

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2020-001276

THE STATE,

Respondent,

v.

MARK ANTHONY HAILEY, JR.,

Appellant.

Opinion No. 2024-UP-074

PETITION FOR REHEARING

On July 13, 2022, this Court issued an unpublished opinion reversing Appellant Mark Hailey's conviction for murder. State v. Hailey, Opinion No. 2024-UP-074 (S.C. Ct. App. filed March 13, 2024). The Court reversed without holding oral argument. Pursuant to Rule 242 of the South Carolina Appellate Court rules, the State respectfully petitions for rehearing, incorporating the arguments made in the Brief of Respondent.

In its opinion, this Court relied on State v. Starnes, 340 S.C. 312, 319, 531 S.E.2d 907, 911 (2000). There, the Supreme Court reversed because the trial court refused to provide the jury with more specific instructions regarding self-defense beyond the basic self-defense charge,

and specifically did not include the Hendrix and Rash “equal terms” language. The trial court refused to give any supplemental instructions beyond the standard self-defense charge, which merely lays out the four elements of self-defense. See also State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997), and State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000).

In this case, by contrast, the trial court did not refuse to supplement the standard self-defense charge. In response to defense counsel’s concern about the State’s argument that Hailey could have retreated instead of shooting the victim in the back of the head, the trial court agreed to give Hailey’s requested charge that a person has no duty to retreat “if by doing so the danger of being killed or suffering serious bodily injury would increase.” (R.p.919–21). This language is substantially similar to the “equal terms” charge requested by Hailey.

The rationale behind the “equal terms” charge is that by waiting until an aggressor is on equal terms, the person who acts in self-defense increases the danger to himself. Thus the underlying rationale is the same in both charges, and the substance of the law was charged. State v. Mattison, 388 S.C. 469, 484, 697 S.E.2d 578, 586 (2010) (affirming trial court's refusal to give instruction encompassing correct statement of law where charge as a whole "sufficiently covered the substance" of applicable legal principles). The trial court was not required to use the specific verbiage requested by Hailey. Id. at 478, 697 S.E.2d at 583.

This is particularly true where the trial court gave the “no duty to retreat charge” in response to Hailey’s stated concerns about the State’s closing argument relating to the duty to retreat. Hailey did not request the “equal terms” charge during the charge conference, and the State never suggested Hailey was required to wait until the victim was on equal terms to act in self-defense. The trial court did not err, and Hailey was not prejudiced.

Furthermore, evidence of Hailey's guilt was overwhelming. Hailey's self-defense claim was a Hail Mary back-up plan to his mental health defense. No rational juror could have believed his story, which was untenable on its face and inconsistent with the physical evidence. See Brief of Respondent at 13–15.

CONCLUSION


This Court should grant respondent's petition and affirm. In the alternative this Court should grant oral argument to examine this issue further.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 28, 2024

RECEIVED

Mar 28 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2020-001276

THE STATE,

Respondent,

v.

MARK ANTHONY HAILEY, JR.,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify I have served the within Petition for Rehearing on Appellant by sending an electronic copy to the address listed in AIS for the following individual:

Lara Caudy
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady St., Ste. 401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.
This 28th day of March, 2024.



Anne Mueller
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727