

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

**ORIGINAL**  
**RECEIVED**  
NOV 27 2019  
SC Court of Appeals  
RESPONDENT,

V.

SHARKEE ALEJANDRO MITCHELL,

APPELLANT

APPELLATE CASE NO 2019-000121

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ANDERS BRIEF OF APPELLANT

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WANDA H. CARTER  
Deputy Chief Appellate Defender

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**STATEMENT OF ISSUE ON APPEAL**

The lower court erred in allowing prior bad act testimony into evidence at trial because such evidence was irrelevant and prejudicial.

## **STATEMENT OF THE CASE**

Appellant Sharkee Alejandro Mitchell was convicted of assault and battery in the third degree and pointing and presenting a firearm during the January 2019 term of the Beaufort County General Sessions Court before Judge Carmen T. Muller. Appellant was sentenced to five years on the firearm conviction and time served (370 days) on the assault conviction. Appellant was represented at trial by Courtney Gibbes and Benjamin Tripp, and Assistant Solicitors Sarah Fowler and Jacob McFadden appeared on behalf of the state.

Appellant appealed. This brief follows.

## STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” Clasby, 385 S.C. at 154, 682 S.E.2d at 895; see State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).

## ARGUMENT

The lower court erred in allowing prior bad act testimony into evidence at trial because such evidence was irrelevant and prejudicial.

This case involved an assault with a weapon that took place in a residence. At trial, Beverly Heyward stated that on June 27, 2017, she entered the house where she lived and found appellant (her nephew) inside. Heyward explained that when she told appellant to exit, he got upset, pulled out a gun, but he fled ultimately. R. 93, 1.1 - R. 95, 1.16. In her statement, Heyward stated in effect that appellant had hit her (with the gun) on her head). R. 95, 1.24 – R. 100, 1.18.

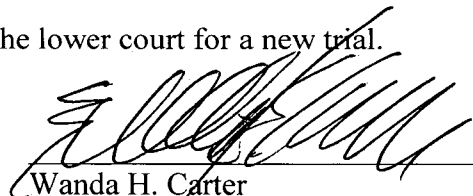
Prior to trial, the parties discussed the pre-trial motion referencing the exclusion of alleged prior bad acts that happened contemporaneously with the assault. R. 40, 1.22- R. 47, 1. 11; R. 54, 1. 1 – R. 55, 1. 18. Before Heyward testified, she was warned not to testify about how she found appellant smoking marijuana when she entered the residence and how she thought she saw marijuana inside the house at that same time, R. 86, 1. 1 -R. 87, 1. 18;R. 90, 1.15 - R.92, 1.10. However, it was the police officer who was dispatched to the scene that repeated what Heyward said when he arrived, which was that that she and appellant argued about him using narcotics in the household. R.69, 1.22- R. 70, 1.11.

Associating appellant with drug use and connecting such an assumption to the assault event was error as that constituted a prejudicial and inadmissible prior bad act. Prior bad acts evidence is not admissible to show that the accused is a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989); State v. Peake, 3.2 S.C. 378, 396 S.E.2d 362 (1990). In Peake, where the defendant was charged with murder, the Court reversed because the state offered evidence that the defendant offered to sell marijuana to the victim had no relevance to the circumstances of the victim's death. Under Rule 401, SCRE, relevant evidence is evidence

having any tendency to make the existence of any fact that it is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Also, Rule 403, SCRE, requires that evidence, although relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Here, the alleged marijuana use or the presence of marijuana at the scene had no relevance on the issue of whether appellant was in possession of a gun or whether appellant assaulted Heyward. The narcotics reference merely portrayed appellant and his character in a negative light. Evidence of prior bad acts is improperly submitted when used to show that the appellant was a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Unfair prejudice results when there is an undue tendency to make a decision on an improper basis. State v. Martuccie, 380 S.C. 232, 669 S.E.2d 598 (2008). The lower court erred in allowing the instant prior bad act testimony into evidence at appellant's trial because such evidence was irrelevant and prejudicial.

### **CONCLUSION**

Based on the foregoing argument, counsel for appellant requests that his convictions and sentences be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Sharkee Alejandro 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 , 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 Sharkee Alejandro Mitchell.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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

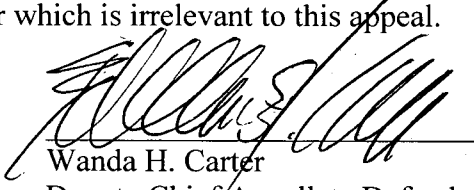
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Transcript dated January 14, 2019
- (3) Transcript dated January 15, 2019.

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

November 27, 2019

  
Wanda H. Carter  
Deputy Chief Appellate Defender

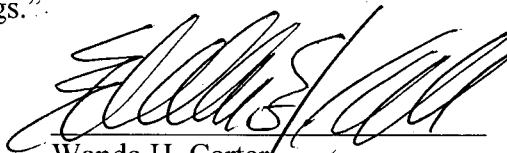
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ATTORNEY FOR APPELLANT

**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."

November 27, 2019.



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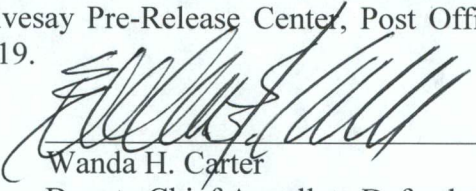
APPELLANT

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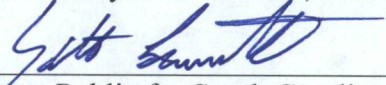
CERTIFICATE OF SERVICE

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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 William M. Blich, 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 Sharkee Alejandro Mitchell, 333949, at Livesay Pre-Release Center, Post Office Box 580, Una, SC 29378, this 27th day of November, 2019.

  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 27th day of November, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina

(L.S)

My Commission Expires: September 27, 2028.