

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of General Sessions

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The Honorable G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case No. 2011-201146

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THADDEUSS STARKS,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**BRIEF OF RESPONDENT PURSUANT TO WHITE v. STATE**

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## STATEMENT OF ISSUE ON APPEAL

1. **The trial court properly denied Appellant's request for a jury charge on the defense of habitation as there was no evidence to support Victim was a trespasser in the home, and Appellant had no authority to eject Victim as he was merely a permissible guest in the home.**

## STATEMENT OF THE CASE

Appellant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. Appellant was true bill indicted at the January 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-09503). Michael D. McMullen, Esquire, represented Appellant on the charge. On October 8, 2007, Appellant appeared before the G. Thomas Cooper, Jr., where he proceeded to jury trial. After a five (5) day trial, Appellant was found guilty of the lesser included Voluntary Manslaughter and was sentenced to ten (10) years imprisonment. No direct appeal was filed.

On February 26, 2008, Appellant filed the current application for post-conviction relief (PCR) with the Richland County Clerk of Court (2008-CP-40-01439). The State made a Return to the application on March 30, 2009, requesting the matter be set for evidentiary hearing. On March 17, 2010, a hearing was convened into the matter at the Richland County Courthouse before the Honorable Alison Renee Lee, at which Applicant was present with counsel, Jeremy A. Thompson, Esquire. The State was represented by Brian Petrano of the South Carolina Attorney General's Office. By amended order filed September 29, 2011, Judge Lee denied Applicant's requests for relief on all grounds *except* for a belated direct appeal pursuant to White v. State<sup>1</sup>. Pursuant to the PCR court's grant of belated appeal, a notice of appeal was filed and a Petition for Writ of Certiorari was submitted, accompanied by the current Brief of Appellant.

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<sup>1</sup> White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

## ARGUMENT

1. **The trial court properly denied Appellant's request to charge the jury with the defense of habitation as there was no evidence to support Victim was a trespasser in the home, and Appellant had no authority to eject Victim as Appellant was merely a permissible guest in the home.**

In the early evening hours of October 12, 2006, Alphonzo "Al" Starks (hereafter "Victim") was stabbed in the chest and killed by Appellant during an altercation in Victim's wife's home. Victim was Appellant's stepfather, having been married to Appellant's mother for roughly thirty-three (33) years at the time of incident. (ROA.p. 454, ll. 3 – 7). According to the testimony presented at trial, Appellant's mother lived in the house for roughly six (6) years prior to October 12, 2006, during which time both Victim and Appellant "came and went". (ROA p. 88, ll. 11 – 15; pp. 88, l. 24 – p. 89, l. 3; pp. 454, l. 18 – p. 455, l. 6). At the time of the incident, Victim's wife's, who was the sole owner of the house, had given both Victim and Appellant express permission to stay at the house. (ROA p. 469, ll. 2 – 6).

On the night of October 12<sup>th</sup>, Appellant and Victim were involved in an argument recounted at trial by next-door neighbor Timothy Cornish (hererafter "Cornish"). Cornish testified he and Victim were friends, and said he gathered from his conversations with Victim that Victim felt Appellant "was coming back and forth" between Victim's house and Appellant's girlfriend's house, but was not "pulling [his] fair share around the house". (ROA p. 89, l. 17 – p. 91, l. 15). Cornish went on to say after seeing a police cruiser stop by the house earlier in the evening and then leave, he heard Appellant and Victim continue to argue. (ROA p. 94, ll. 3 – 24). Upon hearing Victim call his name, Cornish said, he went outside and spoke with Victim who said he would not let Appellant disrespect him in his own house. (ROA p. 95, l. 17 – p. 97, l. 21). Cornish noted Victim asked for a gun, but said he told Victim to calm down and go back in the house. (ROA p. 99, ll. 15 – 25). Cornish said after fifteen or twenty minutes, he heard Victim yelling Cornish's name outside again, so he ran outside and brought Victim back into his

house. (ROA p. 102, ll. 11 – 24). Cornish testified once inside, he realized Victim's shirt was ripped and noticed Victim was bleeding from his chest profusely, so he started to administer first aid. (ROA p. 103, ll. 19 – 22).

