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Jul 23 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

Opinion No. 2025-UP-216

AMENDED PETITION FOR REHEARING

On July 2, 2025, this Court issued an unpublished opinion denying the trial court erred in its ruling that appellant had brought on the difficulty in his encounter with McCray by walking down the street after McCray left the Captain Archie's establishment. See State v. Riggins No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). In affirming the trial court, this Court noted:

The video evidence admitted showed Riggins leaving Captain Archie's restaurant and walking towards the victim one minute after the victim left the restaurant. Additionally, the victim's girlfriend and friend testified the victim did not say anything to Riggins when he approached them in the parking lot. We hold that the circuit court's statement that Riggins "didn't have to leave the

establishment at that point in time" did not indicate the circuit court thought Riggins had a duty to retreat, *but that it found Riggins was not without fault in bringing on the difficulty because he followed the victim into the parking lot when he could have stayed in the restaurant while the victim left the parking lot.*

State v. Riggins, No. 2025-UP-216 pp. 2 – 3 (emphasis added).

Pursuant to Rule 221(a), SCACR, Driscoll Riggins requests that this Court grant rehearing because this Court has overlooked the impact of appellant being lawfully on the street at the time of the incident and misapprehended the impact of a generalized “duty to avoid” concept on the South Carolina Legislature’s clear directive in S.C. Code Ann. § 16-11-440 (C)(2006) that citizens of the State of South Carolina, when lawfully at a location where they have a right to be, do not have a duty to retreat from an aggressor.

This Court’s opinion is in direct conflict with the opinion in State v. Dennis, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024), *cert. granted* (Apr. 22, 2025). In Dennis, the trial court ruled that Dennis actively “sought out the DFHS students and chose the situation.” *Id.*, 444 S.C. at 370, 907 S.E.2d at 151. This Court noted this conclusion was contrary to the clear right of Dennis to be at the Cook-Out and the trial court’s conclusion that Dennis could have exited the establishment from other exits available added a duty to retreat element that was specifically rejected by the Legislature in in S.C. Code Ann. § 16-11-440:

Dennis argues the court erred in denying immunity based on Dennis's failure to retreat and because he went to Cook-Out. In its order, the court found Dennis sought out the DFHS students and chose the situation, *which is in contradiction to Dennis's right to be there*. In addition, the court found Dennis chose not to leave using other exits available to him, *indicating the application of the duty to retreat element of self-defense*.

Dennis, 444 S.C. at 370, 907 S.E.2d at 151 (emphasis added). If Dennis had no duty to avoid the DFHS students because the Cook-Out was open to members of the public, then appellant likewise had no duty to avoid McCray walking down the public right of way.

Importantly, this road was the only means of ingress and egress from the Captain Archie's establishment where appellant worked and had finished his full shift, and the restaurant was approaching closing for the night. R 60, ll. 12 – 25; 64, ll. 17 – 24; 399, ll. 19 – 25. Appellant and McCray had equal rights to be present on the roadway entrance, just as Dennis and the DFHS students had equal rights to be at the Cook-Out. Appellant was under no obligation to avoid walking down the roadway just because McCray, with whom he had a longstanding feud, was potentially going to be in the same area. Appellant was acting lawfully at the time of the incident (walking down the entrance from his place of work towards the public roadway) and was under no duty to retreat from an aggressive move by McCray. As in Dennis, this Court should not have added an element to S.C. Code Ann. § 16-11-440 about a general duty to avoid locations *open to the public* out of fear that an adversary will elect that moment and location to threaten death or great bodily injury.

This imposition of a duty to avoid walking down the public road was the basis for the trial court's ruling:

Furthermore, when we consider the video evidence that shows Mr. McCray and Mr. Riggins just prior to the fatal event, it certainly seems, and looks as though, Mr. Riggins notices Mr. McCray leaving the establishment, and as has been testified to many times throughout the trial, there is only one way in and one way out. This business is at the end of a peninsula.

There is no question, and I recognize the fact, that there was quite a history between these two individuals between the defendant and Mr. McCray, that that history was violent. Certainly Mr. Riggins seemed to have appropriate beliefs that some day some incident might happen that would endanger his life.

