STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMEY CHRISTOPHER GILLIAM,

Appellant.

Appellate Case No. 2020-000877

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Evidence supports the trial court's ruling that narcotics were properly seized pursuant to a search incident to arrest because the officer had probable cause to arrest Appellant for several offenses including possession of drug paraphernalia. Additionally, Appellant's car was properly searched pursuant to the automobile exception to the search warrant requirement, the prior search incident to arrest notwithstanding. None of the evidence constitutes fruit of the poisonous tree.

STATEMENT OF THE CASE

The Anderson County grand jury indicted Appellant Gilliam for possession of methamphetamine and possession of cocaine. Gilliam was tried in his absence on February 24-25, 2020 – counsel admitted Gilliam was on notice of the trial. Supp. R. p. 1, lines 16-22. Gilliam was convicted of both charges. The presiding judge, the Honorable R. Scott Sprouse, sealed Gilliam's sentence. On May 28, 2020, Gilliam's sentence was unsealed by the Honorable R. Lawton McIntosh, and Gilliam was sentenced to three years' imprisonment, suspended to one year imprisonment and five years' of probation.

STATEMENT OF FACTS

Suppression hearing

Detective Jonathon Velez, with the narcotics unit, was headed back to the station to conclude his shift when he observed a vehicle parked about seventy-five yards from the road in the ruins and overgrowth of an abandoned Ingles grocery store. The property became a nuisance to Ingles and law enforcement as people squatted on the property and stole metal from the ruins. The vehicle, an SUV, was surrounded on both sides by overgrown vegetation. The sheriff's office often ran people off the property. R. pp. 9-12; pp. 30-31.

Detective Velez explained the vehicle was "awkwardly placed where the ruins of the building used to once be. That location is barricaded. There's wires or signs stating that nobody could trespass on the said lots. I found it to be a little odd. It drew my attention." R. p. 11, lines 4-12. Detective Velez further explained the SUV was in a "vegetated" area that was overgrown and way off the road. This was not the normal place Detective Velez found vehicles parked on the property, vehicles usually would park on the front half of the property, closer to the high school where parents were picking up their children. R. p. 12, lines 10-14. Detective Velez needed to find an accessible path to pull into the property due to the number of things blocking the roadway's entrances to the lot. R. p. 13, lines 9-14. Detective Velez confirmed during cross-examination that Gilliam was engaged in the criminal act of trespassing, and he explained there were multiple trespassing signs on the property. R. pp. 32-33.

Detective Velez thought he heard arguing as he approached the SUV and thought there could be a domestic issue. He made contact on the passenger side of the vehicle with the heavyset male, Gilliam. Detective Velez estimated Gilliam weighed approximately 300 pounds. A female was in

the driver seat. There was an open container of beer in the center console. R. pp. 13-15. Detective Velez testified that having the open container in the vehicle was an arrestable offense. R. p. 22, lines 21-23.

Detective Velez asked Gilliam to step outside the vehicle. Detective Velez explained he opened the door for Gilliam, and as Gilliam exited, "I observed him to drop a glass pipe, which is indicative of using methamphetamines. It was a long pipe with a bowl at the end of it." R. p. 16, lines 3-7. Detective Velez explained, "It's commonly used. A lot of people buy those at gas stations. They usually have little flowers in it, and most people punch a hole in it and they smoke their illegal drugs in it." R. p. 16, lines 14-17. Detective Velez explained he was aware of this based on his training and experience as a narcotics officer. R. p. 16, lines 18-21. In the incident report, Detective Velez described Gilliam "throwing the glass smoking pipe, . . ." R. p. 24, lines 14-20.

Detective Velez informed Gilliam he was detaining him based on the circumstances and put handcuffs on Gilliam. Detective Velez explained to the trial court, "[B]eing by myself and Mr. Gilliam being such a large man, I went ahead and just placed handcuffs on him and advised him he was being detained." R. p. 16, line 25 - p. 17, line 6. Detective Velez noticed Gilliam held something closed in his right hand. Gilliam would not tell Detective Velez what he had. When he finished handcuffing Gilliam, Detective Velez took the metal pill container Gilliam clung to, opened it, and found two white bags, one appearing to be cocaine base and the other methamphetamine. Detective Velez called for additional units and told the hand-cuffed Gilliam he was under arrest. R. pp. 17-18; p. 27 (one bag field tests positive for cocaine, the other for methamphetamine). During a pat-down search, Detective Velez found what was later established as cocaine base in the pocket of Gilliam's sweatpants. R. p. 19. There were also two pills with the identifying information on the

pills scrubbed off. R. p. 25.

