

State of South Carolina )  
County of Richland )

In the Court of Common Pleas  
Fifth Judicial Circuit  
2014-CP-40-02898

State of South Carolina,  
Plaintiff,

Vs.

Blake Thomas Jenkinson,  
Defendant.

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**SC Court of Appeals**  
Transcript of Record

February 6, 2015  
Columbia, South Carolina

B e f o r e :

The Honorable Ernest J. Kinard, Judge

A p p e a r a n c e s :

Joseph Shenkar, Esquire  
Attorney for the Plaintiff

Jake Moore, Jr., Esquire  
Attorney for the Defendant

Bonnie H. Kelly, CVR  
Circuit Court Reporter

I N D E X

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

THE COURT: Blake Thomas Jenkinson.

(Brief pause.)

MR. SHENKAR: Thank you, Your Honor. If it pleases the Court. Joseph Shenkar for the State. The State is the appellant in -- in this particular proceeding.

Your Honor, the defendant was charged originally with simple possession of marijuana, by University of South Carolina. And on the day that the case was scheduled for a trial -- and on the day of the trial, during a pre-trial hearing, before a jury was sworn, Defense counsel made a motion to dismiss the case based on some evidence that was supposedly missing, related specifically to Rule 6 of the South Carolina Rules of Criminal Procedure.

The judge in the magistrate court granted the defense motion to dismiss the case. We are here on appeal, to ask the Court to reverse the decision and to allow the case to go to trial.

Your Honor, if I may approach, before me, I have Rule 6 of the South Carolina Rules of Criminal Procedure (hands a document to the Court) with a highlighted portion.

And to highlight the basis for the State's request is that during the proceedings, the defense argument was that because the State did not have the chemist or the analyst present at the pre-trial hearing, that that amount -- insufficiency of evidence; and therefore, there were

problems with chains and other related issue, and requested the judge to dismiss.

Our -- or the State's position would be that all of these things have not -- have yet come to fruition because the trial has not started yet.

The purpose of having the chemist, under Rule 6, is that they could come to court and testify as to the content of the material that was confiscated, whether or not it is a controlled substance.

Rule 6 suggests that there are two different ways to establish that the person possessed a controlled substance: There should be a report that is -- a chemical report that is joined by an affidavit and signed by the chemist, and that is one option.

The second option is to have the chemist come to court and testify at trial, and specifically at trial, to show that the material has been tested, that the chain of custody has been established, so forth and so on.

In this case, Your Honor, none of these things have even had a chance to come to fruition. The transcript is pretty clear about Mr. Hagens, the lawyer for the State on the lower proceedings, asking the judge to go ahead and allow the trial to begin so he can call his chemist. It wasn't that the chemist was not available at all, it's just the trial had not started yet.

So obviously, it looks like that the magistrate judge has had an error with regards to dismissing the case prematurely, not allowing it to proceed to trial. The question of whether or not the evidence was properly tested and if there's sufficiency of evidence is a matter to be left for a trial judge or for a jury to be -- to be heard. And because none of this has taken place, there is no basis for the dismissal of the case.

Because there is no double jeopardy attached, we ask that you would reverse the lower judge's decision and allow this case to go ahead and proceed to a trial and have a proper disposition.

MR. MOORE: May it please Your Honor. Judge, it -- it's -- it's pretty simple. Basically, the way they're doing it now on 1400 Huger Street, in Magistrate's Court, is they send you a notice, tell you to come in, and that's when you're gonna have your jury trial.

You can argue your pretrial motions there, but that is the day for your trial, that's when it's set, that's when it's going to be heard.

I basically argued that the chemist wasn't there, and nobody from the chain of custody was there to testify. And I think the problem the judge had -- the transcript really doesn't do it justice. But the problem that the judge had on a trial level was: There's no chemist here. We're

ready to go. We're ready to have a trial. They don't have anybody here. If I started the case now, which I'm planning to do, there's nobody here to go forward. I'm dismissing the case.

But the other problem with it was that in the discovery, the document that they gave me were inadequate, to say the least. Their chain of custody forms, if you want to call them that, basically said marijuana was put into a locker. It didn't have anybody's name, telephone number, address, anything. No identifying marks at all. So even if I -- I -- I couldn't talk to these people to ask them about it. The chemical analysis form had nothing on it with regard to what tests were performed and so forth.

But even so, Judge, there were two reasons, I think, the judge dismissed this one. Number 1, the forms were inadequate. It was just no way I -- I would have any kind of notice at all who these folks were in the chain of custody. But more importantly, we were there; we were ready to go. We had our stuff together; they didn't and --

THE COURT: All right. And apparently their chemist did not have his statement, such as it was, notarized?

MR. MOORE: Yes, sir.

THE COURT: All right. Affirm the magistrate.

MR. MOORE: Thank you, Judge.

THE COURT: Rule says that they have to have it notarized.

MR. MOORE: Yes, sir.

MR. SHENKAR: As an option.

THE COURT: That's what the rule says. I just read it.

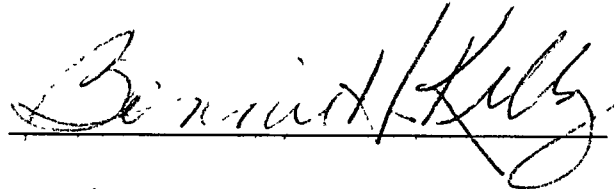
MR. SHENKAR: Thank you, Your Honor.

-- END OF TRANSCRIPT RECORD --

**CERTIFICATE**

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 6th day of February, 2015.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR

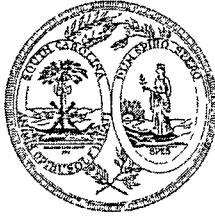
Official Court Reporter

Columbia, South Carolina

April 2, 2015

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April 10, 2015

S. Jahue Moore, Jr.  
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Re *State of South Carolina v Blake T Jenkinson*  
Case No. 2015-000252

Dear Mr. Moore:

Enclosed, please find a clocked copy of the Transcript of Record for the February 6, 2015, Circuit Court proceeding.

Within thirty days of today's date, Appellant shall provide Appellant's Brief.

Please feel free to contact me with any questions.

Thank you for your time

Sincerely,

Handwritten signature of Kristen Bales in cursive script.

Kristen Bales, Assistant Solicitor  
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