STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from State Grand Jury County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN J. GREEN,

APPELLANT

APPELLATE CASE NO. 2024-001684

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to quash the murder count 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?

STATEMENT OF THE CASE

On June 15, 2021, the State Grand Jury issued a second superseding indictment charging Appellant, Stephen J. Green, with murder, count five of the indictment, assault and battery by mob first degree with death resulting, count six of the indictment, conspiracy, count one of the indictment, and unlawful carrying of a weapon by an inmate, count seven of the indictment, indictment #2020-GS-47-20. On September 23, 2024, Appellant proceeded to jury trial before the Honorable R. Ferrell Cothran. Matthew Hicks represented Appellant. Barney Giese and Margaret Scott prosecuted the case. The jury found Appellant guilty of murder, the lesser offense of assault and battery by mob second degree, conspiracy and the weapon charge. Judge Cothran sentenced Appellant to life for murder, life for assault and battery second degree pursuant to S.C. Code §17-25-45, five (5) years concurrent for conspiracy, and ten (10) years concurrent for the weapon charge. A timely notice of intent to appeal was served on October 1, 2024. This appeal follows.

STANDARD OF REVIEW

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. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). 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. id. Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. id.

ARGUMENT

The trial judge erred in refusing to quash the murder count 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.

Facts

The events leading to the charges against Appellant took place during a prison riot between rival gang members at Lee Correctional Institution on April 15, 2018. According to the State's opening statement, Appellant participated in a mob that stabbed the deceased and then thirty minutes later Appellant individually stabbed the deceased. (R. pp. 70-74). Video surveillance captured the events that took place inside the prison. Lieutenant William Burley, a yard sergeant at Lee Correctional at the time of the riot, viewed the video surveillance and identified Appellant. (R. p. 139, lines 20-23; p. 145, line 6 – p. 146, 147, lines 1-24; p. 151, line 13 – p. 152, lines 1-15; pp. 156-163). Lieutenant Burley also identified still shots of Appellant (State's exhibits #14, 15, 16, 18, 21, 22, 23 and 26). Lieutenant Colonda Robinson, another employee at Lee Correctional at the time of the riot, viewed video surveillance and identified Appellant in still shots, State's exhibits #27, 28, and 29. (R. pp. 241-245).

Special Agent Jamie Shaw with the South Carolina Law Enforcement Division [SLED] was the lead agent on the case. (R. p. 264, lines 12-24). Agent Shaw testified that a group of inmates stabbed the deceased at approximately 10:00 PM and then one individual stabbed the deceased at approximately 10:30 PM. (R. pp. 283-284). Agent Shaw, without objection, identified Appellant on the surveillance video. (R. p. 286, line 2 – p. 287, lines 1-25; pp. 290 – 299; p. 305, line 25 – pp. 306-316).

The cause of death was hypovolemic shock. The forensic pathologist testified, "He was in hypovolemic shock, which means he bled out due to multiple sharp force injuries." (R. p. 350, lines 14-15). While it is unclear how long the deceased remained on the floor after the stabbings, Agent Shaw testified that at some point inmates moved the body. (R. p. 284, line 24 – p. 285, line 1). Sergeant Clive Lopez, the officer who was locked in the dorm during the riot, testified that the red team came into the dorm at approximately 11:00 PM. (R. p. 376, lines 5-11).

Argument

Prior to the jury being sworn Appellant challenged the sufficiency of the indictment. (R. p. 11, line 16 – p. 12, 13, lines 1-17). Counsel for Appellant argued, "Well, I would argue that Statute 17-19-30 requires a little more than just saying murder. It requires the plain English statement of the manner in which the death of the decedent was caused, and it also requires allegations of willfulness that's missing from both indictments, the original and the superseding. I view this as a notice issue in that the statement about the manner in which the death of the decease was caused. Are they alleging he shot him? hung him? pushed him? I have no idea." (R. p. 13, lines 8-17). The judge decided to select the jury without reference to the murder count of the indictment. (R. p.13, lines 18-22).