While speaking with the driver of the vehicle, the driver informed Detective Velez there were more drugs in the vehicle. Detective Velez found another bag of methamphetamine behind the driver's seat. R. p. 27. He then read Gilliam his Miranda rights. Gilliam told Detective Velez the drugs were his. R. pp. 58-62.

Trial testimony

Detective Velez was the primary fact witness at trial and naturally his testimony tracked his pretrial testimony. Detective Velez noted when he approached Gilliam's vehicle, Gilliam was screaming and acting erratic. R. p. 147. Detective Velez observed an open container of alcohol, then Gilliam dropped a glass pipe while stepping out of the vehicle. R. pp. 107-08. Detective Velez confirmed, "At that point in time, I felt that there was some crime afoot." R. p. 150, lines 20-21. Detective Velez described the glass pipe for the jury:

> It's a common pipe that people use to smoke methamphetamine. . . . [T]hey sell them a lot . . . at gas stations. . . . [I]t's a long tube and it has like a bulb at the end. People sell them at stores and they say it's for flowers, but most commonly used for actually smoking methamphetamine. People place the said substance in there and they smoke it.

R. p. 108, lines 4-11.

Defense counsel asked about the legitimate uses for the glass pipe, and Detective Velez explained, "The uses and what it's sold for, many gas stations sell things that are – the purpose that's labelled on them is totally different than what people actually buy them for." R. p. 151, lines 15-21.

STANDARD OF REVIEW

"South Carolina appellate courts review Fourth Amendment determinations under a clear

error standard." State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013). "When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011).

ARGUMENT

Evidence supports the trial court's ruling that narcotics were properly seized pursuant to a search incident to arrest because the officer had probable cause to arrest Appellant for several offenses including possession of drug paraphernalia. Additionally, Appellant's car was properly searched pursuant to the automobile exception to the search warrant requirement, the prior search incident to arrest notwithstanding. None of the evidence constitutes fruit of the poisonous tree.

Appellant Gilliam was already trespassing and had an open container in his vehicle when he exited the vehicle and dropped what Deputy Velez recognized as a glass pipe most commonly used for smoking methamphetamine. Therefore, the facts within Deputy Velez's knowledge provided Deputy Velez with probable cause to arrest Gilliam for several offenses and perform a search incident to arrest, and also provided Deputy Velez with probable cause to search Gilliam's vehicle pursuant to the automobile exception to the search warrant requirement. Because none of the evidence seized was fruit of the poisonous tree, the trial court properly denied the suppression motion.

Search incident to arrest

The trial court correctly found the search and seizure of the pill bottle, and the search and seizure of cocaine from the pocket of Gilliam's sweatpants, both were the products of a search incident to a lawful arrest. R. p. 57. Upon discovering Gilliam's possession of a methamphetamine pipe, Detective Velez handcuffed Gilliam and discovered the tin pill bottle in Gilliam's hands

contained methamphetamine and cocaine; he then searched Gilliam and found cocaine in his pants pocket. Detective Velez formally arrested Gilliam. The methamphetamine found behind the front seat of the vehicle was properly seized based on probable cause and the automobile exception to the search warrant requirement.

A **full** warrantless search of person is permitted if he has been lawfully arrested, and the search is conducted in immediate vicinity of, and substantially contemporaneously to, the arrest. State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005). "[P]robable cause for a warrantless arrest generally exists 'where the facts and circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested.'" State v. Moultrie, 316 S.C. 547, 552, 451 S.E.2d 34, 37 (Ct. App. 1994) (quoting United States v. Miller, 925 F.2d 695, 698 (4th Cir. 1991)).

