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**Nov 22 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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Opinion No. 2023-UP-365

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THE STATE,

RESPONDENT,

V.

LEVY LARKIN BROWN,

APPELLANT

APPELLATE CASE NO. 2021-000485

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PETITION FOR REHEARING

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On November 15, 2023, this Court affirmed appellant's conviction and sentence where appellant argued the trial court erred by (1) qualifying Jeremiah Fraser as an expert witness in bloodhound tracking because Fraser did not have the requisite knowledge, skill, experience, training, or education to be qualified as an expert witness and (2) admitting dog tracking evidence because the state failed to show the dog used to track had by experience been found reliable and because the trail was contaminated. Pursuant to Rule 221(a), SCACR, Levy Larkin Brown requests that this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

In affirming appellant's conviction and sentence, this Court held the trial court did not abuse its discretion "by qualifying the police officer as an expert because the officer had eighteen years' experience in dog tracking, had trained the Beaufort County Sheriff's office bloodhound tracking team's dogs, and had been qualified as an expert in at least one prior case. This Court cited *State v. Henry*, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997), for the proposition that defects in the amount and quality of the expert's education or experience go to the weight and not the admissibility of the testimony.

In *Henry* this Court held the psychotherapist possessed requisite skill, training, experience, learning, and knowledge to render an expert opinion regarding victim's posttraumatic stress disorder. *State v. Henry*, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997). In that case the psychotherapist had a postgraduate academic degree and was a practicing psychotherapist for seven years. Additionally, she had been qualified more than fifteen times as an expert in state court and had also been qualified as an expert in federal district court and family court.

This case differs from *Henry*. In *Henry*, the expert at issue was a medical professional with an advanced degree that had been admitted as an expert numerous times. Here, while Officer Fraser had worked with the bloodhound tracking team for several years, he had only ever been to *two* trainings in that time and only received certification from his training in 2003. Although this Court's opinion states Officer Fraser had been qualified as an expert in at least one prior case, Fraser himself seemed unsure whether he had been qualified as an expert before stating that he thought he had been qualified two times prior but maybe it was only one time.

Additionally, as argued in the brief the state failed to show that Fraser satisfied the qualifications of an expert under Rule 702, SCRE. See *State v. Harris*, 318 S.C. 178, 456 S.E.2d 433 (Ct.App.1995) (party presenting expert must show witness possesses, either through study or

experience, specialized knowledge that makes him better qualified than jury to form opinion on particular subject).

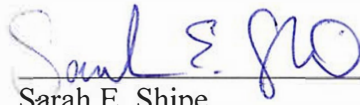
The trial court failed to “execut[e] its gatekeeping duties pursuant to Rule 702, SCRE and *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). While the subject matter of Fraser’s testimony was likely beyond the ordinary knowledge of the jury, the substance of Fraser’s testimony was unreliable. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). Respectfully, Officer Fraser’s testimony regarding how bloodhounds track by scent was disconcerting. Even if this Court finds the trial court properly qualified Fraser as an expert in bloodhound tracking he certainly is not an expert in how the human body releases scent or sheds skin cells.

This Court also held “the trial court did not abuse its discretion by finding the bloodhound was reliable because the tracking team trained weekly with the bloodhound; the officer who monitored the bloodhound explained that the dog was trained weekly using specific methodologies to track from a ‘last known scent’ or ‘off a specific article’; the bloodhound’s track was based on items that contained [appellant’s] DNA; and the officer attested to his reliability.” This Court cited of *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), in support of its holding.

Unlike here, White conceded that the dog handler met the Rule 702, SCRE, qualifications due to his experience and training. *Id* at 269, 676 S.E.2d at 686. Also, in *White* the South Carolina Supreme Court found there was “ample evidence concerning the training and reliability of the dog.” *Id.* at 271, 676 S.E.2d 687. While this Court cited to the extensive training of the bloodhound in this case it only mentions that Fraser “attested to [Copper’s] reliability.”

Moreover, the trial court's finding of reliability is not supported by the record. Instead, the record reflects the dog, Copper, went on twelve different calls and of those twelve it appears that Copper only successfully found two individuals. R. 37, ll. 1-13; 39, ll. 17-23. Fraser merely claimed Copper had shown to be "generally reliable." R. 29, ll. 5-12.

Accordingly, appellant respectfully requests this Court reverse appellant's conviction and sentence based on the trial court's erroneous admission of the bloodhound tracking evidence.



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Sarah E. Shipe  
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ATTORNEY FOR APPELLANT

This 22nd day of November, 2023.

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APPELLATE CASE NO. 2021-000485

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Levy Larkin Brown, #367857, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 22nd day of November, 2023.



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ATTORNEY FOR APPELLANT

**From:** [Mcinnis, Sara](#)  
**To:** [Mark Farthing](#)  
**Cc:** [ccollins@scag.gov](mailto:ccollins@scag.gov); [Shipe, Sarah](#)  
**Subject:** 2021-000485 The State v. Levy Larkin Brown  
**Date:** Wednesday, November 22, 2023 10:21:00 AM  
**Attachments:** [AG Cover Letter - Petition for Rehearing.pdf](#)  
[2021-000485 The State v. Levy Larkin Brown Petition for Rehearing.pdf](#)

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Good Morning Mr. Farthing,

Please find attached for service in the above-referenced case the petition for rehearing, which will be filed with the Court of Appeals today, November 22, via email filing.

Thank you!

**Sara McInnis**

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