STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2011-202529

THE STATE,

Respondent,

vs.

MITCHELL AKEEM HOUSE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge's jury instructions, which included language regarding "the truth," were not improper or unconstitutional, and those instructions as a whole properly charged the jury on the applicable law, including on the State's burden of proving Appellant's guilt beyond a reasonable doubt and on Appellant's presumed innocence, without shifting the burden of proof or creating a reasonable likelihood that the jury would apply the instructions in an unconstitutional manner. Furthermore, even assuming the trial judge's jury instructions were somehow erroneous, any error was harmless in light of the overwhelming evidence of guilt presented during trial.

STATEMENT OF THE CASE

In October of 2010, Appellant Mitchell Akeem House was arrested following an investigation into a vehicle break-in. In March of 2011, the Richland County grand jury indicted Appellant for one count of breaking into a motor vehicle and one count of petit larceny. On October 26, 2011, a jury trial was commenced in the Richland County court of general sessions with the Honorable Clifton Newman, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of breaking into a motor vehicle and acquitted him of petit larceny. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of one year. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On the evening of October 21, 2010, officers with the Columbia Police Department began conducting a law enforcement operation in downtown Columbia, South Carolina, in response to an increase in the number of vehicle break-ins occurring in that area. (Tr. pp. 81-82; p. 116). As part of the operation, Officer Carl Brown went undercover and drove into a well-lit parking lot located on Gervais Street in an unmarked police vehicle around 1:00 a.m. (Tr. pp. 115-116; p. 142; p. 153). As he drove into the parking lot, he saw three men – Clarence Leonard, Shuaib Buckley, and Appellant Mitchell Akeem House – huddled around a vehicle later determined to belong to the victim, Terreahna Jefferson ("Victim"). (Tr. p. 74; p. 82; p. 117; pp. 122-123). However, once the officer entered the parking lot, the men quickly moved away from Victim's vehicle and temporarily got inside of another vehicle parked in the parking lot. (Tr. pp. 117-118). Officer Brown then parked his vehicle, walked out of the parking lot and around a corner, circled back, began covertly watching the men from behind a wall, and used his radio to alert other officers in the area of the men's descriptions. (Tr. p. 83; pp. 118-119; p. 121).

As Officer Brown watched the men, Appellant and Buckley returned to Victim's vehicle while Leonard stood in the middle of the parking lot actively scanning the area.[1] (Tr. pp. 118-120; pp. 122-123). Several minutes later, Appellant and Buckley entered Victim's vehicle and began rummaging around inside while Leonard continued to act as a lookout for the others. (Tr. p. 121; pp. 124-125). Once they were finished rummaging through Victim's vehicle, Appellant and Buckley met back up with Leonard, and the

[1] While Officer Brown was observing the men, Appellant and the others moved away from Victim's vehicle every time a vehicle pulled into the parking lot. (Tr. p. 120).

three men began walking down Gervais Street together. (Tr. pp. 124-125). In response, Officer Brown followed the men and alerted the other officers in the area of the direction in which they were headed.[2] (Tr. p. 83; pp. 125-126). Shortly thereafter, officers from the Columbia Police Department detained Appellant and his accomplices, who matched the descriptions of the suspects described by Officer Brown, and Officer Brown confirmed to the other officers that the detained men were the individuals who he saw enter Victim's vehicle. (Tr. pp. 83-84; p. 98; p. 128; pp. 154-155). The men were then arrested and searched, and the officers located $20 in cash on Appellant, $20 in cash on Buckley, and $76 in cash on Leonard. (Tr. p. 112; p. 129). Thereafter, officers located Victim, who was the owner of the vehicle that Appellant and his accomplices were seen tampering with and entering, at a nearby club. (Tr. p. 74; p. 82; pp. 86-87; p. 106; p. 117; p. 124). After being alerted of the break-in, Victim looked inside of her vehicle and discovered $95 in cash had been taken from her wallet. (Tr. p. 79).

Subsequently, Appellant was indicted for breaking into a motor vehicle and petit larceny, and he proceeded to trial. (Tr. p. 10; Indictments). During trial, Victim and the officers involved in the operation testified about the vehicle break-in and Appellant's apprehension and arrest. (Tr. p. 74; p. 79; pp. 81-82; p. 87; p. 98; pp. 104-106; pp. 116-130). Specifically, Victim testified neither Appellant nor anyone else had her permission to go through her vehicle on the night of the incident. (Tr. p. 75). Furthermore, Officer Brown confirmed Appellant was one of the men he saw inside of Victim's vehicle and indicated he was certain of his identification. (Tr. p. 125; pp. 154-155).

[2] As he walked past Victim's vehicle, Officer Brown noticed the back window of the vehicle was pushed down and the inside of the vehicle was disheveled. (Tr. p. 125).

At the close of the evidentiary phase of trial, the trial judge instructed the jury on the law to be applied in deciding Appellant's case. (Tr. pp. 195-204). In charging the jury, the trial judge thoroughly defined the concept of reasonable doubt, instructing:

> The State must prove the defendant guilty beyond a reasonable doubt. So what is a reasonable doubt in the law? A reasonable doubt is a doubt which makes an honest, sincere juror in search of the truth 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. 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, then you must find him guilty. If, on the other hand, you think there's a real possibility that he is not guilty, you must then give him the benefit of the doubt and find him not guilty.

(Tr. p. 200). Additionally, the trial judge repeatedly explained to the jury that the burden of proof rested solely upon the State, Appellant was not required to prove his innocence, Appellant was to be given the benefit of every reasonable doubt, Appellant was presumed innocent until his guilt was proven beyond a reasonable doubt, the presumption of innocence remained unless Appellant's guilt was proven beyond a reasonable doubt, the State was required to prove the elements of breaking into a motor vehicle and petit larceny beyond a reasonable doubt, the State was required to prove Appellant's identity as one of the perpetrators of the crimes beyond a reasonable doubt, and the State's burden of proof applied to every element of the charged offenses and to identity. (Tr. pp. 196-203). Furthermore, towards the conclusion of the jury charge, the trial judge instructed the jury as follows:

> Mr. Foreman and members of the jury, you have been selected by both the State and the defendant to be fair and impartial jurors. It is your duty then in your joint deliberations to determine the truth in this case, giving the defendant the benefit of every reasonable doubt on each and every issue,

> and from the facts that you determine to be true you take and apply the law which I have just given you and, thus, arrive at a verdict which speaks the truth in this case.

(Tr. p. 203). Following the jury instructions, defense counsel objected to the inclusion of the "in search of the truth" language in the trial judge's jury charge on reasonable doubt, and the trial judge noted defense counsel's objection.[3] (Tr. p. 205). Thereafter, the jury began its deliberations. (Tr. p. 207).

Approximately three hours into the jury's deliberations, the jury foreman submitted a note indicating the jurors had reached a verdict on one of the charges but had been unable to reach a unanimous decision on the other charge. (Tr. pp. 207-208). In response, the trial judge presented an Allen charge to the jury, and the jury resumed its deliberations. (Tr. pp. 208-210). Several hours later, the trial judge asked the jurors if they wished to cease deliberations for the evening and resume in the morning, and the jurors indicated they did wish to do so. (Tr. pp. 213-214). Subsequently, deliberations resumed in the morning, and the jury reached a verdict shortly thereafter, convicting Appellant of breaking into a motor vehicle and acquitting Appellant of petit larceny. (Tr. pp. 215-216). Following the verdict, the trial judge sentenced Appellant to a one-year term of imprisonment. (Tr. p. 247).

[3] Specifically, in raising the objection, defense counsel stated: "[T]he reasonable doubt charge that was read to them, I believe that the language was that which would make an honest, sincere juror in search of the truth to hesitate to act. We would ask that it would be a reasonable person to hesitate to act because the jury is determining whether or not the State's met their burden. They're not technically in search of the truth." (Tr. p. 205).

ARGUMENT

The trial judge's jury instructions, which included language regarding "the truth," were not improper or unconstitutional, and those instructions as a whole properly charged the jury on the applicable law, including on the State's burden of proving Appellant's guilt beyond a reasonable doubt and on Appellant's presumed innocence, without shifting the burden of proof or creating a reasonable likelihood that the jury would apply the instructions in an unconstitutional manner. Furthermore, even assuming the trial judge's jury instructions were somehow erroneous, any error was harmless in light of the overwhelming evidence of guilt presented during trial.

Appellant contends the trial judge committed reversible error by including language regarding "the truth" in his jury instructions. In support of that contention, Appellant maintains the trial judge's use of "the truth" language diluted the State's burden of proof and created a reasonable likelihood that "the jurors substituted the trial court's concept of determining the truth in [Appellant's] case for the State's constitutional duty to prove Appellant's guilt beyond a reasonable doubt."[4] (App. Br. p. 10). To the contrary, the trial judge committed no error in instructing the jury on the

