

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD PETTIT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41458

FILED

OCT 05 2004

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

Appeal from a judgment of conviction on a jury verdict of guilty, on three counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Pettit was sentenced to three concurrent life terms with the possibility of parole after 10 years. His sentence was suspended, and he was placed on conditional probation for a period not to exceed five years.

At trial, Pettit presented a number of witnesses who testified to his general good character and reputation. Pettit proposed a jury instruction on character evidence. The State opposed Pettit's proposed instruction, but had no objection to a generic instruction stating that the jury may consider character evidence, along with other evidence, in reaching its verdict. The district court judge refused to instruct the jury on character evidence, stating that because a good deal of the trial involved character evidence, the jury would likely consider such evidence without being instructed to do so. The district court judge was also concerned that it would appear he was commenting on the evidence and emphasizing the importance of character evidence if he instructed the jury as Pettit requested.

We review a district court's decision regarding jury instructions for an abuse of discretion or judicial error.¹ This court has recognized that a criminal defendant is entitled to jury instructions on his theory of the case, and if his theory is supported by at least some evidence, which, if reasonably believed, would support an alternate jury verdict, the failure to instruct on that theory constitutes reversible error.² As such, a defendant is permitted a jury instruction on the legal effect of good character evidence produced at trial.³


Pettit presented evidence of his good character at trial, and the district court refused to instruct the jury on the legal effect of that evidence.

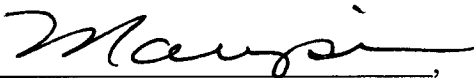
¹Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).


²Honeycutt v. State, 118 Nev. 660, 669, 56 P.3d 362, 368 (2002).

³Barron v. State, 105 Nev. 767, 775, 783 P.2d 444, 450 (1989); Emerson v. State, 98 Nev. 158, 161, 643 P.2d 1212, 1214 (1982); Beddow v. State, 93 Nev. 619, 624, 572 P.2d 526, 529 (1977); see also United States v. Frischling, 160 F.2d 370, 371 (3d Cir. 1947) ("A jury who were not told that the defendant's reputation for good character when considered in light of the other evidence might be permitted to raise the sort of doubt in their minds which would justify acquittal, might well regard evidence of such reputation as wholly irrelevant to the specific issue of guilt committed to them and consequently give it no consideration whatsoever.") (quoted in Emerson, 98 Nev. at 162, 643 P.2d at 1214)).

Accordingly, we reverse the judgment of the district court and remand this matter for a new trial.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
William B. Terry, Chartered
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk