STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

Opinion No. 2019-UP-100 (S.C. Ct. App. Filed March 6, 2019)

2015-GS-10-02684, 2015-GS-10-02685, 2016-GS-10-03318,

THE STATE,

RESPONDENT,

V.

RHAJON AKEEM RESHAE SANDERS,

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' opinion issued in this case on March 6, 2019, a Petition for Rehearing was filed on March 21, 2019, which was denied by the South Carolina Court of Appeals on May 23, 2019.

QUESTIONS PRESENTED

1.) Did the Court of Appeals err in upholding the trial judge's denial of petitioner's motion for a self-defense charge that included an instruction regarding his right to "act on appearances" because it was the aggressor's hand reach for the waistband of his pants that was properly interpreted as a grasp for a gun, which in turn gave the appearance of danger that caused petitioner to shoot in self-defense?

2.) Did the Court of Appeals err in upholding the trial judge's ruling to exclude evidence establishing that petitioner lived in a high crime neighborhood in support of the self-defense claim and also in limiting the cross-examination of witnesses who knew that crime was rampant where the shooting occurred because this interfered with petitioner's right to cross-examine witnesses completely and violated his right to present a full and complete defense at trial?

3.) Did the Court of Appeals err in upholding the trial judge's ruling that prohibited defense counsel from referencing at closing the dangerous high crime nature of the neighborhood where petitioner lived because this violated petitioner's right to a fair trial?

4.) Did the Court of Appeals err in upholding the trial judge's failure to charge the requested "no duty to retreat" jury instruction because the evidence in the record supported such a charge?

5.) Did the Court of Appeals err in upholding the self-defense charge that nullified the correct law regarding the state's burden to disprove self-defense by proof beyond a reasonable doubt?

6.) Did the Court of Appeals err in holding that the trial judge did not err in overruling of defense counsel's objection to the solicitor's injection of prior bad acts into evidence at trial?

STATEMENT OF CASE

Petitioner Rhajon Akeem Sanders was convicted of attempted murder and possession of a weapon during the commission of a violent crime per jury trial held during the June 2016 term of the Charleston County General Sessions Court before Judge William W. Jeffrey Young. petitioner was sentenced to imprisonment for an aggregate period of fifteen years. Attorneys Myesha Brown and Natasha Chisholm represented petitioner at trial, and Assistant Solicitors Nina Savas and Lauren Frierson appeared on behalf of the state.

Petitioner appealed his convictions and sentences. On March 6, 2019, the South Carolina Court of Appeals affirmed petitioner's convictions and sentences. See State v. Sanders, Unpublished Opinion No. 2019-UP-100 (S.C. Ct. App. March 6, 2019). App. 1-6. On March 21, 2019, petitioner filed a petition for rehearing in the case. App. 7-21. On May 23, 2019, the South Carolina Court of Appeals denied the petition for rehearing. App. 22. This petition requesting a review of the Court of Appeals' decision in this appeal follows.

QUESTION I

The Court of Appeals erred in upholding the trial judge's denial of petitioner's motion for a self-defense charge that included an instruction regarding his right to "act on appearances" because it was the aggressor's hand reach for the waistband of his pants that was properly interpreted as a grasp for a gun, which in turn gave the appearance of danger that caused petitioner to shoot in self-defense.

The state alleged that petitioner committed attempted murder when he fired gunshots at Nicolas Washington in Charleston, South Carolina, on the night of December 26, 2014. Petitioner and Washington testified at trial regarding the shooting.

Petitioner testified that he was standing outside his home on the front porch at Kent Avenue around 7:00 p.m. when he noticed a tall suspicious looking male dressed in all black and wearing a hoodie standing across the street. Petitioner explained that when this male, who stood at nearly 6'3" and seemed to weigh over 200 pounds, threw his cigarette down and reached for the waistband of his pants with his hand, and advanced in his direction, then he (petitioner) fired his gun at the male. Petitioner did not leave his property before the shooting transpired and there were no street lights on at that time in the area where the house where he lived was located. R. 520, l. 4 – R. 569, l. 25.

Washington testified at trial and stated that on that same night and time, he was at his aunt's house located at 2311 on Kent Avenue, and that he was standing outside while making a telephone call, and simultaneously lighting a cigarette and listening to music when he saw something like a fireball skim the ground, and that afterwards he fell and then realized that he had been shot. Washington admitted that he was wearing dark clothing and that the porch light

was off and it was dark outside. R. 25, l. 3 – R. 110, l. 20. Officer Tucker confirmed that Washington wore dark clothing on that night. R. 245, l. 11-17.

