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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RECO ANTONIO GODBOLT,

APPELLANT

APPELLATE CASE NO. 2013-000456

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in failing to grant Appellant's motion for a mistrial, or in the alternative quash the jury panel, where a member of the venire stated that he knew Appellant because the venire member was a bondsman, which tainted the entire jury pool and deprived Appellant of a fair and impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, sections 3 and 14 of the South Carolina Constitution.

## STATEMENT OF THE CASE

The Sumter County Grand Jury indicted Appellant for kidnapping, burglary in the first degree, attempted murder, armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy on January 5, 2012. R. 532. The prosecution, represented by John Meadors and Chip Finney, called the case to trial before the Honorable George C. James and a jury on December 3, 2012. On that same day, the prosecution called the case of Appellant's co-defendant, Jamal Helton, to trial. Appellant was represented by Grant Smaldone. Jack Swerling represented the co-defendant, Helton. R. 1. After his motion to sever the trials was denied and after the jury was selected, Helton entered a guilty plea pursuant to a negotiation with the prosecution. R. 80, lines 20-25. When the jury returned, Judge James informed the jury that Helton was no longer in the court room and the jury was "to draw no conclusions or inferences adverse to [Appellant] in that regard." R. 119, lines 22-25. Ultimately, the jury found Appellant guilty of all charges, except attempted murder. R. 475, line 10 – R. 476, line 1. Judge James sentenced Appellant to twenty-five years' imprisonment for armed robbery, burglary in the first degree, and kidnapping. Additionally, he sentenced Appellant to five years' imprisonment for conspiracy and possession of a weapon during the commission of a violent crime. All sentences were to be served concurrently. R. 505, lines 3-21; R. 533 (sentence sheets).

Appellant filed a timely motion for new trial on December 11, 2012. R. 526. On February 20, 2013, Judge James denied the motion. R. 528. Thereafter, Appellant filed a timely notice of appeal. This brief follows.

## STATEMENT OF FACTS

On October 31, 2011, Appellant was arrested outside a recently burglarized home. R. 203, line 24 – R. 204, line 17; R. 206, line 12 – R. 208, line 4. Subsequently, Appellant gave a full confession to police. He explained that earlier that day, he had given his co-defendant a ride. The co-defendant explained that he “had something set-up” and he would pay Appellant to drop him off. Appellant followed co-defendant’s directions and dropped him off at the house where he was arrested later. While Appellant waited in the car, co-defendant entered the house, but returned to ask Appellant to lock a screen door to keep two dogs on the porch. While doing so, Appellant heard a car door shut, and then heard the homeowner yelling. Appellant walked to the front of the house and saw co-defendant chasing the homeowner. The two stopped and then returned to the house. Appellant’s co-defendant jumped into Appellant’s car and tried to leave; however, he hit an obstacle immobilizing the car. The police arrived shortly thereafter, arresting Appellant for burglary and related offenses. R. 266, line 19 – R. 270, line 16; R. 516(Statement). When the police searched Appellant, they found a camera, cell phone, and foreign coins on his person. The homeowner testified at the trial that these items were stolen from his residence. R. 174, lines 8-9; R. 175, lines 3-25.

## ARGUMENT

The trial judge erred in failing to grant Appellant's motion for a mistrial, or in the alternative quash the jury panel, where a member of the venire stated that he knew Appellant because the venire member was a bondsman, which tainted the entire jury pool and deprived Appellant of a fair and impartial jury as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, sections 3 and 14 of the South Carolina Constitution.

### **Relevant facts**

Prior to conducting voir dire, the judge explained that he was going to ask questions of the panel "to make sure that we impanel a jury that will be fair and impartial and one which will base a verdict in this case solely on the evidence and the law and free from any improper motivation, any bias or prejudice, or anything outside the evidence in the law." R. 34, line 24 – R. 35, line 4. He further stated that the fact that someone is arrested or charged or indicted for any crime is not evidence of guilt. R. 35, line 25 – R. 36, line 1. The judge introduced Appellant and his co-defendant to the jurors. R. 36, lines 15-22. Then, the judge asked if anyone had any connection, acquaintance, or association with either Appellant or his co-defendant. R. 38, lines 19-25. In response, Darryl McElveen stood. Tr. 39, lines 2-5. When the judge inquired which person, Juror McElveen knew, he responded he knew them both. R. 39, lines 6-10. Next, the judge asked how long he had known them, and Juror McElveen responded "I'm a bondsman." When the judge inquired again about the length of the relationship, Juror McElveen responded "I'm a bondsman." R. 39, lines 11-14. Thereafter, Judge James requested a bench conference. Juror McElveen responded he had known Appellant and his co-

defendant for several years, and he believed he had bonded them out in 2009. R. 39, lines 17-23.

Appellant's co-defendant objected and explained that Juror McElveen's statements "g[a]ve the connotation they have got a criminal history." R. 40, lines 11-12. Judge James stated that he was not leaving the juror on. R. 40, lines 14-15. Later, Appellant placed his objection and motion on the record. Judge James acknowledged that Appellant had made the motion at a bench conference before the jury was sworn. R. 188, lines 20-24. Appellant moved for a mistrial, or in the alternative for the jury panel to be quashed, based upon the remarks by Juror McElveen during the voir dire. Appellant explained the "whole jury pool was tainted" because a lay person would think a person is guilty based upon the association of a bondsman. R. 189, line 1 – R. 190, line 3. The prosecutor argued initially that Juror McElveen's remark was not intentional. He further argued that the jury was aware that Appellant had been arrested and that bonding was "part of the process." R. 190, lines 5-11.

