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Mar 28 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2022-000250

THE STATE,

Petitioner,

vs.

VICTORIA LORRAINE SANCHEZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by reversing Sanchez's convictions solely due to the manner in which the trial judge instructed the jury on circumstantial evidence when any conceivable error committed by the trial judge during the jury instructions was harmless beyond a reasonable doubt due to the facts: (1) the jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Sanchez could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt; and (2) the presentation of the language requested by defense counsel would not have altered or impacted the jury's analysis in Sanchez's case under the circumstances involved?

STATEMENT OF THE CASE

Procedural History

In June of 2017, Respondent 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 Sanchez 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 Sanchez as indicted. Following the verdict, the trial judge sentenced Sanchez to concurrent terms of imprisonment of thirty-two years for trafficking in heroin and ten years for unlawful conduct towards a minor. Sanchez then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing and oral argument—unanimously reversed Sanchez's convictions in a published opinion. State v. Sanchez, 435 S.C. 438, 867 S.E.2d 595 (Ct. App. 2021). Thereafter, the State timely filed a petition for rehearing. On February 1, 2022, the Court of Appeals denied the State's petition.

Factual History

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. (App'x pp. 9-10; pp. 31-34; pp. 74-75; p. 111; pp. 124-127; pp. 129-130). 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. (App'x p. 10; pp. 18-19; pp. 33-34; pp. 74-75). 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. (App'x 10; pp. 18-19; pp. 33-34).

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 traffic infractions. (App'x pp. 8-9; p. 26; p. 34; pp. 73-76; Defense Ex. # 1 (Recording of Stop)). Based on the observed 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. (App'x p. 10; pp. 76-77; Defense Ex. # 1).

Once the vehicle had stopped, Deputy Reese approached it and explained to its driver—Sanchez—why he initiated the stop, asked where she was going, and requested her driver's license, registration information, and insurance information.[1] (App'x pp. 10-11; p. 23; p. 77; p. 81; Defense Ex. # 1). In response to the deputy's queries, Sanchez 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. (App'x p. 10; pp. 77-78; Defense Ex. # 1). Sanchez also provided the deputy with a Texas identification card, a registration card indicating the vehicle was registered in a third-party's name, insurance information indicating it was insured by an entirely different third-party, and a bill of sale

[1] When he first approached the vehicle, Deputy Reese also noticed a number of factors that raised his suspicions, including an "overwhelming" scent of air fresheners emanating from the vehicle's interior and the presence of two cell phones inside the vehicle despite the fact the only occupants were the driver and a small child. (App'x pp. 10-12; p. 17; p. 79; p. 81).

indicating Sanchez bought the vehicle on the preceding day. (App'x pp. 77-78; p. 96; pp. 114-115). Deputy Reese then asked Sanchez to step out of the vehicle, and she accompanied him to his patrol car while he completed the necessary checks. (App'x p. 12; p. 82; Defense Ex. # 1).

For the next few minutes, Deputy Reese questioned Sanchez while simultaneously attempting to verify the information she had supplied. (App'x p. 78; pp. 82-83; Defense Ex. # 1). During their conversation, Sanchez, 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. (App'x pp. 12-13; pp. 77-78; Defense Ex. # 1). While in Georgia, Sanchez 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.[2] (App'x p. 11; pp. 78-79; p. 84; 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. (App'x p. 13; pp. 78-79; p. 116; Defense Ex. # 1). Additionally, Sanchez claimed she had been working on and off as a cook at a restaurant 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. (App'x p. 17; pp. 83-84; Defense Ex. # 1). Furthermore, Sanchez 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." (App'x p. 13; pp. 79-80; Defense Ex. # 1).

[2] Interestingly, the bill of sale Sanchez provided to Deputy Reese did not contain any information indicating Sanchez only paid a portion of the $10,000 purchase price at the time she bought the vehicle. (App'x p. 232).

