

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

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S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Petitioner.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

O.T. Wallace Building
101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The Court of Appeals correctly affirmed the trial judge's rulings in regard to instructing the jury on the law because the trial judge's jury instructions, including his jury instruction on good character evidence, correctly conveyed the relevant and applicable South Carolina law to the jurors, apprised the jurors of the appropriate test for resolving the issues raised by the evidence presented during trial, and ensured the jurors were fully aware they could consider the evidence of Campbell's good character in determining whether he was guilty of the charged offenses. Moreover, Campbell's contention the good character evidence jury instruction identified in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010), should have been presented to the jury during his trial is wholly lacking in merit as that jury instruction constitutes a confusing, misleading, and unconstitutional comment on the facts in direct violation of the mandates of the South Carolina Constitution.

STATEMENT OF THE CASE

In May of 2011, Petitioner Christopher D. Campbell was arrested following an investigation into the armed robbery of a restaurant located on King Street in Charleston, South Carolina. In August of 2011, Campbell was indicted by the Charleston County Grand Jury for one count of armed robbery and one count of possession of a firearm during the commission of a violent crime. On October 22, 2014, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable W. Jeffrey Young, circuit court judge, presiding. At the conclusion of trial, the jury convicted Campbell as indicted. Following the verdict, the trial judge sentenced Campbell to concurrent terms of imprisonment of eighteen years for armed robbery and five years for possession of a firearm during the commission of a violent crime. Campbell then timely filed and perfected an appeal.

Subsequently, on appeal, the Court of Appeals issued an unpublished opinion in which it unanimously affirmed Campbell's convictions and sentence. State v. Campbell, Op. No. 2016-UP-367 (S.C. Ct. App. filed July 20, 2016). Thereafter, Campbell petitioned the Court of Appeals for rehearing, and the petition was denied. Campbell then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on August 22, 2017.

STATEMENT OF FACTS

On the morning of May 4, 2011, Christopher Riley, a shift leader at the Firehouse Subs restaurant located on King Street in Charleston, South Carolina, arrived for work some time before 8:00 a.m. and began preparing the restaurant to open for business that day.¹ (R. pp. 53-54; pp. 56-57). Shortly thereafter, Leslie Green, a meat slicer at the restaurant, arrived for work at approximately 8:15 a.m. to 8:20 a.m. and proceeded towards the back of the store to begin his shift.² (R. pp. 59-60).

Seconds later, a man wearing a hoodie and sunglasses entered the restaurant and walked towards Riley.³ (R. p. 60; p. 63; State's Ex. # 1 (Surveillance Footage)). In response, Riley tried to tell the man the restaurant was still closed, but the man ignored him, brushed past Green, pulled out a loaded .38-caliber revolver, pointed it at Riley's head, and ordered him to "let [him] get it." (R. pp. 60-61; pp. 65-66; pp. 89-90; State's Ex. # 1). Frightened and in shock, Riley then quickly proceeded to the back of the restaurant at gunpoint and began to access the safe to collect the restaurant's money for the robber. (R. p. 61; State's Ex. # 1).

While Riley was doing so, the robber stood over him with the gun while leaving his back completely turned to Green for roughly fifteen to twenty seconds. (R. p. 61; State's Ex. # 1). The robber then turned to Green and, with a smile on his face, asked Green to come over to where he was standing and get into the corner. (R. pp. 61-62; p. 71; p. 90). After that, the robber

¹ The restaurant opened each day at 10:30 a.m. and closed at 9:00 p.m. (R. p. 168).

² After arriving for work that morning, Riley left the front door unlocked despite the fact the restaurant was not yet open for business so Green would be able to get into the restaurant when he arrived for his shift. (R. pp. 58-59).

³ In the surveillance footage of the robbery, the robber can clearly be seen approaching the double-door entrance of the restaurant and appears to touch the handle of one of the doors with his left hand before touching the handle of the other door with the same hand, opening that door, and proceeding into the restaurant. (State's Ex. # 1).

had Riley place the restaurant's money into a book bag he brought into the restaurant with him and then rapidly fled from the scene with approximately \$1,400 in cash. (R. pp. 62-63; p. 67; State's Ex. # 1).