Petitioner's first self-defense issue raised on appeal follows:

> The trial judge erred in failing to give a complete self-defense charge that included an instruction that petitioner had the right to "act on appearances" because it was the aggressor's hand reach for the waistband of his pants that was properly interpreted as a grasp for a gun, which in turn gave the appearance of danger that caused petitioner to shoot in self-defense.

On appeal, the Court of Appeals addressed the issue as follows:

> We find the circuit court did not err in refusing to give Sanders' requested act on appearances charge. In charging self- defense, the circuit court should consider "the facts and circumstances of the case at bar in order to fashion an appropriate charge." *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989). In this case, neither Sanders nor Victim knew each other. Sanders testified there had never been any issued, problems, threats, or altercations between him and Victim prior to the shooting. On the night of the shooting, Victim testified he was standing outside smoking. Sanders initiated the contact with Victim when he waved across the street at Victim, called out to Victim, and stepped off his porch towards Victim before ultimately firing his weapon when Victim reached into his waistband. Sanders admitted he never saw a weapon or any other type of shiny object on Victim. We find the circuit court correctly determined an act on appearances charge did not fit the facts and circumstances of this case. *See State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989) ("The [circuit court] should charge only the law applicable to the case as the purpose of the jury instructions is to enlighten the jury.") (citation omitted).
>
> > The defendant has the right to use so much force as appeared to be necessary for complete self[-]protection in which a person of ordinary means and firmness would have believed to be needed to prevent death of serious bodily injury.
>
> Although the circuit court's instruction did not contain the identical verbiage as the instruction requested by Sanders, we find its instruction was substantially correct and covered the substance of the law requested by Sanders. *See id.* at 478, 697 S.E.2d at 583 ("A jury charge that is substantially correct and covers the law does not require reversal."); *State v. Adkins*, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct. App. 2003) ("The substance of the law is what must be charged to the jury, not any particular verbiage."). Therefore, we affirm the circuit court's refusal to give Sanders' requested act on appearances charge.

In holding that the facts and circumstances did not require an acting on appearances charge, the Court of Appeals in effect appeared to consider three factors, i.e. that: 1.) that petitioner and Washington did not know each other, and 2.) that there were no prior difficulties (previous "problems threats or altercations") between them, and 3.) that petitioner did not see a weapon before firing in self-defense. However, these three factors were not requirements or prerequisites to satisfy an acting on appearances charge. To the contrary, there was no requirement that petitioner needed to have known Washington or have had difficulties with Washington in the past. The Fuller Court held that in order to receive an acting on appearances charge, the defendant must have **believed** that he was in imminent danger and that he had a right to act on appearances under the circumstances as they appeared to him, which he did do in this case. There is no requirement of prior knowledge of the aggressor's identity or of past difficulties with the aggressor. Here, petitioner believed he was in imminent danger. The danger in question that made petitioner believe he had a right to act on appearances. Furthermore, petitioner was not required to have seen a weapon in Washington's hand because he had a right to an acting on appearances charge even if he **erroneously** believed he saw the victim with a weapon. See Fuller and State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955). In Jackson, the defendant did not see a weapon in the victim's hand as he was blinded by lights, but fired shots after being awakened at his home; and in Fuller, the defendant acted on appearances because he saw two men go into the trunk of a car and he **thought** he saw a shiny object in one man's hand. Moreover, although prior difficulties could be relevant requiring a separate charge under Fuller, nonetheless, the absence of prior difficulties would in no way would preclude an acting on appearance charge Again, petitioner showed that he believed he was in imminent danger and has a right to act on appearance. See also State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000) where the Court reversed because a right to "act on appearances" charge was not given

after the defendant saw one deceased man hold a gun to another's head and fire the gun because he believed the same man would shoot him regardless of whether or not he saw a gun again. Lastly, regarding the Court of Appeals' holding that the instruction charging the jury that petitioner had a right to use as much force as necessary did not cure the lack of a right to act on appearances charge as required under Fuller as the force charge and the appearance charge are two separate and distinct principles. The Court of Appeals erred in not finding error in the trial judge's decision not to include a right to "act on appearances" jury instruction within the self-defense jury charge given in the case.

