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February 5, 2020

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SC Court of Appeals

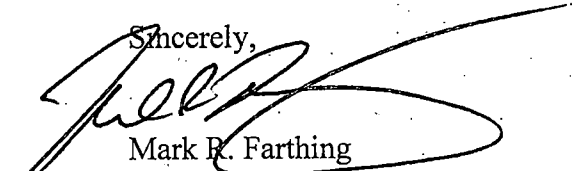
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RE: State v. Victoria Lorraine Sanchez – Appellate Case No. 2018-002163

Dear Mr. Ruffin:

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

Sincerely,



Mark R. Farthing
Senior Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: ~~Honorable Jenny A. Kitchings (original enclosed)~~
Victim Advocacy Division

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

RECEIVED

FEB 05 2020

SC Court of Appeals

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly declined to suppress the vast quantity of heroin found hidden inside a secret compartment installed above Appellant's vehicle's fuel tank because the deputy who stopped Appellant's vehicle did not unreasonably prolong the stop beyond the time necessary to complete its mission prior to obtaining Appellant's voluntary consent for a search, the deputies who proceeded to search Appellant's vehicle properly began to do so only after valid consent had been obtained, and one of the deputies spotted the vehicle's secret compartment during the course of the search, which established a probable cause basis for a search of that compartment even without Appellant's consent.

II.

The trial judge properly denied Appellant's directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing more than a million dollars' worth of heroin was found hidden inside Appellant's vehicle, supported a rational and logical conclusion Appellant was in knowing possession of the vast quantity of valuable contraband contained within her own vehicle and, thus, was guilty as charged, which required the trial judge to submit her case to the jury.

III.

Even assuming the trial judge erred by declining to instruct the jury on circumstantial evidence in one of the manners proposed by defense counsel, any conceivable error was harmless beyond a reasonable doubt because the trial judge's jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Appellant could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt.

STATEMENT OF THE CASE

In June of 2017, Appellant Victoria Lorraine Sanchez was arrested after roughly fifteen pounds of heroin were found during the course of a traffic stop hidden inside a secret compartment installed underneath her vehicle's rear seat. In December of 2017, the Greenville County Grand Jury indicted Appellant for one count of trafficking in heroin and one count of unlawful conduct towards a child. On December 4, 2018, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Letitia H. Verdin, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of thirty-two years for trafficking in heroin and ten years for unlawful conduct towards a minor. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

On June 28, 2017, Master Deputy David Harrison, a highly-experienced member of the Greenville County Sheriff's Office's interdiction unit, was alerted by an agent from the United States Department of Homeland Security about a particular silver Kia that was actively travelling—and being followed—along Interstate 85 while headed in the direction of Greenville County.¹ (Tr. pp. 39-40; pp. 61-64; pp. 109-110; p. 146; pp. 159-162; pp. 164-165). The agent further indicated the identified vehicle had been seen at a suspected stash house in Atlanta, Georgia, just before it began travelling along the highway, and he asked Master Deputy Harrison if his unit could stop the vehicle when they encountered it in the event they could find a legitimate reason for doing so. (Tr. p. 40; pp. 48-49; pp. 63-64; pp. 109-110). The deputy then relayed the information provided by the agent to the other members of the interdiction unit, and they all waited for the vehicle to arrive in their jurisdiction. (Tr. p. 40; pp. 48-49; pp. 63-64).

Around 8:00 p.m. to 8:15 p.m. later that evening, Deputy Andrew Reese, another member of the Greenville County Sheriff's Office's interdiction unit, spotted the identified vehicle, which had a Georgia license tag, just as it entered Greenville County and subsequently observed its driver commit several illegal traffic infractions, including by following another vehicle too closely in a manner that made the deputy believe the driver was suspiciously attempting to “blend in” with the other traffic on the highway.² (Tr. pp. 38-39; p. 56; p. 64; pp. 108-111;

¹ Regarding his background, Master Deputy Harrison had worked in law enforcement for over seventeen years, had received “hundreds” of hours of specialized training on interdiction, had been specifically trained on recognizing and identifying secret compartments, and had personally conducted numerous searches of vehicles. (Tr. pp. 61-63; p. 71; pp. 159-164). Based on his extensive knowledge and experience, Master Deputy Harrison further served as an instructor for other law enforcement officers on the topic of interdiction. (Tr. pp. 62-63).

² By that time, Deputy Reese had worked in law enforcement for approximately three to four years, had received both in-state and out-of-state specialized training on interdiction, and had

Defense Ex. # 1 (Recording of Stop)). Based on the observed traffic infractions, Deputy Reese activated his patrol car's blue lights to initiate a stop, and the vehicle's driver responded by stopping the vehicle along the side of the highway. (Tr. p. 40; pp. 111-112; Defense Ex. # 1).

Once the vehicle had stopped, Deputy Reese approached it and immediately noticed the "overwhelming" scent of air fresheners emanating from its interior. (Tr. p. 40; p. 116; Defense Ex. # 1). Beyond that, he further noticed there were two cell phones inside the vehicle despite the fact the only occupants were the driver and a small child, there were multiple cans of energy drink present, and the vehicle's key ring had no personal keys on it, which were all factors that raised the deputy's suspicions. (Tr. pp. 41-42; p. 47; p. 114; p. 116). Deputy Reese then explained to the vehicle's driver, Appellant Victoria Lorraine Sanchez, why he initiated the stop, asked where she was going, and requested her driver's license, registration information, and insurance information. (Tr. pp. 40-41; p. 53; p. 112; p. 116; Defense Ex. # 1). In response to the deputy's queries, Appellant stated she was headed to New Jersey, admitted she did not have a driver's license, and indicated the vehicle, which she claimed to have purchased just a day earlier, was not registered in her name. (Tr. p. 40; pp. 112-113; Defense Ex. # 1). Appellant also provided the deputy with a Texas identification card, a registration card indicating the vehicle was suspiciously registered in a third-party's name, insurance information indicating the vehicle was suspiciously insured by an entirely different third-party, and a bill of sale indicating Appellant bought the vehicle on the preceding day. (Tr. pp. 112-113; p. 131; pp. 149-150). Deputy Reese then asked Appellant to step out of the vehicle, and she accompanied him to his patrol car while he completed the necessary checks. (Tr. p. 42; p. 117; Defense Ex. # 1).

been specifically trained in regard to the recognition of indicators of criminal behavior. (Tr. p. 38; pp. 107-108).

For roughly the next seven minutes, Deputy Reese questioned Appellant while simultaneously attempting to verify the information she had supplied.³ (Tr. p. 113; pp. 117-118; Defense Ex. # 1). During their conversation, Appellant, who again candidly acknowledged she did not have—and had never had—a driver’s license, indicated she was from Texas, had taken a flight to Georgia a week earlier to visit with family, and had been staying with a cousin. (Tr. pp. 42-43; pp. 112-113; Defense Ex. # 1). While in Georgia, Appellant claimed she bought a vehicle from an individual her cousin knew, and she alleged she paid just \$4,000 towards its purchase price of \$10,000 before driving off with it, which seemed highly unusual and suspicious to the deputy.⁴ (Tr. p. 41; pp. 113-114; p. 119; Defense Ex. # 1). She further asserted she was heading to New Jersey for “probably like” two weeks with her three-year-old daughter to “have fun,” stated she had family living there, and also indicated she had some unspecified tickets to care of in that state. (Tr. p. 43; pp. 113-114; p. 151; Defense Ex. # 1). Additionally, Appellant claimed she had been working on and off as a cook at Applebee’s for a short period of time, had simply not gone into work, and was unsure if she would be allowed to return to her job. (Tr. p. 47; pp. 118-119; Defense Ex. # 1). Furthermore, Appellant stated she had two other children who were back in Texas with her boyfriend of roughly one year, and she asserted she did not bring them along on her trip because they were “too much of a hassle.” (Tr. p. 43; pp. 114-115; Defense Ex. # 1). Beyond that, Appellant expressly confirmed she was responsible for everything in the vehicle. (Defense Ex. # 1).

³ Throughout the deputy’s conversation with Appellant, the recording of the stop depicts what appears to be the sounds of the deputy typing on his patrol car’s computer, which was “not super fast,” and shuffling through paperwork. (Tr. p. 118; Defense Ex. # 1).

⁴ Supporting the deputy’s suspicions, the bill of sale Appellant provided to Deputy Reese did not contain any information indicating Appellant only paid a portion of the \$10,000 purchase price at the time she bought the vehicle. (State’s Ex. # 4 (Bill of Sale)).

