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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER D. CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2014-002339

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In violation of Appellant's federal and state constitutional rights to require the state prove his guilt beyond a reasonable doubt and to a presumption of innocence, the trial judge erred in failing to instruct the jury that good character and reputation may in and of itself create a doubt as to guilt and should be considered where Appellant presented evidence of his good character and requested the charge.

STATEMENT OF THE CASE

On August 1, 2011, a Charleston County grand jury indicted Appellant for armed robbery (2011-GS-10-4830) and possession of a firearm during the commission of a violent crime (2011-GS-10-4831). R. 317. The state, represented by Alexander J. Ziegler and Benjamin C. Simpson, called the case for trial before the Honorable William Jeffrey Young and a jury on October 21, 2014. Jason T. King and Luke Malloy represented Appellant. R. 1. The jury found Appellant guilty on both counts. R. 310, lines 5-14. Judge Young sentenced Appellant to eighteen years' imprisonment for armed robbery and to five years' imprisonment for the weapon. He ordered the sentences to be served concurrently. R. 315, lines 1-7; R. 319.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On the morning of May 4, 2011, Christopher Riley arrived at Firehouse Subs restaurant on King Street in Charleston to start his shift. R. 52, line 24 – R. 53, line 3; R. 53, line 21 – R. 54, line 5. The restaurant was not open yet. R. 54, line 24 – R. 55, line 9. Shortly after Riley's arrival, another employee, Leslie Green, arrived through the unlocked front door. R. 57, lines 14-19; R. 58, line 11 – R. 59, line 11. Seconds later, an unknown individual entered, pointed a fully loaded .38 Smith and Wesson revolver, and demanded money. R. 60, line 10 – R. 61, line 3; R. 65, line 21 – R. 66, line 15; R. 131, lines 1-6. After Riley placed the money in a green and black bookbag, the robber left. R. 61, line 4 – R. 63, line 2; R. 67, lines 8-10.

Riley called the police to report the robbery and provide a description of the robber. R. 67, lines 18-20; R. 64, lines 5-23. While Riley and Green waited for the police to arrive, the two walked in and out of the restaurant using the front door – the same one used by the robber. R. 37, lines 5-11; R. 78, line 25 – R. 79, line 20. When the police arrived, Riley gave another description of the robber. R. 38, line 1 – R. 39, line 2. The first officer on the scene indicated in his report that the Riley claimed the robber had gold teeth. However, during the trial, the officer claimed this was information relayed by dispatch, not from Riley. He said his report was "not entirely accurate as to what happened." R. 38, lines 18-23; R. 41, line 24 – R. 43, line 21. At the trial, Riley described the robber as wearing "black sunglasses, black and white zipped down hoodie, gray sweatpants, and black and red Jordans" and carrying a "green and black bookbag." Riley further claimed the robber had a goatee and a moustache. R. 63, lines 3-17. Riley estimated the robber was between 6'1"

and 6'3" in height, between twenty-three and twenty-six years of age, and had dark brown skin. R. 65, lines 4-10.

The police secured the video surveillance from the restaurant showing the robbery. R. 27, line 9 – R. 29, line 7; State's Exhibit #1.[1] One of the officers thought the robber's interactions with Green were peculiar and suspicious. Based only on their suspicions, the officers interrogated Green at the police station for several hours the day after the robbery. R. 92, lines 15-18; R. 103, line 21 – R. 104, line 2; R. 106, lines 3-5; R. 124, lines 1-7; R. 126, line 22 – R. 129, line 21; R. 130, lines 23-25; R. 131, line 8 – R. 132, line 15. Throughout the course of the interrogation, Green denied being involved in the robbery and denied knowing the identity of the robber. R. 92, lines 19-21; R. 104, lines 9-13; R. 105, line 25 – R. 106, line 2; R. 105, line 25 – R. 106, line 2; R. 124, lines 8-10. Repeatedly, the police told Green of their suspicions that he was involved and that if he failed to cooperate they were "coming at" him. R. 105, lines 14-24; R. 134, lines 6-24. Although the officers were not satisfied with Green's responses, the officers released Green. However, the following day, the officers interrogated Green again. R. 92, line 24 – R. 93, line 4; R. 106, lines 6-8; R. 125, line 13 – R. 126, line 2.