QUESTION II

The Court of Appeals erred in upholding the trial judge's ruling to exclude evidence establishing that petitioner lived in a high crime neighborhood in support of the self-defense claim and also in limiting the cross-examination of witnesses who knew that crime was rampant where the shooting occurred because this interfered with petitioner's right to cross-examine witnesses completely and violated his right to present a full and complete defense at trial.

This Court of Appeals held the following in ruling on this issue:

> We find the circuit court did not abuse its discretion in excluding the high crime neighborhood evidence Sanders sought to admit. *See State v. Aleksey,* 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000) ("The [circuit court] is given broad discretion in ruling on questions concerning the relevancy of evidence, and [its] decision will be reversed only if there is a clear abuse of discretion."). Throughout his trial, Sanders repeatedly attempted to elicit testimony from witnesses about the level of crime in his neighborhood. Each time, the circuit court sustained the State's objections to this questioning as irrelevant. Sanders attempted to introduce this evidence to foster his theory that he shot Victim in self-defense based on his general fear of the community. However, the elements of self-defense are inherently specific to the person perceiving fear and the distinct circumstances causing that fear. *See State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (per curiam) ("[T]he *defendant* must have actually believed *he* was in imminent danger of losing *his* life or sustaining serious bodily injury.... If the defendant actually was in imminent danger, the *circumstances* were such as would warrant a

> man of ordinary prudence, firmness[,] and courage to strike the fatal blow.") (emphasis added). We find an accused's general fear of the community is not a relevant factor in a self-defense claim arising out of a very specific set of circumstances. *See State v. Sweat*, 362 S.C. 117, 127, 606 S.E.2d 508, 513 (Ct. App. 2004) ("Evidence is admissible if 'logically relevant' to establish a material fact or element of the crime."). The objective evidence and testimony in this case showed that Sanders shot Victim because the street was dark, Victim wore dark clothing, Victim threw down his cigarette before taking steps towards Sanders, and Victim reached into his waistband. We find the circuit court did not abuse its discretion in excluding the subjective high crime neighborhood evidence as irrelevant.

The Court of Appeals held in effect that community violence was not a relevant factor with respect to fear connected to petitioner's self-defense claim on the ground that this was not specific to this case via the rationale that the elements of self-defense are inherently specific to a defendant's perception of fear and the distinct circumstances causing the fear. However, to the contrary, this Court may have overlooked the fact that this incessant community violence that spawned constant neighborhood fear in petitioner provided a backdrop and background that created a specific fear that was daily and continually present in his **state of mind**. This meant that petitioner's neighborhood fear was a specific fear to him every minute of the day and because this fear was a constant and specific presence in his mind, then this community violence was inextricably linked to his specific fear of Washington in light of Washington's behavior and actions prior to the shooting. Hence, the community violence was relevant and specifically connected to petitioner's self-defense claim. The defense sought to elicit testimony proving that the area where the shooting occurred was a high crime area that was inherently dangerous to the extent that loss of life or being injured existed at all times and that this was always a highly likely possibility where petitioner lived. Thus, the reason for petitioner's reaction in firing his gun in self-defense after the suspicious man dressed in all black reached for his waistband and advanced in his (petitioner's) was justified due to a specific fear that was triggered by the actions

of Washington **against the backdrop of community fear which was linked to his specific fear.** This Court acknowledged that petitioner "shot [Washington] because the street was dark, [Washington] threw down his cigarette before taking steps towards [petitioner] and [Washington] reached into his waistband."

In the instant case, testimony from residents of the Accabee community and knowledgeable police officers who were familiar with the high crime associated with Kent Street and Accabee Community constituted relevant evidence in support of petitioner's self-defense claim to the extent that petitioner, who lived in an area where getting shot was the norm, believed on the night of the shooting that he was in actual imminent danger of losing his life or sustaining serious bodily injury based on Washington's menacing behavior and based on the historical character of the community in which he lived; and that any reasonable person would have believed the same, i.e., that there was imminent danger of the loss of life or injury based on the scenario in question. This proved petitioner's state of mind based on the circumstances he faced and the high crime area community in which he lived. Therefore, the Court of Appeals erred in excluding this relevant evidence, i.e., evidence that petitioner resided in a high crime neighborhood because this gave rise to a specific fear on petitioner's behalf, which in turn caused him to act in self-defense in the case.

QUESTION III

The Court of Appeals erred in upholding the trial judge's ruling that prohibited defense counsel from referencing at closing the dangerous high crime nature of the neighborhood where petitioner lived because this violated petitioner's right to a fair trial.

