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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County
Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

vs.

BRIAN WILLIE LEWIS,

Petitioner.

Appellate Case No. 2020-001372

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

The trial court's instructions as a whole correctly conveyed to the jury the concept of reasonable doubt, and Petitioner was not prejudiced by the isolated search language in the jury instructions.

STATEMENT OF THE CASE

Petitioner Brian Lewis was found guilty by a jury of armed robbery, possession of a weapon during the commission of a violent crime, conspiracy, and resisting arrest following trial on February 7-9, 2017. The Honorable Brian M. Gibbons sentenced Lewis to twenty-seven years imprisonment for armed robbery and a consecutive five years imprisonment for the weapon possession conviction. Judge Gibbons sentence Lewis to concurrent sentences of five years imprisonment for conspiracy and resisting arrest.

Lewis appealed and the Court of Appeals affirmed the conviction and sentenced in an unpublished decision. State v. Lewis, Op. No. 2020-UP-246 (S.C. Ct. App. filed August 19, 2020). Lewis' Petition for Rehearing was denied by the Court of Appeals on September 16, 2020. This return to Lewis' petition for writ of certiorari follows.

STATEMENT OF FACTS

Steven Haefner, as the owner of two Domino's Pizza restaurants was required to wear many hats, including delivering pizzas, which he did when one of his restaurants received an order for multiple items at an address at Lakeside apartments. Haefner drove his own blue Toyota Highlander to the apartments. He parked near the breezeway and brought the pizzas and two liter bottles of soda upstairs, and knocked on the apartment door. No one answered. He walked down the stairs, put the pizzas and soda on the hood of the car, and reached inside his Highlander to retrieve his phone. Haefner called the phone number on the order and did not get an answer. About that time, four young black men walked through the breezeway. One of them claimed the order was "for my people." R. pp. 111-14.

Haefner asked the man to knock on the door to verify it was their order. While the man went up the stairs to the door, another one of the men stuck a gun in Haefner's face and made him get on the ground after making Haefner throw his keys and wallet into the parking lot. R. pp. 114-15; p. 120. The robbers made Haefner lay face down. Two of the robbers kicked Haefner in the back of the head. He heard his car pull away and waited a bit before calling 911 and walking to the manager's office to wait for law enforcement. R. pp. 124-27.

None of the robbers wore masks and it was daylight. R. pp. 115-16; p. 138. Haefner estimated the gunman was standing two feet away from him, and his attention was focused on the gunman. R. p. 124, lines 1-5. Haefner was able to pick the gunman out of a photographic lineup. He testified he was able to make the identification "very quickly." He identified Lewis as the gunman. R. pp. 133-35. Haefner was further able to identify one of the accomplices, Robert

Jackson, as the man who pretended to pay for the pizzas. R. pp. 136-37. Haefner also was able to identify State's Exhibit 15 as the gun used in the robbery. R. p. 138.

The robbers stole the car, the pizzas, Haefner's laptop, and about $150 in single dollar bills. R. p. 139. Later, when the car was recovered, a cell phone and purple gloves were found in the car that did not belong to Haefner. R. pp. 139-40. One of the robbers wore a Superman t-shirt. R. p. 146, lines 9-11.

At about 2:30 p.m., Monica Moran, the property manager at Grove Station Apartments, acting on a complaint, found and spoke with four young men talking and smoking cigarettes. She knew them: Robert Jackson, Brian Lewis and his brother Cordell Lewis, and another individual named Donny. She told them to stop loitering and they dispersed. R. p. 155-56.

Law enforcement contacted Moran at about 3:30 p.m., and provided Haefner's description of four individuals which to her sounded like the men she approached at the breezeway. R. p. 161. She confirmed the apartment where Haefner attempted to deliver the pizza order was vacant for the last eight years. R. p. 163; p. 165.

Robert Jackson, seventeen years old at the time of the robbery, was one of the robbers. He provided a statement to law enforcement a day after the robbery and subsequently pled guilty to conspiracy. R. pp. 168-69. Jackson knew Lewis because he lived across the breezeway from his apartment, but he only knew him as "Rida." He had only known Lewis a couple of weeks. R. pp. 170-71. He confirmed Moran confronted them at the breezeway that day. R. p. 171. He testified that one of the other two accomplices, not Lewis, ordered the pizza. R. p. 172, lines 5-17. Jackson claimed he did not know there was going to be a robbery, but he was supposed to stall the pizza man

and offered to pay the pizza man by credit card. Lewis then pointed a gun at the pizza man. Jackson decided to leave at that point. R. p. 173; pp. 177-81. Both of the two other testifying co-defendants confirmed Jackson left when the robbery started. R. p. 248, lines 4-6; p. 327, lines 15-21. Later in the trial, Lewis' brother, Cordell Lewis, corroborated Jackson's claim he did not know the robbery was going to take place. R. p. 322, line 24-p. 323, line 7.

