RECEIVED

Sep 16 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

Opinion No. 2025-UP-216 (S.C. Ct. App. Filed July 2, 2025)

Lower Court Case No. 2021-GS-26-03375, -03376, -03377

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in holding that petitioner was at fault in bringing on the difficulty by failing to stay at work or turning around rather than crossing paths with a known adversary on the public street, thus embedding a duty to avoid element into immunity questions in contravention to the South Carolina Legislature's clear directive that citizens do not have a duty to retreat from an aggressor?

STATEMENT OF THE CASE

Petitioner Driscoll Riggins, Jr., was indicted for murder, possession of a weapon during a violent crime, and unlawful possession of a firearm by a Horry County grand jury on August 18, 2021. R. 584. The incident between petitioner and Durance McCray was caught on surveillance video and can be viewed by this Court.[1] Petitioner was tried before the Honorable Steven DeBerry IV and a jury on May 15 – 19, 2023. R. 1. At trial, petitioner was represented by Caitlyn Caldwell and Ricky Todd. George DeBusk and Dylan Bagnal represented the state. By consent of all parties, the evidence concerning appellant's immunity and right to stand his ground under S.C. Code Ann. § 16-11-440 (2006) was taken during the jury trial. R. 29, ll. 11 - 22. Under this agreement, Judge DeBerry denied appellant immunity at the close of the evidence, finding petitioner was not without fault in bringing on the difficulty since he "brought himself to the difficulty" by leaving work and walking down the only means of access to the restaurant when he could have stayed inside. R. 490, ll. 3 – 9.

On May 19, 2023, the jury convicted petitioner of voluntary manslaughter, as a lesser included offense to the murder charge, and found him guilty of the possession of a weapon during the commission of a violent crime charge. R. 567, ll. 7 - 24. Following the verdict, petitioner pled guilty to the unlawful possession charge. R. 568, l. 18 – 570, l. 22. Judge DeBerry sentenced petitioner to twenty-five years in prison for voluntary manslaughter, five years in prison for possession of a weapon during the commission of a violent crime, and 720 days in prison for the unlawful possession charge. R. 581, ll. 4 - 21.

Following a notice of appeal and briefing by both parties, the Court of Appeals heard argument on May 13, 2025, and issued an unpublished opinion affirming the trial court's ruling

[1] State's Exhibit 7 was transported and is included in the Record on Appeal.

on the duty to "avoid." *See* State v. Driscoll Riggins, Jr., Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). Petitioner sought rehearing, arguing that the addition of a duty to avoid element in the fault analysis of self-defense in evaluating cases under S.C. Code Ann. § 16-11-440 (2006) was contrary to legislative intent and improperly added a duty to retreat element. The Court of Appeals denied rehearing and this Petition seeking certiorari review follows.

Statement of facts relevant to the Petition for review.

Prior to the deadly encounter captured on State's Exhibit 7, petitioner and Durance McCray had a long running feud. The state admitted the long-standing grievances and acknowledged McCray was a "bad guy." R. 42, ll. 6 – 17. McCray's involvement with the killing of two of appellant's close friends was a significant factor in their conflict. R. 401, ll. 4 – 25. McCray actively celebrated the deaths, taunted petitioner, and made threats that a similar fate was in store for petitioner in social media posts. R. 402, l. 7 – 405, l. 9. McCray was involved in a drive by shooting incident in which petitioner was shot in the leg. R. 410, l. 3 – 411, l. 13. Based on these facts, the trial court found that petitioner had "appropriate beliefs that some day some incident might happen that would endanger his life." R. 489, l. 25 – 490, l. 2.

Captain Archie's is a bar in North Myrtle Beach surrounded by water with a single point of access across a narrow strip of land. R. 38, ll. 15 – 19; R. 64, ll. 17 - 24. Petitioner was an employee of Captain Archie's and worked as a dishwasher in the kitchen area of the bar. R. 57, ll. 7 - 20. On May 21, 2021, petitioner clocked in at 3:55 p.m. and clocked out at 11:42 p.m., which was just before closing time for the bar and after petitioner had worked a full shift. R. 60, ll. 12 – 25; R. 399, ll. 19 – 25. While working, petitioner noticed McCray's presence at the bar and took steps to keep himself informed of McCray's location during the evening. R. 416, l. 2 – 418, l. 13.

Shortly after McCray left Captain Archie's, petitioner clocked out of work for the evening and also left the bar. R. 419, l. 8 – 420, l. 24. Since there was only a single narrow access road surrounded by water, both petitioner and McCray walked in the same direction, with petitioner delaying his departure for a full minute until McCray was well down the access road.[2] The portion of the video that captured the interaction in the parking area when the shooting occurred is viewable on channels 1 and 7 from time stamp 11:42:00 as McCray enters the frame through time stamp 11:43:06 when petitioner enters the frame until the fatal encounter at 11:44:06. State's Exhibit 7.