Thereafter, just over ten minutes into the stop, Deputy Reese informed Appellant he was going to step out of his patrol car and explain the warning citation to her. (Tr. pp. 119-120; Defense Ex. # 1). The deputy then talked with Appellant for slightly less than a minute about the warning citation and the need for her to properly insure her vehicle in her own name. (Tr. pp. 43-44; p. 53; pp. 119-120; Defense Ex. # 1). Immediately after that, Deputy Reese asked Appellant for permission to conduct a search of her vehicle. (Tr. pp. 41-44; pp. 46-47; p. 54; p. 57; p. 114; pp. 116-118; p. 120; Defense Ex. # 1). Almost instantaneously in response, Appellant unequivocally and unconditionally granted the requested consent without any hesitation. (Tr. p. 44; p. 54; p. 57; p. 120; Defense Ex. # 1).

At that point, Deputy Reese asked Appellant to remove her child from the vehicle, and Appellant complied with that request. (Tr. p. 43; p. 121; Defense Ex. # 1). Deputy Reese then indicated he was going to get some assistance from other members of his team to speed up the search process, and, upon doing so, he began a search of the vehicle's trunk, which contained only a small amount of luggage for Appellant and her daughter, a little less than thirteen minutes after the stop had first begun. (Tr. pp. 45-46; p. 65; p. 121; Defense Ex. # 1). Just seconds after that, Master Deputy Harrison arrived on the scene, and Deputy Reese alerted him of the information he had uncovered up to that point, which led Master Deputy Harrison to suspect drugs might be hidden inside Appellant's vehicle. (Tr. p. 46; pp. 65-66; p. 121; pp. 166-167; Defense Ex. # 1). The two deputies then resumed the search, and, roughly five to six minutes into it, Master Deputy Harrison looked underneath the vehicle and saw a secret compartment that appeared to have been recently installed above the vehicle's fuel tank. (Tr. p. 65; pp. 71-72; pp. 67-69; p. 122; p. 156; p. 170; pp. 174-175; Defense Ex. # 1).

Once the secret compartment had been spotted, Deputy Reese continued looking inside the passenger compartment of the vehicle for a few minutes while Master Deputy Harrison retrieved some tools to aid in the removal of the vehicle's rear seat, which was positioned directly over the access cover for the secret compartment. (Tr. p. 45; pp. 69-70; p. 171; Defense Ex. # 1). Shortly after that, the deputies removed the rear seat, found the access cover for the compartment, and opened it. (Tr. p. 45; p. 59; pp. 69-70; p. 122; p. 156; pp. 170-172; Defense Ex. # 1). Upon doing so, they found numerous wrapped and vacuum-sealed packages of a brown powdery substance that was ultimately determined to constitute just under seven kilograms—or roughly fifteen pounds—of heroin hidden inside the compartment.⁵ (Tr. p. 46; p. 74; p. 122; p. 125; p. 127; pp. 141-142; p. 172; p. 200; Defense Ex. # 1). At that point, Appellant was swiftly placed under arrest.⁶ (Tr. p. 123; pp. 128-129; Defense Ex. # 1).

Subsequently, Appellant was indicted for trafficking in heroin and unlawful conduct towards a child, and she elected to proceed forward to trial. (Tr. p. 6; Indictments). During the course of trial, Master Deputy Harrison and Deputy Reese recounted the circumstances of the stop that led to the discovery of Appellant's enormous hidden stash of heroin, a recording of the stop was admitted into evidence and played for the jury, and the drugs were admitted into evidence over defense counsel's objection. (Tr. pp. 107-156; pp. 159-176; p. 201). Ultimately, at the conclusion of trial, the jury convicted Appellant as indicted, and the trial judge sentenced her to an aggregate sentence of thirty-two years. (Tr. p. 265; p. 269).

⁵ During trial, expert testimony was presented establishing Appellant's heroin, which had been concealed in seventy separate blocks, had an "uncut" value of roughly \$1,730,000 and a "cut" value of between \$5,000,000 and \$7,000,000. (Tr. p. 202; pp. 209-210; pp. 213-214; State's Ex. # 1 (Photograph); State's Ex. # 2 (Photograph)).

⁶ Following her arrest, Appellant was transported to a detention center, and a \$20 bill with cocaine residue on it was found underneath Appellant's bra. (Tr. p. 129; p. 199).

ARGUMENT

I.

The trial judge properly declined to suppress the vast quantity of heroin found hidden inside a secret compartment installed above Appellant's vehicle's fuel tank because the deputy who stopped Appellant's vehicle did not unreasonably prolong the stop beyond the time necessary to complete its mission prior to obtaining Appellant's voluntary consent for a search, the deputies who proceeded to search Appellant's vehicle properly began to do so only after valid consent had been obtained, and one of the deputies spotted the vehicle's secret compartment during the course of the search, which established a probable cause basis for a search of that compartment even without Appellant's consent.

Appellant contends the trial judge committed reversible error by denying her motion to suppress the evidence discovered during the course of the stop of her vehicle. In support of that contention, Appellant maintains the deputy who conducted the stop allegedly unreasonably prolonged the stop beyond the time reasonably required to complete its mission by asking off-topic questions, the deputy purportedly did not possess the reasonable suspicion necessary to justify an extension of the stop, the consent provided was the involuntary product of an unreasonably-prolonged stop, and the deputies' search of the vehicle exceeded the scope of any consent granted. To the contrary, the deputy who lawfully stopped Appellant's vehicle did not prolong the time period required to complete the stop's mission through his questioning of Appellant because it was conducted at the same time he was checking the information she provided and preparing a warning citation, which meant the contemporaneous questioning did not add any time to the stop. Likewise, at the time the deputy requested Appellant's consent for a search, the stop had not yet ended because the deputy could not permit Appellant to drive her vehicle away from the scene since neither she nor anyone in her vehicle had a driver's license. Under those circumstances, the deputy did not extend the stop—unconstitutionally or otherwise—prior to asking for and obtaining voluntary consent from Appellant. Furthermore, since Appellant did not object to the deputies' search or attempt to place any limitations on the

consent she provided, the deputies did not exceed the scope of Appellant's consent by opening the secret compartment installed below her vehicle's rear seat, and, even if Appellant somehow had not consented to a search of that compartment, the deputies nonetheless had a probable cause basis to search it as soon as one of them saw it from outside the vehicle. Accordingly, because the stop of Appellant's vehicle was not unreasonably prolonged beyond its mission before Appellant voluntarily provided consent for a search and because the consent-based search the led to the discovery of her hidden stash of heroin was properly and reasonably conducted, the trial judge did not abuse her broad discretion or commit any other error of law by denying Appellant's suppression motion. Appellant's convictions should be affirmed.

Relevant Facts

Towards the outset of Appellant's trial, defense counsel moved to suppress all the evidence discovered during the course of the stop due to an alleged violation of Appellant's constitutional rights. (Tr. pp. 35-36). In response to that motion, the trial judge conducted an in limine hearing on the matter. (Tr. pp. 36-37).

During the course of the hearing, Deputy Reese testified about the stop of Appellant's vehicle, which he had been advised had left a "known area" for drug activity in Atlanta before heading in his direction, and indicated he initiated the stop after observing Appellant commit several traffic infractions. (Tr. pp. 38-40; pp. 48-49). Once the vehicle was stopped, Deputy Reese stated he approached it and made contact with Appellant, who did not have a driver's license but did provide an identification card from Texas along with vehicle registration information in one man's name and insurance information in another man's name. (Tr. pp. 39-40; p. 53). Based on that, Deputy Reese stated he proceeded to question Appellant to find out if she actually had authorization to drive the vehicle, and, during the course of their interactions, he

observed a number of indicators of criminal activity. (Tr. pp. 41-47). Specifically, Deputy Reese indicated his suspicions were raised by the following factors: (1) several cans of energy drink were present; (2) Appellant, who was the only person present in the vehicle other than a young child, was in possession of two cell phones; (3) no personal keys were present on the vehicle's key ring; (4) Appellant was travelling from a known drug hub; (5) the itinerary provided by Appellant seemed inconsistent with her claimed employment; (6) Appellant was travelling with one child while leaving two others with her boyfriend; and (7) the vehicle was not full of luggage as would be expected based on the weeks-long travel plans provided. (Tr. pp. 41-47). Based on the factors he detected, the officer stated he requested—and obtained—consent from Appellant, who remained “stoic” throughout the stop, after he explained—but did not hand—the warning citation to her roughly twelve minutes after initiating contact with her, which ultimately led to the discovery of the hidden stash of heroin.⁷ (Tr. pp. 43-46; pp. 54-55; p. 57).

