

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF Michigan
Plaintiff-Appellee,

MSC No: 150040

-vs-

COA No:
315323

Wayne County Circuit Court
No: 12-08021

WILLIAM LYLES, JR.
Defendant-Appellant.

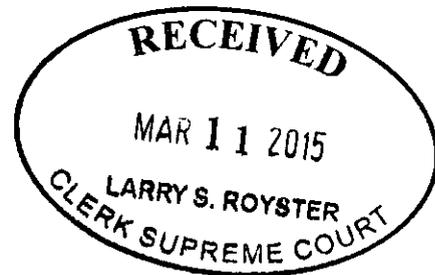
APPELLEE'S SUPPLEMENTAL BRIEF

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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
PLAINTIFF-APPELLANT,

Michigan Supreme
Court No: 150040

-vs-

Court of Appeals No:
315323

WILLIAM LYLES, JR.
DEFENDANT-APPELLEE.

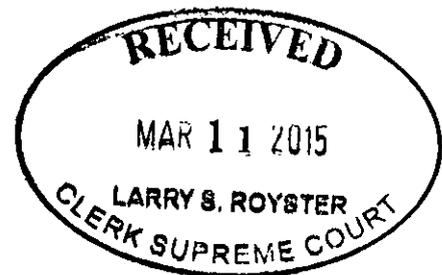
WAYNE COUNTY CIRCUIT COURT NO: 12-08021

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**STATEMENT OF JURISDICTION
AND RELIEF SOUGHT**

Defendant accepts Plaintiff's Statement of Jurisdiction.

The Application should be denied and the Court of Appeals decision affirmed.

STATEMENT OF QUESTIONS PRESENTED

- I. WAS IT MORE PROBABLE THAN NOT THE FAILURE TO PROPERLY INSTRUCT THE JURY REGARDING EVIDENCE OF THE DEFENDANT'S GOOD CHARACTER WAS OUTCOME DETERMINATIVE?**

Court of Appeals Answer: Yes

People Answer: No

Defendant Answers: Yes

STATEMENT OF FACTS

Defendant concurs with Plaintiff's Statement of Facts, except as otherwise noted.

ARGUMENT

I. IT WAS MORE PROBABLE THAN NOT THE FAILURE TO PROPERLY INSTRUCT THE JURY REGARDING EVIDENCE OF THE DEFENDANT'S GOOD CHARACTER WAS OUTCOME DETERMINATIVE?

Standard of Review

A review of the applicable standard is in order. In *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999), this Court reiterated its position taken in *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996), which held that ‘Under our statute⁽¹⁾, as under federal law, a reviewing court is not to find nonconstitutional preserved error harmless simply because it concludes the jury reached the right result. Disregarding errors that do not affect substantial rights, the reviewing court is to examine the record as a whole and the actual prejudicial effect of the error on the factfinder in the case at hand’. *Lukity*, at 492, quoting *Mateo*, at 206.

As this Court noted: ‘In other words, the effect of the error is evaluated by assessing it in the context of the untainted evidence to determine whether it is more probable than not that a different outcome would have resulted without the error. Therefore, the bottom line is that § 26 presumes that a preserved, nonconstitutional error is not a ground for reversal unless “after an examination of the entire cause, it shall affirmatively appear” that it is more probable than not that the error was outcome determinative. *Lukity*, at 495-496.

¹ MCL 769.26: No judgment or verdict shall be ... reversed ... in any criminal case, on the ground of ... the improper admission ... of evidence, ... unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

Justice Brickley concurred: 'Our cases agree that the phrase "miscarriage of justice" means "prejudicial," and this means simply that the error *influenced the verdict* (emphasis added). *Lukity*, at 503. See also *Mateo*, at 215.

Argument

A review of the evidence presented in this case reveals the following: Defendant had been charged with a generation old (30 year) capital offense.

The prosecutor presented a witness who had been a 13 year old child at the time. It was her cousin who had been stabbed to death in her house. No physical evidence linking defendant to the offense was presented.

Through her, the prosecution presented as part of his case in chief, at least four incidents of possible domestic abuse between defendant and her mother, now deceased, over a several year period prior to the offense. Although she claimed police had been called on several occasions, she also admitted there were no police reports regarding them. Other prosecution witnesses also testified to incidents relating to allegations of defendant's 'bad character' during that time.

Although she now claimed, 30 years later, she saw a figure that she thought had the same build and the smell of stale cigarettes she had associated with defendant, she did not mention anything to anyone about the figure at the time.

Other witnesses including a neighbor and other family members testified to the alleged domestic abuse.

There was no physical evidence linking defendant to the offense. Any physical evidence had been lost including the police file because the local police department had been shut down in the interim.

In part to challenge these alleged incidents, defendant presented three witnesses, including one who testified to his good character and community reputation during the time in question.

Defendant's sister had testified he had graduated from high school, worked at a local car company, joined the army, and after being discharged, returned and worked for another car company.

A former girlfriend, who had known defendant all of his life and dated him at one time, testified to the good relationship they had. They remained friends and she remained in contact with his family after moving.