During the second interrogation, one officer told Green, "I take two lies, an initial and a backup. Once you tell me the backup lie, I burn you." R. 107, lines 5-14; R. 135, lines 14-21. During this interrogation, Green initially told the officers that "some guy named 'L'" was the robber. R. 93, lines 5-10; R. 107, lines 15-24; R. 126, lines 19-21; R. 135, line 22 – R. 136, line 4. The police did not believe Green's claim about "L" and continued the interrogation. Eventually, Green, exasperated and having been threatened

[1] State's Exhibit #1 is on file with this Court.

with arrest, told the police that Appellant was the robber. R. 93, line 2 – R. 94, line 5; R. 108, lines 6-7; R. 108, lines 13-20; R. 126, lines 11-18. Repeatedly, the police showed Green a photograph of Appellant asking if Appellant were the robber. Despite his initial protestations, Green ultimately succumbed to the pressure and agreed with the police that Appellant was the robber. R. 94, lines 8-25; R. 109, lines 3-9; R. 128, lines 2-17.

Ultimately, law enforcement charged Green with armed robbery for his role. R. 84, lines 7-12; R. 99, lines 14-15. Subsequently, Green entered into an agreement with the prosecutor to testify against Petitioner. Oddly, the agreement provided no promises in return for Green's testimony, but Green hoped to get the charge dropped. R. 84, line 13 – R. 85, line 4; R. 98, line 18 – R. 99, line 1; R. 100, line 15 – R. 101, line 6. Green and Appellant were third cousins who lived close to each other on May 4, 2011. Appellant agreed to drive Green to work at Firehouse Subs that morning. R. 85, line – R. 66, line 15; R. 240, line 23 – R. 242, line 1. Green claimed Appellant dropped him off in front of the restaurant. R. 87, lines 2-6; R. 101, lines 7-11. Green also claimed Appellant, armed with a gun, walked into the restaurant after Green. R. 89, line 15 – R. 90, line 5; R. 101, lines 10-14. Green further claimed Appellant got the money and left. R. 91, lines 1-5. Appellant returned Green's car to the parking lot and left the keys in the car for Green to use when he got off from work. R. 91, line 17 – R. 92, line 2; R. 103, lines 8-12; R. 242, lines 2-16.

After arresting Appellant on May 6, 2011, law enforcement executed a search warrant on the home Appellant shared with his grandmother and uncle. R. 128, line 19 – R. 130, line 4. The police found a pair of Nike sneakers under Appellant's uncle's bed. R. 141, lines 1-7; R. 154, line 18 – R. 157, line 19; R. 213, line 18 – R. 215, line 7; R. 227,

lines 3-20; R. 229, lines 23-25; R. 247, lines 3-13; State's Exhibits #22 & #23.[2] The police found no other evidence during the search connecting Appellant to the robbery – no gray sweatpants, no hoodie, no green and black bookbag filled with money, no firearm, no ammunition. Quite simply, the police found no physical evidence in Appellant's home implicating him in the robbery. When police interrogated Appellant and at trial, Appellant denied having any involvement in the robbery of Firehouse Subs. R. 141, lines 14-22; R. 238, lines 6-8; R. 247, lines 14-20. Appellant explained that he had supper at Firehouse on May 3, 2011, the evening before the robbery, which explained why his fingerprints were on the door. R. 174, line 2 – R. 180, line 4; R. 245, line 7 – R. 246, line 13. Further, Appellant explained that he dropped Green off at work on May 4, 2011 and then returned home. R. 225, line 1 – R. 226, line 7; R. 240, line 23 – R. 242, line 1. Appellant's grandmother testified that Appellant was at home during the early morning of May 4, 2011. R. 209, lines 12-15; R. 212, lines 8-18; R. 219, lines 2-18.

