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Nov 25 2020

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**Appeal from Greenville County
The Honorable Letitia H. Verdin, Circuit Court Judge**

THE STATE,

Respondent,

v.

SAMUEL HAWKINS, JR.,

Appellant.

Appellate Case No. 2019-001645

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

- I. Did the trial judge abuse her discretion by denying Appellant's motion to quash the indictment for the offense of murder where the indictment was insufficient because it failed to allege, as required by S.C. Code Ann. § 17-19-30, "the manner in which the death of the deceased was caused," and by granting the state's motion to amend the indictment to include Appellant killed the decedent "through homicidal violence of unknown means" since such an amendment violated Appellant's constitutional and statutory right to presentment and changed the nature of the offense?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

- I. Was the trial court within its discretion to permit amendment of the indictment and deny Appellant's motion to quash where the indictment for murder sufficiently put the defendant on notice of what he is called upon to answer, where circumstances prevented the provision of more details regarding the precise manner of homicide, and where statutory construction and existing case law demonstrated that the indictment was sufficient despite the lack of a specific cause of Victim's death?

STATEMENT OF THE CASE

Appellant was charged with murder and grand larceny (2014-GS-23-3303A & 3304). (See Indictments). A four day jury trial was held before the Honorable Letitia H. Verdin, on September 9, 2019, through September 12, 2019. Appellant was represented at trial by defense counsel Christopher D. Scalzo and Charles Sims Propst, Jr. The State was represented by Assistant Solicitors William Douglas Richardson, Jr. and Brandi Batson Hinton. (Tr. p. 1). At the conclusion of the trial, the jury found Appellant guilty on both charges. (Tr. p. 808, lines 1-5). Judge Verdin sentenced Appellant to 45 years imprisonment for murder and five years for grand larceny, with credit for time served. (Tr. p. 812, lines 4-7).

This appeal now follows.

STATEMENT OF FACTS

On September 12, 2013, Misty Johnson (hereinafter “Victim”) left the bar called Junior’s at approximately 3:00am. (Tr. p. 111, lines 14-21). She drove to her home located at Oakland Drive where she later met up with Samuel Hawkins (hereinafter “Appellant”). Victim and Appellant drank and conversed on her outside porch, but the interaction soon turned into an argument. In an effort to end the argument, Victim walked inside her home, closed the door, and left Appellant on the porch. (Tr. p. 119, lines 1-4).

Victim was reported missing approximately 24 hours later. (Tr. p. 93, lines 1-2). Her backdoor was unlocked, some of her furniture was out of place, her dog was left alone, the bedding was removed from the bed, her purse was in the home, but her cell phone and money were not found. (Tr. p. 98, lines 9-12; p. 242, line 9 through p. 243, line 23). The police investigation led to the discovery of evidence connecting Appellant to the crime. First, Appellant denied having any romantic relationship with Victim, however, his underwear was found at Victim’s home and

Appellant's best friend informed law enforcement that he believed Appellant and Victim had been romantically involved. (Tr. p. 100, lines 12-16; p. 586, lines 1-14; p. 604, lines 14-16; p. 685, lines 6-24). Victim's Green Ford Explorer was found parked across the street from Appellant's home. He repeatedly told police that he had no idea why the vehicle was parked there. However, at trial he changed his testimony and explicitly admitted to taking the vehicle from Victim's home after their argument. (Tr. p. 120, lines 14-23; p. 125, lines 16-21; p. 699, line 16 through 700, line 3; p. 707-708). Evidence also demonstrated that he continued to drive the vehicle for the following three days, including a visit to Junior's bar. When leaving the bar with friends he instructed his friend, Quincy, to discard a bag of materials from the front seat. (Tr. p. 107-108; p. 332, lines 1-19; p. 733, lines 2-12). Quincy testified that Appellant sternly told him to never speak of the fact that he was driving the car in question that night. (Tr. p. 335, lines 1-10). The bag was recovered and it contained empty beer bottles that tested positive for Appellant's DNA. The bag also contained a couch pillow from Victim's home with Victim's saliva on it, and some documents that referenced Victim's name. (Tr. p. 109, lines 2-24; p. 342; p. 569-570). Appellant and his friends were captured on surveillance camera when the bag was discarded. (Tr. p. 570, lines 15-21).