[4] Significantly, during trial, defense counsel only objected to the trial judge's inclusion of the single "in search of truth" reference in the reasonable doubt portion of his jury instructions, arguing the jury was "not technically in search of the truth." (Tr. p. 205). Now, on appeal, Appellant appears to be objecting to additional portions of the trial judge's jury instructions and, for the first time, contends the jury instructions violated his constitutional rights by shifting the burden of proof. (App. Br. p. 5; p. 10). However, Appellant is limited on appeal solely to the issues and arguments raised to the trial judge. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); see also West v. Morehead, 396 S.C. 1, 14, 720 S.E.2d 495, 502 (Ct. App. 2011) ("Appellants make arguments and cite authorities in their brief that were not presented to the trial court. These arguments are not preserved."); see, e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments."). Thus, to the extent Appellant is objecting to any additional portions of the jury instructions and arguing the jury instructions violated his constitutional rights, those objections and arguments are not properly preserved for appellate review and cannot properly be considered for the first time on appeal. See State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal."); see also State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) ("Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal."); In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("The record contains no indication that Corley ever raised a due process argument in the circuit court. This argument is not preserved for review."); State v. Charron, 351 S.C. 319, 328, 569 S.E.2d 388, 393 (Ct. App. 2002) (finding allegations of due process and equal protection violations were not preserved for appellate review where there was no indication the issues were raised to the trial court).

applicable law, the trial judge's inclusion of language regarding "the truth" was not unconstitutional, and his instructions as a whole properly conveyed the State's burden of proving Appellant guilty beyond a reasonable doubt along with Appellant's presumption of innocence to the jury without creating a reasonable likelihood that the jury decided Appellant's case in an unconstitutional manner. Furthermore, even assuming the trial judge's instructions were somehow erroneous, any error was harmless in light of the overwhelming evidence of Appellant's guilt for breaking into a motor vehicle. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, the appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In reviewing a trial judge's jury instructions for error, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); 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."). A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); 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."). The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood that the jury applied the charge in a way that violated the Constitution. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, "[a] trial court's decision regarding jury charges will not be reversed where

the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

ANALYSIS

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)); Gardner v. Florida, 403 U.S. 349, 360 (1977) ("[T]he debate between adversaries is often essential to the **truth-seeking function of trials**[.]" (emphasis added)); State v. Kim, 318 N.C. 614, 621, 350 S.E.2d 347, 351 (N.C. 1986) ("The jury is the lie detector in the courtroom and is the only proper entity to perform the ultimate function of every trial – determination of the truth."). As part of the truth-seeking process, the State is constitutionally required 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)).

As a result, it is essential that the trial judge identify the State's burden of proof to the jury by instructing on the necessity that the defendant's guilt be proven beyond a

reasonable doubt. Victor v. Nebraska, 511 U.S. 1, 5 (1994). In identifying the concept of reasonable doubt to the jury, the trial judge is neither prohibited from defining reasonable doubt for the jury nor required to expressly do so. See id. at 5 ("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."). Instead, jury instructions as a whole must **only** correctly convey to the jury the concept of reasonable doubt in order to comply with the requirements of the Constitution. Id. However, the trial judge must avoid defining reasonable doubt in a manner that could lead the jury to convict on a lesser degree of proof than proof beyond a reasonable doubt. Id. at 22.

Significantly, the South Carolina Supreme Court has repeatedly recognized trial judges are **not** required to specifically define reasonable doubt when instructing the jury in criminal cases. See State v. Adams, 322 S.C. 114, 126, 470 S.E.2d 366, 373 (1996) (finding no error in the trial judge's refusal to define reasonable doubt during the jury instructions); State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 637-638 (1994) (recognizing a trial judge is not required to define reasonable doubt to the jury). However, when a trial judge chooses to define reasonable doubt to the jury, our Supreme Court has expressly recognized two appropriate ways for reasonable doubt to be defined. State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 868 (1998).

Under the first accepted jury charge, the trial judge **could** choose to instruct the jury that "[a] reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act." Id. at 156, n.12, 508 S.E.2d 868. Under the second accepted jury charge, the trial judge **could** instruct the jury as follows:

> The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told [it] is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.
>
> Ladies and gentlemen, 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. The law doesn't require that.
>
> If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. You must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Id. (brackets in original). However, neither of the accepted charges is mandatory, and decisions as to whether and how to define reasonable doubt rest entirely in each individual trial judge's discretion so long as the jury is correctly advised of the State's burden of proof. Id.; see also State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) ("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." (emphasis added)); State v. Blanden, 177 S.C. 1, 25-26, 180 S.E. 681, 691 (1935) ("It is not incumbent upon the trial Judge to charge in the exact language usually used by a trial Judge, just so the issues are clearly stated and the law applicable thereto made clear so that the jury can understand the duty devolved and the defendant's rights fully protected.").

