

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Supreme Court County
William Jeffrey Young, Circuit Court Judge

RECEIVED

SEP 18 2017

THE STATE,

S.C. SUPREME COURT
RESPONDENT,

V.

CHRISTOPHER D. CAMPBELL,

PETITIONER

APPELLATE CASE NO 2016-002190

BRIEF OF PETITIONER

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

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?

STATEMENT

Procedural history

On August 1, 2011, a Charleston County grand jury indicted Petitioner for armed robbery (2011-GS-10-4830) and possession of a firearm during the commission of a violent crime (2011-GS-10-4831). R. 317. The state, represented by Alexander J. Ziegler and Benjamin C. Simpson, called the case for trial before the Honorable William Jeffrey Young and a jury on October 21, 2014. Jason T. King and Luke Malloy represented Petitioner. R. 1. The jury found Petitioner guilty on both counts. R. 310, lines 5-14. Judge Young sentenced Petitioner to eighteen years' imprisonment for armed robbery and to five years' imprisonment for the weapon. He ordered the sentences to be served concurrently. R. 315, lines 1-7; R. 319.

Petitioner filed a timely notice of appeal, which was perfected by undersigned counsel. On July 20, 2016, the Court of Appeals issued an unpublished, *per curiam* opinion without the benefit of oral argument. State v. Campbell, 2016-UP-367 (S.C. Ct. App. filed July 20, 2016); App. 1-2. Undersigned counsel filed a petition for rehearing on August 4, 2016. App. 3-10. On September 26, 2016, the Court of Appeals denied the petition. App. 11.

Petitioner filed his petition for writ of certiorari on October 26, 2016. The state filed its return on November 8, 2016. On August 22, 2017, this Court granted the writ. This brief follows.

Evidence presented at trial

On the morning of May 4, 2011, Christopher Riley arrived at Firehouse Subs restaurant on King Street in Charleston to start his shift. R. 52, line 24 – R. 53, line 3; R. 53, line 21 – R. 54, line 5. The restaurant was not open yet. R. 54, line 24 – R. 55, line 9. Shortly after Riley's arrival, another employee, Leslie Green, arrived through the unlocked front door. R. 57, lines 14-19; R. 58, line 11 – R. 59, line 11. Seconds later, an unknown individual entered, pointed a fully loaded .38

Smith and Wesson revolver, and demanded money. R. 60, line 10 – R. 61, line 3; R. 65, line 21 – R. 66, line 15; R. 131, lines 1-6. After Riley placed the money in a green and black bookbag, the robber left. R. 61, line 4 – R. 63, line 2; R. 67, lines 8-10.

Riley called the police to report the robbery and provide a description of the robber. R. 67, lines 18-20; R. 64, lines 5-23. While Riley and Green waited for the police to arrive, the two walked in and out of the restaurant using the front door – the same one used by the robber. R. 37, lines 5-11; R. 78, line 25 – R. 79, line 20. When the police arrived, Riley gave another description of the robber. R. 38, line 1 – R. 39, line 2. The first officer on the scene indicated in his report that the Riley claimed the robber had gold teeth. However, during the trial, the officer claimed this was information relayed by dispatch, not from Riley. He said his report was “not entirely accurate as to what happened.” R. 38, lines 18-23; R. 41, line 24 – R. 43, line 21. At the trial, Riley described the robber as wearing “black sunglasses, black and white zipped down hoodie, gray sweatpants, and black and red Jordans” and carrying a “green and black bookbag.” Riley further claimed the robber had a goatee and a moustache. R. 63, lines 3-17. Riley estimated the robber was between 6’1” and 6’3” in height, between twenty-three and twenty-six years of age, and had dark brown skin. R. 65, lines 4-10.

The police secured the video surveillance from the restaurant showing the robbery. R. 27, line 9 – R. 29, line 7; State’s Exhibit #1.¹ One of the officers thought the robber’s interactions with Green were peculiar and suspicious. Based only on their suspicions, the officers interrogated Green at the police station for several hours the day after the robbery. R. 92, lines 15-18; R. 103, line 21 – R. 104, line 2; R. 106, lines 3-5; R. 124, lines 1-7; R. 126, line 22 – R. 129, line 21; R. 130, lines 23-25; R. 131, line 8 – R. 132, line 15. Throughout the course of the interrogation, Green denied being

¹ State’s Exhibit #1 is on file with this Court.

involved in the robbery and denied knowing the identity of the robber. R. 92, lines 19-21; R. 104, lines 9-13; R. 105, line 25 – R. 106, line 2; R. 105, line 25 – R. 106, line 2; R. 124, lines 8-10. Repeatedly, the police told Green of their suspicions that he was involved and that if he failed to cooperate they were “coming at” him. R. 105, lines 14-24; R. 134, lines 6-24. Although the officers were not satisfied with Green’s responses, the officers released Green. However, the following day, the officers interrogated Green again. R. 92, line 24 – R. 93, line 4; R. 106, lines 6-8; R. 125, line 13 – R. 126, line 2.