Once the robber was gone, Riley immediately called 911 to report the crime, and officers from the Charleston Police Department quickly arrived at the restaurant.⁴ (R. p. 34; p. 36; p. 67). Upon arriving, the officers spoke with Riley, who appeared to be extremely shaken-up, and Green, who appeared to be calm and collected, and they obtained a description of the suspect, who was described as a twenty-three to twenty-six-year-old man that was thin, was approximately 6'0" to 6'3" tall, had a goatee and mustache, and was wearing a striped hoodie, sunglasses, a dark shirt, sweatpants, and black-and-red sneakers.⁵ (R. pp. 37-38; pp. 42-43; pp. 63-65; p. 122). Furthermore, the officers reviewed the surveillance footage of the robbery, and several fingerprints were collected from the crime scene, including from the handles of the double-door entrance into the restaurant. (R. pp. 27-28; p. 130; p. 168; pp. 173-177; p. 179). However, the officers were unable to locate the robber that day. (R. pp. 36-37).

On the following day, Detective Richard Kennedy decided to speak with Green because he believed Green appeared to know the robber based on the suspicious manner in which the two interacted with one another during the robbery. (R. p. 124; pp. 126-127; pp. 130-132). The detective then met with Green at the police department, and Green denied knowing who committed the robbery. (R. p. 92; p. 124).

⁴ Riley's 911 call was received at 8:27 a.m. (R. p. 121).

⁵ During trial, one of the officers who spoke to Riley at the scene of the robbery indicated a dispatcher reported the robber had gold teeth. (R. p. 43; p. 50). However, Riley explained he never described the robber as having gold teeth and, instead, simply stated the robber had a goatee, which was likely misunderstood when he rapidly relayed the description of the robber to the dispatcher. (R. pp. 63-64).

Unconvinced by Green's denial, Detective Kennedy went to the restaurant the next day to again speak with Green, and Green indicated he wanted to talk with the detective somewhere else because he was uncomfortable speaking at that location. (R. p. 93; p. 125; p. 135). The two then returned to the police department, and Detective Kennedy again interviewed Green. (R. p. 93; p. 125). During that interview, Green acknowledged knowing the identity of the robber and initially claimed the robber was an individual called "L." (R. p. 93; pp. 126-127). However, as the interview progressed, he eventually admitted the robber was actually his cousin, Petitioner Christopher D. Campbell, and identified him by both name and sight. (R. p. 85; p. 94; p. 116; p. 126; p. 128).

Based on Green's admissions, Detective Kennedy arrested Green and obtained an arrest warrant for Campbell. (R. p. 84; pp. 128-129). Later that day, officers arrested Campbell, who matched the physical description of the robber, at his home. (R. p. 129). They then obtained a search warrant for Campbell's residence and, during the ensuing search, discovered a pair of sneakers consistent with the description of the sneakers worn by the robber. (R. pp. 129-130; pp. 140-141; p. 155).

After that, Detective Lamar Williams of the Charleston Police Department advised Campbell of his rights and interviewed Campbell in regard to the robbery. (R. p. 138; pp. 141-143). At the outset of the interview, the detective asked Campbell if he knew anything about the Firehouse Subs restaurant located on King Street, and Campbell denied knowing anything about that particular restaurant. (R. p. 143). Detective Williams then asked Campbell what he did on the morning of the robbery, and Campbell claimed he stayed home because it was his birthday. (R. p. 145). As the interview continued, Detective Williams brought up the subject of Green, and Campbell quickly admitted he dropped Green off at the Firehouse Subs restaurant shortly

before the robbery in direct contradiction of his earlier disavowal of having any knowledge regarding that restaurant. (R. pp. 146-147; p. 152). However, Campbell insisted he returned home after dropping Green off and denied committing the robbery. (R. p. 150).

Thereafter, Anna Kerstein, a latent print examiner for the Charleston Police Department and an expert in fingerprint analysis, analyzed the fingerprints that had been collected at the crime scene shortly after the incident. (R. pp. 189-190; p. 192; p. 199). During that analysis, Kerstein discovered a majority of the fingerprints either did not have sufficient detail for comparison purposes or could not be connected to any particular individual. (R. p. 199). However, Kerstein determined Campbell's left thumb print definitively matched the fingerprints collected from the right exterior door handle and left exterior door handle of the restaurant following the robbery.⁶ (R. pp. 199-201).

