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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CHRISTOPHER D. CAMPBELL,

APPELLANT

APPELLATE CASE NO. 2014-002339

Appeal from Charleston County

W. Jeffrey Young, Circuit Court Judge

Opinion No. 2016-UP-367

PETITION FOR REHEARING

On July 20, 2016, this Court affirmed Appellant’s conviction in an unpublished opinion. State v. Campbell, 2016-UP-367 (S.C. Ct. App. filed July 20, 2016). On direct appeal, Appellant challenged the trial court’s refusal to issue a “good character” charge to the jury. In affirming the trial court’s decision, this Court cited two cases and provided for parenthetical explanations of the holdings from those cases. Id. Although this Court’s reasoning for affirming the trial court’s decision is unclear, it appears this Court determined Appellant was not entitled to a good character jury charge, despite the presentation of evidence of Appellant’s good character and Appellant’s reliance on his good character as his defense to the charges, because the other

instructions provided were correct. See id. Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter in light of controlling case law providing for Appellant's right to a good character jury charge, which was overlooked or misapprehended by this Court in arriving at its conclusion.

Overlooked or misapprehended controlling case law

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”).

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 1-2.¹

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.

¹ 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).

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 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.

Reversible error

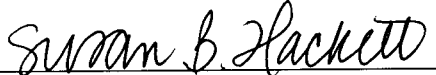
Appellant presented evidence of his good character by presenting the testimony of his grandmother and his two uncles. Each of the witnesses testified that it would be out of character for Appellant to engage in an armed robbery. Each of the witnesses testified that Appellant was an industrious young 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.

For these reasons, Appellant respectfully requests this Court rehear his case to address the overlooked or misapprehended case law concerning a defendant's right to a jury charge on the

use of good character evidence.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

This 4th day of August, 2016.

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IN THE COURT OF APPEALS

Appeal from Charleston County
W. Jeffrey Young, Circuit Court Judge

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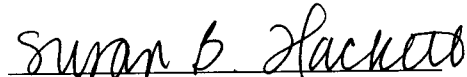
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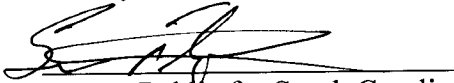
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at the Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Christopher D. Campbell, #361841, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 4th day of August, 2016.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this
4th day of August, 2016.

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