

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 26 2016

S.C. SUPREME COURT

Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2014-002339

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Appellant.

FINAL 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

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 30 2015

SC Court of Appeals

Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2014-002339

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Appellant.

FINAL 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2014-002339

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Appellant.

FINAL 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT10

 The trial judge committed no error in instructing the jury on
 the law because his jury instructions, including his jury
 instruction in regard to 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 Appellant’s good character in
 determining whether he was guilty of the charged offenses.
 10

CONCLUSION.....16

TABLE OF AUTHORITIES

Cases:

<u>Michelson v. United States</u> , 335 U.S. 469 (1948).	15
<u>Sheppard v. State</u> , 357 S.C. 646, 594 S.E.2d 462 (2004).	11, 12
<u>State v. Adkins</u> , 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003).	11
<u>State v. Barth</u> , 25 S.C. 175 (1886).	13
<u>State v. Belcher</u> , 385 S.C. 597, 685 S.E.2d 802 (2009).	14
<u>State v. Burkhardt</u> , 350 S.C. 252, 565 S.E.2d 298 (2002).	11, 12
<u>State v. Cheeks</u> , 401 S.C. 322, 737 S.E.2d 480 (2013).	15
<u>State v. Deas</u> , 202 S.C. 9, 23 S.E.2d 820 (1943).	15
<u>State v. Ezell</u> , 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996).	11
<u>State v. Foust</u> , 325 S.C. 12, 479 S.E.2d 50 (1996).	11
<u>State v. Gathers</u> , 295 S.C. 476, 369 S.E.2d 140 (1988).	15
<u>State v. Green</u> , 278 S.C. 239, 294 S.E.2d 335 (1982).	13, 15
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003).	15
<u>State v. Hill</u> , 129 S.C. 166, 123 S.E. 817 (1924).	13
<u>State v. Holmes</u> , 277 S.C. 232, 285 S.E.2d 353 (1981).	13
<u>State v. Lee-Grigg</u> , 387 S.C. 310, 692 S.E.2d 895 (2010).	13, 15
<u>State v. Leonard</u> , 292 S.C. 133, 355 S.E.2d 270 (1987).	10
<u>State v. Logan</u> , 405 S.C. 83, 747 S.E.2d 444 (2013).	15
<u>State v. Lyles</u> , 210 S.C. 87, 41 S.E.2d 625 (1947).	13
<u>State v. Rabon</u> , 275 S.C. 459, 272 S.E.2d 634 (1980).	14
<u>State v. Rye</u> , 375 S.C. 119, 651 S.E.2d 321 (2007).	11, 14
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009).	11

State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986).15

State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003).10

State v. Tench, 353 S.C. 531, 579 S.E.2d 314 (2003).15

Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003).11

Other Authorities:

2015 Suggested General Sessions Jury Instructions,
<http://www.sccourts.org/juryCharges/GSInstructions.2015.pdf>.12

STATEMENT OF ISSUE ON APPEAL

The trial judge committed no error in instructing the jury on the law because his jury instructions, including his jury instruction in regard to 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 Appellant's good character in determining whether he was guilty of the charged offenses.

STATEMENT OF THE CASE

In May of 2011, Appellant 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, Appellant 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 Appellant as indicted. Following the verdict, the trial judge sentenced Appellant 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. Appellant then timely filed a notice of appeal.

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 began proceeding 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 began 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.

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 had 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).

71; p. 90). After that, the robber had Riley place the restaurant's money into a book bag he had 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 obtained a description of the suspect, who was described as a thin twenty-three to twenty-six-year-old man with a goatee and mustache that was approximately 6'0" to 6'3" tall 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, Appellant 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 Appellant. (R. p. 84; pp. 128-129). Later that day, officers arrested Appellant, who matched the physical description of the robber, at his home. (R. p. 129). They then obtained a search warrant for Appellant'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 Appellant of his rights and interviewed Appellant in regard to the robbery. (R. p. 138; pp. 141-143). At the outset of the interview, the detective asked Appellant if he knew anything about the Firehouse Subs restaurant located on King Street, and Appellant denied knowing anything about that particular restaurant. (R. p. 143). Detective Williams then asked Appellant what he did on the morning of the robbery, and Appellant 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 Appellant 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, Appellant 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 Appellant'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, Appellant 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 arrest of Green and Appellant 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 Appellant as the culprit. (R. pp. 53-63; pp. 85-91). Furthermore, Detective Williams testified about Appellant's inconsistent statements following his arrest, and Kerstein presented the

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).

results of her expert analysis of the fingerprints recovered from the crime scene that implicated Appellant 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 Appellant's defense. (R. p. 209; p. 224; p. 230). Specifically, Appellant's grandmother, Martha Campbell, testified Appellant 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, Appellant's uncle, Leroy Campbell, stated Appellant was a "nice, easy going guy" and indicated he could not personally see Appellant stealing from any store. (R. p. 224). However, he qualified that statement by candidly admitting he "of course" would say that because Appellant was his nephew. (R. p. 224). Likewise, George Martin, another of Appellant's uncles, asserted Appellant 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, Appellant 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 him to bring his car back to him. (R. pp. 241-242). Appellant 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, Appellant stated he was

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

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 believed the officer had acted unprofessionally towards him. (R. pp. 242-244; pp. 249-250; p. 257). However, Appellant 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 Appellant's testimony, the defense rested its case. (R. p. 260). Thereafter, defense counsel requested a charge on good character evidence while citing to the South Carolina Supreme 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 Appellant'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 Appellant was presumed to be innocent and did not have to prove his innocence, affirmed the State had the burden of proving Appellant's guilt beyond a reasonable doubt, thoroughly defined reasonable doubt for the jurors, noted the jurors had to weigh all of

the evidence and should find Appellant 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 the parties if they had 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 Appellant of both armed robbery and possession of a firearm during the commission of a violent crime. (R. p. 310). The trial judge then sentenced Appellant to an aggregate term of imprisonment of eighteen years. (R. p. 315).