Significantly though, our Supreme Court has cautioned that "[t]rial courts should rarely find it necessary to deviate from [the] approved charges." Needs, 333 S.C. at 156, 508 S.E.2d at 868. In particular, the Supreme Court has cautioned trial judges to avoid

using language that instructs the jury to "seek the truth" due to the risk that such language could potentially shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000). Additionally, the Supreme Court has instructed that trial judges should not instruct jurors that their verdicts "would represent truth and justice for the parties" due to the risk that such language could distract the jury from its core functions. State v. Daniels, 401 S.C. 251, ___, 737 S.E.2d 473, 477 (2012) (Toal, C.J., concurring for the majority). However, our Supreme Court has specifically declined to hold any mention of "the truth" in jury charges is unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included "in seeking the truth" language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the case sub judice, Appellant contends the trial judge's jury instructions were erroneous because they allegedly improperly shifted the burden of proof "by placing emphasis on the jury's determination of the truth in [Appellant's] case." (App. Br. p. 10). To the contrary, the trial judge committed no error in instructing the jury on the applicable law, and the jury instructions, when viewed as a whole, did not create a reasonable likelihood that the jury applied those instructions in an unconstitutional manner. Significantly, the trial judge thoroughly and repeatedly explained to the jury that Appellant was presumed to be innocent and the State had the burden of proving Appellant's guilt beyond a reasonable doubt for every element of the indicted offenses

before he could be convicted. Furthermore, at no point in his jury instructions did the trial judge suggest to the jury that it was required to "seek" some reasonable explanation of Appellant's innocence. See State v. Raffaldt, 318 S.C. 110, 115-116, 456 S.E.2d 390, 393 (1995) (finding a jury charge instructing the jury to "seek some reasonable explanation other than the guilt of the accused" was erroneously burden-shifting but determining any error with that instruction was harmless because the charge as a whole properly explained the State had the burden of establishing Raffaldt's guilt beyond a reasonable doubt); see also Needs, 333 S.C. at 154, 508 S.E.2d at 867 ("In Manning, the Court pointed to the 'in search of the truth' language contained in the reasonable doubt charge as contributing to its defective nature. However, appellate courts since have seemed to allow the use of the phrase – at least when it is not combined with other offending terms outlined in Manning." (citations omitted)). Instead, the trial judge simply referenced a search for "the truth," which is the primary objective of the adversarial trial process and the requirement that the State prove a criminal defendant's guilt beyond a reasonable doubt, as part of his jury instructions and, in addition to the use of that language, provided a thorough and complete explanation of what the State's burden of proving Appellant's guilt beyond a reasonable doubt meant. See State v. Young, 238 S.C. 115, 139, 119 S.E.2d 504, 517 (1961) ("[T]he trial Judge charged: 'Go by the law and the evidence, but it cannot in good faith be based upon anything until you have found the truth in the case.' A consideration of the charge as a whole does not bear out defendant's contention that with the use of the word 'truth' the trial Judge injected an indefinable element into the case. To arrive at the truth is the ultimate goal of every case. There are many rules governing the manner in which this must be done, but they are designed to aid in arriving at a verdict which speaks the truth."), overruled on other

grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see also Todd, 355 S.C. at 402-403, 585 S.E.2d at 308-309 ("While the trial judge equated 'reasonable doubt' with 'moral certainty,' he **also used alternative methods of describing the standard**. . . . We find that the 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." (emphasis added)); see, e.g., Moore v. State, 283 Ga. 151, 155, 656 S.E.2d 796, 801 (Ga. 2008) ("[T]he pattern charge's mention of jurors 'seeking the truth' does not, as Moore suggests, dilute or cause confusion over the State's burden of proof and the role of the jury by suggesting that the jurors embark on 'their own intuitive search for the truth.' In criminal cases, the factfinder does have the task of seeking the truth. But, the jury is to determine the truth in view of the evidence, considered in light of the court's instructions. The court's instructions properly focused the jurors on their consideration of the evidence presented at trial." (citations omitted)). Accordingly, because the trial judge's jury instructions thoroughly explained the State's burden of proof and Appellant's presumed innocence, the jury charge as a whole was not erroneous and does not warrant reversal. See State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) ("Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error.").