"A warrantless search that precedes a formal arrest is nonetheless valid if the arrest quickly follows." Moultrie, 316 S.C. at 551, 451 S.E.2d at 37 (Ct. App. 1994) (citing Rawlings v. Kentucky, 448 U.S. 98 (1980)). "Fruits of such a search, however, cannot be used to justify the arrest." Moultrie, 316 S.C. at 551, 451 S.E.2d at 37 (citations omitted). In Moultrie, officers inspected a crowd of people on a dark road and saw a plastic-wrapped package of what appeared to be marijuana, one to two feet in front of the defendant. Officers performed what they described as a Terry[1] pat-down search and found a large sum of cash in the defendant's wallet. The officers then "formally" arrested the defendant. The defendant argued the scope of the search exceeded Terry. This Court explained, "The fact that an arresting officer improperly based a search of an individual on a Terry-stop rationale does not prevent the State from otherwise justifying the search by proving

probable cause to make a warrantless arrest of the individual existed prior to the search." Id. (citing Florida v. Royer, 460 U.S. 491 (1983)). This Court noted regardless of the seizure of cash as evidence of proceeds of drugs sales, ample evidence established probable cause to arrest the defendant before the pat down search. Therefore, this Court found the cash was admissible as the fruit of a valid search incident to arrest. Id. at 552-53, 451 S.E.2d at 38.

Like Moultrie, when Detective Velez "detained" Gilliam, Detective Velez already had probable cause to arrest Gilliam. Detective Velez testified he had probable cause to arrest Gilliam for the open container of beer in Gilliam's vehicle. R. p. 22. Additionally, he testified he considered there to be sufficient signage to believe Gilliam was committing trespassing after notice. R. pp. 32-33.

Moreover, Detective Velez had probable cause to arrest Appellant for possession of drug paraphernalia. S.C. Code § 44-53-391 (a) ("It shall be unlawful for any person to . . ., possess, . . . paraphernalia."). "'Paraphernalia' means any instrument, device, article, or contrivance used, . . . , or intended for use in ingesting, smoking, administering, . . . a controlled substance . . . ." S.C. Code § 44-53-110(33); see S.C. Code § 44-53-391(b) (enumerating twelve factors to consider to determine whether an object is paraphernalia, "in addition to all other logically relevant factors").

In facing a constitutional challenge to an ordinance similar to our state statute, the Seventh Circuit Court of Appeals observed the scienter requirement of the paraphernalia ordinance "determines what is classifiable as drug paraphernalia: the violator must design the item for drug use, intend it for drug use, or actually employ it for drug use." Levas and Levas v. Village of Antioch, Ill., 684 F.2d 446, 453 (7th Cir. 1982). "Since very few of the items a paraphernalia ordinance seeks

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[1] Terry v. Ohio, 392 U.S. 1 (1968).

to reach are single-purpose items, scienter is the only practical way of defining when a multi-purpose object becomes paraphernalia." Id.

In the present case, Detective Velez had probable cause to believe Appellant "possessed an item meeting the statutory definition of paraphernalia and that he . . . did so with the intent to ingest a controlled substance." Moore v. State, 295 So.3d 1259, 1265 (Fla. Dist. Ct. App. 2020) (finding sufficient evidence supported conviction under a similar Florida statute prohibiting drug paraphernalia where Moore was driving a stolen truck with a suspended license and a handgun in the truck, law enforcement found a glass pipe on Moore's person, and the deputy arresting Moore testified the glass pipe was a crack pipe used for the purpose of smoking crack cocaine – the deputy gained this knowledge from his training and experience as a law enforcement officer). In Moore, no evidence was produced that the glass pipe had any other purpose other than drug use. The Florida court concluded, "Given the evidence about the paraphernalia in this case – direct evidence that its sole or **predominant** purpose was to smoke crack cocaine – and the evidence of the circumstances in which Mr. Moore was found with it, a rational jury could determine that Mr. Moore intended to use the pipe in accord with its obvious illicit purpose." Id. at 1268 (emphasis added).

In the present case, Detective Velez testified the glass pipe was used for smoking methamphetamine and recognized the purported legitimate purpose of the product to be a ruse. The burn marks on the fractured pipe erase any naïve pretense that the glass pipe was intended for some improbable innocent use. See State's Exhibits Nos. 13 and 14 (color photographs showing the broken glass pipe with burn marks).

