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

APPENDIX

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INDEX

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Rhajon Akeem Reshae Sanders, Appellant.

Appellate Case No. 2016-001785

Appeal From Charleston County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2019-UP-100
Heard December 3, 2018 – Filed March 6, 2019

AFFIRMED

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

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General William M. Blitch, Jr., both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: In this criminal appeal, Rhajon Akeem Reshae Sanders appeals his convictions of attempted murder and possession of a weapon during the commission of a violent crime. On appeal, Sanders argues the circuit court erred

in (1) failing to give an "act on appearances" charge to the jury, (2) excluding testimony regarding the dangerous nature of the neighborhood where the shooting occurred, (3) refusing to allow Sanders to refer to "high crime" neighborhood evidence through inferences during his closing argument, (4) failing to give a "no duty to retreat" charge to the jury, (5) confusing the jury as to the burden of proof in its self-defense charge, (6) overruling his objection to the State's questioning regarding whether police found drugs in his home, and (7) excluding Nicholas Washington's (Victim) prior inconsistent statement offered as extrinsic impeachment evidence. We affirm.

1. 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 issues, 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 jury instructions is to enlighten the jury.") (citation omitted).

Moreover, even if we found the circuit court erred in refusing Sanders' requested act on appearances charge, the error is not reversible because Sanders suffered no prejudice. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("To warrant reversal, a [circuit court]'s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."). Although it rejected Sanders' specific charge, the circuit court did issue the following charge as part of its self-defense instruction:

> 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 or 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.

2. 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.

3. 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 create 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.

4. 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 the 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 or 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 without fault in initiating the incident and the evidence presented did not support the requested charge. Accordingly, we affirm as to this issue.

5. 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 the 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.[1] 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 issues 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 reversal."). We affirm as to this issue.

6. 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 a 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

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[1] We note the specific language Sanders objected to in the circuit court's instruction is the language Sanders requested in his own charges submitted to the circuit court during the charge conference. *See State v. Stroman*, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) ("[A] party 'cannot complain of an error which his own conduct has induced.'" (quoting *State v. Worthy*, 239 S.C. 449, 465, 123 S.E.2d 835 (1962))).

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.

7. We find the circuit court did not abuse its discretion by finding Sanders failed to lay a proper foundation for the admission of Victim's prior statement to police as extrinsic impeachment evidence. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission [or exclusion] of evidence is within the discretion of the [circuit] court and will not be reversed absent an abuse of discretion."). "Rule 613(b), [, SCRE] explicates the procedure for impeachment by a prior inconsistent statement and requires laying the foundation." *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement." Rule 613(b), SCRE. Here, Sanders failed to identify any inconsistencies between Victim's trial testimony and Victim's statements to police. Therefore, Sanders had no foundation on which to seek admission of Victim's prior statements to police as extrinsic impeachment evidence. *See Anderson v. Elliot*, 228 S.C. 371, 376, 90 S.E.2d 367, 369 (1955) ("The exercise of the right to cross-examine a witness as to previous statements made, for the purpose of contradiction, must be founded on the existence and showing of a material variance between the statements made on the two occasions. For without such showing of variance in the statements *or* testimony it could not form the basis of a contradiction.") (emphasis added). We affirm as to this issue.

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RHAJON AKEEM RESHAE SANDERS,

APPELLANT

APPELLATE CASE NO 2016-001785

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

Opinion No. 2019-UP-100

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing in light of this Court's holding on the issue of the admission of prejudicial prior bad act testimony and on all five self-defense issues presented for appellate review in this case. In support of this petition, counsel would submit the following information.

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

Appellant 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. Appellant 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 (appellant) fired his gun at the male. Appellant 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 [redacted] 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.

2.) Appellant'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 appellant 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 appellant to shoot in self-defense.

3.) On appeal, this Court 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.

2. In holding that the facts and circumstances did not require an acting on appearances charge, this Court in effect appeared to consider three factors, i.e. that: 1.) that appellant 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 appellant 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 appellant 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, appellant believed he was in imminent danger. The danger in question that made appellant believe he had a right to act on appearances. Furthermore, appellant 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, appellant 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 this Court's holding that the instruction charging the jury that appellant 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. This Court overlooked the merit in appellant's argument that the trial judge erred here in not including a right to "act on appearances" instruction within the self-defense jury charge given in the case.

4.) Appellant's second self-defense issue (wherein this Court upheld the trial judge's ruling) follows:

> The trial judge erred in denying defense counsel the opportunity to present evidence establishing that appellant 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 appellant's right to cross-examine witnesses completely and violated his right to present a full and complete defense at trial.

5.) This Court 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.

