

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY S.C. SUPREME COURT  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Trial Judge  
The Honorable George C. James, Jr., Post-Conviction Relief Judge

Appellate Case No. 2017-000280

Vladimir Pantovich, ..... Respondent,

v.

State of South Carolina, ..... Petitioner.

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

**Did the PCR court err as a matter of law by finding appellate counsel was ineffective for failing to raise and argue the trial court's failure to issue a jury instruction on good character during the trial of Respondent, who readily admitted to killing the victim and was arrested while transporting the victim's badly-beaten and unrecognizable body in the trunk of his car to an out-of-state location for disposal before it could be found by authorities?**

## STATEMENT OF THE CASE

In April 2006, the Georgetown County Grand Jury indicted Pantovich for murder. (App. p. 686-87) Stuart M. Axelrod, Esquire (“trial counsel”) represented Pantovich. (App. p. 1) On February 4, 2008, Pantovich proceeded to trial before the Honorable Benjamin H. Culbertson (“the trial judge”) and a jury. (App. p. 1) On February 8, 2008, the jury found Pantovich guilty of the lesser-included offense of voluntary manslaughter. (App. p. 609, lines 5-10) The trial judge sentenced Pantovich to eighteen years’ imprisonment. (App. p. 614, lines 3-5)

Joseph L. Savitz, III, Esquire (“appellate counsel”), of the Office of Appellate Defense, perfected Pantovich’s direct appeal with the filing of an Anders<sup>1</sup> brief. (App. p. 688 - 697) The South Carolina Court of Appeals dismissed Pantovich’s appeal on June 8, 2011. State v. Pantovich, Op. No. 2011-UP-275 (S.C. Ct. App. filed June 8, 2011). The remittitur was issued June 28, 2011.

The State filed an application for post-conviction relief on June 22, 2012. (App. p. 622) The Honorable George C. James Jr. (“the post-conviction relief judge”) convened a hearing on the application on March 21, 2014 at the Georgetown County Courthouse. (App. p. 633) Tristan M. Shaffer, Esquire (“PCR counsel”) represented Pantovich, and Joshua L. Thomas, Esquire represented the State. (App. p. 633) The only allegation on which Pantovich proceeded was whether appellate counsel performed effectively when it did not file a merits brief challenging the trial judge’s refusal to issue certain jury charges, including a good character charge based on State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982). The post-conviction relief judge denied relief in an order dated May 16, 2014, and filed June 16, 2014. (App. p. 675)

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<sup>1</sup> Anders v. California, 386 U.S. 738 (1967).

A notice of appeal was filed by PCR counsel on June 27, 2014. (App. pp. 699 - 712) This was perfected by the filing of a petition for writ of certiorari on February 6, 2015, by Laura R. Baer, Esquire of the Office of Appellate Defense. (App. pp.713 - 739) A return to the petition for writ of certiorari was filed by Mr. Thomas on May 26, 2015. (App. p.740 - 755) Pantovich filed a reply to the State's return to the petition for writ of certiorari on June 5, 2015. (App. p. 756 - 770) In a memorandum opinion filed August 26, 2015, the South Carolina Supreme Court granted the petition, dispensed with further briefing, reversed the PCR court's finding, and remanded for consideration of the matter based on Strickland v. Washington, 466 U.S. 668 (1984). Pantovich v. State, Op. No. 2015-MO-052 (S.C. filed August 26, 2015). (App. p.771-774) The remittitur was returned on September 14, 2015. (App. p.775)

On May 2, 2016, the Honorable George C. James, Jr. (again "PCR judge") convened a hearing on this matter at the Richland County Courthouse after all parties and the acting chief administrative judge for the Fifteenth Judicial Circuit, the Honorable William Seals, consented to a change of venue for ease of scheduling. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. In addition, the first PCR hearing transcript was made part of the record. For the May 2, 2016 hearing, Pantovich was again represented by Tristan M. Shaffer, Esquire, and the State was represented by Jessica E. Kinard, Esquire. (App. p.776 - 815) Judge James issued an order granting relief on the appellate counsel issue on January 8, 2017, and the same was filed on January 12, 2017. (App. p.816 - 823) The State filed a notice of appeal on February 16, 2017, and this petition for a writ of certiorari follows.