Subsequently, Campbell was indicted for armed robbery and possession of a firearm during the commission of a violent crime, and he proceeded to trial. (R. pp. 2-3; pp. 317-318; pp. 320-321). During trial, the surveillance footage of the robbery was admitted into evidence and played for the jury, and the law enforcement officers and other individual involved in the investigation into the robbery testified in regard to the investigative discoveries that led to the arrests of Green and Campbell for the crimes. (R. pp. 28-29; pp. 34-39; p. 68; pp. 120-130; pp. 140-141). Additionally, Riley and Green offered their eyewitness accounts of the robbery, and Green identified Campbell as the culprit. (R. pp. 53-63; pp. 85-91). Furthermore, Detective Williams testified about Campbell's inconsistent statements following his arrest, and Kerstein

⁶ During trial, testimony was presented indicating a fingerprint would typically only remain in place for a short time on a commonly-touched surface, such as a door handle. (R. p. 182; p. 188; p. 207).

presented the results of her expert analysis of the fingerprints recovered from the crime scene that implicated Campbell in the robbery. (R. pp. 141-143; pp. 145-147; p. 152; pp. 199-201).

Thereafter, the State rested its case, and defense counsel called several witnesses in Campbell's defense. (R. p. 209; p. 224; p. 230). Specifically, Campbell's grandmother, Martha Campbell, testified Campbell liked to work, liked to help people, was "okay, nice, [and] kind," and was not the kind of person to rob a Firehouse Subs restaurant because he "wouldn't have no reason to." (R. p. 209; pp. 211-212). Similarly, Campbell's uncle, Leroy Campbell, stated Campbell was a "nice, easy going guy" and indicated he could not personally see Campbell stealing from any store. (R. p. 224). However, he qualified that statement by candidly admitting he "of course" would say that because Campbell was his nephew. (R. p. 224). Likewise, George Martin, another of Campbell's uncles, asserted Campbell was hard-working, "very impressive, sharp, [and] articulate" and would not have committed the charged offenses. (R. pp. 230-232; pp. 235-236).

After those witnesses presented their testimony, Campbell elected to also testify in his own defense and denied robbing the Firehouse Subs restaurant.⁷ (R. p. 238). Instead, he claimed he dropped Green off at the restaurant around 7:40 a.m., returned home, arrived there around 8:00 a.m., and remained there until he received a frantic call from Green an hour or two later during which Green indicated the restaurant had been robbed and asked for his car to be returned. (R. pp. 241-242). Campbell stated he then returned downtown with his uncle, dropped off Green's car, and was later visited by Green, who told him about the robbery. (R. p. 242). After that, Campbell stated he was arrested by the police a few days later, was questioned about the robbery of the restaurant, and initially lied to the officer during the interview because he

⁷ During his testimony, Campbell admitted he had previously been convicted of obtaining property by false pretenses. (R. p. 240).

believed the officer had acted unprofessionally towards him. (R. pp. 242-244; pp. 249-250; p. 257). However, Campbell insisted he did not commit the robbery while suggesting his fingerprints were located at the crime scene because he had visited the restaurant on the night before the robbery and specifically remembered touching both door handles when he went inside. (R. pp. 245-246).

Following Campbell's testimony, the defense rested its case. (R. p. 260). Thereafter, defense counsel requested a charge on good character evidence while citing to this Court's decision in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010). (R. p. 264). After discussing the issue with the parties, the trial judge agreed to add a good character evidence charge to his jury instructions. (R. p. 265-266). Then, following a recess, the parties reviewed the trial judge's intended jury instructions, and both defense counsel and the solicitor confirmed those jury instructions looked correct. (R. p. 266).

Subsequently, the parties presented their closing arguments to the jury. (R. pp. 267-290). As part of his closing argument, defense counsel briefly noted to the jury Campbell's relatives had testified he was a "good guy" and did not have the character to do something like the charged crimes. (R. p. 277). Thereafter, the trial judge instructed the jury on the applicable law. (R. pp. 290-302). Specifically, during his jury instructions, the trial judge explained the elements of the charged offenses, advised the jurors Campbell was presumed to be innocent and did not have to prove his innocence, affirmed the State had the burden of proving Campbell's guilt beyond a reasonable doubt, thoroughly defined reasonable doubt for the jurors, noted the jurors had to weigh **all** the evidence and should find Campbell not guilty unless they were convinced of his guilt beyond a reasonable doubt, and instructed the jurors they had to determine the credibility of the witnesses and could believe several witnesses over a single witness or a single

witness over several witnesses. (R. pp. 293-300). Furthermore, regarding good character evidence, the trial judge instructed the jury as follows:

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

(R. p. 298).

Following the jury instructions, the jurors left the courtroom, and the trial judge asked if there were any objections to the charge. (R. p. 302). In response, defense counsel asserted:

I may have missed it, Judge, just regarding the good character, the language about evidence of good character in and of itself may create a doubt as to guilt. I thought maybe it was diluted a little bit as far as, you know, considering it with all the other evidence, with the law that they consider that in and of itself as evidence.