ARGUMENT

The trial judge committed no error in instructing the jury on the law because his jury instructions, including his jury instruction in regard to 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 Appellant's good character in determining whether he was guilty of the charged offenses.

Appellant contends the trial judge committed reversible error by not sufficiently instructing the jury on evidence of good character. In support of that contention, Appellant maintains the jury instruction on good character that was presented by the trial judge 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. Contrary to Appellant'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 Appellant's good character evidence in determining whether the State had proven Appellant's guilt beyond a reasonable doubt. Therefore, the additional good character evidence instruction requested by Appellant was unnecessary under the circumstances, and the trial judge's failure to give that instruction was not erroneous or prejudicial to Appellant. Appellant's convictions should be affirmed.

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). 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 Appellant 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** of the evidence, instructed them on evaluating the credibility of the witnesses and testimony, and informed them they should find Appellant 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 Appellant's good character evidence would be inconsistent with a finding of guilt, told them they were responsible for weighing that evidence just like all of the other evidence that had been presented, and specifically informed the jurors they were permitted to consider that evidence in determining whether Appellant was guilty of the charged crimes.⁸ Viewing those 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 Appellant'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 is not prejudicial error where the instructions given afford the proper test for determining the issues."). As a result, the trial judge did not commit reversible error in instructing the jury on the law.

⁸ Notably, the good character jury instruction given by the trial judge in Appellant's case was fully consistent with the model good character jury instruction contained in the most recent version of the South Carolina Judicial Department's general sessions bench book, which reads: "THE DEFENDANT HAS PRESENTED EVIDENCE OF HIS [HER] GOOD REPUTATION AND CHARACTER TO SHOW THAT IT WOULD BE INCONSISTENT 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>.

In arguing to the contrary, Appellant 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. 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 Appellant's case was adequate to ensure the jurors knew they could consider the good character evidence that had been presented in determining Appellant's credibility and culpability and were aware such evidence could impact their determination of whether the State had met its burden of proving Appellant'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 Appellant's case were unquestionably **not** in a situation where they were unaware they could consider the evidence of Appellant's good character in deciding his case. Cf. State v. Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010) (finding reversible error in the failure to instruct the jury

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, the Supreme 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, the Supreme 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)).

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”). 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 Appellant’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 Appellant’s case, the trial judge committed no error in instructing the jurors 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 been recognized as a proper statement of law in South Carolina, the jury instructions as given were not erroneous and do not justify or warrant the grant of a new trial.¹⁰ See Rabon, 275 S.C. at 462, 272

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 if, of course not.’” (citation omitted)). As an example, Green directly testified during trial he witnessed Appellant commit the robbery, and his testimony, if accepted as true, could **alone** establish Appellant’s guilt beyond a reasonable doubt in and of

S.E.2d at 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). Appellant's convictions should be affirmed.¹¹

itself. However, an instruction indicating eyewitness testimony can alone prove a defendant's guilt beyond a reasonable doubt 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 beyond a reasonable doubt, the trial judge's failure to give an extra instruction on good character evidence indicating such evidence can alone establish a reasonable doubt was not necessary in Appellant'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 Appellant 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 the Supreme Court in Lee-Grigg from occurring in Appellant's case, coupled with the fact the evidence of Appellant's guilt, which included Green's eyewitness identification of Appellant as the perpetrator of the crimes, the incriminating fingerprints recovered from a surface touched by the robber, and the testimony regarding Appellant's false statements after he was arrested, overwhelmingly established Appellant'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 convicted 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).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

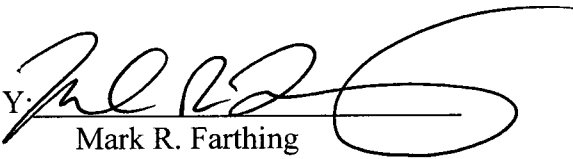
Respectfully submitted,

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

November 30, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
RECEIVED
NOV 30 2015
SC Court of Appeals
SC Court of Appeals

Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2014-002339

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final 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

ATTORNEYS FOR RESPONDENT

November 30, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2014-002339

RECEIVED
NOV 30 2015
SC Court of Appeals

THE STATE,

Respondent,

vs.

CHRISTOPHER D. CAMPBELL,

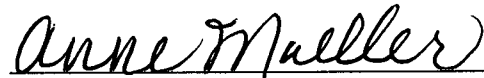
Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed 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 30th day of November, 2015.


ANNE A. MUELLER
Legal Assistant

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