Viewing Detective Velez's observations of the glass pipe and his knowledge about its common use in conjunction with the circumstances that (1) Gilliam was trespassing on abandoned

property, (2) Gilliam's vehicle was partially hidden in overgrowth in a difficult to access portion of property seventy-five feet from the road, (3) an open container was plainly visible in the vehicle, and (4) Detective Velez's reasonable belief the tin pill container likely held the narcotics suitable for consumption in the pipe, Detective Velez had probable cause to believe Gilliam was illegally in possession of drug paraphernalia with the intent of using it to consume narcotics.

When facts within an officer's knowledge support probable cause to believe an offense was committed, the subsequent search incident to arrest is lawful even if the person is not charged with the offense.

When law enforcement is aware of facts amounting to probable cause for an offense, the subsequent search incident to the arrest is lawful, even if the arrest was ultimately for another offense not supported by probable cause. See Devenpeck v. Alford, 543 U.S. 146, 153 (2004) ("Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause."). The officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Id. "Those are lawfully arrested whom the facts known to the arresting officers give probable cause to arrest." Id.

In Devenpeck, the officers stopped the defendant's car on a belief he was impersonating a police officer and found a multitude of evidence to support that suspicion. However, the officers ultimately arrested and charged the defendant with a violation of the state's privacy act, rather than a charge for impersonating a police officer, because the defendant tape-recorded his conversation with the officers. Despite the problem the privacy act was not actually violated, the United States Supreme Court concluded the search incident to arrest was lawful since law enforcement objectively had probable cause to believe the defendant was illegally impersonating a police officer. Id.

Our Supreme Court relied on Devenpeck in State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). In that case, the defendant was tried and convicted for the murder of a taxi cab driver occurring decades earlier. A month after the murder, a highway patrolman in Tennessee saw the defendant hitchhiking and stopped the defendant. The patrolman searched the defendant and found a gun. Although arresting the defendant for "carrying arms," the patrolman testified even before finding the firearm, he was planning to arrest the defendant for hitchhiking or at least take the defendant to jail because it was not safe out on the highway. The Supreme Court rejected the defendant's challenge to the search even though the defendant was not under arrest, explaining it was unreasonable to expect an officer to transport a person found on a highway at 11 p.m. without first conducting a pat down search for weapons. Further, although the patrolman did not arrest the defendant for hitchhiking, that did "not vitiate the reasonableness of the underlying search." Id. at 133, 620 S.E.2d at 741.

Following discussion of both Devenpeck and Freiburger, this Court affirmed the grant of summary judgment against the arrestee/plaintiff in Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). In that case, Jackson became irate when the attendant at a convenience store did not allow Jackson to post a flyer inside the store. The attendant told Jackson to leave and when he did not, the attendant called the police. Jackson interrupted the attendant while the officer attempted to interview the attendant, and Jackson did not oblige the officer's request to be quiet. The officer put Jackson on trespass notice when Jackson refused to leave. Jackson remained obstinate and resisted arrest. He was charged with disorderly conduct and resisting arrest, but not trespass after notice. The city conceded for purposes of the appeal that the city did not have probable cause to arrest Jackson for the charged offenses, but argued it could rely on the presence of probable cause to

arrest Jackson for trespass after notice. Id. at 666, 623 S.E.2d at 658.

This Court quoted case law observing, "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." Id. at 667, 623 S.E.2d at 659 (quoting Horton v. California, 496 U.S. 128, 138 (1990)). This Court concluded "[I]t is permissible to rely on an uncharged offense to establish probable cause." Id. at 669, 623 S.E.2d at 660. This Court then held "as a matter of law, the facts known to the officer 'would induce an ordinarily prudent and cautious man, under the circumstances to believe' that Jackson had committed the offense of trespass after notice." Id. at 670, 623 S.E.2d at 660 (citation omitted). "The fact that Jackson was not charged with trespass after notice is immaterial." Id.

In the present case, Deputy Velez had probable cause to believe Gilliam committed trespass after notice, violated the open container law, and possessed drug paraphernalia based on facts Deputy Velez articulated. Accordingly, Deputy Velez had probable cause to conduct a search incident to the lawful arrest as an exception to the warrant requirement.

The search incident to arrest allowed the officer to search evidence within the area of Gilliam's immediate control.