(R. p. 302). The trial judge then noted defense counsel’s objection while indicating he was satisfied with the jury instructions as presented, and the jurors were permitted to begin their deliberations. (R. p. 302; p. 304).

Subsequently, at the conclusion of trial, the jury convicted Campbell of both indicted offenses. (R. p. 310). Following the verdict, the trial judge sentenced Campbell to an aggregate term of imprisonment of eighteen years. (R. p. 315). Campbell then timely filed and perfected an appeal. (App’x p. 1).

On appeal, the Court of Appeals unanimously affirmed Campbell’s convictions and sentence. (App’x p. 1). In affirming, the Court of Appeals relied upon the following authorities:

State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) (“To warrant reversal, a trial [court]’s refusal to give a requested jury charge must be both erroneous and prejudicial to the

defendant.”); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004) (“In general, the trial court is required to charge only the current and correct law of South Carolina.”); id. at 665, 594 S.E.2d at 472-73 (“A jury charge is correct if it contains the correct definition of the law when read as a whole.”); State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002) (“The substance of the law must be charged to the jury, not particular verbiage.”).

(App’x pp. 1-2).

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's rulings in regard to instructing the jury on the law because the trial judge's jury instructions, including his jury instruction on good character evidence, correctly conveyed the relevant and applicable South Carolina law to the jurors, apprised the jurors of the appropriate test for resolving the issues raised by the evidence presented during trial, and ensured the jurors were fully aware they could consider the evidence of Campbell's good character in determining whether he was guilty of the charged offenses. Moreover, Campbell's contention the good character evidence jury instruction identified in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010), should have been presented to the jury during his trial is wholly lacking in merit as that jury instruction constitutes a confusing, misleading, and unconstitutional comment on the facts in direct violation of the mandates of the South Carolina Constitution.

Campbell contends the Court of Appeals reversibly erred by affirming the trial judge's ruling regarding the sufficiency of the jury instruction presented on evidence of good character. In support of that contention, Campbell maintains the trial judge's jury instruction on good character evidence was insufficient because it did not include a statement to the jury indicating evidence of good character in and of itself may create a doubt as to guilt as was stated in this Court's opinion in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010). Contrary to Campbell's contentions, the trial judge's jury instructions, including his jury instruction on good character evidence, correctly conveyed the relevant and applicable South Carolina law to the jurors, afforded the jurors the appropriate test for resolving the issues raised by the evidence presented during trial, and ensured the jurors were aware they could consider Campbell's good character evidence in determining whether the State had proven Campbell's guilt beyond a reasonable doubt. Therefore, the additional good character evidence instruction requested by Campbell was unnecessary under the circumstances, and the trial judge's failure to give that instruction was not erroneous or prejudicial to Campbell. As a result, the Court of Appeals correctly affirmed Campbell's convictions and sentence. Moreover though, the good character evidence jury instruction from the Lee-Grigg decision Campbell contends should have been

given during his trial constitutes an unconstitutional comment on the facts for the same reasons a jury instruction on the statutory non-corroboration language from S.C. Code Ann. § 16-3-657 was recently found to be improper and unconstitutional by this Court in its decision in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Accordingly, this Court should affirm Campbell's convictions while also overruling the Lee-Grigg decision in light of its incompatibility with the South Carolina Constitution.

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge is required to charge only the current and correct law of South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and **does not** have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). Importantly, a trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

In reviewing a trial judge's jury instructions for error, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable

juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”); see also 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 the case sub judice, the trial judge, through his jury instructions, identified the correct burden of proof for the jury, accurately explained the burden of proof rested solely on the State, thoroughly defined the concept of reasonable doubt, and correctly conveyed Campbell was presumed to be innocent and had no burden whatsoever to prove anything during his trial. Additionally, the trial judge specifically advised the jurors they had to weigh all the evidence, instructed them on evaluating the credibility of the witnesses and testimony, and informed them they should find Campbell not guilty unless they were convinced of his guilt beyond a reasonable doubt. Furthermore, the trial judge singled out the good character evidence that had been presented during trial, directly called the jurors’ attention to that evidence, advised the jurors Campbell’s good character evidence would be inconsistent with a finding of guilt, told them they were responsible for weighing that evidence just like all the other evidence that had been presented, and specifically informed the jurors they were permitted to consider that evidence in determining whether Campbell was guilty of the charged crimes.⁸ Viewing those

