STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

PERRY EICHOR,

Appellant.

Appellant Case No. 2015-001648

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant Perry Eichor was indicted and tried by jury for obstruction of justice, misconduct of a public official, and intimidation of a court official. Following a two-day trial, the jury found Eichor guilty of obstruction of justice and misconduct of a public official on June 9, 2015. The presiding judge, the Honorable Robin B. Stilwell, sentenced Eichor to three years imprisonment suspended to one year of probation.

STATEMENT OF FACTS

Appellant Perry Eichor was the mayor of Simpsonville. He spoke with the victim, a municipal judge, about a neighbor's pending criminal case in municipal court, expressed disfavor with law enforcement's decision to charge his neighbor, and reminded the municipal judge he works for city council, which the municipal judge, Leslie Sharff, took as a threat to his job if he did not rule the way Mayor Eichor wanted.

Steve Moore was the Deputy Chief of the Simpsonville Police Department. ROA. p. 15. Deputy Moore noted the mayor does not have an investigatory role in Simpsonville's municipal government. On March 20, Mayor Eichor called Deputy Moore about Dixie Nance. On March 19, Dixie Nance was charged by Investigator Manley for disorderly conduct. Deputy Moore understood the charges resulted from Nance posting a sign on a bridge. But at the time of the phone call, Deputy Moore did not know the details of the offense. Deputy Moore offered to look up the details of the case, but Mayor Eichor told him he did not have to and hung up the phone. ROA. pp. 16-18. Deputy Moore testified he never spoke with Mayor Eichor about the details of a pending case or arrest before. ROA. p. 19.

Maria Boone, the second witness at trial, provided some background on Simpsonville's municipal court system. She was the clerk of court and administrative judge for Simpsonville. Her duties are generally speaking, limited to signing warrants and taking guilty pleas. The other two judges are Judge Sharff and Judge Moore. Judge Sharff hears bench trials, but is not qualified to preside over jury trials, which are strictly heard by Judge Moore, the chief judge. The judges are appointed by the City Council, which includes the mayor. Each year, judges must apply and be approved by a vote of the six members of City

Council and the mayor to be reappointed. ROA. pp. 22-29.

Between March 19 and March 26, the charge against Dixie Nance was pending in Municipal Court and Nance had not requested a jury trial, therefore, the case was on track to be a bench trial before Judge Sharff. ROA. p. 44.

The case was investigated by SLED Special Agent Gene Donohue. Agent Donohue interviewed Mayor Eichor on April 4. Mayor Eichor gave Agent Donohue a summary of the circumstances leading to Dixie Nance's arrest. A bridge in Simpsonville deteriorated to the point it needed to be closed. This prompted Nance to post a sign on the bridge that suggested Police Chief Grounsell use his recently awarded back-pay to fix the bridge. Nance was arrested for disorderly conduct. Mayor Eichor disagreed with the way the case was handled. ROA. pp. 84-90.

Mayor Eichor assured Agent Donohue he did not talk to Judge Sharff. He advised Agent Donohue that as mayor, he was prohibited from having direct contact with city employees and was required to go through the city administrator, David Dryhaug. Mayor Eichor admitted speaking about the case with Judge Sharff would have been improper. ROA. pp. 91-92; p. 99. Mayor Eichor also denied speaking about the case with Deputy Moore. ROA. p. 98.

Agent Donohue succinctly explained to the jury Mayor Eichor's duty of accountability as a public official, which is to "conduct [the official's] affairs openly, honestly so the public can scrutinize their activities." ROA. p. 100, lines 3-8.

John Laux was not an effective witness for the State because he was clearly uncooperative, perhaps he was scared for his own job. He made a statement to law

enforcement but refused to acknowledge memory of the conversation even after he was offered law enforcement's report of the conversation to refresh his memory. ROA. pp. 58-59. Agent Donohue described his demeanor as standoffish and he refused to put his statement in writing, which is why Agent Donohue wrote out a statement of the conversation. ROA. pp. 104-106.