In addition to that testimony, Master Deputy Harrison, who was a highly-experienced officer by that point, recounted he was initially alerted about Appellant's vehicle by an agent from the Department of Homeland Security and was informed the vehicle had been observed leaving a suspected stash house in Atlanta before heading in the direction of Greenville County on Interstate 85. (Tr. pp. 61-64). Master Deputy Harrison indicated he then relayed the information provided by the agent to the members of his interdiction team and asked Deputy Reese to initiate a stop of Appellant's vehicle once it reached their jurisdiction. (Tr. p. 64). After that, Master Deputy Harrison stated he responded to the scene of the stop when requested by Deputy Reese, spoke with the deputy, and received information that made him suspect drugs were hidden in a secret compartment inside Appellant's vehicle. (Tr. pp. 65-66). Specifically,

⁷ Later on during his trial testimony, Deputy Reese described Appellant's demeanor throughout the stop as “uncomfortably uncomfortable.” (Tr. p. 151).

Master Deputy Harrison affirmed he suspected drugs were present because: (1) the vehicle was newly-purchased and travelling a long distance between two “source” locations for drugs; (2) the vehicle was registered to one man and insured by another while neither of those men were present; and (3) the non-flashy nature of the vehicle suggested it had been chosen to “blend in” with the other vehicles on the roadway. (Tr. p. 66). Master Deputy Harrison indicated he then joined in the search of the vehicle, looked underneath it, and quickly noticed signs indicating a secret compartment, which he noted was only used for the purpose of hiding or smuggling contraband, had recently been installed. (Tr. pp. 65-69; pp. 71-72). In light of that discovery, Master Deputy Harrison stated he proceeded to open the secret compartment’s cover and found Appellant’s stash of contraband inside. (Tr. pp. 69-70; p. 74).

After that testimony was presented and a recording of the stop was played for the trial judge, defense counsel argued for suppression by first contending there was no probable cause for the initiation of the stop in light of the fact Appellant’s traffic infractions were not recorded, and he further contended the trial judge should announce a per se rule holding there must be recorded evidence of a traffic violation before a pretextual traffic stop could be found to be valid. (Tr. pp. 35-36; p. 52; pp. 75-76; p. 91). However, the trial judge rejected defense counsel’s contentions and determined the stop was supported by probable cause in light of Deputy Reese’s testimony about the traffic infractions he personally observed. (Tr. pp. 76-77).

Next, defense counsel contended the evidence found during the course of the stop should be suppressed because the deputy allegedly did not possess reasonable suspicion of criminal activity and purportedly extended the stop beyond the time reasonably required to complete its mission through his off-topic questioning of Appellant. (Tr. pp. 35-36; pp. 77-80). Furthermore, defense counsel contended Appellant’s consent was the product of an unlawful extension of the

stop in light of the fact the deputy did not fully present Appellant with the warning citation until after asking for consent to search. (Tr. pp. 35-36; pp. 84-86). In rebuttal, the solicitor contended the stop, which only lasted approximately eleven minutes before consent for a search was obtained, was not extended beyond the time required to complete its mission because the deputy's questioning of Appellant took place entirely while the deputy was audibly completing the necessary checks on his patrol car's computer and preparing a warning citation for Appellant, which meant it occurred wholly contemporaneously with the deputy's completion of the stop's mission. (Tr. pp. 80-81). Beyond that, the solicitor contended the deputy nonetheless possessed reasonable articulable suspicion of criminal activity sufficient to justify an extension of the stop under the totality of the circumstances, which included the information establishing the vehicle was observed leaving a stash house, the fact Appellant did not have a driver's license, the presence of multiple energy drink cans in the vehicle, the fact the vehicle was insured by an unknown third-party, and the bizarre information Appellant provided as to how she came to be in possession of the vehicle. (Tr. pp. 81-83). After considering the matter, the trial judge found the stop was not unreasonably prolonged and further determined the deputy's acts of both conducting off-topic questioning and requesting consent were warranted because the circumstances involved, including the "very concerning" fact Appellant had no driver's license, reasonably aroused the deputy's suspicions. (Tr. pp. 83-84; p. 87). Likewise, the trial judge concluded the "immediate" and "unequivocal" consent Appellant provided during the course of the stop was voluntarily given. (Tr. pp. 86-87).

Finally, defense counsel argued the suppression motion should be granted because the deputies purportedly exceeded the scope of Appellant's consent by removing the vehicle's back seat and opening the secret compartment's cover. (Tr. pp. 35-36; pp. 87-88). However, once

again, the trial judge rejected defense counsel's argument and found the deputies did not exceed the scope of Appellant's consent in light of the fact Appellant, who was present throughout the search, did not object to or seek to limit the search at any point. (Tr. p. 89). Moreover, the trial judge noted an independent need for a more extensive search arose as soon as one of the officers looked underneath the vehicle and observed the secret compartment. (Tr. p. 89).

Following the denial of the suppression motion, the trial proceeded forward, and Deputy Reese again testified about the circumstances of his stop of Appellant's vehicle, which culminated in the discovery of Appellant's hidden stash of pounds upon pounds of heroin. (Tr. pp. 107-156). During that testimony, Deputy Reese confirmed his questioning of Appellant occurred entirely during the period in which he was attempting to check the information she provided to him, and he further discussed why the things he detected during the stop—such as the “overwhelming” odor of air fresheners emanating from Appellant's vehicle—raised his suspicions. (Tr. pp. 111-118; p. 131). Likewise, Master Deputy Harrison recounted the circumstances of the stop, a recording of the stop was played for the jury, and Appellant's heroin was admitted into evidence over defense counsel's renewed objection. (Tr. pp. 159-176; pp. 144-145; pp. 200-202).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In a search and seizure case, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if

there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (“[A]ppellate courts must affirm if there is any evidence to support the trial court’s ruling.”); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (“When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.” (citation and internal quotations omitted)). Critically, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

Analysis

A. Reasonableness of the Traffic Stop and Ensuing Detention

Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution protect the right of the people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; see S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]”). Significantly, based on their plain wording, the touchstone of those constitutional provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”). As a result, *only* unreasonable

searches and seizures are constitutionally prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”); see also Heien v. North Carolina, 574 U.S. 54, 60 (2014) (“To be reasonable is not to be perfect[.]”).

Pursuant to both the state and federal constitutions, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his [constitutional] rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999); see State v. Robinson, 306 S.C. 399, 402, 412 S.E.2d 411, 413 (1991) (“To justify a brief stop and detention, the police officer must have a reasonable suspicion that the person has been involved in criminal activity.”); see also United States v. Sokolow, 490 U.S. 1, 7 (1989) (“[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot” (citation and internal quotations omitted)). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996).

For constitutional purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the relevant constitutional provisions requires a stop to be reasonable under the circumstances, the initiation of an automobile stop is reasonable per se when either probable cause exists to believe a traffic violation has occurred *or* reasonable suspicion exists to believe the occupants of the vehicle are involved in criminal activity. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) (“[A] police officer may stop an

automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity.”); State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002) (“Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se.”); see also Whren v. United States, 517 U.S. 806, 810 (1996) (“An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”).

Once an investigatory traffic stop is initiated, it must be temporary and last no longer than necessary to effectuate its purpose. State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005); see Rodriguez v. United States, 575 U.S. 348, 349 (2015) (“Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”); see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) (“The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.”). Typically, such a stop begins at the point an officer stops a vehicle to investigate the basis for the stop and continues for the period necessary to complete the investigation *and* conduct the ordinary inquiries incident to any stop. Arizona v. Johnson, 555 U.S. 323, 333 (2009); see Rodriguez, 575 U.S. at 355 (“Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. These checks serve the same objective as enforcement of the traffic

code: ensuring that vehicles on the road are operated safely and responsibly.” (citations, internal quotations, and brackets omitted)). As part of the permissible inquiries, an officer may order the driver and any passengers out of the vehicle pending completion of the stop and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847; see Maryland v. Wilson, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”). Following that, a stop normally ends “when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.” Johnson, 555 U.S. at 333; see Kothe v. State, 152 S.W.3d 54, 63-64 (Tex. Crim. App. 2004) (“On a routine traffic stop, police officers may request certain information from a driver, such as a driver’s license and car registration, and may conduct a computer check on that information. It is only after this computer check is completed, and the officer knows that this driver has a currently valid license, no outstanding warrants, and the car is not stolen, that the traffic-stop investigation is fully resolved.” (footnotes omitted)).