Investigator Michael Stanton interviewed Haefner at the hospital, who was visibly shaken. Haefner identified the robbers who presented the credit card as wearing a Superman t-shirt and Haefner described the gunman as dressed in all black. R. pp. 191-92.

While Investigator Stanton canvassed the neighborhood, a car pulled up and a Domino's Pizza employee said he saw his boss's stolen vehicle. R. pp. 198-99. Six patrol vehicles followed the employee's car and found the stolen Highlander at a dead end. Although it was nighttime, the vehicle drove by Investigator Stanton's patrol car without its lights on. It collided twice with the patrol vehicles and came to rest by a guard rail. By the time Investigator Stanton approached, the Highlander was empty. R. pp. 200-04. The officers apprehended Donny Campbell. Campbell told Investigator Stanton the driver was Isiah "Ike" Jefferson. He described the driver as wearing black shorts and no shirt, with purple and white Nike shoes. "Ike" was a false name and subsequently Campbell identified Lewis as the driver. R. pp. 205-08.

Based on the subsequent interview with Campbell, Investigator Stanton sent a unit to Lewis' apartment and he was taken into custody by a knoll in the apartments. R. pp. 208-09. Investigator Stanton asked Lewis about the robbery and Lewis told him "he was around the people." R. p. 211, line 16 – p. 212, line 5. Lewis explained he "was trying to make some easy money" and "it was a

little job." R. p. 212, lines 5-6. Lewis wanted to get a car because he needed to drive. R. p. 212, lines 6-8. Investigator Stanton noted Lewis was shirtless and wore black basketball shorts. R. p. 218.

Donny Campbell was the second co-defendant to testify against Lewis. He was seventeen at the time of the robbery. He pled guilty to armed robbery and conspiracy, and freely admitted he was guilty of those charges. R. pp. 235-37. He identified his fellow conspirators as Robert Jackson, Cordell Lewis, and Brian Lewis. R. p. 238. Campbell testified the plan was to rob a pizza delivery man and take his car. This was Lewis's idea, he wanted to raise money to take care of his child. R. pp. 239-40. Campbell testified Lewis placed the order on Campbell's phone while they were gathered in the breezeway. Lewis also used Campbell's gun. Campbell was apprehended in the woods, and he saw law enforcement retrieve the gun used in the robbery while he was sitting in the patrol car. He admitted he carried the gun into the woods. R. pp. 241-42. The order was to be delivered to the vacant apartment. R. p. 239; p. 243.

The four robbers gathered when the pizza man arrived. Jackson greeted Haefner. Lewis then walked up to Haefner and made him get on the ground at gunpoint. Lewis cranked up the Highlander while Cordell held the gun on Haefner. Campbell kicked Lewis in the head before they left. Jackson ran off and did not get in the Highlander. R. pp. 244-48. They ate the stolen pizza and for a time, Lewis left Cordell and Campbell behind at a relative's in Judon, but later returned and picked them up. They later parked the Highlander in "a cut," which he explained was a closed dirt road, to hide the vehicle. However, when they saw a patrol car, Campbell ran while Lewis drove and hit a patrol car. Campbell was caught by an officer. R. pp. 248-52. Campbell admitted he lied when

he told officers the driver was Isiah Jefferson. Campbell explained it was a made up name. At the police station, Campbell admitted Lewis was driving and provided Lewis' address. R. pp. 254-56.

Deputy Jeremy Jones drove one of the patrol cars to the stolen Highlander. As he approached the Highlander, he saw a suspect in a light-blue shirt run to the tree-line. An SUV with its lights off sped his way and he swerved, then heard a crash. Deputy Jones chased down the man he saw run into the tree line. The man told him the gun was left in the woods. The K-9 unit found it. R. pp. 268-70. The apprehended suspect, Campbell, told Deputy Jones that Isiah Jefferson was driving the vehicle, but no one with that name appeared in the computer system or in the Department of Motor Vehicle's online database. R. p. 276. Investigator William Whitlock was called out to the scene and heard the loud crash. The Highlander was abandoned by the time he reached it, but he found a black Chicago Bulls tee-shirt on the passenger floorboard. R. pp. 289-91; p. 295.

