

*Randall M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

\*

V.

\*

Indictment:

\*

CR 2000433

\*

TRAVIS MCMICHAEL

\*

GREG MCMICHAEL

\*

WILLIAM R BRYAN

\*

**4.3 STATE'S MOTION IN LIMINE: CHARACTER OF DEFENDANTS**

COMES NOW THE STATE OF GEORGIA and moves this Court to prohibit Defendants in the above-styled case from introducing good character evidence as it relates to themselves, in the form of testimony or exhibits, and shows the following:

1.

Defendants are charged individually, and as parties to the crime, with Murder and related crimes involving the fatal shooting of victim Ahmaud Arbery, an unarmed man shot while running in Glynn County, Georgia on February 23, 2020.

2.

The defendants have served the State with numerous pieces of evidence regarding the good character of the defendants including their military service, law enforcement service, and specific instances of good conduct and other acts.

3.

The admissibility of evidence of a defendant's character is governed by OCGA §§ 24-4-404 and 24-4-405. See Timmons v. State, 302 Ga. 464, 467 (2017). As a general rule, evidence of a person's character is inadmissible. See OCGA § 24-4-404(a). But, “[w]hen a witness testifies about a defendant's good character, the State may cross-examine that witness about the defendant's prior misconduct in an attempt to undermine the witness's credibility.” Leanos v. State, 303 Ga. 666, 672 (2018). Thus, as part of the cross-examination of the character witness by the State, the State is allowed to ask questions about relevant specific instances of conduct, including prior convictions or arrests of the accused. See United States v. Collins, 779 F2d 1520, 1532 (11th Cir. 1986) (character witness could be questioned on cross-examination about whether he had heard of defendant's prior arrests and convictions).

When a defendant calls a character witness to testify about a specific character trait of the defendant, the State is limited to cross-examining the character witness about specific instances of the defendant's conduct that are relevant to that specific character trait. See Stroud v. State, 301 Ga. 807, 812 (II), n. 7 (2017) (noting that “under both old and new Evidence Code, [a] defendant's character witnesses may be cross-examined about their knowledge of a prior conviction if such conviction rebutted the ‘specific character trait’ as to which the witness testified”) (citation

omitted). Thus, the State's evidence on cross-examination must be narrowly tailored to rebut the original evidence and that determination is made by looking at the characteristics of the proffered trait and the elements of the crimes charged. Blackwell v. State, 351 Ga. App. 302, 305 (2019).

But when the defendant calls a character witness who talks about the defendant's general good character, the door is opened for the State to cross-examine that witness about specific instances of the defendant's conduct reflecting bad general character. Montgomery v. State, 350 Ga. App. 244, 246-247 (2019).

The Court in Montgomery went on to note that a defendant does not put his character in issue when a witness makes an inadvertent or non-responsive comment on his character. A defendant must affirmatively put his character, or a character trait, before the jury with opinion or reputation evidence. *Id.* at 247-48.

5.

WHEREFORE, the State moves this Court to prohibit the defendants in the above-styled case from introducing evidence regarding their good character that is beyond reputation or opinion testimony, including specific instances of prior acts by the defendants.

This the 29th day of September, 2020.

/S/ Linda J. Dunikoski

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## **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above Motion via the Odyssey E-File System to:

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This the 29th day of September, 2020.

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