## STATEMENT OF THE FACTS

On March 7, 2006, Pantovich and his on-and-off girlfriend, Sheila McPherson, got into an altercation after she let herself into his house while they were broken up. (App. p.433;23 – 434;25) Pantovich asked McPherson to leave because he did not want her there, but she refused. (App. p.434;3-10) When she began to smoke marijuana in the home, he again asked her to leave and attempt to contact the police, but the phone was unplugged. (App. p.434;14 – 25) The argument escalated, as McPherson began to point a fireplace poker at Pantovich. (App. p.435;3-11; p.438;3-4) While McPherson kept arguing with Pantovich, he grabbed a baseball bat that was kept by the door and began to hit her, and the next thing he remembered was her lying on the ground as he was hitting her. (App. p.438;5-10)

After realizing what he had done, Pantovich sat in a chair at his home for quite a while before he began panicking and trying to get rid of the body. (App p.468;20 – 469;16) He wrapped her in a comforter, tied her body in rope, and put her body in the trunk of his car. He also placed a plastic bag over her head and a placemat under body her so blood would not get all over the trunk. (App p.469;17 – 471;9; p.474;8 - 11) Pantovich also folded up a rug that McPherson had bled onto in order to hide evidence. (App. p.474;16 – 23)

Pantovich telephoned his son, Marco, who lived in Taylorsville, North Carolina and relayed to him what he had done. (App. p.178;2 – 4; p.178;21 – 178;2; p.209;22 – 25) Marco then called 911 in Alexander County, North Carolina and reported the situation. He relayed that Pantovich had no other family in the area, and it was likely that Pantovich was on the way to his house. (App. p.209;22 – 25) Horry County law enforcement was contacted, and they telephoned Pantovich at his home, who reported that everything was fine. (App. p. 477;12 – 478;14) Soon after the call, and approximately two hours after killing McPherson, Pantovich left his home in

Georgetown County. Alexander County law enforcement received the BOLO South Carolina law enforcement had put out for Pantovich's car, and they ultimately pulled the vehicle pursuant to a felony vehicle stop. (App. p.210;14 – 23; p.212;13 – 15) Pantovich was ordered to get on the ground, handcuffed, and Mirandized. (App. p.215;1 – 216;2) While seated in the car with an officer from Alexander County and without being questioned, Pantovich stated, "Tell my son he did the right thing," and "I just lost it, man." (App. p.220;21 – 222;7) Pantovich was subsequently indicted for one count of murder (Indictment No.: 2006-GS-22-0126).

Pantovich's case was called to trial before the Honorable Benjamin H. Culbertson, and Pantovich was found guilty after five days of trial (February 4-8, 2008). (App. p.1) During the jury charge conference, trial counsel submitted three potential charges that dealt with the good character and demeanor of Pantovich, self-defense, and reputation for violence, none of which the trial court used. (App. p.550;21 – 552;9) Trial counsel moved for a new trial based on this, and that motion was denied. (App. p.617;1-3) A notice of appeal was filed, and it was perfected by the filing of an Anders brief, as noted above.

The direct appeal was dismissed and a post-conviction relief application was ultimately filed. Relief was denied to Pantovich, who appealed to this Court. The PCR court's finding was reversed and remanded for a determination pursuant to Strickland v. Washington, supra. The original order issued by the PCR court on May 16, 2014, held the Applicant (now Respondent) failed "to rebut the presumption of regularity in the Court of Appeals' Anders review." (App. p.680) This Court held the Strickland test must be applied, even if an Anders brief is filed and, further, "[t]o prove appellate counsel was ineffective, the applicant must show appellate counsel's performance was deficient and, but for appellate counsel's errors, the result of the

appeal would have been different. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001).” (App. p.774)