Deputy Matthew Anderson was with the K-9 unit. Other officers approached Lewis' apartment while Deputy Anderson positioned himself by the breezeway and the back windows to the apartment. He saw a black male with no shirt, no pants, and purple shoes (he saw the purple shoes last) jump out the window and takeoff running. On his command, Deputy Anderson's dog, Striker, gave chase, clamped down on Lewis' arm, and pulled him down. R. pp. 300-02. Lewis rolled and resisted law enforcement's commands even as he was held by Striker. R. p. 304. Striker let go upon command. However, Lewis continued resisting even as Deputy Anderson put handcuffs on him. R. p. 306. Lewis had scratches on his leg. R. p. 310.

Cordell Lewis, the remaining conspirator and Lewis' younger brother, also testified against Lewis. Cordell was sixteen years old at the time. R. p. 315. Cordell pled guilty to attempted armed

robbery, conspiracy, and assault and battery. R. p. 318. Cordell did not know Jackson well and only met Campbell a few minutes before the robbery. Cordell understood the plan was to get some money. According to Cordell, Campbell called and placed the pizza order. When Jackson was about to pay for the pizzas with a credit card, Lewis pulled out a gun on the pizza deliveryman. R. pp. 321-22. Cordell was not sure if Jackson knew a robbery was going to occur. R. p. 322, line 24-p. 323, line 7. Lewis made the deliveryman drop his keys and wallet and then lay on the ground. Cordell held the gun while Lewis cranked up the car. Cordell kicked the deliveryman. Lewis drove Cordell and Campbell to Judson and later dropped off Cordell so he could play basketball. R. pp. 323-29.

Sergeant Darwin Shaw photographed the vehicle damage and the gun, and took fingerprints off the SUV. R. p. 339; p. 341; p. 349. The prints on the front passenger side were Campbell's prints. Cordell left his fingerprints on the backside of the rear driver's side door. R. pp. 359-60.

Investigator Kicklighter provided Lewis Miranda warnings after he was apprehended. Lewis admitted he was the driver and said they were trying to "hit a jug." R. pp. 376-79. Investigator Kicklighter later interviewed Lewis at the police station after Lewis was treated for a dog bite. When asked what he knew about the robbery, Lewis initially responded he wanted to make some easy money. State's Exhibit No. 53 (4:55-5:45). Lewis claimed he was merely driving the stolen vehicle. He would explain to the officers that if someone said he just needed to drive to make some easy money, he could care less what they do if he was not taking part. (circa 12:45). Law enforcement was skeptical that Lewis, twenty-one years old, was taking orders from two seventeen year-olds and a sixteen year old. (14:30-15:00).

ARGUMENT

The trial court's instructions as a whole correctly conveyed to the jury the concept of reasonable doubt, and Petitioner was not prejudiced by the isolated search language in the jury instructions.

Lewis argues he is entitled to a new trial because the trial court used the term "search for the truth" while defining reasonable doubt. The jury instructions, considered in totality, did not reduce or shift the State's burden to prove its case beyond a reasonable doubt.

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error. State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. State v. Lee Grigg, 374 S.C. 388, 406, 649 S.E.2d 41, 50 (Ct. App. 2007).

This Court's prohibition on "search" language is somewhat counterintuitive: The **central function** of the trial process in both criminal and civil cases is to discover the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); see also State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a search for the truth[.]"); see, e.g., Carella v. California, 491 U.S. 263, 265 (1989) (explaining that

burden-relieving jury instructions "subvert the presumption of innocence accorded to accused persons and also invade **the truth-finding task assigned solely to juries** in criminal cases." (emphasis added)).

Of course, as part of the truth-seeking process, the State carries the burden to prove a criminal defendant's guilt for every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); see also Burr v. Florida, 474 U.S. 879, 880 (1985) ("[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.]" (emphasis added)).

Regarding a jury charge on reasonable doubt, "[t]he 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." Victor v. Nebraska, 511 U.S. 1, 5 (1994). In a criminal case, a trial judge is only required to instruct the jury on the necessity that the defendant's guilt be proven beyond a reasonable doubt, and no specific language or wording is required to be used to advise the jury of that burden of proof. Id. In order to meet the requirements of the Constitution, jury instructions as a whole must only correctly convey to the jury the concept of reasonable doubt. Id.

