RECEIVED
Aug 19 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

---

Unpublished Opinion No. 2026-UP-394
Submitted July 1, 2026-Filed August 5, 2026

---

THE STATE,

RESPONDENT,

V.

MATTHEW JOSEPH HOGAN,

APPELLANT

APPELLATE CASE NO. 2023-000565

---

# PETITION FOR REHEARING

---

Pursuant to Rule 221(a), SCACR, Matthew Joseph Hogan 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 and, in this case, to excuse any inconsistencies in the Complainant's statements and testimony as well as other State witnesses.

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.").

The line of cases dealing with improper comments on victim credibility in child sex cases further shows the prejudice of the trial judge's "simple mistakes" charge. See State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); State v. Jennings 394 S.C. 473, 716 S.E.2d 91 (2011). Kromah and Jennings both dealt with forensic interviewers opining—directly or indirectly—on the credibility of a child witness. These cases, together with Stukes, show the importance of leaving the credibility of the complainant within the province of the jury. The trial judge here indicated the improper effect of the charge when he said, "[Y]ou're basically telling the jury that if the witnesses made a statement that's contradicted by other evidence, doesn't necessarily mean they're intentionally intending to deceive the Court." R. 407, l. 21 – 409, l. 5. The charge in this

case served no legal purpose, gave an improper example, told the jurors how to make inferences regarding credibility, favored the Complainant and the State's witnesses, and cannot be harmless in this close case. This Court should grant rehearing and reverse.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of August, 2026.

RECEIVED
Aug 19 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MATTHEW JOSEPH HOGAN,

APPELLANT

APPELLATE CASE NO. 2023-000565

---

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Matthew Joseph Hogan, #390640, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 19th day of August, 2026.

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

Outlook

## 2023-000565 The State v. Matthew Joseph Hogan

**From** Walkup, Catherine <cwalkup@sccid.sc.gov>
**Date** Wed 8/19/2026 10:44 AM
**To** mfarthing@scag.gov <mfarthing@scag.gov>
**Cc** Alexander, David <dalexander@sccid.sc.gov>; gracesommer@scag.gov <gracesommer@scag.gov>; Bast, Daniel <dbast@sccid.sc.gov>

2 attachments (318 KB)

2023-000565 The State v. Matthew Joseph Hogan Petition For Rehearing.pdf; 2023-000565 The State v. Matthew Joseph Hogan Petition For Rehearing Attorney General Letter.pdf;

Good morning,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today August 19th with the Court of Appeals via email filing.

Respectfully,

Catherine Walkup, Administrative Assistant

RECEIVED
Aug 19 2026
SC Court of Appeals