives removed from Appellant's computer contained approximately thirty images and thirty videos of a graphic and sexually-explicit nature involving young teenage children and prepubescent males and females engaged in sexual acts with other children and with adults. (Tr. pp. 155-157). As a result of Duncan's discovery of the child pornography, Appellant was arrested and indicted for two counts of second-degree sexual exploitation of a minor and two counts of third-degree sexual exploitation of a minor, and he proceeded to trial. (Tr. pp. 6-7; Indictments).

During trial, evidence and testimony was presented establishing that numerous images and videos constituting child pornography had been downloaded and stored on Appellant's computer at various times on several different dates between February and April of 2010. (Tr. pp. 173-174; State's Ex. # 5A (Time Line)). After the State and

Appellant concluded their presentations of evidence in the case, the trial judge instructed the jury on the applicable law. (Tr. pp. 520-532). During his jury instructions, the trial judge explained to the jury that the State had to prove Appellant's guilt for the charged offenses beyond a reasonable doubt, that Appellant was presumed to be innocent, that Appellant was innocent until proven guilty beyond a reasonable doubt by the State, and that the burden of proof for conviction required proof beyond a reasonable doubt. (Tr. pp. 521-523). The trial judge then defined reasonable doubt for the jury as follows:

> Now the State is not required to prove his [guilt] beyond all or beyond every doubt. We know that it is not possible in our world to resolve all doubt or every doubt but the State must prove his guilt beyond a reasonable doubt. Our courts have defined a reasonable doubt as the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of one's guilt. If based on your consideration of the evidence you are firmly convinced that Mr. Bishop is guilty of one of the charges, you would find him guilty. On the other hand if you think there is a real possibility that he is not guilty as to the charges you would give him the benefit of that reasonable doubt and find him not guilty. He is entitled to the benefit of every reasonable doubt you have as to any issue in this case.

(Tr. p. 523). As his jury instructions continued, the trial judge explained to jury that there were two types of evidence – direct and circumstantial – and identified the differences between the types of evidence, instructing:

> There are two types of evidence which are generally presented in a trial such as this. Those two types are direct and circumstantial evidence. Direct evidence is testimony of someone who claims to have actual knowledge of the facts such as an eyewitness. It is evidence which establishes the main fact sought to be proven. Circumstantial evidence is evidence which immediately – I'm sorry. Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact. Circumstantial evidence 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 personal observation. Our law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence. Our law does not require a greater degree of certainty to circumstantial as opposed to direct evidence. What you should do in this case is weigh all of the

> evidence. If you are not convinced of Mr. Bishop's guilt beyond a reasonable doubt after weighing all the evidence you would find him not guilty.

(Tr. pp. 525-526). The trial judge then defined the elements of second-degree sexual exploitation of a minor and third-degree exploitation of a minor and reaffirmed that the State was required to prove the elements of the offenses beyond a reasonable doubt. (Tr. pp. 528-529). Finally, the trial judge explained the verdict forms to the jurors and again emphasized that they had to find Appellant not guilty if they determined the State failed to prove Appellant's guilt for the indicted offenses beyond a reasonable doubt. (Tr. p. 532).

Following the jury charge, the trial judge asked the parties if anything needed to be brought to his attention regarding his instructions. (Tr. p. 532). Defense counsel then asserted: "I'd like you to charge in order to be convicted of a crime based on circumstantial evidence the State must disprove all the other possible facts which could lead to a finding of innocence." (Tr. p. 533). However, the trial judge declined to give the requested charge while indicating that he used a charge that had been approved by the Supreme Court. (Tr. pp. 533-534). The jury then began its deliberations and subsequently convicted Appellant of two counts of third-degree sexual exploitation of a minor. (Tr. pp. 537-538). Following the verdict, the trial judge sentenced Appellant to an aggregate term of imprisonment of ten years. (Tr. p. 545).

Thereafter, defense counsel filed a motion for reconsideration seeking dismissal of the charges, a new trial, or a substantial reduction in Appellant's sentence. (Motion for Reconsideration, p. 1). In seeking that relief, defense counsel asserted: "The court failed to charge the proper charge on Circumstantial evidence. The use of circumstantial evidence was not properly explained to the jury and deprived the defendant of a fair

trial." (Motion for Reconsideration, p. 2). However, the trial judge disagreed and denied the motion in totality. (Order, pp. 1-2).