Thereafter, Deputy Reese informed Sanchez he was going to step out of his patrol car and explain the warning citation to her. (App'x pp. 84-85; Defense Ex. # 1). The deputy then briefly talked with Sanchez about the warning citation and the need for her to properly insure her vehicle in her own name. (App'x pp. 13-14; p. 23; pp. 84-85; Defense Ex. # 1). Immediately after that, Deputy Reese asked Sanchez for permission to conduct a search of her vehicle. (App'x pp. 11-14; pp. 16-17; p. 24; p. 27; p. 79; pp. 81-83; p. 85; Defense Ex. # 1). Almost instantaneously in response, Sanchez unequivocally and unconditionally granted consent for a search. (App'x p. 14; p. 24; p. 27; p. 85; Defense Ex. # 1).

At that point, Deputy Reese asked Sanchez to remove her child from the vehicle, and Sanchez complied with that request. (App'x p. 13; p. 86; 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 Sanchez and her daughter. (App'x pp. 15-16; p. 35; p. 86; Defense Ex. # 1). Shortly 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 Sanchez's vehicle. (App'x p. 16; pp. 35-36; p. 86; pp. 131-132; Defense Ex. # 1). The two deputies then resumed the search, and, a few 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. (App'x p. 35; pp. 37-39; pp. 41-42; p. 87; p. 121; p. 135; pp. 139-140; Defense Ex. # 1).

Once the secret compartment had been spotted, Deputy Reese continued looking inside the passenger compartment of the vehicle 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. (App'x p. 15; pp. 39-40; p. 136; Defense Ex. # 1). Shortly after that, the deputies removed the rear seat, found the access cover for the compartment, and opened it. (App'x p. 15; p. 29; pp. 39-40; p. 87; p. 121; pp. 135-137; 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. (App'x p. 16; p. 44 p. 87; p. 90; p. 92; pp. 106-107; p. 137; p. 165; Defense Ex. # 1). At that point, Sanchez was swiftly placed under arrest. (App'x p. 88; pp. 93-94; Defense Ex. # 1).

Subsequently, Sanchez was indicted for trafficking in heroin and unlawful conduct towards a child, and she elected to proceed forward to trial. (App'x p. 2; pp. 235-238). During the course of Sanchez's trial, evidence and testimony was presented establishing Sanchez 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. (App'x pp. 75-81; pp. 109-110; p. 114; State's Ex. # 9 (Recording of Stop)). Additionally, evidence and testimony was presented establishing Sanchez, 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 recently 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. (App'x pp. 79-80; pp. 87-88; p. 94; pp. 109-110; p. 121; pp. 128-129; p. 135; pp. 139-140; pp. 164-165; 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. (App'x pp. 174-175; pp. 178-179).

As the trial progressed, the trial judge asked the parties if they wished to discuss potential jury instructions outside the presence of the jury. (App'x pp. 142-143). 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). (App'x p. 143). 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."

(App'x pp. 143-144). 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. (App'x p. 144).

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). (App'x pp. 149-150). 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.

(App'x pp. 230-231). Once again, the trial judge denied the request. (App'x p. 151).

Subsequently, the trial judge charged the jury on the applicable law. (App'x pp. 204-220). 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 Sanchez was presumed to be innocent, and advised the jurors their verdict must be a unanimous one. (App'x pp. 205-210; p. 219). More specifically, regarding 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.

(App'x p. 210). Additionally, the trial judge instructed the jurors on the indicted offenses and advised them mere presence was not sufficient to prove possession of drugs. (App'x p. 215-217). 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.
>
> 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.

(App'x p. 211).

At the conclusion of the trial judge's jury instructions, defense counsel unsuccessfully renewed his "prior objection" without further comment. (App'x p. 220). Thereafter, the case was submitted to the jury, and the jury ultimately convicted Sanchez as indicted after roughly ninety minutes of deliberations. (App'x p. 222; p. 224).