Therefore, on remand, the PCR court considered whether appellate counsel was ineffective pursuant to the standard imposed by Strickland and, specifically, whether appellate counsel was ineffective for failing to file a brief on the merits regarding the trial court’s decision not to issue a jury instruction regarding good character. Ultimately, the PCR court found appellate counsel indeed was ineffective for failing to file such a brief, and it based this reasoning on the following line of cases (as cited in the order of dismissal): See, e.g., State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982); State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007) (reversing the trial court for failure to give a good character evidence charge); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000) (cert. denied) (reversing drug conviction after the trial court's refusal to charge good character evidence despite the defendant's admission that he attempted to purchase cocaine.); State v. Lyles, 210 S.C. 87, 92, 41 S.E.2d 625, 627 (1947) (finding that the trial court erred in not giving a good character evidence charge but finding that the issue was not preserved).

## STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review in a post-conviction relief action is whether "any evidence of probative value" exists to sustain the post-conviction relief court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The reviewing court will affirm if there is any evidence to support the post-conviction relief court's ruling. Moore v. State, 399 S.C. 641, 646, 732 S.E.2d 871, 873 (2012).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, at 441, 334 S.E.2d at 814.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, at 689. An applicant must overcome this presumption in order to receive relief. Cherry, at 118, 386 S.E.2d at 625.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel, and both prongs must be established by an applicant to receive relief. Strickland, at 687. First, an applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, at 688. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

## ARGUMENT

**The PCR court erred as a matter of law by finding appellate counsel was ineffective for failing to raise and argue the trial court's failure to issue a jury instruction on good character during the trial of Respondent, who readily admitted to killing the victim and was arrested while transporting the victim's badly-beaten and unrecognizable body in the trunk of his car to an out-of-state location for disposal before it could be found by authorities.**

The PCR court reversibly erred when it ruled that appellate counsel was ineffective for failing to brief the issue of whether the trial court's failure to instruct the jury on Pantovich's good character was reversible error. The good character instruction as presented in the controlling case of Lee-Grigg, on which the PCR court based its ruling, is unnecessary and unconstitutional, as this charge emphasizes good character evidence to the exclusion of other evidence, thus potentially confusing jurors and influencing their deliberations. However, even if the charge is found to be constitutional, appellate counsel was not ineffective because Pantovich suffered no prejudice when a good character jury instruction was not given. The abundant evidence of guilt including, but not limited to, forensic evidence, Pantovich's flight, and his admission of guilt show that his actions are inconsistent with good character or self-defense. There should be no finding of ineffective assistance of appellate counsel, and this Court should grant certiorari and ultimately reverse the post-conviction relief court's grant of relief.

### **A. A good character jury instruction is unnecessary and unconstitutional.**

In the case at bar, Pantovich was convicted of the lesser-included offense of voluntary manslaughter, after he was charged with murder for beating his life-in girlfriend to death with a baseball bat. (App. p.609;5 - 9) He claimed she had been taunting him with a fireplace poker and, therefore, pursued a claim of self-defense. (App. p.472;8 - 10; p.560;3 - 8; p.640;17 - 20) This defense, as described by trial counsel at the initial PCR evidentiary hearing, was bolstered by the notions that everyone trial counsel interviewed stated Pantovich was not a violent person,

there was a great size disparity between Pantovich and victim, and the victim had a history of fighting with the Pantovich. (App. p.642;7 – 644;4) Because of this, trial counsel submitted jury charges that addressed Pantovich’s good character, as well as the victim’s reputation and propensity for violence, but none were used. Further, there was not a charge pursuant to Green, though “the trial judge did include instructions on the victim’s prior history of physical abuse, her prior difficulties with [Pantovich], her reputation as a violent person, and her intoxication.” (App. p.677) The PCR court found, “[e]ven assuming, *arguendo*, appellate counsel was deficient in failing to brief the trial judge’s refusal to include [Pantovich’s] requested charges, [Pantovich] has not shown how he was prejudiced by appellate counsel’s performance.” (App. p.679)

