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Jun 11 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH C. MITCHELL,

APPELLANT.

APPELLATE CASE NO. 2024-000901

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in submitting a confusing verdict form because this likely affected integrity of the jury verdicts delivered in the case.

STATEMENT OF THE CASE

Appellant Kenneth C. Mitchell was convicted of trafficking in methamphetamine, unlawful carrying of a pistol, possession of a weapon during the commission of a violent crime, and possession of a stolen handgun during the May 2024 term of the Jasper County General Sessions Court before Judge Carmen T. Mullen. Appellant was sentenced to an aggregate twenty-five-year prison term. Carolyn Carmody represented appellant at trial, and Assistant Solicitor Trasi Campbell prosecuted the case.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the constitution. State v. Aleksey, 343 S.C.20, 538 S.E.2d248 (2000).

ARGUMENT

The trial judge erred in submitting a confusing verdict form because this likely affected integrity of the jury verdicts delivered in the case.

Appellant was stopped by police on July 16, 2020, in Ridgeland, South Carolina, for a traffic violation (defective brake light). A search of appellant's vehicle followed, and a gun and methamphetamine were found therein. After the trial judge charged the jury on the law, the following verbal explanation on the verdict form was given to the jury:

To that end, my law clerk has prepared a verdict form. It has simply the case caption: State of South Carolina v. Kenneth C. Mitchell. It says verdict, and it has four questions on it, Mr. Foreperson.

The first question is: As to indictment 202GS2700487, the charge of trafficking in methamphetamine between 100 and 200 grams, we the jury unanimously find the defendant, Kenneth C. Mitchell either guilty or not guilty. You just put a check mark for whichever one.

If on that first charge you find Mr. Mitchell not guilty, it says that you would then go to question 3 and 4. That would mean you would skip Question 2.

Question Number 2 says: As to the Indictment Number 2020GS2700155, the charge of possession of a weapon during the commission of a violent crime, we the jury unanimously find the defendant, Kenneth C. Mitchell, again, guilty or not guilty.

Obviously, you would only answer Question Number 2 if you found Mr. Mitchell guilty on the trafficking in methamphetamine.

Then the third question, which even if you find him not guilty as to Question Number 1, which is trafficking, you would answer Question Number 3 which states: As to Indictment Number 2020GS2700488, unlawful carrying of a pistol, we the jury unanimously find the defendant Kenneth C. Mitchell, again, guilty or not guilty.

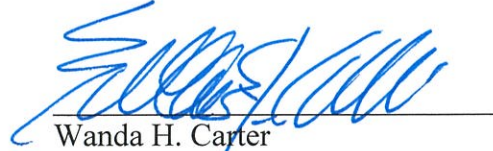
Then Question Number 4 as to Indictment Number 2024GS2700156, the charge of possession of a stolen handgun, we the jury find the defendant, Kenneth C. Mitchell, again, either guilty or not guilty. R. 261, l. 13 – p. 262, l. 12.

A special verdict question may be so defective in its formation that its submission results in a prejudicial effect which constitutes reversible error in connection with the jury verdict(s). Sulton v. Healthsouth Corporation, 400 S.C. 412, 734 S.E.2d 641 (2012) citing to South Carolina Department of Transportation v. First Carolina Corporation of South Carolina, 372 S.C. 295, 641 S.E.2d 903 (2007). In the case at bar, the trial judge's verdict form options referencing the three gun charges were very confusing. For example, there were options to issue guilty verdicts on two gun charges, or three gun charges, or one gun charge sans explanations as to how a not guilty verdict on the first gun charge would have no bearing on verdicts regarding the second and third nonviolent gun charges. In other words, although the first gun charge was joined to the drug charge (both classified as violent offenses), the jury form referencing the remaining two gun charges appeared to be duplicitous in nature without explanations as to how the last two gun charges were separate and distinct (nonviolent) from the first gun offense charged. It appeared as though a not guilty verdict on the first gun charge would lead to not guilty verdicts on all gun charges. Undoubtedly, the likely course of action might have been to vote guilty on all three gun charges due to the confusing jury verdict form. The resulting prejudice was that there was no way to assess the integrity of the jury verdicts on the gun charges in the case because of the difficulty they likely experienced in deciphering the differences between them.

The trial judge erred in submitting a confusing verdict form to the jury.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that this Court reverse appellant's convictions and sentences, and remand his case for a new legal proceeding.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of June, 2025.

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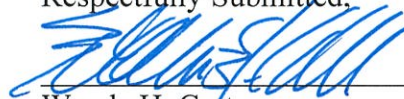
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kenneth Craiven Mitchell 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 Carmen T. Mullen, which was held on May 13-14, 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 Kenneth Craiven Mitchell.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of June, 2025.

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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) May 13, 2024 Transcript
- (2) May 14, 2024 Transcript
- (3) Indictments

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



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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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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 Danielle E Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Kenneth Craiven Mitchell, #382599, at Allendale Correctional Institution, 1057 Revolutionary Trail, Fairfax, SC 29827, this 11th day of June, 2025.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT