

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Alison Renee Lee, Circuit Court Judge

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SC SUPREME COURT

Opinion No. 2015-UP-548 (S.C. Ct. App. filed 12/2/2015)

08-CP-40-01439

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THADDEUSS STARKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2011-201146

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PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that a petition for rehearing was filed in the case on December 17, 2015, but denied by the Court of Appeals on January 21, 2016.

### QUESTION PRESENTED

The Court of Appeals erred in upholding the trial judge's denial of a request for a jury charge on the defense of habitation after finding in effect that petitioner and the deceased were in effect cohabitants of the same residence because petitioner's stepfather's cohabitant status morphed into that of a trespasser when he became intoxicated and violently entered the locked bedroom door of petitioner, who had an expectation of privacy therein and the right to defend himself from an attack in a non-common area of the residence, which in turn meant that a defense of habitation jury charge was applicable in the case.

## STATEMENT OF THE CASE

Petitioner Thaddeus Starks was convicted of voluntary manslaughter during the October 2007 term of the Richland County General Sessions Court before Judge G. Thomas Cooper. Petitioner was sentenced to imprisonment for a period of ten years. Michael D. McMullen represented petitioner at trial. App. 1 -758.

On February 8, 2008, petitioner filed a PCR application with the Richland County Office of the Clerk of Court. App. 760-766. The respondent filed a return dated March 5, 2009, requesting that a hearing be held in the case. App. 767-771. A PCR hearing was convened on March 17, 2010, at the Richland County Courthouse before Judge Allison Lee. App. 755-870. Jeremy Thompson represented petitioner at the PCR hearing. On September 28, 2011, Judge Lee issued an order denying petitioner's PCR allegations of ineffective assistance of trial counsel, but granted petitioner's request for a belated direct appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). App. 887-900.

Petitioner appealed Judge Lee's order and filed a petition for writ of certiorari and brief of appellant pursuant to White v. State on September 20, 2012, and the Respondent's return to the petition and brief pursuant to White v. State were filed on January 29, 2013. On May 8, 2015, the Court of Appeals granted certiorari to review the case on belated direct appeal, but subsequently affirmed the case on December 2, 2015. See State v. Starks, Unpublished Opinion No 2015-UP-548 (December 2, 2015). Supp App. 1-3.

A petition for rehearing was filed in the case on December 17, 2015, which was denied by the Court of Appeals on January 21, 2016. Supp. App. 4-12. This petition for writ of certiorari requesting review of the Court of Appeals' decision in the belated direct appeal per White v. State follows.

## ARGUMENT

The Court of Appeals erred in upholding the trial judge's denial of a request for a jury charge on the defense of habitation after finding in effect that petitioner and the deceased were in effect cohabitants of the same residence because petitioner's stepfather's cohabitant status morphed into that of a trespasser when he became intoxicated and violently entered the locked bedroom door of petitioner, who had an expectation of privacy therein and the right to defend himself from an attack in a non-common area of the residence, which in turn meant that a defense of habitation jury charge was applicable in the case.

In this case, the deceased was stabbed by petitioner on October 12, 2006, in a home owned by Betty Ann Starks Cleveland, who was petitioner's mother and the deceased's wife. Mrs. Cleveland was at work when the stabbing occurred and there were no witnesses to the stabbing. The state's case and the case for the defense emanated from petitioner's statements made to police and one neighbor's comments regarding the event. Petitioner did not testify in his defense.

At trial, neighbor Timothy Cornish testified that police arrived at the home in question around 7:30 p.m. on October 12, 2006, to quell a disturbance therein. Cornish stated that the deceased, who had been drinking, wanted petitioner (deceased's stepson) out of the house and that he (deceased) asked for a gun. Cornish stated that later on that evening (after 9:00 p.m.), the deceased lay in his yard with a fatal stab wound to his chest. App. 86, l.3-p. 105, l. 17. Cornish stated that petitioner's response to the stabbing was that "[the deceased] came and kicked the door open and slapped him," so "[he] stabbed [the deceased]." App. 105, l. 18-p. 106, l. 1.

Police Officers John Carwell, Stephanie Watford, Jonathan Haddock, and Kevin Isenhoward all testified at trial and stated that they were dispatched to the crime scene on the night in question.

