

STATE OF SOUTH CAROLINA

IN THE 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.

**RESPONDENT'S MEMORANDUM ADDRESSING ISSUE OF
APPEALABILITY AS REQUESTED BY THE COURT**

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MAR 25 2016

SC Court of Appeals

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

I. THIS CASE IS NOT APPEALABLE DUE TO THE ATTACHMENT OF DOUBLE JEOPARDY.

The fundamental principle of double jeopardy is citizens of the United States are free from having their liberty placed into question for the same offense more than once. The relevant clause of the Fifth Amendment to the United States Constitution provides "...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. The Fifth Amendment guarantees were made applicable to the states through the Due Process Clause of the Fourteenth Amendment. See *Benton v. Maryland*, 395 U.S. 784 (1969). The South Carolina Constitution provides the same right in Art. 1, § 12. The protection against double jeopardy lies at the core of criminal jurisprudence in the United States.

The Double Jeopardy Clause provides three basic protections: (1) protection from prosecution for the same offense after acquittal; (2) protection from prosecution for the same offense after conviction; and (3) protection from multiple prosecutions for the same offense after a grant of mistrial. *State v. Kirby*, 269 S.C. 25, 27-28, 236 S.E.2d 33, 34 (1977). Jeopardy generally attaches once a jury has been impaneled and sworn. *State v. Rowlands*, 343 S.C. 454, 457, 539 S.E.2d 717, 718 (Ct. App. 2000).

Exceptions to this general rule do exist. The Supreme Court of the United States in *Burks v. United States* recognized that the Double Jeopardy Clause precludes a second trial once a reviewing appellate court has found the evidence existing in the case to be “legally insufficient.” 437 U.S. 1, 18 (1978). The Court also found that the Clause “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.” *Burks*, 437 U.S. at 11. The Court ruled this way to avoid allowing the Government “the proverbial ‘second bite at the apple.’” *Id.* at 17.

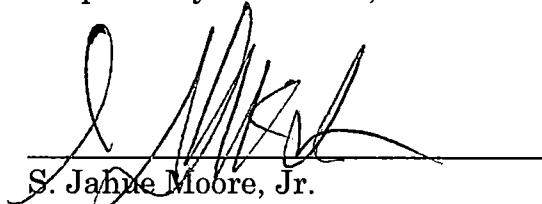
The Supreme Court’s holding in *Burks* is directly applicable to the case on appeal. Respondent’s case was called at the original magistrate hearing, and it was dismissed based upon lack of evidence. Appellant was simply not prepared to present the proper evidence at trial. Upon appeal to the Circuit Court, Judge Kinard affirmed the dismissal for lack of legally sufficient evidence.

The prior judicial proceedings in this case fall directly in line with the precedent established by *Burks*. A court serving in an appellate capacity found the evidence to be legally insufficient. When it affirmed the dismissal by the magistrate, the Circuit Court, in reality, entered a judgment of acquittal which, under *Burks*, causes jeopardy to attach and preclude a second hearing. Both the Appellant and Respondent had ample time to prepare for the initial hearing. Allowing Appellant to seek a second hearing and muster new evidence goes directly against both the precedent in *Burks* and the original purpose of the Fifth Amendment’s Double Jeopardy Clause.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court deny Appellant's request for appeal.

Respectfully submitted,



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March 23, 2016

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PROOF OF SERVICE

I, Martin Ebert, a law clerk employed by S. Jahue Moore, Jr., hereby certify that I have served *Respondent's Memorandum Addressing Issue of Appealability as Requested By The Court*, dated March 23, 2016, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to attorney of record:

Kristen A. Bales
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March 24, 2016