Judge Sharff left the copper mines in Arizona to pursue a thirty-two year career in law enforcement. ROA. p. 137. Judge Sharff moved to Simpsonville in 1999 and he was appointed by City Council to be a municipal judge in 2006. The appointment was by a vote of the mayor (at the time, not Eichor) and the six council members. City Council and the mayor also made the decision by a vote every year about whether to reappoint Judge Sharff. ROA. pp. 139-142. Judge Sharff has never sought advice from the mayor. Judge Sharff explained he would bring any problems he had to Chief Judge Moore rather than the Mayor or City Council. ROA. pp. 142-143.

Judge Sharff testified he went to City Hall after finishing court on March 20. Judge Sharff was summoned into a closed-door conversation with Mayor Eichor. Mayor Eichor discussed the case, which Judge Sharff did not know anything about. Mayor Eichor asked Judge Sharff what he would have done as a police officer. Judge Sharff responded he probably would have removed the banner and advised Nance not to put any more signs up, but not brought any charges against Nance. Mayor Eichor agreed. Then Mayor Eichor told Judge Sharff the case would be triable in his court. Mayor Eichor reminded Judge Sharff he works for City Council. ROA. pp. 147-149.

Judge Sharff took this last comment as a threat, testifying as follows:

> I took it as a threat because of the fact that this was the first time that anything had ever come up about a case being in my court by any city council member or by anybody. And here I am, I'm in my 60's. We just bought a home. And now, I'm concerned whether or not I'm going to have a position if this thing goes to court in my court and depending on the way I rule, whether or not I'll still be employed.

ROA. p. 149, lines 15-22. Mayor Eichor also made a comment that no matter how the case turned out, it was going to head to the Supreme Court. ROA. p. 151.

Judge Sharff right away left Mayor Eichor's office and went to the Clerk of Court's Office to call County Magistrate Mary Ford. When he did not reach Magistrate Ford, he spoke with Magistrate Sara Davis instead. Judge Sharff asked Magistrate Davis to accept transferring the case from Municipal Court to Magistrate's Court. ROA. pp. 153-154. Judge Sharff testified about this conversation as follows:

> I explained the situation. Basically, that because the police department was involved and it was involving also the mayor, friends, I decided that it would be best if we could have a change of venue where it would take it out of the city's hands into a neutral courtroom.

ROA. p. 154, lines 18-23. Judge Sharff explained he was concerned about ensuring the parties received a fair trial. ROA. p. 153. Judge Sharff did not tell Magistrate Davis about his conversation with Mayor Eichor. ROA. pp. 154-155.

Judge Sharff did not report his conversation with Mayor Eichor right away. He wanted to just let it go. But the situation just kept eating away at him. Judge Sharff was having trouble eating and sleeping. He was concerned it was beginning to affect his performance as a judge. So he decided to report what happened. ROA. pp. 156-157. On cross-examination, the defense sought to have Judge Sharff equivocate on Mayor Eichor's

obvious meaning, but Judge Sharff concluded, "In my mind it was a threat." ROA. p. 170, lines 2-12.

Judge Sharff's wife, Nancy Sharff, confirmed the resulting manifestations of Judge Sharff's moral dilemma: he lost his appetite and was worried. ROA. pp. 126-129. Holly Smith, an employee with a desk near Mayor Eichor's office recalled an early or mid-March closed door meeting between Mayor Eichor and Judge Sharff. She discussed this with Agent Donohue on April 11. ROA. pp. 191-192.

Magistrate Sara Davis confirmed she spoke with Judge Sharff about transferring a case from municipal court to the county. Magistrate Davis noted it was uncommon to transfer cases from a municipal court to the county. She also noted Judge Sharff seemed apprehensive during their phone conversation. Magistrate Davis explained the reason why she accepted the case as follows:

> Because I could tell that it was something that was troubling, that it was going to be a problem in the court if it were to – if he were to try to have that case in his court, that it was not going to be worth it for him to even try. That we would take the pressure off by allowing it to come out to where we didn't know anything really about what was going on politically within the City of Simpsonville.