Officer Carwell testified that petitioner explained that he locked himself in his bedroom to escape from the decedent's rampage, but that the decedent kicked open his bedroom door and slapped him on the face, and that he responded by stabbing the decedent with a kitchen knife. App. 145, l. 18-p. 146, l. 5. Note that it was Officer Carwell who arrived at the home previously on that same date and spoke to Betty Ann Starks Cleveland via telephone and then advised the deceased that petitioner was authorized to reside in the house could not be put out. App. 134 l. 1 – p. 139, l. 24. Officer Watford testified that petitioner explained that he and the deceased argued earlier, but that he was alone in his bedroom with the door locked until the deceased later kicked the door open and backhanded him in the face, and that he (petitioner ) reacted by stabbing the deceased. App. 177, l. 21-p. 178, l. 2. Officer Isenhoward testified that petitioner explained the sequence of the events as follows:

A: [petitioner] said that Mr. Cleveland was intoxicated, and that they had been arguing all night....he said that when Deputy Carwell told [the deceased] that he couldn't do that...[the deceased] was very upset [and] the argument continued to escalate. He says that he called his mother [Betty Ann Starks Cleveland] and ...his mother told him to go to his bedroom, close the door... [petitioner] says that he did that. He said that he was hungry, so he made himself a sandwich and got a knife to cut the sandwich. It says that he took the sandwich on a plate with a knife and a paper towel into his bedroom. He says that he was in the bedroom watching T.V. minding his own business when the door was forced in. He says [the deceased] came into the bedroom and backhanded him is how he put it. He says that when he backhanded him, he was afraid and he took the knife. He used the word "gig" him to get him off of him.

App. 281, l. 16-p. 282, l. 17.

Also, note that the defense presented evidence of the 911 call by petitioner, who called at 9:09 p.m. on October 12, 2006, stating that he "had to cut his step father" because his "stepfather broke into his room." Additionally, note that the deceased called 911 on October 12, 2006, at 8:57 stating "son locked in room." App. 511, lines 11-17; App. 515, l. 16-25.

Defense witness Natasha Clinton-Starks, who was petitioner's wife, testified that when petitioner called her to inform her that the deceased was fighting him, she heard the commotion and the deceased asking the neighbor for a gun. App. 443, l. 4-p. 446, l. 17. Betty Ann Starks Cleveland testified on behalf of the defense and explained that on the night in question, the deceased placed twelve calls to her about how he wanted petitioner out of the house. Cleveland added that petitioner suffered a stroke in 1993 and had little physical use or balance of his left side thereafter. Cleveland stated that petitioner's left hand jerked and he had no balance with his left hand, and that although petitioner was big, he would lose his balance and fall if pushed. App. 460, l. 15-462, l. 10.

On appeal, petitioner argued that the trial judge erred in failing to charge the jury on the defense of habitation. The Court of Appeals addressed the issue of the trial judge's failure to charge the defense of habitation as follows:

We find the trial court correctly denied Stark's request to charge the defense of habitation because Alphonso Cleveland (Victim) was not a trespasser, and therefore, the defense was inapplicable to Stark's case. *See Gaines*, 380 S.C. at 31, 667 S.E.2d at 732 ("To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.") Betty Ann Cleveland testified she owned the house where the incident occurred and allowed Starks and Victim to live there. A police officer spoke to Cleveland on the night of the incident, and she informed both Starks and Victim had a right to be in the house. Unlike in *Bryant*, where the defendant's hotel room was considered his dwelling, here, the was no evidence Starks had any ownership stake in the house. 391 S.C. at 227, 705 S.E.2d at 466. Thus, we find Starks and Victim were cohabitants of Mother's home at the time of the incident such that neither had any right over the other as it related to the house. As a result, we conclude the trial court correctly denied Stark's request to charge the defense of habitation and instead charge self-defense and voluntary manslaughter.... *Smith*, 226 S.C. at 419-420, 85 S.E.2d at 409 (holding [t]he law of habitation ha[s] no relevancy, and the rules as to self-defense [are] alone applicable" when the victim is "neither and intruder or a trespasser" and the defendant and victim "[stand] on equal grounds and neither [have] any right over the other"); 40 C.J.S. *Homicide* § 175 (2014) (explaining "the rights of a householder

against a violent intruder have no relevancy, and the *ordinary rules as to self-defense are alone applicable, where the deceased was not even a trespasser* but was lawfully in the house, as where the deceased and the accused reside in the same dwelling” (emphasis added) (footnote omitted)).

To the contrary, the deceased lost his status as an equal and lawful cohabitant in the house, where petitioner was also a lawful and equal cohabitant, and became a trespasser and intruder when he (deceased) violently burst into and knocked down petitioner’s locked bedroom door while intoxicated prior to the stabbing. Actually, petitioner retreated to his bedroom per his mother’s order (even though he had no duty to retreat), after the police informed the deceased that his mother owned the house and that petitioner, who was her son, had a right to be in the house. Like the defendant in Bryant<sup>1</sup>, who did not invite the intruder into his hotel room, petitioner did not invite the decedent into his bedroom. Furthermore, like the intruder in Bryant, who entered without the defendant’s consent, the decedent in the case at bar entered petitioner’s room without consent. The decedent’s act of bursting through petitioner’s bedroom door categorized him as a trespasser. Hence, the decedent was trespassing in petitioner’s room and committed a violent act against petitioner by slapping/backhanding him during the trespass. Additionally, in response to the decedent’s entering petitioner’s bedroom as a trespasser and perpetrating a violent act therein, the petitioner held up a knife, which he had in his room to cut in half the sandwich he had made earlier, and the struggle at that point occurred during petitioner’s ejection of the decedent. Although the

