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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Oconee County

R. Scott Sprouse, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

WAYNE BEECHER CARTER,

APPELLANT

APPELLATE CASE NO. 2015-002009

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# INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES ..... 2

STATEMENT OF ISSUES ON APPEAL ..... 3

STATEMENT OF THE CASE ..... 4

ARGUMENT ..... 5

CONCLUSION ..... 9

TABLE OF AUTHORITIES

## Cases


Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710 (2009) ..... 7

*Henry v. United States,* 361 U.S. 98, 80 S. Ct. 168, 171, 4 L.Ed.2d 134 (1959) ..... 6

*Johnson v. United States,* 333 U.S. 10, 16-17, 68 S. Ct. 367, 370, 92 L.Ed. 436 (1948) ..... 6

*Rawlings v. Kentucky*, 448 U.S. 98, 111, n. 6, 100 S.Ct. 2564, n. 6, 65 L. Ed.2d 633 (1980) 6

*Sibron v. New York*, 392 U.S. 40, 63, 88 S. Ct. 1889, 1902, 20 L.Ed.2d 917 (1968) ..... 6

Smith v. Ohio, 494 U.S. 541, 543,110 S. Ct. 1288, 1290 (1990): ..... 6

State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991 ..... 5

State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980) ..... 5

State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001) ..... 5

State v. Tindal, 388 S.C. 518, 698 S.E.2d 203 (2010) ..... 7

*Thornton*, 541 U.S., at 632, 124 S. Ct. 2127 ..... 7

*Unites States v. Sullivan*, 138 F. 3d 126, 131 (4th Cir. 1998) ..... 7


## Statutes


S.C. Code §56-5-4590 ..... 5

S.C. Code §56-5-4730 ..... 5

S.C. Code §56-5-5310 ..... 5

SC Code 56-5-4510 ..... 5

## STATEMENT OF ISSUE ON APPEAL

I. Whether Officer Jefferson had probable cause to support his traffic stop of appellant's vehicle for a defective right tail light which was functioning?

II. Whether the continued detention of appellant exceeded the scope of the traffic stop and rendered his consent to search invalid?

## STATEMENT OF THE CASE

Appellant was convicted of possession with intent to distribute meth after a jury trial held before the Honorable R. Scott Sprouse in Oconee County on September 14-15, 2015. An eight (8) year sentence was imposed. W. Wilson Burr, Esquire and Keith G. Denny, Esquire were the defense attorneys. Bethany Ann Blundy, Esquire was the solicitor.

This appeal follows.

## ARGUMENT I

Officer Jefferson did not have probable cause to support his traffic stop of appellant's vehicle for a defective right tail light which was functioning.

Defense counsel moved to suppress the meth that was found under the seat of the appellant's pick up truck in a black bag. The entire stop of appellant was based on a tail light. (Tr. p.71, l. 23 – p.72, l. 3). Counsel noted that the video of the stop showed two active tail lights so there was no reason for the stop. (Tr. p.72, ll. 12-16). The tail light statute, SC Code 56-5-4510, deals with tail lights not brake lights. Only one has to operational and it has to be seen at 500 feet. Appellant's tail lights were working, his brake lights worked, as did the signal lights. (Tr. p.73, ll. 9-22; Tr. p.74, ll. 4-14). The legal maxim in this State is that statues are to be construed strictly against the State and in favor of a defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980); State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001) is readily distinguishable from appellant's case. That case dealt with a non-functioning brake light which was specifically dealt with under the brake light statute, S.C. Code § 56-5-4730. Only a tail light was involved in appellant's case and defense counsel said it was only slightly cracked and there was no reason for the stop. (Tr. p.74, ll. 13-14).

The assistant solicitor side-stepped the tail light statute and instead argued a more general statute, S.C. Code §56-5-5310, that deals with the general condition of the vehicle and the vehicle equipment. (Tr. p.75, ll. 11-21). But case law holds that where there is a conflict between a general statute and a specific statute, the specific statute prevails. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). So the tail light statute would prevail. Then, the assistant solicitor brought up S.C. Code §56-5-4590. (Tr. p.75, l. 22 – p.76, l. 76). But that statute also does not deal specifically with tail

lights. Finally, she said the officer checked "defective equipment" on the warning ticket. But she said the tail light was the reason for the stop. (Tr. p.76, ll. 20-24). The State had the burden of proof at the suppression motion. It did not put up Officer Jefferson to testify at the motion. His incident report did say "tail light." And during the trial Officer Jefferson said the tail light was "cracked." (Tr. p.127, l. 23).

A review of the DVD of the stop shows both tail lights functioning and both turn signals working. In fact the left tail light shows more white light than the right tail light. Stopping appellant for a bad right tail light was just used as a pretext to search appellant and his truck.

The fruits of the search in this case did not justify the stop of the appellant.[1] As the Supreme Court of the United States wrote in Smith v. Ohio, 494 U.S. 541, 543,110 S. Ct. 1288, 1290 (1990):

> That reasoning, however, "justify[ing] the arrest by the search and at the same time...the search by the arrest," just "will not do." *Johnson v. United States,* 333 U.S. 10, 16-17, 68 S. Ct. 367, 370, 92 L.Ed. 436 (1948). As we have had occasion in the past to observe, "[i]t is axiomatic that in incident search may not precede an arrest and serve as part of its justification." *Sibron v. New York*, 392 U.S. 40, 63, 88 S. Ct. 1889, 1902, 20 L.Ed.2d 917 (1968); see also *Henry v. United States*, 361 U.S. 98, 102, 80 S.Ct. 168, 171 4 L.Ed.2d 134 (1959): *Rawlings v. Kentucky*, 448 U.S. 98, 111, n. 6, 100 S.Ct. 2556, 2564, n. 6, 65 L. Ed.2d 633 (1980). The exception for searches incident to arrest permits the police to search a lawfully arrested person and areas within his immediate control. Contrary to the Ohio Supreme Court's reasoning, it does not permit the police to search any citizen without a warrant or probable cause so long as an arrest immediately follows.

## Argument II

The continued detention of appellant exceeded the scope of the traffic stop and rendered his consent to search invalid.

In Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710 (2009) the court wrote:

> "we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle" 556 at 335, 129 S.Ct. at 1714.

Later in decision the court wrote:

> Although it does not follow from *Chimel*, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Thornton*, 541 U.S., at 632, 124 S. Ct. 2127 (SCALIA, J., concurring in judgment). In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. 556 at 344, 129 S.Ct. at 1719.

In State v. Tindal, 388 S.C. 518, 698 S.E.2d 203 (2010) the court wrote:

> In carrying out a routine traffic stop, a law enforcement officer may request a driver's license and vehicle registration, run a computer check and issue a citation. *See Unites States v. Sullivan*, 138 F. 3d 126, 131 (4th Cir. 1998). Any further detention for questioning is beyond the scope of the stop and therefore illegal unless the officer has reasonable suspicion of a serious crime. *Id.*
>
> We find the officer's continued detention of Tindall exceeded the scope of the traffic stop and constituted a seizure for purposes of the Fourth Amendment.
>
> The fact that Tindall "consented" to the search of the vehicle does not alter our conclusion as the consent was the product

[1] The stop of appellant just covers the first few minutes of the DVD.

of the unlawful detention. 388, S.C. at 521-523, 698 S.E.2d at 205-206

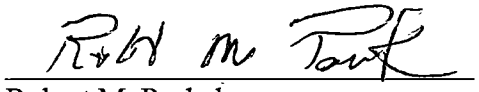
In Rodriguez v. United States, _____ U.S._____, 135 S. Ct. 1609 (2015) the court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 135 S. Ct. at 1612.

Appellant in this case was stopped for an ostensible and questionable tail light infraction. Further questioning for consent to search was not justified and went beyond the scope of the stop. A search of appellant and his truck had nothing to do with his tail light. His consent was invalid as it was the product of an unlawful detention that went beyond the scope of the stop for his tail light.

## CONCLUSION

The evidence obtained from the stop and search of appellant should have been excluded and his conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of February, 2016.

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of February, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of February, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022