

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Donald B. Hocker, Circuit Court Judge

Court of Appeals Case No. 2020-000091

RECEIVED

Jul 22 2020

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Shi Heme Raquan Price,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

WHETHER THE TRIAL COURT ERRED IN DENYING PRICE'S MOTION FOR IMMUNITY PURSUANT TO THE S.C. PROTECTION OF PERSONS AND PROPERTY ACT WHERE THE EVIDENCE SHOWED THAT PRICE WAS ATTACKED AND MET ALL THE ELEMENTS OF SELF-DEFENSE AND SECTIONS 16-11-440(A) AND (C)

STATEMENT OF CASE

The State indicted Appellant Shi Heme Price ("Price") for murder and possession of a weapon during the commission of a violent crime with the grand jury issuing a true bill Sept. 6, 2019.¹ (Indictment.) The indictment rose from the death of Willie "Bo" Bell ("Bell") on May 27, 2018. Price filed a motion to determine immunity under Protection of Persons and Property Act on Feb. 28, 2019. (Motion for immunity.) The circuit court held a hearing on Price's motion June 10, 2019, during which it listened to live testimony. The circuit court issued an order dated June 21, 2019, and filed June 27, 2019, in which it denied Price's motion for immunity. (Order.) On July 3, 2019, Price timely filed a motion to reconsider the circuit court's order. (Motion to reconsider.) The circuit court heard oral argument on the motion to reconsider on Jan. 7, 2020. Following the hearing, the circuit court again denied Price immunity. The case then proceeded to trial. During the trial, the parties reached a plea agreement. On Jan. 8, 2020, Price pleaded guilty to voluntary manslaughter and was sentenced to thirty years in prison suspended upon the service of four years in prison to be served with two years active in the S.C. Department of Corrections and two years on house arrest with a GPS monitor followed by five years of probation. (Sentencing Sheet.)

¹ The State also indicted Price for possession of a weapon during the commission of a violent crime with the grand jury issuing a true bill Jan. 6, 2020.

Price timely served and filed the notice of appeal Jan. 17, 2020.

FACTS

On May 27, 2018, Price drove his car to Oakland Apartments in Abbeville where he was meeting Anthony Lavert Patterson (“Patterson”) who was going to look at installing speakers in Price’s car. (Tr. p. 6, ll. 1-12; p. 41, ll. 1-15; p. 70, ll. 12-14.) Price’s friend Terrance Aiken (“Aiken”) was in his car, and Patterson was a passenger with Harold Johnson (“Johnson”) when they arrived at the parking lot for Patterson to look at the speaker’s in Price’s car. (Tr. p. 6, ll. 15-23; p. 40, ll. 1-16.) The two cars were parked beside each other in the complex’s parking lot. (Tr. p. 81, ll. 9-13.) This parking lot was open to the public. (Tr. p. 81, ll. 14-22.)

About ten minutes after Price got to the parking lot, Bell walked from a breezeway in the apartment complex across the parking lot towards Price and started an altercation with Price. (Tr. p. 7, ll. 9-19; p. 42, ll. 18-25; p. 74, ll. 24-p. 75, l. 15.) Bell called Price derogatory names while saying he was not cool with Price (Tr. p. 42, ll. 13-17; p. 120, l. 20-p. 121, l. 2.) Price responded by telling Bell to leave the car so Bell walked off (Tr. p. 43, ll. 18-19; p. 121, ll. 3-5.) Bell was shouting insults at Price and threatening Price by telling Price, “I am going to wet you up” and that he was going to kick Price’s ass. (Tr. p. 7, ll. 12-19; p. 45, ll. 17-21; p. 78-79, ll. 21-22 p. 101, ll. 18-23; p. 122, ll. 5-9.) Multiple witnesses testified that “wetting someone up” is slang for shooting or stabbing someone. (Tr. p. 7, ll. 1-16, p. 78, l. 21-p. 79, l. 1.)

