**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**



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**APPEAL FROM RICHLAND COUNTY**
**J. Ernest Kinard, Jr., Circuit Court Judge**

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**Appellate Case No. 2015-000252**

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**The State,**

**Appellant.**

**v.**

**Blake Thomas Jenkinson,**

**Respondent,**

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# INITIAL BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT

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## APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court erred in affirming the Trial Court holding that Rule 6 of the South Carolina Rules of Criminal Procedure narrowly limits admission of drug evidence through a sufficient chemical analysis report and a sufficient chain of custody statement.

## STATEMENT OF THE CASE

On June 29, 2013, Respondent was charged with Simple Possession of Marijuana, in violation of S.C. Code Ann. § 44-53-370(d) (2002). Respondent's case was scheduled for a trial on April 29, 2014, before the Honorable Donald Simons.

At a pre-trial hearing, prior to any jury or witness being sworn in, the Respondent moved to suppress the chemical analysis report and sworn chain of custody statement for the State's failure to comply with Rule 6 of the South Carolina Rules of Criminal Procedure (SCRCrimP). Specifically, the Respondent argued that the State failed to provide notarized signatures and failed to identify all witnesses for the chemical analysis report and sworn chain of custody statement in violation of Rule 6, SCRCrimP. The State informed the Trial Court that it intended to call the drug analyst and other witnesses at trial to testify as to the validity of the report and the chain of custody. The trial judge granted the Respondent's motion to suppress and dismissed the case. On May 8, 2014, the State filed a timely Notice of Appeal with the Fifth Judicial Circuit Court of Common Pleas.

On February 6, 2015, the matter came before the Honorable J. Ernest Kinard, Jr., for the purposes of an Appeal at the Circuit Court level. Judge Kinard affirmed the Magistrate's holding that the State did not comply with Rule 6, SCRCrimP; and thus, could not introduce any evidence as to the chemical analysis report or sworn chain of custody statement. The State's appeal followed.

## ARGUMENT

### I. The Circuit Court erred in affirming the Trial Court finding that Rule 6 of the South Carolina Rules of Criminal Procedure narrowly limits the method of admitting a chemical analysis report and a sworn chain of custody statement.

The State contends that Rule 6 and the chain of custody principles designated in case law support the finding that (1) Rule 6 mandates that judges shall require proponents of evidence to produce witnesses at trial to testify where the opposing party raises an objection as to the admission of a chemical analysis report or sworn chain of custody statement; and (2) Rule 6 is not the only manner by which a proponent may admit into evidence a chemical analysis report or sworn chain of custody statement.

Rule 6 of the South Carolina Rules of Criminal Procedure

Rule 6 of the South Carolina Rules of Criminal Procedure enumerates the specifications for sufficient chemical analysis reports and sworn chain of custody statements that are deemed admissible into evidence. Rule 6(a) addresses chemical analysis reports and Rule 6(b) addresses sworn chain of custody statements.

In Rule 6(a), chemical analysis reports may be admitted into evidence "without the necessity of the chemist or analyst personally being present or appearing in court" so long as the proponent of the report complies with the itemized requirements in Rule 6(a)(1)-(2). Rule 6(a), SCRCrimP. Therefore, a proponent of admitting a report into evidence may do so without the analyst's live testimony if the report adheres to the rules in Rule 6(a)(1)-(2). Rule 6(a), SCRCrimP. Similarly a chain of custody statement may be admitted into evidence "without the necessity of the person who signed the statement being present in court" where the statement complies with the requirements in Rule 6(b).

Even where the proponent complies with the report and chain statement requirements, Rule 6 permits opposing parties to raise objections as to the admissibility of such evidence. In the last paragraph of Rule 6(a), the opposing party is required to object to the chemical analysis report "not later than ten (10) days prior to the trial of the case," and "[i]f such objection is properly made, the trial judge shall require the chemist or analyst to be present at trial for the purpose of personally testifying." Rule 6(a), SCRCrimP. Rule 6(b) requires the same for objections to sworn chain of custody statements.[1] Rule 6(b), SCRCrimP. The trial courts must require proponents to produce the analyst and chain of custody witnesses at trial once the opposing party raises an objections – regardless of whether the proponent complied with the requirements in Rule 6(a) and Rule 6(b). Rule 6, SCRCrimP.

