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Mar 07 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB D. HALL,

APPELLANT.

APPELLATE CASE NO. 2024-000266

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in identifying the classification of appellant's predicate prior felony conviction as a violent crime per the jury charge on the offense of possession of a firearm by a felon as this was a comment on the facts in the case, and because this knowledge prejudiced the jury with respect to deliberations on the drug charge.

STATEMENT OF THE CASE

Appellant Jacob D. Hall was convicted of trafficking in methamphetamine (100 grams or more) and felony possession of a firearm by a person convicted of a violent crime per jury trial held during the February 2024 term of the York County General Sessions Court before Judge Daniel D. Hall. Appellant was sentenced to an aggregate thirty-year prison term. Attorney Lir Derieg represented appellant at trial, and Assistant Solicitors Leslie Robinson and Chris Epting prosecuted the case.

Appellant appealed. This brief follows

STANDARD OF REVIEW

In reviewing an alleged error in jury instructions, an appellate court will not reverse the circuit court's decision absent an abuse of discretion. See Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) (applying an abuse of discretion standard of review to an alleged error in jury instructions). In reviewing jury charges for error, the appellate court must consider the circuit court's jury charge as a whole in light of the evidence and issues presented at trial. Welch v. Epstein, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct.App.2000). If the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error. Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999).

ARGUMENT

The trial judge erred in identifying the classification of appellant's predicate prior felony conviction as a violent crime per the jury charge on the offense of possession of a firearm by a felon as this was a comment on the facts in the case, and because this knowledge prejudiced the jury with respect to deliberations on the drug charge.

On February 24, 2022, several York County police officers were dispatched to a particular residence where appellant allegedly lived¹ in response to a call requesting a welfare check there because children were housed therein. Kendal Harris, who was a mother of four children, was found at the residence in question when the officers arrived there. Apparently, Kendal Harris was married to appellant at that time and the two shared one child together. Harris opened the door when the police knocked and informed them that appellant was not present inside the residence. R. 136, 1.2 - p. 153, 1.2. Nonetheless, the police officers entered the residence and searched all around until they found guns and methamphetamine. R. 189, 1.16 - p. 201, 1.7; R. 343, 1.16 - p. 262, 1.6; R 267, 1.23 - p. 275. Note that an active arrest warrant against appellant had previously been issued in an unrelated case. R. 195, lines 18-19.

Subsequently, appellant was arrested and charged with trafficking in methamphetamine and possession of a firearm by a person convicted of a violent offense. At trial, the York County Deputy Clerk (hereinafter referred to as "clerk") confirmed that state's exhibit #32 was a document that reflected appellant's prior attempted armed robbery conviction. R. 224, 1. 9 - p. 226, 1.19. The clerk's testimony regarding this exhibit not only identified appellant's prior conviction (attempted armed robbery), but revealed also that attempted armed robbery was classified as a violent crime.

¹ The residence belonged to appellant's mother. R. 137, lines 5-11; R. 151, lines 20-2.

The testimony from the clerk follows:

Q. And do the records indicate whether or not that (attempted armed robbery) would be a violent crime?

A. It does. R. 226, lines 14-16

During the jury charge, the trial judge issued an instruction on the offense of felony possession of a firearm charged against appellant as follows:

The Court: The defendant is charged with possession of a firearm by a person convicted of a violent offense. In order to be convicted, the state must prove beyond a reasonable doubt that the defendant has been convicted of a violent offense. And the state must also prove beyond a reasonable doubt that the defendant was in possession of a firearm or ammunition within the State of South Carolina, [and that] attempted armed robbery is a violent offense.

R. 536, lines 6-14.

At the close of the trial judge's jury charge on the law, defense counsel entered the following objection:

Defense Counsel: In the copy of the jury charges I have, it did not list that you were going to...to instruct the jury that attempted armed robbery is a violent offense.

R. 540, l. 16-19.

The trial judge ruled that [he] would "live with the instruction" given and in effect overruled the objection. R. 541, lines 3-5.