At that point, several people tried to calm Bell to diffuse the situation. (Tr. p. 93, ll. 20-22 p. 109, ll. 16-p. 110, l. 3.) The crowd of four to five men on the breezeway, on the other hand boosted Bell to fight Price and agitated the situation. (Tr. p. 77, ll. 5-10; p. 110, ll. 4-5.) Bell then approached Price’s car a second time still making threats to physically harm Price and “wet him

up.” (Tr. p. 78, l. 21-p. 79, l. 5; p. 98, ll. 19-p. 99, l. 12; p. 114, l. 25-p. 115, l. 7; p. 122, l. 5-9.) Bell’s cousin Tobias Hughey testified that Bell had been off kilter that day looking for a fight since 10 a.m. and directed all of his anger and desire to fight at Price when he saw Price. (Tr. p. 106, l. 1-p. 107, l. 16; p. 116, l. 13-p. 117, l. 22.)

Bell surprised Price by coming back to the car aggressively. (Tr. p. 122, ll. 11-15.) Price was 20 years old at the time of the incident, weighed 130 to 135 pounds, and had never been in an adult fight before. (Tr. p. 119, l. 23-p. 120 l. 16.) Price did not want to fight Bell who was older, bigger, and a more experienced fighter. (Id.) Patterson testified that Bell would have hurt Price if Bell had gotten his hands on Price. (Tr. p. 103, ll. 14-16.) When Bell came around the front of Price’s car aggressively while making threats, Price was sitting in the driver’s seat of his uncranked car with the window down. (Tr. p. 96, ll. 2-14, Tr. p. 122, ll. 11-21; Video.) Price did not have time to crank the car and drive off prior to Bell reaching the driver’s side of the car. (Tr. p. 48, ll. 8-13; p. 122, l. 17-p. 123, l. 6; Video.) Bell continued saying he was going to wet Price up, kick Price’s ass, and burn Price out of his hood. (Tr. p. 91, ll. 22-p. 92, l. 21; p. 98, l. 19-p. 99, l. 12.) Price and Patterson each believed Price was in physical danger if Bell got to Price’s window (Tr. p. 103, p. 123, ll. 2-12.) When Bell got to the driver’s side of Price’s car, Price got out of the car and began backing up. (Tr. p. 15, l. 10-p. 16, l. 2; p. 48, l. 22-p. 49, l. 3; p. 65, l. 24-p. 66, l. 11; p. 126, ll. 9-25; Video.) Price and Patterson were scared of Bell when Price got out of the car to defend himself as Bell aggressively approached. (Tr. p. 80, ll. 10-22; p. 126, l. 9-p. 127, l. 3; p. 148, ll. 1-13.) Price pulled out a fishing knife with a four-to-five-inch-long blade to show to Bell to try to stop Bell’s attack. (Tr. p. 124, ll. 18-21; p. 144, l. 1-p. 145, l. 25.) Bell was not deterred, though, and lunged at Price and knocked Price’s glasses off. (Tr. p. 124, l. 1-p. 125, l. 3; Video.) In the process of lunging at Price, Bell ran into the knife, and Price stabbed him. (Tr. p. 125, ll. 2-

10.) The altercation only lasted three seconds once Price exited of the car. (Video.) Bell then ran towards the people on the breezeway and asked them for a gun. (Tr. p. 145, l. 21-l. 24, p. 147, ll. 15-21.) Bell ultimately died from his injuries. The altercation was caught on the parking lot surveillance camera. (Video.)

Johnson, Aiken, Patterson, and Hughey all testified that Bell was the aggressor throughout the confrontation, and Price tried to deescalate things by telling Bell to leave the car and by backing up once he was out of the car. (Tr. p. 15, l. 10-p. 16, l. 2; p. 48, ll. 1-23; p. 65, l. 21-p. 66, l. 11; p. 98, l. 19- p. 99, l. 20; p. 102, 6-p. 103, l. 4; p. 104, ll.17; p. 106, l. 21-p. 107, l. 25; p. 108, l. 18-p. 109 p. 117, ll. 13-25 p. 126, 19-p. 127, l. 3.)

STANDARD OF REVIEW

“A defendant's entitlement to immunity from prosecution under the Protection of Persons and Property Act must be decided pretrial using a preponderance of the evidence standard.” State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019) (citing State v. Duncan, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011)). “This Court reviews an immunity determination for abuse of discretion.” Id. (citing State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)). “A trial court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support.” Id. (citing State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)).

ARGUMENT

THE TRIAL COURT ERRED IN DENYING PRICE IMMUNITY PURSUANT TO THE S.C. PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE THE EVIDENCE SHOWS PRICE WAS ATTACKED AND MET ALL THE ELEMENTS OF SELF DEFENSE AND SECTIONS 16-11-440(A) AND (C).