Beyond that, an officer can also inquire into matters unrelated to the initial justification for the stop without converting the stop into something other than a lawful seizure so long as the unrelated questioning does not measurably extend the stop’s duration. Johnson, 555 U.S. at 333; see Rodriguez, 575 U.S. at 355 (“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop.”); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent constitutional violation). Importantly though, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005);

see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, such a detention is lawful and permissible where: (1) the officer possesses reasonable articulable suspicion of other illegal activity based on the totality of the circumstances; or (2) the traffic stop becomes a consensual encounter. Id.; see Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (explaining the reasonable suspicion standard “is a less demanding standard than probable cause” and simply requires a showing of “a minimal level of objective justification” in order to be established); United States v. Coker, 648 F. App’x 541, 544 (6th Cir. 2016) (noting the reasonable suspicion standard “is not a high bar”); see also United States v. Arvizu, 534 U.S. 266, 273 (2002) (“[W]e have said repeatedly that [reviewing courts] must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” (citation omitted)).

In the case sub judice, Deputy Reese—almost immediately after validly stopping Appellant for committing traffic infractions he personally witnessed—discovered Appellant, who was the only adult inside her vehicle, did not have a driver’s license—valid or otherwise—and, thus, could *not* lawfully operate her vehicle on a South Carolina roadway in any manner.⁸ See

⁸ Although Appellant is not challenging the propriety of the stop on appeal, it was unquestionably proper in light of the fact it was only initiated after the deputy saw Appellant commit several traffic infractions. See State v. Nelson, 336 S.C. 186, 193, 519 S.E.2d 786, 789 (1999) (“As a general matter, the decision to stop an automobile is reasonable where police have probable cause to believe that a traffic violation has occurred.”); see also S.C. Code Ann. § 56-5-1900(a) (requiring a driver driving a vehicle on a South Carolina roadway that is divided into two or more clearly marked traffic lanes to drive the vehicle “as nearly as practicable entirely within a single lane”); S.C. Code Ann. § 56-5-1930(a) (prohibiting drivers in South Carolina from following other vehicles “more closely than is reasonable and prudent”).

S.C. Code Ann. § 56-1-20 (“No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver’s license issued to him under the provisions of this article.”); S.C. Code Ann. § 56-1-30(2) (permitting “[a] nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator’s or chauffeur’s license issued to him in his home state or country” to operate a motor vehicle in South Carolina); see also Tex. Transp. Code Ann. § 521.021 (“A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver’s license issued under this chapter.”); Tex. Transp. Code Ann. § 521.027 (exempting from Texas’s licensing requirements only drivers who are military members operating vehicles in the scope of their employment, drivers who are non-resident military members with out-of-state license, drivers who are non-resident military members’ spouses or dependent children with out-of-state licenses, and drivers who are operating various non-commercial farming or husbandry-related equipment); cf. United States v. Espinoza, 885 F.3d 516, 523 (8th Cir. 2018) (“[W]hen Espinoza revealed that he lacked a valid driver’s license, the request that he move to [the officer]’s cruiser was directed related to proper completion of the traffic stop because, without a license, Espinoza *could not be permitted to drive his vehicle after the stop.*” (emphasis added)). After that, Deputy Reese proceeded to question Appellant for the next few minutes while *simultaneously* attempting to both verify the confusing and suspicious information she provided to him and prepare a warning citation for the infractions he had observed. See Rodriguez, 575 U.S. at 355 (explaining an officer can conduct unrelated checks during a lawful traffic stop even without possessing reasonable suspicion of criminal activity so long as those checks are conducted in a way that does not prolong the stop). Then, only roughly eleven minutes after first stopping Appellant’s

vehicle, Deputy Reese explained the warning citation to Appellant and then immediately asked for—and obtained—consent for a search, which meant the deputy was able to obtain consent from Appellant during a period of time consistent with the time reasonably required to complete an ordinary and routine stop. See State v. Provet, 391 S.C. 494, 499, 706 S.E.2d 513, 516 (Ct. App. 2011) (finding a traffic stop was not unreasonably extended even if the officer’s questioning was unrelated to the purpose of the traffic stop where the entire stop lasted less than eleven minutes), aff’d, 405 S.C. 101, 747 S.E.2d 453 (2013); see also United States v. Sharpe, 470 U.S. 675, 683 (1985) (concluding a twenty-minute detention during an investigatory traffic stop was objectively reasonable); United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994) (finding a fifteen-minute traffic stop to be reasonable).

Critically, by the point in time he asked for consent, Deputy Reese had done nothing to unreasonably prolong the stop beyond the time necessary to complete its mission along with the ordinary inquiries that were permitted because any off-topic questioning he conducted was conducted *simultaneously with* his computer checks and preparation of the warning citation. See Rodriguez, 575 U.S. at 355 (recognizing a lawful stop does not become unlawful due to an officer asking inquiries unrelated to the stop’s purpose if those inquiries do not measurably extend the stop’s duration); cf. Caballes, 543 U.S. at 409 (finding no constitutional violation resulted from an officer using a drug-detection dog to conduct a sniff search of a vehicle stopped for a traffic violation because the sniff search occurred at the same time another officer was simultaneously completing the stop). Beyond that, Appellant supplied an out-of-state registration in one third-party’s name and insurance information in an entirely different third-party’s name to Deputy Reese during the course of the stop, which rendered the stop anything but routine and allowed for whatever additional time was needed to sort out that seemingly-

inconsistent and unusual information. See United States v. Olivera-Mendez, 484 F.3d 505, 510 (8th Cir. 2007) (“[Trooper] Kolz’s attempts to sort through Olivera-Mendez’s conflicting information involved Kolz in the legitimate and sometimes time-consuming tasks of a traffic stop. These tasks took longer than normal because Olivera-Mendez presented unusual circumstances and incomplete documentation.”); see also Sharpe, 470 U.S. at 688 (“We reject the contention that a 20-minute stop is unreasonable when the police have acted diligently and a suspect’s actions contribute to the added delay about which he complains.”). Moreover, as soon as he learned Appellant did not have a driver’s license towards the outset of the stop, Deputy Reese was aware of a crucial fact that prevented him from releasing Appellant—and, particularly, her vehicle—even after he had finished preparing the warning citation and done his best to verify the bizarre information that had been supplied because Appellant simply could not lawfully drive her vehicle away from the scene due to her lack of a valid license. See Kothe, 152 S.W.3d at 63-64 (recognizing the initial purpose of a traffic stop is not fully resolved until the officer has checked the driver’s information and “knows that this driver has a currently valid license, no outstanding warrants, and the car is not stolen”); see also United States v. Vargas, 848 F.3d 971, 974 (11th Cir. 2017) (“The fact that [the officer] had earlier informed [the driver] that he was issuing a warning is irrelevant. Under state law [the officer] had a duty not to allow [the driver] or Vargas, who were unlicensed, to drive the vehicle. Preventing them from driving off without is a license is lawful enforcement of the law, not unlawful detention.”); cf. State v. Hewins, 409 S.C. 93, 115, 760 S.E.2d 814, 825 (2014) (finding “the purpose of the traffic stop was fulfilled except for presenting the warning citation to Hewins” after the officer obtained Hewins’s driver’s license during the course of the stop, ran a check on it, confirmed the vehicle was registered to Hewins, and completed the citation).