At the heart of Gilliam's argument is the assertion that Detective Velez improperly opened the tin pill bottle. "The search-incident-to-arrest exception allows arresting officers to search both the arrestee's person and the area within his immediate control." United States v. Davis, 997 F.3d 191, 195 (4th Cir. 2021) (quoting Davis v. United States, 564 U.S. 229, 232 (2011)) (internal quotation marks omitted). "The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." Arizona v. Gant, 556 U.S. 332, 338

(2009).

"When a search of the person arrested is conducted incidental to a lawful arrest it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." United States v. Simpson, 453 F.2d 1028, 1030 (10th Cir. 1972) (citing Chimel v. California, 395 U.S. 752 (1969)). "A search incidental to a valid arrest may have as one of its purposes the discovery of objects or things which constitutes evidence that the person arrested has committed a crime." Id. "The probable cause that is required to sustain the search is the same whether the purpose of the search is to uncover weapons, mere evidence or any of the other categories of permissible objects." Id. (citation and internal quotation marks omitted).

Accordingly, it was proper for Deputy Velez to seize both the crack cocaine in Gilliam's pocket and the pill tin in Gilliam's hand. Gilliam argues it was improper to search the tin pill bottle which contained both methamphetamine and crack cocaine. In Simpson, the defendant's wallet was searched after he was arrested on a warrant. The wallet contained another person's selective service identification and the defendant was charged with unlawful possession of the identification. The Court rejected the defendant's argument that the search of the wallet was unlawful. "The general rule is that incident to a lawful arrest, a search without a warrant may be made of portable personal effects in the immediate possession of the person arrested." Simpson, 453 F.2d at 1031.

In United States v. Ferebee, 957 F.3d 406, 419 (4th Cir. 2020), the Fourth Circuit Court of Appeals rejected a claim that a search inside of Ferebee's backpack fell outside the search-incident-to-arrest exception. In reaching the result, the Fourth Circuit analyzed Arizona v. Gant, 556 U.S. 332 (2009). In Gant, the United States Supreme Court found a search of Gant's vehicle under the search-

incident-to-arrest exception was improper because Gant was not within reaching distance of the vehicle, but instead handcuffed in the back of the patrol car at the time his vehicle was searched and the passenger compartment of the vehicle would not reasonably be expected to contain evidence of the driving under suspension offense for which the defendant was arrested. Gant, 556 U.S. at 343-44. The Supreme Court distinguished the facts in Gant's case from New York v. Belton, 453 U.S. 454 (1981) because in Belton, a single officer was confronted with four unsecured men while in Gant, five officers outnumbered the three arrestees, who all were handcuffed and in separate vehicles. Gant 556 U.S. at 344. The Supreme Court concluded, "Because police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable." Id. at 344.

The Fourth Circuit distinguished Gant, noting that Ferebee had no impediment to his movement beyond the handcuffs and was only a few feet outside the house where the backpack was located and only a few steps from the backpack. The Fourth Circuit noted other courts recognized "handcuffs are not fail-safe." Id. at 419 (citation omitted).

In the present case, Deputy Velez was alone with Gilliam and the unhandcuffed passenger. Deputy Velez noted Gilliam was a three hundred pound man, and Gilliam remained standing after Deputy Velez handcuffed him. Compare Ferebee (Ferebee had no impediment to his movement beyond handcuffs) with United States v. Davis, 997 F.3d 191, 198 (4th Cir. 2021) (finding Davis was secured and not within reaching distance because he was handcuffed behind his back on the ground and outnumbered by officers three to one. Officers "were able to focus solely on Davis."). Accordingly, Gilliam was within reach of the tin pill bottle and therefore, Deputy Velez was

authorized to search the pill bottle under the search-incident-to-arrest exception. See also United States v. Litman, 739 F.2d 137, 139 (4th Cir. 1984) (finding immediate search by officer of shoulder bag within reach of the defendant, incident to the defendant's arrest and frisk was a lawful search incident to arrest).

The search of the automobile was supported by probable cause and supported by the automobile exception to the warrant requirement.

Of course, Deputy Velez also had probable cause to search the vehicle. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth amendment . . . permits police to search the vehicle without more." Pennsylvania v. Labron, 518 U.S. 938 (1996); United States v. Ross, 456 U.S. 798, 823 (1982) ("The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize."). Deputy Velez had probable cause to search the vehicle because: (1) Gilliam dropped a glass meth pipe; (2) the search incident to arrest yielded cocaine in his pants; (3) Deputy Velez found both methamphetamine and cocaine in the tin pill bottle; and (4) the passenger told him there were more drugs in the car. Indeed, the drug paraphernalia alone sufficiently provided Deputy Velez probable cause to believe the automobile could contain illegal narcotics. To be clear, Gilliam does not challenge the automobile search, but instead insists the product of the automobile search is fruit of the poisonous tree following the search of the tin pill bottle.