Another defense witness, a Ms. Harden, had known defendant all of her life because her family lived close to defendant's. Although she had left the area the year prior to the incident, she frequently returned home.

Before she left, she would see defendant on a daily basis, had a good relationship with him and in her opinion, he was a peaceful person. She had never heard anything in the neighborhood about defendant being either physically or verbally abusive to any of his girlfriends. She also knew Louise, the mother, saw them together and thought they were in love. She never saw any abuse between the two. Defendant had a reputation in the community, including at the time of the murder, as a peaceful person

Against this backdrop, the jury was instructed. However, they were initially not instructed on how to consider character evidence regarding the conduct of the defendant, MI Crim JI 5.8a.

Then, after objections were registered, the court instructed the jury as follows:

The court has some additional instructions to give you. That - - - you've heard the testimony of --- about witness' truthfulness. You may consider this evidence together with all other evidence in the case in deciding whether you

believe the testimony of the witness, inn [sic] deciding how much weight to give to that witness. The prosecutor has examined some of defendant's character witnesses as to whether or not they heard anything bad about the defendant. You should consider such cross-examination only in deciding whether or not you believe the character witness and whether they described the respondent fairly.

The prosecutor also has called witnesses who have testified that the defendant did not have good character of the other acts. (Trial Transcripts, 01/18/13, 169-170).

Again, no mention was made that they, the jury, heard any evidence about defendant's character for peacefulness, honesty, or being law-abiding. The first sentence of the instruction requested by defendant was completely omitted.

With regards to the second sentence, rather than informing the jury they could consider the evidence of defendant's good character together with all the other evidence in the case in deciding whether the defendant committed the crime for which he was charged, informed the jury they could consider the evidence of the witnesses' truthfulness together with all the other evidence in the case in deciding whether or not they believed the testimony of the witnesses and how much weight to give that witness. Thus the jury was again not instructed on how to evaluate defendant's evidence.

The third sentence, that evidence of good character alone *may sometimes* (emphasis added) create a reasonable doubt in their minds and lead them to find defendant not guilty was also completely omitted.

The court also inappropriately informed the jury the prosecutor had called witnesses to rebut the defendant's character witnesses and failed to inform them they could only be considered in judging whether they believed defendant's character witnesses and whether defendant has a good character.

The jury was thus informed twice that the prosecutor challenged defendant's witnesses, not only in his case in chief, but also in rebuttal. As the use notes indicate: 'Use this paragraph

only where the prosecutor has called adverse character witnesses on rebuttal.’ In this case the prosecutor did not call any witnesses in rebuttal. The improper instruction adversely affected defendant and resulted in a miscarriage of justice.

The jury was not properly instructed that they had heard evidence about defendant’s character. Rather, they were instructed they had heard testimony about the witnesses’ truthfulness. They were then informed this evidence of a witness’s truthfulness was to be considered along with the other evidence in deciding whether to believe that witness’s testimony or not and how much weight to give it.

They were not informed the defense evidence of his good character should be considered along with all the other evidence in determining whether he committed the crime. Compounding the error, the jury was not informed that sometimes evidence of good character alone may create a reasonable doubt in their minds.

Finally they were informed the prosecutor called witnesses who testified defendant did not have good character at the time to rebut defendant’s witnesses, even though no such witnesses were called. It is reasonable to assume the jury knew the prosecutor did not call any rebuttal witnesses and thus the jury interpreted this instruction as the court informing them the defense witnesses were unbelievable since the prosecutor did not challenge them.

The instructions failed to mention either defendant or his character evidence relating to his peacefulness, failed to advise the jury evidence of good character alone may be sufficient to create reasonable doubt, failed to instruct them that his good character could be considered in relation along with the other evidence, and the trial court offered the jury no instruction regarding his peacefulness for its consideration even though it had been requested several times.

One of the principal rights guaranteed under the Sixth Amendment and due process clause is the right to present a defense. US Constit, Ams VI; XIV; Mich Const 1963, art 1, §17, 20.

While MRE 404(a)(1) provides an exception to the general rule that character cannot be used to prove conduct, it provides a defendant the absolute right to introduce evidence of his peaceable nature in a case where he is accused of a violent crime. The historical reason for the rule at common law and its codification in MRE 404(a)(1) is that courts and scholars have long recognized that in some cases, other than a general denial, evidence of character is highly relevant to the fact finder and may be the only available relevant evidence.

While there may be pitfalls in introducing character evidence, a defendant nonetheless has the absolute right to introduce this evidence. See *People v Whitfield* 425 Mich 116; 388 NW2d 206 (1986). Sometimes, as here, it may be the only evidence a defendant has left after thirty years to defend himself against the forces of the government and a witness who would like to see the case solved at all costs arrayed against him. Since he had nothing more than his good name to defend himself, the jury should not be precluded from properly considering the evidence, however probative.

