

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**ORIGINAL**

\_\_\_\_\_  
Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

AUNDRA HUNTER, JR.

APPELLANT

APPELLATE CASE NO. 2018-001692  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

**RECEIVED**

JUN 21 2019

SC Court of Appeals

KATHRINE H. HUDGINS  
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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in failing to individually question each juror after an alternate juror was excused because she was related to a member of the victim's family?

## STATEMENT OF THE CASE

In March of 2017, the Greenville County Grand Jury indicted Appellant, Aundra Hunter, Jr., for burglary first degree, two counts of kidnapping, armed robbery, attempted armed robbery, conspiracy, discharging a firearm into a dwelling and possession of a weapon during the commission of a violent crime, indictments #2016-GS-23-8757 – 8764. On September 10, 2018, Appellant proceeded to jury trial before the Honorable Edward W. Miller. Richard H. Warder represented Appellant at trial. William Chandler McMaster, III and William Ryan Holloway prosecuted the case. The jury found Appellant not guilty of attempted armed robbery and conspiracy. The jury, however, found Appellant guilty of the remaining charges. Judge Miller sentenced Appellant to thirty-five (35) years for burglary first degree, thirty (30) years concurrent for each kidnapping charge, thirty (30) years concurrent for armed robbery, ten (10) years concurrent for discharging a firearm into a dwelling and five (5) years concurrent for possession of a weapon during the commission of a violent crime. A timely notice of intent to appeal was served on September 17, 2018. This appeal follows.

## **STANDARD OF REVIEW**

“A denial of a new trial based on alleged jury misconduct is reviewed for an abuse of discretion.” State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005). “The determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court.” State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000).

## ARGUMENT

**The trial judge erred in failing to individually question each juror after an alternate juror was excused because she was related to a member of the victim's family.**

The jury found Appellant, Aundra Hunter, Jr., guilty of robbing Charles Rosemond in his apartment. Rosemond was known as the candy man in the apartment complex because he sold shots of liquor and cigarettes and food items out of his apartment. (R. pp. 158-159). On the night of the robbery Eric "Gator" Garrison claimed that he was in Rosemond's apartment to get a shot and a couple of cigarettes when there was a knock at the door. (R. p. 163, line 21 – p. 164, 165, lines 1-12). Gator testified that Rosemond asked him to answer the door. (R. p. 165, lines 8-9). According to Gator, when he answered the door a man in a ski mask put a pistol in his face. (R. p. 165, lines 9-22). Gator thought that the person was playing so he hit the pistol. (R. p. 165, lines 22-23). Gator testified that the person then said, "Gator, you think I'm playing?" and shot into the floor<sup>1</sup>. (R. p. 166, lines 6-7). Gator testified that the person hit Rosemond in the head with a pistol.<sup>2</sup> (R. p. 168, lines 13-15). Gator claimed that he knew who the robber was based on his shoes and his voice. (R. p. 169, lines 23-25). Gator testified that after the robber left Rosemond was bleeding and loaded his pistol. (R. p. 173, lines 9-14). According to Gator he left Rosemond's apartment, went straight home and told his roommate what happened. (R. p. 174, lines 1-14). The roommate called Rosemond to check on him and Rosemond answered the phone after several rings. (R. p. 191, lines 13-20).

Rosemond's neighbor heard a gunshot and called 911. (R. p. 72, lines 16-23). When the police arrived they began kicking on the door of Rosemond's apartment. (R. p. 79, lines 19-25). Rosemond shot at the police striking one of the deputies in the head. (R. p. 80, lines 1-11). The

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<sup>1</sup> An investigator testified that there was no evidence that anyone shot into the floor. (Tr. p. 367, lines 7-22).

<sup>2</sup> A doctor testified that there was no evidence that Rosemond was hit with a gun. (Tr. p. 394, lines 2-4).

police returned shots, striking Rosemond. A SWAT team was called and when the team finally entered the apartment they found Rosemond was dead. (R. pp. 98-106). The forensic pathologist testified that Rosemond died from a gunshot wound to his thigh. (R. p. 393, lines 24-25).

On the morning of the third day of trial the judge was notified that the alternate juror realized that she was related to a member of Rosemond's family. (R. p. 298, lines 20-24). Counsel for Appellant stated, "Your Honor, we probably need some voir dire whether she's spoken to the other jurors about anything, because of her relationship, that would influence the jury." (R. p. 299, lines 19-22). The judge replied, "Well, I'm going to presume that all the jurors have followed the instructions under their oath not to discuss the case. But we'll – as much as I hate to – okay." (R. p. 299, line 23 – p. 300, line 1). The judge then brought the alternate juror into the courtroom and properly excused her from the trial. (R. p. 300, lines 2-13).

The judge then asked the alternate if she discussed her relationship with the victim's family member with the other jurors. (R. p. 300, lines 14-19). The alternate juror answered, "Oh, I told them I was going to talk to you." (R. p. 300, lines 20-21). The judge then asked, "But did you all discuss the facts of the case in any way?" (R. p. 300, lines 22-23). The alternate juror answered, "Hu-uh." (R. p. 300, line 24). The judge then asked, "And did you ask them to give special favor to the - -" (R. p. 300, line 25 – p. 301, line 1). The alternate juror answered, "Oh, no. I know how sensitive this is." (R. p. 301, lines 2-3). Counsel for Appellant asked the judge to question the other jurors stating:

Yes, I do, Your Honor. I want some inquiry with the other juror whether she's talked not about the facts of the case, but about the facts of the Rosemond family or anything like that that would carry over prejudice against my client from some friendship or something with them. You know, when you have a juror that is related to the victim's family, it's hard for me to believe that when they first come aware of that, they don't start discussing what they should do and what and why

they think they might need to bring that to your attention, maybe even sought advice from other jurors on that, whether they should tell you or how to do that. It certainly has the potential to prejudice the whole panel – my jury, not the panel. And I think there needs to be some inquiry by the Court as to whether the other jurors, you know, have learned anything from the case from her or discussed anything about her in a personal way about the victim, what a nice fellow he was or any of that.

