

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jul 30 2026
SC Court of Appeals

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

Unpublished Opinion No. 2026-UP-367
Submitted June 25, 2026-Filed July 15, 2026

THE STATE,

RESPONDENT,

V.

STACY MICHELLE RABON,

APPELLANT

APPELLATE CASE NO. 2023-001374

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Stacy Michelle Rabon requests that this Court grant rehearing. The Court's conclusion that the "simple mistakes" charge was not an improper charge on the facts is incorrect. The "simple mistakes" charge does not state or explain any point of law. It has no legal utility. The only point of the "simple mistakes" charge is improperly telling the jury what inferences to draw when evaluating witness credibility.

Our Supreme Court has been clear that superfluous instructions telling jurors what inferences to draw from the evidence should be eliminated, not invented. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21. In

State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), the Supreme Court eliminated the charge that a victim's testimony in a sexual assault case need not be corroborated. Id. at 498-500, 787 S.E.2d at 482-83. The Court found that charge violated Article 21's prohibition on courts commenting on the facts to the jury. Id. "By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury." Id. "The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." Id.

Our Supreme Court has recently emphasized the importance of not "elevating facts" in jury charges. See State v. Brown, 438 S.C. 146, 151, 881 S.E.2d 771, 774 (Ct. App. 2022) (noting trend in cases). "Recent precedent has directed circuit courts to refrain from giving instructions that guide juries on the inferences they can draw from evidence or that tells the jury to consider particular evidence and how to construe it." Id.

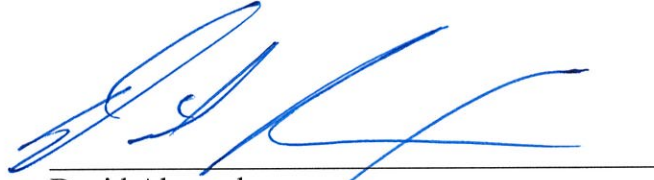
Brown cites the recent cases paring down jury charges and leaving comments and inferences to lawyers in argument. Id. In State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), the Court eliminated the charge that malice can be inferred from a deadly weapon. The Burdette Court frowned on giving juries "examples of conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven." Burdette at 502, 832 S.E.2d at 582. Burdette cited with approval cases eliminating the charge that a defendant's flight is evidence of guilt, the refusal to charge specific examples of legal provocation, and eliminating a charge on inferences a jury can draw from a defendant's actual knowledge of the presence of a drug. Id. citing State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980) (flight); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000) (legal provocation); State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013)

(drug knowledge). See also Pantovich v. State, 427 S.C. 555, 832 S.E.2d 596 (2019) (restricting use of good character charge). The “simple mistakes” charge here is an example of conduct that has no business in a court’s charge and should be left to the lawyers during their closing arguments.

The Supreme Court again pared jury charges in Heatley v. State, Op. 28344, ___ S.C. ___, ___ S.E.2d ___ (July 22, 2026). In Heatley, the Court eliminated a charge explaining how to evaluate circumstantial evidence. The Court again stated its preference for allowing attorneys to argue how to interpret the facts of a case in closing arguments instead of placing such instructions in the judge’s charge. Id. (“The attorneys are free to argue that [the facts and inferences] are or are not consistent or that they do or do not point conclusively to guilt, but the trial court may not require such a finding when charging the jury.”).

This Court also erred in finding any error harmless. The correct analysis is simply whether there was an error and whether it was harmless beyond a reasonable doubt. Burdette at 501, 832 S.E.2d at 581-82 (2019) (“Therefore, we cannot conclude the trial court’s erroneous instruction was harmless beyond a reasonable doubt.”). This cold case was close and the State’s evidence was thin. As the Court notes, the jury acquitted appellant of murder. Furthermore, this Court erred in finding that the act of giving a baby up for adoption satisfies the extreme indifference standard for homicide by child abuse. Rabon’s statement contains no evidence that it was foreseeable that a couple who wanted to adopt a child would murder it. This Court found, “The jury could have concluded this admitted conduct constituted extreme indifference to human life that resulted in the infant’s death even if it did not believe Rabon herself stabbed the infant and placed her in the plastic bag.” Opinion at 4. This conclusion is wrong, amounts to weighing the evidence, and cannot be found by an appellate court as sufficient to make any error harmless

beyond a reasonable doubt. The improper charge in this case served no legal purpose, gave an improper example, told the jurors how to make inferences regarding credibility, and cannot be harmless in this close case. This Court should grant rehearing and reverse.



David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

This 30th day of July, 2026.

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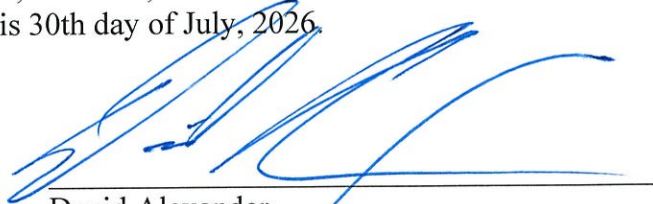
STACY MICHELLE RABON,

APPELLANT

APPELLATE CASE NO. 2023-001374

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Stacy Michelle Rabon, #391824, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 30th day of July, 2026.



David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, July 30, 2026 11:38 AM
To: jedwards@scag.gov
Cc: Alexander, David; gracesommer@scag.gov
Subject: 2023-001374 - The State v. Stacy Michelle Rabon
Attachments: 2023-001374 - The State v. Stacy Michelle Rabon - Petition for Rehearing.pdf

Good morning,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, July 30, 2026, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330

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