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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lee County
State Grand Jury
The Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

STEPHEN J. GREEN,

APPELLANT.

Appellate Case No. 2024-001684

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. ERNEST FINNEY, III
Solicitor, Third Judicial Circuit
P.O. Box 836
Sumter, South Carolina 29150-0836
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to quash the murder county of the indictment when that count of the indictment lacked sufficient notice by failing to allege the manner in which the death of the deceased was caused?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial court properly find that, because the indictment put the defendant on notice of the charges that he faced, it was sufficient under South Carolina law?

STATEMENT OF THE CASE

Appellant was indicted on charges of conspiracy; murder; assault and battery by mob, first degree; and prisoner carrying or concealing a weapon. Second Superseding Indictment. Appellant proceeded to trial in front of the Honorable R. Ferrell Cothran. (Tr. p. 1). The trial was conducted September 23–26, 2024. (Tr. p. 1). Appellant was represented by Matthew Hicks, Esq. (Tr. p. 1). The State was represented by Assistant Solicitors Barney Giese, Esq., and Margaret Scott, Esq. (Tr. p. 1).

The jury found Appellant guilty of murder; assault and battery by mob, second degree; a prisoner carrying or concealing a weapon; and conspiracy. (Tr. p. 566). The trial court sentenced Appellant to life without parole for the murder; life without parole for the assault and battery charge; five years on the criminal conspiracy charge, to run concurrently; and ten years on the weapons charge, to run concurrently. (Tr. p. 571). This appeal follows.

STATEMENT OF FACTS

This case arises out of the riot at Lee Correctional Institution in April 2018. Stephen Green was one of several individuals indicted by the State Grand Jury for his actions during the riot. Cornelius McClary (the victim) was one of those who died during the riot.

Before the trial began, Green moved to either dismiss or quash the murder indictment. (Tr. p. 33, ll. 4–9). Green argued that Count Five did not meet the statutory requirements for a murder indictment.[1] Specifically, he contended that the indictment did not specify the victim's manner of death and did not allege that Green wilfully killed the victim. (Tr. p. 33, ll. 10–22). And Green argued that the exclusion of the language left it unclear whether Green allegedly "pushed his alleged victim in front of bus" or "kicked him off a cliff" or "stabbed him or shoved him." (Tr. p. 33, l. 23–p. 34, l. 9).

The State opposed the motion. The State argued that the indictment reflected the statutory definition of murder and specified the time and place of the killing. (Tr. p. 34, l. 25–p. 35, l. 8). The State also pointed out that the indictment is intended to put the defendant on notice of the crime for which he is being tried, and that the indictment did so. (Tr. p. 35, l. 25–p. 36, l. 7). Green argued that the indictment would at least need to be cured before he could be tried for murder. (Tr. p. 38, l. 21–p. 39, l. 1).

In pretrial proceedings the next day, the trial court denied Green's motion. The trial court said it had read the case law given to it before making the determination. (Tr. p. 81, ll. 11–17).

> And, clearly, if you accuse somebody of committing a crime, accuse somebody of committing murder, you need to state where

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[1] *See* S.C. Code Ann. § 17-19-30 (West) ("Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology, of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased.")

> and when it happened so he will know how to defend himself. The fact that I just say that the defendant murdered someone, he has no way to draw up a defense because he doesn't know where or what time or the date or anything. So, it's important, I think, to give a date and time that the alleged murder occurred for you to ever form some kind of a defense, and this indictment, in fact, does have it. I think it's adequate in that it puts the defendant on notice of the place and date and time that the statute requires for the murder to occur.
>
> And, then, the deficiency in this indictment is, as the defense has pointed out, is that it does not go into detail about the manner of death. Many times, the indictment will say "to wit, shot the defendant" or "stabbed the defendant" or "beat the defendant to death," and this indictment does not say that.
>
> But I think it does put the defendant on adequate notice of the charges against him as to the time and place that he can defend those, and so, I'm going to deny your motion.

(Tr. p. 81, l. 18–p. 82, l. 13).