This third self-defense related issue was raised on appeal in the case follows:

> The trial judge erred in not allowing defense counsel to formulate her closing remarks based on reasonable inferences raised in the record because this in turn violated petitioner's right to a fair trial.

The Court of Appeals ruled on the issue above as follows:

> We find the circuit court did not abuse its discretion in prohibiting Sanders from referencing the neighborhood's alleged dangerous nature during his closing argument. *See State v. Finklea*, 388 S.C. 379, 385, 697 S.E.2d 543, 547 (2010) ("A [circuit court] is vested with broad discretion in dealing with the range and propriety of closing arguments and ordinarily [its] rulings on such matters will not be disturbed."). The defendant's closing argument is confined to statements pertaining to the evidence in the record and any *reasonable* inferences that may be drawn from the facts in evidence. *State v. Durden*, 264, S.C. 86, 92, 212 S.E.2d 587, 590 (1975); *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); 23A C.J.S. *Trial and Incidental Proceedings* § 1752 (2016). Because the circuit court repeatedly sustained the State's relevance objections to this evidence during the trial, allowing Sanders to reference this evidence for the first time during closing argument may have confused the jury in their consideration of his case. *See* Rule 403 SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of .... confusion of the issues, or misleading the jury...."). We also find that referring to the neighborhood's "crime infested character" is not a reasonable inference that can be drawn from the facts in evidence. The only testimony related to the neighborhood- on the record without objection- was Victim's testimony that a friend of his was recently killed in the neighborhood. A single homicide in the neighborhood is not sufficient to created a reasonable inference that the entire neighborhood is dangerous, unsafe, or "crime infested." *See Hoeffner v. The Citadel*, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993) ("Arguments by counsel which invite the jury to base its verdict on considerations not relevant to the merits of the case are improper."). We affirm as to this issue.

The Court of Appeals held in effect that this neighborhood crimes evidence did into constitute matter that could be addressed during defense counsel's closing argument because

such evidence was ruled inadmissible by the trial judge at trial and because one single homicide did not create a reasonable inference that the entire neighborhood was dangerous. To the contrary, there is no rule of law mandating a certain threshold or a certain amount of evidence to be presented in order to create reasonable inferences from the record, so therefore, as long as there is evidence in the record that was admitted (here there were two instances of high crime neighborhood testimony that entered the record without objection), then the rule is that counsel may draw on facts in evidence that were admitted and not objected to at trial, and then make reasonable inferences about the same at closing This record contained information regarding the dangerousness of the neighborhood. Washington testified that a friend of his from the Accabee Community had been killed recently in the neighborhood (R. 51, l. 25 – R. 52, l.2), and petitioner's mother testified that she was warned that this was a high crime neighborhood before moving into her home (R.494, lines 4-10). Based on the testimony, defense counsel should have been allowed to refer to this at closing couched in terms of the crime infested character of the neighborhood as a reasonable inference from the record and how this played into petitioner's reaction in self-defense in light of the background information regarding his knowledge of the area being a high crime area. R. 590, l. 21 – R. 592, l. 6.

Clearly, the Court of Appeals erred in denying petitioner's argument that the trial judge erred in denying defense counsel the opportunity to address at closing the high crime character of the neighborhood which emanated from Washington (state's witness) as an inference that was supported by the record and relevant to petitioner's self-defense claim.

QUESTION IV

The Court of Appeals erred in upholding the trial judge's failure to charge the requesting "no duty to retreat" jury instruction because the evidence in the record supported such a charge.

The fourth self-defense issue raised on appeal follows:

> The trial judge erred in denying petitioner's request for the additional "no duty to retreat" charge in connection with the self-defense instruction because there is no affirmative duty requiring one to retreat from the curtilage of his or her home.