During the second interrogation, one officer told Green, “I take two lies, an initial and a backup. Once you tell me the backup lie, I burn you.” R. 107, lines 5-14; R. 135, lines 14-21. During this interrogation, Green initially told the officers that “some guy named ‘L’” was the robber. R. 93, lines 5-10; R. 107, lines 15-24; R. 126, lines 19-21; R. 135, line 22 – R. 136, line 4. The police did not believe Green’s claim about “L” and continued the interrogation. Eventually, Green, exasperated and having been threatened with arrest, told the police that Petitioner was the robber. R. 93, line 2 – R. 94, line 5; R. 108, lines 6-7; R. 108, lines 13-20; R. 126, lines 11-18. Repeatedly, the police showed Green a photograph of Petitioner asking if Petitioner were the robber. Despite his initial protestations, Green ultimately succumbed to the pressure and agreed with the police that Petitioner was the robber. R. 94, lines 8-25; R. 109, lines 3-9; R. 128, lines 2-17.

Ultimately, law enforcement charged Green with armed robbery for his role. R. 84, lines 7-12; R. 99, lines 14-15. Subsequently, Green entered into an agreement with the prosecutor to testify against Petitioner. Oddly, the agreement provided no promises in return for Green’s testimony, but Green hoped to get the charge dropped. R. 84, line 13 – R. 85, line 4; R. 98, line 18 – R. 99, line 1; R. 100, line 15 – R. 101, line 6. Green and Petitioner were third cousins who lived close to each

other on May 4, 2011. Petitioner agreed to drive Green to work at Firehouse Subs that morning. R. 85, line – R. 66, line 15; R. 240, line 23 – R. 242, line 1. Green claimed Petitioner dropped him off in front of the restaurant. R. 87, lines 2-6; R. 101, lines 7-11. Green also claimed Petitioner, armed with a gun, walked into the restaurant after Green. R. 89, line 15 – R. 90, line 5; R. 101, lines 10-14. Green further claimed Petitioner got the money and left. R. 91, lines 1-5. Petitioner returned Green's car to the parking lot and left the keys in the car for Green to use when he got off from work. R. 91, line 17 – R. 92, line 2; R. 103, lines 8-12; R. 242, lines 2-16.

After arresting Petitioner on May 6, 2011, law enforcement executed a search warrant on the home Petitioner shared with his grandmother and uncle. R. 128, line 19 – R. 130, line 4. The police found a pair of Nike sneakers under Petitioner's uncle's bed. R. 141, lines 1-7; R. 154, line 18 – R. 157, line 19; R. 213, line 18 – R. 215, line 7; R. 227, lines 3-20; R. 229, lines 23-25; R. 247, lines 3-13; State's Exhibits #22 & #23.² The police found no other evidence during the search connecting Petitioner to the robbery – no gray sweatpants, no hoodie, no green and black bookbag filled with money, no firearm, no ammunition. Quite simply, the police found no physical evidence in Petitioner's home implicating him in the robbery. When police interrogated Petitioner and at trial, Petitioner denied having any involvement in the robbery of Firehouse Subs. R. 141, lines 14-22; R. 238, lines 6-8; R. 247, lines 14-20. Petitioner explained that he had supper at Firehouse on May 3, 2011, the evening before the robbery, which explained why his fingerprints were on the door. R. 174, line 2 – R. 180, line 4; R. 245, line 7 – R. 246, line 13. Further, Petitioner explained that he dropped Green off at work on May 4, 2011 and then returned home. R. 225, line 1 – R. 226, line 7; R. 240, line 23 – R. 242, line 1. Petitioner's grandmother testified that Petitioner was at home

² State's Exhibits #22 and #23 are on file with this Court.

during the early morning of May 4, 2011. R. 209, lines 12-15; R. 212, lines 8-18; R. 219, lines 2-18.