Judge James ruled that Juror McElveen's revelation that he was acquainted with Appellant due to his status as a bondsman did not "unduly prejudice[]" Appellant. Thus, he denied the motion for mistrial and the motion to quash the panel. Further, he offered to instruct the jury that they not consider anything that occurred outside the immediate confines of the presentation of evidence. R. 190, line 15 – R. 191, line 6.

After the trial, Appellant moved for a new trial based upon the improper statement made by the venire member during voir dire. In the motion, Appellant explained that the potential juror "stood up when the question was asked if anyone had any personal relationship, however slight, with the defendant" and "answered how he knew the

Defendant.” Specifically, “the potential juror announced to the entire jury pool that he was their bondsman.” Quite obviously, the “entire jury pool heard this statement” and was tainted. The potential jurors, and those who ultimately sat in judgment of Appellant, were exposed to unfairly prejudicial information that was inadmissible during the trial. R. 526. Several months later, Judge James denied the motion for new trial. Judge James’ order acknowledged that Appellant had moved for a mistrial and moved to quash the jury panel and that he had denied those motions. He further acknowledged that “the jury did not respond to the question directed to him and instead volunteered the information about bonding the defendant out.” However, the judge concluded Appellant “suffered no prejudice, as anyone could logically conclude that if a person is on trial for a charge, that person had been arrested and perhaps been given a bond.” In denying the motion, Judge James also relied upon his remarks to the jury that the fact that “a person has been charged, arrested, or indicted for any offense is not evidence of guilt.” R. 528.

### **Discussion**

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a criminal defendant a fair trial by a panel of impartial and indifferent jurors. Estelle v. Williams, 425 U.S. 501 (1976); Irvin v. Dowd, 366 U.S. 717 (1961); see also S.C. Const. art. I, §§ 3 & 14. A jury must “render its verdict free from outside influences of whatever kind and nature” and make its decision based solely on the evidence admitted during the trial. State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993); see also State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999), State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (Ct. App. 2010). The South Carolina Supreme Court held “[i]n a criminal prosecution, the conduct of the jurors should be free from all extraneous or

improper influences.” State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). Conduct that affects the jury’s impartiality will affect the verdict. Id. “The ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as explained to him.” State v. Council, 335 S.C. 1, 10, 515 S.E.2d 508, 513 (1999).

In addition to the constitutional requirement that an individual be tried by a fair and impartial jury, our state Supreme Court has declared that evidence of a defendant’s character may not be considered by a jury except in very limited circumstances. “In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue.” Mitchell v. State, 298 S.C. 186, 188-189, 379 S.E.2d 123, 124 (1989) (citing State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966)). Additionally, “evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.” Id. (citing State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987)). In State v. Ross, 272 S.C. 56, 59, 249 S.E.2d 159, 161 (1978), the Court noted that “[c]haracter evidence is so highly prejudicial that it is usually excluded under hard and fast rules.” The “inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the juror.” State v. Lyle, 125 S.C. 406, 412, 118 S.E. 803, 807 (1923).

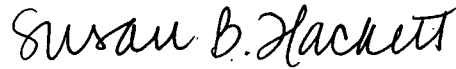
In the instant matter, Juror McElveen told the entire jury panel that his knowledge of Appellant was due to his being a bondsman. Although one involved in the criminal justice system, such as the judge or solicitor, may infer that Juror McElveen’s relationship with Appellant as a bondsman was due to the charge pending before the jury, a person not well-versed in the system may not make such an inference. The entire jury panel was made

aware that Appellant had a prior criminal history due to Juror McElveen's response to the voir dire. Pursuant to well-established principles of law, the jury would not have been apprised of Appellant's criminal history unless he testified or placed his good character into evidence. Thus, the judge erred in failing to grant Appellant's motion for a mistrial or quash the jury panel based upon Juror McElveen's statements before the jury concerning Appellant's prior criminal history.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial before a fair and impartial jury.

Respectfully submitted,



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Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Sumter County  
George C. James, Jr., Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

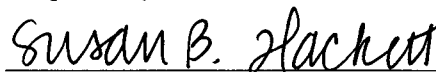
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Counsel for Reco Antonio Godbolt states:

1. She is 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 George C. James, Jr., which was held on December 6, 2012, 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 Reco Antonio Godbolt.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

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RECO ANTONIO GODBOLT,

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

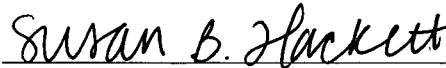
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Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript
- (2) State's Exhibits 1, 2, 22, 42, 43
- (3) Court's Exhibits 1, 2, 3, 4
- (4) Request for Voir Dire Examination
- (5) Motion for New Trial
- (6) Order denying Motion for New Trial
- (7) Indictment
- (8) Sentence sheets

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

May 12th, 2014



Susan B. Hackett  
Appellate Defender

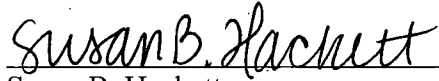
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PO Box 11589  
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(803) 734-1343

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."

May 12, 2014.



Susan B. Hackett  
Appellate Defender

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STATE OF SOUTH CAROLINA  
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George C. James, Jr., Circuit Court Judge

THE STATE,

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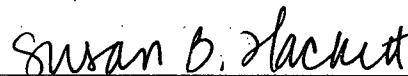
V.

RECO ANTONIO GODBOLT,

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CERTIFICATE OF SERVICE

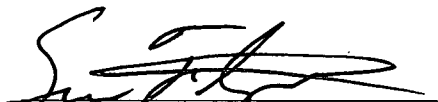
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Reco Antonio Godbolt, #342149 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 12th day of May, 2014.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 12th day of May, 2014.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022