On October 30, 2013, a body was found on Whispering Hollow Road, a dead-end frontage road off of I-85. (Tr. p. 132, line 6 through p. 133, line 16). The body was wrapped in the comforter matching Victim's bed linens and appeared to have been drug to the location she was found. Also found with the body was a discarded dildo. (Tr. p. 135, line 20 through p. 137, line 5; p. 423, lines 3-12). The body was in an advanced stage of decomposition, such that her body consisted mostly of skeletal remains with some remaining skin. The state of decomposition prevented the autopsy from revealing with certainty the manner of death. (Tr. p. 459, line 2 through p. 460, line 5). News of the body being found reached Appellant before the identity of the body could be determined.

Identifying the body required the comparison of Victim's dental records on November 1, 2013, (Tr. p. 154, line 10 through p. 155, line 13; p. 456-461). Appellant's internet search history for October 31, 2013, included "stages of decomposition". (Tr. p. 524, line 1 through p. 525, line 19). Appellant's life-long friend, Matthew Boyce, informed police that Appellant had confessed to him that he had killed Victim, and mimicked Appellant's behavior to show that Appellant had possibly strangled or suffocated victim. (Tr. p. 597, line 1 through p. 604, line 16). Soon after, Appellant was informed that he was being placed under arrest for Victim's murder, and his response was: "I understand." (Tr. p. 592, lines 7-13).

Appellant's trial testimony revealed that he purposefully lied on multiple topics to law enforcement during the investigation of Victim's disappearance. The record demonstrates that Appellant's lies to law enforcement included: (1) how he arrived at Victim's home on September 12, 2013, (2) how he got home that morning, (3) that he did not clean up the porch before leaving, (4) that he did not take the empty beer cans with him when he left Victim's home, (5) that he did not take Victim's vehicle, (6) that he witnessed a white sedan pick Victim up and leave with her on the morning she went missing. (Tr. p. 709, lines 1-22; p. 682, lines 11-17; p. 723, lines 13-25; p. 726-727; p. 733, line 2 through p. 734, line 20).

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. Tumbleston*, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007) (citing *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.*

ISSUE AS IT WAS PRESENTED AT TRIAL

Appellant was arrested on November 4, 2013, for the murder of Victim, Misty Johnson. Due to the advanced decomposition of Victim’s body the pathologist was not able to conclude with certainty a precise manner of death. As a result, the State’s April 2014 Indictment for Murder did not identify the specific manner in which the homicide was perpetrated. (See Indictments). On August 19, 2019, Appellant moved to quash the indictment on the grounds that the indictment’s failure to specify the manner of homicide rendered the indictment insufficient under South Carolina Code of Laws § 17-19-30. (Pre-trial Motion Tr. p. 4, lines 8-16; p. 9, lines 1-5).

Assistant Solicitor Brandi Hinton acknowledged that the language of § 17-19-30 references the provision of the manner of death, but argued that the indictment should still be considered sufficient. (Pre-trial Motion Tr. p. 5, lines 22-24). Assistant Solicitor Hinton argued (1) that there are other instances where precise adherence to the language of the statute did not render an indictment insufficient, (2) the maxims for statutory construction cannot be applied in a manner that would create absurd results, and (3) existing precedent has dictated that an indictment may alternatively state that death was caused by means or instrumentality unknown. (Pre-trial Motion Tr. p. 6, lines 1-25). Ms. Hinton also confirmed for the court that if the motion to quash were to be granted, the State would simply have to present the same evidence to the grand jury again, as no new case evidence had been developed. (Pre-trial Motion Tr. p. 7, lines 2-12). She also made a contemporaneous motion to amend the indictment so as to add the phrase “homicidal violence by unknown means” to the indictment, which was the phrase used by the pathologist in her findings. (Pre-trial Motion Tr. p. 7, line 6 through p. 8, line 1).

Judge Verdin concluded that it would strain the language and intent of the statute to

construe it in such a way that a defendant could not be tried for murder in circumstances where the exact cause of death could not be determined. Judge Verdin also concluded that the proposed amendment to add “homicidal violence by unknown means” did not constitute a notable change to the indictment and determined that Appellant was on notice of the circumstances supporting the added language. The trial court granted the motion to amend and denied Appellant’s motion to quash. (Pre-trial Motion Tr. p. 15, lines 1-19).

