STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Alison Renee Lee, Circuit Court Judge

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

08-CP-40-01439

THADDEUSS STARKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2011-201146

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CLAY MITCHELL
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Thaddess Starks, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-201146

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2015-UP-548
Submitted October 13, 2015 – Filed December 2, 2015

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant Deputy Attorney General Karen Christine Ratigan, and Assistant Attorney General James Clayton Mitchell, III, all of Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) action, we granted certiorari pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), to hear Thaddess

Starks's belated direct appeal. On appeal, Starks argues the trial court erred in denying his request for a jury charge on the defense of habitation. We affirm.[1]

"Generally, the trial [court] is required to charge only the current and correct law of South Carolina." *State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005). "In reviewing jury charges for error, we must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial." *Id.* "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." *Id.*

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014). "If there is any evidence to support a jury charge, the trial [court] should give a requested charge on the matter." *State v. Bryant*, 391 S.C. 225, 233, 705 S.E.2d 465, 469-70 (Ct. App. 2010). "To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." *State v. Burkhart*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

"[T]he defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." *State v. Rye*, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." *Id.* Under the defense of habitation, for a victim to become a trespasser, he must either (1) "attempt[] to force himself into another's dwelling" or (2) be a guest in another's dwelling and "refuse[] to leave when the owner makes that demand." *Bryant*, 391 S.C. at 233, 705 S.E.2d at 470 (quoting *State v. Bradley*, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)). In either case, the victim must be attempting to unlawfully enter or remain in *another's* dwelling. *See id.* In *State v. Smith*, our supreme court determined that when a victim and defendant "[stand] on equal grounds and neither [have] any right over the other," the victim is "neither an intruder nor a trespasser" and "[t]he law of habitation ha[s] no

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

relevancy, and the rules as to self-defense [are] alone applicable." 226 S.C. 418, 419-20, 85 S.E.2d 409, 409 (1955).

We find the trial court correctly denied Starks's request to charge the defense of habitation because Alphonso Cleveland (Victim) was not a trespasser, and therefore, the defense was inapplicable to Starks'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 him 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, there 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 Starks's request to charge the defense of habitation and instead charged self-defense and voluntary manslaughter. *See Zeigler*, 364 S.C. at 106, 610 S.E.2d at 865 ("Generally, the trial [court] is required to charge only the current and correct law of South Carolina."); *Smith*, 226 S.C. at 419-20, 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 an intruder nor 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)).

AFFIRMED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THADDEUSS STARKS,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

Opinion No. 2015-UP-548

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, appellate counsel would petition for rehearing with respect to this Court's holding that the trial judge did not err in denying appellant's request for a defense of habitation jury charge per the rationale that appellant and the deceased were both lawful cohabitants of equal standing at the residence where they lived because this Court may have overlooked the fact that the deceased's status morphed into that of a trespasser when he entered appellant's locked bedroom door while intoxicated in a violent manner, and that appellant had a reasonable expectation of privacy from such an intruder while inside his bedroom. In support of this position, counsel for appellant would submit the following points.

1.) In this case, the state alleged that on the night of October 12, 2006, the deceased was stabbed by appellant in the home owned by Betty Ann Starks Cleveland, who was appellant'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 appellant's statements made to police and one neighbor on that night. Appellant did not testify at trial. 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 appellant (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 appellant'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 appellant 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 appellant was authorized to reside in the house could not be put out. App. 134 l. 1 – p. 139, l. 24. Officer Watford testified that appellant 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 (appellant) reacted by stabbing the deceased. App. 177, l. 21-p. 178, l. 2. Officer Isenhoward testified that appellant explained the sequence of the events as follows:

> A: [appellant] 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... [appellant] 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 appellant, 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 appellant's wife, testified that when appellant 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 appellant out of the house. Cleveland added that appellant suffered a stroke in 1993 and had little physical use or balance of his left side thereafter. Cleveland stated that appellant's left hand jerked and he had no balance with his left hand, and that although appellant was big, he would lose his balance and fall if pushed. App. 460, l. 15-462, l. 10.

2.) On appeal, appellant argued that the trial judge erred in failing to charge the jury on the defense of habitation. This Court 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)).

3.) To the contrary, the deceased lost his status as an equal and lawful cohabitant in the house where appellant was also a lawful and equal cohabitant and became a trespasser and intruder when he (deceased) violently burst into and knocked down appellant's locked bedroom while intoxicated prior to the stabbing. Actually, appellant 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 appellant, who was her son, had a right to be in the house. Like the

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defendant in Bryant[1], who did not invite the intruder into his hotel room, appellant 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 appellant's room without consent. The decedent's act of bursting through appellant's bedroom door categorized him as a trespasser. Hence, the decedent was trespassing in appellant's room and committed a violent act against appellant by slapping/backhanding him during the trespass. Additionally, in response to the decedent's entering appellant's bedroom as a trespasser and perpetrating a violent act therein, the appellant 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 appellant's ejectment of the decedent. Although the 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.

4.) 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

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[1] 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.

of ejectment 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).

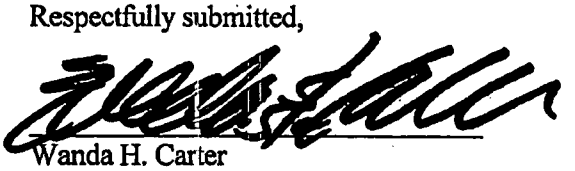
5.) Additionally, appellant possessed a reasonable expectation in his locked bedroom. It was clear that appellant lived with the mother of his child and that he also lived with his mother and the deceased at different time intervals. Therefore, appellant would have qualified as an overnight guest and 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 appellant's claim that the deceased was an intruder in his bedroom where he has a rightful claim to a reasonable expectation of privacy while in there[2].

[2] 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).

In the case at bar, the defense of habitation was clearly applicable because a trespass occurred and the chosen means to eject was reasonable.

WHEREFORE, based on the foregoing points, counsel for appellant would request a rehearing with respect to this Court's affirmance of the appeal per White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 17th day of December, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THADDEUSS STARKS,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Robert D. Corney, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Thaddeuss Starks #284256, at Macdougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472 this 17th day of December, 2015.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day
of December, 2015.

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

The South Carolina Court of Appeals

Thaddess Starks, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-201146

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

H. Bruce Hill J.

Paula H. Thomas J.

Columbia, South Carolina

cc:
Wanda H. Carter, Esquire
Alan McCrory Wilson, Esquire
Karen Christine Ratigan, Esquire
James Clayton Mitchell, III, Esquire
The Honorable Alison Renee Lee

FILED
January 21, 2016