

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

\_\_\_\_\_  
Appeal from Laurens County

Honorable Benjamin H. Culbertson, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

KATY MCDONALD TUTTLE,

APPELLANT

APPELLATE CASE NO 2017-000883  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

RECEIVED  
MAR 13 2018  
SC Court of Appeals

ROBERT M. PACHAK  
Appellate Defender

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in refusing to suppress evidence seized from appellant's vehicle when seizing the evidence was not justified under Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009) since appellant was not in the car and was in handcuffs?

**STATEMENT OF THE CASE**

Appellant was convicted of possession with intent to distribute methamphetamine after a jury trial held before the Honorable Benjamin H. Culberton on March 30-31, 2017, in Laurens County. She was sentenced to five (5) years or fined \$10,000. That sentence was suspended to four (4) years' probation. C. Dale Scott, Esq. and A. Lyon Bixler were the solicitors. Joel T. Broome, Esq. was trial counsel.

This appeal follows.

## ARGUMENT

The trial court erred in refusing to suppress evidence seized from appellant's vehicle when seizing the evidence was not justified under Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009) because appellant was not in the car and was in handcuffs.

At the suppression hearing, trial counsel said the police stopped appellant for speeding then they arrested her for suspicion of DUI. He said one officer took her out of her car and tried doing some field sobriety tests and decided to arrest her for DUI. She was placed into handcuffs, and then in the patrol car. Then the other officer, the one who stopped her for speeding, decided to search her car (R. p. 6, line 5- p. 7, line 12).

Trial counsel argued that under Arizona v. Gant, 556 U.S. 332, 127 S.Ct. 1710 (2009), there was a stop, a seizure, and because appellant was in custody she posed no threat to the police and no reasonable basis to believe she could reach back into her car. It was the State that had the burden to prove that there were reasonable and particularized facts to show that there was criminal activity afoot. (R. p. 7, lines 13-14).

Officer Kanipe testified at the suppression hearing that he placed appellant under arrest for DUI and advised her of her Miranda rights. (R. p. 17, line 9-p. 18, line 2). After she was advised of her rights she was placed in the back of the patrol car. (R. p. 19, lines 13-15). At the police station appellant blew double zeros on the Datamaster. (R. p. 24, line 23-p. 25, line 2).

Officer Gainey testified that officer Kanipe arrested appellant and then left. He said he searched her vehicle because "she made a furtive movement to the passenger side, which indicated to me that she was possibly concealing something." Officer Gainey searched the passenger side and found meth. (R. p. 32, lines 11-21). There is nothing on appellate counsel's version of the

video that shows that appellant made any furtive movement toward her car. This was just a case where the police were trying to justify the search by the fruits of the search.

As the court noted 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 and 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 searched incident to arrest permits to 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.”

The Fourth Amendment does not allow the “unbridled discretion to rummage at will...” Arizona v. Gant, 556 U.S. 332, 345, 129 S. Ct. 1710, 1720 (2009). Instead, an officer has to have “reasonable suspicion” to search a passenger and there has to be “probable cause” to believe a vehicle contains evidence of criminal activity. Arizona v. Gant, 556 U.S. at 346-348, 129 S.Ct. at 1721.

When a person is arrested, handcuffed, and put into a patrol car there is no justification to search the automobile, Arizona v. Gant, 556 U.S. at 339-343, 129 S.Ct. at 1716-1719.

**CONCLUSION**

Because the search of appellant's car violated the constitution, the drugs found in appellant's car should have been suppressed, and her conviction should be reversed.

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of March, 2018.

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V.

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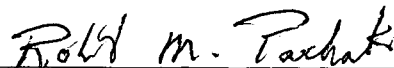
\_\_\_\_\_  
PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Katy McDonald Tuttle 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 Benjamin H. Culbertson, which was held on March 30 - 31, 2017, 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 Katy McDonald Tuttle.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of March, 2018.

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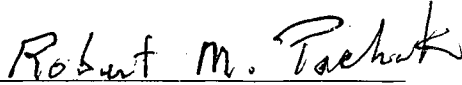
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

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

- (1) True-billed indictment(s):
- (2) Trial Transcript
- (3) State's Exhibit No. 1 (DVD to be transported to the Court.)

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

March 13, 2018

  
\_\_\_\_\_  
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Defense  
Division of Appellate Defense  
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ATTORNEY FOR APPELLANT

**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."

March 13, 2018.

*Robert M. Pachak*

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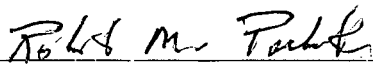
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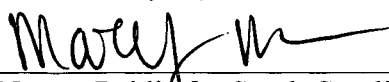
APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Anders 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; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Katy McDonald Tuttle, at 2405 Andorra Street, Navarre, FL 32566, this 13th day of March, 2018.

  
\_\_\_\_\_  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 13th day of March, 2018.

  
\_\_\_\_\_  
(L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.