Therefore, just as the trial judge correctly found, Deputy Reese did not unreasonably prolong the stop through his questioning of Appellant, and the stop had not yet ended at the time he requested consent from Appellant since he still had a need to control the scene in light of the fact no licensed drivers—aside from the deputies themselves—who could validly operate Appellant’s vehicle were present there at that time. See Vargas, 848 F.3d at 974 (concluding the mission of a traffic stop had not been completed by the time the officer obtained consent to search the vehicle because neither the vehicle’s driver nor passenger had licenses and, therefore, the officer was lawfully permitted to continue the detention since the officer had a duty to enforce “the law requiring that any person driving a vehicle be licensed to do so”); see also Johnson, 555 U.S. at 333 (explaining the typical ending point of a stop is “when the police have no further need to control the scene”). Accordingly, the trial judge properly declined to suppress the heroin found inside Appellant’s vehicle after correctly determining Deputy Reese did not extend the stop prior to obtaining Appellant’s consent, and her ruling was fully supported by the evidence and testimony presented during trial.⁹ See State v. Wright, 391 S.C. 436, 442, 706

⁹ Significantly, even if the initial stop had somehow been extended into a second detention under the circumstances involved, Deputy Reese—just as the trial judge correctly recognized—nonetheless possessed reasonable articulable suspicion of criminal activity that would have permitted him to do so in light of the indicators of criminal activity he detected during the course of the stop, which included: (1) Appellant’s vehicle was observed leaving a suspected stash house before heading towards Greenville County; (2) Appellant was travelling from Atlanta, a known source city for drugs; (3) Appellant was travelling on Interstate 85, which was a known drug corridor; (4) there were two cell phones present in Appellant’s vehicle but only one adult, which was consistent with drug activity; (5) multiple energy drink cans were present in the vehicle, which was a recognized indicator of drug activity; (6) an overwhelming odor of air fresheners was emanating from the vehicle, which was consistent with an effort to mask the smell of drugs; (7) there were no personal keys on the vehicle’s key ring; (8) Appellant did not possess a driver’s license; (9) Appellant’s vehicle was registered in the name of one third-party but insured by another third-party, and neither of those individuals were present at the scene; (10) Appellant provided bizarre information about the manner in which she purchased her vehicle that was not consistent with the information reflected in the bill of sale she provided; (11) Appellant’s travel plans appeared to be illogical and her claim of weeks of travel seemed

S.E.2d 324, 326 (2011) (instructing “an appellate court must affirm if there is any evidence to support the ruling” in a case involving a constitutional challenge to a search or seizure); see also Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 (“Undoubtedly, a law enforcement officer may request permission to search at any time.”); cf. State v. Jones, 364 S.C. 51, 59, 610 S.E.2d 846,

inconsistent with the amount of luggage she had in her vehicle; and (12) Appellant was driving her vehicle in a manner that suggesting she was trying to “blend in” with other vehicles on the roadway to avoid detection. See United States v. Santillan, 902 F.3d 49, 57 (2nd Cir. 2018) (explaining the presentation of “a story that simply does not ring true” can contribute to a finding of reasonable suspicion); United States v. Bams, 858 F.3d 937, 944 (5th Cir. 2017) (concluding the presence of multiple energy drinks and a lone key in a vehicle’s ignition contributed to a finding of reasonable suspicion); United States v. Vaughan, 700 F.3d 705, 712 (4th Cir. 2012) (confirming the presence of multiple cell phones can contribute to a finding of reasonable suspicion to prolong a stop); United States v. Ervin, 469 F. App’x 374, 379 (5th Cir. 2012) (finding the fact a driver drove in a manner indicative of an attempt to blend in with other traffic supported a finding of reasonable suspicion sufficient to extend a traffic stop); United States v. Hearn, 476 F. App’x 512, 513 (4th Cir. 2011) (determining both the presence of multiple energy drink cans and an unusual story about how the driver came to be in possession of the vehicle contributed to a finding of reasonable suspicion to extend the stop); United States v. Figueroa-Espana, 511 F.3d 696, 703 (7th Cir. 2007) (holding the fact the driver “failed to provide a valid driver’s license or vehicle registration” during the course of a properly-initiated traffic stop to be a factor justifying an extension of the stop); United States v. Arango, 912 F.2d 441, 447 (10th Cir. 1990) (concluding the presence of an inadequate amount of luggage for the several-week-long period of travel reported by the occupants of a vehicle supported a finding of reasonable suspicion justifying further investigation); Moore, 415 S.C. at 253-254, 781 S.E.2d at 901-902 (recognizing illogical travel plans can be a relevant factor in a reasonable suspicion analysis); State v. Corley, 392 S.C. 125, 127, 708 S.E.2d 217, 218 (2011) (concluding the fact a vehicle left a residence connected to drug activity to be a pertinent factor in a reasonable suspicion analysis); State v. Wallace, 392 S.C. 47, 55, 707 S.E.2d 451, 455 (Ct. App. 2011) (finding third-party vehicle ownership, Atlanta’s status as a known drug hub, and Interstate 85’s status as a known drug corridor to be relevant factors in establishing a reasonable articulable suspicion of drug activity); see also Sokolow, 490 U.S. at 10 (“[I]nnocent behavior will frequently provide the basis for a showing of probable cause, and . . . in making a determination of probable cause the relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts. That principle applies equally well to the reasonable suspicion inquiry.” (internal quotation marks and brackets from original omitted)); cf. Terry v. Ohio, 392 U.S. 1, 28 (1968) (holding an officer’s actions in effectuating a detention and frisk search were constitutionally reasonable because they were not “the product of a volatile or inventive imagination” or “undertaken simply as an act of harassment” and, instead, were reasonably tempered based on the officer observing Terry and his confederate repeatedly walk by and look in a store window in a manner that appeared suggestive of criminal activity to the officer).

850 (Ct. App. 2005) (“In the case at hand, there is evidence to support the trial judge’s findings and we cannot say his findings are clearly erroneous. We therefore find no abuse of discretion.”). Appellant’s convictions should be affirmed.

B. Propriety of the Search of Appellant’s Vehicle

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Typically, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial, and, absent an applicable exception to the warrant requirements, warrantless searches are generally considered to be unreasonable. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); see State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978) (explaining it is well-settled warrantless searches are per se unreasonable “unless an exception to the warrant requirement is presented”). In South Carolina, recognized exceptions to the warrant requirement include: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; (7) the abandonment exception; and (8) the exigent circumstances exception. State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) (“A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.”).

One of the recognized exceptions to the warrant requirement is the consent exception. See Birchfield v. North Dakota, ___ U.S. ___, 136 S. Ct. 2160, 2185 (2016) (“It is well established that a search is reasonable when the subject consents[.]”). Pursuant to the consent exception, an officer can validly conduct a warrantless search of a constitutionally-protected area when he receives free and voluntary consent. See State v. Adams, 377 S.C. 334, 339, 659 S.E.2d 272,

275 (Ct. App. 2008) (holding warrantless searches and seizures are constitutionally permissible when conducted under the authority of voluntary consent). Factors to be considered when determining whether consent was validly provided include the characteristics of the individual providing consent, which include the individual's age, maturity, education, intelligence, and experience, and the conditions under which the consent was granted, which include the conduct of the officer asking for consent, the number of officers present, and the duration of the encounter. United States v. Boone, 245 F.3d 352, 361-362 (4th Cir. 2001). Significantly, the State bears the burden of establishing the voluntariness of consent, which is a question of fact to be determined from the circumstances. Pichardo, 367 S.C. at 105, 623 S.E.2d at 851.

Likewise, another of the recognized exceptions to the warrant requirement is the automobile exception, which is based on the ready mobility of automobiles coupled with the lessened expectation of privacy in such vehicles. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981); see State v. Cox, 290 S.C. 489, 491, 351 S.E.2d 570, 571 (1986) (“The two bases for the exception are: (1) the ready mobility of automobiles and the potential that evidence may be lost before a warrant is obtained; and (2) the lessened expectation of privacy in motor vehicles which are subject to governmental regulation.”). Pursuant to the automobile exception, law enforcement officers can conduct a warrantless search of an automobile based solely on the existence of probable cause, which simply means there is a fair probability contraband or evidence of a crime will be found. State v. Bultron, 318 S.C. 323, 332, 457 S.E.2d 616, 621 (Ct. App. 1995); see Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”); see also Kaley v. United States, 571 U.S. 320, 338 (2014) (recognizing the probable cause standard “is not a high bar”). Critically, when probable cause exists for a vehicle search, the search can be extended to every

part of the vehicle—and its contents—potentially containing the search’s object. Bultron, 318 S.C. at 332, 457 S.E.2d at 621; see also Wyoming v. Houghton, 526 U.S. 295, 307 (1999) (“We hold that police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search.”).