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<sup>1</sup> In Bryant, the defendant, a vulnerable paraplegic defendant who was confined to a wheelchair, tried to escape from a man who entered into his (defendant’s) hotel room without invitation. The Bryant Court held that the intruder whom the defendant shot became a trespasser when he forced himself into the defendant’s hotel room. Once inside the hotel room, the intruder threatened to kill the defendant and advanced toward the defendant; and at that point the defendant “defend[ed] himself from imminent attack on his own premise,” by employing force to eject the trespasser.

act to eject the decedent was via a knife and ultimately deadly, “one is permitted to use deadly force against a trespasser, with no duty to retreat, before taking the life of the trespasser.” State v. Bryant, supra.

A person who defends himself from imminent attack on his own premises is entitled to a charge on the defense of habitation. State v. Lee, 293 SC 536, 362 S.E. 2d 24 (1987). The defense of habitation provides that defending one’s home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Bryant, 391 SC 225, 705 S.E. 2d 465 (2011); State v. Rye, 375 S.C. 119, 651 S.E. 2d 321 (2007). In order to establish the defense of habitation, a defendant must establish that a trespass occurred and that the chosen act of ejection was reasonable under the circumstances, even to the point of taking one’s life. State v. Bryant, supra; State v. Sparks, 179 SC 135, 183 S.E. 719 (1936).

See State v. Sullivan, 345 SC 169, 547 S.E. 2d 183 (2001), where the Court reversed where the defense of habitation was not charged because the fighting aggressor who was in the defendant’s house had been told to leave by the defendant, but the aggressor refused to do so and defiantly advanced toward the defendant until he was struck down by the defendant’s gunfire. In Rye, the Court reversed because the trial judge failed to charge the defense of habitation where the defendant shot an intruder who was armed with guns and had been repeatedly shooting his (defendant’s) pets and stealing equipment from his property after he saw the armed intruder on his property, along with another dead pet were on his steps. The Rye Court held that the case presented a jury question as to whether the defendant was acting in defense of his habitation. Compare also, State v. Bradley, 126 SC 528, 120 S.E. 240 (1923) and State v. Brocks, 79 S.C. 144, 60 S.E. 518 (1908).

Additionally, petitioner possessed a reasonable expectation in his locked bedroom. It was clear that petitioner lived with the mother of his child and that he also lived with his mother and the

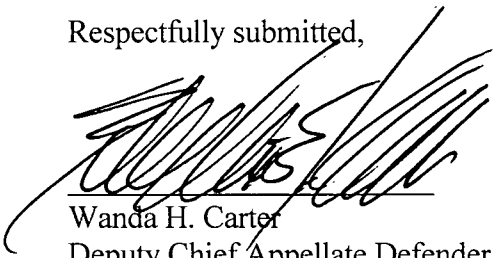
deceased at different time intervals. Therefore, petitioner would have qualified as an overnight guest and had a reasonable expectation of privacy in his bedroom prior to the deceased's intrusion in the case. See Minnesota v. Olsen, 495 U.S. 91 (1990), where the Supreme Court held that an overnight guest has a reasonable expectation of privacy in his host's home which is protected by the Fourth Amendment. Although this case was not a search and seizure case; nonetheless, by analogy this principle supports petitioner's claim that the deceased was an intruder and a trespasser in his bedroom where he has a rightful claim to a reasonable expectation of privacy while there<sup>2</sup>.

In the case at bar, the defense of habitation was clearly applicable because a trespass upon petitioner by the deceased occurred and petitioner's chosen manner to eject was reasonable.

#### CONCLUSION

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow full briefing on the above raised issue.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 22nd day of February, 2016

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<sup>2</sup> The Fourth Amendment protects against unreasonable searches in areas where one has a reasonable expectation of privacy. United States v. Rallas, 439 U.S. 128 (1978). Also, a defendant has the burden of showing that he has a reasonable expectation of privacy in the area searched. Rawlings v. Kentucky, 448 U.S. 98 (1980).

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THADDEUSS STARKS,

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CERTIFICATE OF SERVICE

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I certify that a true copy of the petition for writ of certiorari and a copy of the supplemental appendix, in this case has been served on Clay Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Mr. Thaddeuss Starks #284256, at Maccougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 and the S.C. Court of Appeals this 22nd day of February, 2016.

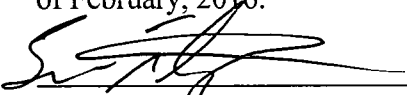


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Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day  
of February, 2016.



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(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022