

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CHRISTOPHER LEE TODD,

APPELLANT

APPELLATE CASE NO. 2013-000118

ADDICTION ANDERS BRIEF OF APPELLANT
TO BE ATTACHED, TO ANDERS BRIEF OF APPELLANT
SUBMITTED BY ROBERT M. PACHAK Appellate Defender

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RECEIVED

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- 1) Whether Cir Cuit Court Was Without Jurisdiction to trial of the appellant. Because indictment failed to allege all of the elements of the crime.
- 2) Whether the indictment was insufficient to confer Jurisdiction upon the Courts.

BACKGROUND

ON May 10, 2012, around 11:30 PM in Anderson County, Chris Whitfield with the Sheriff's office was in a marked patrol car that was also a K-9 unit. He was sitting at a red light and appellant drove in front of him. Officer Whitfield decided to turn right behind the vehicle and follow it. As he followed the vehicle, he noticed a backseat passenger turning around and looking at him. He noticed the vehicle straddled the line and drifted over the center line. He thought maybe they had been drinking a little bit. (Tr. p. 49, line 9 - p. 51, line 25). He decided to initiate a traffic stop due to the center line infraction. There were three people in the vehicle. Appellant was the driver and there was a front seat passenger and a back seat passenger. (Tr. p. 52, line 2 p. 53, line 9). The officer walked up to the driver's door and the driver told him that he knew he should not have been driving. He got the driver out of the vehicle and ran him through dispatch. Dispatch advised him that appellant was driving under suspension and he was arrested for that offense. Whitfield patted appellant down for weapons and found a glass bowl-type pipe in his pocket that is commonly used for narcotics. (Tr. p. 54 line 11 - p. 55, line 10). It was determined that the vehicle was a rental unit. (Tr. p. 56, lines 4-6). They called the company that rented the car and told them to pick it up. In the meantime, Officer Whitfield and the other officers who had arrived at the scene inventoried the vehicle. In the back seat they found some syringes. They searched the trunk and found a Pringles can. Inside the can they found digital scales, plastic baggies, and narcotics which later tested to be methamphetamine. (Tr. p. 58, line 7 - p. 61, line 3).

- 1) The trial court erred in allowing the trial to proceed when the indictment here is insufficient because it did not include the element of knowingly or intentional distribution of a Schedule II controlled substance methamphetamine. Pursuant to Section (44-53-370). This indictment, (Tr. p. 189-190) in its complete form was insufficient particularly in light of the fact the statutory citations were not included thereby incorporating the knowledge element. However the indictment in this case does not refer to Section (44-53-370), which states the knowledge element, but

STATEMENT OF THE CASE

Appellant was convicted of possession with intent to distribute methamphetamine after a jury trial held before the Honorable R. Lawton McIntosh in Anderson County on January 7-8, 2013. A fifteen (15) year sentence was imposed along with a \$15,000 fine. Scott McElhannon, Esquire, was trial counsel. Rame Campbell, Esquire was the assistance solicitor.

This appeal follows.

instead refers to Sections 44-53-110, 44-53-375. Which is the general def-
initional portion of the Statute, and the penalty enhancement provision
only; and contains no reference to the requirement that possession of the
substance must be knowing or intentional. When viewing the entire indi-
ctment with a practical eye. It failed to include an essential element
of the offense, which therefore made the indictment insufficient to confer
jurisdiction upon the circuit court. This indictment fails to list the know-
ledge element involving certain substances and does not define a separate
crime.

(2.b) The indictment here was insufficient to confer jurisdiction pursu-
ant to South Carolina Constitution, ARTICLE 1, SECTION 11. A valid grand
jury presentment is needed for trial. Under former Section 17 of article
1, requires the presentment of a grand jury as a condition precedent to
the trial of a crime, except for certain minor offenses. The grand jury is
a constituent part of the court, and without its presentment the co-
urt has no jurisdiction of the cause. And do to the fact that the indict-
ment fails to list a signature of the grand jury foreman, which would
substantiate that the grand jury did convene on August 14th, 2012;
Therefore the Anderson County Court of general sessions does not have juris-
diction to proceed to trial.

CONCLUSION

Due to the facts stated above, the appellant would therefore ask this court to
vacate this conviction and sentence.

Subject matter jurisdiction may be raised at anytime even for the first
time in this court of appeals. Browning v. State, 320 S.C. 336, 465 S.E. 2d 358
(1995).