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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from State Grand Jury County

Honorable R. Ferrell Cothran, Circuit Court Judge

Opinion No. 2026-UP-438

THE STATE,

RESPONDENT,

V.

STEPHEN J. GREEN,

PETITIONER

APPELLATE CASE NO. 2024-001684

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Stephen J. Green, respectfully requests that this Court grant rehearing. On September 23, 2026, this Court, in an unpublished opinion, affirmed the convictions for murder, second degree assault and battery by mob, prisoner carrying a concealed weapon, and conspiracy. State v. Stephen J. Green, Op. No. 2026-UP-438 (S.C.Ct.App. filed September 23, 2026). Counsel respectfully submits that this Court overlooked the fact that a murder indictment that fails to include the statutorily mandated "manner of death" is insufficient because it fails to state the offense with sufficient certainty and particularity to enable the defendant to know what he is called upon to answer. Respectfully, an indictment

simply alleging a killing at Lee Correctional Institution fails to enable Petitioner to know what he was called upon to answer. The fact that the indictment alleged Petitioner did with malice aforethought, unlawfully kill the victim with the murder statute cited does not cure the notice deficiency with regard to the manner of death. The murder indictment that fails to allege manner of death is overbroad and fails to provide sufficient notice.

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).

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).

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 is overbroad and 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."

In State v. Gentry, 363 S.C. 93, 102–03, 610 S.E.2d 494, 500 (2005), the South Carolina Supreme Court wrote:

> The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17–19–90. If the objection is timely made, the 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. State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003); *see also* S.C.Code Ann. § 17–19–20 (2003) (sufficiency of indictment). 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. State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). Further, whether the indictment could be more definite or certain is irrelevant. State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003).

The indictment in the present case is invalid on its face as it fails to allege manner of death as required by S.C. Code Ann. § 17-19-30. Additionally, because the indictment fails to allege manner of death, the indictment is overbroad and insufficient as to notice. Viewing the indictment with a practical eye, the indictment fails to state the offense with sufficient certainty and particularity to enable the defendant to know what he is called upon to answer. The challenge in the present case is not to the "exactness" of the manner of death listed in the indictment or that the indictment could be more definite or certain. Instead, the challenge is to the fact that the indictment completely fails to allege any manner of death, even vaguely.

In affirming the conviction this Court wrote:

> We hold the trial court did not abuse its discretion in denying Green's request to quash his murder indictment because the indictment was sufficient. Although the murder indictment did not include the manner of death, when viewing the indictment objectively, the indictment enabled Green to know what he was called upon to answer—the killing of the victim at Lee Correctional Institution—and the court to know what judgment to pronounce. Additionally, the murder indictment apprised Green of the elements of the offense because it explicitly alleged Green "did, with malice aforethought, unlawfully kill" the victim and cited the murder statute.

State v. Stephen J. Green, Op. No. 2026-UP-438 (S.C.Ct.App. filed September 23, 2026).

Counsel respectfully submits that this Court overlooked the fact that a murder indictment that omits the manner of death is invalid on its face as in violation of the statute and insufficient

to provide notice as being overly broad. 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, and presentment of a facially valid indictment to a grand jury and a true bill of that indictment is constitutionally and statutorily required. The indictment in this case failed to provide notice and was facially invalid. The judge erred in refusing to quash the indictment.

In State v. Dent, 446 S.C. 121, 125, 919 S.E.2d 394, 396 (2025), the South Carolina wrote:

> Indictments matter. In criminal trials, where the weight of the government comes to bear against an individual citizen, indictments are a foundational part of that citizen's constitutional right to due process: they put the citizen on formal notice of the charges against him and the theories the government intends to present at trial to show the citizen violated the law, thereby allowing the citizen to prepare a defense. A conviction based on unindicted conduct cannot stand.

In Dent the State alleged one thing in one of the indictments but pursued an alternative theory of liability during closing arguments. The Court reversed the conviction based on that one indictment. This case does not present the legal issue addressed in Dent. The indictment in the present case, however, that fails to include manner of death, could allow the State to allege one manner of death in opening statement and then argue another manner of death in closing argument. As in Dent, this would violate due process. Counsel respectfully seeks rehearing.

Kathrine H. Hudgins
Senior Appellate Defender

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

This 8th day of October, 2026.

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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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Stephen J. Green, #259765, at Lawrence Correctional Center, 10930 Lawrence Road, Sumner, IL 62466, this 8th day of October, 2026.

Kathrine H. Hudgins
Senior Appellate Defender

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

ATTORNEY FOR PETITIONER

Stock, Chris

From: Stock, Chris
Sent: Thursday, October 8, 2026 5:11 PM
To: mbrown@scag.gov; abennett@scag.gov
Cc: Hudgins, Kathrine
Subject: 2025-001684 - The State v. Stephen J. Green - Petition for Rehearing
Attachments: 2025-001684 - The State v. Stephen J. Green - Petition for Rehearing.pdf; 2025-001684 - The State v. Stephen J. Green - Petition for Rehearing - AG Cover Letter.pdf

Ms. Brown,

Please find attached for service the Petition for Rehearing for Stephen J. Green's appeal which will be filed today with the Court of Appeals.

Thank you.
Chris

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330