At trial, the State presented evidence about the basic outlines of the riot. Broadly speaking, witnesses said that gang violence and retaliation—communicated between dorms on one side of the prison by contraband cell phones—cascaded across three dorms and briefly threatened to overwhelm prison officials. (Tr. p. 121, ll. 7–16; p. 121, l. 24–p. 122, l. 24; p. 285, l. 6–p. 345, l. 3). [2]

According to Special Agent Jamie Shaw, the lead investigator on the riot case for SLED, the incident seems to have begun with an attempted robbery of an inmate in the F3 dorm of the prison. (Tr. p. 283, ll. 20–21; p. 285, ll. 6–14). The unrest then spread to the F5 dorm through cell phone communications. (Tr. p. 290, l. 12–p. 291, l. 9). Word then spread to the F1 dorm. (Tr. p. 296, l. 22–p. 297, l. 25). Shaw recounted video recordings that showed multiple individuals

[2] Multiple gangs apparently operated at the prison. According to one officer's testimony, the prison had factions of Bloods, Crips, Gangster Disciples, the Aryan Brotherhood, and Hispanic and Muslim gangs. (Tr. p. 161, l. 24–p. 162, l. 2).

stabbing the victim. (Tr. p. 302, ll. 7–23). He is stabbed, then falls down a stairwell, where the assault continues. *Id.* About 28 minutes after the last stabbing in that attack, an individual approaches the victim. (Tr. p. 303, ll. 18–23). The victim "kind of jolts and moves a little bit" as he is stabbed in the final attack. *Id.* The victim died of hypovolemic shock resulting from his blood loss. (Tr. p 369, ll. 11–17). The forensic pathologist who conducted the victim's autopsy calculated that he sustained 101 stab wounds. (Tr. p. 371, ll. 8–15).

Witnesses identified Green on video recordings or screen shots. (Tr. p. 176, ll. 4–8; p. 263, l. 7–p. 264, l. 10). Agent Shaw testified that the individual who stabbed the victim the final time was wearing clothing that was similar to clothing that Green wore at times that night. (Tr. p. 306, ll. 3–16; 330, ll. 1–21; p. 335, l. 1–7).

According to the transcript, the jury officially began deliberating at 5:01 p.m. (Tr. p. 560, ll. 21–22). After two questions and some repeated instructions from the trial court, the jury entered the courtroom with a verdict at 5:40 p.m. (Tr. p. 560, l. 24–p. 565, l. 25). The jury found Green guilty of murder; assault and battery by mob, second degree; the weapons charge; and conspiracy. (Tr. p. 566, ll. 7–18). The trial court then sentenced Green to life without parole on the murder and assault charges; five years on criminal conspiracy, to run concurrently, and ten years on the weapons charge, to run concurrently. (Tr. p. 571, ll. 11–21). This appeal follows.

STANDARD OF REVIEW

This Court reviews a trial court's factual conclusions on the sufficiency of the indictment for an abuse of discretion. *See State v. Tumbleston*, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007) ("The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support.").

ARGUMENT

The trial court properly found that because the indictment put Green on notice of the charges that he faced, it was sufficient under South Carolina law.

Green argues that the trial court erred when it declined to quash the murder count of his indictment because it did not precisely outline "the manner in which the death of the deceased was caused." S.C. Code Ann. § 17-19-30 (West). Factually, there isn't much to dispute there. Count Five of the Indictment says:

> That STEPHEN J. GREEN (A/K/A "TANK"), on or about April 15, 2018, at Lee Correctional Institution, located in Lee County, South Carolina, did, with malice aforethought, unlawfully kill CORNELIUES MCCLARY.
>
> All in violation of S.C. Code Ann. §16-3-10, and such conduct not having been authorized by law; and such conduct involving a criminal gang activity or a pattern of criminal gang activity.

But as a legal matter, Green's argument goes too far. The indictment is a notice document, and it was sufficient to make him aware of the accusations he faced. For that reason, this Court should affirm his conviction.

Twenty years ago, our supreme court signaled a change in the purpose and function of indictments under South Carolina law. In *State v. Gentry*, the court revisited a previous decision from 1987 that appeared to hold that flaws in an indictment deprived a trial court of subject matter jurisdiction over a defendant's case. 363 S.C. 93, 100–02, 610 S.E.2d 494, 498–99 (2005), *discussing State v. Munn*, 292 S.C. 497, 540 S.E.2d 461 (1987). "This language conflated the meaning of subject matter jurisdiction and mixed two separate questions, *i.e.* whether the trial court has the power to hear a case and whether the indictment is sufficient." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. Drawing on older state precedent, the court clarified that "[t]he indictment is a notice document." *Id.* at 102, 610 S.E.2d at 500.

And when the sufficiency of an indictment is challenged, the *Gentry* court spelled out how a trial court should consider those challenges.

> [T]he circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

Gentry, 363 S.C. at 102–03, 610 S.E.2d at 500; *see also Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) ("The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.,* to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.").

Gentry also reiterated other considerations—many of them rooted in earlier case law—that trial courts should take into account when weighing the sufficiency of the indictment. For example, a court doesn't need to read an indictment in a chamber sealed off from reality or context. "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." *Gentry*, 363 S.C. at 103, 610 S.E.2d at 500. Likewise, the court is not looking for a degree of thoroughness or precision in the indictment's language. *See id.* ("[W]hether the indictment could be more definite or certain is irrelevant.").