Moreover, Rule 6(d) states, "[n]othing in this Rule shall preclude the right of any party to introduce any evidence supporting or contradicting reports or papers entered into evidence under this Rule." Rule 6(d), SCRCrimP. In other words, both proponents and opposing parties may use other evidence at trial in relation to reports or statements entered into evidence in accord with Rules 6(a) and 6(b).

In *State v. Joseph*, the South Carolina Court of Appeals specifically addressed the purview of Rule 6 when it stated that, "Rule 6 does not supplant the general law governing chain of custody requirements." 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). Additionally, "Rule 6 simply provides an *alternative* means of establishing a chain of custody by authorizing, under proper circumstances, the admission of reports and affidavits in lieu of live testimony." *Id.*, emphasis added. Rule 6 is not the only means of introducing reports and chain statements into

[1] "The defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner as provided in Section (a)." Rule 6(b), SCRCrimP.

evidence, but, rather, an expedited method of admitting analysis reports and chain of custody statements into evidence.

The Court of Appeals also held that once an opposing party raises an objection, "it is inescapable that the trial court's duty to require the presence of the chemist upon proper objection is *mandatory*, not permissive." *Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997) (emphasis added). Once an opposing party objects to Rule 6 evidence, the trial court must require the evidence proponent to produce the witness at trial.

Chain of Custody Principles

The proponent of the evidence carries the burden of establishing admissibility. *State v. Williams*, 297 S.C. 290, 376 S.E.2d 773 (S.C. 1989). Courts determine whether the proponent has proven that the evidence has maintained its integrity – the evidence is what it purports to be and the evidence has not been materially altered. *U.S. v. Summers*, 666 F.3d 192, 201 (4th Cir. 2011). Chain of custody is "but a variation of the principle that real evidence must be authenticated prior to its admission." *U.S. v. Howard-Arias*, 679 F.2d 363, 366 (4th Cir. 1982). Courts avoid implementing rigid requirements for admissibility pursuant to chain of custody. *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (S.C. 2011). Instead, courts exercise discretion to determine whether evidence is admissible under general chain of custody principles and do so while considering the "unique factual circumstances of each case." *Id.* quoting *South Carolina Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629 at n. 1, 614 S.E.2d 642, 646 at n. 1 (S.C. 2005). When evaluating evidence admissibility, courts examine "the nature of the...[evidence], the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it." *State v. Hatcher*, 392 S.C. 86, 94-5, 708 S.E.2d 750, 754-5 (S.C. 2011).

Evidence is generally classified as either non-fungible or fungible for the purposes of chain of custody requirements. *State v. Glenn*, 328 S.C. 300, 305-6, 429 S.E.2d 393, 395-6 (Ct. App. 1997). Non-fungible evidence is evidence that is "fairly unique and readily identifiable" and "relatively impervious to change." *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (S.C. 2005). Where evidence is non-fungible, proponents need not prove a complete or strict chain of custody. *Id.* Instead, courts will determine whether the proponent sufficiently authenticated non-fungible evidence through proof of identification or inability to change.[2]

In contrast, fungible evidence is evidence that is not readily identifiable or is "susceptible to alteration by tampering or contamination." *State v. Glenn*, 328 S.C. 300, 306, 429 S.E.2d 393, 395 (Ct. App. 1997). Common examples of traditionally fungible evidence include samples of blood, urine, and drugs.[3] Courts generally exercise strict discretion when evidence is fungible and "may require a substantially more elaborate foundation" for admissibility. *Id.* Courts evaluate whether proponents of fungible evidence have sufficiently established a strict, complete chain of custody. *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (S.C. 2011), quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (S.C. 2007).

A strict chain of custody "is not an iron-clad requirement...." *U.S. v. Summers*, 666 F.3d 192, 201 (4th Cir. 2011). Indeed, strict chain of custody need only be established "as far as practicable." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (S.C. 2011), quoting *State v.*

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[2] For examples of non-fungible evidence, *See State v. Glenn*, 328 S.C. 300, 429 S.E.2d 393 (Ct. App. 1997) (porcelain toilet fragment with the defendant's fingerprint on it was non-fungible evidence); *State v. Pope*, 410 S.C. 214, 763 S.E.2d 814 (Ct. App. 2014) (digital scale with case number affixed to the scale itself was non-fungible evidence); and *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (S.C. 2005) (gun with serial number and markings was non-fungible evidence).

[3] See *State v. Carter,* 344 S.C. 419, 544 S.E.2d 835 (S.C. 2001) (blood as fungible evidence); *State v. Horton*, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004) (urine as fungible evidence); and *State v. Sweet*, 374 S.C. 1, 647 S.E.2d 202 (S.C. 2007) (drugs as fungible evidence), for example.

*Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (S.C. 2007). The ultimate question for chain of custody inquiries is "whether the [proof of] authentication...was sufficiently complete so as to convince the court that [the evidence is what it purports to be and] it is improbable that the...[evidence]... had been exchanged with another or otherwise tampered with. *U.S. v. Howard-Arias*, 679 F.2d 363, 366 (4th Cir. 1982). Proponents of fungible evidence do not "leave to conjecture as to who had it [the evidence] and what was done with it between the original taking and...[any]...analysis." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (S.C. 2011). Nevertheless, courts may still hold that a chain is complete where there is a missing link in the chain. *U.S. v. Summers*, 666 F.3d 192, 201 (4th Cir. 2011); See also *U.S. v. Jones*, 356 F.3d 529, 536 (4th Cir. 2004).

Courts have consistently distinguished between missing and weak evidentiary links in a chain of custody. Where courts find that a chain is missing an evidentiary link, the courts evaluate admissibility. *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (S.C. 2001). A missing link in the chain is not necessarily detrimental to admissibility as long as "there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect." *U.S. v. Jones*, 356 F.3d 529, 536 (4th Cir. 2004); See also *U.S. v. Summers*, 666 F.3d 192 (4th Cir. 2011). Where a link is merely weak, "the question is only one of credibility and not admissibility." *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (S.C. 2001). Credibility of the evidence goes to evaluating the weight of the evidence and that is beyond the purview of courts sitting in their capacity as the finder of law. See *State v. Carter*, 344 S.C. 419, 544 S.E.2d 835 (S.C. 2001). Consequently, where courts determine that a link is

merely weak, courts should admit the fungible item into evidence in order to allow the fact-finder to weigh credibility. [4]

A complete chain of custody may be established despite having an absent witness where "other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling the evidence." *State v. Sweet*, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (S.C. 2007); referencing *State v. Williams*, 297 S.C. 290, 376 S.E.2d 773 (S.C. 1989). Additionally, "[t]estimony from each custodian of fungible evidence...is not a prerequisite to establishing a chain of custody sufficient for admissibility." *State v. Hatcher*, 392 S.C. 86, 92, 708 S.E.2d 750, 753 (S.C. 2011), quoting *State v. Sweet*, 374 S.C. 1, 7, 647 S.E.2d 202, 205 (Ct. App. 2007). The Supreme Court of South Carolina has stated, "[t]o expect the [prosecuting authority] to produce every possible individual who may have had fleeting contact with the evidence would cause unnecessary logistical problems concerning chain of custody." *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (S.C. 2011).

The proponent of the fungible evidence does not necessarily have to negate all possibilities of tampering for a trial court to admit the evidence. *State v. Sweet*, 374 S.C. 1, 7-8, 647 S.E.2d 202, 206 (Ct. App. 2007); See also *State v. Taylor*, 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004). Instead, the proponent must establish a chain by "demonstrat[ing] a reasonable assurance the condition of the...[evidence]...remains the same from the time it was obtained until its introduction at trial." *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (S.C. 2011).

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[4] In *State v. Carter*, the defendant's blood and saliva samples were stored in the same sealed evidence container; however, when the analyst opened the sealed container, the saliva sample was missing. The chain custodians' testimonies as to lack of tampering were inconsistent with the fact that the saliva sample was missing from the sealed container. Nevertheless, the inconsistency amounted to a question of credibility, not admissibility.