After jury selection but prior to the swearing of the jury, counsel for Appellant moved to quash the murder count of the indictment. (R. p. 14, line 4 – p. 15, lines 1-23). Counsel argued, "The reason I'm asking you this is because, according to South Carolina Code 17-19-30, every indictment is required to not only state the time and place – this is indictments for murder specifically – not only state the time and place that the murder allegedly took place but also the manner in which the -- the death of the deceased was caused as well as stating that it was felonious, willful, and with malice aforethought." (R. p. 14, lines 10-16). Counsel stated that count five of

the indictment, the murder count, failed to include the statutorily required language. (R. p. 14, lines 17-22). Counsel additionally argued:

> So, the problem with the statutory language missing is that, specifically with regards to the manner of death, it fails to provide adequate notice to the defendant – you okay? It fails to provide adequate notice to the defendant about what he is preparing to defend himself against. Sure, murder is stated there, as well as the statute regarding that, but murder isn't just murder across the board, Your Honor. It doesn't allege that Mr. Green pushed his alleged victim in front of a bus. It doesn't allege that he kicked him off a cliff. It doesn't allege that he stabbed him or shoved him. We have no idea functionally, based on this indictment, what we're preparing to defend ourselves against here.

(R. p. 14, line 23 – p. 15, lines 1-9). Counsel noted that the indictment additionally failed to include the willful language. (R. p. 15, lines 10-19).

In response the State argued, "Yes, Your Honor. As you know, for Section 17-19-20 of this specific indictment charges the crime substantially in the language of the statute. The murder statute specifically says it's the killing of any person with malice aforethought, either expressed or implied. The indictment says just that but additionally adds the date April 15th, 2028, and the jurisdiction, Lee Correctional Institution, located in Lee County, did with malice aforethought, kill Cornelius McClary." (R. p. 15, line 25 – p. 16, lines 1-8). In support the State cited State v. Gonzalez, 360 S.C. 263, 600 S.E.2d 122 (Ct. App. 2004), overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) and State v. Means, 367 S.C. 374, 626 S.E.2d 348 (2006). (R. p. 16, lines 9-19).

Counsel for Appellant correctly noted that the code section cited by the State, S.C. Code §17-19-20, pertained to indictments in general. The code section relied upon by Appellant, S.C. Code §17-19-30, pertained to murder indictments specifically and discussed time, place **and** manner of death. (R. p. 17, lines 9-19). The judge noted that the Gentry case held that indictments were notice documents. (R. p. 18, lines 15-18). The State agreed that indictments were notice

documents and argued, "Date and time is essentially the two main factors that are needed for that as well as the statute, which, as the statute for murder reads, is exactly what the indictment reads." (R. p. 18, lines 19 – p. 19, lines 1-2). Counsel for Appellant correctly noted that the challenge in the present case was to the sufficiency of the indictment, not subject matter jurisdiction as challenged in Gentry. (R. p. 19, lines 12-16). The State additionally cited a conspiracy case, Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004), overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). (R. p. 19, lines 3-11). Counsel for Appellant distinguished the Thompson case because it was not a murder case and S.C. Code §17-19-30 was not implicated. (R. p. 19, lines 17-20).

The trial judge denied the motion to quash the murder count of the indictment. (R. p. 62, line 11 – p. 63, 64, lines 1-13). The judge stated:

> Okay. I have reviewed the case law that I have been presented on this indictment issue, and – Margaret Joseph vs. The State, and there was a question about the indictment in light of the statute at that time. And, basically, the Supreme Court has said the indictment is a notice document to put the defendant on notice of the charges that are against him, as well as the date and time.
>
> And clearly, if you accuse somebody of committing a crime, accuse somebody of committing murder, you need to state where 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 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.

(R. p. 62, line 11 – p. 63, lines 1-13). The trial judge erred in refusing to quash the indictment as insufficient for failing to allege the manner of death. A murder indictment that fails to allege manner of death fails as a notice document.

S.C. Code Ann. § 17-19-20 provides, "Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."

S.C. Code Ann. § 17-19-30, however, is specific to murder indictments and provides, "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." The murder count of the indictment in the present case fails to allege manner of death. Count five of the indictment for murder alleges, "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 CORNELIUS 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." (R. p. 559 p. 5. of indictment). The murder count of the indictment is invalid on its face as it fails to allege manner of death as referenced in S.C. Code Ann. § 17-19-30.