McCray and his companion, Jada Phyatt, decided to stop on this single access road to investigate an unknown person who had crashed their moped into a dumpster. R. 209, ll. 2 – 24. While McCray was stopped talking to the moped driver, McCray's other companion during the evening, Joey Sinclair, pulled up in his vehicle alongside McCray and Phyatt, effectively creating a choke point for any other persons leaving the area. State's Exhibit 7 (channel 7 time stamp 11:42:49 shows Sinclair's vehicle following McCray).

Petitioner was walking towards this choke point, the sole means available to leave the area, when the fatal confrontation occurred. State's Exhibit 7. According to petitioner, he and McCray exchanged words and threatened that petitioner's picture would be on a "t-shirt next"

[2] State's Exhibit 7 is the Captain Archie's security video from several camera locations including the parking area introduced at trial that captured the interaction of the participants around the moment of the shooting from distance with small time jumps and is on file with this Court for review. Each camera angle has its own designation, and the Exhibit requires accessing the Lorex player software and selecting the appropriate camera for viewing. Channel 1 shows the area of the final confrontation (in the distance) with channel 7 showing a slightly different view of the parties walking towards the confrontation area. Channel 28 shows the departures from Captain Archie's of both parties demonstrating the time between their departures.

and made a movement towards his waist.[3] R. 422, l. 3 - 19. Petitioner, well acquainted with McCray's prior history of violence, reacted by pulling his own handgun and firing. R. 424, l. 16 – 425, l. 24. McCray called out to Sinclair in the BMW blocking traffic to "get the chopper" so petitioner pursued McCray around the front of Sinclair's vehicle and continued firing, striking McCray several times.[4] R. 424, l. 16 – 425, l. 24. Sinclair drove McCray to the hospital where he was pronounced dead. R. 94, l. 21 – 95, l. 5; 120, ll. 1 – 21.

To contradict petitioner's claims about the actions of McCray, the state relied upon the testimony of Phyatt who claimed there was no verbal confrontation between petitioner and McCray. Phyatt claimed petitioner simply walked up and shot McCray without provocation. R. 211, l. 23 – 212, l. 25. This claim was contradicted by the video evidence which shows ten seconds of time in which petitioner and McCray are in close proximity before the first shot is fired. State's Exhibit 7 Channel 1 (11:43:54 - 11:44:06); R. 211, l. 23 – 212, l. 25. Sinclair testified that he did not see when the shooting started, but claimed he did not hear any commotion or shouting before the first shot. R. 93, ll. 6 – 13; R. 94, ll. 1 – 19.

Rather than resolve the factual dispute as to whether McCray made threats and aggressive movements, the trial court judged that petitioner's decision to leave work and walk down the public right of way removed the protections afforded by S.C. Code Ann. § 16-11-440(C):

> So, as a judge of the facts, it is necessary for me to determine the credibility of the witnesses. Certainly, I find that the video evidence in this case, which I'll -- I've watched several times at this point, suggests that – and by the defendant's own admission -- that he knew the victim, Durance McCray, was present at Captain

[3] The reference to "face on a t-shirt" was connected to the prior slaying of petitioner's two friends which McCray celebrated through social media posts. R. 422, ll. 4 – 7.

[4] "Chopper" was identified by petitioner as slang for an assault rifle. R. 425, ll. 9 - 13. This interpretation is supported by common slang guides. See *Chopper*, Urban Dictionary, https://www.urbandictionary.com/define.php?term=chopper.

Archie's on that night. He testified and it was corroborated by video that he even made contact with Durance -- eye contact with Durance McCray during the day in question.

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.*

Now, whether or not he's entitled to self-defense beyond that is a question for the jury to determine. But as far as the immunity statute that I'm determining the facts under at this point in time, I can't find that he was without fault in bringing on the difficulty based on the evidence and based on the credibility of the witnesses.

Furthermore, in large part, based on the video evidence, and even the defendant himself admitted to him being the person on the video as it was suggested throughout the trial, and also that Mr. McCray and Ms. Pyatt and Mr. Sinclair were also in the same place and doing the same things as was suggested throughout the trial. So all of those things were corroborated.

So having found the defendant was not without fault in bringing on the difficulty and bringing on the confrontation, the evidence doesn't suggest that, and I don't find that. Certainly, the jury can find whatever it is that they deem is appropriate. So I'm going to deny your immunity based on the stand-your-ground law by a preponderance of the evidence.