The State argues this finding should stand – Pantovich has failed to show how he was prejudiced by appellate counsels’ performance – and it should also apply to the good character instruction. The PCR court’s order of dismissal after remand discussed the proposition that without a jury instruction on good character, “it is reasonable to conclude that the jury was not aware that it could consider the [Pantovich’s] good character in determining whether the State had disproven that the [Pantovich] acted in self-defense” and that “there is a reasonable probability that a good character charge would have impacted the jury’s consideration of whether the defendant was without fault in bringing on the difficulty between him and the victim. See discussion in Lee-Grigg, 374 S.C. at 417-418.” (App. p.821-22)

Respectfully, the State argues the holding in Lee-Grigg is antithetical to other cases decided by this Court and the Supreme Court of the United States in terms of how it weighs evidence before the jury and how the jury can be trusted to analyze this information. The earliest case decided by the Supreme Court of the United States on this topic was in 1948 – Michelson v. United States, 335 U.S. 469 (1948). This opinion arose out of a prosecution where a defendant

called character witnesses to speak to his good reputation, and those witnesses, upon cross-examination, testified they were aware of the defendant's earlier criminal record. The defendant argued this was generally unfair, and challenged the practice. The Court began its analysis by considering the essential balancing test of probative inquiry versus prejudicial value:

The State may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice.

Id. at 476-7 (footnote omitted). This passage contains the overall considerations when the prosecution is attempting to admit information about a defendant's prior record, and the Court concludes the same logic should be applied when a defendant wishes to open the door into his character:

The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him. The prosecution may pursue the inquiry with contradictory witnesses to show that damaging rumors, whether or not well-grounded, were afloat—for it is not the man that he is, but the name that he has which is put in issue.

Id. at 478 (footnote omitted). The Court goes on to discuss limiting instructions to juries and whether those are effective, while eventually surmising that, “[g]iven this option, we think defendants in general and this defendant in particular have no valid complaint at the latitude which existing law allows to the prosecution to meet by cross-examination an issue voluntarily tendered by the defense.” Id. at 485 (citation omitted).

The holding in Lee-Grigg, on which the PCR court partially based its decision, is not in keeping with Michelson or any South Carolina case on the matter. Lee-Grigg cites to Green and

expounds on its harmless error analysis. Green cited to State v. Key 256 S.C. 90, 180 S.E.2d 888 (1971) for a more general description of harmless error. Lee-Grigg errs because it places so many suppositions on the jury, notably that “it seems fair to conclude” their struggle in coming to a unanimous verdict was due to whether criminal intent was proven by the State, and an analysis of intent is linked to a defendant’s character.

Compare this to the logic espoused in State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Essentially, by removing the concept of inferred malice from a jury charge, this Court gave credence to the idea jurors are rational and reasonable thinkers. It recalled the idea of the “half-truth” that had existed in the old charge, which was “malice includes the absence of justification, excuse, and mitigation,” which “cannot be inferred from the use of a deadly weapon standing alone. Other facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of these component parts.” Id. at 385 S.C. 609-10, 685 S.E.2d at 808-09. These considerations necessarily require the jury to synthesize the facts presented to them in the cases in chief to reach a conclusion – it does not force any presupposition of the law or add undue weight to evidence before them. To be clear, it does not change the standard implied malice charge or the general permissive inference instruction including the statement “you may give it such weight as you determine it should receive.” Id., footnote 9. Additionally, the State can still argue for a finding of malice from the use of a deadly weapon and a defendant can argue the opposite. Id. Simply, “[i]t is axiomatic that some matters appropriate for jury argument are not proper for charging. ‘Do jurors need the court’s permission to infer something? The answer is, of course not.’ Bruce A. Antkowiak, *The Art of Malice*, 60 Rutgers L. Rev. 435, 476 (2008).” Id.

To analogize this to the instant matter, instructing a jury to specifically consider the fact

that evidence of a defendant's good character charge is unnecessary, as it emphasizes the weight of that testimony over all the other evidence presented and presents the jury with another "half-truth" –because the defendant is considered by some to have a good character, he is less likely to be able to form the intent to commit a crime. Just as with a case where the jury is told to infer malice because a deadly weapon was used, a case where a jury is told to specifically consider a defendant's good character places undue emphasis on that particular testimony.