In arguing that the trial judge's jury instructions were erroneous and prejudicial, Appellant contends the instructions "clearly" contributed to the verdict because the evidence of his guilt was not overwhelming. (App. Br. p. 10). However, notwithstanding the fact that the trial judge's jury instructions were **not** erroneous, the

evidence of Appellant's guilt for breaking into a motor vehicle was substantial and overwhelming. Looking to the evidence and testimony presented during trial, Officer Brown testified he directly observed Appellant and his associates tampering with Victim's vehicle, which Victim confirmed Appellant had no permission to enter, and Officer Brown unequivocally stated he was certain Appellant was one of the men he observed enter the vehicle and rummage around inside of it. Furthermore, the testimony presented during trial established Appellant and his associates engaged in furtive behavior each time someone else entered the parking lot prior to the break-in, were arrested while walking in the direction that the suspects headed in after Victim's vehicle was broken into, and matched Officer Brown's descriptions of the perpetrators of the crime. In light of that testimony, the jury could not have reached any rational conclusion other than that Appellant, who was seen inside of a vehicle that he had no legitimate reason or legal right to be inside of, was guilty of breaking into Victim's motor vehicle. Therefore, even if the trial judge's jury instructions were somehow erroneous, those instructions could not have contributed to the verdict and any error was entirely harmless. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.").

Additionally, Appellant maintains the jury instructions "clearly" contributed to the guilty verdict based on the fact that the jury was originally deadlocked, the deliberations were somewhat lengthy, and the jury ultimately returned a split verdict. (App. Br. p. 10). However, absent wholly unsupported speculation, the fact that the jury was deadlocked as to **one** of the two charges during its deliberations in no way suggests

the jury did not understand the State's burden of proof in Appellant's case, and the jury notably returned a unanimous verdict of guilty as to the breaking into a motor vehicle charge. Likewise, neither the length of the jury's deliberations, which lasted approximately five hours in total, nor the split verdicts on the breaking into a motor vehicle and petit larceny charges suggests the jury found Appellant guilty based on a degree of proof lower than the appropriate beyond a reasonable doubt standard. See State v. Dewitt, 254 S.C. 527, 534, 176 S.E.2d 143, 147 (1970) ("There is no prescribed length of time for a jury to reach a verdict. Such must of necessity be left to the judgment of the jury."). Instead, the fact that the jury deliberated for a total of five hours before convicting Appellant of one charge and acquitting him of another more reasonably suggests the jury understood it was tasked with returning a verdict of guilty **only** upon proof beyond a reasonable doubt and carefully considered the evidence presented before finding Appellant guilty of breaking into a motor vehicle. See, e.g., Clark v. Moran, 942 F.2d 24, 32-33 (1st Cir. 1991) ("This span of time and the questions asked, rather than indicating indecision, more likely indicated a diligent and conscientious attempt to evaluate the evidence, to verify the testimony of different witnesses and to come to a careful and reasoned decision."). Accordingly, as there is no reason to believe the jury did not understand the State's burden of proof based on the trial judge's jury instructions as a whole, any possible error resulting from the inclusion of "the truth" language in those instructions was entirely harmless even assuming the inclusion of that language was somehow erroneous. See State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.").

When viewed as a whole, the trial judge's jury instructions were substantially correct, properly instructed the jury on the applicable law, and thoroughly identified and explained the State's burden of proving Appellant's guilt beyond a reasonable doubt to the jury. See Ezell, 321 S.C. at 425, 468 S.E.2d at 681 ("A jury charge which is substantially correct and covers the law does not require reversal."). Although the trial judge included language in his jury instructions regarding a search for "the truth," which ultimately is the central function of all trials, there is no reasonable likelihood that the inclusion of that language shifted the burden of proof to Appellant or prevented the jury from properly deciding Appellant's case when considered in the context of the jury charge as a whole. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); see also Portuondo, 529 U.S. at 73 (stating "the central function of [a] trial . . . is to discover the truth"); see, e.g., Victor, 511 U.S. at 16 ("We do not think it reasonably likely that the jury understood the words 'moral certainty' either as suggesting a standard of proof lower than due process requires or as allowing conviction on factors other than the government's proof."). Accordingly, the trial judge committed no error in instructing the jury in Appellant's case, and, even if his inclusion of language regarding "the truth" was somehow erroneous, any error was harmless in light of the overwhelming evidence of Appellant's guilt as to the breaking into a motor vehicle charge. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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April 23, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge
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THE STATE,

Respondent,

vs.

MITCHELL AKEEM HOUSE,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

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

(1) Trial Transcript, Pages 10, 63-64, 70-159, 165-171, 195-223, and 247;

(2) Both Indictments; and

(3) Sentencing Sheet.

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

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

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ATTORNEYS FOR RESPONDENT

April 23, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2011-202529

THE STATE,

Respondent,

vs.

MITCHELL AKEEM HOUSE,

Appellant.

PROOF OF SERVICE

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

Dayne C. Phillips, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 23rd day of April, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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