

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JUN 14 2013
SC COURT of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER LEE TODD,

APPELLANT

APPELLATE CASE NO. 2013-000118

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

Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009)..... 3, 5, 6

Constitutional Provisions

U.S. Const. amend. XIV 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to suppress evidence seized after a search of appellant and the car he was driving after a routine traffic stop when the search went beyond the reason of the stop and was in violation of Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009)?

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 assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in failing to suppress evidence seized after a search of appellant and the car he was driving after a routine traffic stop because the search went beyond the reason of the stop and was in violation of Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009).

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 backseat 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

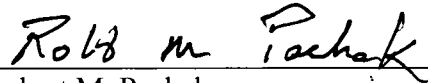
digital scales, plastic baggies, and narcotics which later tested to be methamphetamine. (Tr. p. 58, line 7 – p. 61, line 3).

The trial court erred in allowing the evidence seized from the search to be introduced into evidence. The search of the vehicle appellant was driving while he was outside of the vehicle without a search warrant was unreasonable under the Fourth Amendment to the United States Constitution. An exception to the warrant requirement is a search incident to a lawful arrest. But, that is limited to the arrestee's person and the area within his immediate control. Thus, the exception does not apply when the arrestee is outside of the vehicle and could not reach into the area the officers were seeking to search. Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2013.

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,

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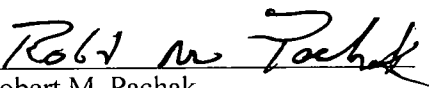
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Lee Todd 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 R. Lawton McIntosh, which was held on January 8, 2013, 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 Christopher Lee Todd.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2013.

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Appeal from Anderson County

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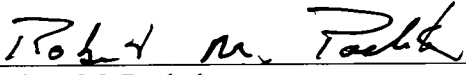
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Entire Trial Transcript (January 7 – 8, 2013)

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

June 14th, 2013



Robert M. Pachak
Appellate Defender

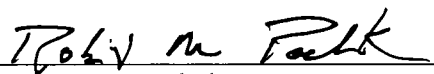
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 14, 2013



Robert M. Pachak
Appellate Defender

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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
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Appeal from Anderson County
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THE STATE,

RESPONDENT,

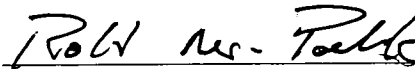
V.

CHRISTOPHER LEE TODD,

APPELLANT

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 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 Christopher Lee Todd, #317993 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th day of June, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of June, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.