(R. p. 301, line 25 – p. 302, lines 1-18). The judge then stated, “All right. We’ll inquire of the jury what was said.” (R. p. 303, lines 20-21).

The judge brought the jury back into the court room and told them, “All right. Ladies and gentlemen, welcome back. As you may notice, one of your fellow jurors, the alternate, is not with you, and I have excused her because she learned that she was related to some folks who were involved in the case. What I need to know from you all is were there any discussions about her relationship with the folks in the gallery?” (R. p. 303, line 24 – p. 304, lines 1-6). An unidentified juror answered, “We had no clue.” (R. p. 304, line 7). The judge then asked, “Well, did you know what she was coming to talk to me about?” (R. p. 304, lines 8-9). An unidentified juror answered, “No, sir.” (R. p. 304, line 10). The judge then stated:

Okay. All right. And you all I trust to follow your oath and not discuss the case, the facts of the case. And of course, you can see how important that is. And I will tell you that Ms. Wright, there’s a distant relationship, and someone came to court yesterday so she did not know until yesterday. All right. Hope y’all can see just how important it is that we follow our oath and do what the 200 years of our jurisprudence, our law has taught us, and that’s just not to discuss the case, do any independent research or anything like that. So we’re all about being fair and impartial, okay? All right. Call your next witness.

(R. p. 304, lines 11-24). The judge failed to individually question each juror as to what he or she may have heard. The judge erred.

In State v. Kelly, 331 S.C. 132, 141–42, 502 S.E.2d 99, 104 (1998), the South Carolina Supreme Court wrote:

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors. Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976); Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961); *see also* S.C. Const. art I, §§ 3 & 14. To safeguard these rights, “it is required that the jury render its verdict free from outside influences of whatever kind and nature.” State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct.App.1993).

In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict. The trial court has broad discretion in assessing allegations of juror misconduct. Relevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice. Generally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court. 23A C.J.S. *Criminal Law* § 1365 (1989).

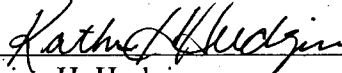
When the judge asked the alternate juror if she discussed her relationship with the victim's family member with the other jurors, the alternate juror answered, “Oh, I told them I was going to talk to you.” (R. p. 300, lines 20-21). The judge did not ask the alternate if she discussed with the other jurors **why** she was going to talk with the judge. Instead, the judge asked if the alternate discussed the facts of the case. It is not clear from the judge's questioning what the alternate may have said to the other jurors that may have constituted an improper outside influence. While an unidentified juror indicated that he or she did not know why the alternate was going to talk with the judge, the judge failed to establish that the other jurors did not hear the juror say something about her relationship with a member of the victim's family or her reason for wanting to talk with the judge.

In Kelly, a capital case, the judge learned that a religious pamphlet concerning God's view on capital punishment was being circulated in the jury room. “Upon receiving the note, the trial judge questioned the jurors individually to determine who, if anyone, had read the pamphlet and what information was contained in the pamphlet.” State v. Kelly, 331 S.C. 132, 139, 502

S.E.2d 99, 103 (1998). After extensively questioning the jurors individually, the judge dismissed the juror who brought the pamphlet into the jury room but determined that the remaining jurors were not biased by the pamphlet. The extensive individualized questioning that took place in Kelly did not take place in the present case. As a result, the judge did not have sufficient information to determine if other jurors may have heard statements by the alternate and if so, if they were biased by the statements. The judge's failure to individually question each juror requires a new trial.

**CONCLUSION**

Based on the above argument, this Court should reverse Appellant's conviction and sentence and remand the case for a new trial.

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

ATTORNEY FOR APPELLANT

This 21<sup>st</sup> day of June, 2019.

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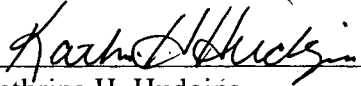
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Aundra Hunter 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 Edward W. Miller, which was held on September 10 - 13, 2018, 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 Aundra Hunter.

Respectfully Submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 21<sup>st</sup> day of June, 2019.

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

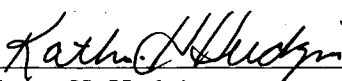
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Entire trial transcript, September 10-13, 2018;
- (3) State's Exhibit #3 – Waiver of Rights, 12/16/15;
- (4) State's Exhibit #4 – Waiver of Rights, 12/18/15;
- (5) State's Exhibit #5 – Waiver of Rights, 1/11/16;
- (6) State's Exhibit #6 – Waiver of Rights, 1/12/16;
- (7) Defense Exhibit #2 – Search Warrant Return.

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

June 21, 2019

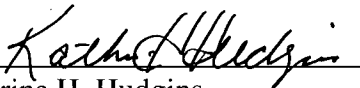
  
Kathrine H. Hudgins  
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PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330  
ATTORNEY FOR APPELLANT

**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."

June 21, 2019.

  
Kathrine H. Hudgins  
Appellate Defender

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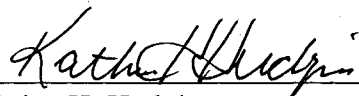
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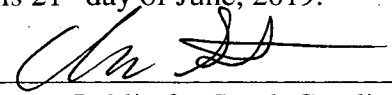
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

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 Melody J. Brown 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 Aundra Hunter, #377640, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21<sup>st</sup> day of June, 2019.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21<sup>st</sup> day of June, 2019.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: October 26, 2019