

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APR 23 2014

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

Case No. 2012-208267

Ida Lord.....Appellant.

v.

D & J Enterprises, Inc.Respondent.

RESPONDENT'S PETITION FOR REHEARING

COMES NOW THE RESPONDENT, D & L Enterprises, Inc., by and through its undersigned counsel of record, and does hereby petition this Court for a rehearing on the above-captured matter following the Court's filing of its ruling on April 9, 2014 in this case.

This petition is filed pursuant to Rule 221 (a) of the SCACR. Appellant submits this Court either overlooked or misapprehended the following points in the determination of its filed ruling:

The Court either overlooked, or misapprehended, the analysis of the balancing test in determining whether there was a scintilla of evidence that the Respondent breached its duty of care and safety to the Appellant.

It is submitted that the limits of the duty under the balancing test as set out in *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910 (2011) ("*Gopal II*") is an analysis by the Court between the degree of foreseeability and the reasonable actions taken by a merchant to provide safety to its patrons. In the current opinion regarding the particular facts of this case, the Court overlooks the analysis between the two and only discusses the existence or nonexistence of the foreseeability, not the degree, and the mere existence in the form of an opinion to produce the scintilla of evidence the Court noted as being needed. Thus, it is submitted mere existence was the standard, and not balancing. Thus it is submitted that the result is that the extent of duty of a merchant owed to a patron regarding safety from third party criminal acts will always be a material question of fact.

By just determining the existence of foreseeability, such as some one knew of events that were happening in other places, rather than analyzing the probability of it happening at the Respondent's business as opposed to being a random happening, the Court is setting a precedent that knowledge of a happening alone constitutes foreseeability for the balancing test. It is submitted that knowledge alone should not constitute foreseeability. By accepting mere knowledge as the test for foreseeability, the extent of duty imposed could be endless, depending on a mere expert opinion, no matter its content. In the present case, if the expert had opined that all like businesses, such as those which were small and dealt in cash in Fort Mill and Rock Hill, should have closed until the perpetrator was apprehended, the result would be the same and thus the extent of the legal duty would be left to the jury of each case.

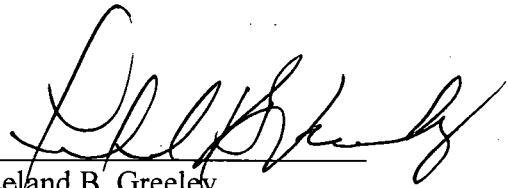
An example may be shown through the bombings at the Boston Marathon and its effect on the organizers of the Come See Me Road Race in Rock Hill, South Carolina.

The organizers no doubt have knowledge of the bombings, and thus that would constitute foreseeability of a bombing at its event. The extent of its duty to the participants may be defined at some point by an expert stating that it would be reasonable to post armed guards every 25 yards along the race route.

The Court relies in part on the case *Midkiff v. Hines*, 866 S.W. 2d 328 (Tex. Ct. App. 1993) in concluding that failure to post an armed security guard may have been negligent. Yet in *Midkiff*, the Texas court discusses the overall general criminal activity which had been shown to have occurred previously on or around the premises where the murder occurred. 866 S.W. 2d 331. It is submitted that the *Midkiff* case is quite distinguishable from the present case. Here there has been no evidence or argument made regarding the Appellant's business being in a crime area.

Further, the Court overlooked the type of person who committed the assault and battery on Ms. Lord which should be considered in the formula. The person who committed the act was mentally ill as confirmed in the plea entered and accepted by the Court, adding to the randomness of locations affected and randomness of actions of the perpetrator. There is nothing in the opinion of the expert which deals with that fact of the case. It is submitted that balancing under the test would also consider the number of businesses financially affected by having to hire an armed guard during any criminal actions in the area by third parties and whether an armed guard, would too would become a shooting victim.

Respectfully submitted,



Leland B. Greeley
128 East Main Street, Suite 102
Post Office Box 2981
Rock Hill, South Carolina 29732
(803) 329-0088 S.C. Bar # 7850
Attorney for Respondent D & J
Enterprises, Inc.

April 22, 2014.

TABLE OF AUTHORITIES

Cases

Bass v. Gopal, Inc., 395 S.C. 129, 716 S.E.2d 910 (2011).....	2
Midkiff v. Hines, 866 S.W. 2d 328 (Tex. Ct. App. 1993).....	3

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

APR 23 2014

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

Case No. 2012-208267

Ida Lord.....Appellant.

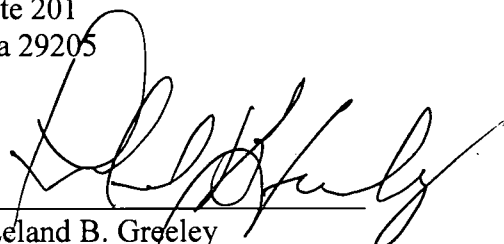
v.

D & J Enterprises, Inc.Respondent.

CERTIFICATE OF SERVICE

I certify that I have served today a copy of Respondent's Petition for Rehearing on counsel for the Appellant by hand delivery at the address as follows:

Authur K. Aiken, Esq.
AIKEN & HIGHTOWER, P.A.
2231 Devine Street, Suite 201
Columbia, South Carolina 29205



Leland B. Greeley
128 East Main Street, Suite 102
Post Office Box 2981
Rock Hill, South Carolina 29732
(803) 329-0088 S.C. Bar # 7850
Attorney for Respondent D & J
Enterprises, Inc.

April 23, 2014.