⁸ Notably, the good character jury instruction given by the trial judge in Campbell’s case was fully consistent with the model good character jury instruction contained in the most recently-available version of the South Carolina Judicial Department’s general sessions bench book, which read: “THE DEFENDANT HAS PRESENTED EVIDENCE OF HIS [HER] GOOD REPUTATION AND CHARACTER TO SHOW THAT IT WOULD BE INCONSISTENT

jury instructions together as a whole, the trial judge's jury instructions correctly conveyed the relevant and applicable South Carolina law to the jurors and afforded the jurors the appropriate test for resolving the issues raised by the evidence in Campbell's case. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); see also Burkhart, 350 S.C. at 263, 565 S.E.2d at 304 ("Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues."); cf. United States v. Foley, 598 F.2d 1323, 1336-1337 (4th Cir. 1979) (finding no error in the trial judge's refusal to instruct the jury good character evidence alone could establish a doubt as to guilt where the jury instructions presented by the trial judge "properly allowed the jury to consider [good character evidence] along with other evidence, and clearly did not suggest that the jury might not find in the character evidence 'alone' a basis for reasonable doubt"): As a result, the trial judge did not commit reversible error in instructing the jury on the law.

In arguing to the contrary, Campbell contends the trial judge's instruction on good character evidence was not sufficient because it did not contain specific verbiage informing the jury evidence of good character in and of itself can establish a reasonable doubt as was stated in this Court's earlier decision in the Lee-Grigg case. See State v. Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010) (" '[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

WITH THE DEFENDANT COMMITTING THE CRIME. THE WEIGHT YOU GIVE TO THAT TESTIMONY, LIKE ALL OTHER TESTIMONY IN THE CASE, IS FOR YOU TO DECIDE IN YOUR GOOD JUDGMENT. YOU MAY CONSIDER TESTIMONY OF THE DEFENDANT'S GOOD CHARACTER ALONG WITH ALL THE OTHER EVIDENCE IN DECIDING WHETHER OR NOT THE DEFENDANT COMMITTED THE CRIME." 2015 Suggested General Sessions Jury Instructions, <http://www.sccourts.org/juryCharges/GSInstructions.2015.pdf> (last visited Nov. 30, 2015).

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))). Importantly though, while such verbiage has been found to constitute an appropriate instruction in regard to good character evidence, the good character jury evidence instruction actually given by the trial judge in Campbell’s case was adequate to ensure the jurors knew they could consider the good character evidence that had been presented in determining Campbell’s credibility and culpability and were aware such evidence could impact their determination of whether the State had met its burden of proving Campbell’s guilt.⁹ See State v. Holmes, 277 S.C. 232, 234, 285 S.E.2d 353, 354 (1981) (recognizing a trial judge does not have to use any particular language when instructing the jury on the law so long as the instructions given adequately cover the relevant and applicable law). Thus, the jurors in Campbell’s case were unquestionably **not** in a situation where they were unaware they could consider the evidence of Campbell’s good character in deciding his case. Cf. Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 (finding reversible error in

⁹ Interestingly, the first reference in South Carolina to an instruction indicating “that evidence of good character and good reputation may in and of itself create a doubt as to guilt” arose in State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982). In that case, this Court cited to State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947), as support for such an instruction. Green, 278 S.C. at 240, 294 S.E.2d at 335. However, in Lyles, this Court merely recognized good character evidence could be considered by the jury in determining whether the defendant committed the charged crime while specifically noting it was for the jury to determine what force and effect that evidence should have when it was considered in connection with the other evidence presented during trial. Lyles, 210 S.C. at 92, 41 S.E.2d at 627. Similarly, in the authorities cited by Lyles in regard to good character evidence, no statement was made indicating the jury should be instructed good character evidence standing alone in and of itself can establish a doubt as to guilt. See State v. Hill, 129 S.C. 166, 170, 123 S.E. 817, 818 (1924) (finding a jury instruction indicating the jury can take evidence of the defendant’s good reputation into consideration in determining whether he committed a crime to be a proper instruction on the law regarding good character evidence); State v. Barth, 25 S.C. 175, 177 (1886) (stating “it is the privilege of the accused, in all cases where character is admissible, to put in evidence his good character without regard to the other proofs in the case, and **it is for the jury to consider it in connection with the other evidence, and determine what force and effect it should have**” (emphasis added)).

the failure to instruct the jury on good character evidence because “without **an** instruction the jury was not aware that it could consider this evidence in determining [Lee-Grigg’s] credibility and culpability” (emphasis added)). Under those circumstances, any further instruction on good character evidence was unnecessary to ensure the jurors were capable of correctly evaluating the evidence presented during trial, including the good character evidence, and reaching a correct verdict in Campbell’s case. See State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980) (“While the charge would not have been inappropriate, we are of the opinion that the judge’s charge, when considered as a whole, adequately covered the applicable law under the facts of this case. The Constitution of this State requires that the trial judge declare the law, but no particular verbiage is necessary. It is sufficient if the precepts stated to the jury adequately cover that law which is applicable.”).