Even in the pre-*Gentry* world, our supreme court recognized that form should not cancel out function in considerations of an indictment. Otherwise, *Joseph v. State* would be inexplicable. 351 S.C. 551, 571 S.E.2d 280 (2002), *overruled by Gentry*, *supra*. In *Joseph*, the court found that an indictment was sufficient despite the fact that it didn't follow the murder indictment statute

word for word, because it didn't allege the defendant acted "feloniously" and "wilfully." *See id.* at 561–62, 571 S.E.2d at 285; *see also* § 17-19-30 (providing that an indictment for murder is sufficient when it, among other things, "charges that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased"). Literally, then, the indictment did not meet the requirements of the statute. But the *Joseph* Court overlooked that. "While the indictment did not state petitioner 'feloniously' and 'wilfully' committed the murder, the indictment included the elements of murder by stating petitioner killed another with "malice aforethought." *Joseph*, 351 S.C. at 562, 571 S.E.2d at 285. It found that the indictment clearly let the plea court and the defendant know what the charge was about; that it would be "absurd" to require the exact wording of the statute in that case (after all, the court reasoned, "feloniously" and "wilfully" were subsumed in the words "murder" and "malice"); and that it would be counter to the General Assembly's purpose in passing the indictment statute—to simplify indictments—to find the statute to require unnecessary words. *See id.* at 562–63, 571 S.E.2d at 285–86.

The same is true here. The indictment did not, in so many words, specify the weapon used to kill the victim. There is no arguing that. But, like the *Joseph* Court, this court should look at whether the indictment carries out the purpose it was designed for—letting the defendant know what he needed to prepare himself to face in court. So, under the specific facts of this case, the indictment was sufficient. It gave the court what it needed to pronounce judgment, and it provided Green with the information he needed to decide on a plea. And it made him aware of the elements of murder.

For one thing, read as a whole, the indictment reflects the State's theory of the case. In Count One, the State alleged that Green and others "did conspire and combine for the purpose of engaging in violence against other inmates at the Lee Correction Institution." Second Superseding

Indictment at 3. In that sequence of events, Green killed the victim in a gang-related crime. *Id.* at 5 (alleging that the murder was part of a course of conduct "involving a criminal gang activity or a pattern of criminal gang activity.").

There's another aspect of the events here that is important: This was not a random day at prison, one that might be hard to recall with accuracy months or years later. Green was being prosecuted for his actions with regards to a specific person in a specific place on a specific date that he was almost certain to recall. He was not presented an amorphous indictment for events that might be obscured by the passage of time. *Cf. State v. Baker*, 411 S.C. 583, 590–91, 769 S.E.2d 860, 864 (2015) (finding that a defendant convicted of committing lewd acts against a minor was prejudiced when, weeks before trial, the relevant time frame on his indictment was significantly widened, giving him too little time to prepare an expanded defense) ("[W]e are unable to discern how any defendant could effectively defend himself against a six-year time frame."). The date and place here gave Green a definitive event to return to in his mind—one that he would remember regardless of his role in the events of the day—and consider what defenses he might raise. In other words, it gave him the information he needed to determine whether he would better served by pleading guilty or by going to trial.

And while the indictment did not specifically allege how Green murdered his victim, it laid out the elements of murder. Murder, state law tells us, "is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (West). And the Second Superseding Indictment alleged in Count Five that Green "did, with malice aforethought, unlawfully kill" the victim. Second Superseding Indictment at 5.

Furthermore, as Green appears to concede, the indictment could have simply said that the methods by which Green murdered the victim were unknown. Or it could have proposed multiple

theories as to how the victim was killed. In either case, it would be sufficient under South Carolina law. *See State v. Owens*, 293 S.C. 161, 165, 359 S.E.2d 275, 277 (1987) ("Allegations may state in the alternative the manner and instrumentality of death, or may state that death was caused by a means or instrumentality unknown[.]" (citations omitted)). It is hard to see how changing the superseding indictment in either way would have meaningfully affected Green's ability to defend himself against the charges.

For those reasons, this Court should find that the indictment was sufficient and affirm Green's conviction for murder.

CONCLUSION

The indictment was sufficient to provide notice to Green of the allegations he faced at trial. For all the above reasons, the Court should affirm his conviction for murder.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: s/*R. Brandon Larrabee*
R. BRANDON LARRABEE
ATTORNEYS FOR RESPONDENT

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