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

THE STATE,

Respondent,

vs.

VICTORIA LORRAINE SANCHEZ,

Appellant.

REPLY TO RETURN TO
RESPONDENT'S PETITION FOR REHEARING

Following this Court's issuance of its decision reversing Sanchez's trafficking in heroin and unlawful conduct toward a child convictions based solely on the manner in which the trial judge instructed the jury on circumstantial evidence, the State submitted a petition for rehearing raising several points it believed were overlooked by this Court when it was conducting its harmless error analysis. In response, this Court asked Sanchez to submit a return to the State's petition, and Sanchez subsequently complied with that request.

Through her return, Sanchez first contends the State's position in its petition for rehearing is substantively unpersuasive because this Court's purportedly correctly determined the trial judge's failure to instruct the jury on the language from the decision in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), did not constitute a harmless error due to the circumstantial nature of the evidence in her case. As support for that particular contention, Sanchez—like this Court in

its decision—points to the language from Logan stating "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" as the omitted language that was crucial and necessary in her case.

To the extent Sanchez has raised substantive arguments in her return addressing the merits of the State's petition for rehearing, the State does not believe an additional response is necessary and reasserts the positions raised in its petition coupled with those raised in the Brief of Respondent and during oral argument before this Court. However, the State again notes the jury instructions that were presented specifically instructed the jurors they must consider *all* the evidence presented—or, stated differently, the evidence "taken together"—when deciding Sanchez's case and were required to acquit her after conducting such a holistic evidentiary analysis unless they were convinced of her guilt beyond a reasonable doubt. (R. p. 211). Furthermore, the State similarly notes our Supreme Court—in its decision in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020), which was issued well after Sanchez's 2018 trial—has now abandoned the language from the Logan decision misleadingly suggesting "*all of* the circumstances must be consistent" in order for circumstantial evidence to found to be sufficient to meet the State's requisite burden of proof. See State v. Herndon, 430 S.C. 367, 369, n. 1, 845 S.E.2d 499, 500, n. 1 (2020) ("Originally, this sentence stated that '*all of* the circumstances must be consistent with each other,' but we hereby modify the Logan charge by deleting the two italicized words. We make this change because we are concerned the phrase 'all of the circumstances' could be construed to invade the fact-finding role of the jury. It should be left to the jury—aided by argument of the lawyers—to determine whether a conflict between circumstances is sufficiently significant to give rise to reasonable doubt."). In light of that, it

remains unclear exactly how the missing language from Logan identified by Sanchez in her return—and by this Court in its decision—was not adequately covered by the jury instructions that were actually presented during Sanchez's trial such that the jurors' deliberations would have been analytically altered in some impactful way by the missing language's inclusion.[1] See State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused. However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." (citations and internal quotations omitted)); cf. State v. Logan, 405 S.C. 83, 94, n. 8, 747 S.E.2d 444, 449, n. 8 (2013) (concluding "any conceivable error" resulting from the trial judge's refusal to give the requested circumstantial evidence jury instruction was harmless beyond a reasonable doubt because "the trial court clearly instructed the jury regarding the reasonable doubt burden of proof" and the jury instructions as a whole properly conveyed the applicable law).

Next, through her return, Sanchez contends the State's arguments concerning the problems that would have flowed—and will flow in the event of a retrial—from the presentation of the exact language from Logan under the specific circumstances of Sanchez's case should be rejected as procedurally barred because they were purportedly raised for the first time in the State's petition for rehearing. Meanwhile, beyond raising that limited—and inaccurate—contention, Sanchez, perhaps tellingly, did not include any meaningful substantive response to the State's arguments in that regard.

[1] Supporting the State's position concerning the sufficiency of the jury instructions presented, Sanchez's appellate counsel correctly acknowledged during oral argument "no particular wording has to be used to convey [the Logan charge] concepts." (State v. Sanchez Oral Argument Recording, 6:40 to 6:59).

Contrary to Sanchez's contention, the State's arguments concerning the problematic nature of the supposedly-significant missing language from the Logan charge when that language is considered in conjunction with the issues and evidence involved in Sanchez's case were neither raised for the first time in the petition for rehearing nor procedurally barred. Instead, those arguments were expressly raised by the State during oral argument to distinguish Sanchez's case from the Herndon decision, which, significantly, was not issued until several months *after* final briefing was fully completed in the current appeal.[2] (State v. Sanchez Oral Argument Recording, 25:50 to 26:25 and 27:14 to 28:10). And, those arguments were only raised for the first time during the oral argument because the State's need to distinguish Sanchez's case from Herndon did not arise—and could not possibly have arisen—until after that decision was issued, which, as already noted, occurred at a time that resulted in oral argument being the State's first effective opportunity to address the matter. Under such circumstances, those arguments—which, contrary to Sanchez's contention, were unquestionably raised prior to the State's petition for rehearing—were properly raised on appeal such that they are not procedurally barred and could, can, and should be considered by this Court in resolving Sanchez's case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (expressing concern about "hypertechnical application" of procedural bars on appeal); cf. State v. Brown, 401 S.C. 82, 95, n. 3, 736 S.E.2d 263, 270, n. 3 (2012) (rejecting Brown's contention the State's arguments related to Davis v. United States, 564 U.S. 229 (2011), were not properly preserved for appellate review due to the fact they had not been

[2] Notably, those arguments were also raised during oral argument to respond to Sanchez's appellate counsel's oral argument remarks, which included—for the first time—contentions that were not raised in Sanchez's appellate brief concerning the three specific "concepts" from Logan appellate counsel believed were prejudicially not covered by the jury instructions presented during trial. (App. Br. pp. 26-28; State v. Sanchez Oral Argument Recording, 6:18 to 8:02).

included in the State's petition for a writ of certiorari because the Davis decision had not yet been issued at the time the State filed its petition). Moreover, even if those arguments had not been raised at all by the State, this Court could *still* properly consider them because an appellate court can *affirm* a conviction for any ground appearing in the record whether raised on appeal or not. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420–21, 526 S.E.2d 716, 723 (2000) ("[I]t is not always necessary for a *respondent*—as the winning party in the lower court—to present his issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review. This approach is in keeping with the view, as expressed in Rule 220(c), SCACR, that an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal.").

Accordingly, for all the foregoing reasons coupled with the reasons articulated in the State's petition for rehearing, included in the Brief of Respondent, and presented during oral argument before this Court, the State respectfully asks this Court to rehear this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, reconsider its decision, vacate its previous opinion, and affirm Sanchez's convictions after finding any error resulting from the trial judge's charging decisions was harmless beyond a reasonable doubt under the specific circumstances of Sanchez's case.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: _____
Mark R. Farthing
S.C. Bar Number 76901

January 27, 2022

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

THE STATE,

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vs.

VICTORIA LORRAINE SANCHEZ,

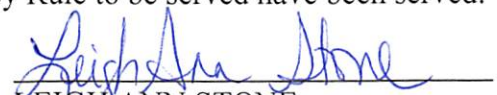
Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Reply to Return to Respondent's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Adam Sinclair Ruffin, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 27th day of January, 2022.



LEIGH ANN STONE
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Leigh Ann Stone

From: Leigh Ann Stone
Sent: Thursday, January 27, 2022 4:54 PM
To: aruffin@sccid.sc.gov
Cc: Mark Farthing; William Blitch; Leverett, Scott
Subject: The State v. Victoria L. Sanchez (2018-002163)
Attachments: Sanchez.Reply to Return to Pet for Rehearing (02884624xD2C78).PDF

Good Afternoon Mr. Ruffin,

Attached please find a copy of the Reply to Return to Respondent's Petition for Rehearing in The State v. Victoria L. Sanchez (2018-002163). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

LEIGH ANN STONE, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-7239 | LeighAnnStone@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov