STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

LAMONT RAPHAEL BRIGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213670

SUPPLE MENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

John M. Milling, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RALPHAEL LAMONT BRIGGS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by charging the jury that Briggs may have had a duty to retreat before acting in self-defense, where the evidence was uncontroverted that Briggs was a guest on the property where the incident occurred.

STATEMENT OF FACTS

On March 21, 2006, Ralphael Lamont Briggs stood trial in Sumter County on an indictment charging him with murder in connection with the shotgun death of Wesley "Mouse" House. Briggs testified that he shot House in self-defense after House attacked him with a club. ROA p. 43, lines 19-21; ROA p. 46, lines 18-20; ROA p. 68, line 20 – p. 74, line 15. (The State's main witness to the incident, House's cousin, testified, "[E]arlier he had a stick, but when he walked up, he didn't have no stick." ROA p. 11, lines 3-7; ROA p. 20, lines 13-17.) In addition to murder, the judge instructed the jury on voluntary manslaughter and self-defense. (For some reason, defense counsel did not request a charge on involuntary manslaughter, even though Briggs testified, "He walked into the gun, and the gun went off. ... I didn't know it was going to go off." ROA p. 92, line 25 – p. 94, line 5.) The jury found Briggs guilty as charged, and the judge sentenced him to imprisonment for thirty-seven years.

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ARGUMENT

The trial judge committed reversible error by charging the jury that Briggs may have had a duty to retreat before acting in self-defense, where the evidence was uncontroverted that Briggs was a guest on the property where the incident occurred.

Briggs shot House on the property of Katie Green during a cookout. ROA p. 50, lines 16-20. Green testified for the defense. She testified that Briggs "been there a lot. ... [H]e be back and forth." ROA p. 53, lines 7-12. There was no testimony that Briggs was anything other than a guest on Green's property at the time of the incident.

At the charge conference, the Assistant Solicitor argued that Briggs was not entitled to self-defense because "he was not on his own property. He had a duty to retreat." ROA p. 103, lines 14-21. Defense counsel responded, "[H]e was a guest at that house. ... [Y]ou don't have to retreat when you are a guest at someone's house." ROA p. 103, line 24 – p. 104, line 1. The judge observed, "Well, he wasn't in the house. He was in the yard." ROA p. 104, lines 2 and 3. The Assistant Solicitor argued, "[H]e hasn't even proved he was an invitee, Judge." ROA p. 105, lines 5 and 6. The judge ultimately ruled:

> [O]ne of the decisions ... that the jury is going to have to make is whether or not these were people who were lawfully guests at her house or whether they were just hanging out ... [a]nd we'll let the jury make a determination as to whether or not he gets that designation of being a lawful guest on the premises of another.

ROA p. 110, line 7 – p. 112, line 8. He then instructed the jury as follows:

> Now, ladies and gentlemen, the law ... in this State does not require a defendant to retreat if they are on their own premises, or they are about the yard of their dwelling house. And likewise, ladies and gentlemen, the law of this State says that if someone is invited to your home, if they are there at your residence as your guest, they likewise do not have the duty to retreat in order to be entitled to self-defense. They can

> be there either expressly or impliedly. But it is, of course, always the function of the jury to determine what status someone occupies when they are there at a particular location.

ROA p. 141, line 24 – p. 222, line 9. The inclusion of this instruction was reversible error.

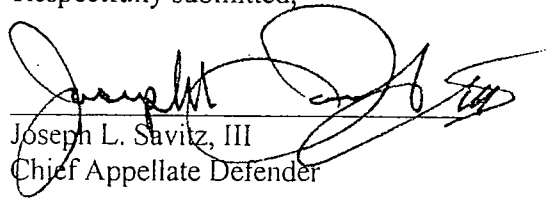
A person need not retreat before resorting to deadly force in self-defense if he is a guest in the home of another. *State v. Osborne*, 202 S.C. 473, 25 S.E.2d 561 (1943). This exception to the requirement of retreat extends to the curtilage of the premises as well. *State v. Jackson*, 227 S.C. 271, 87 S.E.2d 681 (1955). Finally, there is also no duty to retreat where both parties are guests. *State v. Smith*, 226 S.C. 418, 85 S.E.2d 409 (1955).

As noted previously, the record below contains absolutely no evidence from which the jury could have inferred that Briggs was not welcome on Katie Green's property. See *State v. Osborne*.

Under these circumstances, the judge erred by submitting the non-existent issue of Briggs's status on the property to the jury. In fact, the judge should have charged the jury that there was no duty to retreat under the circumstances present in this case. See *State v. Sales*, 285 S.C. 113, 328 S.E.2d 619 (1985).

For this reason, the Court should reverse Ralphael Lamont Briggs' conviction for murder (and possession of a firearm during the commission of a violent crime) and remand for a new trial.

Respectfully submitted,



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This 4th day of October, 2007.

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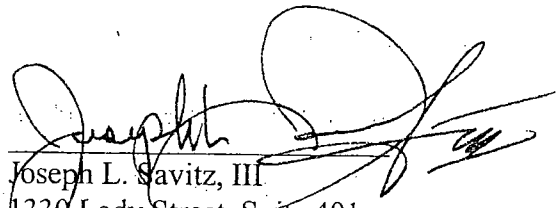
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

October 4, 2007



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

John M. Milling, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RALPHAEL LAMONT BRIGGS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon S. Creighton Waters, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of October, 2007.

Joseph L. Savitz, III
Chief Appellate ~~Defender~~

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of October, 2007.

Karen D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017 .

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County
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Respondent,

v.

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FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN SUBMITTING TO THE JURY WHETHER APPELLANT HAD A DUTY TO RETREAT, WHERE (1) THE ISSUE IS NOT PRESERVED, (2) THE JUDGE'S INSTRUCTION WAS A CORRECT STATEMENT OF LAW, AND (3) THERE WAS CONFLICTING EVIDENCE OF WHETHER APPELLANT WAS A SOCIAL GUEST, OR WHETHER HE RETURNED TO THE SCENE TO EITHER SELL CRACK FROM THE FRONT YARD, OR MERELY TO KILL WESLEY BECAUSE OF THEIR PRIOR CONFRONTATION?

STATEMENT OF THE CASE

The Clarendon County Grand Jury indicted Appellant, Ralphael Briggs, for murder and possession of a firearm during commission of a violent crime (06-GS-14-0076). **{R. 152-153}**.

The case was tied before the Honorable John M. Milling, from March 20th to March 21st, 2006. Attorney Harry Leslie Devoe, Jr., represented Appellant; the State was represented by Assistant Solicitor Ferrell Cothran. On March 21st, 2006, the jury convicted Appellant of murder. **{R. 150}**. Judge Milling then sentenced Appellant to thirty-seven (37) years for murder and a concurrent five (5) years for the firearms charge. **{R. 151}**.

A timely notice of appeal was filed. This appeal follows.

STATEMENT OF FACTS

It was undisputed at trial that Appellant killed the victim Wesley House with a shotgun blast at close range. The prosecution presented evidence that Appellant pulled out the gun and shot Wesley as he merely approached and said "what's up"; Appellant testified and claimed the victim was approaching in a threatening manner with a paddle or stick.

A. 7:45 p.m. on 9/5/05: Wesley is murdered

Apparently, a number of people liked to hang out in the yard of Katie Green's mobile home near Summerton, South Carolina. Dominique Lawson testified that on the evening of Labor Day 2005, he arrived at Green's trailer, where a few fellows were hanging out and cooking. Lawson started flipping burgers on the grill. **{R. 5-6; 18-19; 21}**.

About 20 minutes before Appellant arrived, Wesley showed up at the trailer. Wesley was hanging out down by the shoulder of the roadway. Dominique stated Appellant pulled up into the yard and parked. Wesley started to walk up to him from the road, asking D "what's up" when D got out of the car. Appellant replied "boy, are you crazy", popped the trunk, pulled out a shotgun, stuck it in Wesley's chest, and fired. The whole thing took less than a second. **{R. 7-14}**.

Appellant then looked at Dominique, said "fuck you", and then got in his car and drove off. Dominque ran to Wesley's side as he lay there dying. **{R. 14-17}**. The forensic pathologist testified that Wesley was killed by a contact wound from a shotgun slug that fractured and lacerated his aorta. **{R. 92-93}**.

While Dominique admitted that Wesley had sort of an "aggressive" tone when he

stated "what's up", and also stated Wesley usually carried a red paddle around in his trunk, Dominque testified Wesley never threatened Appellant and was not carrying any sort of stick or other weapon when he approached. Dominique also testified here was not any such weapon on the ground when he ran to Wesley's side. **{R. 10; 14-17; 19-20; 31}**.

Police who responded to the scene found Dominique and James Earl Green, both of whom immediately stated that Appellant was the culprit. Police found no evidence that Wesley was carrying a stick or paddle of any kind. **{R. 34-36; 41-42}**.

B. Appellant is apprehended and gives a statement

Appellant turned himself in a couple of days later. He gave a statement to police, in which he stated that he was at the trailer earlier that afternoon. Someone approached wanting to buy crack from Appellant, and did not want to speak to Wesley. This irritated Wesley, who scuffled with Appellant and took his vial of crack. **{R. 37}**. Dominique also testified he heard there had been a scuffle between Appellant and Wesley earlier in the day. **{R. 23}**.

Appellant told police that he left, went to the mall, did some chores, and returned to the trailer around 7:30 that evening. He admitted he always kept the shotgun in the trunk of his girlfriend's car. He stated that he felt threatened by Wesley when he returned to the trailer, and that Wesley literally ran into the gun before he fired. **{R. 38-47}**.

Appellant had relatives throw the gun into Elliot's Pond, where it was recovered. It had been loaded with Rebel 20 gauge slugs. **{R. 39-41}**.

C. The defense case

The defense first called Katie Green, who lived at the trailer where the incident

happened. She owned the property and admitted that both Appellant and Wesley were in her yard a good bit. She did not see the killing as she was inside, but she stated she had seen Wesley with a bat earlier in the day. **{R. 50-57}**.

Appellant also took the stand. He freely admitted he did not have a job other than selling crack out in front of Katie Green's trailer. **{R. 60-61; 77-78}**.

As to the scuffle during the early afternoon that Labor Day, Appellant stated that a customer came up to him. He told the customer to go see Wesley, but the customer said he would rather deal with Appellant. Wesley supposedly got mad at that, pinned Appellant against the trailer, and snatched a vial of about $50 of crack from Appellant: Appellant claimed he thought Wesley was just playing around, but admitted he was mad about it at first. He said he just "left it alone", and got in the car to go get some more crack to sell. As he left, Wesley was walking down the street "playing with his hands and laughing". Apparently, at some point Wesley claimed Appellant tried to run him over when Appellant was leaving. **{R. 61-67}**.

Appellant went and got some crack cocaine, and then returned to stash it in a old Ford Taurus on Katie Green's property. He then went to the mall, claiming that Sherod, Katie Green's grandson, was with him. Appellant stated he was then returning to Katie Green's because he needed to drop Sherod off. **{R. 63-64; 95-96}**.

Appellant claimed that as he and Sherod returned and parked at the trailer, he saw Wesley standing out by the stop sign taking with someone. Wesley was allegedly holding a grey stick with the words "Big Shot" on it, although Appellant later described the stick as red. As Appellant turned around after exiting the car, he saw the victim walking towards

him holding the stick, saying "what's up now nigger" in a very unfriendly manner. Appellant claimed he told Wesley to back up, and then popped the trunk with latch by the driver's door. **{R. 68-71}**.

According to Appellant, Wesley kept coming straight for him "like it was nothing", saying "fuck that". Appellant stated Wesley walked right into the gun, and it went off, although at other points he admitted he pulled the trigger. Appellant said he was scared because Wesley's family was out there, so he jumped in the car and took off. **{R. 71-75; 93-94; 99}**.

As for the stick no one could ever find, Appellant claimed Wesley had raised the stick up and was about to hit Appellant when he was shot, and the stick fell into Appellant's trunk. Appellant said he noticed the stick later, and had "his people" get rid of it. **{R. 74-76}**.

On cross, Appellant admitted that when he first saw Wesley approaching, he could have easily gotten into the car and left rather than walking back to the trunk and pulling out the weapon. He stated, though, that Wesley was right on him when he got to the trunk. Appellant claimed it did not bother him at all that Wesley stole his crack, as he just went and got more. **{R. 89-90; 95}**.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN SUBMITTING TO THE JURY WHETHER APPELLANT HAD A DUTY TO RETREAT, WHERE (1) THE ISSUE IS NOT PRESERVED, (2) THE JUDGE'S INSTRUCTION WAS A CORRECT STATEMENT OF LAW, AND (3) THERE WAS CONFLICTING EVIDENCE OF WHETHER APPELLANT WAS A SOCIAL GUEST, OR WHETHER HE RETURNED TO THE SCENE TO EITHER SELL CRACK FROM THE FRONT YARD, OR MERELY TO KILL WESLEY BECAUSE OF THEIR PRIOR CONFRONTATION.

Appellant first contends the trial court erred in charging that he "may" have had a duty to retreat, when the evidence was allegedly uncontradicted that he was a guest on the property. However, the issue is not preserved. Regardless, the judge instructed the correct law, and a charge that Appellant had no duty to retreat as a matter of law would amount to an impermissible charge on the facts. Indeed, the evidence of Appellant's status was much in factual dispute, as to whether he was a social guest returning an occupant to the house and attending a barbeque, or merely returning to sell crack or to settle the score with the victim.

A. Events at trial

During opening argument, defense counsel argued:

> Did he have a duty to retreat, or was the other person so close to what we believe was a weapon that he had no other reasonable means to escape and avoid the situation. There is some exceptions to retreat we think. And maybe holding those exceptions and not having to retreat also.

{R. 1-2}.

During direct testimony, State's witness Dominique Lawson stated he arrived that evening at Katie Green's trailer to cook out. Dominique noted that Wesley was down by the shoulder of the road when Appellant arrived and pulled his car into the yard or the driveway. **{R. 6-7}**. Dominique also mentioned hearing about the "scuffle" between

Appellant and Wesley earlier in the day. **{R. 23-24}**.

Dominique was later asked if Appellant was invited to the cookout. He responded: "Well, no, he be out there every day, and of course he was invited. But I mean, it was like . . .". When the solicitor interrupted and asked if Appellant and Wesley hung out at Katie Green's trailer every day, Dominique agreed. **{R. 18}**. On cross, Dominique again stated that the trailer was where he, Appellant, Wesley, and Ray normally hung out. **{R. 21}**.

Officer Cutler related Appellant's statement about the scuffle between Appellant and Wesley earlier in the day over a crack sale. **{R. 37}**.

During the defense case, Katie Green testified, stating that she lived at the single wide trailer on the property where Wesley was killed. **{R. 50}**. She admitted knowing both Wesley and Appellant, and stated:

DEFENSE COUNSEL: Is Tank [Appellant] at your house a lot?

GREEN: Yeah, he been there a lot.

DEFENSE COUNSEL: Out front?

GREEN: Yes, he be back and forth.

{R. 52-53}. On cross, Ms. Green stated that neither Appellant nor Wesley came in the house that day. **{R. 56-57}**.

During Appellant's testimony, he agreed when asked if his custom or habit was to hang out and socialize "on the Mayzak Road in Summerton". He agreed he hung out at Katie Green's trailer because that was the only place to go, since he had been banned from the "apartments". While describing Katie Green's as a place where he would "chill out", Appellant admitted that was the place where he sold his crack cocaine to people. He

stated other people sold there too, and then described the scuffle that morning with the victim over selling crack to a particular customer. **{R. 59-62; 77}**.

While Dominique earlier testified that no one was with Appellant when he returned to Katie Green's trailer that evening **{R.8}**, Appellant claimed that Sherod, Katie Green's grandson, was with him when he went to the mall and returned to the trailer. He stated that he was returning to the trailer to drop Sherod off, and said that Sherod lived at the trailer. **{R. 64-65; 95-96}**. While he stated he was returning to drop Sherod off, and they were having a cook out for Labor Day, Appellant also admitted he was returning to sell more crack. **{R. 95}**. On redirect, Appellant stated he had a broken-down car under some trees at Katie Green's house, which was where he would stash the crack he was selling. **{R. 1100-101}**. He also claimed that he considered himself a "guest" at Katie Green's property, and while he did not consider it his "place of business", it was the only place where he sold drugs. **{R. 102}**.

Following conclusion of the defense case and denial of the renewed directed verdict motion, the court noted that "the question I have in my mind is whether there is sufficient evidence to charge the jury on self defense". The prosecutor replied that self defense was not appropriate as Appellant was not on his own property and thus had a duty to retreat, to which the court agreed "that's the part that gives me the problem". At this point, defense counsel argued that Appellant was a guest at Katie Green's house and did not have a duty to retreat. **{R. 103-104}**.

After the court rejected defense counsel's argument that Appellant's illegal sale of crack on the property would constitute it as his place of business, defense counsel

contended that Appellant could not have retreated in complete safety. The court replied, "well that's the thing I don't know", pointing out that Appellant testified he could have left without any problem when he first saw Wesley allegedly approaching with the stick, and it was only after Appellant popped the trunk that he stated Wesley was too close for escape. The court continued that "based on that testimony, I have a hard time about whether the elements of self-defense are there". **{R. 104}**.

Defense counsel responded that Appellant was in the curtilage of the home, and that Appellant's testimony was that by the time he realized he was in danger it was too late to escape. The solicitor argued that Appellant had not proved he had been invited by Katie Green, and that Appellant could have easily left in the car rather than pulling out the gun. The defense cited a case that a guest has no duty to retreat, as well as a case that neither of two guests in a home has the duty to retreat. As the court pointed out that all of those cases dealt with people inside a home, defense counsel again argued the curtilage is considered part of the home. **{R. 105-107}**.

After a lunch break, the court cited caselaw to the effect that as long as they were not at fault in bringing on the difficulty, two guests in a home did not have a duty to retreat from one another, and noted that Wesley was as much of a guest as Appellant. The court noted it had also read cases indicating that the duty to retreat applied to the curtilage, and stated that one of the decisions the jury was going to have to make was "whether or not these were people who were lawfully guests at her house, or whether they were just hanging out". The court stated it would make part of its charge that the jury would have to "make a decision as to what were their respective rights as to whether they were just

people who happened to come up there or whether they were actually guests". **{R. 109-110}**.

Defense counsel then pointed to Appellant's testimony that he was dropping Sherod off, but the court pointed out that by that point Sherod had gotten out and walked off, and the solicitor noted that Appellant himself had testified he was coming back to the residence to sell crack. When defense counsel argued that Appellant was also going to eat and drink and the barbeque, the court noted again that it would let the jury make the determination "as to whether ir not he fits that designation of being a lawful guest on the premises of another". The court then noted that another issue might exist as to exactly where the crime took place, in the yard or in the street. Defense counsel argued it was the yard, but the solicitor stated he was not sure. The court concluded the matter by again noting he would charge the jury on the "normal duty on the law of retreat", "the normal responsibility about guests", and then let them make a decision about "what position he actually occupied", and whether Appellant should have gotten back into the car and left rather than popping the trunk. **{R. 111-112}**.

Whether Appellant was a guest in the home or was simply there to "settle a score" or to sell drugs was a central theme in the closing arguments of both the prosecution and the defense. **{R. 113-118; 119-120}**. After discussing the other three elements of self-defense, the judge charged the jury as follows:

> And fourth, Ladies and Gentlemen, the defendant has no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury other than to act as he did.
>
> Now, Ladies and Gentlemen, the law in this case, in this State does not require a defendant to retreat if they are on their own premises. Or they

> are about the yard of their dwelling house. And likewise, Ladies and Gentlemen, the law of this State says that if someone is invited to your home, if they are there at your residence as your guest, they likewise do not have the duty to retreat in order to be entitled to self-defense. They can be there either expressly or impliedly. But it is of course the function of the jury to determine what status someone occupies when they are there at a particular location.

{R. 142} (emphasis added). The defense raised no exceptions to the charge at its conclusion. **{R. 149}**.

B. The issue is not preserved.

Appellant's precise claim on appeal is that the trial court erred in submitting the issue of the duty to retreat to the jury, and indeed should have specifically charged the jury he had no duty to retreat, based on his contention that there is no evidence he was anything but a guest on the property. That is an entirely distinct issue than what was discussed at trial.

As set forth above in the Events at Trial, the defense only raised its contention that Appellant was a social guest in response to the trial court's concern that self-defense should not even be charged at all in the case, based on Appellant's own testimony that he could have easily gotten in his car and driven away once he first saw the victim heading toward him with the stick. The defense was merely asserting guest status as a way to ensure that self defense was charged at all, and the trial court ultimately decided there was enough evidence on the issue of Appellant's status to submit it to the jury.

At no time did Appellant make the argument to the trial court that he makes now. Appellant never once asserted that the duty to retreat should not be charged at all, and certainly never once requested that the trial court specifically charge the jury as a matter

of law that he had no duty to retreat under the circumstances of this case. Indeed, Appellant from his opening statement told the jury that whether or not he had a duty to retreat would be a issue for them to decide in the case. Before the judge, Appellant only argued his guest status to secure a self defense charge in the first place.

Since Appellant did not make to the trial court the argument he makes now before this Court, the issue is not preserved. See, e.g. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (holding arguments not raised to or ruled upon by the trial court are not preserved for appellate review, and a defendant may not argue one ground below and another on appeal).

C. General Rules

Of course, our self-defense law imposes a general duty to retreat upon a person using deadly force. See generally State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). However, there are two classes of exceptions to this general duty. The first situation deals with the nature of the incident itself and holds that one need not retreat if it would increase his danger to do so. State v. McGee, 185 S.C. 184, 190, 193 S.E.2d 303, 306 (1937).

The second general class of exception relates to the status of the defendant and the victim, and the location of the use of deadly force. The "castle doctrine" generally holds that a person need not retreat and may meet force with force in his own home. State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955). This has also been expanded to the curtilage of the home, see, e.g. Jackson, *supra*, and State v. Trent, 234 S.C. 26, 106 S.E.2d 527 (1959), as well as one's place of business, State v. Kennedy, 143 S.C. 318, 141 S.E. 559 (1928), and club house, State v. Marlowe, 120 S.C. 205, 112 S.E. 921

(1921).

Moreover, there are instances when one outside his own home or place of business can claim no duty to retreat. In State v. Osborne, 200 S.C. 504, 21 S.E.2d 178 (1942), a sharecropper claimed that after his landowner was abusive to him, he moved his clothes over to the house of another sharecropper, and was in the bed there when the landowner burst in and struck him with a stick. The defendant claimed he then shot the landowner. The case was reversed because the trial court charged the duty of retreat where "both are on common ground", when in fact "the uncontradicted evidence shows that the homicide occurred in a house where the defendant was at the time a guest and hence lawfully entitled to be there". Since the defendant claimed the victim "invaded" the house, in such circumstances he would not have been required to retreat. Osborne 21 S.E.2d at 182. Osborne cited 25 A.L.R. 522 (1923) for the proposition that "[a] guest of the householder is entitled to the protection that the law affords to the more permanent occupant or to the owner, and may repel trespasses in or upon the house, or repel assaults, actual or menaced, as if he were under his own roof or within his own doors". Id.

Osborne was subsequently cited in State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996), for the proposition that "a lawful guest in attacked in the owner's home has no duty to retreat where the attacker is an intruder". Brown held, however, that a lawful guest did have a duty to retreat if the attacker was the homeowner. Id.

Finally, in State v. Smith, 226 S.C. 418, 85 S.E.2d 409 (1955), the Court addressed a situation where the victim was a farmhand who lived across the road but had free access to the farm owner's house, and the attacker was the farm owner's son-in-law, who had recently moved into the farm owner's house to help her and pay off a debt. The assault

by the son-in-law on the farmhand took place in the farm owner's bedroom. The Court there held it was error to charge the retreat element of self-defense, where it could be reasonably inferred that the son-in-law had permission for access to all of the house. Thus, if the son-in-law "was assaulted and was without fault in bringing on the difficulty", he was not bound to retreat. Id. See also State v. Sales, 285 S.C. 113, 328 S.E.2d 619 (1985) (defendant's sister had no duty to retreat in a home she shared with her live-in boyfriend).

It is from these cases that Appellant claims he was a lawful guest on the curtilage of Katie Green's home, and he had no duty to retreat from Wesley, even if Wesley himself was a lawful guest.

D. As an initial matter, any specific charge that Appellant had no duty to retreat would be an impermissible charge on the facts.

Part of Appellant's contention is that he should have received a specific instruction that as a matter of law he had no duty to retreat. Of course, Article V, section 21of the South Carolina Constitution provides that "[j]udges shall not charge juries in respect to matters of fact, but shall declare the law." Thus, this charge would be improper as a charge on the facts. See, e.g. State v. Telfaire, 337 S.C. 215, 552 S.E.2d 845 (1999) (rejecting charge that "in the experience of many" cross-racial identification is more difficult as a charge on the facts).

Appellant's contention is apparently based in a passage of State v. Sales, 285 S.C. 113, 328 S.E.2d 619 (1985), in which the court noted that since the defendant's sister had no duty to retreat in her home and the defendant came to her aid, "[t]he appellant thus had no duty to retreat, and the jury should have been so charged".

However, Sales goes on to note that "[o]n retrial of this case, the judge shall refer to the self-defense charge approved by this Court in State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)." The Davis charge, of course refers to the general duty to retreat, but then states: "If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense." Thus, the Davis charge still submits the issue to the jury rather than giving a direct charge on what is normally a factual matter for the jury.

Indeed, there are a number of cases where the Court has found no reversible error where correct instructions were submitted to the jury on a matter where there was undisputed evidence. See, e.g. State v. Trent, 234 S.C. 26, 106 S.E.2d 527 (1959) (rejecting claim that trial court erred in instructing jury on duty to retreat, where trial court specifically instructed that if a person is attacked in the curtilage he has no duty to retreat, and even though the evidence was undisputed that the defendant was within the curtilage, these instructions fully protected his immunity from the law of retreat); State v. Osborne, 202 S.C. 473, 25 S.E.2d 561 (1943) ("Osborne II") (no error even though judge charged on the duty to retreat, where he fully explained the "castle doctrine" to the point that the jury could not have been confused or misled). But cf. State v. Smith, 226 S.C. 418, 85 S.E.2d 409 (1955) (error for the court to include charge on the duty to retreat, although, in this case unlike the others, the judge did not also charge on the immunity from retreat in one's home).

Here, Appellant undoubtedly got a correct instruction of the law. Unlike Smith but like Trent and Osborne II, the judge included a charge as to immunity of retreat for a lawful guest. A specific charge that he had no duty to retreat as a matter of law would not only be a charge on the facts, but also, as will be seen in the subsequent section, be incorrect

– because whether Appellant was a lawful guest at the time of the incident was very much in factual dispute.

E. Since whether Appellant was a lawful guest was a matter in factual dispute, the judge did not err in submitting the issue to the jury.

Whether Appellant was a lawful guest on the property at the time of the murder was a factual issue that was properly submitted to the jury.

Tort law in South Carolina defines adults on the property of another as either an invitee, a licensee, or a trespasser. Social guests are licensees as their entry is primarily for the benefit of the guest, whereas invitees as typically business customers, where the primary benefit is for the person with possessory interest in the land. Licensees enter with the permission of the landowner. See Hoover v. Broome, 324 S.C. 531, 479 S.E.2d 62 (1996).

However, the scope of the invitation to a licensee or invitee depends on what the invitee is to do on the premises, as well as where that person can do it. Botka v. Estate of Hoerr, 21 P.2d 723 (Wa. Ct. App. 2001). Cf. Williams v. Cook, 725 N.E.2d 339, 342 (Ohio Ct. App. 1999) ("However, if the social guest exceeds the scope of the landowner's invitation, he will lose the status of a social guest and become either a licensee or trespasser."). There are a number of cases that have held, for purposes of burglary law, that a social guest who subsequently forms a criminal intent is not then automatically a trespasser, to prevent the absurd result of one smashing a lamp and thereby becoming a burglar. See, e.g. People v. Petrino, 746 N.Y.S.2d 781 (N.Y. Co. Ct. 2002). Other cases have noted, though, that if one has a purpose of doing harm "and that purpose continues unabated, the invitee becomes a trespasser, *ab initio*." Melichoir v. Jago, 723 F.2d 486,

493 (6th Cir. 1983) (discussing Ohio law). See also People v. Felix, 28 Cal. Rptr. 2d 860 (Cal. App. 1994) ("invitee's illegal purpose negates the occupant's express permission); State v. Inciarrano, 473 So.2d 1272, 1275-76 (Fla. 1985) ("One who enters the business premises of another for a lawful purpose is an invitee. At the moment that his intention changes, that is, if he suddenly decides to steal or pillage, or murder, or rape, then at that moment he becomes a trespasser and has no further right upon the premises. Thus, here, if appellant ever had a privilege, it dissolved in the sound of gunfire."); City of University Heights v. Conley, 252 N.E.2d 198, 200 (Ohio Mun. 1969) ("It is further the opinion of this court that where one enters upon the property of another as an invitee or licensee, that person loses his status as an invitee or licensee and becomes a trespasser when it becomes evident that the purpose of such entry is to commit a criminal offense against the owner. Such a trespasser may not claim the right of privacy while he proceeds with his nefarious efforts.").

Undoubtedly, there was a Labor Day barbeque going on that evening. And, of course, Appellant claimed that he was returning to the trailer to drop off Sherod, Katie Green's grandson who stayed there. However, Dominique denied that anyone was with Appellant. Moreover, there was plenty of evidence that Appellant frequently stood in Katie Green's yard and sold crack to people who approached on the street. Finally, of course, it is certainly inferable from the evidence that Appellant returned to the trailer with the express intent of settling the score and killing Wesley due to the prior scuffle.

Given these conflicting inferences, whether or not Appellant was a social guest was properly for the jury. While Katie Green stated that Appellant was often on her property, there was no evidence undisputedly establishing that she consented to him being there

selling crack, much less consented to him being there to shoot down another man. Such are hardly the purposes of a social guest, and obviously the property owner would not consent to entry for that purpose. It would certainly be a stretch of self-defense law or the concept of a social guest to place crack dealers who merely stood in the front yard of an old lady's house selling crack on the same footing as the defendants in Osborne or Smith, who were actually residing within the house – such that the crack dealers could blaze away with their weapons without any duty to de-escalate the inevitable violence associated with their trade. Indeed, it was inferable from the evidence that after the first scuffle that afternoon Appellant was asked to leave and his presence was no longer wanted. This is supported by Dominque's description of Welsey aggressively approaching Appellant when he returned and asking him what was up.

Certainly if Appellant was returning with the express purpose of killing Wesley he no longer occupied the status of a "lawful guest". See State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996) ("a lawful guest in attacked in the owner's home has no duty to retreat where the attacker is an intruder"). While this may dovetail with the concept of "without fault in bringing on the difficulty", the fact remains is that it was for the jury to determine if Appellant was returning to sell crack or to kill Wesley, or whether he was merely returning to drop off an occupant and attend the Labor Day barbeque. See generally State v. Sales, 285 S.C. 113, 328 S.E.2d 619 (1985) ("A person attacked on his own premises *without fault* has the right to claim immunity from the law of retreat." (emphasis added)).

There was no error in the charge. See, e.g. Hoover v. Broome, 324 S.C. 531, 479 S.E.2d 62 (1996) (for jury to resolve conflicting evidence as to whether plaintiff was invitee or trespasser).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the convictions and sentences should be affirmed.

Respectfully submitted,

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October 4, 2007

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County
Honorable John M. Milling, Circuit Court Judge

THE STATE,

Respondent,

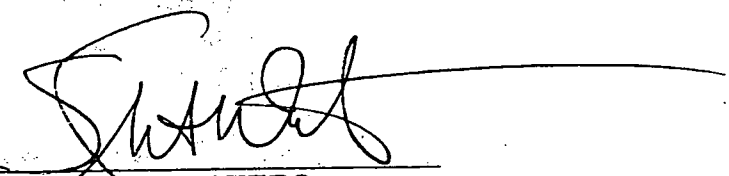
v.

RAPHAEL L. BRIGGS ,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.



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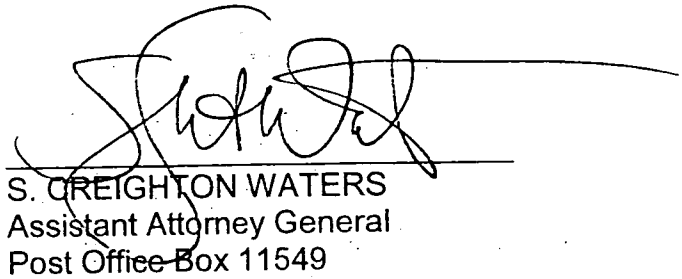
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Final Brief of Respondent***, dated October 4, 2007, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III., Esquire
South Carolina Office of Appellate Defense
1330 Lady Street, Fourth Floor
Columbia, South Carolina 29201

I further certify that I have served all parties required by Rule to be served.

This 4th day of October, 2007.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Raphael L. Briggs Appellant.

Appeal from Beaufort County
John M. Milling, Circuit Court Judge

Unpublished Opinion No. 2008-UP-515
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AFFIRMED

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Waters, Office of the Attorney General, of Columbia; and Solicitor C. Kelly Jackson, of Sumter, for Respondent.

PER CURIAM: Raphael L. Briggs appeals his conviction for murder. Briggs contends the trial court erred in submitting the issue of his status as an invitee, as it related to a self-defense charge, to the jury. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authority: State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (holding arguments not raised to or ruled upon by the trial court are not preserved for appellate review, and a defendant may not argue one ground below and another on appeal).

AFFIRMED.

HEARN, C.J., HUFF and GEATHERS, JJ., concur.

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.