The argument that South Carolina case law is moving toward allowing jurors to make broader considerations without the burden of specific jury instructions is bolstered by this Court's opinion in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). This appeal arose from a criminal sexual conduct and first degree burglary conviction that was affirmed by the Court of Appeals, and from which the petitioner argued it was error to instruct the jury that the victim's testimony need not be corroborated by additional evidence or testimony pursuant to Section 16-3-657 of the South Carolina Code (2003). In this opinion, the Court adopted then-Justice Pleicones' dissent from an earlier case, in which he wrote that "placing this emphasis on the victim's testimony appeared to be a comment on the facts by the court." Stukes, 416 S.C. at 499, 787 S.E.2d at 483. The Court went on to hold "it is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." Id. (footnote omitted)

For the reasons stated above, the State avers that a good character jury instruction such as contemplated here is in violation of the South Carolina Constitution, specifically Article V, Section 21. This section concisely states "[j]udges shall not charge juries in respect to matters of

fact, but shall declare the law,” and provides a guarantee to an impartial judiciary during trial for the sake of both parties. A charge that encourages jurors to consider the good character of a defendant certainly requires a judge to comment on the facts, as the determination of whether such good character exists is within the province of the factfinders. This Court held in State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987) that the goal of jury instructions is to enlighten the jury and provide aid in arriving at a correct verdict. “Regardless of whether the charge is a correct statement of the law, instructions which confuse or mislead the jury are erroneous.” Stukes, 416 S.C. at 498, 787 S.E.2d at 482, citing Leonard, 292 S.C. at 137, 355 S.E.2d at 273. This has recently been reiterated by this Court in Belcher, and the facts of the case align closely with the underlying trial *sub judice*:

Where a jury is asked to consider a lesser included offense of murder or a defense, Belcher asserts the permissive inference charge violates our common law and our constitutional prohibition against charging juries on the facts. We elect to decide this appeal solely under the common law. Relying on Belcher's common law challenge, we conclude that our modern day usage of this jury charge has strayed from this Court's original jurisprudence.

Belcher, 385 S.C. at 602, 985 S.E. 2d at 804. Here, the jury was considering the same lesser-included offense (voluntary manslaughter from murder) and the same defense (self-defense). The State avers that if an implied malice charge is unconstitutional in this circumstance, so is a good character charge. Both cause a trial judge to place great emphasis on elements of *fact*, rather than merely instructing the jury on the state of the law.

A jury instruction regarding good character in terms of a self-defense case conflates the ideas of good character and requisite intent, thus confusing the jury as to how it should ultimately decide. Again, referring back to Michelson and, more recently, Belcher, we note the Courts considering the idea that jurors are capable of weighing information independently, and that more judicial instruction may only confuse the issue. From Justice Jackson’s majority

opinion in Michelson: “A judge of long trial and appellate experience has uttered a warning which, in the opinion of the writer, we might well have heeded in determining whether to grant certiorari here: ‘\* \* \* evidence of good character is to be used like any other, once it gets before the jury, and the less they are told about the grounds for its admission, or what they shall do with it, the more likely they are to use it sensibly. The subject seems to gather mist which discussion serves only to thicken, and which we can scarcely hope to dissipate by anything further we can add.’” 335 U.S. 469, 474, n. 5 (1948).

Not only should this Court recognize jurors and their capabilities, it must bring our state case law in line. Though the holding in Michelson was ultimately supportive of good character jury instructions in federal courts, the Court took great care to express its view that jurors are thinking and sensible entities. This Court cannot break with that precedent, but it can certainly embody the trend begun in Belcher and Stukes by mandating the reformation of good character charges. For these reasons, this Court must find good character jury charges are unnecessary and unconstitutional, as well as that appellate counsel was not ineffective in failing to brief this issue.