ARGUMENT

Initially, any issue with the trial judge's failure to instruct the jury on the "reasonable hypothesis" language from the traditional circumstantial evidence jury charge was not properly preserved for appellate review because Appellant never requested a jury charge containing that language during trial and, instead, requested a jury charge that did not constitute a correct statement of law. However, regardless of any issue preservation concerns, the trial judge committed no error in instructing the jury on the law of circumstantial evidence because he instructed the jury in a manner expressly adopted as an appropriate charge on circumstantial evidence by the South Carolina Supreme Court. Furthermore, even if the trial judge somehow erred in instructing the jury on circumstantial evidence, any error was entirely harmless because the trial judge's jury instructions as a whole fully and correctly instructed the jury on the applicable South Carolina law, including on the State's burden of proving Appellant's guilt beyond a reasonable doubt.

Appellant contends the trial judge erred in denying his requested charge on circumstantial evidence. In support of that contention, Appellant maintains that the trial judge's failure to instruct the jury in accordance with the traditional circumstantial evidence jury charge from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), violated his constitutional right to have the State prove his guilt beyond a reasonable doubt. Initially, although Appellant contends on appeal that the trial judge should have instructed the jury on the "reasonable hypothesis" language from the Edwards charge, Appellant **never** asked the trial judge to instruct the jury using that language. Instead, Appellant asked the trial judge to instruct the jury that "in order to be convicted of a crime based on circumstantial evidence[,] the State must disprove all the other possible facts which could lead a finding of innocence[,]" which was an incorrect statement of law. (Tr. p. 533). As a result, the trial judge committed no error in declining to instruct the jury in the manner that Appellant actually requested at trial, and Appellant's appellate argument is not preserved for appellate review since it was not raised to the trial judge. However, even assuming the issue was somehow properly preserved for appellate review, the trial judge would have committed no error had he declined to instruct the jury on the

"reasonable hypothesis" language from the Edwards charge because he instructed the jury on the law of circumstantial evidence in the manner expressly adopted as an appropriate charge on circumstantial evidence by our Supreme Court in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997). Furthermore, even if the trial judge somehow erred in instructing the jury on circumstantial evidence despite the fact that he did so in a judicially-approved manner, any error was entirely harmless because the trial judge's jury instructions as a whole properly explained the State's burden of proof to the jury and correctly and thoroughly defined reasonable doubt. Accordingly, the trial judge committed no error in instructing the jury in Appellant's case. Appellant's convictions should be affirmed.

STANDARD OF REVIEW

In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

ANALYSIS

Over fifty years ago, in State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955), the South Carolina Supreme Court addressed the distinction between a trial judge's consideration of circumstantial evidence at the directed verdict stage of a trial and a jury's consideration of circumstantial evidence during deliberations. Regarding the jury's consideration of circumstantial evidence, the Court instructed:

> [I]t is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused **to the exclusion of every other reasonable hypothesis**. It is not sufficient that they create a probability, though a strong one; and if, assuming them to be true, they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Id. (emphasis added). Regarding the trial judge's consideration of circumstantial evidence at the directed verdict stage, the Court explained:

> But on a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.

Id. at 329, 89 S.E.2d at 926. Thereafter, in State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989), the Supreme Court adopted the "reasonable hypothesis" language from Littlejohn as the appropriate standard to be charged to juries in cases involving circumstantial evidence.

Subsequent to the decision in Edwards, the Supreme Court considered the question of whether a trial judge committed reversible error in omitting the "reasonable hypothesis" language from a circumstantial evidence jury instruction in State v. Grippon,

327 S.C. 79, 81, 489 S.E.2d 462, 462-463 (1997). During Grippon's trial, the trial judge refused Grippon's request to instruct to the jury on the "reasonable hypothesis" language because he interpreted that language as shifting the burden of proof from the prosecution to Grippon. Id. at 81, 489 S.E.2d at 463. On appeal, the Court concluded that the trial judge erroneously determined he was required to omit the "reasonable hypothesis" language from his jury charge and noted that it had recently approved the use of such language in instructing a jury. Id. However, the Court ruled that the trial judge did not err in instructing the jury in Grippon's case because the jury instructions as a whole adequately apprised the jury of the proper legal standard to be applied in deciding the case. Id. at 83, 489 S.E.2d at 463. The Court further determined the omission of the "reasonable hypothesis" language did not affect the burden of proof. Id. at 83, 489 S.E.2d at 463-464. Significantly, the Court then addressed the propriety of the "reasonable hypothesis" language itself and concluded the charge was unnecessary in cases where the jury had been properly instructed on the reasonable doubt standard. Id. at 83, 489 S.E.2d at 464. Thereafter, the Court recommended the following jury charge for use in cases where circumstantial evidence was presented and the jury was properly instructed on reasonable doubt:

> 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 asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. 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 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.

Id. at 83-84, 489 S.E.2d at 464.