R. 489, l. 2 – 491, l. 7 (emphasis added).

In upholding this ruling, the Court of Appeals held "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. Driscoll Riggins, Jr., Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). The Court of Appeals also noted the contradictory testimony of Phyatt, but failed to acknowledge that trial court did not base his decision on the credibility of the two versions of events, but relied solely on petitioner's decision to leave Captain Archies and walk down thus bring himself to the difficulty rather than delaying his departure to avoid McCray.

ARGUMENT

The Court of Appeals erred in holding that petitioner was at fault in bringing on the difficulty by failing to stay at work or turning around rather than crossing paths with a known adversary on the public street, thus embedding a duty to avoid element into immunity questions in contravention to the South Carolina Legislature's clear directive that citizens do not have a duty to retreat from an aggressor.

The General Assembly has recognized "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(E) (emphasis added). Under the Protection of Persons and Property Act (hereinafter Act),

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C) (2006).

In applying S.C. Code Ann. § 16-11-440(C), this Court requires the fact finder to consider and make factual findings on the traditional elements of self-defense, except for the duty to retreat:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. 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 in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. McCarty, 437 S.C. 355, 369, 878 S.E.2d 902, 909–10 (2022) (*quoting* State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013).

This Court has interpreted S.C. Code Ann. § 16-11-440(C) applies to "incidents, provided the other requirements are met, *without a geographical restriction.*" State v. Jones, 416 S.C. 283, 297, 786 S.E.2d 132, 139 (2016) (emphasis added). In State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019), this Court applied S.C. Code Ann. § 16-11-440(C) to the common areas of an apartment complex Glenn was visiting at the time of the altercation:

> *Rather, to obtain immunity, Glenn must satisfy all four elements of self-defense by a preponderance of the evidence, or three of the elements plus subsection 16-11-440(C) if applicable.*

Glenn, 429 S.C. at 122–23, 838 S.E.2d at 498 (emphasis added).

Here, the Court of Appeals and the trial court improperly expanded the scope of "fault" in bringing on the difficulty to encompass elements of a duty to retreat: a requirement that citizens attempt to avoid crossing paths with adversaries. By masquerading a duty to avoid as a factor in the fault element of self-defense, the Court of Appeals has taken the "no duty to retreat" element and replaced it with a new element that foreknowledge that an encounter with someone may initiate aggression would remove the protections of S.C. Code Ann. § 16-11-440(C). This effectively puts South Carolinians at the whim of happenstance in encountering known adversaries in places all citizens have a right to be, such as walking along the public street, and leaving them unable to assert application of the protection of S.C. Code Ann. § 16-11-440(C) in responding to aggressive, unprovoked action.

In the present matter, petitioner was walking down the public street as the only means of egress from his place of employment. That McCray had by chance stopped at the chokepoint leading out of the establishment and delayed his departure so that he and petitioner crossed paths was mere "happenstance" as warned by this Court in Glenn. 429 S.C. at 120, 838 S.E.2d at 497. Importantly, this road was the only means of ingress and egress from the Captain Archie's establishment where petitioner 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.

Recently, this Court granted certiorari review of the decision of the Court of Appeals in State v. Dennis, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024), *cert. granted* (Apr. 22, 2025). In Dennis, a different panel of the Court of Appeals reversed a trial court's denial of immunity in part over the trial court's application of a generalized "duty to avoid" concept that was contrary to 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. 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. The panel for the Court of Appeals 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 other students because the Cook-Out was open to members of the public, then petitioner likewise had no duty to avoid McCray walking down the public right of way.

Petitioner 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. Petitioner 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 a different panel held in Dennis, the Court of Appeals in this case should not have added an element to S.C. Code Ann. § 16-11-440(C) 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 in conducting the fault analysis.

This imposition of this duty to avoid potentially running into an adversary by walking down the public road was the sole 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).

This holding, that a citizen of South Carolina has a duty to avoid public places where his adversary may also lawfully be present, subverts the clear intention of the Legislature, which applies only two requirements regarding 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 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.

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, as petitioner was when this even unfolded. Had petitioner been the initial aggressor, he would have been acting unlawfully and fallen out of the Act's grant of immunity. Had petitioner disturbed the peace and instigated the altercation with McCray, he would have also been acting unlawfully. Merely walking on 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. The 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).

Since this same fact pattern (where a duty to avoid contact with an adversary may remove the protections afforded by S.C. Code Ann. § 16-11-440(C)) has occurred in State v. Dennis, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024), *cert. granted* (Apr. 22, 2025), and the present matter, this Court should grant the petition and clarify whether a duty to avoid exists as a fault ground in

interpreting the "innocent in bringing on the difficulty" element of self-defense as applied to S.C. Code Ann. § 16-11-440(C) cases.

CONCLUSION

Based upon the foregoing argument, petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari and review the decision of the Court of Appeals in this matter.

Respectfully Submitted,

Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of September 2025.