But the problem that I would grant immunity under these facts is that Mr. Riggins didn't have to leave the establishment at that point in time. I mean, I have to consider whether or not he was without fault in bringing upon the difficulty. *Certainly, it looks like, from the video evidence, that he brought himself to the difficulty.*

R. 489, l. 13 – 490, l. 9 (emphasis added).

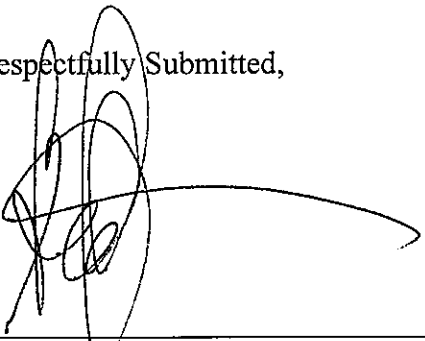
The trial court never made a factual finding that appellant's version of the events surrounding the shooting were not credible – that McCray threatened appellant verbally and made a motion towards his waist for what appellant believed would be weapon. R. 422, l. 3 – 19; 424, l. 16 – 425, l. 24. This Court's statement in the opinion that "the victim's girlfriend and friend testified the victim did not say anything to Riggins when he approached them in the parking lot" would be important *had such a credibility finding been made by the trial court.* However, since there was no such finding, the Court's reference to the testimony that contradicted appellant's version of events substitutes this Court's view of the credibility of the witnesses for that of the trial court. Appellant would assert that, should such a credibility ruling be required on the issue of whether appellant "reasonably believe[d] it [was] necessary to prevent death or great bodily injury", then a remand would be the appropriate remedy. S.C. Code Ann. § 16-11-440(C) (2006); *see also State v. Gray*, 438 S.C. 130, 142, 882 S.E.2d 469, 475 (Ct. App. 2022) (remanding to the trial court for specific factual findings under the act when there is conflicting evidence). Appellant would point out that in *State v. Gray*, Gray initially left the home where a disagreement began but returned to the house where the victim was still present, and the argument continued. *Id.*, 438 S.C. at 136, 882 S.E.2d at 472. Under this Court's ruling in the present case, Gray would have failed under S.C. Code Ann. § 16-11-440(C) (2006) as soon as he returned to the home since he could have avoided further interaction with the victim had he continued walking home.

Such a holding would subvert the clear intention of the Legislature, which specifically applied two requirements before a court is to analyze the appropriateness of the use of deadly force: #1 the person must not be engaged in an unlawful activity and #2 must be “attacked” in a “place where he has a right to be.” S.C. Code Ann. § 16-11-440(C). A general duty to avoid places where every citizen has the right to be would add an element to the statutory scheme that is inconsistent with the legislative intent. “The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420 (2006). A general duty to avoid public places out of fear you may be attacked by an adversary would require a citizen to needlessly retreat from public areas in contradiction to the clear legislative intent. This Court’s concern, that conflicts may be avoided, is addressed with the requirement that one who relies upon the immunity must be acting lawfully. An initial aggressor would be acting unlawfully. Someone who disturbs the peace and instigates an altercation would be acting unlawfully. A person merely walking down a public road is acting lawfully. If attacked, under S.C. Code Ann. § 16-11-440(C), citizens of South Carolina have every right to meet a threat of death or great bodily injury with force if they are in place they have the right to be and are acting lawfully. This Court’s addition of a generalized duty to avoid potential conflicts with persons who may respond to your lawful presence with violence would cede a lawful action (walking down the street) to an unlawful response (attacking someone walking down the street due to prior difficulties). To the extent that a person must be “without fault” in bringing on the difficulty element, that obligation should be established whenever someone is acting lawfully in a place where they have a right to be.

CONCLUSION

For the reasons stated above, appellant petitions for rehearing pursuant to Rule 22l(a) SCACR, and requests this Court reconsider its opinion of July 2, 2025, and reverse the trial court's determination that S.C. Code Ann. § 16-11-440 contains a duty to avoid.

Respectfully Submitted,



GARY H JOHNSON
Appellate Defender

This 23rd day of July, 2025.

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APPELLATE CASE NO. 2023-000868

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Amended Petition for Rehearing in the above-entitled case has been served upon Andrew Douglas Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Driscoll Riggins, #349152, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 23rd day of July, 2025.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Wednesday, July 23, 2025 4:21 PM
To: andrewpowell@scag.gov
Cc: Johnson, Gary; gracesommer@scag.gov
Subject: 2023-000868 - The State v. Driscoll Riggins, Jr.
Attachments: 2023-000868 -The State v. Driscoll Riggins Jr. Amended Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Amended Petition for Rehearing in the above referenced case that is being filed today, July 23, 2025, with the Court of Appeals.

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330