ROA. p. 183, lines 7-14.

ARGUMENT

Eichor argues it was reversible error for the trial court to decline several of his requested instructions, the discussion of the denial of those requested instructions are segregated into four issues in this brief. The following basic legal concepts apply to the four issues:

When instructing the jury, a trial judge must charge the current and correct law of South Carolina. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). A jury charge is accurate if it contains the precise definition and sufficiently charges the law. Id. When an appellate court reviews a jury charge for error, it "must consider the charge as a whole in light of the evidence and issues presented at trial." Dixon v. Ford, 362 S.C. 614, 619, 608 S.E.2d 879, 882 (Ct. App. 2005).

To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008); State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002). The appellant's case must have been prejudiced in order to reverse an appellant's verdict on the basis of an erroneous jury charge. State v. Lee-Grigg, 374 S.C. 388, 415, 649 S.E.2d 41, 55 (Ct. App. 2007); Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) (holding "[a]n error not shown to be prejudicial does not constitute grounds for reversal"). "A trial judge's refusal to provide specific jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved." State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) *overruled on other grounds by* Rosemund v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009).

I.

The trial court did not err by refusing to charge the jury that to prove obstruction of justice or misconduct of a public official, the State must prove beyond a reasonable doubt the communication was made for the purpose of issuing a threat or the defendant knew the communication would be viewed as a threat because threat is not an element of either offense. (Appellant's Issue #1).

While instructing the jury on the offense of intimidation of a public official, the trial court gave the following instruction on threat:

> It is unlawful for a person by threat or force to intimidate or impede a judge . . . in the discharge of his duties as such or to destroy, impede or attempt to obstruct or impede the administration of justice of any court. The State must prove beyond a reasonable doubt that the communication was made by the Defendant for the purpose of issuing a threat or that the Defendant knew that the communication would be viewed as a threat.

ROA. p. 225, lines 5-17.

Eichor alleges this instruction should have been provided for the other two charges. However, neither obstruction of justice nor misconduct in office requires the State prove a threat was made. Eichor's actions could be interpreted as a violation of both laws regardless of whether his illegal conversation with Judge Sharff was considered a threat.

Eichor relies on United States v. Elonis, 135 S.Ct. 2001 (2015). However, in Elonis, the federal statue being examined, 18 U.S.C.A. § 875(c), specifically required proof of a threat. The federal statute proscribed the following conduct: "[w]hoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or

imprisoned not more than five years, or both." § 875(c).

For the jury charge on obstruction of justice, the trial judge instructed the jury, as follows:

> The Defendant is charged with obstruction of justice. The State must first prove beyond a reasonable doubt that the Defendant committed an act which prevented, obstructed, impeded or hindered the administration of justice. The State must also prove beyond a reasonable doubt that the Defendant did the act with intent to obstruct justice. The Defendant does not have to succeed in the effort to obstruct justice. It is enough that some act was done in furtherance of the attempt to obstruct justice. The State must prove beyond a reasonable doubt that the Defendant committed some act in furtherance of his endeavor to obstruct justice.

ROA. p. 224, line 14 – p. 225, line 2. The trial court's instruction is almost identical to the South Carolina Judicial Department's suggested jury instruction on obstruction of justice.[1] Neither the trial judge nor the Judicial Department obstruction of justice jury instructions include a discussion of a threat.

A threat is not an element of obstruction of justice. State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 806 (Ct. App. 1997) ("Indeed, a person can commit obstruction of justice by use of force or threats; however, such conduct is neither an essential element of, nor the only means of committing, the crime of common-law obstruction of justice."). Rather, common-law obstruction of justice is defined as, "an offense to do any act which

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[1] S.C. Judicial Department website suggests that a jury should be charged on obstruction of justice, as follows:

> The Defendant is charged with obstruction of justice. The State must first prove beyond a reasonable doubt that the Defendant committed an act which prevented, obstructed, impeded or hindered the administration of justice. The State must also prove beyond a reasonable doubt that the defendant did the act with the intent to obstruct justice. The defendant does not have to succeed in the effort to obstruct justice. It is enough if some act is done in furtherance of theattempt to obstruct justice.

