

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Williamsburg County  
Clifton Newman, Circuit Court Judge

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RECEIVED

DEC 14 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JASON THOMAS BOSTON,

APPELLANT

APPELLATE CASE NO. 2015-000753

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ANDERS BRIEF OF APPELLANT

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KATHRINE H. HUDGINS  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in allowing the trial to proceed when only thirty of the two hundred jurors who were summoned actually appeared for jury selection?

## **STATEMENT OF THE CASE**

In May of 2014, the Williamsburg County Grand Jury indicted Appellant Boston for armed robbery and possession of a weapon during the commission of a violent crime, indictment #2014-GS-45-0120. On April 1, 2015, Appellant proceeded to jury trial before the Honorable Clifton B. Newman. The jury found Appellant guilty of armed robbery and not guilty of possession of a weapon during the commission of a violent crime. Judge Newman sentenced Appellant to eleven (11) years. A timely notice of intent to appeal was served on April 6, 2015. This appeal follows.

## ARGUMENT

The trial judge erred in allowing the trial to proceed when only thirty of the two hundred jurors summoned appeared for jury selection.

The jury found Appellant guilty of robbing Luciano Garcia of his cell phone and wallet. Latoya Hickson was also charged with the armed robbery of Garcia. Hickson pled guilty to strong armed robbery and testified against Appellant at his trial. (R. p. 145, lines 17-19). At the time of trial Hickson had not yet been sentenced. (R. p. 145, lines 20-23). Hickson testified that on the day of the robbery she, her niece and Appellant's girlfriend Zalandria, her cousin Sharhonda Burgess and Appellant drove to a Mexican food store operated by Garcia's family. (R. p. 125, lines 21 – p. 126, lines 1-20). Hickson was looking for Jerry Tovar, the father of one of her seven children. (R. p. 122, line 20 – p. 123, lines 1-9; p. 126, lines 21 –23). According to Hickson, Tovar owed her money for tire rims that were on his truck. (R. p. 127, lines 1-2). Tovar and Garcia worked together. (R. p. 99, lines 3-5). On the day of the robbery Tovar asked Garcia to pick up his truck from Superior Transmission. (R. p. 100, lines 5-11). Garcia picked up the truck and parked it at the store. (R. p. 40, lines 3-19).

Hickson testified that when she got to the store and learned that Tovar was not there, she asked Garcia for the keys to Tovar's truck. (R. p. 127, lines 12-16). When Garcia refused to give Hickson the keys, Hickson slashed the tires on Tovar's truck. (R. p. 129, lines 3-20). Later that evening Hickson, Burgess and Appellant drove to Garcia's home. (R. p. 133, lines 3-9). According to Hickson she drove to Garcia's home to apologize. (R. p. 133, lines 10-11). Hickson testified that Garcia walked up to her car and she apologized. (R. p. 135, lines 1-6). Then, according to Hickson, Appellant got out of the car and robbed

Garcia at gun point, taking his wallet and cell phone. (R. p. 135, line 7 – p. 136, lines 1-22; p. 108, lines 3-4). Garcia was unable to identify the person who robbed him. (R. p. 110, lines 18-20). The State's case against Appellant was based primarily on the testimony of co-defendant Hickson and her cousin Burgess.

Prior to trial Appellant objected to the trial proceeding based on the fact that the jury pool from which Appellant struck his jury was compromised of only twenty nine people. (R. pp. 19 – 23). The judge noted there was no challenge pursuant to Batson<sup>1</sup> and denied the motion to continue the case to a term when there would be a larger jury pool. (R, p. 23, lines 23-24). The judge erred.

Appellant argued:

There were two hundred jurors summoned with only 29 appearing back for jury selection today. It's our contention that that's not a fair representation or cross section of the county itself, and therefore, it's unfair for Mr. Boston to have to select a jury from only 29 individuals appearing out of 200 that were summoned to appear here today.

(R. p. 20, lines 5-12). Counsel noted that Appellant was from Lake City and only one juror from lake City answered the summons for jury duty. (R. p. 22, lines 1-15).