Following that, Sanchez appealed her convictions, arguing—amongst other things—the trial judge erred by declining defense counsel's request for a jury instruction containing the language on circumstantial evidence articulated in the Logan decision. (App'x pp. 242-276). On appeal, the Court of Appeals reversed. State v. Sanchez, 435 S.C. 438, __, 867 S.E.2d 595, 599 (Ct. App. 2022). In doing so, the Court of Appeals concluded the trial judge erred by refusing

defense counsel's circumstantial evidence jury instruction request. Id. at __, 867 S.E.2d at 598. More specifically, the Court of Appeals determined the jury instructions presented were not sufficient because they did not contain 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 guilt of the accused beyond a reasonable doubt." Id. Notably though, in reaching that determination, the Court of Appeals did not offer any explanation as to how the omitted language from Logan would have altered or impacted the jury's analysis had it been presented along with the other instructions actually presented in Sanchez's case. Id. at __, 867 S.E.2d at 598-599. Furthermore, while acknowledging the failure to give a requested Logan charge must be prejudicial to warrant reversal, the Court of Appeals held the trial judge's error resulted in prejudice to Sanchez due to the largely circumstantial nature of the evidence in her case and found the error not to be harmless. Id. at __, 867 S.E.2d at 598-599.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). 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."). 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."); see also United States v. Ashrafkhan, 964 F.3d 574, 577 (6th Cir. 2020) ("We will reverse a conviction based on improper jury instructions on abuse-of-discretion review only if the instructions, viewed as a whole, were confusing, misleading, or prejudicial, . . . and a reversal of a conviction is generally unwarranted unless the instructions have clearly misstated the law[.]" (citations and internal quotations omitted)).

ARGUMENT

The Court of Appeals erred by reversing Sanchez's convictions solely due to the manner in which the trial judge instructed the jury on circumstantial evidence because any conceivable error committed by the trial judge during the jury instructions was harmless beyond a reasonable doubt due to the facts: (1) the jury instructions as presented were sufficient to adequately and properly convey the applicable law to the jury, including the law regarding the fact Sanchez could not be convicted unless the evidence—regardless of whether it was direct or circumstantial—proved her guilt beyond a reasonable doubt; and (2) the presentation of the language requested by defense counsel would not have altered or impacted the jury's analysis in Sanchez's case under the circumstances involved.

Through its decision in Sanchez's case, the Court of Appeals reversed Sanchez's convictions based solely on the manner in which the jury was instructed on circumstantial evidence. In doing so, the Court of Appeals found the trial judge erred by failing to instruct the jury in a manner consistent with this Court's decision in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), and further concluded the trial judge's error was not harmless due to the fact the State primarily relied upon circumstantial evidence to prove its case. Significantly, even without the presentation of the Logan-based 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 Sanchez could not be convicted unless her guilt had been established by the evidence beyond a reasonable doubt. Moreover, the presentation of the requested instruction would not have altered or impacted the jury's analysis since the instruction merely constituted an additional explanation of the reasonable doubt standard, which had already thoroughly been covered by the instructions as presented. Under such circumstances, any possible error committed by the trial judge by failing to include the requested Logan-based instruction in her jury charge was harmless beyond a reasonable doubt and could not have resulted in any actual prejudice to Sanchez. Thus, contrary to the conclusion of the Court of Appeals, reversal of Sanchez's convictions was not warranted

on appeal. The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be reversed, and Sanchez's convictions should be affirmed.

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. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002); see 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."). 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.").

Throughout South Carolina history, a variety of different circumstantial evidence charges have been recognized by our courts as proper at different points in time. 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), this 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 State v. Littlejohn, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955) ("[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), this 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), this 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)).

Following that, in State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013), this Court again considered an issue involving the propriety of a circumstantial evidence jury instruction. In that case, this 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, this 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 guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99-100, 747 S.E.2d 452-453. Importantly though, despite articulating that new charge, this Court expressly recognized any error that occurs concerning 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.