In Joseph v. State[1], 351 S.C. 551, 561–62, 571 S.E.2d 280, 285 (2002), overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), the murder indictment was challenged for failing to state the crime had been committed "wilfully" and "feloniously." In Joseph the Court wrote:

> The murder indictment was sufficient to confer subject matter jurisdiction on the plea court. As mentioned in § 17–19–30, the indictment set forth the time ("on or about March 18, 1987") and place ("in Clarendon County") of the crime, and stated the manner in which the death of the deceased was caused ("kill one Alfred Cole by means of shooting him with a Colt .357 Magnum Pistol"). 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." *See* S.C.Code Ann. § 16–3–10 (1985) (murder is "killing of any person with malice aforethought, either express or implied"). The offense of murder was stated with sufficient certainty and particularity in the indictment such that the plea court knew what judgment to pronounce and petitioner knew what he was being called upon to answer. *See State v. Owens, supra.*

Joseph, 351 S.C. at 561–62, 571 S.E.2d at 285.

Although the indictment in Joseph failed to state that the crime had been committed "wilfully" and "feloniously", the indictment included the manner of death and was stated with sufficient certainty and particularity such that the defendant knew what he was being called upon to answer. In contrast, the murder count of the indictment in the present case fails to allege manner of death as provided by S.C. Code Ann. § 17-19-30 and fails to provide Appellant with notice of what he was called upon to answer. This is especially true given the two separate stabbings, one by a mob and one by an individual[2]. The murder count of the indictment was insufficient and the judge erred in refusing to quash the indictment.

In State v. Owens, 293 S.C. 161, 165, 359 S.E.2d 275, 277 (1987), Owens was convicted of murder in the commission of kidnapping although the victim's body was never found. On

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[1] It appears this is the Joseph case referenced by the trial judge and "Margaret" is a typo in the transcript and should be "Marcus."

[2] Counsel for Appellant failed to move to require the State to elect between murder and death by mob.

appeal Owens challenged the trial judge's refusal to quash the indictment because the alternative manner and instrumentality of death failed to provide sufficient notice. The South Carolina Supreme Court disagreed writing:

> The indictment alleged that appellant murdered Mr. Vereen "by means of forcibly sedating him and/or roughening him up by violently manhandling and beating him and/or depriving him of his life sustaining medication and/or mortally injuring him by means or instruments unknown." Appellant claims the State failed to give him sufficient notice of the charges against him.
>
> An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution. *State v. Hardee,* 279 S.C. 409, 308 S.E.2d 521 (1983). Allegations may state in the alternative the manner and instrumentality of death, *State v. King,* 158 S.C. 251, 155 S.E. 409 (1930), or may state that death was caused by a means or instrumentality unknown, *State v. Jenkins,* 48 S.C.L. (14 Rich.) 215 (1867). This indictment was therefore sufficient.

Owens, 293 S.C. at 165, 359 S.E.2d at 277. The murder count of the indictment in the present case does not list alternative manners of death, as in Owens. Instead, the murder count of the indictment fails to list any manner of death or instrumentality. In contrast to Owens, the body of the deceased in this case was recovered and the pathologist testified that the deceased sustained one hundred and one (101) stab wounds made by sharp objects such as knives or ice picks. (R. p. 352, lines 8-25). The forensic pathologist testified, "He was in hypovolemic shock, which means he bled out due to multiple sharp force injuries." (R. p. 350, lines 14-15). Although the information was available to the State, the indictment fails to allege death by multiple sharp force injuries. The murder count of the indictment in the present case was insufficient because it failed to allege manner of death. The indictment failed to provide notice.

In State v. Jenkins, 48 S.C.L. 215, 227 (S.C. Ct. App. 1867), the South Carolina Court of Appeals wrote, "When it is said in the books that besides the legal description of the offence, the manner of the death must be stated with exactness, it is only meant, that the particular mode of

violence whereby the death was caused, whether by shooting, stabbing, beating, or striking, strangulation, poisoning, &c., must be set forth, and not that the manner of the prisoner's connection with the use of that violence shall appear on the record." The challenge in the present case is not to the "exactness" of the manner of death listed in the indictment. Instead, the challenge is to the fact that the indictment completely fails to allege any manner of death, even vaguely.

