

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Michael G. Nettles, Circuit Court Judge

RECEIVED
JUL 19 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT WAYNE MITCHELL,

APPELLANT

APPELLATE CASE NO. 2012-212534

RECORD ON APPEAL

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AMINAH R. HARDY, RPR
Official Court Reporter

EXHIBITS

No.

Description

Page

(No exhibits were marked.)

P R O C E E D I N G S

1
2 MR. SHELTON: Thank you, Your Honor. May it please
3 the Court. Standing before you is Robert Wayne Mitchell.
4 He's appointed -- represented by appointed counsel, Chisa
5 Putman. He is here this morning to enter a plea on one
6 indictment, an indictment for burglary, second degree,
7 violent. This is a straight-up plea that carries zero to
8 15 years. The State will be requesting a sentence in the
9 higher range of the 15 years, and I'll explain why at the
10 appropriate time.

11 ROBERT WAYNE MITCHELL, after being duly sworn,
12 testified as follows:

13 THE COURT: Yes, ma'am. I'm new to York. Your name
14 again?

15 MS. PUTMAN: Chisa Putman.

16 THE COURT: You represent Mr. Mitchell?

17 MS. PUTMAN: Yes, sir, Your Honor.

18 THE COURT: Have you explained to him the offense
19 burglary, second degree, violent, and the fact and he
20 could be incarcerated for a period of up to 15 years; the
21 elements of the offense; potential defenses; and his
22 constitutional rights?

23 MS. PUTMAN: Yes, sir, Your Honor.

24 THE COURT: And how does he wish to plead?

25 MS. PUTMAN: Guilty, Your Honor.

1 THE COURT: Do you agree with his decision to do so?

2 MS. PUTMAN: Yes, sir, Your Honor.

3 THE COURT: Do you feel if called upon to do so, the
4 State could prove him guilty beyond a reasonable doubt?

5 MS. PUTMAN: Yes, sir, Your Honor.

6 THE COURT: Mr. Mitchell, are you under the influence
7 of any drugs or alcohol here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Experiencing any kind of mental --
10 physical or mental problems that would prevent you from
11 understanding what we're doing here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Pay very close attention to Mr. Shelton
14 as he summarizes the facts that bring us here today.

15 MR. SHELTON: Thank you, Your Honor. This incident
16 occurred on September 25th, 2011, around 4:00 in the
17 morning. At that time, defendant Robert Wayne Mitchell
18 and his codefendant, Ryan Douglas Brannon, went to a local
19 establishment called the End Zone Bar and Grill, which is
20 located at 2354 Ebenezer Road in Rock Hill, South
21 Carolina. They went to that location with burglary tools
22 in their vehicle with the intent to break into a walk-in
23 cooler where various food items and beer is stored,
24 located behind the business. The State would contend and
25 I feel confident would prove at trial that would qualify

1 as a business, especially because it's closely related to
2 this business, establishing one of the elements of this
3 crime, burglary, second degree, violent.

4 While behind the building, which is not visible from
5 the roadway, they got out of their car with the burglary
6 tools, tried for several minutes to gain entry into the
7 walk-in storage cooler, but were unsuccessful. However,
8 they were able to jar the building, the door to the
9 building enough to set off an alarm, which then the
10 business owner, Mr. Ben Chamberlain, was notified of the
11 alarm, arrived on scene within minutes. And while the
12 defendants were still working to get into the building, he
13 approached -- got out of the vehicle to approach the
14 suspects.

15 They jumped in their vehicle, took off running. He
16 then pursued them, notifying law enforcement who took over
17 the pursuit. The driver of the car, Mr. Brian Brannon,
18 was able to get enough distance between law enforcement
19 and his vehicle to where he was able to slow down enough
20 to let Mr. Mitchell get out to jump -- jump out of the
21 vehicle and run away, and he was also himself able to jump
22 out of the vehicle and run away. He was caught in the
23 area by the K-9 units and subsequently told the police,
24 admitted to his involvement in the crime, and told them
25 that Mr. Robert Wayne Mitchell was his coconspirator.

1 Mr. Brannon has pled guilty to burglary, second
2 degree, nonviolent pursuant to a plea agreement that
3 involved other burglary charges, second degree,
4 nonviolents. He was sentenced on the other charges for
5 eight years in prison. The sentencing for his burglary,
6 second degree, nonviolent is contingent upon his agreement
7 to cooperate with the State and testify against the trial
8 of Mr. Mitchell if that were needed to be the case.