(http://www.judicial.state.sc.us/juryCharges/GSInstructions.2015.pdf) (p.243)(last visited March 28, 2016).

prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979).

Eichor's meeting with Judge Sharff, in which he discussed a pending case, may be found by the trier of fact to be an obstruction of justice regardless of whether he intended to communicate a threat because "any act" done with the intent to obstruct justice meets the elements of the offense. Eichor's conversation may reasonably be construed to influence how Judge Sharff handled the case, which is sufficient to establish Eichor's guilt for the obstruction of justice charge.

Turning to the misconduct of a public official charge, the trial court instructed the jury, as follows:

> Misconduct in office occurs when a person in public office fails to properly and faithfully discharge a duty owed by law. Existence of a duty owed to public is essential to sustain a conviction of misconduct in office. Otherwise, if any behavior is merely a private misconduct of one who happens to be an official. Misconduct includes an act, the omission and the breach of duty of public concern by persons in public office provided it was done willfully and dishonestly. Public officers must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly. To find the Defendant guilty of misconduct in office, you must find that he acted with dishonesty and corruption.

ROA. p. 225, line 18 – p. 226, line 11.

This instruction was taken almost completely verbatim from the South Carolina Supreme Court's opinion in State v. Hess, 279 S.C. 14, 20, 301 S.E.2d 547, 550-51 (1983). In Hess, the Supreme Court adopted the rationale of leading New Jersey Supreme Court

decisions, finding:

> Misconduct in office occurs when duties imposed by law have not been properly and faithfully discharged. The existence of a duty owed to the public is essential, for otherwise the offending behavior becomes merely the private misconduct of one who happens to be an official. The jury instruction of the trial court in this case satisfactorily stated the rule as follows: "Misconduct includes any act, any omission, in breach of duty of public concern by persons in public office provided it is done wilfully and dishonestly."

Id. (citation omitted). The Court noted that New Jersey courts require a breach of a duty by a public official in order for a criminal indictment for official misconduct to be sufficient. Id. The Court quoted with approval New Jersey authority that defined a public officer's duty of accountability as follows:

> Public officers must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly.

Id. (quoting Driscoll v. Burlington-Bristol Bridge Co., 86 A.2d 201, 221 (N.J. 1952)). Thus, in the instant case, the trial judge properly charged the jury as to the current and correct law of South Carolina.

Similar to obstruction of justice, a threat is not an element of misconduct in office. The crux of official misconduct is a breach of a duty by a public official. The evidence established Eichor breached the duty of accountability. Eichor acknowledged he was aware of this duty during his interview with law enforcement where he informed Agent Donohue that it would be improper for Eichor to meet privately with Judge Sharff to discuss city business. The duty of accountability was breached when Eichor met privately with Judge

Sharff to discuss Dixie Nance's charge and seek out Judge Sharff's mindset. The evidence shows Eichor breached his duty of accountability by merely conversing with Judge Sharff on a case potentially going before Judge Sharff.

A jury instruction is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990); State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994) (noting the substance of the law, not any particular verbiage, must be charged to the jury); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (finding reversal is not warranted where the charge given is substantially correct and covers the applicable law).

The trial court did not err in declining to instruct the jury on threat for obstruction of justice and misconduct by an official because the charges do not contain the element of a threat.

II.

The trial court did not err by refusing to charge the jury that evidence of good character may in and of itself create doubt as to the defendant's guilt because the record was devoid of evidence of Appellant's good character, but the trial court nonetheless gave a good character charge that was accurate and sufficiently charged the law. (Appellant's Issues #2 and #5).