The Court of Appeals ruled on the issue raised above as follows:

> We find the circuit court correctly refused to charge the jury with Sanders' requested "no duty to retreat" charge because the evidence presented at trial does not support the requested charge. *See State v. Marin*, 404 S.C. 615, 619, 745 S.E.2d 148, 151 (Ct. App. 2013), *aff'd as modified,* 415 S.C. 475, 783 S.E.2d 808 (2016) ("This court will not reverse a [circuit] court's decision to refuse a specific request to charge unless the [circuit] court committed an error of law."). In order to claim immunity from the law of retreat, an accused must demonstrate that he was attacked on his own premises without fault on his part. *See State v. Long*, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (explaining the exception to the duty to retreat element of self-defense). Here, although Sanders was standing in his yard when he opened fire on Victim, the evidence showed Sanders fired multiple rounds across the street and struck Victim in he leg while Victim was either on the sidewalk or a couple steps into the street. There is no evidence that indicated Victim ever accosted Sanders on his property of that Victim even approached Sanders' property. Moreover, immunity from the law of retreat is "predicated on the absence of aggression or fault" on the part of the accused seeking the doctrine's immunity. *State v. Grantham*, 224 S.C. 41, 44, 77 S.E.2d 291, 292 (1953). The evidence in this case indicates Sanders, not Victim, initiated the incident when he waved across the street at Victim, called out to Victim, and stepped off his porch towards Victim, before ultimately firing his weapon when Victim reached into his waistband. We find Sanders was not at fault without initiating the incident and the evidence presented did not support the requested charge. Accordingly, we affirm as to this issue.

The Court of Appeals held in effect that petitioner "was standing in his yard when he opened fire on [Washington]," but nonetheless This Court went on to hold that there was no evidence that Washington "accosted petitioner on his property or that Washington approached

petitioner's property and as a result, there was evidence to support a "no duty to retreat charge." To the contrary, petitioner was not the aggressor (note that self-defense was charged) and petitioner was on his own premises when Washington approached and advanced toward petitioner as the aggressor and when petitioner fired in self-defense. To the contrary, the "no duty to retreat" charge was applicable in this case. Here, petitioner stayed on his own property and watched Washington reach for his waist band while he Washington advanced across the street onto his (petitioner's) property. Petitioner had no duty to retreat; and note furthermore that retreating would have increased his danger of experiencing death or serious bodily injury. Under the law of self-defense, one who is attacked on his own premise is immune from the duty to retreat. State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996); State v. Merriman, 287 S.C. 74, 337 S.E.2d 218 (1985). A defendant is not required to retreat if he has "no other probable means of avoiding the danger of losing his life or suffering serious bodily injury." State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), citing to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). Also, there is no duty to retreat around the cartilage of one's own premises. State v. Wiggins, supra; State v. Brooks, 252 S.C. 504, 167 S.E.2d 307 (1969).

The Court of Appeals erred in denying petitioner's argument that the trial judge erred in failing to charge the "no duty to retreat" component of self-defense in the present case.

QUESTION V

The Court of Appeals erred in upholding the self defense charge that nullified the correct law regarding the state's burden to disprove self defense by proof beyond a reasonable doubt.

The trial judge gave the following charge on the burden of proof of self-defense as follows:

> Now, ladies and gentlemen, the defendant has raised the defense of self-defense and self-defense is a complete defense, and if it is **established** you must find the defendant not guilty...the state has the burden of disproving self-defense by proof beyond a reasonable doubt and if you have a reasonable doubt of the defendant's guilt after considering all of the evidence including the evidence of self-defense, then you must find the defendant not guilty on the other hand; if you have no reasonable doubt of the defendant's guilt after considering all of the evidence including the evidence of self-defense, then you must find the defendant guilty. R. 675, l. 3-15.

The Court of Appeals held as follows on this last self-defense issue:

> We find the circuit court properly charged the jury regarding the burden of proving self-defense. *See Marin*, 404 S.C. at 619, 745 S.E.2d at 151 ("The [circuit] court is required to charge the correct law applicable to the case."). Sanders contends the circuit court's use of language "if [self-defense] is established you must find the defendant not guilty," improperly led the jury to believe that Sanders, not the State, had the burden of proving the elements of self-defense. However, in the sentence immediately following the language at issue, the circuit court stated, "The State has the burden of disproving self-defense by proof beyond a reasonable doubt...." When viewed as a whole in light of the evidence and issued presented at trial, we find the charge was substantially correct and charged the appropriate law based on the facts and circumstances of the case. *State v. Harris*, 382 S.C. 107, 113-14, 674 S.E.2d 532, 535 (Ct. App. 2009) ("On review, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial... a [circuit] court's jury charge that is substantially correct and covers the law does not require a reversal."). We affirm as to this issue.