[2] State's Exhibits #22 and #23 are on file with this Court.

ARGUMENT

In violation of Appellant's federal and state constitutional rights to require the state prove his guilt beyond a reasonable doubt and to a presumption of innocence, the trial judge erred in failing to instruct the jury that good character and reputation may in and of itself create a doubt as to guilt and should be considered where Appellant presented evidence of his good character and requested the charge.

Relevant facts

Good Character Evidence Presentation

Not only did Appellant deny robbing the restaurant when he testified, Appellant presented evidence of his good character. Martha Campbell, Appellant's grandmother, raised Appellant from the time he was six-months old. R. 209, lines 16-18. Martha described Appellant as an individual who liked to work and held several jobs over his lifetime, including working at a phone company and landscaping. R. 210, lines 9-17. Concerning his character, Martha described Appellant as the type of person who "likes to help people." She also described him as nice and kind. R. 211, line 21 – R. 212, line 1. When asked if he were the kind of person who would rob Firehouse Subs, Martha responded, "No, he would not. He wouldn't have no reason to." R. 212, lines 2-5. Further, she had never seen Appellant with a handgun. R. 212, lines 7. Additionally, Martha recalled that on the morning of May 4, 2011, Appellant was home between 7:40 a.m. and 8:00 a.m. R. 212, lines 8-23.

Appellant's uncle, Leroy Campbell, also attested to Appellant's good character. Leroy had known Appellant his entire life as they were both raised by Martha. R. 224, lines 8-14. Leroy described Appellant as "a nice, easy going guy." He simply could not "see him

going in any store and stealing." R. 224, lines 17-23. Further, Leroy had never seen Appellant with a handgun. R. 224, lines 24-25.

Finally, George Martin, Appellant's uncle by marriage, testified regarding Appellant's good character. R. 230, lines 22-25. George had known Appellant for ten years, which included several months during with Appellant lived with George and his family. R. 231, lines 10-19; R. 233, lines 2-17. Regarding Appellant's character, George did not "see him doing this. He wouldn't do this." R. 231, line 20 – R. 232, line 1. George explained there was "nothing in his nature" to do this crime. "It's totally out of nature for" Appellant. R. 235, lines 18-25. George described Appellant as "a hard-working young man, very impressive, sharp, articulate." George stated it all quite simply, "He wouldn't do this crime." R. 232, lines 18-20.

Charge Conference

During the charge conference, Appellant requested "[a] good character charge." To support his request, Appellant cited State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010). R. 264, lines 10-13. Judge Young responded, "But you can't use good character to show that somebody doesn't commit a crime. You've got testimony - - they didn't object to you going further than you did on that." R. 264, lines 14-17. Relying upon Lee-Grigg, supra, Appellant argued that "where requested, and there was evidence of good character, the defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury in determining the guilt or innocence of the accused." R. 264, lines 18-25. After noting the presentation of evidence of good character, Appellant specifically requested the

judge charge the jury "that good character and reputation may in and of itself create a doubt as to guilt and should be considered by the jury." R. 265, lines 1-5.

Thereafter, Judge Young read "the standard charge":

> Generally, when there is evidence of good character, the defendant [*sic*] evidence of good character, evidence of good character, may in and of itself create a doubt as to whether it should be considered by the jury, along with all other evidence, in determining the guilt or innocence of the defendant. If proved, may be taken into consideration by the jury.

R. 265, lines 14-23. The prosecution responded to the request by merely saying, "I mean, the case speaks for itself." R. 265, lines 24-25. The judge then stated, "We'll add that in there." R. 266, lines 1-2.[3]

Jury Instructions

However, the judge's instruction to the jury was deficient and inadequate on this point:

> Now, ladies and gentleman, the defendant has presented evidence of good reputation and character to show that he - - that would be inconsistent with the defendant committing the crime. The weight you give of that - - to that testimony, like all other testimony in this case, is for you to decide in your good judgment. You may consider the testimony of the defendant's good character, along with other evidence, in deciding whether or not the defendant committed the crime.

