

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO THE COURT OF APPEALS
Appeal from Richland County
The Honorable Alison R. Lee, Circuit Court Judge

SC SUPREME COURT

Opinion No. 2015-UP-548 (S.C. Ct. App. filed December 2, 2015)

Appellate Case No. 2011-201146

Thaddeuss Starks, #284256, Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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PETITIONER'S 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

The Richland County Grand Jury indicted Petitioner at the January 2007 term of General Sessions for Murder (2007-GS-40-9503). (App. p. 901-02). Michael D. McMullen, Esquire, represented Petitioner. On October 8, 2007, Petitioner proceeded to trial and was found guilty of the lesser included offense of voluntary manslaughter. The Honorable G. Thomas Cooper sentenced Petitioner to ten (10) years' imprisonment. No direct appeal was taken.

On February 26, 2008, Petitioner filed the current application for post-conviction relief (PCR) with the Richland County Clerk of Court (2008-CP-40-1439). The State filed a Return on March 30, 2009, requesting the matter be set for an evidentiary hearing. On March 17, 2010, a hearing was convened at the Richland County Courthouse before the Honorable Alison R. Lee, at which Petitioner was present and represented by 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 Petitioner's request for relief on all grounds except for a belated direct appeal pursuant to White v. State¹. Pursuant to the PCR court's grant of a belated appeal, a notice of appeal was filed and a Petition for Writ of Certiorari was submitted, accompanied by the Brief of Petitioner. Respondent filed a return to the petition and a brief pursuant to White v. State on January 29, 2013. On May 8, 2015, the South Carolina Court of Appeals granted certiorari to review the case on belated direct appeal and then affirmed the case on December 2, 2015.

Petitioner filed a petition for rehearing on December 17, 2015, which was subsequently denied on January 21, 2016. Petitioner then filed a Petition for Writ of Certiorari to the Court of Appeals on February 22, 2016. The return follows.

¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

The victim was a permissible guest and was not a trespasser or intruder; therefore, Petitioner was not entitled to a jury charge on the defense of habitation.

Certiorari is not warranted in this case because the court of appeals was correct in finding the trial court was correct in denying Petitioner’s request to charge the defense of habitation. Petitioner argues he was entitled to a defense of habitation charge because the victim’s status changed from lawful occupant to trespasser when he allegedly became violent. Respondent submits the victim was a cohabitant of the home and was not a trespasser.

How the issue was raised below

In the early evening hours of October 12, 2006, Alphonzo “Al” Starks (hereafter “Victim”) was stabbed in the chest and killed by Petitioner during an altercation in Victim’s wife’s home. Victim was Petitioner’s stepfather and had been married to Petitioner’s mother for approximately thirty-three (33) years at the time of the incident. (App. p. 454, lines 3-7). Petitioner’s mother lived at the house for roughly six (6) years prior to the incident, during which time both Victim and Petitioner “came and went.” (App. p. 88, lines 11-15; p. 88, line 24 – p. 89, line 3; p. 454, line 18 – p. 455, line 6). Victim’s wife was the sole owner of the house and had given both Victim and Petitioner express permission to stay at the house. (App. p. 469, lines 2-6).

On the night of October 12th, Petitioner 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 Petitioner “was coming back and forth” between Victim’s house and Petitioner’s girlfriend’s house, but was not “pulling [his] fair share around the house”. (App. p. 89, line 17 – p. 91, line 15). Cornish went on to say after seeing a police cruiser stop by the house earlier in the evening and then leave, he heard Petitioner and Victim continue to argue. (App. p. 94, lines. 3 – 24). Upon hearing Victim call his name, Cornish went outside and spoke with Victim who said he would not let Petitioner disrespect him in his own house. (App. p. 95, line 17 – p. 97, line 21). Cornish noted Victim asked for a gun, but said he told Victim to calm down and go back in the house. (App. p. 99, lines 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. (App. p. 102, lines 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. (App p. 103, lines 19 – 22).

Cornish said while he was tending to Victim, Petitioner “came over in a very aggressive manner” threatening to kick Victim while he was on the ground, unresponsive. (App. p. 104, line 22 – p. 105, line 17). Cornish testified when he asked Petitioner what happened, Petitioner said “[Victim] came over, kicked the door open and slapped [Petitioner]”, so Petitioner “stabbed him”. (App. p. 105, line 23 – p. 106, line 1). The first responding officer on the scene, Lance Corporal John Carwell also testified that upon his arrival at the scene, Petitioner said he “had locked himself in his bedroom in an attempt to stay away from Victim”, but “[Victim] kicked in his bedroom door” and “slapped [Petitioner] on the face”, at which time Petitioner stabbed

Victim with a kitchen knife. (App. p. 145, line 24 – p. 146, line 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. (App. p. 177, line 21 – p. 178, line 2). Investigator Kevin Isenhoward also testified as to Petitioner’s statement about the altercation detailing the same pertinent facts set forth above. (App. p. 281, line 16 – p. 282, line 17).

At the close of the state’s case-in-chief, counsel for Petitioner 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 Petitioner exercising reasonable means of ejection to stop Victim’s trespass. (App. p. 411, lines 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 [Petitioner] was trying to eject [Victim] . . . from those premises.” (App. p. 415, line 24 – p. 416, line 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, Petitioner requested the jury be charged with the lesser included voluntary manslaughter, self-defense and the defense of habitation. (App. p. 549, line 12 – p. 550, line 23; p. 622, line 23 – p. 625, line 22). Judge Cooper 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. (App. p. 634, lines 20 – 24). Counsel took exception to the Judge Cooper’s denial of that request following the jury charge. (App. p. 714, lines 5 – 6).

Relevant Law

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Analysis

Respondent asks this Court to deny the petition because the defense of habitation is inapplicable to the facts of the case. "[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. Petitioner's argument is without merit.

"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 the court of appeals did not err in finding the charge inapplicable

because Victim was not a trespasser and there was no evidence presented that Petitioner attempted to eject Victim.

Petitioner cites State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), in support of his argument that Victim lost his status as a lawful cohabitant and became a trespasser when he allegedly became aggressive. Bryant held that a defendant who lived in a hotel room was entitled to a jury charge on habitation when a trespasser attempted to force himself into the defendant's hotel room. The court of appeals was correct to distinguish Bryant from this case because no evidence was presented at trial to support a finding Victim was a trespasser attempting to force himself into the dwelling of another, or that Petitioner 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 on the law of habitation was denied. The court noted the 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 ruled, 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 Petitioner were merely permissible guests in Victim’s wife’s home, which she owned solely in her name. The testimony was uncontroverted she gave both Petitioner and Victim explicit permission to reside in her home. Therefore, like in 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. Petitioner had no right to “eject” Victim, a permissible guest in the house, from any portion of the dwelling. Accordingly, 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 Petitioner’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 Petitioner 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 Petitioner’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, this Court should deny the petition.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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By: 

ATTORNEYS FOR RESPONDENT

March 22, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2016-000310

Thadduess Starks, #284256,.....Petitioner,

v.

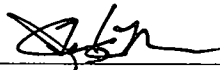
State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Return to Petition for Writ of Certiorari to the Court of Appeals** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

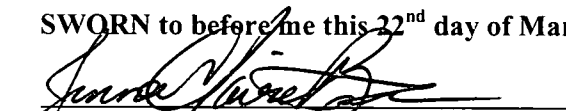
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This 22nd day of March, 2016.



J. CLAYTON MITCHELL
ATTORNEY FOR RESPONDENT

SWORN to before me this 22nd day of March, 2016.



Notary Public for South Carolina.
My Commission Expires: 04-28-2025