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SMITH, RODGERS & STRICKLAND, PLLC

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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TOPIC:

The Case We Affectionately Call “THE ARMREST CASE” or “THE POTATO CHIP-IN-A CAN-CASE”

THE SUBJECT:

Constructive Possession of Controlled Substances

THE CASE:

Maryland v. PRINGLE, 540 U.S. ___ (2003), The United States Supreme Court, 02-809, December 15, 2003

BY:

Kevin Smith, the Original Pringles* “One Pop, and You Won’t Stop” Potato Chip Man and Ralph B. Strickland, Jr. “One Pop and He’s Through”

MESSAGE TO FIRST-LINE SUPERVISORS AND THE POINT WE WISH TO MAKE:

(1) On occasion, and (2) under the right circumstances, a law enforcement officer who finds a controlled substance in the passenger compartment of a motor vehicle may charge all the occupants therein (driver and passengers) with possession of the substance under the **doctrine of constructive possession**.

FIRST, A LITTLE NORTH CAROLINA LAW ON THE SUBJECT:

Possession of a controlled substance may be by ACTUAL possession (the dope is in his pocket, or hand) or by CONSTRUCTIVE possession (the dope is in his car or in his house). Constructive possession occurs when the State can prove the defendant had the power and intent to control the disposition of the substance. See *State v. Allen*, 279 NC 406, 183 S.E.2d 680 (1971). Now, whether the evidence is sufficient to create an inference of constructive possession depends on the totality of the circumstances that you find on a case-by-case basis. *State v. James*, 81 N.C. App. 91, 344 S.E.2d 77 (1986). That being said, let’s move on to –

THE FACTS OF PRINGLE:

Around 0300 hours a law enforcement officer stopped a Nissan Maxima for speeding. The defendant was sitting in the front right passenger seat, and a second passenger was seated in the back seat. The LEO asked for license/registration from the driver, who opened the glove box for the registration and revealed a big wad of rolled-up U.S. currency. It was in fact a **Maxima** amount of cash! [...sorry, couldn't resist]. A computer check revealed no violations or warrants on the driver.

A second patrol car arrived, and the LEO gave the license and registration back to the driver along with a verbal warning to S-L-O-W D-O-W-N. The LEO then made casual conversation with the driver, asking him if there were weapons or narcotics in the car. The driver said no, and consented to a search. Well, there was \$763 in the glove compartment and five plastic glassine** baggies, each containing what was later determined to be **cocaine** behind the back-seat armrest. (The armrest was in the upright position; when the officer pulled it down, he found the drugs behind it.) None of the three occupants claimed the cocaine. The LEO arrested all three for possession and transported them to the police station.

After receiving his *Miranda* warnings, and waiving them, Pringle confessed the drugs were his, and that they did not belong to the other occupants, who were then released. Mr. Pringle said they were all going to a party and he intended to either sell the cocaine or “use it for sex.” We hope he meant *trade* it for sex, because otherwise our imaginations conjure up very disturbing ... no, you are better off not knowing.

THE LAW OF THE CASE:

Point Number 1: The State of Maryland, similar to the Tar Heel state, authorizes the warrantless arrest of a person for whom LEOs have probable cause to believe is committing a felony in their presence. Please see NCGS 15A-401(b)(1).

Point Number 2: The *Pringle* court said: “It is uncontested in the present case that the officer, upon recovering the five plastic glassine baggies containing suspected cocaine, had probable cause to believe a felony had been committed.”

Point Number 3: The sole question remaining is whether the LEO had probable cause to believe that Pringle committed that crime. And the answer is – **YES!**

Point Number 4: The *Pringle* Court then said: “To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide whether these facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” Please notice that probable cause arises from the facts **an officer** (not an untrained citizen) sees and hears smells and touches and tastes, and those facts must be viewed from the standpoint of an objectively reasonable officer.

Point Number 5: And another quote from the case: “We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly.” And there you are.