**B. In the alternative, not issuing a good character jury instruction was harmless error.**

Generally, South Carolina case law regarding the failure of a trial court to issue a jury instruction requires an analysis of the prejudice that resulted from the failure, and whether such prejudice or lack thereof constituted harmless error. As this Court stated in Belcher, “Errors, including erroneous jury instructions, are subject to harmless error analysis.” Belcher, 385 S.C. at 611, 685 S.E.2d at 809. As similarly contemplated in Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992), a reviewing court must determine that an error did not contribute to a verdict by finding the “error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. Thus, to say an instruction to apply an unconstitutional

presumption did not contribute to the verdict is to make a judgment about the significance of the presumption to reasonable jurors, when measured against the other evidence considered by those jurors independently of the presumption.” Id., 309 S.C. at 166, 420 S.E.2d at 839. Further, the court “must ask what evidence the jury actually considered in reaching its verdict,” and also “must weigh the probative force of the evidence as against the probative force of the presumption standing alone.” Id.

The State argues this phrasing speaks directly to the prior argument regarding the propriety and constitutionality of the jury charge – if a proposed jury instruction is unconstitutional and it is not applied, then no prejudice is done. This is the scenario the State argues occurred in the case at bar. However, should the Court disagree the State’s argument that the good character jury instruction is unconstitutional, the State further argues no prejudice was done to Pantovich as a result of the jury not receiving that instruction based on overwhelming evidence of Pantovich’s guilt.

Starting from the first step of the analysis, we must consider whether the trial judge’s jury instructions correctly conveyed the relevant and applicable law to the jurors and provided the jurors with the appropriate test for deciding Pantovich’s case. If so, the trial judge committed no error in instructing the jury on the law, and there would be nothing for appellate counsel to brief. See State v. Rye, 375 S.C. 119, 123, 651 S.E.2d, 321 323 (2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”). In this instance, no instruction regarding good character or the personality of the defendant was given, and this fact cannot be viewed as reversible error. See State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (holding the failure to give a jury instruction on a proper statement of law did not constitute reversible error in light of the fact the

jury instructions as given adequately and sufficiently covered the applicable law); see also Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003) (“A circuit court’s refusal to give a properly requested charge is reversible error only where the requesting party can demonstrate prejudice from the refusal.”).

The instant matter stems from an underlying conviction of voluntary manslaughter as a lesser-included offense of murder. There was never any testimony or evidence offered that Pantovich did not kill the victim, only whether he had formed the requisite malice aforethought to be guilty of murder. As contemplated in Green, “[h]e admitted his presence and participation in the [crime] and from the whole record his guilt is conclusively established. Under these circumstances, the error, if any, could not reasonably have affected the result and is properly regarded as harmless.” Green, 278 S.C. at 240, 294 S.E.2d at 335. As part of his self-defense case, Pantovich introduced witnesses to speak to his good character, as well as presented evidence to denigrate the victim.

As mentioned in the earlier argument, this issue was considered by the Michelson court. Essentially, the holding in Michelson was the more a jury hears about good character evidence, the less likely they are to use it properly and sensibly. This conclusion was bolstered by a quotation from then-Judge Learned Hand’s opinion in Nash v. United States, 54 F.2d 1006, 1007 (2nd Cir. 1932). The Court goes on to state, in a reiteration of Hand’s argument “the system may work best when explained least.” Michelson, 335 U.S. 469, 481, n. 18.

The State argues there is no way Pantovich could have been found not guilty of a homicide, and it is only a matter of degree as to which crime he committed. This position is firmly supported by the record including, but not limited to, the following pieces of evidence. At trial, Pantovich’s son testified his father called him and told him he had killed the victim. (App.

p.178;2 – 4) The forensic pathologist, Dr. Cynthia Schandl, testified the victim died from “extreme blunt force trauma to the head and thorax” because she was “beaten to death.” (App. p.339;13, 16-17) Dr. Schandl testified in detail about the extensive injuries the victim suffered on direct examination, including testifying the bat recovered from the Pantovich could have created the injuries, and the blows were so severe they liquefied the underlying muscle and fat. (App. p. 340-376) The bat was found in the trunk of Pantovich’s car next to the victim’s dead body, which had sustained such extensive injuries to the head that she could only be identified by fingerprints. (App. p. 223;11-14; p. 300;5-13) Additionally, Pantovich made several inculpatory statements both while in the custody of law enforcement and to the media. (App. p.111;8 – 114;20; p.220;24 – 222;13; p.225;18 – 227;6)