In *State v. Joseph*, the South Carolina Court of Appeals held that the State's chain of custody was insufficient because the State failed to produce the chemist at trial. 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997). Corrections officers observed the defendant inmate making hand-to-hand transactions outside his cell, and they ultimately located marijuana and crack cocaine inside the defendant's hair. *Id.* at 355-6, 491 S.E.2d 275, 276-7 (Ct. App. 1997). Two different chemists tested the drugs at different times. The first chemist originally received the drugs and she kept them in her custody for six months. *Id.* at 365, 491 S.E.2d 275, 281 (Ct. App. 1997). Over Defense's objection, the trial court admitted into evidence the first chemist's sworn affidavit during both the pre-trial hearing and the trial. *Id.* at 355-6, 491 S.E.2d 275, 276-7 (Ct. App. 1997). The chemist did not testify at trial. *Id.*

The South Carolina Court of Appeals held that the trial court violated Rule 6(a), SCRCrimP, by admitting into evidence the chemist's affidavit over Defense's timely objection. *Id.* at 364, 491 S.E.2d 275, 281 (Ct. App. 1997). The Court explained that Rule 6(a) required that the trial court direct the State to produce the chemist at trial once Defense objected. *Id.* The State did not present the chemist at trial so the trial court improperly admitted the affidavit into evidence. *Id.*

Additionally, the Court stated that where evidence fails to meet the standards enumerated in Rule 6(a), "the question is whether, without considering any affidavit or report admitted in violation of Rule 6, the general chain of custody requirements have been met." *Id.* The Court determined that the first chemist's absence at trial amounted to a missing "critical link" in the State's chain of custody. *Id.* The first chemist maintained control over the drugs for an extended

period of time, and the affidavit contained a number of inconsistencies.[5] The State's chain was deficient because the State was unable to sufficiently evidence the handling of and lack of tampering with the drugs without the chemist's testimony. *Id.*

In *State v. Taylor*, the Court of Appeals held that the State's chain of custody was complete where the State established the identity of an evidence custodian, how the custodian handled the evidence, and proof that the custodian did not tamper with the evidence *without needing to present the custodian or an affidavit at trial.* 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). The State identified the absent custodian using additional evidence custodians and the absent custodian's successor testified as to the department's procedure for handling drug evidence. *Id.* at 21, 598 S.E.2d at 736 (Ct. App. 2004). The absent custodian was a non-critical intermediary[6] in the chain and other evidence testimony was able to establish a complete chain of custody.

In *State v. Hatcher*, the South Carolina Supreme Court held that the State provided other evidence sufficient to prove the chain as far as practicable without identifying the custodian who transferred the drug evidence from the collecting officer to the SLED analyst. 392 S.C. 86, 95, 708 S.E.2d 750, 755 (S.C. 2011). The Court adopted a test wherein the trial courts will examine the characteristics of the drug evidence, the specific case circumstances surrounding the custody and control of the evidence, and proof that no one tampered with the evidence. *Id.* at 94-95, 708 S.E.2d at 754-755 (S.C. 2011). The Court determined that the trial court did not abuse its

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[5] The Court specifically mentions that the chemist's affidavit (1) provided a different date for the drug testing than the one reported on the chemical analysis; (2) provided a discrepancy in the drug weight from the officer's field test to the chemist's analysis; and (3) established a peculiar occurrence where the crack cocaine drug weight was the same before and after multiple testing. *State v. Joseph*, 328 S.C. 352, 365 491 S.E.2d 275, 282, note 3 (Ct. App. 1997).

[6] The absent custodian merely accepted the drug evidence bag from the officer, sent the drugs to SLED, and placed the drugs in an evidence locker after SLED returned the drugs. *State v. Taylor,* 360 S.C. 18, 21, 598 S.E.2d 735, 736 (Ct. App. 2004).

discretion when it admitted the drugs into evidence over Defense's objection given that the testimony presented at trial sufficiently addressed the handling of the evidence and the lack of tampering.