Most recently, in State v. Herndon, 430 S.C. 367, 369-370, 845 S.E.2d 499, 501 (2020), this Court yet again addressed an issue involving a circumstantial evidence jury instruction and considered the question of whether the trial judge's decision not to instruct the jury on the language from Logan upon request constituted reversible error. In that case, the critical issue in dispute during trial centered on whether Herndon was acting in self-defense, by accident, or criminally when the victim was fatally shot. Id. at 369, n. 3, 845 S.E.2d at 501, n. 3. The largely-circumstantial evidence that was presented during Herndon's trial established the victim was physically abusive of Herndon and had been involved in a heated argument with Herndon just before the shooting, and further testimony was presented from a pathologist establishing the fatal bullet's trajectory was *equally* consistent with both the State's theory of the case and Herndon's. Id. at 369-370, 845 S.E.2d at 501. Before the case was submitted to the jury, defense counsel requested a jury instruction on the language from Logan, the trial judge denied that request, and Herndon was later convicted. Id. During the ensuing appeal, the Court of Appeals affirmed, and this Court subsequently granted Herndon's petition for a writ of certiorari. Id. On certiorari, this Court reversed. Id. at 370, 845 S.E.2d at 501. In doing so, this Court explained the Logan charge "must" be given when requested pursuant to the Logan decision but reiterated the failure to give such a charge remains subject to a harmless error analysis. Id. at 371, 845 S.E.2d at 501-502. Then, looking to the specific circumstances of Herndon's case, this

Court determined the trial judge's failure to present a Logan charge was not harmless in light of the fact the State's case was almost exclusively circumstantial *and* even the State's own witness confirmed the plausibility of Herndon's version of events. Id. at 373, 845 S.E.2d at 502. Based on that, this Court explained: "The competing inferences involved in *this* circumstantial evidence case illustrate well the need for the Logan charge." Id. at 373, 845 S.E.2d at 503 (emphasis added).

Unquestionably, the trial judge in Sanchez's case did not use the precise language from the Logan decision—or the now-modified language that has since been articulated in the Herndon decision—when instructing the jury on circumstantial evidence despite defense counsel's request for a jury instruction pursuant to Logan.[3] Nevertheless, 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 Sanchez of the indicted offenses if the evidence presented only supported a conjectural or speculative possibility of Sanchez's guilt. In fact, the instructions presented were more instructive on that point than the requested language from Logan—which would have simply stated: "If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed."—by making it clear

[3] In Herndon, this Court modified the Logan charge to eliminate the words "all of" from the language that had previously been articulated in the Logan decision. See Herndon, 430 S.C. at 369, n. 1, 845 S.E.2d at 500, n. 1 ("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.").

even a *grave* suspicion of guilt was not sufficient for Sanchez to be convicted.[4] Similarly, the instructions as presented included additional language not contained in the Logan charge that explained the analytical distinction that exist between direct and circumstantial evidence and specifically ensured the jurors understood circumstantial evidence was "based on inference." Furthermore, the trial judge's jury instructions contained much of the language from this Court's proposed charge in Logan and ensured the jurors were aware Sanchez could not be convicted based on direct evidence or circumstantial evidence *unless* that evidence established Sanchez's guilt beyond a reasonable doubt. See State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) ("The substance of the law is what must be instructed to the jury, not any particular verbiage."). Finally, the trial judge's jury instructions explicitly required the jurors to consider and weigh "all of the evidence"—or, if phrased slightly differently, the evidence taken together—when determining whether the State met its burden of proof and emphasized Sanchez had to be acquitted if that collective analysis of *all* the evidence did not convince them of her 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 Sanchez's case even without being instructed on the language from Logan. See Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-473 (2004) ("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

[4] Specifically, through instructions that immediately preceded the instructions on circumstantial evidence, the trial judge explained: "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." (App'x pp. 210-211) (emphasis added).

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)).

