

CASE 2012-03
APPEAL OF TE CHARLES TARTER
VS.
EVANGEL PRESBYTERY

I. SUMMARY OF THE FACTS

07/12/10 At a meeting of Evangel Presbytery's (EP) Church and Pastoral Care Committee (CPCC), there was a discussion of concerns about TE Chuck Tarter's alleged "lack of purpose in his ministry" and a "pattern of avoiding accountability." TE Chuck Tarter had been given permission to work with an organization outside the jurisdiction of the Presbyterian Church in America" (*BCO* 8-7) in Ireland, and was related to EP though the CPCC.

12/09/10 After personal visits and considerable correspondence between the CPCC and TE Tarter, the CPCC voted to make the following requests of TE Tarter:

1. That he restructure his organization, the Gospel Friendship Outreach, to include two members of Evangel Presbytery on the Board of Directors.
2. That he attend Greystone Presbyterian Church and come under the authority of that session.
3. That the Gospel Friendship Outreach make quarterly reports to the chair of the CPCC.

It was communicated to TE Tarter that failure to reply to these requests would result in the CPCC beginning the process of *BCO* 34-10.

01/18/11 TE Tarter's response by letter to the CPCC was found to be unacceptable. He was notified on January 21, 2011, that a recommendation would be made to Presbytery that a Judicial Commission be appointed to investigate the matter and make recommendations to Presbytery.

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- 02/08/11 EP heard and approved the report of the CPCC and appointed a Judicial Commission (JC) to investigate the allegations concerning TE Tarter's ministry and, if the investigation resulted in charges being filed, was given the authority to proceed to adjudicate the matter. While there is no clear reference to the *BCO* in the EP minutes, it is assumed that this was intended to be a *BCO* 31-2 investigative proceeding.
- 07/01/11 The JC communicated to TE Tarter that they had carefully reviewed the concerns raised by the CPCC and invited him to provide them with his perspective by July 15, 2011. His response was made on the date requested.
- 08/01/11 After considering TE Tarter's response, by acclamation the JC found no grounds to file formal charges and thus asked the Presbytery to dismiss the Commission.
- 08/09/11 EP voted not to approve the recommendations of the JC. It directed the Commission to continue its work under its previous charge and report to the November, 2011, meeting of Presbytery.
- 11/07/11 After further investigation, including a personal meeting with TE Tarter, the JC voted to file charges against him related to his failure to submit to the authority of Presbytery. The JC also voted to suspend him from the functions of the office of Teaching Elder in the Presbyterian Church in America pursuant to *BCO* 31-10. He was cited to appear before the JC to answer the charges.
- 01/21, 31/12 A trial was held. The Commission found the defendant, TE Tarter, guilty on the following two counts:
1. Did TE Tarter fail to submit to the authority of Evangel Presbytery in the following three areas presented to him by Evangel Presbytery's Church and Pastor Care Committee? (See #3 above on 12/09/10)

Judgment: YES

2. Has TE Tarter exhibited an ongoing pattern of refusing to submit to those who call him into account and to the authority of Evangel Presbytery?

Judgment: YES

The Commission voted to depose TE Tarter from the office of Teaching Elder in the Presbyterian Church in America and to assign him to a church within the Presbytery for membership and shepherding oversight of the session.

02/14/12 EP approved the report and the judgment of the JC.

03/13/12 TE Tarter filed an appeal against the decision with the Stated Clerk of the Presbyterian Church in America.

II. STATEMENT OF THE ISSUE

Did Evangel Presbytery, at its meeting of February 14, 2012, err in approving the report and judgment of its JC in the case of The Presbyterian Church in America vs. TE Chuck Tarter (Appellant)?

III. JUDGMENT

Yes, and the case is remanded to Evangel Presbytery for process consistent with the Reasoning and Opinion set forth herein, or for dismissal, whichever course may appear wiser to Evangel Presbytery.

IV. REASONING AND OPINION

Appellant raises nine specifications of error on the part of EP's JC. In the first specification of error, Appellant confuses the JC's *judgment* after trial, that he failed to submit to the authority of EP, with a *requirement* that he comply, against his conscience, with the direction of EP's CPCC. The specification is not sustained. Given the confusion, the specification requires no further notice.

In the second specification of error, Appellant alleges that Preliminary Principles 1 and 7 were violated in the JC's judgment that Appellant failed to submit to the authority of EP, when he failed to comply with the direction of the CPCC to "regularly attend Greystones Presbyterian

Church and come under the authority of their session.” Further, Appellant alleges that Preliminary Principle 6 was violated in the JC’s judgment that Appellant failed to submit to the authority of EP, when he failed to comply with the direction of the CPCC to “restructure the board of directors of Gospel Friendships Outreach.” This specification is sustained. A presbytery, or its committee, cannot require of a member what is without the express or implied warrant of Scripture, and a presbytery, or its committee, has no jurisdiction over such an independent mission board.

In the third specification of error, Appellant alleges that *BCO* 15-1 was violated in the JC’s judgment that Appellant failed to submit to the authority of EP, when he failed to comply with the three cited directions of the CPCC specified on December 9, 2010. This specification is sustained. A *committee* of presbytery has no authority to so direct.