While the South Carolina Supreme Court made clear in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), that the indictment is a notice document, presentment of a facially valid indictment to a grand jury and a true bill of that indictment is constitutionally and statutorily required. In State v. Means, 367 S.C. 374, 382, 626 S.E.2d 348, 353 (2006), the South Carolina Supreme Court wrote:

> In *Gentry,* then, we returned to our earlier view that an indictment is a "notice document," albeit one required by our state constitution and statutes. *See* S.C. Const. art. I, § 11 and art. V, § 22 [footnote omitted]; S.C.Code Ann. § 17–19–10 (2003) ("[n]o person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury" except in specified instances). 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,* [363 S.C. at 102–03, 610 S.E.2d at 500]; S.C.Code Ann. § 17–19–20 (2003). This required notice is a component of the due process that is accorded every criminal defendant. *See* U.S. Const. amend. V; S.C. Const. art. I, § 3. Given that the sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction which may be raised at any time, we applied the general rule regarding preservation of error and held that a defendant must raise an issue regarding the sufficiency of the indictment before the jury is sworn in order to preserve the error for direct appellate review. *Gentry,* [363 S.C. at 101, 610 S.E.2d at 499] (citing S.C.Code Ann. § 17–19–90 (2003)).
>
> The South Carolina Constitution provides:
>
> No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the

> accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide. (1970 (56) 2684; 1971 (57) 315; 1989 Act No. 5; 1989 Act No. 8.)

S.C. Const. art. I, § 11.

Before the Court explicitly prohibited the practice of prosecutors appearing as the sole witness before the grand jury in State v. Anderson, 312 S.C. 185, 439 S.E.2d 835, (1993), the Court in State v. Capps, 276 S.C. 59, 61, 275 S.E.2d 872, 873 (1981), discussed the roles of the grand jury and the prosecutor writing, "This Court shares with the nation's founders a concern that on occasions prosecuting officers will expand too far and abuse the powers granted to them. A grand jury is not a prosecutor's plaything and the awesome power of the State should not be abused but should be used deliberately, not in haste. A prosecutor should at all times avoid the appearance or reality of a conflict in interest with respect to his official duties. Capps, 276 S.C. at 61, 275 S.E.2d at 873 (1981). The dissent in Capps, noting the constitutional importance of indictments and the grand jury process, wrote:

> Therefore, I would hold that as a general rule an attorney performing a prosecutorial function may not additionally appear before the grand jury as a witness. While compelling reasons may dictate a rare exception be allowed to this general rule, I note no such showing in this case. The normal effort required in calling witnesses is insufficient. Since such evidence was the sole testimony in this case, it follows that the indictment should have been quashed. See U. S. v. Treadway, 445 F.Supp. 959.
>
> I would additionally hold that the routine acquisition of an indictment based solely on hearsay evidence requires the indictment be dismissed. Therefore, even assuming the assistant solicitor could act as a witness, the motion should have been granted.
>
> Our Court previously indicated in State v. Williams, 263 S.C. 290, 210 S.E.2d 298, an opinion which I authored, that an indictment based solely on hearsay evidence did not violate the constitutional requirement of a grand jury indictment as a condition precedent to trial in such a case. However, it was never our intention or purpose to create a limitless haven for its routine use.

> The deliberate use of hearsay testimony alone to obtain indictments is a questionable practice which seriously erodes the function of the grand jury. See U. S. v. Gramolini, 301 F.Supp. 39. It can be used to subject a defendant to the expense and humiliation of a public trial solely on the basis of evidence which is generally inadmissible in a trial.
>
> In order to provide more than lip service to the constitutional provision here in question, I would hold that an indictment cannot, as a matter of course, be acquired solely on oral hearsay testimony. The routine practice of one individual appearing before the proceeding to give his "third hand" capsule version of facts which he has no direct knowledge without some other competent evidence, is insufficient.
>
> The drafters of Article I, s 11 as well as those citizens who voted for its implementation clearly intended the right to a grand jury indictment to be meaningful because they incorporated it into such a solemn document, our State Constitution. The disposition I propose seeks to rekindle the spirit with which it was created.

Capps, 276 S.C. at 67–68, 275 S.E.2d at 875–76.

The constitutional and statutory significance of the indictment and grand jury process as well as S.C. Code Ann. § 17-19-30, specifically referring to murder indictments as sufficient if time, place, and manner of death are alleged, both support a finding that a murder indictment that fails to allege time, place, and manner of death is not sufficient to provide notice. A murder indictment that fails to allege manner of death is invalid on its face, pursuant to the statute. The murder count of the indictment in the present case that fails to include manner of death is not sufficient to provide notice. The judge erred in refusing to quash the murder count of the indictment.

CONCLUSION

Based on the above argument, this Court should reverse the murder conviction.

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of December, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this final brief of appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEY FOR APPELLANT

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APPELLANT

APPELLATE CASE NO. 2024-001684

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 23rd day of December, 2025.

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