Bonus Number One: The United States Supreme Court, in *Wyoming v. Houghton*, 526 U.S. 295 (1999), said the following – and pay close attention to this – “A car passenger will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing.” And in *Pringle* it was certainly reasonable for the LEO to infer this common enterprise given the cash, the drugs and the passenger compartment of the car. Not likely, said the court, that where a man is dealing in drugs, that he would admit to such close proximity an innocent person who might testify against him.

Bonus Number Two: Please read pages 512 through 517 in **North Carolina Crimes: A Guidebook on the Elements of Crimes**, FIFTH EDITION, 2001, Edited and Revised by Bob Farb, Institute of Government, UNC at Chapel Hill. There he discusses many cases of constructive possession of controlled substances. If you want a copy of it or the new Third Edition of Farb's **Arrest Search and Investigation in North Carolina**, just dial 919/966-4119. That is the IOG Publications Office, and with a credit card, they'll ship you either or both books and a free catalogue. Shipping is FREE, though you must pay the state sales tax. It is a great deal, and that's the truth.

SR&S TIPS ON POINT:

1. A law enforcement officer may NOT and SHOULD NOT always charge everyone in the car when a controlled substance is found in the passenger compartment. *Maryland v. Pringle* clearly does not stand for such a doctrine.
2. One factor that was important in *Pringle* was the amount of cash found in the car. In most cases you will not find a large amount of cash in the car that is not already on some person. But if you do, you may use that fact in determining probable cause for arrest. We think that if a large sum of cash is found on one of the occupants, that also might serve as a factor helping to establish probable cause.
3. But the most important factor, aside from the fact cocaine was found, was the packaging of that drug. Based on the average law enforcement officer's training and experience, the cocaine was packaged for "drug dealing." And your training now includes your knowledge of the United States Supreme Court's opinion that a car passenger will often be engaged in a common enterprise with the driver, thus placing others in that car officially under suspicion.
4. If the drugs are found intact and in one package, then a small amount would not be sufficient to establish probable cause to arrest all occupants. A misdemeanor amount of marijuana in a baggie corner or one marijuana "roach" lying on the floorboard of the car just is not sufficient evidence of drug dealing to charge everyone in the car.
5. And remember, this was a private vehicle, not a common carrier (*Pringle* would almost never apply to a common carrier such as a bus or plane), and was at most a four-door sedan. We are not certain whether *Pringle* would apply in a large, ten-passenger van.
6. The best-case scenario for applying *Pringle*: as close to the facts here as possible. Several persons in the passenger compartment of a private vehicle, drugs packaged for sale, some "loose" currency in the car (large amount), and two or three occupants.

This type of case is the very essence of the SR&S legal practice concept. Our client agencies can contact us within minutes of a vehicle stop—24/7—and get our opinion on "Pringle fact similarity" for assistance with probable cause—and then we'll write you a case memo to go with it. In other words, we **"take the indecision out of your decision"** or, put another way, we **"put a decision into your indecision."** It's both, actually.

A Trimmer Aside: "I, Reece Trimmer, being of sound mind and body, hereby disassociate myself from Ralph B. Strickland, Jr., as he is the only attorney I know who would refer to an august and somber opinion on cocaine possession by our nation's highest court as the "Potato Chip-in-a-Can Case" simply because the defendant's surname is Pringle. Absolutely disgusting, it is. Kevin and Greg are OK, but that Strickland fellow is going to need medical attention, and soon."

*Pringles is a registered trademark or name of a fine snack-food company. The use of that name, in an attempt to liven up a bulletin on the law in a humorous vein, was in no way intended to disparage that fine company or their superb products. Please visit their Website at www.pringles.com/ for a list of their many food products.

** Glassine: A nearly transparent, resilient glazed paper resistant to the passage of air and grease, a material almost exactly like ... well, **plastic**. As in "plastic baggie." Ah, our Supreme Court, ever its redundant self.

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