Fruit of the poisonous tree

Gilliam separates the Fourth Amendment inquiry into two separate issues by challenging the

legality of the search incident to arrest in the first issue, and in the second issue, arguing that various evidence should be suppressed as fruit of the poisonous tree. As discussed above, Detective Velez's actions were legal as the warrantless searches were proper under the search-incident-to-arrest exception and the automobile exception. Therefore, none of the evidence seized constitutes fruit of the poisonous tree.

Of course, evidence found in the course of an illegal police action does not automatically require suppression. Not all evidence is the "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of law enforcement. Wong Sun v. United States, 371 U.S. 471 (1963). Evidence does not qualify as "fruit of the poisonous tree" merely because such acts may be causally connected to police misconduct. In re Jeremiah W., 361 S.C. 620, 606 S.E.2d 766 (2004); State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999).

In Wong Sun, there were two petitioners, Wong Sun and James Wah Toy. Police arrested Hom Way for possession of heroin. Hom Way told law enforcement he purchased the heroin from a man he only knew as "Blackie Toy" who operated a laundry on Leavenworth Street. At six in the morning, the agents went to a laundry on Leavenworth Street called "Oye's Laundry" which was operated by Petitioner James Toy.[2] No evidence in the record indicated James Toy and "Blackie Toy" were the same person. Toy attempted to close the store door, then fled, while agents broke in and followed. Agents arrested him even though narcotics were not found on the premises. The officers interrogated Toy and he denied selling heroin but said "Johnny" sold drugs from a house on Eleventh Avenue. Agents subsequently located the house and Johnny Yee, who surrendered an

[2] The opinion later noted no reason was provided why they went to "Oye's" laundry and Toy's name did not appear on the laundry business's name; additionally Leavenworth was thirty blocks in length.

ounce of heroin. Yee claimed the drugs were brought to him by Toy and "Sea Dog." In a second interview, Toy identified Sea Dog as Petitioner Wong Sun and disclosed Wong Sun's residence. Agents arrested Wong Sun and searched his apartment, but found no narcotics. Id. at 473-75. The petitioners and Yee were arraigned and released on their own recognizance. Id. at 475-76. Both Toy and Wong Sun later gave statements to law enforcement but refused to sign the written statements. Id. at 477.

The petitioners challenged four pieces of evidence as the "fruits" of unlawful arrests or searches: (1) Toy's statement at his house at the time of arrest; (2) the heroin surrendered by Yee; (3) Toy's later unsigned statement; and (4) Wong Sun's unsigned statement. Id. at 477.

The Supreme Court found agents lacked probable cause to intrude into Toy's living quarters and arrest Toy. The Court also found Toy's statements to law enforcement at his residence, inadmissible and found "it is unreasonable to infer that Toy's response was sufficiently an act of free will to purge the primary taint of the unlawful invasion." Id. at 484-86.

In reaching this conclusion, the Supreme Court explained:

> The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved liked any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed.

Id. at 485 (citation and internal quotation marks omitted).

In examining the exclusion of the heroin seized from Yee, the Supreme Court noted without

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Id. at 480-81.

Toy's admission, law enforcement would not have found the heroin surrendered by Yee. The Supreme Court found "that the narcotics were 'come at by the exploitation of that illegality' and hence that they may not be used against Toy." Id. at 488.

However, reviewing Wong Sun's claims, the Supreme Court found Wong Sun's unsigned statement was not the fruit of his illegal arrest and was admissible. The Supreme Court noted Wong Sun returned voluntarily to the police station and the connection between the arrest and statement became sufficiently "attenuated as to dissipate the taint." Id. at 491 (citation and internal quotation marks omitted). Further, the Supreme Court found that the heroin, although not admissible against Toy, was admissible against Wong Sun because "[t]he seizure of this heroin invaded no right of privacy of the person or premises which would entitle Wong Sun to object to its use at his trial." Id. at 492.

