STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001246

THE STATE, Respondent,

v.

WANDA JANE CRUMPTON, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Suite 325
Greenville, SC 29601
(864)-467-8282

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Assuming for the sake of argument that the trial judge erred in qualifying Robert Cowan as an expert in marijuana analysis, whether any error was harmless in light of the evidence produced against Appellant at trial and Appellant's defense to the charges she faced? (Appellant's issues I and II)

STATEMENT OF THE CASE

In July 2019, the Pickens County Grand Jury indicted Appellant for one count of possession with intent to distribute marijuana and one count of distribution of marijuana within close proximity of a school or park. On July 22-23, 2019, a jury trial was held in the Pickens County Court of General Sessions with the Honorable Robin B. Stilwell presiding. Appellant was represented by Daniel King, Esq. The State was represented by Assistant Solicitor Megan Owen of the Thirteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of both counts. The trial judge sentenced Appellant to two concurrent terms of forty-two months' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

In March 2017, the Easley Police Department began to receive complaints from local citizens and businesses of heavy traffic occurring in the vicinity of a trailer located at 102 Darby Way in the city of Easley. (R. 119-20). Law enforcement also received a complaint from a mother who claimed her child had purchased marijuana from the trailer. (R. 68). In response, Detective Jonathan Hamby conducted surveillance of the residence at 102 Darby Way. (R. 120). Hamby discovered Appellant resided at the address. (R. 120). On the afternoon of March 20, 2017, Hamby observed Kerek Harris leaving Appellant's residence. (R. 120). Harris was already the subject of an active drug investigation by the Easley Police Department. (R. 69). On March 21, 2017, Law enforcement executed a search warrant on Harris' apartment. (R. 69). Inside the apartment, five pounds of marijuana were found. (R. 63). Harris was placed under arrest and agreed to talk with law enforcement. (R. 69). Harris admitted he knew Appellant and told law enforcement he sold marijuana to her frequently. (R. 57, 69). Between March 11 and March 21 Harris sold Appellant two ounces of marijuana approximately eleven different times. (R. 132). Harris charged Appellant $90 per ounce. (R. 58, 132). Harris allowed law enforcement to search his cell phone. Hamby located multiple text messages between Harris and Appellant that confirmed the information given by Harris. (R. 69).

After completing their search of Harris' apartment, law enforcement drafted a search warrant for Appellant's trailer at 102 Darby Way and executed the search later the same day. (R. 70). Appellant cooperated with law enforcement during the search of her home. Appellant led officers to a cabinet that contained a bag of suspected marijuana and a set of scales. (R. 122). Appellant also had $534 with her and a joint that she was in the process of smoking when law enforcement arrived. (R. 123). The suspected marijuana weighed .66 ounces. (R. 229). The

suspected marijuana was analyzed by Robert Cowan of the Easley Police Department and determined to be marijuana. (R. 170-71, 229). Cowan was certified as a marijuana analyst through a SLED program that Cowan conceded had been discontinued in 2018. (R. 152, 224). Cowan analyzed the marijuana found in Appellant's home using the Duquenois-Levine test. (R. 154). Cowan admitted the test he used could determine the presence of THC[1], but could not specify a quantitative amount of THC. (R. 159). At the conclusion of trial, Appellant was convicted of both counts.

[1] THC refers to tetrahydrocannabinol which is a chemical that is found in marijuana. Cowan testified that a substance which contains less than 0.3 percent THC is classified as industrial hemp as opposed to marijuana and is not prohibited under S.C. Code § 44-53-370(B). (R. 154, 159). See also S.C. Code § 46-55-10(6)("'Federally defined THC level for hemp' means a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. SECTION 5940, whichever is greater.")

STANDARD OF REVIEW

"The decision to admit or exclude testimony from an expert witness rests within the trial court's sound discretion. The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion." State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

Even assuming for the sake of argument that the trial judge erred in qualifying Robert Cowan as an expert in marijuana analysis, any error was harmless in light of the evidence produced against Appellant at trial and Appellant's defense to the charges she faced. (Appellant's issues I and II)

Appellant contends the trial judge erred by qualifying Robert Cowan as an expert in marijuana analysis and by allowing him to offer his opinion regarding the suspected marijuana found in Appellant's home. Assuming for the sake of argument that the trial judge erred in qualifying Cowan as an expert in marijuana analysis, any error is harmless in light of the evidence presented against Appellant and Appellant's defense at trial. Appellant never claimed the substance she possessed was anything but marijuana. In fact, Appellant explicitly argued that she possessed marijuana, but it was merely for her personal use and not for distribution. While Appellant challenged Cowan's qualifications based on the limitations of his testing method[2], Appellant never maintained that she possessed industrial hemp rather than marijuana. Therefore, any error committed by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Appellant's home did not affect the outcome of the trial and was entirely harmless.

"Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562,

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[2] Notably, as of March 21, 2017, S.C. Code § 46-55-10 did not specify a level of THC concentration that differentiated industrial hemp from marijuana. As Appellant acknowledges in her brief, the applicable law on the date of offense merely stated "Hemp and marijuana are genetically different cultivars of the same plant species and are scientifically distinguishable from each other." 2014 Act No. 216 (S. 839), (Initial Brief of Appellant 12, 17). Two months after the date of offense, the General Assembly enacted 2017 Act No. 37 (H. 3559) which specified that the THC concentration in industrial hemp must not exceed 0.3 percent on a dried weight basis. Therefore, the State was not required to prove the level of THC concentration in the marijuana that Appellant possessed based on the applicable law on the date of offense.

575 S.E.2d 77, 83 (Ct. App. 2003). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Error is harmless when it could not reasonably have affected the result of the trial." State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). "[W]here guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result." State v. Livingston, 282 S.C. 1, 6, 317 S.E.2d 129, 132 (1984).

Here, Appellant never claimed that she did not possess marijuana. In his opening statement and closing argument, counsel for Appellant admitted that Appellant possessed marijuana for her personal use but she was not distributing it. (R. 113-14, 197-98). In his opening statement, counsel for Appellant stated:

> Mr. King: ...personal use, that's what you're going to hear about today. It's personal use and personal use only. The evidence is going to show that [Appellant] was in her home, **she had a small amount of marijuana**, less than an ounce, which is perfectly legal in other states. She had a blunt in her house, in her easy chair. Her easy chair she was sitting in when law enforcement came up to her house. It was personal use.

(R. 113, lines 24-25- R. 114, lines1-8)(emphasis added). Similarly, in closing argument counsel for Appellant argued:

> Mr. King: So let's look at the evidence we have here. We have State's Number 10, which is the joint, and we have State's Number 11, **which is the pack of marijuana. Personal use,** remember, like I said at the beginning, State's Number 11 is like a six pack of Coke you got at home. State's Number 10 is a single can of Coke. Just because you got a six pack of Coke in your fridge doesn't mean you're distributing it. Now, along with just that personal use evidence, we've got that State's Number 8, which was that picture of the joint on the easy chair. That's the easy chair she was sitting in when law enforcement approached. They saw her there. That's where they found it. **She was smoking it right beforehand.** That's personal use. You light up. She's using it.

(R. 197, lines 12-25- R. 198, lines 1-3)(emphasis added). Thus, the theme of Appellant's defense remained consistent from her opening statement through her closing argument. Appellant argued that she possessed marijuana, but she was using it herself and not distributing it. Appellant never claimed that she possessed industrial hemp. In fact, Appellant acknowledged to the trial judge before trial that she was "100 percent" guilty of smoking marijuana. (R. 8, line 11). Furthermore, Kerek Harris testified he sold Appellant two ounces of marijuana approximately eleven different times. (R. 132). Harris acknowledged being a drug dealer and claimed to have sold Appellant marijuana, not industrial hemp. (R. 131-36). The closest Appellant came to suggesting the substance she possessed was industrial hemp occurred at the very end of her closing argument when trial counsel questioned the accuracy of the State's testing methods. (R. 200, lines 1-17).

The jury was convinced of Appellant's guilt based on her own defense and the testimony of Kerek Harris, not based on the testing method of Robert Cowan. Any error by the trial judge in allowing Cowan to offer his opinion regarding the substance found in Appellant's home was entirely harmless. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Suite 325
Greenville, SC 29601
(864)-467-8282

BY: s/ Scott Matthews
SCOTT MATTHEWS
Bar # 101464

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 26, 2020

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Suite 325
Greenville, SC 29601
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BY: s/ Scott Matthews
Scott Matthews
Bar # 101464

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