In the fourth specification of error, Appellant alleges that *BCO* 35-5 was violated in the JC’s indictment, in that matters therein referred to as “Additional areas of concern,” said to include “church involvement and mentorship, integrity in communications, reputation in the local community, ministry calling, and work ethic” were taken as “charges” without being identified as such, and were set forth in vague language, without times, places, and circumstances particularly stated. Appellant further alleges that the Prosecution sought to sustain these “charges” in the examination of witnesses at trial. This specification is sustained. This aspect of the indictment was inadequate with respect to the demands of due process. The Record of the Case (ROC) demonstrates that these “charges,” nonetheless, were a primary focus of the prosecution’s examination of witnesses, and became a central element in the reasoning of the decision of the JC. The prominence of this issue in the trial and in the reasoning is all the more striking in that it is not even mentioned in the “Statement of the Issues” of the JC’s Final Decision.

In the fifth specification of error, Appellant alleges that *BCO* 32-13, 35-5 and 32-8 were violated when the JC allowed testimony from witnesses who reported the words of others not present to be heard and cross-examined. The ROC amply demonstrates that such testimony was permitted. Further, in at least one instance, the ROC shows that one whose words were so reported was unwilling to grant the characterization of his words when informed that he had been quoted. This specification of error is sustained. Although the Rules of Discipline

do not include a “hearsay” prohibition, given that the indictment alleged an “ongoing pattern of refusing to submit to those who call him to account,” the JC ought to have been jealous for the right of the Appellant to cross-examine those who gave evidence of instances that constituted the alleged pattern.

The sixth specification of error alleges prejudice on the part of the JC (cf. *BCO* 42-3). The evidence offered for the alleged prejudice consists of alleged misstatements of fact, misinterpretations, oversights, and incomplete statements in the Report of the JC. This specification is not sustained. Even granting the truth of the allegations, Appellant did not demonstrate that prejudice was the source of the failures in question.

The seventh specification of error alleges that the JC violated *BCO* 35-7 by allowing testimony to be erased from the recording of the trial before it was transcribed. This specification is not sustained. There is no evidence that this erasure was deliberate or prejudicial, and the JC made every effort to remedy the loss by allowing two members of the JC and the Appellant to reconstruct the testimony from their notes for inclusion in the ROC.

The eighth specification of error repeats the allegation raised in the second part of specification two and is treated in that place.

The ninth specification of error alleges that *BCO* 30, Preliminary Principle 7, *BCO* 34-5 and 42-3 were violated by the JC in its judgment and censure. This specification is sustained. While the SJC must exhibit great deference to a lower court regarding matters of discretion and judgment (*BCO* 39-3, 3), the JC clearly erred in its judgment that when Appellant declined to cooperate with the requirements of the CPCC—requirements that are beyond both the Committee’s and EP’s constitutional authority—Appellant failed to submit to the authority of EP. Further, the ROC does not show that Appellant has exhibited an ongoing pattern of refusing to submit to those who call him to account. The JC drew conclusions unwarranted by other evidence from the mere facts of TE Tarter’s career. The language of their decision regularly speaks of what “appears,” not what it had *found* to be the case. On this ROC, the judgment is not proven and therefore the censure is vacated. This is not to say, however, that with a constitutionally compliant indictment, and a constitutionally compliant examination of all the relevant witnesses, another ROC, sustaining the indictment, might not be

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created. In particular, if Presbytery is persuaded that the issues discussed in the fourth specification of error are of critical importance in this case, an indictment so specifying in sufficient detail must be prepared “that the accused may have an opportunity to make his defense” (*BCO* 32-5). Thus this case is remanded to Evangel Presbytery for process consistent with the Reasoning and Opinion set forth herein, or for dismissal, as may appear wisest to Evangel Presbytery.

This Decision was written by RE Jeff Owen and TE David Coffin, and adopted, as amended, as the Decision of the full Standing Judicial Commission.

The Decision in Case 2012-03 was adopted by a vote of 15 concurring, 1 not qualified, 2 recused, and 6 absent.

Aquila <i>Concur</i>	Duncan <i>Concur</i>	Meyerhoff <i>Concur</i>
Burkhalter <i>Absent</i>	Fowler <i>Absent</i>	Neikirk <i>Concur</i>
Burnett <i>Concur</i>	Greco <i>Concur</i>	Owen <i>Concur</i>
Carrell <i>Concur</i>	Haigler <i>Absent</i>	Pickering <i>Not Qualified</i>
Chapell <i>Absent</i>	Kooistra <i>Recused</i>	Shuffield <i>Concur</i>
Coffin <i>Concur</i>	Lee <i>Absent</i>	Terrell <i>Recused</i>
Culbertson <i>Concur</i>	Lyle <i>Absent</i>	White <i>Concur</i>
Donahoe <i>Concur</i>	McGowan <i>Concur</i>	Wilson <i>Concur</i>

In accord with *OMSJC* 2.10(e), a member subject to disqualification shall disclose on the record the basis of the member’s disqualification. RE Pickering was not qualified because he is a member of a congregation in the bounds of a presbytery party to the Case (*OMSJC* 2.10(d)(3)(iii)). RE Terrell recused himself because he because of his relationship to a party as a former employee of MTW. TE Kooistra recused himself because of his relationship to a party as the Coordinator of MTW.

Case 2012-07
RE WILLIAM G. MITCHELL
VS.
THE PRESBYTERY OF THE ASCENSION

This case came before a Panel of the SJC on March 6, 2013, on appeal by RE William G. Mitchell, the former Clerk of the Session of Westminster Presbyterian Church (“WPC”) in Butler, PA. The Appellant, RE Mitchell,