In *State v. James*, the South Carolina Supreme Court held that where a proponent seeks to admit into evidence the results of tests or analyses, "such results must be substantiated by the person who conducted the tests or analyses." 255 S.C. 365, 370, 179 S.E.2d 41, 43 (S.C. 1971). Witnesses who were not involved with the actual testing of the victim's urine could not be used to admit the testing results at trial. The Court explained that, "the cogent elements [of tests and analyses] are the results, methods used and qualifications of the tester." *Id* at 370, 179 S.E.2d at 43 (S.C. 1971). Furthermore, the Court stated "[t]he method used and the qualifications of the tester give the results their veracity." *Id.*

Instant Case

In the instant case, the Respondent objected to the admission of the chemical analysis report and chain of custody statement. The Respondent argued that the report was not notarized and that it failed to specify the test or tests performed on the substance. (Apr. Tr. p. 2; Feb. Tr. p. 7). The Respondent also argued that the chain of custody statement was insufficient because it did not include the names of all persons who handled the evidence and because the statement was not notarized. (Apr. Tr. p. 2; Feb. Tr. p. 7). The Respondent claimed that Rule 6 required a sufficient chemical analysis report and chain of custody statement in compliance with the itemized specifications in the rule as the only method to admit the evidence. The State informed the Trial Court that the State was prepared to present the analyst and other custodians to testify at trial. (Apr. Tr. p. 2; Feb. Tr. p. 7).

The Trial Court did not make an explicit finding on the record; however, the State contends the holdings can be determined from the context of the statements that were made. No witnesses or jurors were sworn or empanelled. (Apr. Tr. p. 1). The clerk called the case and then stated "Motion" and the Trial Court stated, "Go ahead." *Id.* Therefore, the proceeding was a pre-trial motion. At multiple points during the pre-trial motion, the State explained that it would present the analyst at trial and each time the Trial Court stated that the parties were not present in the courtroom for trial at that moment.[7] (Apr. Tr. p. 2-3). Consequently, the Trial Court held that the absence of the analyst at a pre-trial hearing was a sufficient basis for dismissal.

From contextual circumstances, the Trial Court held that the only manner by which to admit an analysis report or sworn statement is to comply with the specific itemizations in Rule 6. Immediately before the Trial Court's ruling, Respondent last argues that the report and statement were inadequate because they fail to comply with Rule 6 by failing to identify all custodians in the chain, and failed to notarize the analysis. (Apr. Tr. p. 3). The Respondent stated that the State "can't give this evidence in, I don't care who they [the State] bring [to trial]...that's just the bottom line." (Apr. Tr. p. 3). The Trial Court held that the State could not admit the analysis or chain statement into evidence because the State did not comply with Rule 6. Even though the State was prepared to present the evidence custodians at trial, the Trial Court held that the only method of introducing the analysis report or chain statement was through the itemized specifications in Rule 6, SCRCrimP. The Circuit Court upheld the Trial Court's findings by stating, "[The] Rule says that they [the State] have to have it [the chemist's statement] notarized.... That's what the rule says." (Feb. Tr. p. 8). In so doing, both the Circuit Court and the Magistrate Court committed errors of law.

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[7] The Trial Judge stated "But that's what we are here for to have a trial," and "We are here this morning to have a jury trial this morning." (Apr. Tr. p. 2-3).

The Circuit Court erred by affirming the Trial Court ruling that Rule 6 narrowly limits the admissibility of analysis reports and chain statements into evidence. According to *State v. Taylor*, the admission and exclusion of evidence rests within the discretion of the trial court. 360 S.C. 18, 23, 598 S.E.2d 735, 737 (Ct. App. 2004). When that decision is questioned on appeal, the court sitting in appellate jurisdiction determines whether the trial court abused its discretionary power. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Specifically, the appellate court will determine whether the trial court made the ruling absent evidentiary support or based its ruling upon an error of law. *Taylor,* 360 S.C. at 23, 598 S.E.2d at 737 (Ct. App. 2004). If the appellate court finds that the trial court committed an error of law, the appellate court will then determine whether that error resulted in prejudice to the appealing party. *State v. Irick*, 344 S.C. 460, 463-64, 545 S.E.2d 282, 284 (2001); *State v. Adams*, 354 S.C. 361, 377-78, 580 S.E.2d 785, 793-94 (Ct. App. 2003).

