



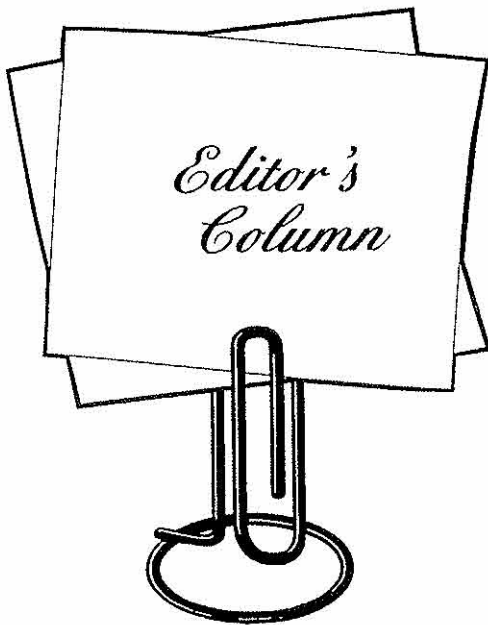
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Splitting the Proverbial Hair

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In the upcoming 2003-2004 term of the United States Supreme Court, the Court will decide an issue of significant import for the practice of law in South Carolina. On March 24, 2003, the Supreme Court granted the State of Maryland's petition for certiorari to review *Pringle v. Maryland*¹, a decision of the Maryland Court of Appeals involving a significant search and seizure issue. 123 S.Ct. 1571 (2003). The issue in this case is whether probable cause existed to arrest a front seat passenger in an automobile owned by another when the only evidence of a crime was money concealed in the glove compartment of the vehicle and drugs concealed in the backseat armrest.

As a factual background, Mr. Pringle was traveling in the front passenger seat of a vehicle owned by the driver. This vehicle was stopped for a traffic violation during the early morning hours. A third individual was seated in the rear of the vehicle. The officer noticed a large amount of rolled up money in the glove compartment of the vehicle when the driver retrieved the license and registration. After issuing the driver an oral warning, the officer asked for and obtained consent to search the vehicle. The officer asked all three occupants to exit the vehicle. During this search, \$763.00 was found in the glove box and five plastic bags of cocaine were found in the back seat armrest. *Pringle*, at 1019. Importantly, when questioned at the roadside, all three defendants denied possession of the contraband. However, after all three were arrested and taken to the police station, Mr. Pringle confessed to possession of the contraband.

The posture of this case is that Mr. Pringle sought a finding that his arrest was not supported by probable cause and sought suppression of his post-arrest confession as the fruit of this illegal arrest. *Pringle*, at 1020. The trial court denied this motion and Mr. Pringle was convicted of a controlled substance violation under the Maryland Code of Laws. On appeal, the Maryland Court of Special Appeals affirmed the conviction. However, this decision was reversed by the Maryland Court of Appeals in a plurality opinion. *Id.*

¹ 370 Md. 525, 805 A.2d 1016 (Ct. App. 2002)

To begin its analysis and, significant to practitioners in South Carolina, the Maryland Court found the elements of possession to be generally “dominion and control” over and “knowledge” of a controlled substance. *Pringle*, at 1023. The Maryland Court, following existing state case law, expressed the view that one can not logically exercise control over an item when he has no knowledge of the existence of this item. *Id.* Applying this principle to the facts in *Pringle*, the Maryland Court of Appeals believed that the fact the cocaine was hidden from view of Mr. Pringle and that he had no ownership right over the vehicle prohibited law enforcement from finding probable cause that he had control over this substance. The Maryland Court of Appeals discounted the existence of the money in the glove compartment as an “innocuous” fact without other circumstances. *Id.*, at 1028. Finally, the Maryland Court stated in a footnote that a policy of arresting everyone in proximity to contraband until one of these persons confesses is not constitutionally accepted. *Pringle*, at 1027, footnote 12.

Whatever the outcome of the *Pringle* matter in the United States Supreme Court, the opinion may well impact South Carolina case law. Unlike Maryland, where the elements of possession are codified, South Carolina defines possession through its case law. In South Carolina, proof of possession of an item in a criminal case requires proof of either actual or constructive possession and knowledge of the presence of the item. *State v. Hudson*, 284 S.E. 2d 773, at 774 (SC 1981). Actual possession occurs when the item is found “in the actual physical custody” of a person. *Id.* Constructive possession, on the other hand, occurs when the person has “dominion or control” or “exercises dominion or control” over an item. *Id.*

Further, South Carolina allows the use of circumstantial evidence to prove constructive possession. *Hudson*, at 775 (internal citations omitted.) Also, when an item is found on the premises under the control of a person, this circumstance alone will suffice as evidence to submit the matter to the jury for consideration. *Hudson*, at 775. Finally, however, proof of possession of an item requires more than proof of mere presence where the item is possessed or kept and more than mere knowledge that the item is in a particular area. *State v. Lee*, 380 S.E.2d 834, at 836 (SC 1989).

Therefore, because of the Constitutional dynamic underlying the *Pringle v. Maryland* case and the similarity between the possession law in South Carolina and Maryland, practitioners should grasp on any positive outcomes the United States Supreme Court’s opinion in this matter might bring. Hopefully, the Court will reaffirm that suspicion of criminal activity, under the Federal Constitution, must be individualized. See *Payton v. New York*, 445 U.S. 573, at 583 (1980) (“It is familiar history that indiscriminate searches and seizures conducted under the authority of ‘general warrants’ were the immediate evils that motivated the framing and adoption of the Fourth Amendment.”).

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