

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
In The Court of Common Pleas

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APPEAL FROM CITY OF COLUMBIA MUNICIPAL COURT

The Honorable Susan O. Porter  
City of Columbia Municipal Judge

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Case Number: 2018CP4006650

**RECEIVED**  
NOV 15 2019  
SC Court of Appeals

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The City of Columbia,.....Respondent,

v.

Eddie Norris,.....Appellant.

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**ORDER**

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**HOOD, R.:** Eddie Norris (Appellant) appeals his conviction of Simple Possession of Marijuana under S.C. Code Ann § 44-53-370. He contends that the trial court erred in qualifying Investigator Kermit Scott as an expert in marijuana analysis under Rule 702, SCRE and improperly denied his Motion for a Directed Verdict. I agree. The conviction is reversed and remanded for a new trial.

**FACTS**

Defendant (“Appellant”) Eddie Norris, by and through counsel, Kieley M. Sutton, seeks an appeal of his conviction and sentence in this case. Appellant was arrested and charged with Simple Possession of Marijuana under S.C. Code Ann. § 44-53-370 on or about January 9, 2018. Appellant was found guilty of Simple Possession of Marijuana after a jury trial before the City of Columbia Municipal Court on December 20, 2018.

During trial, the Respondent produced two witnesses: Officer James Webster of the City of Columbia Police Department and Investigator Kermit Scott (Inv. Scott) of the City of Columbia Police Department. Prior to Inv. Scott's testimony, Appellant requested a hearing to challenge Inv. Scott's qualifications as an expert under Rule 702, SCRE pursuant to *State v. White*, 382 S.C. 265 (2009) and *State v. Council*, 335 S.C. 1 (1999). In this hearing, Inv. Scott testified that he has no formal training in biology, chemistry, or any other type of science classes. Trial Transcript p. 70-71. He further testified that the only training he received as it pertains to the identification of marijuana was a two-day training session, known as the Marijuana Analysis Education Program, through S.L.E.D. (South Carolina Law Enforcement Division). Trial Transcript 71 and 74. The two methodologies he learned in this program were microscopic analysis and the Duquenois Levine Chemical Test. Trial Transcript p. 72.

When asked, Inv. Scott admitted that the Marijuana Analysis Education Program had been terminated by S.L.E.D prior to trial. Trial Transcript p. 74. The S.L.E.D report terminating the program states that, "all law enforcement officers currently certified under the SLED Marijuana Analyst Program (The Program) should discontinue testing plant material...SLED has determined that due to the creation of the Industrial Hemp Program, the Marijuana Testing procedures covered in this Program...cannot differentiate between Industrial Hemp and Marijuana." Appellant's Exhibit 1.

The Trial Court stopped Appellant from further questioning Inv. Scott about the S.L.E.D. report, stating that, "it doesn't go towards whether or not he's an expert." Trial Transcript p. 75:9-11. Appellant objected stating that, "It goes toward the fact that his entire program by [S.L.E.D's] own words [is] no longer adequate in determining whether or not it is confirmed marijuana. It goes towards whether or not [Inv. Scott] has [the] certifications that make him an expert." Trial

Transcript p. 75:12-16. Pursuant to this ruling, the Trial Court allowed Inv. Scott to testify as an expert in marijuana analysis over the Appellant's objection.

Inv. Scott testified to the jury that he conducted a microscopic and chemical test on a sample given to him in relation to this trial. Trial Transcript p. 90:21-25. He testified that both tests indicated the substance to be marijuana. Trial Transcript p. 91:3 and 92: 25. He further testified that the analysis report entered in as City's Exhibit 1 did not indicate a level of T.H.C. present as he did not test for any amount of T.H.C.. Trial Transcript 97: 22-24 and 98:2-3. Appellant renewed his objections to Inv. Scott being allowed to testify as an expert and moved for a directed verdict on that basis as well as inconclusive testimony as to whether the substance was actually identified as marijuana. The Trial Court denied Appellant's motion for a directed verdict and the jury returned with a guilty verdict.

Appellant timely filed this appeal on December 20, 2018. Judge R. Hood heard oral arguments from both sides on September 13, 2019 in the Court of Common Pleas.

### **LAW AND ANALYSIS**

**The Trial Court improperly qualified Inv. Scott as an expert in marijuana analysis under Rule 702, SCRE.**

Rule 702, SCRE states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

A trial court must make three key preliminary findings before the jury may consider expert testimony: that the subject matter discussed is beyond the ordinary knowledge of the jury; that the proffered expert has acquired the requisite knowledge and skill to qualify as an expert; and that

the substance of the testimony is reliable. *Watson v. Ford Motor Co.*, 389 S.C. 434, 435 (2010). The trial court *must* ensure that the proposed expert testimony meets a reliability threshold before allowing the testimony to reach the jury. *State v. White*, 382 S.C. 265 at 266 (emphasis added). “Reliability is a central feature of Rule 702 admissibility...” *Id.* (citing *State v. Jones*, 343 S.C. 562 at 572 (2001) and *State v. Council*, 335 S.C. 1 at 20 (1999)). *State v. Council* lays out the required factors to consider when determining the admissibility of scientific expert testimony to be: 1) the publications and peer review of the technique; 2) prior application of the method to the type of evidence involved in the case; 3) the quality control procedures used to ensure reliability; and 4) the consistency of the method with recognized scientific laws and procedures. *White*, fn. 7.

In the case at hand, Inv. Scott’s entire training in regards to marijuana analysis was the S.L.E.D. Marijuana Analyst Certification/Recertification and Testing Program (The Program). Inv. Scott testified that he had no other background in scientific testing or marijuana analysis. S.L.E.D. terminated this testing program prior to the commencement of trial because the procedures used cannot differentiate between industrial hemp, a legal substance pursuant to S.C. Code Ann. § 46-55-50, and marijuana. Termination of The Program also resulted in a mandate that all officers certified under The Program should discontinue testing.

In terms of peer revision and publications, the S.L.E.D memorandum terminating The Program lays out in detail why The Program and those certified under The Program are no longer qualified to differentiate between a legal substance and the illegal substance known as marijuana. The Program’s application and methods may have been generally accepted prior to the addition of S.C. Code Ann. §§ 46-55-10 and 46-55-50 in 2017; however, it is clear that neither the scientific nor the law enforcement communities accept those methods any longer. S.L.E.D’s own admission to insufficiency indicates a lack of reliability that quality control procedures would be unable to fix.

Finally, The Program involved methods that are no longer in accordance with recognized scientific laws and procedures.

Because Inv. Scott's entire qualification as a marijuana analyst depends on the continuing acceptance of The Program and its efficacy, any qualifications he had as an expert in marijuana analysis terminated along with The Program. Accordingly, qualifying Inv. Scott as an expert and allowing him to testify as such before the jury was an abuse of discretion by the trial court and is reversible error.

### CONCLUSION

Inv. Scott's testimony did not constitute expert testimony under Rule 702, SCRE and *State v. Council*. The Trial Court erred by allowing the jury to hear his testimony. Such error is reversible. Accordingly, the trial court is

**REVERSED** and this case is **REMANDED FOR A NEW TRIAL**.

**IT IS SO ORDERED.**

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**The Honorable R. Hood**  
Court of Common Pleas  
Fifth Judicial Circuit

Columbia, South Carolina

This \_\_\_\_ day of October, 2019



Richland Common Pleas

**Case Caption:** Eddie Norris VS City Of Columbia  
**Case Number:** 2018CP4006650  
**Type:** Order/Other

So Ordered

s/ R.E. Hood #2164