Subsequently, following the decision in Grippon, the Supreme Court again considered the issue of the propriety of a trial judge's jury charge on circumstantial evidence in State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In that case, the trial judge instructed the jury on circumstantial evidence in a manner consistent with the recommended charge from Grippon and denied Cherry's request to instruct the jury on the "reasonable hypothesis" language from Littlejohn and Edwards. Cherry, 361 S.C. at 591-592, 606 S.E.2d at 476-477. On appeal, the Court noted that the decision in Grippon clearly determined the "reasonable hypothesis" language was not a **required** jury instruction on circumstantial evidence. Cherry, 361 S.C. at 597, 606 S.E.2d at 480. The Court then determined that the charge from "Grippon is the sole remaining charge to be utilized by the courts of [South Carolina] in instructing juries in cases relying, in whole or in part, on circumstantial evidence." Id. In reaching that conclusion, a majority of the Court concluded that "the reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not." Id. at 601, 606 S.E.2d at 482; see also Holland v. United States, 348 U.S. 121, 139-140 (1954) ("The petitioners assail the refusal of the trial judge to instruct that where the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt. There is some support for this type of instruction in the lower court decisions, but the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect[.]" (citations omitted)); see, e.g., State v. Adcock, 310 N.C. 1, 36, 310 S.E.2d 587, 607 (N.C. 1984) ("We are of the opinion that the reasonable doubt instruction and the 'moral certainty' circumstantial evidence instruction encompass the

same measure of proof. Therefore, recognizing that the purpose of a charge to the jury is to clarify the issues and apply the law to the evidence, we conclude that the giving of the 'moral certainty' or the 'reasonable hypothesis' instruction in addition to the reasonable doubt instruction would tend to confuse the jury by requiring them to engage in an unnecessary and repetitious application of the same measures of proof to the evidence in the case. We hold that an instruction on circumstantial evidence to the effect that a conviction may not be based upon it unless the circumstances point to guilt and exclude to moral certainty every reasonable hypothesis except that of guilt is unnecessary when a correct instruction on reasonable doubt is given.").

Most recently, in State v. Logan, 405 S.C. 83, ___, 747 S.E.2d 444, 778 (2013), a case decided **after** Appellant's trial, the Supreme Court again considered whether the circumstantial evidence jury instruction from Grippon remained an appropriate statement of the law. In that case, Logan asserted that the charge from Grippon was invalidated by the Court's more decisions in cases involving challenges to the denials of directed verdict motions. Logan, 405 S.C. at ___, 747 S.E.2d at 448. However, the Court disagreed and found that the trial judge committed no error in instructing the jury on the law of circumstantial evidence in a manner consistent with the charge articulated in Grippon. Logan, 405 S.C. at ___, 747 S.E.2d at 449. The Court then went on to propose a new circumstantial evidence jury charge containing the following language:

> 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. at ___, 747 S.E.2d at 452. Regarding the newly-articulated charge, the Court instructed that the charge should be provided "when so requested by a defendant[.]" Id. Thus, the Court modified its earlier holdings in Grippon and Cherry to allow trial judges to instruct juries on circumstantial evidence using its proposed language **if** that language was requested by a defendant. Logan, 405 S.C. at ___, 747 S.E.2d at 453.

In the case sub judice, the trial judge committed no error in instructing the jury because he properly charged the jury on the relevant and applicable law. Specifically, the trial judge instructed the jury that Appellant was presumed innocent and that the State had the burden of proving Appellant's guilt for the indicted offenses beyond a reasonable doubt and thoroughly and completely defined reasonable doubt for the jury. Furthermore, when instructing the jury on circumstantial evidence, the trial judge explained the relevant law to the jury in the manner specifically recommended by our Supreme Court in Grippon and expressly adopted as a correct charge on circumstantial evidence by our Supreme Court in Cherry. See Cherry, 361 S.C. at 601, 606 S.E.2d at 482 ("[W]e hold that the recommended language in Grippon is the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction."); see also Logan, 405 S.C. at ___, 747 S.E.2d at 449 ("[T]he trial court did not err in providing a circumstantial evidence charge consistent with Grippon."). Thus, by instructing the jury on all of the applicable law and in a

manner expressly recognized by our Supreme Court as an appropriate statement of the law on circumstantial evidence, the trial judge committed no error in instructing the jury during Appellant's trial. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472 ("[T]he trial court is required to charge only the current and correct law of South Carolina.").

In arguing the trial judge's jury instructions were erroneous, Appellant contends on appeal that the trial judge's alleged refusal to instruct the jury pursuant to the circumstantial evidence charge adopted in Edwards violated his constitutional rights by denying him the right to have the State prove his guilt beyond a reasonable doubt. However, the trial judge did not refuse a request for such a charge because one was **never** made during Appellant's trial. Instead, as opposed to asking the trial judge to instruct the jury on the "reasonable hypothesis" language from the charge adopted in Edwards, defense counsel asked the trial judge to instruct the jury that "in order to be convicted of a crime based on circumstantial evidence[,] the State must disprove all the other possible facts which could lead a finding of innocence." (Tr. p. 533). Critically, that requested language was far different from the "reasonable hypothesis" language from Edwards and constituted an incorrect statement of the State's burden of proof, which was simply to prove Appellant's guilt beyond a reasonable doubt. See Burr v. Florida, 474 U.S. 879, 880-881 (1985) ("[T]he beacon of the truth-seeking process in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.] . . . [T]he 'reasonable doubt' standard merely attempts 'to exclude as nearly as possible the likelihood of an erroneous judgment.' Hence, 'beyond a reasonable doubt' cannot ensure that a jury will not convict a defendant without foreclosing all possibility of innocence in the jurors' own minds." (citations omitted)); see also State v. Hackett, 215 S.C. 434, 449, 55 S.E.2d 696, 703 (1949) (instructing that proof beyond a reasonable doubt is a degree of proof

distinguishable from an absolute certainty); see, e.g., Nangreave v. State, 318 Ga. App. 437, 439, 734 S.E.2d 203, 205 (Ga. Ct. App. 2012) ("The State is not required to remove every possibility of innocence of the crime charged, and it is not required to disprove bare possibilities that the crime could have been committed by someone else."); State v. Frieze, 3 Neb. App. 263, 272, 525 N.W.2d 646, 652 (Neb. Ct. App. 1994) ("[T]he State is required to establish the defendant's guilt for the crime charged, but is not required to disprove every hypothesis consistent with the defendant's innocence."); State v. Williams, 330 N.C. 579, 587, 411 S.E.2d 814, 819 (N.C. 1992) ("The State need not disprove every possibility that could exonerate the defendant. The State need only present substantial evidence of the defendant's guilt." (citation omitted)). Thus, because Appellant did not request a charge on the "reasonable hypothesis" language from Edwards during trial, Appellant cannot now complain about the failure to give that charge for the first time on appeal. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Moreover, because the charge that Appellant **did** request during trial was an incorrect statement of law, the trial judge committed no error in declining to instruct the jury in the manner actually requested. See State v. Marin, 404 S.C. 615, 620, 745 S.E.2d 148, 151 (Ct. App. 2013) ("[T]here is no error of law in refusing to give a specific request to charge where (1) **the charge**

requested is an incorrect statement of law, or (2) the trial court used language different from that requested, but considering the charge as a whole, the charge as given stated the requested principle of law correctly." (emphasis added)).

However, even assuming the issue was properly preserved and Appellant's requested charge could somehow be construed as a request for the "reasonable hypothesis" language from the Edwards charge, the trial judge still committed no error in instructing the jury on circumstantial evidence during Appellant's trial. Importantly, just like the trial judge in Logan's case, the trial judge in Appellant's case instructed the jury in a manner consistent with the approved jury charge from Grippon. See Logan, 405 S.C. at ___, 747 S.E.2d at 447 (identifying the circumstantial jury instruction given in Logan's case, which contained virtually identical language to the circumstantial evidence jury instruction given in Appellant's case). As a result, the trial judge properly instructed the jury on the law of circumstantial evidence. See id. at ___, 747 S.E.2d at 449 ("[T]he trial court did not err in providing a circumstantial evidence charge consistent with Grippon."). Notably, the Supreme Court in Logan did **not** find that the circumstantial evidence charge from Grippon reduced the State's burden of proof or constituted an incorrect statement of the law. See Logan, 405 S.C. at ___, 747 S.E.2d at 452-453 ("This holding does not prevent the trial court from issuing the circumstantial evidence charge provided in Grippon and Cherry."). Instead, the Supreme Court simply proposed a new circumstantial evidence charge that could appropriately be given upon request that, significantly, did **not** include the "reasonable hypothesis" language from the Edwards charge that Appellant now, for the first time on appeal, contends should have been given. See Logan, 405 S.C. at ___, 747 S.E.2d at 452 (providing a new circumstantial evidence jury instruction that should be given when requested that did **not** include any "reasonable

hypothesis" language). Thus, as Appellant did not request any language similar to the language from the circumstantial evidence charge proposed by the Supreme Court in Logan, the trial judge committed no error in instructing the jury on the law of circumstantial evidence in the manner adopted by the Supreme Court in Grippon.