Nonetheless, this Court held "[j]ury instructions on reasonable doubt which charge the jury to 'seek the truth' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to a defendant.'" State v. Aleksey, 343 S.C. 20, 26-27, 538 S.E.2d 248, 251 (2000) (quoting State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)). "The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the

challenged instruction in a way that violates the Constitution." Id. (citing Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991)).

In the instant case, the trial court provided the following instruction:

> So what is a reasonable doubt? I've said that word seventeen times. What does that mean? A reasonable doubt is that doubt which would make an honest, conscientious juror searching for the truth in a case to hesitate to act. **Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.**
>
> **Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the Defendant's guilt.**

R. p. 456, line 20 – p. 457, line 7. Therefore, Petitioner is incorrect in claiming the trial court only provided a single definition of reasonable doubt. Further, reasonable doubt, within the challenged sentence, was defined as a doubt that would make a juror hesitate to act. The search language is not used to define doubt as much as describe a juror that is doing the assigned duty of being "honest" and "conscientious" in the juror's fact-finding mission. Moreover, the single "search" sentence was not the only definition of reasonable doubt as Petitioner claims; the jury was also told (1) Proof beyond a reasonable doubt must be "of such a convincing character" that a reasonable person would not hesitate to rely on the proof even in their most important affairs, and (2) "Proof beyond a reasonable doubt [is] proof that leaves you firmly convinced of the Defendant's guilt."

Preceding this portion of the jury instructions, the trial court instructed the jury on factors in assessing the credibility of witnesses, including the witnesses' demeanor, reasons for the witnesses to be biased and whether their testimony was supported or contradicted by other evidence. R p. 452, lines 14-23. The trial court then advised, "All of these things you consider bearing in mind that you

should give the Defendant the benefit of any doubt." R. p. 452, line 24 – p. 453, line 1.

The trial court explained direct and circumstantial evidence, explaining that "to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt." R. p. 454, lines 9-14. The trial court advised, "The State has the burden of proving the defendant guilty beyond a reasonable doubt and this burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two." R. p. 454, lines 18-23.

The trial court further explained the State's burden as follows:

> A person charged with a criminal offense is never required to prove innocence. I charge you, ladies and gentlemen, that it is an important rule of law that a defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be not guilty of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

R. p. 455, lines 15-24. The trial court further advised that this burden "accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying you of that guilt beyond a reasonable doubt." R. p. 455, line 25 – p. 456, line 5.

The trial court then explained the presumption of innocence:

> A good way to describe this presumption of innocence is just like a robe of righteous[ness], just like I am wearing a robe, placed about the shoulders of the Defendant; which remains with him until it has been stripped from him by evidence satisfying you of his guilt beyond a reasonable doubt. This is not just mere legal theory, ladies and gentlemen. It is not just a legal phrase. Presumption of innocence is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from evidence of the Defendant's guilt beyond a reasonable doubt.

R. p. 456, lines 6-19.

This immediately precedes the trial court's definition of reasonable doubt that used the search language on the one hand, and on the other, told the jury that he proof must be of such a convincing character that "a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs." R. p. 457, lines 1-4. The trial court also advised that proof beyond a reasonable doubt was "proof that leaves you firmly convinced of the Defendant's guilt." R. p. 457, lines 5-7. The trial court told the jury, "[I] there is a real possibility that he is not guilty, you must then give him the benefit of the doubt and find him not guilty." R. p. 457, lines 17-20.

The trial court further instructed the jury about determining whether or not Lewis' statements to the police were voluntary, and advised the jury that the State bears "the burden of proving beyond a reasonable doubt that the alleged statement was voluntary." R. p. 459, lines 8-10. The trial court moved on to instructing the jury on intent and told the jury, "Criminal intent must be proven by the State beyond a reasonable doubt." R. p. 459, lines 24-25.

The trial court later instructed the jury on identification, noting, "Now, the State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict him." R. p. 461, lines 9-13. After more instructions on identification, the trial court returned to the burden:

> Once again I instruct that the burden on the State extends to every element of the crimes charged and this specifically includes the burden proving beyond a reasonable doubt the identity of the Defendant.
>
> If after examining the testimony you have a reasonable doubt as to the accuracy of the identification you must find the Defendant not guilty.