In State v. Stanko, 402 S.C. 252, 279, 741 S.E.2d 708, 722, reh'g denied (Apr. 3, 2013), cert. denied (Oct. 7, 2013), cert. denied, 134 S. Ct. 247, 187 L. Ed. 2d 183

(U.S.S.C. 2013), the South Carolina Supreme Court wrote:

The Sixth Amendment requires that a person charged with a crime be able to draw from a fair cross-section of the community. Taylor v. Louisiana, 419 U.S. 522, 530, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). To establish a prima facie violation of the fair cross-section requirement, a defendant must show that (1) the group alleged to be excluded is a distinctive group in the community; (2) the representation of this group in the venire from

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<sup>1</sup> Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

which the juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury selection process. Duren v. Missouri, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979). A "distinctive" group has been defined as one that: (1) shows a quality or attribute that defines or limits membership in the group; (2) possesses a cohesiveness of ideas, attitudes, or experiences that distinguishes the purported group from the rest of society; and (3) shares a community of interest that may not be represented in other segments of the population. State v. Price, 301 N.C. 437, 272 S.E.2d 103, 109 (1980).

The jury pool consisting of only twenty nine people did not represent a fair cross section of the Williamsburg County community. Only one individual from Lake City appeared for jury service. Residents from Lake City are a distinct group in Williamsburg County. Their residence in Lake City defines their membership in the group. Lake City residents possess a cohesiveness of idea, attitudes and experiences that distinguished them from the rest of Williamsburg County. Their shared community of interest may not be represented by other residents of Williamsburg County.

Additionally, if the State had exercised all of five of their peremptory strikes and Appellant had exercised all ten of his peremptory strikes, with the seating of twelve jurors, only two jurors remained to serve as alternate jurors and neither side would have been able to exercise a peremptory strike in regard to the alternate jurors. In State v. Jackson, 32 S.C. 27, 10 S.E. 769, 769-70 (1890) the South Carolina Supreme Court wrote:

We see no error in the refusal of either of the motions made in reference to the formation of the jury. There is no statute or rule of practice, so far as we know, which requires that 36 or any specific number of jurors shall be in attendance on the court at the time a jury for the trial of a capital case is organized. If a sufficient number are present to enable the accused to enjoy all the rights guaranteed to him by the law, he cannot complain that there has been any error of law in organizing the jury for the trial of his case. He is entitled to be tried by a jury composed of 12 men, and also to the number of peremptory challenges prescribed by statute; and if these rights are accorded to him, as they undoubtedly were in this case, we do

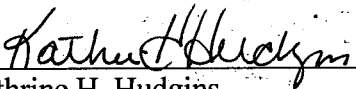
not see what ground of complaint, so far at least as numbers are concerned, he can have.

In Jackson it appears there were thirty one jurors in the pool, allowing five strikes by the State, ten strikes by the defense and one strike each for a single alternate juror. In the present case there were not enough jurors to allow Appellant to exercise all of his peremptory strikes as provided by law. The judge erred in refusing to continue the case to a term where there an adequate number of jurors present in the jury pool to allow Appellant to exercise his statutory right to peremptory strikes.

**CONCLUSION**

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of December, 2015.

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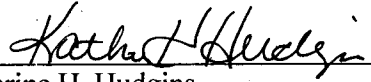
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Counsel for Jason Thomas Boston states:

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 Clifton Newman, which was held on April 2, 2015, 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 Jason Thomas Boston.

Respectfully submitted,



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of December, 2015.

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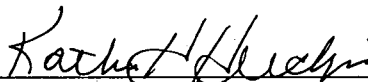
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

- (1) True-billed indictment and sentencing sheet;
- (2) Trial Transcript.

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

December 14th, 2015



\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender


South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(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."

December 14<sup>th</sup>, 2015



Kathrine H. Hudgins  
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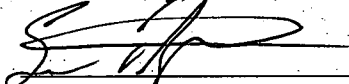
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Jason Thomas Boston, #360656 at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 14th day of December, 2015.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 14th day of December, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.