Because 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 Campbell’s case, the trial judge committed no error in instructing the jury on the law. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 (“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.”). Accordingly, even though an instruction indicating good character evidence in and of itself can establish a doubt as to guilt has previously been recognized as a proper statement of law in South Carolina, the jury instructions as given were not erroneous and did not justify or warrant the grant of a new trial.¹⁰ See Rabon,

¹⁰ Notably, the simple fact a statement of law might be correct does not necessarily justify an instruction on that statement of law or mean such an instruction is necessary or required in order for the jurors to be able to carry out their roles during trial. See, e.g., State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 (2009) (“It 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.’ ” (citation omitted)). As an example, Green directly testified during trial he witnessed Campbell commit the robbery, and his testimony, if accepted

275 S.C. at 462, 272 S.E.2d at 636 (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.”). As a result, the Court of Appeals correctly affirmed the trial judge’s rulings in regard to instructing the jury along with Campbell’s convictions and sentence.¹¹

as true, could **alone** establish Campbell’s guilt beyond a reasonable doubt in and of itself. However, an instruction indicating eyewitness testimony can alone prove a defendant’s guilt beyond a reasonable doubt or eliminate any doubt as to guilt would indisputably constitute an unnecessary and improper jury instruction during a trial despite the fact it would constitute an accurate statement of law. See State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (“Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt. It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.”); see generally State v. Smith, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986) (“The trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused or as to controverted facts.”); State v. Deas, 202 S.C. 9, 14, 23 S.E.2d 820, 822 (1943) (“Of course, under our Constitution and practice the jury are the sole judges of the facts in criminal trials and it is error for the Judge to communicate his views of them to the jury.”). Therefore, much like an instruction on the ability of eyewitness testimony to alone establish guilt or eliminate doubt as to guilt, an extra instruction on good character evidence indicating such evidence can alone establish a doubt was not necessary in Campbell’s case in light of the fact the jurors had specifically been instructed they could consider the good character evidence that had been presented in determining whether Campbell was guilty of the charged crimes. See Michelson v. United States, 335 U.S. 469, 474, n. 5 (1948) (“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.’ ” (citation omitted)).

¹¹ Significantly, even assuming the trial judge somehow erred in instructing the jury on good character evidence, any error was nonetheless harmless and non-prejudicial in light of the fact the jury was unquestionably aware it could consider the good character evidence based on the correct instructions that were actually given, which prevented the prejudice found by this Court in Lee-Grigg from occurring in Campbell’s case, coupled with the fact the evidence of

Moreover though, the jury instruction Campbell requested from this Court's decision in Lee-Grigg constituted an unconstitutional and impermissible comment on the facts. Therefore, neither the trial judge's method of the instructing the jury in Campbell's case nor the decision of the Court of Appeals affirming Campbell's convictions was erroneous based on the alleged failure of the trial judge to instruct the jury in a constitutionally improper manner. See State v. Hartley, 307 S.C. 239, 240-241, 414 S.E.2d 182, 183-184 (Ct. App. 1992) (rejecting a contention the trial judge erred by refusing to give a requested charge where that requested charge would have constituted an impermissible comment on the facts).

Critically, as this Court recently recognized in its decision in Stukes, the South Carolina Constitution directly bars judges in our state from commenting to the jury on the facts of a case. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). In Stukes's case, the trial judge instructed the jury on the statutory non-corroboration language from S.C. Code Ann. § 16-3-657 simply by informing the jurors the