In reaching a conclusion to the contrary, the Court of Appeals determined the trial judge's jury instructions were not sufficient to render any error in the trial judge's failure to present the exact language of the Logan charge harmless due to the largely circumstantial nature of the evidence of Sanchez's knowledge of the drugs coupled with the absence of 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." Critically though, the missing language viewed as pivotal by the Court of Appeals does *not* constitute an explanation of what circumstantial evidence is or how the process for evaluating circumstantial evidence is analytically different from the process for evaluating direct evidence in light of the inferential nature of circumstantial evidence. Instead, it merely constitutes an additional statement on the necessity for circumstantial evidence to prove the defendant's guilt beyond a reasonable doubt

and, thus, merely reemphasizes the reasonable doubt standard, which was already thoroughly covered and conveyed through the instructions the trial judge actually presented to the jury in Sanchez's case.[5] See Victor, 511 U.S. at 6 ("[T]he proper inquiry is not whether the instruction 'could have' been applied in an unconstitutional manner, but whether there is a reasonable likelihood that the jury *did* so apply it. The constitutional question . . . is whether there is a reasonable likelihood that the jury understood the instructions to allow conviction based on proof insufficient to meet the Winship standard."); see also Holland, 348 U.S. at 140 ("Attempts to explain the term reasonable doubt do not usually result in making it any clearer to the minds of the jury[.]" (citation and internal quotations omitted)); cf. State v. Jenkins, 408 S.C. 560, 573-574, 759 S.E.2d 759, 766 (Ct. App. 2014) ("[T]he trial court's instruction on circumstantial evidence . . . immediately followed the reasonable doubt instruction. 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." (citation omitted)). Therefore, since the trial judge's jury instructions on reasonable doubt were sufficient to ensure the jurors could have had

[5] Moreover, by stating circumstantial evidence must "conclusively" establish a defendant's guilt beyond a reasonable doubt while not making a similar statement in the context of direct evidence, it could potentially be misconstrued as implying a stronger showing than just proof beyond a reasonable doubt is necessary when circumstantial evidence—and circumstantial alone—is involved, which makes it somewhat problematic. See Logan, 405 S.C. at 97, 747 S.E.2d at 451 (explaining circumstantial evidence and direct evidence "clearly" carry the same probative weight); cf. State v. Stukes, 416 S.C. 493, 499, 787 S.E.2d 480, 483 (2016) ("Specifying this qualification applies to one witness creates the inference the same is not true for others."). Beyond that, in a drug case like Sanchez's, a jury instruction suggesting all the circumstances—or even just the circumstances—must be consistent with each other in order for them to be sufficient to convict could be highly misleading and confusing in light of the fact—as was previously recognized and explained by this Court in State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981)—the circumstance of contraband being found on premises under the control of the accused "*in and of itself* gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." Under such circumstances, an instruction containing all the language from Logan would have had a high potential to cause confusion for the jury in a case like Sanchez's. See State v. Rothell, 301 S.C. 168, 169-170, 391 S.E.2d 228, 229 (1990) ("It is error to give instructions which may confuse or mislead the jury.").

no misunderstandings about the State's burden of proof even without the presentation of the requested language from Logan, the trial judge's jury instructions—which expressly required the jurors to consider *all* the evidence regardless of whether it was direct or circumstantial when determining whether the State met its burden of proof—were sufficient to adequately convey the applicable law such that any error in the failure to present the Logan charge was, in fact, harmless. 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."); 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)); cf. State v. Drayton, 411 S.C. 533, 546, 769 S.E.2d 254, 261 (Ct. App. 2015) ("The trial court in this case charged the jury on reasonable doubt immediately before charging the law on circumstantial evidence, and we find the reasonable doubt instruction to be a correct statement of the law. As this court concluded in Jenkins, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law. Accordingly, we find no reversible error in the jury charge."), cert. granted in part and vacated in part on other grounds, 415 S.C. 43, 780 S.E.2d 902 (2015).

Accordingly, just as this Court recognized and found in Logan itself, the jury instructions presented in Sanchez's case were sufficient such that a reversal of Sanchez's convictions was not—and is not—warranted on appeal based solely on the manner in which the trial judge instructed the jury on the law regarding circumstantial evidence. 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 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. Jenkins, 408 S.C. at 573, 759 S.E.2d at 766 ("[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."). The State's petition for a writ of certiorari should be granted, the decision of the Court of Appeals should be reversed, and Sanchez's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

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March 28, 2022