6.) This Court held in effect that community violence was not a relevant factor with respect to fear connected to appellant'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 appellant provided a backdrop and background that created a specific fear that was daily and continually present in his **state of mind**. This meant that appellant'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 appellant'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 appellant lived. Thus, the reason for appellant'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 (appellant'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 appellant "shot [Washington] because the street was dark, [Washington] threw down his cigarette before taking steps towards [appellant] 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 appellant's self-defense claim to the extent that appellant, 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 appellant's state of mind based on the circumstances he faced and the high crime area community in which he lived. Therefore, this Court overlooked merit in appellant's challenge to the trial judge's exclusion of this relevant evidence, i.e. the high crime neighborhood where appellant resided, because this gave rise to a specific fear on appellant's behalf.

7.) The third self-defense related issue 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 appellant's right to a fair trial.

8.) This Court ruled in 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.

9.) This Court 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 appellant'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 appellant'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, this Court overlooked merit in appellant's argument that the trial judge erred in denying defense counsel the opportunity to address the issue of the high crime character of the neighborhood which emanated from

Washington (state's witness) as an inference supported by the record, which was relevant to appellant's self-defense claim.

10.) The fourth self-defense issue raised on appeal follows:

> The trial judge erred in denying appellant'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.

11.) This Court ruled on the issued 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.

12.) This Court held in effect that appellant "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 appellant on his property or that Washington approached appellant's property and as a result, there was evidence to support a "no duty to retreat charge." To the

contrary, appellant was not the aggressor (note that self-defense was charged) and appellant was on his own premises when Washington approached and advanced toward appellant as the aggressor and when appellant fired in self-defense. To the contrary, the "no duty to retreat" charge was applicable in this case. Here, appellant stayed on his own property and watched Washington reach for his waist band while he Washington advanced across the street onto his (appellant's) property. Appellant 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 overlooked merit in appellant's argument that the trial judge erred in failing to charge the "no duty to retreat" component of self-defense in the present case.

13.) The final self-defense issue raised on appeal follows:

> The trial judge erred in charging the jury that "if [self-defense] is **established** [then they] must find the defendant not guilty" because this confused the jury and nullified the correct law that "the state has the burden of disproving 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.

14.) This Court held the following 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.

15.) 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 appellant not guilty "if [appellant] **established** [self-defense]" surely led them to believe that appellant 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 appellant'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 may have overlooked merit in appellant's argument that the trial judge erred in failing to charge the proper burden of proof on a self-defense claim.

16.) Lastly, respect to prejudicial evidence, appellant raised the following issue on appeal:

> The trial judge erred in overruling defense counsel's objection after the solicitor asked appellant if marijuana had been found on the dresser in his room near where his gun was located and recovered by police as this was an extremely prejudicial and irrelevant assertion because this injected a prior bad act drug factor into the case, especially when there was no marijuana found on the dresser in the room or anywhere in appellant's room, and where

there was no drug link whatsoever connected to the shooting in the case.

17.) This Court addressed the prior crimes issue as follows:

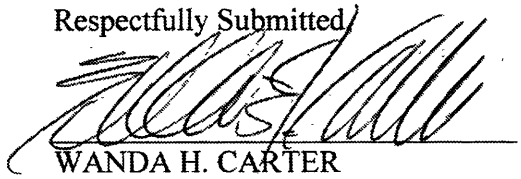
> Sanders' sixth issue as to whether the circuit court erred in overruling his objection to the State's line of questioning about whether police found drugs in his home is not preserved for appellate review. Although Sanders objected to the State's questions, he never placed the specific reasons for 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.

19.) This Court 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 appellant in the light of one who engages in gun violence and does drugs also, which in turn created a criminal propensity image of appellant 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 appellant 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 overlooked merit in appellant's assignment of error regarding this prior bad act evidence.

WHEREFORE, based on the foregoing points, counsel for appellant would request a rehearing on the issues raised above from this Court's opinion issued in the appeal.

Respectfully Submitted,



WANDA H. CARTER
Deputy Chief Appellate Defender

This 21st day of March, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RHAJON AKEEM RESHAE SANDERS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon 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 21st day of March, 2019.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 21st day of March, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

The South Carolina Court of Appeals

The State, Respondent,

v.

Rhajon Akeem Reshae Sanders, Appellant.

Appellate Case No. 2016-001785

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 C. Young J.

Paul E. Short, Jr. J.

N. Brian Wilson J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Wanda H. Carter, Esquire
William M. Blitch, Jr., Esquire
Scarlett Anne Wilson, Esquire
The Honorable W. Jeffrey Young

FILED
May 23, 2019