Eichor complains the trial court erred in not instructing the jury with Eichor's requested charge for evidence of good character. However, no evidence supports an instruction for good character, and the trial court's instruction to the jury sufficiently charged the jury on evidence of good character.

"Generally, where requested and there is evidence of good character, a 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, along with all the other evidence, in determining the guilt or innocence of the defendant." State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335 (1982) (citing State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947)). To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008); State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002).

In State v. Lee-Grigg, 374 S.C. 388, 418, 649 S.E.2d 41, 57 (Ct. App. 2007), this Court held the defendant was entitled to a jury charge on use of evidence of her good character. The trial court declined to issue a jury charge regarding good character even though the defendant called two witnesses who testified to the defendant's good character

and reputation in the community. Id. at 410, 649 S.E.2d at 53. This Court found the trial court erred in denying the defendant's request of the good character charge because the defendant presented evidence of her good character and requested a charge on that evidence. Id. at 411.

In the instant case, Eichor did not call any witnesses to testify to his good character nor did he present any other evidence of his good character during the trial. Eichor's attorney attempted and failed to elicit testimony establishing Eichor's good character from two of the State's witnesses.

While cross-examining Marie Boone, Eichor's attorney asked Boone about Eichor's reputation at City Hall with respect to his character for honesty. The State objected, but Eichor's attorney observed, "[s]he's about to answer no, so that might help. She's shaking her head." ROA. p. 40, line 24 – p. 41, line 6. Therefore, the record establishes Boone was unaware of Eichor's reputation for honesty and Eichor's attorney failed to elicit testimony from her on Eichor's character.

Character was explored one more time, during Eichor's cross-examination of Agent Donohue, in the following line of questioning:

> Q: Okay. So, the good character of my client is not relevant to this case?
>
> A: I was not looking at his character. I was looking at whether or not a crime occurred or not.
>
> Q: Right. But to answer my question, you're saying that my client's good character is not relevant to this case?
>
> A: It has relevancy to it, yes.

Q: So it does now?

A: No, everybody's character is relevant when you're doing an investigation.

ROA. p. 117, line 21 – p. 118, line 6. Agent Donohue did not deny that character could be relevant, but he did not testify as to Eichor's character, so no evidence was elicited supporting an instruction on good character.

Unlike Lee-Grigg, not even one witness testified to Eichor's good character or reputation in the community. Since Eichor presented no evidence of his good character, the trial court did not have to instruct the jury about evidence of good character. See Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues.").

Despite the absence of evidence of Eichor's good character, the trial court still provided the following instruction:

> Now, ladies and gentlemen, in your consideration of this case, you may consider evidence of the Defendant's character along with all the evidence in deciding whether or not the Defendant committed the crime.

ROA. p. 226, lines 20-24.

Although the charge was not a direct resuscitation of the law from State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982), the charge was accurate as it sufficiently charges the law. Moreover, the trial court was under no obligation to even charge the jury on good character because Eichor failed to present character evidence. Thus, the trial court did not err because its jury instruction on good character was neither erroneous nor prejudicial because the trial

court did not have to charge the law and the charge, as given, was accurate.

III.

The court did not err by refusing to charge the jury that where a communication has both a threatening and nonthreatening interpretation the State has the burden to present evidence to remove the ambiguity because a trial judge is only required to charge the jury on South Carolina law. (Appellant's Issue #3).

Eichor argues that the trial court erred in declining his instruction on analyzing the existence of an ambiguity vis-a-vis, the State's burden to prove the offenses beyond a reasonable doubt. The trial court extensively and correctly instructed the jury on the State's burden of proof and the presumption of innocence, and further correctly instructed the jury on the elements of the offenses. As discussed in Issue I, threat is not an element of misconduct by a public official or obstruction of justice, and evidence supports that Eichor committed the offenses even if his statements were not construed as a threat.

A judge is only required to charge the jury on the current and correct law of South Carolina. Further, precedent set by federal circuit courts is not binding on this Court. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003) *overruled on other grounds by* State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Eichor requested the trial judge charge the jury on law from United States v. Barcley, 452 F.2d 930 (8th Cir. 1971). Since Barcley is not South Carolina law, the trial judge had no obligation to charge the jury on it.

The requested instruction was as follows:

> When a communication contains language which is equally susceptible of two interpretations, one threatening, and the other nonthreatening, the state carries the burden of presenting evidence to remove that ambiguity. If the state does not remove that ambiguity beyond a reasonable doubt,

you must find the defendant not guilty.

First, as argued in Issue I, a threat is not an element of obstruction of justice or official misconduct, and evidence supports the verdict whether or not the statement was interpreted as a threat. Additionally, contrary to Eichor's assertions, there really is no ambiguity in his statement to Judge Sharff reminding Judge Sharff he works for the City.

Moreover, the general instructions on the State's burden of proof and the jury's role as finder of fact sufficiently informed the jury of its fact-finding role. The trial court charged the jury as to State's burden of proof, as follows:

> The State has the burden of proving each and every element of each offense beyond a reasonable doubt. So, when you look at those charges, you will determine whether the State has met its burden of proof with respect to each charge.

ROA. p. 218, lines 17-22. The trial court further instructed the jury on the presumption of innocence as follows:

> [A] criminal defendant is presumed innocent until proven guilty beyond a reasonable doubt by the State. The State has the burden of proving each and every element of all the offenses beyond a reasonable doubt. As we sit here right now, the Defendant retains that presumption of innocence and he will retain that presumption of innocence until you determine whether the State has met its burden of proof.

ROA. p. 219, lines 8-16.

The trial court further explained to the jury that "if after your view of the evidence you believe that there is a real possibility that he is not guilty, then you must under your oath find him not guilty." ROA. p. 220, lines 2-5. The trial court emphasized again the State's burden of proving each element beyond a reasonable doubt. ROA. p. 220, lines 17-19.

Also, the trial judge appropriately instructed the jury as to their fact-finding role:

> Now, understand, your role is as the judge of the facts. You will determine what the facts are in this case based on the evidence that has been presented. If at any point during this trial you have heard me say anything that gives you the impression that I have an opinion about what the facts are or about what your determination should be, again, please disregard that, disabuse yourself of that notion. I have no preference one way or the other and I have no opinion about what the facts are or about what your ultimate determination should be.

ROA. p. 217, line 21 – p. 218, line 6.

The trial court revisited this role again, advising the jurors they would determine what the facts are. ROA. p. 220, lines 20-25. Advantageous to Eichor was the instruction on circumstantial evidence, which concluded, "If the circumstances merely portray the Defendant's behavior as suspicious, the proof has failed." ROA. p. 223, lines 24-25. Additionally, the jury was advised on the State's burden to prove criminal intent with respect to all three charges. ROA. p. 226, lines 12-19.

Ultimately, the trial court properly instructed the jury on the elements of the offense and the State's burden of proving each element beyond a reasonable doubt. The charge as a whole sufficiently apprised the jury of the law and issues involved, and therefore, refusing the requested instruction was not reversible error. "A trial judge's refusal to provide specific jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved." State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) *overruled on other grounds by* Rosemund v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009).

Accordingly, the trial court did not err because jury was fully informed of its role in determining the facts and of the State's burden of proving each element beyond a reasonable doubt. Jurors are presumed to follow the trial court's instructions. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). In the instant case, the jury could follow the trial court's instructions and find Eichor guilty of both charges.

IV.

The trial court did not err by refusing to charge the jury the State has the burden of proving beyond a reasonable doubt that any threat made by the defendant needed to be made with the specific intent to execute it because that is an inaccurate statement of law. (Appellant's Issue #4).