ARGUMENT

I. **The trial court did not abuse its discretion in granting the State’s amendment to the murder indictment and in denying Appellant’s motion to quash.**

The trial court did not commit an abuse of discretion in granting the State’s motion to amend the murder indictment and in denying Appellant’s motion to quash; both decisions were factually sound and consistent with existing law. The language added to the indictment via amendment did not change the nature of the murder indictment, the indictment satisfied the legal standards for sufficiency of notice to Appellant, and existing case law permits a murder indictment to articulate that the cause of death was by unknown means. Appellant’s conviction and sentence should therefore be affirmed.

a. **The State’s motion to amend the indictment**

The trial court’s decision to grant the motion to amend was not an abuse of discretion. Appellant’s argument is without merit and his conviction and sentence should be affirmed.

“An indictment may be amended if: (1) it does not change the nature of the offense; (2) the amended charge is a lesser included offense of the original crime charged in the indictment; or (3) the defendant waives presentment to the grand jury and pleads guilty.” *State v. Fonseca*, 383 S.C. 640, 646, 681 S.E.2d 1, 4 (Ct. App. 2009), affd., 393 S.C. 229, 711 S.E.2d 906 (2011) (citing *State*

v. Myers, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993)). The State’s amendment adding “homicidal violence by unknown means” satisfied the first option, as it did not change the nature of the offense for which Appellant was charged. His indictment was and remained the killing of Victim Misty Johnson with malice aforethought on or about September 12, 2013, in Greenville County. The additional language does no more than bring clarity to the indictment that the exact manner in which the homicide was perpetuated is unknown. Both Appellant and the State were aware of this circumstance for years prior to trial. (Pre-trial Motion Tr. p. 7, lines 6-12).

As Appellant’s motion to quash is based on the argument that the manner of homicide is not identified in the indictment, the motion to quash serves as a concession by Appellant that the amendment did not change the nature of the offense. The motion to quash addressed the same unknown manner of homicide issue that the subsequent amendment conceded and clarified. Also, the added “homicidal violence by unknown means” language is taken from the findings of the medical examiner in the case, which Appellant was on notice of prior to the motion being made.

The amendment did not present new or distinguishing information that would change the nature of the offense in question, the motion therefore satisfied the first basis for proper amendment. The trial court was well within its discretion to grant the State’s motion to amend, and therefore there is neither a factual nor a legal basis for error in the court’s decision.

b. Appellant’s motion to quash

Appellant filed a motion to quash his murder indictment for failure to articulate the manner in which the homicide was committed. Appellant argued that the indictment is insufficient and relied upon the language of S.C. Code of Laws § 17-19-30 for support of his motion. Appellant now seeks to appeal the trial court’s decision to deny his motion to quash. However, existing case law and maxims of statutory construction render Appellant’s appeal meritless and demonstrate that

the trial court was within its discretion to find the indictment sufficient and deny the motion to quash.

With the South Carolina Supreme Court's decision in *State v. Gentry*, subject-matter jurisdiction is no longer established by indictment. The Court in *Gentry* noted that "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. Gentry*, 363 S.C. 93, 102–03, 610 S.E.2d 494, 500 (2005). Also, when evaluating the sufficiency of an indictment, a trial court must also look at the indictment "with a practical eye in view of all the surrounding circumstances." *Id.* "Definitively, an indictment is a 'notice' document." *State v. Tumbleston*, 376 S.C. 90, 95–96, 654 S.E.2d 849, 852 (Ct. App. 2007).

The law concerning sufficiency of indictments is fully satisfied here. Appellant's existing indictment provided the time and place for which the crime against Victim Misty Johnson is believed to have occurred, and put Appellant on notice for the elements of murder for which he must answer. The record demonstrates that Appellant was on notice of the crime he is called to answer and the indictment was of sufficient certainty and particularity to enable the court to administer judgment. The indictment satisfied the standard to which all indictments are held.

Additionally, the latitude granted to the court in judging the sufficiency of an indictment based upon all of the relevant circumstances is a pertinent component in this case. Due to the Appellant's disposal of the Victim's body and the decomposition of Victim's body that took place prior to discovery, the precise cause of death could not be determined. Such a circumstance

provides latitude for evaluating the indictment and is in harmony with the both the statutory language itself and the maxims of statutory interpretation.

First, the precise language of S.C. Code of Laws § 17-19-30 states:

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, willfully and on his malice aforethought kill and murder the deceased.

