

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jan 14 2021

SC 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.

INITIAL REPLY BRIEF OF APPELLANT

GEOLY LAW FIRM
Stephen D. Geoly
222 Phoenix St.
Greenwood, SC 29646
(864) 223-3352

TINSLEY & TINSLEY, P.C.
R. Jamison Tinsley Jr.
109 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Attorneys for Appellant

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ARGUMENT

PRICE DID NOT WAIVE HIS ABILITY TO CHALLENGE THE TRIAL COURT'S DENIAL OF HIS IMMUNITY MOTION BY PLEADING GUILTY.

Given the circumstances of this case, Shi Heme Price ("Price") did not waive his right to appeal the trial court's denial of his motion for immunity when he pleaded guilty.

The State relies almost exclusively on the argument that Price's guilty plea precludes him from arguing that the trial court erred in denying immunity. The State only responds to the merits of Price's issue with the trial court's ruling in a footnote. (Respondent's Initial Brief pp. 9-10, fn. 5.) The State argues that a blanket rule applies in South Carolina that a defendant cannot challenge the denial of a motion for immunity after that defendant enters a guilty plea based on State v. Sims, 423 S.C. 397, 814 S.E.2d 632 (Ct. App. 2018). The Sims opinion is more nuanced than the State's view of it.

In Sims, after the trial court denied the defendant's motion for immunity pursuant to the Protection of Persons and Property Act ("the Act"), the defendant pleaded down to assault and battery of a high and aggravated nature from the indicted charge of attempted murder. Id. The defendant then appealed the denial of his immunity motion by arguing that the immunity assertion was a jurisdictional challenge that survived the guilty plea. Id.

The Court acknowledged that the immunity granted by the Act is more than a mere defense because immunity goes to the court's jurisdictional power to hale the defendant into court. Id. at 400, 814 S.E.2d at 633-34. The Court applied the following test to determine whether the defendant could appeal despite his guilty plea:

[A] ... defendant who unconditionally pleads guilty may still challenge his conviction on any ground "that if asserted before trial, would forever preclude the state from obtaining a valid conviction against him, regardless of how much the state might endeavor to correct the defect."

Id. (citing United States v. Curcio, 712 F.2d 1532, 1539 (2d. Cir. 1983) (Friendly, J).


In Sims, the Court determined that “under the circumstances here, his guilty plea is a ‘lid on the box, whatever is in it, not a platform from which to explore further possibilities.’” Id. (internal citation omitted). The Court reasoned that immunity pursuant to the Act is a statutory right that the defendant must prove he is entitled to and “there is nothing defective in the State’s prosecution of or the court’s jurisdiction over a defendant asserting immunity until immunity is established.” Id.


Under the circumstances here, Price established his immunity at the pre-trial hearing so the Court lost its jurisdiction over him at that point. Pursuant to the Act, Price had the right to defend himself and meet force with force when Willie “Bo” Bell attacked him as specified in Price’s Appellate Brief. At the point the evidence was presented to the trial court, the State lost its ability to prosecute Price, and the court lost its power to hear the case and enter a judgment against Price. Price meets the test announced in Sims as the State can no longer correct the defect preventing it from being able to prosecute Price. Price’s appeal, therefore, is properly before the Court.

CONCLUSION

This appeal is properly before this Court, which should reverse the trial court’s denial of Price’s motion for immunity pursuant to the Act and dismiss the State’s case, because Price established he was entitled to immunity.

Respectfully Submitted,


Stephen D. Geoly
Geoly Law Firm


R. Jamison Tinsley Jr.
Tinsley & Tinsley, P.C.

222 Phoenix St.
Greenwood, SC 29646
864-223-3352
geolylawfirm.com
Attorneys for Appellant

109 Oak Ave.
Greenwood, SC 29646
864-223-0770
Tinslerj@gmail.com

This 14th day of January, 2020.

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Proof of Service

I certify that I have served the Initial Reply Brief of Appellant by faxing a copy to the S.C. Court of Appeals at 803-734-1839 and by e-mailing a copy to Mark Farthing at mfarthing@scag.gov, William Blich 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 April 3, 2020 as amended December 16, 2020.



R. Jamison Tinsley Jr.
Tinsley & Tinsley, P.C.
109 Oak Ave.
Greenwood, SC 29646
864-223-0770
Tinslerj@gmail.com

Greenwood, South Carolina
January 4, 2021

1/14/2021

Gmail - State v. Price, Case No. 2020-000091



Jamison Tinsley <tinslerj@gmail.com>

State v. Price, Case No. 2020-000091

Jamison Tinsley <tinslerj@gmail.com>

Thu, Jan 14, 2021 at 6:17 PM

To: William Blitch <wblitch@scag.gov>, Mark Farthing <mfarthing@scag.gov>, awilson@scag.gov, Geoly Law <geolylawfirm@yahoo.com>

Gentlemen:

I have attached the Initial Reply Brief of Appellant in the above matter with a proof of service. I am filing this document with the Court of Appeals via fax. Thanks.

Jamison Tinsley

[Quoted text hidden]

 **initial reply brief.pdf**
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Tinsley & Tinsley, P.C.
Attorneys at Law
109 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

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S.C. Court of Appeals
Via Fax: 803-734-1839

Re: State v. Shi Heme Price – Initial Reply Brief of Appellant
Case No. 2020-000091

Please find attached a copy of the Initial Reply Brief of Appellant in the above-referenced matter along with proof of service and a copy of the e-mail showing service upon counsel for Respondent.

Thank you for your assistance in this matter.

Yours truly,



R. Jamison Tinsley Jr.

cc: Alan Wilson (via awilson@scag.gov)
Mark Farthing (via mfarthing@scag.gov)
William Blich (via wblitch@scag.gov)

Tinsley & Tinsley, P. C.
Attorneys at Law
109 Oak Avenue
Greenwood, South Carolina 29646
(864) 223-0770
FAX: (864) 377-8278

DATE: 1/14/2021
TO: S.C. Court of Appeals
COMPANY:
FAX #: 803-734-1839
FROM: Jamison Tinsley
RE: State v. Price - Case No. 2020-000091
Initial Reply Brief of Appellant

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