Eichor argues the trial court should have informed the jury the State needed to prove he had the specific intent to execute any threat he made. That is not the law. Eichor again cites to the Elonis case, which examines a federal statute prohibiting threatening communications through interstate commerce. United States v. Elonis, 135 S.Ct. 2001 (2015). In Elonis, the U.S. Supreme Court held "[t]he Third Circuit's instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under 18 U.S.C. § 875(c)." Id. at 2003. The Court found, "[w]hen interpreting federal criminal statutes that are silent on the required mental state, we read into the statute 'only that *mens rea* which is necessary to separate wrongful conduct from 'otherwise innocent conduct.'" Id. at 2010. The Court continued by stating, "a general requirement that a defendant *act* knowingly is itself an adequate safeguard" in some cases. Id.

Even federal cases have not expanded Elonis past the confines of § 875(c). "Elonis is a case of statutory construction, and as such, is limited to 18 U.S.C. § 875(c)." United States v. Kirsch, 2015 WL 9077546, at *5 (W.D.NY December 16, 2015) (stating "No case thus far extends Elonis's holding beyond § 875(c)...").

Additionally, the U.S. Supreme Court reversed and remanded Elonis because "Elonis's conviction was premised solely on how his posts would be viewed by a reasonable person, a standard feature of civil liability in tort law inconsistent with the conventional

criminal conduct requirement of 'awareness of some wrongdoing.'" Elonis, 135 S.Ct. at 2003 (citing Staples v. United States, 511 U.S. 600, 606-607 (1994)).

In the instant case, Elonis is inapplicable because the trial court properly instructed the jury on intent:

> Now, ladies and gentlemen, in this case and in all – **with respect to all the charges,** in order to establish criminal liability, criminal intent is required. Criminal intent must be proven by the State beyond a reasonable doubt. Now, criminal intent **is a conscious wrongdoing**. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed.

ROA. p. 226, lines 12 – 19 (emphasis added).

The trial judge properly instructed the jury on the correct law for the intent element for all three offenses. Moreover, only intimidation of a court official contains a threat element. The trial judge explicitly instructed the jury that in order to find Eichor guilty of intimidation of a court official, "[t]he State must prove beyond a reasonable doubt that the communication was made by the Defendant for the purposes of issuing a threat or that the Defendant knew that the communication would be viewed as a threat." ROA. p. 225, lines 13 – 17. Thus, this instruction clearly sets the proper guidelines for intent of the alleged threat. See In re Steven S., 315 S.C. 472, 434 S.E.2d 312 (1993) (rejecting claim that overheard remark to kill teachers made by eighth grade juvenile was mere childish horseplay and cannot be considered the conveyance of a threat under statue prohibiting knowing and willful threats to teachers).

Even if the trial judge did not charge the jury as to intent under each offense, he sufficiently instructed the jury on criminal intent. "A trial judge's refusal to provide specific

jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved." Hughey, 339 S.C. at 452, 529 S.E.2d at 728. Here, the instructions regarding criminal intent were sufficiently broad to allow the jury to understand that criminal intent is required to find Eichor guilty of any of the crimes.

Finally, Eichor reads Elonis broadly to claim the person making a threat must intend to carry the threat out. Elonis distinguishes criminal intent from a civil standard, but Respondent does not read any part of Elonis to require the defendant intend to carry a threat out, only that the defendant intended to communicate a threat. It is the threat, not the act suggested by the threat, that is the crime. And of course, both offenses for which Eichor was convicted do not require a threat as an element of the offense. See State v. Love, 275 S.C. 55, 62, 271 S.E.2d 110, 114 (1980) ("Success in the effort to obstruct justice is not necessary to constitute the offense; it is sufficient if some act is done in furtherance of the endeavor.").

In conclusion, the trial court did not err in denying to instruct the jury as requested as the requested instruction was not an accurate statement of law. Further the trial court's instructions to the jury covered the applicable law in the case and the denial of the requested instruction is not reversible error.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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April 26, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

THE STATE, Respondent,

vs.

PERRY EICHOR,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Stephen J. Henry, Esquire, 406 Pettigru St., Greenville, SC 29601.

I further certify that all parties required by Rule to be served have been served.

This 26TH day of April, 2016.

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