9 Your Honor, Mr. Mitchell does have a significant
10 prior criminal history. Based on that prior criminal
11 history, the State has served him with notice of life
12 without parole. This would be the third strike and he's
13 out. If we were to proceed with trial and he was
14 convicted, the State would have invoked that LWOP and
15 requested the judge to send him away for the rest of his
16 life without parole.

17 In consideration of this guilty plea, the State is
18 not intending to invoke that part of the law, but is
19 instead allowing to him plead to what he's charged with,
20 burglary, second degree, violent, which, of course,
21 carries up to 15 years.

22 Also in consideration of his plea, Your Honor, the
23 State is dismissing companion charges for possession of
24 burglary tools, criminal conspiracy, and there's a
25 property crime charge as well that related to malicious

1 injury to property. There's also an unrelated burglary
2 case at the same business from a couple months earlier
3 that the State is dismissing the charges of burglary,
4 second degree, violent; conspiracy; and larceny. And,
5 Your Honor, if it pleases the Court, I would like to make
6 you aware of Mr. Mitchell's prior record so that you know
7 what we're dealing with.

8 His first conviction arose in 1974 for two counts of
9 larceny from an automobile where he was given a
10 probationary sentence. In 1986, burglary second and grand
11 larceny. He got two years in prison. 1992, failure to
12 stop for a blue light and assault and battery of a high
13 and aggravated nature. He received a ten-year sentence.
14 That year he also had a damage to property charge. Then
15 he was also -- he also pled guilty to an accessory before
16 the fact of a felony, which was related to a burglary,
17 second degree, violent, which was dismissed. Was given a
18 concurrent sentence, it appears.

19 In 2000, he was convicted of grand larceny and
20 conspiracy, was given a probationary sentence. 2002,
21 burglary second, violent. He was given ten years
22 concurrent to a probation violation for the grand larceny
23 and conspiracy. 2007, his parole was revoked on that
24 sentence. 2008, he was convicted of two counts of B & E
25 auto, petit larceny, and conspiracy. Was given 90 days

1 concurrent. 2009, possession of crack cocaine, first
2 offense. 47 days time served. Also in 2009, burglary,
3 second degree, violent. He was given probationary
4 sentence that involved 198 days credit for time served.
5 He must -- that must have also included a PTUP provision,
6 Your Honor, because he was not on probation when this
7 incident occurred. So there is no probation violation
8 associated with this plea.

9 THE COURT: All right. Are those facts true and
10 accurate, Mr. Mitchell?

11 THE DEFENDANT: Yeah.

12 THE COURT: Are you indeed guilty of burglary, second
13 degree, violent?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand this is a violent
16 offense and adversely affects your custody status and
17 parole eligibility? Do you understand all that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Standing before me pleading guilty, but
20 you don't have to plead guilty to anything. You could
21 exercise your right to a jury trial. In that process, the
22 jury would determine whether or not the State could
23 actually prove you guilty beyond a reasonable doubt. I
24 would charge the jury as a matter of law that you're
25 presumed to be innocent. No one could require that you

1 take the witness stand. However, if you wanted to, you
2 could, and you could subpoena witnesses on your behalf.
3 In addition to that, you and your lawyer could
4 cross-examine the State's witnesses. You have an
5 opportunity to eyeball them and confront them as they
6 testify against you. You realize by pleading guilty,
7 you're giving up all those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Still wish to plead guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you indeed guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Plea negotiations are recommendation at
14 higher end is the extent of it?

15 MR. SHELTON: Yes, sir. It's a plea without
16 recommendation, but the State feels the higher end is
17 appropriate given all the circumstances.

18 THE COURT: Is that your understanding, Ms. Putman?

19 MS. PUTMAN: I was told the State was going to remain
20 silent on sentencing, and I was -- wanted to be able to
21 argue on behalf of probation.

22 THE COURT: All right. We'll proceed forward in that
23 fashion. We'll just act like he didn't ask for anything.
24 Does that sound fair to you?

25 MS. PUTMAN: Thank you, Your Honor.

1 THE COURT: Does that sound fair, Mr. Mitchell?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Mitchell, are you satisfied with your
4 lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anybody promised you anything,
7 threatened you, pressured you, mistreated you in any way,
8 shape, or form in an effort to get you to plead guilty
9 today?

10 THE DEFENDANT: No.

11 THE COURT: It's been your decision to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you indeed guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you understood all my questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have your answers been truthful?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied with your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Nobody has promised you anything,
22 threatened you, pressured you, mistreated you in any way,
23 shape, or form?