First, the Trial Court violated Rule 6 by refusing to allow the State to proceed with trial and present witness testimony. Rule 6 requires that the Trial Court direct the State to present evidence custodians to testify at trial once Respondent objected[8] to the admission of the analysis report and the chain statement. Rule 6, SCRCrimP; *Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). Because Rule 6 creates that mandate, the Trial Court could not exercise discretion to bypass this requirement. *Ids.* Unlike *State v. Joseph*, the State was prepared to present witnesses like the analyst at trial. (Apr. Tr. p. 2-3); *Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). The Trial Court committed an error of law by failing to abide by explicit provisions in Rule 6, SCRCrimP. Second, Rule 6 does not provide for an automatic

[8] Respondent failed to "properly" object because he failed to notify the State of his intent to challenge the evidence 10 days prior to the trial. Rule 6, SCRCrimP. However, this issue was not preserved in the record below.

dismissal during a pre-trial motion, especially when any perceived shortcomings potentially could be resolved with testimony or additional evidence at trial.

Third, Rule 6 is merely an alternative method of introducing analysis reports and statements into evidence – Rule 6 does not prohibit the State from using the chain of custody requirements. Rule 6, SCRCrimP; *Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). Even assuming that the State did not comply with Rule 6, the State could nevertheless establish a chain using other evidence. *State v. Joseph,* 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997).

In the instant case, the Trial Court did not comply with the chain of custody requirements in *State v. Hatcher* because it did not examine "the nature of the…[evidence], the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it." 392 S.C. 86, 94-5, 708 S.E.2d 750, 754-5 (S.C. 2011). The Trial Court prematurely dismissed the case without permitting the State to present its chain evidence, and, therefore, the Trial Court failed to properly analyze the evidence. As a result, the State was unable to present evidence to address Respondent's specific objections to the analysis report and chain statement. The State is not necessarily required to identify all evidence custodians to Respondent nor is it necessarily required to present all custodians for the purposes of testifying. *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (S.C. 2011). The State may have been able to prove a complete chain despite Respondent's allegations because the missing custodian links might not have been "critical." *State v. Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997); See also, *State v. Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). If the Trial Court had properly examined the chain factual circumstances during trial, the Trial Court would have been in a position to use its discretion to determine admissibility. *State v. Hatcher*, 392 S.C. 86, 708

S.E.2d 750 (S.C. 2011). Because the Trial Court did not permit the State to present its evidence at trial, the Trial Court was unable to exercise its discretion to determine whether the State proved the chain as far as practicable. *Id.* Consequently, the Trial Court violated the general chain of custody requirements, which amounts to an error of law.[9]

Lastly, these errors in law were extremely prejudicial to the State because it resulted in the dismissal of the State's case before the case ever proceeded to trial.

[9] Additionally, it is counter-intuitive that the Trial Court should dismiss this case when the State was permitted to go to trial in *State v. Joseph* after having specifically stated that the State *would not* present the chemist. 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997).

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Order of the Circuit Court and Trial Court be reversed and the case remanded for trial.

Respectfully submitted,

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July 13, 2015

**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

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**APPEAL FROM RICHLAND COUNTY**
**J. Ernest Kinard, Jr., Circuit Court Judge**

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**The State,**

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**v.**

**Blake Thomas Jenkinson,**

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**PROOF OF SERVICE**

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I, Paulina Gomez, Paralegal, hereby certify that I have served the within *Initial Brief of Appellant* and *Designation of Matter*, both dated July 13, 2015, on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

S. Jahue Moore, Esquire
Post Office Box 5709
West Columbia, South Carolina 29171

I further certified that all parties required by Rule to be served have been served. This 13th day of July, 2015.

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July 13, 2015

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Re: *State of South Carolina v. Blake T. Jenkinson*
Case No. 2015-000252

Dear Mr. Moore:

I am enclosing two (2) copies of the Initial Brief of Appellant and Designation of Matter in the above-referenced case.

Sincerely,

Kristen Bales

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