In the case at bar, Deputy Reese requested consent from Appellant at a point in time before the lawful stop of her vehicle had concluded, and, thus, the consent request was made during a period of time during which Appellant was being lawfully detained.¹⁰ See Salmeron v. State, 632 S.E.2d 645, 646 (Ga. 2006) (“If a driver is questioned and gives consent while he is being lawfully detained during a traffic stop, there is no Fourth Amendment violation.”); see also Pichardo, 367 S.C. at 105, 623 S.E.2d at 851 (“[W]hen an officer asks for consent to search *after* an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention.”); cf. State v. Willard, 374 S.C. 129, 136, 647 S.E.2d 252, 256 (Ct. App. 2007) (“We likewise find the search was not an exploitation of an unlawful detention. As previously discussed, we find reasonable suspicion existed to make the stop and detention. Furthermore, although Willard allegedly noticed the officers’ guns when first surrounded, there is no evidence of any threat of force against Willard once he had exited his vehicle. Nor is there evidence of coercion or promises made.”). Significantly, in response to that request, Appellant, who had only been detained for approximately eleven minutes by that point, unequivocally provided consent in a free and voluntary manner, and nothing suggested she

¹⁰ Moreover, as previously noted, Deputy Reese possessed reasonable suspicion to believe criminal activity was afoot at the time he requested consent based on the numerous suspicious factors he detected during the course of the yet-to-be-completed stop, and, therefore, he had a basis upon which he could have justifiably continued to detain Appellant even if the initial purpose of the stop had been satisfied. See Boone, 245 F.3d at 362 (“If an individual voluntarily consents to a search while justifiably detained on reasonable suspicion, the products of the search are admissible.”).

was not of a sufficient age, maturity, or intellect to be able to provide consent. See United States v. Watson, 423 U.S. 411, 424-425 (1976) (“There is no indication in this record that Watson was a newcomer to the law, mentally deficient, or unable in the face of a custodial arrest to exercise a free choice.” (footnote omitted)); see also State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (2003) (“Custody alone . . . is not enough in itself to demonstrate a coerced consent to search.”). Beyond that, Deputy Reese did not do anything coercive, deceptive, or threatening in order to obtain Appellant’s consent before she granted it. See Salmeron, 632 S.E.2d at 648 (rejecting the contention Salmeron’s consent was involuntary where there was “no evidence that the officer coerced or tricked him into agreeing to a search” when consent was requested during the course of a traffic stop). Furthermore, Appellant placed no express limits on the scope of her consent, and, during the course of the search, she did not expressly attempt to revoke it or engage in any actions that would have reasonably indicated to the deputies her consent had been in any way limited even when the deputies began removing the vehicle’s rear seat. See State v. Trapp, 420 S.C. 217, 242, 801 S.E.2d 742, 755 (Ct. App. 2017) (concluding a search did not exceed the consent provided where “Trapp presented no evidence that he limited the consent he gave to the police in their investigation”); State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006) (“A suspect’s failure to object (or withdraw his consent) when an officer exceeds limits allegedly set by the suspect is a strong indicator that the search was within the proper bounds of the consent search.”). Under those circumstances, the deputies were permitted to conduct a consent-based search of Appellant’s vehicle, including by removing the rear seat to access the vehicle’s secret compartment. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) (“The constitutional immunity from unreasonable searches and seizures may be waived by valid consent.”); see also Mattison, 352 S.C. at 587, 575 S.E.2d at 857 (“Effective

withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given.”); cf. Funderburk, 367 S.C. at 240-241, 625 S.E.2d at 250 (“Because Funderburk gave a general consent to a search of the vehicle and failed to object to Robinson’s search, we find the trial court’s ruling was supported by the evidence, and, therefore, we find no error.”).

However, even assuming the removal of the seat somehow could have exceeded the unrestricted consent for a search Appellant had provided, Master Deputy Harrison—before removing the vehicle’s rear seat—saw the secret compartment from outside the vehicle when he took a look underneath it, which gave him a compelling probable cause basis to believe the vehicle contained concealed contraband. See United States v. Estrada, 459 F.3d 627, 633 (5th Cir. 2006) (“[E]vidence of a hidden compartment supports ‘probable cause’ for a search/arrest.”); United States v. Ledesma, 447 F.3d 1307, 1318 (10th Cir. 2006) (“Because the evidence was highly probative of the existence of a secret compartment, and because it is difficult to imagine a licit purpose for a large hidden compartment in a vehicle the size of a Chevy van, these signs of a hidden compartment strongly suggest—and perhaps even singlehandedly establish—probable cause to search behind the side panels in the rear of the van.”); United States v. Price, 869 F.2d 801, 804 (5th Cir. 1989) (“Once the agents had discovered the secret compartment they had probable cause to search the compartment itself.”). As a result, the deputies were permitted to remove the rear seat and search the secret compartment even without Appellant’s express permission to do so based on the existence of probable cause. See United States v. Ross, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”).

Accordingly, because the search of Appellant's vehicle that led to the discovery of her hidden stash of heroin was conducted both with her own voluntary consent and probable cause, the trial judge properly denied the suppression motion after finding the search was constitutionally proper, and her ruling was fully supported by the testimony and evidence presented during trial. See Moore, 415 S.C. at 251, 781 S.E.2d at 900 (explaining an appellate court reviewing a trial judge's ruling on a search and seizure issue must affirm "if there is any evidence to support the trial court's ruling"); see also Robinette, 519 U.S. at 39-40 (recognizing an individual does not have to be told there are free to go before that individual can voluntarily provide consent for a search); cf. United States v. Lattimore, 87 F.3d 647, 651 (4th Cir. 1996) ("[E]ven when an appellate court is convinced that it would have reached an opposite conclusion had it been charged with making the factual determination in the first instance, and although the temptation to substitute its judgment is particularly seductive when the encounter was recorded, a reviewing court may not reverse the decision of the district court that consent was given voluntarily unless it can be said that the view of the evidence taken by the district court is implausible in light of the entire record." (citing Anderson v. City of Bessemer City, 470 U.S. 564 (U.S. 1985))). Appellant's convictions should be affirmed.

II.

The trial judge properly denied Appellant's directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing more than a million dollars' worth of heroin was found hidden inside Appellant's vehicle, supported a rational and logical conclusion Appellant was in knowing possession of the vast quantity of valuable contraband contained within her own vehicle and, thus, was guilty as charged, which required the trial judge to submit her case to the jury.

Appellant contends the trial judge reversibly by denying her motion for a directed verdict. In support of that contention, Appellant maintains there was no direct or substantial circumstantial evidence she had knowledge of the heroin found concealed inside her vehicle, which was required to establish her guilt for trafficking in heroin.¹¹ To the contrary, the evidence and testimony presented during trial, including the evidence establishing Appellant was caught driving a vehicle containing a vast quantity of heroin worth more than a million dollars, was sufficient for the jury to logically and rationally find Appellant was knowingly in constructive possession of the heroin found during the search and, thus, was guilty as charged.

¹¹ In challenging on appeal the trial judge's ruling on the directed verdict motion, Appellant has not raised any specific arguments in regard to her unlawful conduct towards a child conviction aside from a conclusory request for relief. (App. Br. pp. 23-25; p. 29). As a result, any issue Appellant may have had in regard to that particular conviction has been abandoned on appeal and cannot appropriately be considered or addressed. See State v. Hiott, 276 S.C. 72, 86, 276 S.E.2d 163, 170 (1981) (recognizing an issue raised on appeal but not actually argued in the brief will be "deemed abandoned on appeal"). Nonetheless though, the trial judge committed no conceivable error by declining to grant a directed verdict on the unlawful conduct towards a child charge because the evidence and testimony presented during trial established Appellant brought her young daughter along with her while she engaged in the inherently dangerous act of trafficking in heroin, which supported an obvious and rational conclusion Appellant placed her child's safety at unreasonable risk and, thus, was guilty of all the required elements of unlawful conduct towards a child. See S.C. Code Ann. § 63-5-70(A) (prohibiting a parent of a child from—amongst other things—"plac[ing] the child at unreasonable risk of harm affecting the child's life affecting the child's life, physical or mental health, or safety"); see also United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998) (explaining the presence of drugs creates a "readily apparent" risk of danger); State v. Banda, 371 S.C. 245, 253-254, 639 S.E.2d 36, 40-41 (2006) (recognizing an indisputable nexus exists between drugs and guns).

Accordingly, the trial judge correctly denied Appellant's directed verdict motion and submitted the case to the jury. Appellant's convictions should be affirmed.