24 THE DEFENDANT: No, sir.

25 THE COURT: Based on your testimony, I find there's

1 substantial and factual basis for your plea, that your
2 decision was freely and voluntarily entered into,
3 knowingly and intelligently with the consent of competent
4 counsel with whom you say you're satisfied. Mr. Mitchell,
5 you understand you have ten days to appeal any decision I
6 might render here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very good. I'll be glad to hear from
9 you, Ms. Putman.

10 MS. PUTMAN: May it please the Court, Your Honor.
11 Mr. Mitchell has stated he's pleading guilty to the
12 burglary second. He acknowledges that he does have a
13 criminal history, but he also acknowledges that there was a
14 bad decision. Mr. Mitchell is 55 years old. He's a
15 native of Rock Hill, and he has family here in Rock Hill.
16 We're requesting the Court consider probation in regards
17 to Mr. Mitchell's sentencing. He has been incarcerated
18 since September the 27th of 2011, so approximately 261
19 days if I calculated correctly.

20 Mr. Mitchell would be able to adhere to the
21 stipulations of probation. And just ask that the Court
22 would consider probation and taking into consideration he
23 does have limited funding and limited transportation, so
24 if afforded probation, that he would not have to come
25 every week, but every other week. And he is able to come

1 up with the funds in a legal matter and adhere to all
2 stipulations to probation.

3 THE COURT: Mr. Mitchell, on indictment
4 2012-GS-46-00079, burglary, second degree, violent, the
5 sentence of the Court is you be committed to the state
6 Department of Corrections for a period nine years. Credit
7 for 261 days. Good luck to you.

8 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
General Sessions for York County, South Carolina, on the
18 day of June, 2012.

January 3rd, 2013

Aminah R. Hardy

Aminah R. Hardy, RPR

AMENDED INDICTMENT
DOCKET NO. 2012-GS-46-00079

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 16, Term 2012

THE STATE

vs.

ROBERT WAYNE MITCHELL

Indictment for

ATTEMPTED
BURGLARY SECOND DEGREE

SC Code: 16-11-312(B)
CDR Code: 0086

WITNESSES

(CSD)Clark

sgb

ARREST WARRANT NUMBER

Direct Indictment re:
M603151

ACTION OF GRAND JURY

/s/ Paul A. Veachan TRUE BILL

01-19-2012 True Bill

Foreperson of Grand Jury
Date: 2/16/12

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

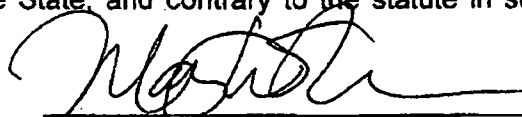
INDICTMENT

At a Court of General Sessions, convened on February 16, 2012, the Grand Jurors of York County present upon their oath:

ATTEMPTED BURGLARY SECOND DEGREE

The Defendant, Robert Wayne Mitchell, did in York County, South Carolina, on or about September 25, 2011, willfully and unlawfully attempt to enter a walk-in storage building located at 2354 Ebenezer Road in Rock Hill, South Carolina, during the night time hours, without consent and with the intent to commit a crime therein, and the Defendant has at least two prior convictions for burglary in South Carolina. All in violation of Section 16-11-312 of the Code of Laws of South Carolina (1976 and Supp 2010, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

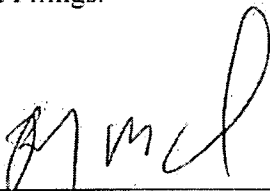


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 19th, 2013



Robert M. Dudek
Chief Appellate Defender

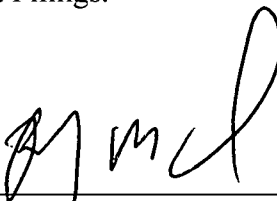
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 19th, 2013

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Michael G. Nettles, Circuit Court Judge

RECEIVED

JUL 19 2013

SC Court of Appeals

THE STATE,

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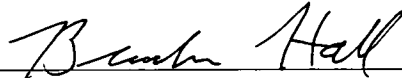
ROBERT WAYNE MITCHELL,

APPELLANT

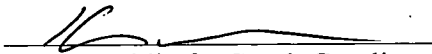
APPELLATE CASE NO. 2012-212534

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Robert Wayne Mitchell, #288979 at Perry Correctional Institution, this 19th day of July, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 19th day of July, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.