A. Price proved the common law elements of self-defense by a preponderance of the evidence so the trial court should have granted immunity.

When deciding a motion for immunity pursuant to the S.C. Protection of Persons and Property Act, which is the statutory adoption and extension of the common law Castle Doctrine, the trial court must first determine whether the defendant can prove the elements of common law self-defense. State v. Curry, 406 S.C. at 372, 752 S.E.2d at 267. A defendant must meet four elements to establish common law self-defense:

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. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

1. Element Nos. 1 and 2.

The trial court correctly found that Price proved the first two elements of self-defense. (Order p. 4.) First, Price was without fault in bringing on the difficulty as all evidence presented at the immunity hearing was that Bell started the altercation by aggressively coming at Price while threatening Price. Price, on the other hand, tried to diffuse the situation by telling Bell to get away from him and the car. Second, Price believed he was in imminent danger of losing his life or sustaining serious bodily injury. Price testified that he was scared of Bell given that Bell was older, bigger, and a much more experienced fighter who was coming at him aggressively saying

threatening things such as, “I’m going to wet you up.” Price understood this term to mean that Bell was going to shoot or stab him.

2. Element No. 3.

The trial court, however, committed reversible error in finding that Price failed to prove the third element of self-defense. (Order p. 4.) The third element requires the defendant to prove “a reasonably prudent man of ordinary firmness and courage would have entertained the same belief” or if the defendant is actually in such imminent danger that “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.” Id.

Price met his burden here as a reasonably prudent man would have believed he was in imminent danger of losing his life or suffering serious bodily injury. As stated above, Price was much smaller than Bell as Price only weighed 130 to 135 pounds, was much younger than Bell as Price was only twenty, and Price had never been in an adult fight. Further, any reasonable person would have been in fear of imminent danger given that Bell made threats, which included “I’m going to wet you up” and then escalated the situation by sprinting around the car. Patterson, who was also in the car, testified that he was also scared when Bell charged around the car. Patterson also testified that Bell would have hurt Price if he had gotten to the window and gotten his hands on Price. These facts prove by a preponderance of the evidence that Price’s fear of imminent danger was reasonable.

The trial court erroneously based its ruling that a reasonably prudent person of ordinary firmness and courage would not have believed he was in imminent danger on the fact that “[Price] could have very easily stayed in his car, rolled up his window, and/or cranked his car.” (Order p. 4.) The trial court should not have factored these potential responses Price could have made while

in the car as Bell made an aggressive charge at the car because the trial court should focus on the reasonableness of Price's fear at the time Price struck the fatal blow. Inherent in the law of self-defense is the fact that fear must exist "at the time he struck the fatal blow." See State v. McIntosh, 40 S.C. 349, 359, 18 S.E. 1033, 1038 (1894) (cited favorably by State v. Chambers, 310 S.C. 43, 425 S.E.2d 45 (Ct. App. 1992)) (overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)). For well more than a century, the test for whether a reasonable fear gives rise to self-defense has centered on the conditions at the time the defendant struck the fatal blow. State v. McGreer, 13 S.C. 464, 467 (1880). ("[T]he true test was the belief of the accused as to the necessity for his taking life, while we regard the true test to be the opinion of the jury, after hearing all the circumstances, whether the accused actually believed that such necessity existed, and whether, under all the circumstances surrounding the parties, at the time the violence was committed, he was warranted in forming such belief." (emphasis added); see also State v. Jackson, 227 S.C. 271, 278, 87 S.E.2d 681, 684 (1955). ([T]hat at the time the defendant fired the fatal shot, he believed he was in imminent danger of losing his own life or of sustaining serious bodily harm and that a reasonable and prudent man." (emphasis added).)

At the precise moment of the stabbing, Price had just gotten out of his car. (Video.) Bell had just made a threat that Price understood to mean Bell was going to shoot or stab him. Immediately after Price left his car, Bell lunged at him and knocked off his glasses. (Video.) The video shows the stabbing took place as Bell was actively assaulting and battering Price. Price, thus, has proved his fear of imminent danger from Bell was reasonable at the time he struck the fatal blow.

Even if the trial court properly considered things it believes Price could have done in the car seconds before the fatal blow, it erred in finding that a reasonably prudent man would not have

shared Price's fear of imminent danger. Given that Bell was charging the car from close distance while threatening to wet Price up, which means stab or shoot Price, none of the trial court's proposed alternative actions would have abated the imminent danger. Staying in the car would have just made Price a sitting duck for the aggressively charging Bell. Price did not have enough time to crank the car and roll up his window given that Bell was charging in his direction from right in front of Price's car; the whole encounter only lasted about three-to-four seconds once Price exited his car as Bell began the charge. Even if the Court decides Price had time to crank his car and roll up his window, Price still had a reasonable fear of imminent danger of death because Bell was charging at him while making threats that Price understood to mean that Bell was going to shoot him. Cranking the car and rolling up the window would not have prevented Bell's imminent attack on Price. Price, therefore, met his burden of proving that his belief of imminent danger was reasonable.

3. Element No. 4.

While the trial court did not analyze the fourth element of self-defense, it ruled that it "cannot find that [Price] had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force, given that [Price] elected to get out of his car with a knife to engage the victim." (Order p. 3.) The Court's ruling is error because Price met his burden of the fourth element of self-defense because he "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." Dickey, 394 S.C. at 499, 716 S.E.2d at 101.

Price tried to avoid the confrontation with Bell throughout the sequence. When Bell initially approached the automobile, Price told Bell to leave it. Then when Bell came back and charged at Price, Price did the reasonable thing by retreating as he got out of his car and backed

up. Price reasonably pulled the small knife out to stop Bell's advance, but Bell continued his charge and lunged at Price. Bell's attack of Price is what caused the fatal blow to be struck rather than Price doing anything to escalate the situation. For the reasons argued above, the alternative actions the court found Price should have taken are irrelevant to the self-defense analysis. These alternative actions also would not have avoided the danger because Bell was charging at Price and threatening to shoot or stab him. Price, thus, has met his burden of proving he had no other probable means of avoiding the danger than to act as he did by getting out of his car and retreating from Bell.

The trial court, therefore, committed reversible error by failing to find that Price met his burden of proving the four elements of self-defense. The trial court should have granted Price immunity on this ground pursuant to the Protection of Persons and Property Act.

B. If the Court determines Price failed to prove he retreated and avoided the danger, the Court should still grant him immunity pursuant to Section 16-11-440(C).

If the trial court determines that the defendant fails to prove he meets the elements of the duty to retreat then the trial court must analyze whether Section 16-11-440(C) applies. Glenn, 429 S.C. at 118-19, 838 S.E.2d at 496. The section states:

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) (2015). "Generally, a defendant will be defaulted into satisfying Subsection (C) when the Castle Doctrine does not apply or he cannot otherwise show he was excused from the duty to retreat." Glenn, 429 S.C. at 118-19, 838 S.E.2d at 496.

As stated above, Price was not engaged in an unlawful activity when Bell attacked Price in the parking lot where Price had the right to be. Even if Price had failed to prove he met the self-defense fourth element of avoiding the danger, this element is excused in the Section 16-11-440(C) analysis. The issue under this section is whether Price reasonably believed the use of force was necessary to prevent death or great bodily injury to himself.

In State v. Oates, 421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017), the Court of Appeals whether the trial court properly denied immunity. Oates was attempting to tow the decedent's vehicle when a dispute arose. Oates stated that Decedent pulled a weapon on him. The trial court found the following, "Assuming that there was an "attack" previously, there was no such event at the time of the shooting. In short, there was no force to be met. [Victim] was walking away from [Appellant] when he was shot five times in the back and once in the side." Oates, 421 S.C. at 16, 803 S.E.2d at 919. In affirming the denial of immunity, the Court noted the following:

Even if the uncontroverted facts show Victim was still intent on preventing his minivan from being towed when he had his back turned to Appellant, this is not necessarily inconsistent with the circuit court's perception that the aggression had abated at that precise moment.

Id. at 17, 803 S.E.2d at 920 (emphasis added). The proper inquiry under Section 16-11-440-(C), therefore, is whether Defendant had a reasonable fear at the precise moment that the fatal blow was struck.

Price's belief of imminent danger was reasonable because he was being charged at from a close distance by a much older and larger man with more experience fighting who was threatening to shoot or stab him. Bell confirmed the reasonableness of Price's fear of attack when he lunged onto Price and knocked off Price's glasses. Unlike the retreating victim in Oates, at the precise moment Price delivered the deadly blow with his small knife, Bell was attacking him.

The trial court, therefore, committed reversible error in denying Price immunity pursuant to Section 16-11-440(C) because Price proved he was not engaged in a crime when Bell attacked Price in a place where Price had the right to be, and Price reasonably believed he needed to use force to prevent death or great bodily injury from Bell's attack.

C. If the Court determines Price failed to prove his fear of imminent danger was reasonable, the Court should still grant him immunity pursuant to Section 16-11-440(A).

If the trial court determines that the defendant fails to prove he meets the elements of the duty to retreat then the trial court must analyze whether Section 16-11-440(A) applies. Glenn, 429 S.C. at 118-19, 838 S.E.2d at 496. This section states:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-44-440(A) (2015) (emphasis added). This section gives the defendant an opportunity to receive immunity when he fails to prove that his fear of imminent danger was reasonable "by providing a presumption that the person's fear was reasonable under certain circumstances." Glenn, 429 S.C. at 118, 838 S.E.2d at 496.

Based upon the trial court's framing of events and reasoning, the trial court should have granted Price immunity pursuant to Section 16-44-440(A). The trial court found that Price's fear was not reasonable because "[Price] could have very easily stayed inside his car, rolled up his

window and/or cranked his car.” (Order p. 4.) The use of the term “stayed” by the trial court subsumes a finding that Bell’s attack began while Price was still inside his vehicle.

Price was occupying his vehicle when Bell approached in an aggressive manner after making a threat to Price that Price understood as a threat to shoot him or stab him. When Bell began his charge from the front of Price’s car at Price toward Price’s open window, Bell was in the process of unlawfully and forcibly entering Price’s car. Price believed that if Bell made it to his car window, Price was done. (Tr. p. 123, ll. 2-12.) Based upon Bell’s threats and Bell’s aggressive manner in approaching the open window, Price had reason to believe that an unlawful and forcible entry was in the process of occurring.

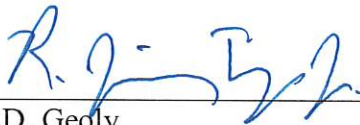
The trial court, therefore, committed reversible error in denying Price immunity pursuant to Section 16-11-440(A) because Price proved Bell was in the process of unlawfully and forcefully entering Price’s vehicle and Price knew this unlawful and forcible act was occurring when he used force against Bell.

CONCLUSION

The Court should reverse the trial court’s denial of Price’s motion for immunity pursuant to the S.C. Protection of Persons and Property Act for the reasons stated herein and should reverse Price’s conviction for voluntary manslaughter while dismissing all charges against him.

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Respectfully Submitted,



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This 22nd day of July, 2020.

RECEIVED

Jul 22 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Donald B. Hocker, Circuit Court Judge

Court of Appeals Case No. 2020-000091

State of South Carolina,

Respondent,

v.

Shi Heme Raquan Price,

Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order denying immunity under the Protection of Persons and Property Act;
2. Sentence sheet;
3. Indictment for murder;
4. Motion to determine immunity under Protection of Persons and Property Act;
5. Motion to reconsider denial of immunity and motion for immunity related to the charge of murder;
6. Transcript of immunity hearing dated June 10, 2019; and
7. Transcript of motion to reconsider hearing dated January 7, 2020.

I certify that this designation contains no matter which is irrelevant to this appeal.


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This 22nd day of July, 2020.

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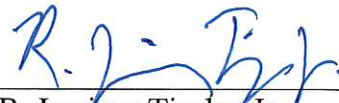
v.

Shi Heme Raquan Price,

Appellant.

Proof of Service

I certify that I have filed and served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal by e-mailing a copy to the S.C. Court of Appeals at ctappfilings@sccourts.org, to William M. Blich Jr. at wblitch@scag.gov, and Alan Wilson at awilson@scag.gov. This method of service and filing is based upon the Supreme Court Order dated May 29, 2020.



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July 22, 2020

S.C. Court of Appeals
Via e-mail: ctappfilings@sccourts.org

Re: State v. Shi Heme Price – Petition for Extension of Time to File and Serve
Appellant's Initial Brief and Designation of Matter
Case No. 2020-000091

Please find attached a copy of the Appellant's Initial Brief and Designation of Matter in the above-referenced matter along with proof of service. I am serving counsel for respondent simultaneously via e-mail.

Thank you for your assistance in this matter.

Yours truly,



R. Jamison Tinsley Jr.

cc: Alan Wilson (via awilson@scag.gov)
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