R. 298, lines 9-18. At the conclusion of the charge, Appellant objected to the judge's omission that "evidence of good character in and of itself may create a doubt as to guilt." Specifically, Appellant objected that the language used by the judge "diluted" the use of

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[3] During his closing argument, trial counsel argued to the jury that it was not in Appellant's character to rob the restaurant – and the jury knew this based on the evidence presented by Appellant from his character witnesses, his mother, Leroy Campbell, and George Martin. R. 277, lines 7-13. Trial counsel reasonably relied on the judge's statements during the charge conference regarding how he was going to charge the jury. When the judge failed to charge the jury accordingly, trial counsel's credibility was diminished in the eyes of the jury. State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001).

good character evidence by the jury. R. 302, lines 10-17. Judge Young responded simply that he was "satisfied with it." R. 302, line 18.

Discussion

The law to be charged to the jury is determined by the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); see also State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993). When a requested instruction is supported by the evidence and correctly states the applicable law, the judge is duty-bound to give it. Brown v. Smalls, 325 S.C. 547, 554-555, 481 S.E.2d 444, 448 (Ct. App. 1997)(citing Singletary v. South Carolina Dep't of Educ., 316 S.C. 153, 447 S.E.2d 231 (Ct. App. 1994)); see also State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (1996). "Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error." Id. at 555, 481 S.E.2d at 448; see also State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999)(holding that a "trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence").

"The concept of good character evidence is based on the premise that someone who has led a morally sound and lawful existence is less likely to have committed a crime than someone with a history of bad actions and an immoral or amoral approach to the world." Josephine Ross, *"He looks Guilty": Reforming Good Character Evidence to Undercut the Presumption of Guilt*, 65 U. Pitt. L. Rev. 227, 227 (2004). Good character evidence "gives factual support to the legal presumption of innocence, rendering it more likely that jurors will give the defendant the benefit of the doubt as the law requires." Id. at 228. A criminal defendant "may introduce affirmative testimony that the general

estimate of his character is so favorable that the jury may infer that he would not be likely to commit the offense charged." Michelson v. United States, 335 U.S. 469, 476 (1948). In fact, the United States Supreme Court "has held that such testimony alone, in some circumstances, may be enough to raise a reasonable doubt of guilt and that in federal courts a jury in a proper case should be so instructed." Id. (citing Eddington v. United States, 164 U.S. 361 (1896)).

"It is well settled that a criminal defendant may introduce evidence of his good character." Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010). If evidence of good character is presented and the defendant makes the request for an instruction, "'a defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create doubt as to guilt and should be considered by the jury, along with all the other evidence in determining the guilt or innocence of the defendant.'" Id. (quoting State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982)); see also State v. Harrison, 343 S.C. 165, 175, 539 S.E.2d 71, 76 (Ct. App. 2000)(holding that "a defendant is entitled to a jury instruction regarding evidence of good character and reputation when this type of evidence is presented and the defendant requests the charge").

Appellant presented evidence of his good character by presenting the testimony of his grandmother and his two uncles. Each of the witnesses testified that it would be out of character for Appellant to engage in an armed robbery. Each of the witnesses testified that Appellant was an industrious young man who helped people. Most importantly, Appellant's character witnesses testified that it was not in his character to commit an armed robbery. Their interactions with Appellant, two of which covered Appellant's

entire life, demonstrated that Appellant's character was not of a type to engage in violence or commit robberies.

The trial judge's instruction omitted the crucial components for the jury. The judge instructed the jury that they simply may consider the evidence of Appellant's character like any other evidence presented in the case. He failed to instruct the jury on the critical component of a good character evidence charge – "evidence of good character in and of itself may create a doubt as to guilt." Not only is this charge supported by the law and the evidence in this case, but the language is vital for a jury to understand how to use the evidence. It is this aspect of the charge that provides factual support to the legal presumption of innocence because it informs jurors that an individual's good character may be sufficient to establish a reasonable doubt.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial based upon the trial error described herein.

Respectfully submitted,

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of December, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

December 4, 2015

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of December, 2015.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of December, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.