A careful reading of this statute reveals that it is providing a statement that indictments containing certain information will be deemed sufficient. However, *it is not a list of requirements that must be present to establish sufficiency*. As such, Appellant's reliance upon the statute as a list of requirements for a sufficient indictment is in error. Even if the statute were read to constitute a mandatory list of requirements, as was noted by the trial court in consideration of the matter, it would be an absurd conclusion for a prospective defendant to be unable to be tried for murder simply because the precise manner of homicide cannot be determined. This is especially so when it is the culprit's own efforts that prevent a conclusion as to the manner of death. Our Supreme Court has held that:

choice of language in an act 'will not be construed with literality when that would defeat the manifest intention of the lawmakers' and that the court will reject the ordinary meaning of words used in a statute 'when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature.'

S.C. State Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946) (citing *State v. Gilliam*, 208 S.C. 126, 130, 37 S.E.2d 299, 301 (1946)). The trial court was within its discretion to recognize the absurdity of such a statutory construction given the circumstances of this case, and was therefore within its discretion to deny the motion to quash.

Existing case law also provides a basis for upholding the trial court's decision. As was

referenced by Assistant Solicitor Hinton, other cases demonstrate that strict adherence to statutory language is not necessarily fatal to an indictment's sufficiency. See *Joseph v. State*, 351 S.C. 551, 562, 571 S.E.2d 280, 285 (2002), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (noting that indictment's lack of statutory language noting defendant did "feloniously, willfully, . . . kill and murder the deceased" did not render the indictment insufficient.) Moreover, the South Carolina Supreme Court has held that an indictment "may state that the death was caused by a means or instrumentality unknown." Such language is the functional equivalent of stating "homicidal violence of unknown means". Ms. Hinton cites to *State v. Jenkins*, 48 S.C.L (14 Rich.) 215 (1867) for this legal principle. However, this rule of law was cited favorably by the South Carolina Supreme Court in *State v. Owens* as well, which was decided after the adoption of § 17-19-30. *Owens* provides a directly applicable and controlling authority for upholding the trial court's decision to deny the motion to quash.^{1 2}

The trial court's decision to deny the motion to quash is supported by the standards for indictments set forth in *Gentry*, the statutory construction of § 17-19-30, and the existing case law

¹ Also, by way of persuasive authority, the Georgia Supreme Court has handled this exact issue. In *Phillips v. State*, the Georgia Supreme Court handled a case where the victim's body was too decomposed to provide a definitive cause of death. The Georgia Supreme Court ruled that "an indictment failing to specify the cause of death is sufficient 'when the circumstances of the case will not admit of greater certainty in stating the means of death.'" *Phillips v. State*, 258 Ga. 228, 228, 367 S.E.2d 805, 806 (1988) (citing *Hicks v. State*, 105 Ga. 627, 31 S.E. 579 (1898)).

² Beyond the statutory language, Appellant relies upon *Winns v. State* as its basis for support. *Winns v. State*, 363 S.C. 414, 418–19, 611 S.E.2d 901, 903 (2005), abrogated by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). However, *Winns* provides no comparable legal or factual analysis to support Appellant's claim. The Supreme Court in *Winns* concluded that the indictment was sufficient and overturned the PCR court's findings to the contrary which relied upon the potential issue of the location and time of the victim's death. While the indictment in *Winns* included language as to the cause of death, the fact that an indictment includes such language in one case does not equate to the conclusion that all indictments that fail to include such language are automatically insufficient in other cases.

of South Carolina that explicitly permits reference to unknown means of death in murder indictments. Appellant's argument that that indictment is insufficient is entirely without merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Respondent agrees with Appellant's proposal regarding the Record on Appeal.

I certify that this designation contains no matter that is irrelevant to this appeal.

s/ W. Joseph Maye
W. JOSEPH MAYE
Assistant Attorney General

November 25, 2020.

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CERTIFICATE OF SERVICE

I, Donna D'Alessio, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Initial Brief of Respondent, Designation of Matter, and Certificate of Service has been forwarded to Appellant's counsel, Lara M. Caudy, Esq., via email today, November 25, 2020 to lcaudy@sccid.sc.gov, and to her assistant at lmattthews@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 25th day of November, 2020.



Donna D'Alessio,
Legal Assistant to W. Joseph Maye
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