This Court held that the infirm charge in question was in effect cured by the one sentence instructing the jury that the state had the burden of disproving self-defense by proof beyond a reasonable doubt. To the contrary, clearly, one correct charge given after an incorrect charge did

not cure the overall burden shifting charge and its effect; and if anything, said improper charge confused the jury, which cannot as a whole render the charge to be "substantially correct." The charge that the jury that they must find petitioner not guilty "if [petitioner] **established** [self-defense]" surely led them to believe that petitioner had the burden of proving the elements of self-defense in the case, which nullified the correct law that the state had to disprove self-defense beyond a reasonable doubt. At the very least, this confused the jury. At the most (and worst), this vitiated the correct law on the proof of self-defense. This error was prejudicial and reversible error because petitioner's defense hinged primarily on self-defense, and because in light of the facts, the state could not disprove self-defense by proof beyond a reasonable doubt. The current law requires the state to disprove self-defense when raised by the defendant beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). See State v. Burkhart, 350 S.C.252, 565 S.E.2d 298 (2002). The Court reversed in Burkhart, supra, holding that the requested charge that the state must disprove self-defense is clearer than a description of the self-defense burden of proof that states that the defendant does not need to prove self-defense. Although the concurring opinion in Burkhart espoused the view that the instant charge is acceptable, the majority opinion in Burkhart refused to agree to the legitimacy of such a charge. Compare also State v. Addison, 343 S.C. 290, 540 S.E.2d 449 (2001), where the Court reversed based on the following charge that was given in the case and found that this error was not harmless error because it was not the law and it confused the jurors, which probably contributed to the jury's guilty verdicts:

> If you have a reasonable doubt of the defendant's guilt after considering all the evidence including the evidence of self-defense, then you must find him not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence including the evidence of self-defense, then you must find him guilty.

The Court of Appeals erred in denying petitioner's argument that the trial judge erred in failing to charge the proper burden of proof on his self-defense claim.

QUESTION VI

The Court of Appeals erred in holding that the trial judge did not err in overruling defense counsel's objection to the solicitor's injection of prior bad acts into evidence at trial.

During the solicitor's cross-examination of petitioner, the following colloquy occurred:

> Q. Right that's your gun that's your dresser, that's your extended magazine right?
>
> A. Yes, ma'am
>
> Q. That's your weed too, right?
>
> A. What weed?
>
> Defense Counsel: Objection, Your Honor.
>
> The Court: Overruled. Proceed.
>
> Q. Is that weed?
>
> A. That's not weed
> R. 558, l.1-17

The injection of drugs (marijuana) into a case that involved a shooting that was devoid of any drug link or connection was extremely prejudicial because it injected a negative character/bad act component in the case in order to cast petitioner in the light of one who engages in gun violence and does drugs also, which in turn created a criminal propensity image of petitioner to the extent that he was predisposed to commit crimes and thus guilty as charged.

This identical issue was raised in State v. Peake 302 S.C. 378, 396 S.E.2d 362 (1990), where the Court reversed due to a similar case when the solicitor introduced a drug factor in the case, which was a murder case, where the murder was the only issue in the case sans any

involvement of a drug connection to the murder. In Peake, the Court held that it was improper to allow testimony into evidence that the defendant offered to sell marijuana to the deceased ten days prior to the deceased's murder because this was impermissible prior bad acts evidence that was irrelevant and more prejudicial than probative. In Peake, the Court's rationale as follows:

> Generally, when alleged prior bad acts have not resulted in arrest, indictment or conviction, evidence of such crimes is admissible. State v. Diddlemeyer, 296 S.C. 235, 371 S.E.2d 793 (1988); State v. Smith, 279 S.C. 440, 308 S.E.2d 794 (1983). Evidence of prior criminal acts which are independent and unconnected to the crime for which an accused is on trial is admissible for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987); 381 State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973). Implicit in the rules of evidence 88364 which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish either" 1) motive; 2) intent); 3) the absence of mistake or accident; 4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; 5) the identity of the person charged with the commission of the crime on trial." State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923).

Clearly, there must be a logical connection between the unrelated prior bad acts evidence and the charged crime, and that determination of the prejudicial effect of the prior bad act evidence must be based on the entire record and the facts of the case. State v. Brooks, 341 S.C. 57, 533 S.E.2d 325 (2000). Compare State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006), where the Court held that it was error to admit a prior failure to stop for a blue light conviction where the defendant was on trial for murder. Finally, compare also the reversal in State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999), where the Court held that it was prejudicial error to admit prior thefts from the defendant's ex-wife in support of the theory that the defendant needed money to support a bad drug habit during his trial on the charges of murder, arson, and armed robbery, particularly where the deceased was known to carry large sums of money, because the priors showed bad

character and criminal propensity on the defendant's behalf as proof that he was criminally predisposed to commit crimes and was guilty of the crimes with which he was on trial.

