

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 13 2015

SC Court of Appeals

Appeal from Richland County
The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000252

The State, Appellant,

vs.

Blake Thomas Jenkinson, Respondent.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF ISSUES ON APPEAL 4

STATEMENT OF THE CASE 4

ARGUMENT..... 5

I. The Circuit Court properly upheld the Magistrate’s finding that Rule 6 of the South Carolina Rules of Criminal Procedure establishes requirements and narrow limits for the admissibility of chemical analysis reports and chain of custody statements. 5

 A. The State did not fulfill the requirements for the admission of a chemical analysis report under Rule 6(a), and the motion to dismiss was properly granted. 5

 B. The State did not fulfill the requirements for the admission of chain of custody evidence under Rule 6(b) and case precedent, and the motion to dismiss was properly granted. 7

CONCLUSION 8

TABLE OF AUTHORITIES

CASES

State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (S.C. 2011) 7

State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997) 6,7,8

RULES

Rule 6(a) 5

Rule 6(a)(1)..... 5

Rule 6(a)(2)(A)-(B) 6

Rule 6(b)..... 7

STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court properly affirming the Trial Court's holding that Rule 6 of the South Carolina Rules of Criminal Procedure establishes clear requirements and narrow limits for the admission of drug evidence through a sufficient chemical analysis report and sufficient chain of custody statements.

STATEMENT OF THE CASE

Respondent was charged with Simple Possession of Marijuana, S.C. Code Ann. § 44-53-370(d) (2014) on June 29, 2013. The original trial in the case was scheduled to be heard before the Honorable Donald Simons on April 29, 2014.

On the day of the scheduled trial, the Defense moved to dismiss the Chemical Analysis and Chain of Custody statements. The forms were inadequate under the requirements of Rule 6, South Carolina Rules of Criminal Procedure. Furthermore, the State was not prepared to present witnesses at the trial, as none were in attendance. Based upon those two factors, the Magistrate dismissed the case.

The State appealed to the Circuit Court. A hearing was held before the Honorable J. Ernest Kinard, Jr. on February 6, 2015. Judge Kinard affirmed the Magistrate's holding that the State had not complied with Rule 6 and upheld the dismissal. This appeal by the State followed.

ARGUMENT

- II. The Circuit Court properly upheld the Magistrate's finding that Rule 6 of the South Carolina Rules of Criminal Procedure establishes requirements and narrow limits for the admissibility of chemical analysis reports and chain of custody statements.

The Defense contends that Rule 6 sets down firm requirements for the admission of evidence pertaining to chemical analysis and chain of custody, and that the correct interpretation of applicable law to the case at issue supports the rulings by both the Magistrate and Circuit Courts.

- A. The State did not fulfill the requirements for the admission of a chemical analysis report under Rule 6(a), and the motion to dismiss was properly granted.

Rule 6 of South Carolina Rules of Criminal Procedure establishes the admissibility requirements for both chemical analysis reports and chain of custody statements. In Rule 6(a), chemical analysis reports that are signed by the chemist/analyst who performed the test are evidence that the material tested was properly tested under procedures approved by State Law Enforcement Division ("SLED"), that procedures used are legally reliable ones, and what the material actually is or contains the substances on the report. Rule 6(a), SCRCrimP.

In order for these reports to be admissible at trial without the presence of the chemist who performed the tests, Rule 6(a)(1) requires the report to identify the items tested, the kinds of tests conducted on each item, and the conclusion of what the item is based upon those tests in language able to be understood by a lay juror. Rule 6(a)(1), SCRCrimP.

The report must also be accompanied by an affidavit of the chemist/analyst who performed the tests that:

- (A) He or she is certified by SLED as qualified under standards approved by SLED to analyze those substances;
- (B) Sets forth his or her training and experience as a chemist or analyst, to include the number of times he or she has been qualified as an expert witness and testified in court; and,
- (C) He or she conducted the test or tests shown on the report using procedures approved by SLED and that the report accurately reflects his or her opinion regarding the results of those tests.

Rule 6(a)(2)(A)-(B), SCRCrimP.

The report provided by the State failed the Rule 6(a) requirements. It was not notarized, and therefore not an affidavit. (Apr. Tr. p. 2; Feb. Tr. p. 7). It failed to enumerate what tests had been performed. *Id.* Without the presence of a chemist, this report was not admissible.

The State quotes *State v. Joseph* as a mandatory duty on the Trial Court to require the presence of a chemist when a proper objection to a report is made. 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). However, the chemist was not present at the trial. (Apr. Tr. p. 2; Feb. Tr. p. 6). The Magistrate inquired as to the presence of the chemist, and the attorney for the State mentioned the witness would be available for the trial, yet the trial was scheduled to proceed the morning the motion was heard. *Id.*

Due to the fact that the report failed the Rule 6(a) requirements and no chemist was present at the trial, the motion to suppress and dismiss was properly granted by the Trial Court and properly upheld by the Circuit Court.

B. The State did not fulfill the requirements for the admission of chain of custody evidence under Rule 6(b) and case precedent, and the motion to dismiss was properly granted.

Rule 6(b) of the South Carolina Rules of Criminal Procedure governs the establishment of a chain of custody. This rule states “a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated...”. Rule 6(b), SCRCrimP. The signatory of such a statement does not have to appear in court as long as the statement clear distinguishes the substance or container it was in and the statement certifies it was “delivered in substantially the same condition as when received.” *Id.*

The issues with the chain of custody mirror the issues with the chemical analysis report. The chain of custody documents provided to the Defense were inadequate under Rule 6. (Apr. Tr. p. 2; Feb. Tr. p. 7). Therefore, the forms themselves were not admissible to prove chain of custody. Case precedent on chain of custody would require that the State to present witnesses and prove chain of custody through testimony. *State v. Hatcher* did establish the precedent that the establishment of chain of custody needs to remain practical. 392 S.C. 86, 91, 708 S.E.2d 750, 753 (S.C. 2011). Furthermore, the South Carolina Court of Appeals has promulgated that when the Rule 6 standards haven't been met, the question defers to “general” chain of custody requirements. *Joseph*, 328 S.C. 352, 364, 491 S.E.2d 275, 281 (Ct. App. 1997). However, the Court also noted that, “Where the analyzed substance has passed through several hands, the evidence must not leave it to

conjecture as to who had it and what was done with it between the taking and analysis.” *Id.* Without providing the names of the chain of custody witness on the form, there is no solid chain established. Moreover, no witnesses were actually present the day of the trial. (Apr. Tr. p. 2; Feb. Tr. p. 6). With no witnesses, and with inadequate forms, the State failed to properly establish chain of custody and the motion to dismiss was properly granted and upheld.

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the Order of the Circuit Court and Trial Court be affirmed.

Respectfully submitted,



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August 13, 2015

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Blake Thomas Jenkinson, Respondent.

PROOF OF SERVICE

I, Martin Ebert, law clerk to S. Jahue Moore, Jr., hereby certify that I have served the *Initial Brief of Respondent*, dated August 13, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to attorney of record:

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I, Martin Ebert, law clerk to S. Jahue Moore, Jr., hereby certify that I have served the *Designation of Matter*, dated August 13, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to attorney of record:

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