Pantovich’s actions after the death of the victim warrant special consideration. After beating her to death with a baseball bat, Pantovich wrapped the victim in a comforter, placed a plastic bag over her head, and bound her with rope. (App. p.169;7-12; p.469;15-22; p.470;22 – 471;9; p.472;3-7) He testified the first thing to cross his mind was to get rid of the body, and he took precautions to keep blood from “get[ting] all over the trunk,” including putting a placemat underneath her body. (App. p.474;3-4 and 8-11) He also included the murder weapon in the trunk, though did not directly admit to doing so to dispose of evidence. (App. p.473;23 - 474;7) Pantovich did, however, admit to rolling up a rug at the location of the incident in order to hide evidence. (App. p. 474;16-22) After killing the victim, Pantovich did not call 911 to ask for help, but rather called his son. He further testified he felt he could not call 911 because he could not admit what he had done, and he thought he would get caught on the way to his son’s home. (App. p. 473;11 – 22) Pantovich even answered a wellness check phone call from a 911 operator and told her everything was fine before he left his home. (App. p.477;12 – 22) These actions are

not consistent with those of someone who has acted in self-defense or possesses good character. These are the actions of someone who has admitted to killing and attempting to dispose of evidence.

When considering the weight of the evidence against Pantovich, including his own testimony that he killed the victim, it is possible he could have been found guilty of murder rather than manslaughter. (App. p. 437;20 – 439;3) It is unreasonable to believe Pantovich would have been acquitted of this charge when considering the amount of evidence the State had against him. When applying this to the criteria as stated by Arnold, one can easily conclude good character evidence of Pantovich was probably not given much weight by the jury; this would not be because of a lack of instruction, but by the weight and “probative force” of other evidence against him. Arnold, 309 S.C. at 166, 420 S.E.2d at 839. For these reasons, this Court should find that, if it deems good character jury instructions are warranted, the trial court did not commit reversible error and, therefore, appellate counsel was not ineffective in failing to brief this issue.

**CONCLUSION**

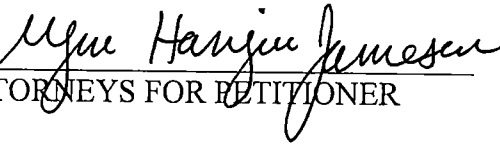
For the reasons stated above, this Court should grant the Petition for Writ of Certiorari and reverse the lower court's ruling.

Respectfully submitted,

ALAN WILSON  
Attorney General

JESSICA E. KINARD  
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By:   
ATTORNEYS FOR PETITIONER

October 5, 2017

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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OCT 05 2017

Certiorari to the Court of Appeals  
Appeal from Horry County

S.C. SUPREME COURT

The Honorable Benjamin H. Culbertson, Trial Judge  
The Honorable George C. James, Jr., Circuit Court Judge

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VLADIMIR PANTOVICH,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER,

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and Appendix, Supplemental Appendix and Second Supplemental Appendix has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Robert M. Dudek, Esquire**  
**PO Box 11589**  
**Columbia, SC 29211**

This 5<sup>th</sup> day of October, 2017

  
MALLORY MORRIS  
LEGAL ASSISTANT



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OCT 05 2017

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

October 5, 2017

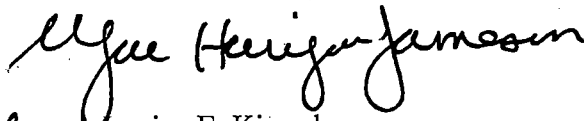
The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: Vladimir Pantovich, #326633 v. State of South Carolina**  
**Appellate Case No. 2017-000280**  
**Lower Court Case No. 2012-CP-22-0635**

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Petition for Writ of Certiorari and an original and one copy of the Appendix, Supplemental Appendix and Second Supplemental Appendix. By copy of this letter we are serving opposing counsel today.

Sincerely,

*for*   
Jessica E. Kinard

Assistant Attorney General  
SC Bar No. 77889

JEJ/mm  
Enclosures

cc: Robert M. Dudek, Esquire