Campbell's guilt, which included Green's eyewitness identification of Campbell as the perpetrator of the crimes, the incriminating fingerprints recovered from a surface touched by the robber, and the testimony regarding Campbell's false statements after he was arrested, overwhelmingly established Campbell's guilt for the charged offenses. See Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 (finding the failure to instruct the jury on good character evidence to be prejudicial because "without an instruction the jury was not aware that it could consider this evidence in determining [Lee-Grigg's] credibility and culpability"); Green, 278 S.C. at 240, 294 S.E.2d at 335 ("[T]he refusal in this case to instruct the jury on the issue of good character was not reversible error, because we are not convinced that such refusal prejudiced the appellant."); see also State v. Logan, 405 S.C. 83, 94, n. 8, 747 S.E.2d 444, 449 (2013) ("The trial court's jury instruction, as a whole, properly conveyed the applicable law. Thus, any conceivable error [in failing to give a requested circumstantial evidence jury instruction] was harmless beyond a reasonable doubt." (citations omitted)); State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt); see generally State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding the erroneous admission of evidence was harmless where its impact was minimal in the context of the entire record).

testimony of a victim in a sexual assault case need not be corroborated, which was an unquestionably accurate statement of law. State v. Stukes, 416 S.C. 493, 495-496, 787 S.E.2d 480, 481 (2016). On appeal, this Court found that particular jury instruction to be unconstitutionally erroneous and reversed. Id. at 496, 787 S.E.2d at 481. In reversing, this Court concluded a jury instruction on the statutory language of S.C. Code Ann. § 16-3-657 is confusing and “violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of a case.” Id. at 499, 787 S.E.2d at 483. Specifically, this Court explained:

[I]t 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. Moreover, it is inescapable that this charge confused the jury. Specifying this qualification applies to one witness creates the inference the same is not true for the others.

Id. at 499-500, 787 S.E.2d at 483 (footnote omitted).

Similar to the jury instruction found to be improper in Stukes, the good character evidence jury instruction contained in the Lee-Grigg decision and requested by Campbell during his trial singles out just one type of evidence presented during the trial – good character evidence offered in a criminal defendant’s defense – and addresses the weight of that singled-out evidence by stating such evidence in and of itself may create a doubt as to the defendant’s guilt. See Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898 (“ ‘[E]vidence 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.’ ” (citation omitted)). Significantly, by emphasizing a defendant’s good character evidence to the jury and directly addressing the potential weight of the evidence, such a jury instruction could be construed as

expressing an opinion on that specific type of evidence to the jury and, as a result, constitutes an impermissible and unconstitutional comment on the facts. Cf. Stukes, 416 S.C. at 499, 787 S.E.2d at 483 (“By addressing the veracity of a victim’s testimony in its instruction, the trial court emphasizes the weight of that evidence in the eyes of the jury.”); State v. Cheeks, 401 S.C. 322, 328-329, 737 S.E.2d 480, 484 (2013) (“[C]harging a jury that ‘actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use’ unduly emphasizes that evidence, and deprives the jury of its prerogative both to draw inferences and to weigh evidence.”); Hartley, 307 S.C. at 241, 414 S.E.2d at 184 (“[T]he trial judge was requested, in effect, to charge that particular evidence (*i.e.*, evidence of lack of motive) is entitled to receive weight or consideration. The requested charge is clearly a charge on a fact that the jury was to determine.”). Furthermore, such an instruction has a high potential to confuse the jury based on the fact it indicates good character evidence **in and of itself** could create a doubt as to guilt, which is a determination solely for the jurors acting as fact-finders to make and which could lead jurors to improperly consider that evidence in isolation while ignoring the other evidence presented during trial. See State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975) (“It is . . . well settled that the weight and sufficiency of the evidence is for the jury. It is the province of that body to weigh the evidence and decide on its sufficiency in reaching a verdict.”); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) (“The task of determining the weight of the evidence lies within the exclusive province of the jury.”); cf. Stukes, 416 S.C. at 499, 787 S.E.2d at 483 (“Specifying this qualification applies to one witness creates the inference the same is not true for others.”); State v. Cheeks, 408 S.C. 198, 200, 758 S.E.2d 715, 716 (2014) (finding a “strong evidence” jury instruction to be improper where it

“unduly emphasized the evidence” and “deprived the jury of its prerogative to draw inferences and to weigh evidence”).