ARGUMENT

In light of Petitioner's presentation of good character evidence and his request for a jury instruction on good character, the trial judge's failure to instruct the jury that good character and reputation may, in and of itself, create a doubt as to guilt and should be considered by the jury violated the federal and state constitutions, which place the burden of proof on the state and entitle all criminal defendants to a presumption of innocence.

Relevant facts

Good Character Evidence Presentation

Not only did Petitioner deny robbing the restaurant when he testified, Petitioner presented evidence of his good character. Martha Campbell, Petitioner's grandmother, raised Petitioner from the time he was six-months old. R. 209, lines 16-18. Martha described Petitioner as an individual who liked to work and held several jobs over his lifetime, including working at a phone company and landscaping. R. 210, lines 9-17. Concerning his character, Martha described Petitioner as the type of person who "likes to help people." She also described him as nice and kind. R. 211, line 21 – R. 212, line 1. When asked if he were the kind of person who would rob Firehouse Subs, Martha responded, "No, he would not. He wouldn't have no reason to." R. 212, lines 2-5. Further, she had never seen Petitioner with a handgun. R. 212, lines 7. Additionally, Martha recalled that on the morning of May 4, 2011, Petitioner was home between 7:40 a.m. and 8:00 a.m. R. 212, lines 8-23.

Petitioner's uncle, Leroy Campbell, also attested to Petitioner's good character. Leroy had known Petitioner his entire life as they were both raised by Martha. R. 224, lines 8-14. Leroy described Petitioner as "a nice, easy going guy." He simply could not "see him going in any store and stealing." R. 224, lines 17-23. Further, Leroy had never seen Petitioner with a handgun. R. 224, lines 24-25.

Finally, George Martin, Petitioner's uncle by marriage, testified regarding Petitioner's good character. R. 230, lines 22-25. George had known Petitioner for ten years, which included several months during which Petitioner lived with George and his family. R. 231, lines 10-19; R. 233, lines 2-17. Regarding Petitioner's character, George did not "see him doing this. He wouldn't do this." R. 231, line 20 – R. 232, line 1. George explained there was "nothing in his nature" to do this crime. "It's totally out of nature for" Petitioner. R. 235, lines 18-25. George described Petitioner as "a hard-working young man, very impressive, sharp, articulate." George stated it all quite simply, "He wouldn't do this crime." R. 232, lines 18-20.

Charge Conference

During the charge conference, Petitioner requested "[a] good character charge." To support his request, Petitioner cited State v. Lee-Grigg, 387 S.C. 310, 692 S.E.2d 895 (2010). R. 264, lines 10-13. Judge Young responded, "But you can't use good character to show that somebody doesn't commit a crime. You've got testimony - - they didn't object to you going further than you did on that." R. 264, lines 14-17. Relying upon Lee-Grigg, *supra*, Petitioner argued that "where requested, and there was evidence of good character, the defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury in determining the guilt or innocence of the accused." R. 264, lines 18-25. After noting the presentation of evidence of good character, Petitioner specifically requested the judge charge the jury "that good character and reputation may in and of itself create a doubt as to guilt and should be considered by the jury." R. 265, lines 1-5.

Thereafter, Judge Young read "the standard charge":

Generally, when there is evidence of good character, the defendant [*sic*] evidence of good character, evidence of good character, may in and of itself create a doubt as to whether it should be considered by the jury, along with all other evidence, in

determining the guilt or innocence of the defendant. If proved, may be taken into consideration by the jury.

R. 265, lines 14-23. The prosecution responded to the request by merely saying, “I mean, the case speaks for itself.” R. 265, lines 24-25. The judge then stated, “We’ll add that in there.” R. 266, lines 1-2.

Closing argument

During his closing argument, trial counsel argued to the jury that it was not in Petitioner’s character to rob the restaurant – and the facts in evidence supported this conclusion. Specifically, trial counsel argued to the jury that “he’s a good guy, he wouldn’t do something like this. It’s not in his character to do something like this.” R. 277, lines 7-13. Trial counsel based this “good character” closing argument on the evidence presented by Petitioner from his character witnesses, including his mother, Leroy Campbell, and George Martin. R. 277, lines 7-13.