In the instant case, there were four pieces of evidence Gilliam attempted to suppress: (1) cocaine and methamphetamine found in the pill tin; (2) cocaine in Gilliam's pocket; (3) methamphetamine found in Gilliam's vehicle; and (4) Gilliam's admission that the methamphetamine in his car was his.

The methamphetamine found in Gilliam's vehicle and his admission of possession of the methamphetamine in the vehicle constitutes evidence lawfully obtained from the search of the vehicle regardless of the lawfulness of the search incident to arrest. Since Deputy Velez saw Gilliam drop a glass pipe he knew to be commonly used for smoking methamphetamine, Deputy Velez had probable cause to search the vehicle, even without having first found the narcotics in Gilliam's

immediate possession.[3] Of course, that would provide probable cause to arrest Gilliam and search Gilliam without a warrant pursuant to the search incident to arrest exception.

If there was probable cause to arrest Gilliam, this Court would need to decide that the tin pill bottle was not within Gilliam's immediate reach to find it was illegally searched. However, the tin bottle would need to be inventoried at the police station or jail. See Murray v. United States, 487 U.S. 533, 537 (1988) quoting Nix v. Williams, 467 U.S. 431, 443 (1984) ("[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred. . . . When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation.").

Therefore, even if the narcotics inside the tin pill bottle were improperly seized, the narcotics still should not be excluded due to their inevitable discovery. In Nix v. Williams, 467 U.S. 431 (1984), law enforcement improperly interrogated the defendant who disclosed the whereabouts of his murder victim. The United States Supreme Court found the statement was the product of unlawful police conduct but nonetheless affirmed the admission of evidence concerning the location and condition of the victim based on the inevitable discovery doctrine, because at the time of the statement, a volunteer search party was attempting to locate the body and was close to the area where the body was discovered. The Court found that the lower courts' findings that the body would have inevitably been located by the volunteers was supported by evidence. Id. at 442-45.

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[3] Deputy Velez observed, "The search of the vehicle was going to be conducted even if I didn't speak with her at that point in time." R. p. 156, lines 13-19.

In the present case, the contents of the tin would have been inevitably discovered because once narcotics were found in Gilliam's pants and then his car, he would be under arrest and the contents of the tin pill bottle would have been discovered by an inventory of items found on Gilliam's person at the time of arrest. Illinois v. Lafayette, 462 U.S. 640 (1983) (holding that the inventory search of personal effects of an arrestee at the police station is permissible); Colorado v. Bertine, 479 U.S. 367, 371-373 (1987) (finding inventory search of the contents of a shoulder bag of person taken into custody was proper; police knowledge of the precise nature of the property protects an owner's property while it is in custody of the police and guard police from danger).

Accordingly, the trial court's denial of the suppression motion is supported by evidence and the convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 10, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMEY CHRISTOPHER GILLIAM,

Appellant.

Appellate Case No. 2020-000877

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

Respectfully submitted,

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The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2020-000877

THE STATE, Respondent,

v.

JAMEY CHRISTOPHER GILLIAM, Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief Of Respondent on Adam S. Ruffin, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 10th day of September, 2021.

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Subject:	State v. Jamey Christopher Gilliam, 2020-000877
Date:	Friday, September 10, 2021 10:18:00 AM
Attachments:	image001.png Gilliam Jamey - 2020-000877 - Motion To Serve And File Amended Designation Of Matter And Supplemental Record On Appeal (02705523xD2C78).PDF Gilliam Jamey - 2020-000877 - Amended Designation Of Matter (02705528xD2C78).PDF Gilliam Jamey - 2020-000877 - Supplemental Record On Appeal (02702939xD2C78).PDF Gilliam Jamey - 2020-000877 - Final Brief of Respondent (02705514xD2C78).PDF

Good morning, Mr. Ruffin.
Attached to this email are the following items:

- Motion To Serve And File An Amended Designation Of Matter and Supplemental Record On Appeal
- Amended Designation Of Matter
- Supplemental Record On Appeal
- Final Brief Of Respondent

These items will be filed with the Court electronically later today.
If you would, please confirm your receipt of this email and the attachments by return email.
Thank you for your cooperation.
Sincerely,
Anne Mueller, Legal Assistant to Senior Assistant Attorney General David Spencer

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