Beyond those problems and issues with that particular jury instruction, the good character instruction from Lee-Grigg is not even entirely true or accurate. As an example of its inaccurate and misleading nature, take, for instance, a hypothetical situation in which the State’s evidence conclusively and irrefutably established the defendant was guilty of the charged crime and the defendant was, in fact, guilty as charged. In such a situation, could evidence of the defendant’s good character in and of itself establish a doubt as to the defendant’s guilt? The answer necessarily must be no since the defendant’s guilt in that hypothetical situation is both known and proven to an absolute certainty. See State v. Graham, 33 Conn. App. 432, 444, 636 A.2d 852, 858 (Conn. App. Ct. 1994) (“Since a person of previous good character may commit a crime, proof of good character is not a defense to a criminal charge. . . . If the facts establish beyond a reasonable doubt that the accused committed the charged crime, then evidence of good character is ‘no longer of any weight.’ ” (citations omitted)). Thus, evidence of the defendant’s good character in such a situation could not logically or lawfully create a doubt as to guilt, which means the Lee-Grigg good character instruction as it currently exists could only serve to confuse the jurors and potentially mislead them into believing jury nullification was appropriate regardless of a defendant’s guilt so long as the defendant possessed good character. See Ducett v. State, 186 Ala. 34, 38, 65 So. 351, 352 (Ala. 1914) (holding the trial judge committed no error by refusing to instruct the jury “proof of defendant’s general good character, taken in connection with the other evidence in the case, may be sufficient to generate a reasonable doubt of the defendant’s guilt, requiring his acquittal” because such a charge could have potentially been misinterpreted by the jury to mean “good character alone may be a sufficient reason for acquittal,

though the evidence upon the whole showed his guilt beyond a reasonable doubt”); see also United States v. Thomas, 116 F.3d 606, 615 (2nd Cir. 1997) (“[T]he power of juries to ‘nullify’ or exercise a power of lenity is just that – a power; it is by no means a right **or something that a judge should encourage or permit** if it is within his authority to prevent.” (emphasis added)); United States v. Muse, 83 F.3d 672, 677 (4th Cir. 1996) (“Although a jury is entitled to acquit on any ground, a defendant is not entitled to inform the jury that it can acquit him on grounds other than the facts in evidence, i.e. a jury has the power of nullification but defense counsel is not entitled to urge the jury to exercise this power. If defense counsel attempts to do so, the trial court may make an appropriate corrective instruction[.]” (citation and footnote omitted)); United States v. Washington, 705 F.2d 489, 494 (D.C. Cir. 1984) (“A jury has no more ‘right’ to find a ‘guilty’ defendant ‘not guilty’ than it has to find a ‘not guilty’ defendant ‘guilty,’ and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power. Any arguably salutary functions served by *inexplicable* jury acquittals would be lost if that prerogative were frequently exercised; indeed, calling attention to that power could encourage the substitution of individual standards for openly developed community rules.”); cf. Graham, 33 Conn. App. at 444-445, 636 A.2d at 858 (“[A] trial court may instruct a jury that where it determines after considering all the evidence, including character evidence, that the facts establish guilt beyond a reasonable doubt, evidence of good character will not by itself warrant an acquittal. . . . The trial court instructed the jury to consider character evidence along with all of the other evidence in determining whether a reasonable doubt existed as to the defendant’s guilt. **The court also informed the jury that if other evidence implicated the defendant in the charged crime, good character evidence in**

and of itself would not be sufficient to raise a reasonable doubt. The instructions as a whole were proper and the defendant was not constitutionally deprived of a right due her or of a fair trial.” (citations omitted and emphasis added)).

For all those reasons, the good character evidence jury instruction identified in Lee-Grigg and requested by Campbell during his trial constitutes a confusing, problematic, impermissible, and unconstitutional comment on the facts, and, as a result, it should not and cannot properly be presented to a jury in South Carolina. See State v. Thorne, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960) (“The Judge must be careful to avoid expressing, or even intimating, any opinion, as to the facts, and if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury is the exclusive judge of the facts, and the true meaning and real object is that the jury must be left to form its own judgment, unbiased by any expressions, or even intimations, of opinion by the Judge.”). Accordingly, in addition to affirming Campbell’s convictions, this Court should overrule the Lee-Grigg decision just as this Court recently overruled its earlier precedent permitting a jury instruction on the statutory non-corroboration language through its decision in Stukes because the Lee-Grigg decision permits the presentation of a confusing, misleading, and unconstitutional jury instruction incompatible with the South Carolina Constitution.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed and this Court's earlier decision in State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010), should be overruled due to its good character evidence jury instruction's confusing and misleading nature and incompatibility with Article V, Section 21 of the South Carolina Constitution.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 12, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies this Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 

Mark R. Farthing
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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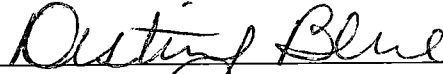
Petitioner.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Brief of Respondent on Petitioner by sending two copies of the same to:

Susan B. Hackett, Esquire
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 12th day of October, 2017.


DESTINY BLUE
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727