Jury Instructions

The judge’s instruction to the jury was deficient and inadequate:

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

R. 298, lines 9-18. At the conclusion of the charge, Petitioner objected to the judge’s omission that “evidence of good character in and of itself may create a doubt as to guilt.” Specifically, Petitioner objected that the language used by the judge “diluted” the use of good character evidence by the jury. R. 302, lines 10-17. Judge Young responded simply that he was “satisfied with it.” R. 302, line 18.

Court of Appeals' Opinion

In affirming the trial court's erroneous instruction, the Court of Appeals cited three cases and provided for parenthetical explanations of the holdings from those cases. App. 2. Although the Court's reasoning for affirming the trial court's decision is unclear, it appears the Court determined Petitioner was not entitled to a good character jury charge, despite the presentation of evidence of Petitioner's good character and Petitioner's reliance on his good character as his defense to the charges, because the other instructions provided were correct. See id.

Discussion

There can be little doubt that evidence of a person's character or a trait of character is admissible for the purpose of proving action in conformity therewith on a particular occasion when the evidence is offered by an accused. Rule 404(a)(1), SCRE; see also Michelson v. United States, 335 U.S. 469, 476-479 (1948)(stating that a defendant "may introduce affirmative testimony that the general estimate of his character is so favorable that the jury may infer that he would not be likely to commit the offense charged"). The Rules of Evidence provide that when "evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion." Rule 405(a), SCRE. However, simply acknowledging that evidence of good character is admissible does not end the inquiry. Once the evidence is presented to the jury, the question remains – what is the jury to do with the evidence? This is where jury instructions are critical.

The law to be charged to the jury is determined by the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); see also State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993). When a requested instruction is supported by the evidence and correctly states the applicable law, the judge is duty-bound to give it. Brown v. Smalls, 325 S.C. 547,

554-555, 481 S.E.2d 444, 448 (Ct. App. 1997)(citing Singletary v. South Carolina Dep't of Educ., 316 S.C. 153, 447 S.E.2d 231 (Ct. App. 1994)); see also State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (1996). “Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error.” Id. at 555, 481 S.E.2d at 448; see also State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999)(holding that a “trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence”).

“The concept of good character evidence is based on the premise that someone who has led a morally sound and lawful existence is less likely to have committed a crime than someone with a history of bad actions and an immoral or amoral approach to the world.” Josephine Ross, *“He looks Guilty”*: *Reforming Good Character Evidence to Undercut the Presumption of Guilt*, 65 U. Pitt. L. Rev. 227, 227 (2004). Good character evidence “gives factual support to the legal presumption of innocence, rendering it more likely that jurors will give the defendant the benefit of the doubt as the law requires.” Id. at 228. A criminal defendant “may introduce affirmative testimony that the general estimate of his character is so favorable that the jury may infer that he would not be likely to commit the offense charged.” Michelson v. United States, 335 U.S. 469, 476 (1948). “[C]haracter is relevant in resolving probabilities of guilt.” Id. In fact, the United States Supreme Court “has held that such testimony alone, in some circumstances, may be enough to raise a reasonable doubt of guilt and that in federal courts a jury in a proper case should be so instructed.” Id. (citing Eddington v. United States, 164 U.S. 361 (1896)).

“It is well settled that a criminal defendant may introduce evidence of his good character.” Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010). If evidence of good character is presented and the defendant makes the request for an instruction, “a defendant is

entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create doubt as to guilt and should be considered by the jury, along with all the other evidence in determining the guilt or innocence of the defendant.” Id. (quoting State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982)); see also State v. Harrison, 343 S.C. 165, 175, 539 S.E.2d 71, 76 (Ct. App. 2000)(holding that “a defendant is entitled to a jury instruction regarding evidence of good character and reputation when this type of evidence is presented and the defendant requests the charge”).

