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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 28 2012

SC Court of Appeals

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM T. COLEMAN,

APPELLANT

APPELLATE CASE NO. 2012-212338

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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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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress the gun taken from the pocket of a coat that was in appellant's car because the search was unreasonable because appellant was handcuffed outside the car and the search had nothing to do for the reason of the stop which was a failure to dim headlights?

STATEMENT OF THE CASE

Appellant was convicted of being in possession of a handgun with serial numbers obliterated after a jury trial held before the Honorable John C. Hayes, III in York County on June 18 – 19, 2012. A three (3) year sentence was imposed. Melissa Inzerillo, Esquire, was trial counsel. Jessica Holland, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress the gun taken from the pocket of a coat in appellant's car because the search was unreasonable because appellant was handcuffed outside the car and the search had nothing to do for the reason of the stop which was a failure to dim headlights.

At appellant's suppression hearing, Sergeant Dwayne Bunch, with the Winthrop University Police Department, testified that on a night in January of 2012 around 1:00 A.M., he executed a traffic stop on appellant on Cherry Road, Camden Avenue in Rock Hill. The stop was for failure to dim headlights. Appellant was asked to produce his license and registration. He showed a bill of sale since the car had a temporary tag on it and said he did not have his driver's license on him. Appellant said his name was David Ervin and his date of birth was October 18, 1983. Sergeant Bunch ran that information through DMV for a check and there was a real David Ervin. He then asked dispatch for the last four digits of David Ervin's social security number. Receiving that information, he asked appellant for the last four digits of his social security number. Appellant said he did not know his social security number. Sergeant Bunch then asked for a photograph of David Ervin from another officer who had on-line access with DMV. The sergeant then asked appellant to get out of the car and asked him his age. Appellant said he was 29, but with the date of birth he gave he would have been 28. Because appellant did not know his social security number, appellant was handcuffed for the officer's safety! But, he was not placed under arrest. (Tr. p. 38, line 11 – p. 43, line 25). Sergeant Bunch said the photograph of David Ervin arrived and he could tell that was not appellant. (Tr. p. 44, lines 15 – 20). He then placed appellant under arrest. (Tr. p. 46, lines 5 – 6). The arrest was for giving false information. (Tr. p. 53,

lines 15 – 19). After appellant was placed under arrest, he was secured in officer Wilson’s vehicle. The sergeant then went back to appellant’s car and noticed the odor of marijuana coming from the vehicle. (Tr. p. 55, lines 9 – 21). He searched the vehicle. He found a jacket in appellant’s car seat. Inside the jacket, he found a wallet with appellant’s identification. He also found a handgun with the serial number removed. (Tr. p. 56, line 22 – p. 58, line 8).

As one of the grounds for suppression of the handgun, defense counsel relied on Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009). That case held that a search of a defendant’s vehicle while he was handcuffed in a patrol car was unreasonable. There was no possibility that appellant could have reached into the area where Sergeant Bunch was searching because he was handcuffed and secured in a patrol car. He did not have to search for his safety. And, since the purpose of the stop was a failure to dim lights, there was no evidence to be searched for that offense. (Tr. p. 79, line 8 – p. 82, line 15).

The trial court’s ruling denying the motion to suppress was in error. (Tr. p. 84, line 21 – p. 87, line 7).

CONCLUSION

Appellant's conviction should be reversed because the trial court failed to suppress the handgun.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2012.

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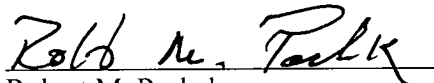
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William T. Coleman 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 John C. Hayes, III, which was held on June 18-19, 2012, 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 William T. Coleman.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2012.

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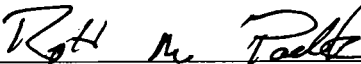
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (June 18-19-2012)
- (3) State's Exhibit #2 (In Car Camera Video)

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

December 28th, 2012



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
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Attorney for Appellant

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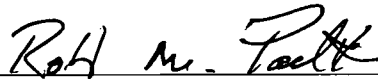
WILLIAM T. COLEMAN,

APPELLANT

APPELLATE CASE NO. 2012-212338

CERTIFICATE OF SERVICE


The undersigned attorney 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 Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Anders Brief and Record on Appeal have been served upon William T. Coleman, #287408, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 28th day of December, 2012.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of December, 2012.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.