Cornish said while he was tending to Victim, Appellant "came over in a very aggressive manner" threatening to kick Victim while he was on the ground, unresponsive. (ROA pp. 104, l. 22 – p. 105, l. 17). Cornish testified when he asked Appellant what happened, Appellant said "[Victim] came over, kicked the door open and slapped [Appellant]", so Appellant "stabbed him". (ROA pp. 105, l. 23 – p. 106, l.1). The first responding officer on the scene, Lance Corporal John Carwell also testified that upon his arrival at the scene, Appellant said he "had locked himself in his bedroom in an attempt to stay away from Victim", but "[Victim] the kicked in his bedroom door" and "slapped [Appellant] on the face", at which time Appellant stabbed Victim with a kitchen knife. (ROA pp. 145, l. 24 – p. 146, l. 5). Deputy Stephanie Watford testified similarly, detailing Victim's statement to her and Investigator Isenhoward in a consistent manner with the recount given by Carwell. (ROA pp, 177, l. 21 – p. 178, l. 2). Investigator Kevin Isenhoward also testified as to Appellant's statement about the altercation detailing the same pertinent fact set forth above. (ROA pp. 281, l. 16 – p. 282, l. 17).

At the close of the state's case-in-chief, counsel for Appellant argued for a directed verdict on the murder charge on grounds of a habitation defense, stating "there [had] been nothing in the evidence to suggest" any scenario other than Appellant exercising reasonable means of ejection to stop Victim's trespass. (ROA p. 411, ll. 8 – 24). The state, in response, argued "[t]here [had] been no evidence submitted by the defense or anything submitted by the state that would suggest at any time [Appellant] was trying to eject [Victim]...from those premises." (ROA pp. 415, l. 24 – p. 416, l. 2). The state went on to note there was "no evidence to show that [Victim] was an intruder". (ROA p. 416, l.

At the close of the defense's case, Appellant requested the jury be charged with the lesser included voluntary manslaughter, self-defense and the defense of habitation. (ROA pp. 549, l. 12 – p. 550, l. 23; pp. 622, l. 23 – p. 625, l. 22). The Court granted the requests to charge voluntary manslaughter and self-defense, but denied the request to charge habitation finding the evidence did not support such a charge based upon statutory interpretation and the relevant case law. (ROA p. 634, ll. 20 – 24). Counsel took exception to the Court's denial of that request following the jury charge. (ROA p. 714, ll. 5 – 6).

"[T]he trial court is required to charge only the current and correct law of South Carolina." Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "If there is any evidence to support a jury charge, a trial judge should grant the request." State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. Att. 2004). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Id.

"As the defense of habitation provides, defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection." State v. Bradley, 126 S.C. 528, 533, 120 S.E.2d 240, 242 (1923). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances." Id. "[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). Respondent submits there was no evidence presented at trial to support such a jury charge.

In Bradley, the Court set forth four (4) different scenarios in which habitation may be applicable: (1) when the occupant is the slayer and stands upon habitation apart from self-defense; (2) when the occupant is the slayer, stands upon the right of self-defense, but claims

immunity from his duty to retreat; (3) when the occupant is the slain and the homicide occurred while he sought to protect his habitation; and (4) when the occupant is the slain and the homicide occurred while he was attempting to eject a trespasser but was outside of his habitation. *Id.* at 233 – 237, 120 S.E.2d at 242 – 243. Appellant herein claims he was entitled to a jury instruction on the defense of habitation separately and distinctly from that of self-defense as explained in scenario (1) of Bradley, as he was the occupant of the bedroom and was entitled to use reasonable force to eject Victim therefrom.