Relevant Facts

During the course of Appellant's trial, evidence and testimony was presented establishing Appellant was stopped while driving from a known source location for drugs in a vehicle she claimed to own, provided "extremely" suspicious and inconsistent information after she was stopped, and asserted she was responsible for everything in her vehicle, which contained—amongst other things—a number of indicators of criminal activity. (Tr. pp. 110-116; pp. 144-145; p. 149; State's Ex. # 9 (Recording of Stop)). Additionally, evidence and testimony was presented establishing Appellant, who was the only occupant of her vehicle aside from her three-year-old daughter, was arrested after roughly fifteen pounds of heroin were found concealed inside a secret compartment that appeared to have been installed above her vehicle's fuel tank, apologized to her daughter several times after the heroin was found, and was subsequently found to be in actual possession of cocaine after being taken to a detention center. (Tr. pp. 114-115; pp. 122-123; p. 129; pp. 144-145; p. 156; pp. 163-164; p.170; pp. 174-175; pp. 199-200; State's Ex. # 9; State's Ex. # 10 (In-Car Recording)). Furthermore, expert testimony was presented establishing the heroin found inside Appellant's vehicle was worth no less than \$1,730,000 and as much as \$7,000,000. (Tr. pp. 209-210; pp. 213-214).

After all that evidence and testimony was presented, defense counsel moved for a directed verdict on both charges. (Tr. pp. 216-217). In support of that motion, defense counsel argued the State's evidence was purportedly not sufficient to prove Appellant knew her vehicle contained heroin since the drugs were found in a secret compartment, no fingerprint evidence was introduced, and no eyewitnesses were presented to directly connect her to the drugs. (Tr. pp.

216-218). However, the trial judge rejected defense counsel's arguments and concluded sufficient evidence had been introduced from which the jury could find Appellant was knowingly in possession of the heroin found hidden inside her vehicle. (Tr. pp. 218-219).

Subsequent to that ruling, the trial proceeded forward, and Appellant's case was submitted to the jury. (Tr. p. 263). Ultimately, after deliberating on the matter, the jury convicted Appellant of trafficking in heroin and unlawful conduct towards a child. (Tr. p. 265).

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

Analysis

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a

light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (“When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight.”); see also State v. Franklin, 80 S.C. 332, ___, 60 S.E. 953, 955 (1908) (“The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) (“[O]n 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.”). By doing so under such circumstances, the trial judge correctly avoids

improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 (“[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) (“[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.”).

In South Carolina, it is illegal to traffic in four grams or more of heroin. See S.C. Code Ann. § 44-53-370(e) (prohibiting trafficking in heroin). In order to prove a defendant's guilt for trafficking in heroin under a theory of possession, the State must present direct *or* circumstantial evidence establishing the defendant was knowingly in actual or constructive possession of the requisite quantity of heroin. Id.; see State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (“[A] conviction for possession of contraband drugs requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs.”); see State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (“Possession may be inferred from circumstances.”); State v. Stanley, 365 S.C. 24, 42-43, 615 S.E.2d 455, 464 (Ct. App. 2005) (“In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over either the drugs or the premises upon which the drugs are found.”); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (explaining actual possession occurs “when the drugs are found to be in the actual physical custody of the person” while constructive possession occurs “when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found”). Significantly, when drugs are found on premises under the control of the

defendant, that fact “*in and of itself* gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.” State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981) (emphasis added). Moreover, possession of a controlled substance can be inferred from the circumstances of a particular case and can be imputed to a person with both the power and intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995); see State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) (“In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. Knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances.” (citations omitted)); see also Kimbrell, 294 S.C. at 54, 362 S.E.2d at 631 (“Because actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element.”).

In Appellant’s case, the evidence and testimony presented during trial established multiple *pounds* of heroin were found concealed in a vehicle Appellant both owned and was driving, which supported a logical conclusion she knew about and was in possession of that heroin since it was concealed in her own car. See United States v. De Jesús-Viera, 655 F.3d 52, 59 (1st Cir. 2011) (“The jury could have inferred that De Jesús-Viera acted knowingly and intentionally from testimony that the drugs were found in a car that De Jesús-Viera both owned and was driving, notwithstanding the fact the drugs were concealed in a hidden compartment.”); United States v. Ascolani-Gonzalez, 449 F.2d 159, 159-160 (9th Cir. 1971) (“The act of driving a car laden with concealed contraband provides . . . a substantial basis [for inferring knowledge.]”); Townsend v. State, 558 S.E.2d 849, 850 (Ga. Ct. App. 2002) (“There is a

presumption that drugs found within a vehicle actually belong to the driver of the vehicle, particularly when the driver is also the owner of the vehicle.”); see also Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (recognizing evidence establishing drugs were found on premises under the control of a particular individual can alone support an inference of knowledge and possession sufficient to warrant submission of the case to the jury). Additionally, the evidence and testimony presented during trial established the heroin concealed in Appellant’s vehicle was worth more—and perhaps much more—than a million dollars, which supported an obvious and rational conclusion such valuable contraband would not have simply been left behind or unwittingly allowed into the hands of a random stranger by its owner. See De Jesús-Viera, 655 F.3d at 60 (“The jury also could have inferred that De Jesús-Viera knew of the presence of the illegal narcotics in his car from the sheer amount of drugs the CBP officers found. . . . The jury could have drawn the inference that De Jesús-Viera knew that the over \$1.45 million worth of drugs were in his car based on its common sense.”); United States v. Cota-Meza, 367 F.3d 1218, 1224 (10th Cir. 2004) (“[T]he value of drugs can support an inference of knowledge.”); United States v. Villarreal, 324 F.3d 319, 324 (5th Cir. 2003) (“One example of circumstantial evidence which may be probative of knowledge is the value of the drug being transported.”); United States v. Hooks, 780 F.2d 1526, 1532 (10th Cir. 1986) (finding the high value of drugs found concealed in a vehicle supported a conclusion the individual in possession of the vehicle was also knowingly in possession of the drugs since the owner of the drugs would not have been likely to have simply left the valuable drugs behind). Beyond that substantial evidence, Appellant’s knowledge of the heroin was further supported by the evidence establishing various indicators of criminal activity were detected during the course of the stop coupled with the evidence establishing Appellant, who candidly apologized to her daughter after the heroin was found, was

in *actual possession* of other drugs. See Robinson, 310 S.C. at 539, 426 S.E.2d 317, 319 (“Once physical possession is shown, knowledge becomes a question for the jury.”); see also Hernandez, 382 S.C. at 624, 677 S.E.2d at 605 (recognizing knowledge of drugs can be established by the presentation of evidence regarding the acts and conduct of the accused that support an inference the accused knew of the existence of the drugs); State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (“As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.”).

In light of all that testimony and evidence, the jury—even without eyewitness testimony or fingerprint evidence—could have rationally and logically found Appellant had the right to exercise dominion and control over and was in knowing possession of the heroin and, thus, was guilty as charged based on her constructive possession of that contraband. See Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (“When contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.”); State v. Smith, 307 S.C. 376, 384, 415 S.E.2d 409, 414 (Ct App. 1992) (recognizing the lack of incriminating physical evidence such as fingerprints, blood stains, and fiber samples does not preclude a finding sufficient evidence existed to support guilty verdict); cf. United States v. Guzman, 446 F.2d 1137, 1139 (9th Cir. 1971) (“The question of the occupant’s knowledge of the concealed contraband is for the trier of fact to answer, not a court of review. Having answered this question by way of a guilty verdict, it has long been our position that evidence which is the subject of this controversy serves as a substantial basis to draw an inference of such knowledge.”). As a result, the trial judge was *required* to deny Appellant’s directed verdict motion and submit the case to the jury, and she committed no possible error by doing just that. See State v. Al-Amin, 353 S.C. 405, 411, 578

S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is “required” to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused’s guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); cf. Ascolani-Gonzalez, 449 F.2d at 159-160 (finding sufficient evidence existed to support the defendant’s convictions for drug offenses based on the presentation of evidence establishing the defendant was apprehended driving a vehicle containing a large stash of marijuana that had been concealed in a hidden compartment). Appellant’s convictions should be affirmed.

III.

Even assuming the trial judge erred by declining to instruct the jury on circumstantial evidence in one of the manners proposed by defense counsel, any conceivable error was harmless beyond a reasonable doubt because the trial judge's jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Appellant could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt.

