

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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◦ Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JAMES WHEELER BEDENBAUGH, JR.,

APPELLANT

APPELLATE CASE NO 2016-002013

\_\_\_\_\_

ANDERS BRIEF OF APPELLANT

\_\_\_\_\_



ROBERT M. PACHAK  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in overruling defense counsel's motion to exclude the introduction of two signs taken from appellant's yard that were very pro-weapon oriented and unduly prejudicial to appellant?

**STATEMENT OF THE CASE**

Appellant was convicted of pointing or presenting a firearm after a jury trial before the Honorable Frank R. Addy on September 12-13, 2016, in Newberry County. He was sentenced to five (5) years suspended to one (1) year with three (3) years probation thereafter. Charles Verner, Esq. was defense counsel. Dale Scott, Esq. and Taylor David, Esq. were the solicitors.

This appeal follows.

## ARGUMENT

The trial court erred in overruling defense council's motion to exclude the introduction of two signs taken from appellant's yard that were very pro-weapon oriented and unduly prejudicial to appellant.

Aleah Cromer testified that she was thirteen years old and lived in Prosperity with her Mother, Michelle, and Sean, her mother's boyfriend, and Sean's two sons, Michael and Adam. On November 15, 2015, their dog went into appellant's yard. She saw appellant on his porch as she was dragging her dog off his property. She did not know who appellant was until that day. She said her dog's name was Mist and she was a border collie and lab mix. (Tr. p. 40, line 13-p. 42, line 15). Aleah said she had Mist on a leash that day but a deer ran through their yard and Mist took off after it pulling the leash out of her hand. (Tr. p. 46, lines 18-24).

Aleah and Michael ran through the woods after the dog. The dog jumped over a fence and she followed and grabbed her. That is when she saw appellant sitting on his porch. She headed back to her house with the dog. (Tr. p. 47, lines 16-25). She said appellant yelled something but she could not hear what he said because she was preoccupied getting Mist back home. Michael, who was 11 or 12 at the time, told her to keep heading home. He told her appellant had a gun. (Tr. p.48, line 2- p.49, line 7).

Aleah told her mother what happened and her mother went outside. Appellant yelled if your children or dog comes back on my yard again or near the fence, I will shoot them. Aleah heard that and appellant sounded angry. (Tr. p. 50, lines 10-22).

Michael testified next. He said he saw appellant with a rifle at his shoulder like he was fixing to shoot. Appellant yelled, if ya'll come back in this yard, I'm going to shoot you and your dog. The rifle had a big black scope on it. (Tr. p. 62, lines 20-p. 63, line 22). Appellant was

pointing the gun at Aleah and Mist. He was not sure if appellant saw him. (Tr. p. 64, lines 1-11). Appellant was looking through the scope and holding the gun like he was going to shoot. (Tr. p. 65, lines 6-19). The whole thing scared him. (Tr. 66, lines 7-8).

Michelle Cromer, Aleah's mother, testified on the day of the incident Aleah and Michael came home "shaking, white as ghosts." Michael told her about the appellant pointing a gun at them and threatened to shoot them. She went to ask appellant what the problem was and he told her if her children, her dog, or she came back in his yard, he would shoot them. (Tr. p. 79, line 19- p. 80, line 5). She called the police and she stayed on the phone until they got to the house. (Tr. p. 82, lines 2-6).

Deputy Rembisz said she responded to the scene. She talked to Michelle first to learn what happened. She spoke to the children next. She said "Aleah was very shaken and upset and very scared." And "Michael was a lot more upset than Aleah. Michael was somewhat traumatized. He seemed to be almost in shock." (Tr. p. 106, line 10- p. 107, line 24).

Once the other officers arrived they went over to appellant's house. (Tr. p. 108, lines 13-16). Appellant came out of his back door. He was detained since a gun was repeatedly involved. They told him about Michelle's complaint. Appellant said he didn't even have guns out; that all of his guns were locked in a safe inside the house. (Tr. p. 110, line 13- p.111, line 20). After getting consent to search the house, they found a long gun with a scope like Michael described and within arm's reach of the back door. (Tr. p. 112, lines 10-15). Two metal signs were also found on the property. One was a warning message that said, "Due to the price increase of AMMO, do not expect a warning shot." It also had a picture of a long gun. The other sign said, "Prayer is the best way to meet the Lord. Trespassing is faster." That sign had a picture of a revolver. (Tr. p. 116, lines 2-20).

Defense counsel objected to photographs of these signs coming into evidence. (Tr. p. 115, lines 10-20). Defense counsel's objection was based on unfair prejudice and relevance under Rule 403, SCRE. The court overruled the objection. (Tr. p. 127, lines 5-15). The court's ruling was in error.

Rule 403, SCRE provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice..." In State v. Alexander, 303 S.C. 377, 401 S.E. 2d 146 (1991) the court noted that unfair prejudice means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." In that case evidence of the victim's emotional trauma was relevant to show a lack of consent in a criminal sexual case but the prejudicial value of that testimony outweighed its probative value.

The photos of the signs were inflammatory and unduly prejudicial. They did not prove appellant was pointing or presenting a firearm. Such proof could only come from the testimony of the witnesses. The signs suggested a decision on an improper basis.

CONCLUSION

Appellant's conviction should be reversed.

*Robert M. Pachak*

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Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2017.

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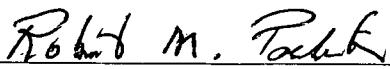
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Wheeler Bedenbaugh states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on September 12-13, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for James Wheeler Bedenbaugh.

Respectfully Submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 21st day of April, 2017.

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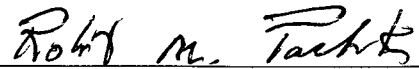
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) General Sessions Transcript dated September 12-13, 2016
- (2) True-billed indictment

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

April 21, 2017



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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."

April 21, 2017

Robt M. Pachak

Robert M. Pachak  
Appellate Defender

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The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on James Wheeler Bedenbaugh at 149 Brown Street, Prosperity, SC 29127, this 21st day of April, 2017.

*Robert M. Pachak*  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of April, 2017.

Henric Mendez (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023