The request for jury charge on the defense of habitation was properly denied by the trial court as there was no evidence presented at trial to support a finding Victim was a trespasser attempting to force himself into the dwelling of another, or that Appellant had the authority to undertake such an ejection.

In State v. Smith, 226 S.C. 418, 85 S.E.2d 409 (1955), this Court found the trial court properly denied a request to charge the jury on the law of habitation where “both parties involved stood on equal grounds” and “neither had any right over the other in so far as the place where [the incident] happened”. *Id.* at 419 – 420. In Smith, the victim was a farm hand working for and living across the street from Mrs. Coates. Defendant, Mrs. Coates’s son-in-law, had recently moved in with Mrs. Coates to care for her following a recent operation. One evening, following an argument between victim and defendant in Mrs. Coates’s personal bedroom, defendant struck victim several times with his fist and cut victim severely with a knife. Defendant alleged he did so in self-defense as victim was reaching for a nearby rifle. At trial, defendant’s request for a charge the law of habitation was denied. The Court noted victim was neither an intruder nor a trespasser, but rather carried the status of a guest in Mrs. Coates’s home. Under the circumstances, the Court said, defendant “certainly had no right to eject” victim from the home.

Therefore, “the law of habitation had no relevancy, and the rules as to self-defense were alone applicable.” Id. at 420.

Similarly, both Victim and Appellant in the instant case were merely permissible guests in Victim’s wife’s house, which the testimony reflects she owned solely in her name. The testimony was uncontroverted she gave both Appellant and Victim explicit permission to reside in her home. Therefore, like Smith, neither had “any right over the other” and the two “stood on equal grounds” in their ability to enforce the rights of the owner. Victim here, like victim in Smith, was neither an intruder in the home nor a trespasser, nor was there any evidence to indicate that the rightful owner of the house ever asked Victim to leave the residence. Appellant had no right to “eject” Victim, a permissible guest in the house, from any portion of the dwelling. Accordingly, like in Smith, the law of habitation had no relevancy and was wholly unsupported by the evidence presented at trial. Therefore, the trial court did not err in denying Appellant’s request for such a charge.

Such a determination is reinforced when looking to the statutory language and legislative intent set forth in the “Protection of Persons and Property Act”. Under S.C. Code §16-11-440, the act provides a “presumption of reasonable fear of imminent peril of death or great bodily injury to himself or another person” justifies the use of “deadly force that is intended or likely to cause death or great bodily injury” against a person “unlawfully and forcefully entering...a dwelling”, but specifically sets forth such a presumption is **not** applicable if the person “against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling”. It is clear the legislature sought to carve out an exception to the defense of habitation when applied to those rightfully and/or lawfully within the dwelling. The evidence in the record is uncontroverted, and Appellant readily conceded to the jury at trial, that Victim had the right to be in the dwelling per his wife’s permission.

Therefore, the trial court properly denied Appellant's request to charge the law of habitation as a defense to the charge as there was no evidence presented to support such a charge. Accordingly, Appellant's convictions should be affirmed.

### CONCLUSION

For all the foregoing reasons stated above, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 29, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal From Richland County  
Honorable Alison R. Lee, Circuit Court Judge

Thaddeuss Starks, 284256,

Petitioner,

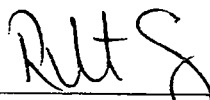
v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent Pursuant to White v. State has been served upon opposing counsel, Wanda H. Carter by mailing two (2) copies addressed to: South Carolina Office of Appellate Defense; 1330 Lady Street, Suite 401; Columbia, SC 29211; with postage prepaid, this 4<sup>th</sup> day of February, 2013.



ROBERT D. CORNEY  
ATTORNEY FOR RESPONDENT

SWORN to before me this 4<sup>th</sup>  
day of February, 2013.

 (L.S.)  
Notary Public for South Carolina.

My Commission Expires: ~~My Commission Expires~~  
January 30, 2013