

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

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SC Court of Appeals

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

Appellate Case No. 2015-000252

The State,

Appellant.

v.

Blake Thomas Jenkinson,

Respondent,

RECORD ON APPEAL

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ATTORNEYS FOR APPELLANT

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE RICHLAND COUNTY
CENTRAL COURT

State of South Carolina)

vs.)

TRANSCRIPT OF
TRIAL

Blake Thomas Jenkinson)
Defendant)

2014-CP-400-2971
Ticket#: 32531FZ

RICHLAND COUNTY
FILED
2014 DEC 29 AM 10:45
JEANETTE W. McBRIDE
C.C.P. & G.S.

The case was heard in courtroom 1-B on April 29, 2014. Presiding was the Honorable Donald Simons. The defendant appeared with his attorney Jahue Moore and the officer; Sargent M. Harrelson with the state's attorney Todd Hagins was present.

Clerk: Blake Jenkinson, Officer Harrelson, Attorney Moore.
Motion

Judge: Go ahead.

Defense Attorney: This is a, is a simple possession of marijuana case. In the discovery I was basically given a chemical analysis form and what I suppose of course to be a chain of custody form. Um I guess you can call it that. I have these documents if I can hand these up. Basically judge I do not believe anybody from the University of South Carolina police department or Sled is here today to testify to what this substance was and if they're not going to bring the people in for the chain of custody or the person that does the chemical analysis that certainly is ok but if they are going to do it that way the forms have to comply with the rule 6. The form that basically of course to be

the chemical analysis form, it's not notarized, there is nothing to indicate what test were done on the substance which was required on the rule 6, the chain of custody forms. If they're going to use that document as a chain of custody form, everybody who is in the chain basically has to sign it and the signature has to be notarized, so basically the forms don't comply. I would move to suppress all of that, all of the evidence in this case and therefor move to dismiss.

State Attorney: Who did you receive this from?

Defense Attorney: In the discovery through the University of South Carolina police department.

Judge: Yes sir

State Attorney: Your honor, my name is Todd Hagins and I'm the Special Prosecutor with the Fifth Judicial Circuit representing the University of South Carolina. Our argument would be that under State v. Hatcher, any concern about the chain of custody would be proven at trial, that's why when we have the trial we will call those witnesses to testify to that. Um as far as tossing a case out because defense council doesn't feel that all the chain of custody is proven in that isn't necessary, if your honor wishes we can go back if he believes we are not following the rule 6 which I believe we are um that can be corrected. However it is not proper basis for tossing at this point because the whole point is at trial you bring those people. The defense counsel has stated that those individuals are not here and again that's why we have a trial.

Judge: But that's what we are here for to have a trial.

State Attorney: Yes your honor, yes my understanding for a jury trial your honor we would have the individuals here for trial.

Judge: We are here this morning to have a jury trial this morning.

State Attorney: Yes your honor, we would call, we would have that individual available for the jury trial.

Defense Attorney: Judge regardless whether they have the person available or not these forms are inadequate, the chain of custody form is inadequate. I have got to be able to know who the people are in the chain of custody so I can question them. Rule 6 is clear, I've got it right here, just take the chemical analysis form on its face; there is no notarized signature on that document. They can't give this evidence in, I don't care who they bring um that's just the bottom line. Um everybody over here is handing me a bunch of stuff especially Mr. Roberson with his great hair, he evens agrees with me. Um but judge it's just clear on the face even with the reading of the rule it's just.

Judge: Motion granted

Defense Attorney: Thank you

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.

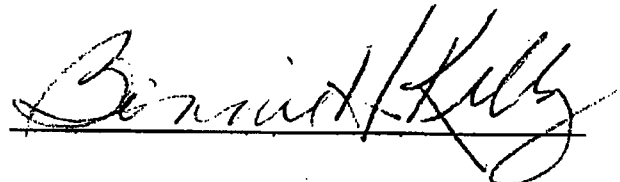
MR. SHENKAR: Thank you, Your Honor.

-- 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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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4002971

State of South Carolina

Blake Thomas Jenkinson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

Affirm magistrate court.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 017

Date 2/6/15

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of Feb, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Feb, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Joseph Yechiel Shenkar

S. Jahue Moore Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Janette W. H. Hinde

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SC Court of Appeals

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

KRISTEN A. BALES
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BY: Kristen A. Bales
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ATTORNEYS FOR APPELLANT

September 4, 2015