Here, the solicitor attempted to inoculate the jury with the idea that petitioner was a weed- smoking and gun-toting criminal who was predisposed to commit violent crimes despite the fact that no marijuana was found during the search of his room and that he used the weapon only in self-defense. Clearly, this prior bad act error evidence constituted irrevocable prejudice because of the impact of bad character assigned to petitioner and the bad behavior that would accompany bad character. The trial judge erred in overruling the objection by the defense to the prior bad acts evidence, which turned out to be factually untrue. This error deprived petitioner of his right to a fair trial in violation of the Fourteenth Amendment and article 1, §3 of the South Carolina State Constitution.

The Court of Appeals addressed the prior crimes issue as follows:

> Sanders' sixth issue as to whether the circuit court erred in overruling his objection to the State's line of questioning about whether police found drugs in his home is not preserved for appellate review. Although Sanders objected to the State's questions, he never placed the specific reasons for his objection on the record. *See State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("[A party's] objection should be addressed to the circuit court in a sufficiently specific manner that brings attention to the exact error. If the party fails to properly object, the party is procedurally barred from raising the issue on appeal.") (internal citations omitted); *c.f. State v. King*, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018) (finding an objection citing a rule of evidence preserved the issue for review because the defendant's argument was sufficiently specific and apparent from the context of the objection). Moreover, the circuit court allowed Sanders to place previously raised objections and bench conference discussions on the record through the form of a post-trial motion. Sanders filed a post-trial motion citing his objections, the court's rulings, and the court's off-the-record discussions about his objections; however, he failed to include any information about this objection to the State's line of questioning regarding whether police found drugs in his home. Therefore, we find this issue is not preserved for appellate review.

The Court of Appeals held that this prior bad act objection was not specific and thus not preserved for appellate review. To the contrary, per Rule 103(a)(1), SCRE, an objection that has

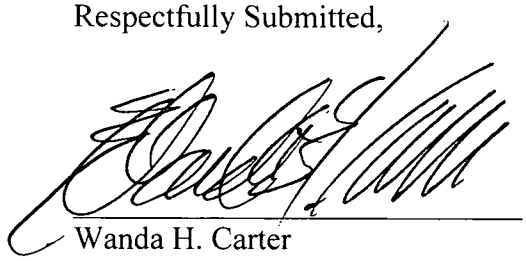
a ground that is apparent from the context of the objection will preserve the issue for appellate review. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (2001). The injection of drugs (marijuana) into a shooting case that was devoid of any drug link or connection was very obvious, irrelevant, and prejudicial, and hence the objection to this was also very obvious as well. The result was prejudicial because it injected a negative character/bad act component to the case in order to cast petitioner in the light of one who engages in gun violence and does drugs also, which in turn created a criminal propensity image of petitioner to the extent that he was predisposed to commit crimes and thus guilty as charged. R 558, lines 1-17. An identical issue was raised in State v. Peake 302 S.C. 378, 396 S.E.2d 362 (1990), where the Court reversed due to a similar case when the solicitor introduced a drug factor in the case, which was a murder case, where the murder was the only issue in the case sans any involvement of a drug connection to the murder. In Peake, the Court held that it was improper to allow testimony into evidence that the defendant offered to sell marijuana to the deceased ten days prior to the deceased's murder because this was impermissible prior bad acts evidence that was irrelevant and more prejudicial than probative. Here, the solicitor attempted to inoculate the jury with the idea that petitioner was a weed-smoking and gun-toting criminal who was predisposed to commit violent crimes despite the fact that no marijuana was found during the search of his room.

The Court of Appeals erred in denying relief on petitioner's assignment of error regarding this prior bad act evidence.

CONCLUSION

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

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of July, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable William Jeffrey Young, Circuit Court Judge

Opinion No. 2019-UP-100 (S.C. Ct. App. Filed March 6, 2019)

2015-GS-10-02684, 2015-GS-10-02685, 2016-GS-10-03318,

THE STATE,

RESPONDENT,

V.

RHAJON AKEEM RESHAE SANDERS,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on William M. Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Rhajon Sanders, #368551, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 3rd day of July, 2019.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 3rd day of July, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: September 27, 2028.