R. p. 462, lines 4-13.

The trial court forbade the jury to consider the fact that Lewis did not testify in reaching its verdict, reminding the jury, "The burden of proof, as I have stated to you, is always on the State. The defendant is not required to prove innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt." R. p. 463, lines 7-12. The jury referenced the State's burden of proof beyond a reasonable doubt again while instructing the jury on accomplice liability. R. p. 464, line 18 – p. 465, line 1. The trial court reminded the jury of the State's burden of proof in explaining the elements for each of four charges. R. pp. 466-70. The trial court gave the jurors instructions on how to deliberate with each other and reminded the jury it was chosen to be fair and impartial, but reminded the jury, "It is you duty in your deliberations to determine the evidence in this case, giving the Defendant the benefit of every reasonable doubt." R. p. 473, lines 14-23.

Accordingly, the complete definition of reasonable doubt the trial court provided and the remainder of the instructions ensured there was not a reasonable probability the jury would apply the trial court's instructions in an unconstitutional manner. In Todd v. State, 355 S.C. 396, 401, 585 S.E.2d 305, 308 (2003), this Court reversed the grant of post-conviction relief based on jury instructions that not only contained seek language, but advised, "I charge you that a reasonable doubt is a substantial doubt arising out of the testimony or lack of testimony in the case for which a person honestly seeking to find the truth can give a reason." Further, the trial judge charged the jury that circumstantial evidence "must point conclusively, that is to the moral certainty of the guilt of the accused to the exclusion of every other reasonable hypothesis . . . ." Id. However, this Court observed that while reasonable doubt was equated with moral certainty, the trial court did provide

other methods of describing the reasonable doubt standard and further found the instructions examined in their entirety "effectively communicated the higher burden of proof." Id. at 402, 585 S.E.2d at 308-09. As an example, this Court noted the trial judge used similar **"robe of righteousness"** language used by the trial court in the instant case. This Court found, "[T]he trial judge's careful and exhaustive articulation of the reasonable doubt and circumstantial evidence standard, when examined in its entirety, effectively communicated the high burden of proof that the state was required to establish by the Constitution." Id. at 403, 585 S.E.2d at 309.

Likewise, in the instant case, the trial court effectively explained that the proof must be sufficient that a reasonable person would not hesitate to rely on it in their own most important affairs and the proof must leave the jurors firmly convinced of the defendant's guilt. The trial court used similar "robe of righteousness" language approbated by this Court in Todd. Therefore, in the present case, the offending instructions were not nearly as odious as those in Todd and further, the remainder of the trial court's instruction effectively communicated the high burden the State faced to establish guilt.

The Court of Appeals examined a similar instruction in State v. Pradubsri, 420 S.C. 629, 803 S.E.2d 724 (Ct. App. 2017), and noted this Court's opinion from State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) which admonishes its circuit court judges to refrain from using "seek" or "search" in jury instructions, but nonetheless found the defendant was unable to show prejudice from the instruction. The Court of Appeals compared Beaty to this Court's same admonishment to its circuit court judges in State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998). In Needs, this Court found problematic the following instruction, which is nearly identical to the present case:

> [A] reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth in the case hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and to act upon it in the most important of his or her own affairs.

Needs, 333 S.C. at 152, 508 S.E.2d at 866. Notably, in addition to the above instruction, the trial court additionally used "search" language in its circumstantial evidence instructions. Id. However, this Court in Needs, as it did in Beaty, found the language harmless because the reasonable doubt standard was referenced twenty-six times and other disfavored language – "moral certainty" and "real reason" language was not used in the jury instructions. Needs, 333 S.C. at 154-55, 508 S.E.2d at 867-68. Even while advising trial courts to abandon the "search for the truth" language in the reasonable doubt charge, the Supreme Court noted, "trial judges have talked about jurors searching for the truth for more than a century." Id. at 154, 508 S.E.2d at 867 (citations omitted). Notably, while Lewis attempts to distinguish this case from cases like State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000), Lewis makes no attempt to distinguish the instant case from Needs. This is because Needs is dispositive.

The Court of Appeals concluded Pradubsri was not prejudiced by the identical instruction found in Needs, noting the trial court referenced the reasonable doubt standard twenty times in its instructions and did not use the problematic "moral certainty" and "real reason" terms. Pradubsri, 420 S.C. at 640-41, 803 S.E.2d at 730. Likewise, in the instant case, the trial court referenced the reasonable doubt standard twenty-five other times and did not use the "moral certainty" or "real reason" terms. Accordingly, in line with Needs, Todd, and Pradubsri, the trial court's decision to use the "search" language from Needs was harmless and did not prejudice Lewis.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. Should this Court see fit to grant the petition, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

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