South Carolina is not alone in requiring a jury charge on good character evidence. In State v. Hobbs, 705 S.E.2d 147, 148 (Ga. 2010), the Georgia Supreme Court held that “when instructing on good character, the trial court is expected to tell the jury that good character is a substantive fact which may create reasonable doubt leading to an acquittal.” According to the court, “[s]pecifically, a proper good character charge should effectively advise the jury that it has a duty to consider good character evidence along with any other evidence in the case; that good character is a positive and/or substantive fact; that good character evidence may generate a reasonable doubt sufficient to acquit.” Id. at 149. See also United States v. Foley, 598 F.2d 1323, 1336-1337 (4th Cir. 1979)(holding that the “word ‘alone’ need not be included” in the good character evidence charge, but explaining “that an ‘alone’ instruction could” in certain circumstances “be a matter of right”); United States v. Lewis, 482 F.2d 632, 637 (D.C. Cir. 1973)(explaining that “[g]ood-character evidence may of itself generate a reasonable doubt as to guilt, and the accused is entitled to have the jury so instructed”); Oertle v. United States, 370 F.2d 719, 727 (10th Cir. 1966)(providing that “the ‘standing alone’ instruction” was not required in every case, but “when an accused presented only evidence of good character and rested his defense upon this evidence coupled with the failure of the prosecution to sustain the burden of

proof,” he would be entitled to such a charge); Kilpatrick v. State, 66 So.2d 441, 444 (Ala. Ct. App. 1953).

The Supreme Court of Pennsylvania explained the importance of a proper instruction on good character in Commonwealth v. Neely, 561 A.2d 1 (Pa. 1989). Recalling an earlier case, the court asked “Of what avail is a good character, which a man may have been a lifetime in acquiring, if it is to benefit him nothing in his hour of peril?” Id. at 2(quoting Commonwealth v. Cleary, 19 A. 1017, 1018 (1890). “[T]he value of a good reputation has been highly regarded since antiquity.” Id. In fact, “[r]eputation has been characterized as more valuable than riches, precious materials and gold.” Id. “Often a person takes a lifetime to build his or her reputation and when the dark clouds of life gather, one’s reputation may be all that one has to ward off the impending downpour and at that moment it may be the *only* beacon of truth – truth is reputation’s reward.” Id. at 3 (emphasis in original). Therefore, “[a] criminal defendant must receive a jury charge that evidence of good character (reputation) may, in and of itself, (by itself or alone) create a reasonable doubt of guilt and, thus, require a verdict of not guilty.” Id.; see also Commonwealth of Sandusky, 77 A.3d 663, 673 (Pa. Super. Ct. 2013)(re-affirming the jury instruction on good character).

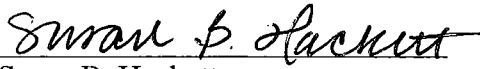
Petitioner presented evidence of his good character by presenting the testimony of his grandmother and his two uncles. Each of the witnesses testified that it would be out of character for Petitioner to engage in an armed robbery. Each of the witnesses testified that Petitioner was an industrious young man who helped people. Most importantly, Petitioner’s character witnesses testified that it was not in his character to commit an armed robbery. Their interactions with Petitioner, two of which covered Petitioner’s entire life, demonstrated that Petitioner’s character was not of a type to engage in violence or commit robberies.

The trial judge's instruction omitted the crucial components for the jury. The judge instructed the jury that they simply may consider the evidence of Petitioner's character like any other evidence presented in the case. He failed to instruct the jury on the critical component of a good character evidence charge – "evidence of good character in and of itself may create a doubt as to guilt." Not only is this charge supported by the law and the evidence in this case, but the language is vital for a jury to understand how to use the evidence. As this Court held in Lee-Grigg, "without an instruction the jury was not aware that it could consider this evidence in determining [] credibility and [] culpability." Lee-Grigg, 387 S.C. at 317, 692 S.E.2d at 898. It is this aspect of the charge that provides factual support to the legal presumption of innocence because it informs jurors that an individual's good character may be sufficient to establish a reasonable doubt.

Not only is prejudice from the judge's omission clear from the inherent nature of the proposed charge, but prejudice arose when trial counsel relied on the judge's statements during the charge conference that he was going to "add" the requested language to his jury instructions. Trial counsel reasonably relied on the judge's statements during the charge conference regarding how he was going to charge the jury. When the judge failed to charge the jury accordingly, trial counsel's credibility was diminished in the eyes of the jury. See State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001).

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the Court of Appeals, reverse his conviction, and remand for a new trial.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of September, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

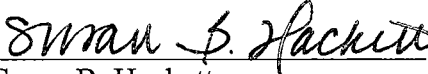
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CHRISTOPHER D. CAMPBELL,

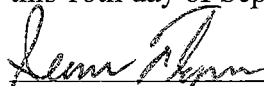
PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner has been served on Christopher D. Campbell, #361841, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of September, 2017.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of September, 2017.



Notary Public for South Carolina
My Commission Expires: October 30, 2022.