It has been noted that ‘This privilege [to introduce good character testimony] is sometimes valuable to a defendant for this Court has held that such testimony alone, in some circumstances, may be enough to raise a reasonable doubt of guilt and that in the federal courts a jury in a proper case should be so instructed.’ See *Michelson v United States*, 335 US 469, 476; 69 S Ct 213; 93 L Ed 168 (1948), citing *Edgington v United States*, 164 US 361, 365-366; 17 S Ct 72; 41 L Ed 467 (1896).

Once character evidence is introduced by a defendant, he has a right to have his jury properly instructed on how to evaluate the evidence. The criminal jury instructions include the

character defense and state that such evidence, in conjunction with the other evidence, or even sometimes alone may create a reasonable doubt. Without a properly instructed jury, defendant was bereft of any defense against a 30 year old charge.

Without this evidence, what did the jury have to consider? Defendant had nothing which he could challenge the prospector's position that he was in a long term violent and abusive relationship with the witnesses' mother, that he had moved out of the house and blamed the deceased for his problems. According to the prosecution, defendant broke a basement window to gain entry, cut the electricity, left his shoes which had sponges on the bottom at the scene, and was spotted fleeing the scene. Without the evidence of his good character for the jury to consider, it was a 'slam dunk' the jury would find him guilty.

However, with the evidence of defendant's character, it was more probable² that there could be a different outcome, if the jury was properly instructed. Although the prosecution had presented evidence, it was based on memories from three decades ago. Defendant would submit memories change with age³. No evidence was presented to support these memories, no hospital records, police reports, or ambulance reports, no physical evidence to support the allegations of domestic violence. The woman who was the focus of the alleged domestic violence had died.

The prosecution's star witness, the 13 year old daughter, was the only one who according to her memory, identified shoes found at the scene as belonging to defendant, identified a

² Supported by evidence which inclines the mind to believe, but leaves some room for doubt. *Black's Law Dictionary*, 4th Ed. Rev, p 1365).

³ See *Neural Correlates of Reactivation and Retrieval-Induced Distortion*; Donna J. Bridge and Ken A. Paller; *The Journal of Neuroscience*, August 29, 2012.

shadowy figure as being defendant, without details except to say he was roughly the same build and had the same cigarette smell.

No evidence was presented that glass was found on the inside of the house, only that a window was broken. No evidence was presented regarding whether there was a trail in the snow from the house (the offense happened in December), given that defendant supposedly fled the house in bare feet. The pathologist report indicated there was no exit wound, even though the 13 year old said she saw the knife sticking out of the back.

The daughter wanted someone to blame, because she did not like defendant and blamed him for breaking up the family. It was she who supplied all the information to the police. She was the one who prompted the police to take a look into the case after 30 years.

The defense presented information for consideration by the jury which not only challenged the credibility of the witnesses (for example his army records challenged the testimony he had been living with Ms. Weathers at the same time), but also challenged their memories, and challenged the accusation that he was a violent person.

Yet the jury was not given the proper guidance with which to evaluate the evidence. Since juries are presumed to follow their instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), one can presume they only considered the witness' truthfulness and decided how much weight to give that witness' testimony because they were instructed to do so.

They did not consider his character evidence either alone or in conjunction with the other evidence, because they were not instructed to do so. The jury was aware the prosecution did not call rebuttal witnesses, which further minimized any witnesses the defense called because they were not worthy of rebuttal.

The prosecutor conceded the jury was improperly instructed. Thus did the improper instructions render a questionable verdict? The answer to that question must be in the affirmative.

Taken as a whole, the instructions did not clearly present the case and applicable law to the jury for their consideration. Even though requested, the instructions failed to fairly present defendant's case to the jury, nor did they adequately protect his right to present a defense, resulting in a miscarriage of justice. The error influenced the verdict. *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002).

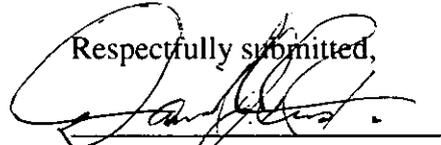
The Court of Appeals was correct: 'Given these circumstances, the denial of defendant's request for an instruction on character evidence, where defendant presented evidence relating to his peaceful character, constitutes a miscarriage of justice requiring reversal of defendant's conviction and remand for a new trial'. Slip Op, 6.

SUMMARY AND RELIEF SOUGHT

For the foregoing reasons, Defendant-Appellant respectfully requests this Honorable Court deny the Application.

The decision of the Court of Appeals should be affirmed.

Respectfully submitted,



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DATED: March 6, 2015

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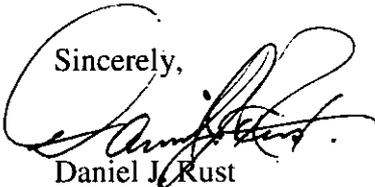
Re: Appellee's Supplemental Brief
People v. William Lyles, Jr.
MSC No: 150040
COA No: 315323
Wayne County Circuit Court No: 12-08021

Clerk:

Enclosed, please find the original, proof of service and seven copies of Appellee's Supplemental Brief in the above entitled matter.

Thank you for your cooperation in this matter.

Sincerely,



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Encl.
DJR/jaz