Appellant contends the trial judge reversibly erred by declining to instruct the jury on one of the circumstantial evidence jury instructions requested by defense counsel. As support for that contention, Appellant maintains our Supreme Court mandated in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the instruction requested by defense counsel be given and further maintains the trial judge's refusal to give that particular instruction was not harmless due to the fact the State relied exclusively on circumstantial evidence when proving part of its case. Significantly, even without the presentation of the jury instruction requested by defense counsel, the trial judge's jury instruction, when considered as a whole, were substantially correct and sufficient to adequately cover the applicable law to the jury and ensure the jury understood Appellant could not be convicted unless her guilt had been established by the evidence beyond a reasonable doubt. Under such circumstances, any possible error committed by the trial judge in instructing the jury on the applicable law was harmless beyond a reasonable doubt and could not have resulted in any actual prejudice to Appellant. Thus, reversal of Appellant's convictions is simply not warranted on appeal. Appellant's convictions should be affirmed.

Relevant Facts

During the course of Appellant's trial, the trial judge asked the parties if they wished to discuss potential jury instructions outside the presence of the jury. (Tr. pp. 177-178). In response, defense counsel proposed the trial judge present the "old" circumstantial evidence jury

instruction from State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989). (Tr. p. 178).

Specifically, defense counsel asked the trial judge to instruct the jury:

“The jury may not convict unless every circumstance relied upon by the state is proven beyond a reasonable doubt and all the circumstances so proven are consistent with each other and, when 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 the[m] 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.”

(Tr. pp. 178-179). However, the trial judge declined defense counsel’s request and indicated she intended to present her own circumstantial evidence charge, which she stated “encapsulate[d] the spirit” of the proposed charge. (Tr. p. 179).

Thereafter, following a recess, defense counsel informed the trial judge he understood her earlier ruling but proposed she present an alternative circumstantial evidence charge containing language from the decision in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). (Tr. pp. 184-185). Through that proposal, defense counsel requested a jury instruction stating:

1. 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.
2. 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.

3. 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.

(Court's Ex. # 1 (Proposed Jury Instruction)). Once again though, the trial judge denied defense counsel's request. (Tr. p. 186).

Subsequently, the trial judge charged the jury on the applicable law. (Tr. pp. 245-261). In doing so, the trial judge instructed the jurors their ultimate goal and duty was to determine whether the State met its burden of proof, explained the burden of proof was solely on the State and not on the defendant, thoroughly discussed both the reasonable doubt standard and the fact Appellant was presumed to be innocent, and advised the jurors their verdict must be a unanimous one.¹² (Tr. pp. 246-251; p. 260). Additionally, the trial judge instructed the jurors on the indicted offenses and specifically advised them mere presence was not sufficient to prove possession of drugs. (Tr. p. 256-258). Furthermore, regarding circumstantial evidence, the trial judge instructed:

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.

¹² Specifically, in discussing reasonable doubt, the trial judge explained: "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 crimes charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find her not guilty. Facts and circumstances that merely place upon the defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the accused." (Tr. p. 251).

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.

(Tr. p. 252).

Following the presentation of those instructions, defense counsel unsuccessfully renewed his “prior objection” without further comment. (Tr. p. 261). Thereafter, the case was submitted to the jury, and the jury ultimately convicted Appellant as indicted. (Tr. p. 263; p. 265).

Standard of Review

On appeal, an appellate court reviewing a trial judge’s jury charge must view the 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); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant’s due process rights have been violated.”). When reviewing a jury charge, 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). 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.”); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 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.”). Moreover, an appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (“An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.”); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) (“[A]n alleged error in a portion of the charge *must be prejudicial* to the appellant to warrant a new trial.” (emphasis added)).

Analysis

The purpose of a trial judge’s jury instructions is “to enlighten the jury and to aid it in arriving at a correct verdict.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does *not* have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). Importantly, so long as the trial judge’s jury instructions are substantially correct and adequately cover the applicable law, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); 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.”).

As far as jury instructions on circumstantial evidence are concerned, a variety of different circumstantial evidence charges have been recognized as proper throughout the course of South Carolina history. See State v. Lynch, 412 S.C. 156, 176-177, 771 S.E.2d 346, 357 (Ct. App. 2015) (outlining the different circumstantial evidence jury instructions that have been approved of in South Carolina over the years). In State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989), our Supreme Court adopted “reasonable hypothesis” language from an earlier appellate decision as the appropriate standard to be charged to juries in cases involving circumstantial evidence. See Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926 (“[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.”). Thereafter, in State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997), our Supreme Court determined a charge on the “reasonable hypothesis” language was unnecessary in cases in which the jury was properly instructed on reasonable doubt and further proposed the following circumstantial evidence charge for use in future cases:

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.

Subsequently, in State v. Cherry, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004), our Supreme Court determined the charge from “Grippon [was] 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.” 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)).

Most recently, in State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013), our Supreme Court again considered an issue involving the propriety of a circumstantial evidence jury instruction. In that case, the Supreme Court affirmed Logan’s conviction after recognizing the continuing accuracy of the circumstantial evidence charge articulated in Grippon. Id. at 100, 747 S.E.2d at 452-453. However, the Supreme Court further articulated a new circumstantial evidence jury instruction and explained it “should” be given when requested by defense counsel in future cases:

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 guilty 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 99-100, 747 S.E.2d 452-453. Importantly though, despite articulating that new charge, the Supreme Court expressly recognized any error that occurs through the manner in which a jury is instructed on circumstantial evidence can nonetheless still be harmless beyond a reasonable doubt so long as the jury was properly instructed on the law as a whole, including in regard to the reasonable doubt standard. Id. at 94, n. 8, 747 S.E.2d at 449, n. 8.

In the case sub judice, the trial judge's jury instructions as presented thoroughly conveyed the applicable law on the reasonable doubt standard, the burden of proof, and the presumption of innocence to the jurors. Likewise, the trial judge's jury instructions ensured the jurors understood they could not convict Appellant of the indicted offenses if the evidence presented only supported a conjectural or speculative possibility of Appellant's guilt. Furthermore, the trial judge's jury instructions contained much of the language from our Supreme Court's proposed charge in Logan and ensured the jurors were aware Appellant could not be convicted based on direct evidence or circumstantial evidence unless that evidence established Appellant's guilt beyond a reasonable doubt. Under those circumstances, the trial judge's jury instructions were sufficient to adequately convey the relevant and applicable South Carolina law to the jurors and ensure they were equipped to properly render a verdict in Appellant's case. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); State v. Holmes, 277 S.C. 232,

234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law); see also Burkhart, 350 S.C. at 263, 565 S.E.2d at 304 (“Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues.”); cf. Victor v. Nebraska, 511 U.S. 1, 5 (1994) (“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 convey the concept of reasonable doubt to the jury.” (citations, brackets, and internal quotations omitted)).

Because the trial judge’s jury instructions as presented were sufficient to adequately and correctly convey the applicable law to the jury, any conceivable error in the trial judge’s decision not to present a jury instruction on the exact language proposed in Logan was harmless beyond a reasonable doubt and could not have resulted in any prejudice to Appellant. See State v. Jenkins, 408 S.C. 560, 573, 759 S.E.2d 759, 766 (Ct. App. 2014) (“[A]ny error in the omission of other language from the Logan instruction was harmless beyond a reasonable doubt because the trial judge’s instruction, as a whole, properly conveyed the applicable law.”); cf. Brandt, 393 S.C. at 551, 713 S.E.2d at 604 (“[T]he judge’s denial of Brandt’s request to charge does not warrant reversal as the charge as a whole afforded the jury the proper test for determining the issues presented at trial.”); State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (“The defendant requested the judge to charge the jury that a signed Miranda warning alone does not

admit a confession. While the charge would not have been inappropriate, we are of the opinion that the judge's charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the trial judge declare the law, but no particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable."'). Accordingly, just as our Supreme Court found in Logan itself, the jury instructions presented in Appellant's case were sufficient such that a reversal of Appellant's convictions is not warranted on appeal. See Logan, 405 S.C. at 94, n. 8, 747 S.E.2d at 449, n. 8 ("In the instant case, the trial clearly instructed the jury regarding the reasonable doubt burden of proof The trial court's jury instruction, as a whole, properly conveyed the applicable law. Thus, any conceivable error was harmless beyond a reasonable doubt." (citations omitted)); see also 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."); cf. Jenkins, 408 S.C. at 573-574, 759 S.E.2d at 766 ("As our supreme court ultimately concluded in Logan, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law."'). Appellant's convictions should be affirmed.

CONCLUSION

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

Respectfully submitted,

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February 5, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2018-002163

RECEIVED

FEB 05 2020

SC Court of Appeals

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,


Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

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I further certify all parties required by rule to be served have been served.
This 5th day of February, 2020.



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