

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 23 2019

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2016-002190

S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Petitioner.

**MOTION TO
ARGUE AGAINST PRECEDENT**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Petitioner Christopher D. Campbell’s criminal appeal is currently pending before this Court following a grant of a writ of certiorari. At present, the case is scheduled for oral argument on May 9, 2019, at 9:30 a.m.

II.

In his appellate brief, Campbell raised the following issue to this Court on certiorari:

In light of Petitioner’s presentation of good character evidence and his request for a jury instruction on good character, did the trial judge’s failure to instruct the jury that good character may, in and of itself, create a doubt as to guilt and should be considered by the jury violate the federal and state constitutions, which place the

burden of proof on the state and entitle all criminal defendants to a presumption of innocence?

As support for that issue, Campbell relied heavily on this Court's earlier decision in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010), just as defense counsel did at trial. In its appellate brief filed in response, the State contended the trial judge's jury instructions as presented were proper and sufficient, including on the issue of evidence of a defendant's good character. In addition to that particular contention, the State further argued against the precedent of the Lee-Grigg decision while contending the jury instruction identified in it is confusing, misleading, and unconstitutionally improper.

III.

Pursuant to Rule 217 of the South Carolina Appellate Court Rules, a party is not required to receive permission from an appellate court to argue against precedent in an appellate brief. See Rule 217, SCACR ("Permission of the appellate court shall not be required to argue against precedent in the brief."). However, a party must receive prior leave from the appellate court in order to argue against precedent during oral argument. See id. ("Oral argument against precedent shall not be permitted except upon leave of the appellate court in which the case is then pending, pursuant to motion in accordance with Rule 240 filed at least fifteen (15) days prior to oral argument.").

IV.

Through this motion, the State seeks leave from this Court to argue against the precedent of Lee-Grigg and related cases in a manner consistent with the arguments already raised in the State's Brief of Respondent. See Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 (" '[W]here 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.’ ” (quoting State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982))). In making this motion, undersigned counsel for Respondent certifies this motion complies with Rule 240, SCACR, and is being made at least fifteen days prior to oral argument before this Court.

WHEREFORE, Respondent prays this Court will permit argument against precedent during oral argument before this Court; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

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By



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COUNSEL FOR RESPONDENT

April 23, 2019

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PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Motion to Argue Against Precedent on Petitioner by sending two copies of the same to:

Susan B. Hackett, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2019.



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