Furthermore, even assuming the trial judge somehow erred in instructing the jury on circumstantial evidence, any error was entirely harmless because the trial judge fully and correctly instructed the jury on the State's burden of proving Appellant's guilt beyond a reasonable doubt. Specifically, the trial judge instructed the jury that Appellant was presumed to be innocent, explained that the burden of proof resided solely with the State, and thoroughly defined reasonable doubt for the jury. See Grippon, 327 S.C. at 82-83, 489 S.E.2d at 463-464 ("[T]he instruction actually given by the trial judge, as a whole, adequately conveyed the level of proof required to find appellant guilty. The trial court repeatedly charged the State had the burden of proving the defendant guilty beyond a reasonable doubt, and reasonable doubt was correctly defined. Therefore, the jury was adequately apprised of the proper legal standard, and the omission of this 'reasonable hypothesis' phrase from the circumstantial evidence charge did not affect the burden of proof."). Therefore, because the trial judge's jury instructions properly conveyed the applicable law to the jury, "any conceivable error was harmless beyond a reasonable doubt" assuming one occurred. Logan, 405 S.C. at ___, 747 S.E.2d at 449, n. 8. As a result, there is no proper basis to reverse Appellant's convictions based on the trial judge's jury instructions. See State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

In conclusion, the trial judge in Appellant's case properly and completely instructed the jury on the applicable law. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). In doing so, the trial judge charged the jury on the law regarding circumstantial evidence in a manner consistent with the instructions of the Supreme Court in Grippon and Cherry while correctly defining reasonable doubt for the jury, and nothing more was constitutionally required of the trial judge to ensure that the jury was apprised of the State's burden of proving Appellant's guilt beyond a reasonable doubt.[1] See Victor v. Nebraska, 511 U.S. 1, 5 (1994) (instructing that a trial judge in a criminal case is **only** constitutionally required to instruct the jury on the necessity that the defendant's guilt be proven beyond a reasonable doubt and that no specific language or wording is required to be used to advise the jury of that burden of proof); State v. Longworth, 313 S.C. 360, 372, 438 S.E.2d 219, 225 (1993) (holding no specific charge on reasonable doubt is mandated or required); see also State v. Rayfield, 357 S.C. 497, 505, 593 S.E.2d 486, 490 (Ct. App. 2004) ("The trial court is required to charge the correct law of South Carolina."). For the foregoing reasons, the jury instructions presented in Appellant's case do not warrant a reversal of Appellant's convictions. See Ezell, 321 S.C. at 425, 468 S.E.2d at 681 ("A jury charge which is substantially correct and covers the law does not require reversal."). Appellant's convictions should be affirmed.

[1] Notably, Appellant has not challenged the trial judge's denial of his directed verdict motion on appeal, and, thus, the trial judge's ruling on the sufficiency of the evidence is the law of the case. See State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (holding that an unchallenged ruling is the law of the case); see also State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) ("In his appellate brief, Fripp does not dispute the correctness of the trial court's ruling that he opened the door to Officer Heany's hearsay testimony. Therefore, that ruling is the law of the case.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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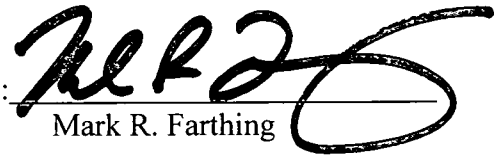
BY: 
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ATTORNEYS FOR RESPONDENT

October 4, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

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vs.

DOUGLAS BRET BISHOP,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) Trial Transcript, Pages 1, 6-7, 28, 42-133, 137-247, 253-393, 368-387, 391-417, 430-479, 485-534, 537-538, and 541-546;

(2) Indictments;

(3) Sentencing Sheets;

(4) Motion for Reconsideration, dated May 18, 2012;

(5) Order, dated May 22, 2012; and

(6) State's Ex. # 5A (Time Line).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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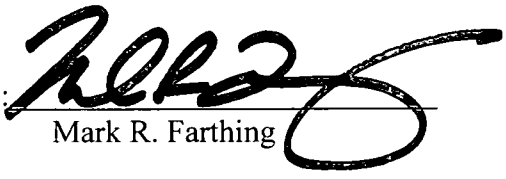
MARK R. FARTHING
Assistant Attorney General

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 4, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2012-212240

THE STATE,

Respondent,

vs.

DOUGLAS BRET BISHOP,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 4th day of October, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

October 4, 2013

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Douglas Bret Bishop – Appellate Case No. 2012-212240

Dear Ms. Hackett:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services