S.C. Code Ann. §16-23-500(A) (2024) states that it is unlawful for a person who has been convicted of a crime punishable by a maximum term of imprisonment of more than one year to possess a firearm or ammunition. In the case at bar, appellant's prior attempted armed robbery conviction was the predicate prior felony crime used to charge him on the offense of felony possession of a firearm by a person convicted of a violent crime. However, it was error

for the trial judge to inform the jury of the specific classification of appellant's predicate prior felony conviction as a violent crime because this matter (whether the prior was a violent crime) was a jury question that should have been decided based on the evidence presented via state's exhibit #32 and the clerk's testimony in the case. At trial, the clerk gave testimony regarding the classification of appellant's prior criminal conviction based on the documentation (exhibit #32). Therefore, the trial judge's instruction in question constituted a charge on the facts in the case. Compare State v. Gleaton, 444 S.C. 394, 906 S.E.2d 630 (2024), where the defendant, who was also indicted under S.C. Code Ann. §16-23-500(A) (2024), had a prior arson conviction, but the trial judge did not refer to the arson prior and only charged the jury that it was unlawful for a convicted felon to possess a firearm, and added that the defendant had been convicted previously of a violent crime. The Court held that referring to the defendant's "unspecified" predicate prior felony conviction was not more prejudicial than probative. However, here, it was unnecessary for the trial judge to confirm that appellant's prior conviction was a violent crime during the jury charge because there was evidence in the record via testimony given at trial and an exhibit that addressed the issue of the classification of the prior as a violent crime.

Thus, the trial judge's jury instruction in question revealing that the classification of appellant's predicate prior crime was a violent one resulted in a charge on the facts in violation of S.C. State Constitution Article V, § 21, which states that judges shall not charge juries with respect to matters of fact, but shall declare the law. See State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (2008)², where the court held that a charge that states a legal conclusion by the judge is improper; and that a trial judge should refrain from any comment that would tend to indicate to the jury his opinion on the credibility of witnesses, the weight of the evidence, or the guilt of the

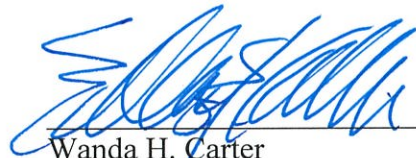
² Affirmed, but reversed on other grounds in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011). (2011).

accused. In the case at bar, the trial judge summarily decided the factual issue for the jury on the question of whether appellant's predicate prior conviction of attempted armed robbery was a violent crime by affirmatively stating to the jury that the same was indeed a violent offense.

The trial judge erred in identifying the classification of appellant's predicate prior felony conviction as a violent crime when charging the jury on the offense of possession of a firearm by a felon in the case because this was a comment on the facts, and because of the prejudicial effect of this knowledge presented to the jury during the deliberations on the drug charge in the case.

CONCLUSION

Based on the foregoing argument, appellant's case should be reversed and remanded to the lower court for a new trial because of the prejudice that occurred when the jury was made aware of appellant's prior record in the case.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2025.

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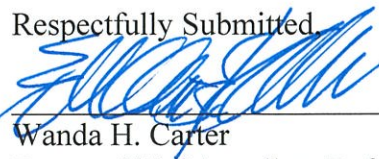
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jacob D. Hall states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Daniel D. Hall, which was held on Feb. 12-15, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jacob D. Hall.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

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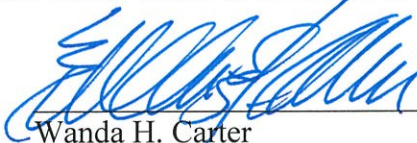
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript
- (2) Indictments

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



Wanda H. Carter
Deputy Chief Appellate Defender

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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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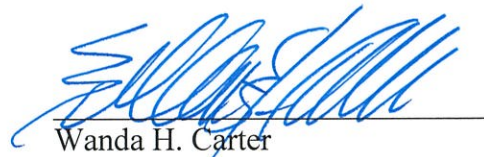
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter 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 Jacob D. Hall, #374446, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 7th day of March, 2025.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT