

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Roger L. Couch, Circuit Court Judge

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APR 21 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRAVIS SCOTT CONNER

APPELLANT

APPELLATE CASE NO 2015-002097

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

State v. Ballenger, 322 S.C. 196, 470 S.E. 2d 851 (1996)..... 6

State v. Fripp, 397 S.C. 455, 725 S.E.2d 136 (2012)..... 6

Constitutional Provisions

South Carolina Const. Art. 5 § 21 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in instructing the jury on constructive possession when this was a case of actual possession?

STATEMENT OF THE CASE

Appellant was convicted of methamphetamine, third offense, after a jury trial held before the Honorable Roger L. Couch on September 15-16, 2015, in Charleston County. He was sentenced to eight (8) years suspended on service of four (4) years with three (3) years probation thereafter. Andrew Johnston, Esquire was trial counsel. Kimberly L. Leskanic, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in instructing the jury on constructive possession because this was a case of actual possession.

The assistant solicitor's theory of this case was that appellant had in his possession methamphetamine and he intended to give it, sell it, or deliver it to someone else. During a July 6, 2014, traffic stop in Cherokee County, Deputy Aaron Bowles approached appellant who was sitting in the driver's seat. Rachael Powell was sitting in the passenger side. Deputy Jennings approached her. Now when Deputy Bowles approached appellant, he saw his right hand shoved down his pants. He did not know if appellant was reaching for a weapon, so Deputy Bowles drew his service revolver and told appellant to show him his hand. Appellant pulled out his hand and he had a glassine baggy containing meth. He tossed it onto Ms. Powell's lap. (R. p. 56, line 9; p. 57, line 13)

The defenses theory of the case was that the meth really belonged to Ms. Powell and she passed them to appellant and he passed them back to her. Ms. Powell also had meth in a syringe that was concealed in her bra. Thus, appellant did not possess the drugs with the intent to distribute them. He may not even be guilty of simple possession of the drugs. (R. p. 59, line 7 – p. 61, line 15)

After all the evidence was presented, there was a charge conference in chambers. Defense counsel put on the record that only actual possession should be charged and not constructive possession because the facts only showed actual possession. (R. p. 237, line 18 – p. 238, line 5) Respondent argued that constructive possession should be charged because appellant was in his car and under

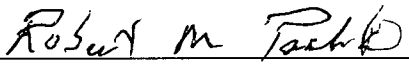
constructive possession he had dominion and control over the car which would attribute the drugs to him. (R. p. 239, ll. 14 – 16) The trial court said it would charge constructive possession because appellant had dominion and control over the drugs because they were in his car. (R. p. 240, line 25 – p. 242, line 14) That ruling was in error.

It is true that constructive possession is present when a defendant is charged with possession of drugs and that person has dominion and control over the drugs or the premises where the drugs are found. State v. Fripp, 397 S.C. 455, 725 S.E.2d 136 (2012); State v. Ballenger, 322 S.C. 196, 470 S.E. 2d 851 (1996) The problem is when more than one person is on the premises or, as in this case, in a vehicle. Under the court's application of constructive possession drugs could never belong to a passenger in a vehicle but always to the driver/owner of the vehicle. Hence, a jury is instructed to find the driver/owner of the vehicle guilty. The jury instruction becomes a comment on the facts in violation of Article 5, Section 21 of the South Carolina Constitution.

CONCLUSION

Because of the error in the jury instruction, appellant's conviction should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2016.

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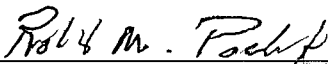
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Travis Scott Conner states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on September 16, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Travis Scott Conner.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2016.

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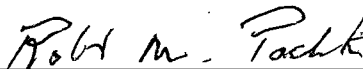
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript Dated September 15 -16, 2015(s);
- (2) Indictment

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



Robert M. Pachak
Appellate Defender

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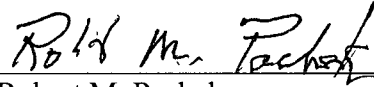
Attorney for Appellant

April 21st, 2016

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 21, 2016



Robert M. Pachak
Appellate Defender

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Division of Appellate Defense
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Travis Scott Conner, #347001 at Walden Correctional Institution, this 21st day of April, 2016.

Robert M. Pachak

Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of April, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.