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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2018-001147

THE STATE,

Respondent,

vs.

MUTEKIS JAMAR WILLIAMS,

Appellant.

RETURN TO APPELLANT'S SECOND PETITION FOR REHEARING

Through a revised unpublished decision issued on June 8, 2022, this Court again affirmed Appellant Mutekis Jamar Williams's conviction for trafficking in cocaine. State v. Williams, Op. No. 2022-UP-114 (S.C. Ct. App. filed Mar. 16, 2022) (withdrawn, substituted, and refiled June 8, 2022). In once again affirming, this Court—just as it did in its earlier decision—correctly rejected Williams's contention the trial judge committed reversible error by declining to strike an answer given directly in response to defense counsel's questioning in light of the fact any conceivable error resulting from the admission of that challenged answer was harmless beyond a reasonable doubt under the specific circumstances involved. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, both Williams and the State again petitioned this Court for rehearing, and this Court asked the State to file a return to Williams's second petition. For the following reasons, Williams's second petition should be denied.

Through his second petition, Williams first appears to maintain this Court failed to conduct a proper harmless error analysis by looking to the record as a whole to determine whether the admission of the challenged testimony could have reasonable affected the outcome of the trial instead of limiting its analysis to determining whether the testimony "had no impact on the verdict of the jury[,]" which he seems to suggest would somehow constitute a different type of analysis. Contrary to Williams's contention in that regard, this Court correctly evaluated the challenged testimony in conjunction with all the other evidence and testimony presented just as a proper harmless error analysis—which is *not* governed by any definite rule—necessarily requires and, thus, committed no error when analyzing whether the admission of the challenged testimony constituted harmless error in Williams's individual and specific case. See Yates v. Evatt, 500 U.S. 391, 403 (1991) ("To say that an error did not 'contribute' to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial later held to have been erroneous. . . . To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record."), disapproved of on other grounds by Estelle v. McGuire, 502 U.S. 62 (1991); State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("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.").

Next, relying on the decision in State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001), Williams maintains this Court erred by even conducting a harmless error analysis at all in his case because, in his view, the decision in Ellis "seemed to hold" the admission of improper opinion testimony from a law enforcement officer always requires reversal as a matter of law without consideration of the impact such testimony's admission had in a particular case. Thus,

Williams appears to be suggesting the Ellis decision established the admission of improper opinion testimony from a law enforcement officer categorically constitutes the rare type of error deemed structural in nature. See Neder v. United States, 527 U.S. 1, 8 (1999) ("[W]e have found an error to be structural, and thus subject to automatic reversal, only in a very limited class of cases." (citations and internal quotations omitted)); see also State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) ("Most trial errors, even those which violate a defendant's constitutional rights, are subject to harmless-error analysis."). To the contrary, our Supreme Court in Ellis did not create any categorical rules of reversal and, instead, only found reversible error occurred in that case after specifically finding Ellis was prejudiced under the specific circumstances involved. Cf. State v. Ellis, 345 S.C. 175, 178-179, 547 S.E.2d 490, 491-492 (2001) ("We find appellant has established reversible error in the admission of Sergeant Walters' 'expert opinion' reconstructing the position of the victim's body when he was shot. The effect of this error, compounded by the solicitor's repeated references to this 'scientific evidence,' was to impermissibly undermine appellant's self-defense claim. This error entitles appellant to a new trial."). Therefore, the decision in Ellis supports—rather than refutes—the need for a case-specific and circumstances-specific analysis of whether prejudice occurred after improper testimony from a law enforcement officer is admitted, and, as a result, this Court properly looked to what occurred in Williams's case when evaluating whether reversal was warranted based on the admission of the challenged testimony from Deputy Brown. Cf. Harrington v. California, 395 U.S. 250, 254 (1969) (concluding a constitutional error that occurred based on the improper admission of the confessions of two non-testifying co-defendants in violation of Bruton v. United States, 391 U.S. 123 (1968), was harmless to Harrington beyond a reasonable doubt under the specific circumstances involved); State v. Jenkins, 412 S.C. 643, 653, 773 S.E.2d 906, 911

(2015) ("[W]e find the admission of the DNA evidence in this case was harmless error, and we decline to adopt a per se rule that a new trial is mandatory any time DNA evidence is wrongly admitted.").

And, when the circumstances of Williams's case are properly evaluated just as this Court has done, any conceivable error in the admission of the challenged portion of Deputy Brown's testimony was entirely harmless beyond a reasonable doubt for several different reasons. Initially, the challenged testimony was wholly cumulative to the unobjected-to testimony defense counsel subsequently elicited from Deputy Brown, which—just like the challenged testimony—also established the deputy believed the cocaine was in Williams's possession *and* included a more complete explanation as to why he held that particular belief. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."); see also State v. Washington, 315 S.C. 108, 110, 432 S.E2d 448, 449 (1993) ("Appellant may not now be heard to complain of the admission of evidence elicited by his own counsel."); cf. State v. Pickrell, 435 S.C. 417, 446-447, 867 S.E.2d 465, 481 (Ct. App. 2021) ("Because Investigator Bailey's direct examination testimony complained of on appeal *is cumulative to his cross-examination testimony*, as well as to Investigator Taylor's testimony, Appellant cannot show prejudice from the admission of Investigator Bailey's testimony in this regard, and any possible error is harmless." (emphasis added)). Furthermore, the other evidence apart from Deputy Brown's challenged testimony, which included evidence establishing the cocaine was found in a bag described by Williams directly next to a large quantity of cash over which Williams claimed ownership inside the trunk

of a rental vehicle Williams was in sole possession of that also contained Williams's personal mail along with other evidence commonly associated with narcotics activity, overwhelmingly established Williams was in constructive possession of the cocaine such that the admission of the challenged testimony could have not had any impact on the outcome of Williams's individual and specific case. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt that was presented during trial). Under such circumstances, the admission of challenged testimony was harmless beyond a reasonable doubt, and, thus, this Court correctly affirmed Williams's conviction. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); cf. United States v. Hasting, 461 U.S. 499, 510-511 (1983) ("The question a reviewing court must ask [when conducting a harmless error analysis] is this: absent the prosecutor's allusion to the failure of the defense to proffer evidence to rebut the testimony of the victims, is it clear beyond a reasonable doubt that the jury would have returned a verdict of guilty?").

Accordingly, for all those reasons coupled with the arguments raised in the Final Brief of Respondent and the State's other filings in Williams's case, this Court should deny Williams's second petition for rehearing and again uphold its decision correctly affirming Williams's conviction. However, for the reasons urged in the State's second petition for rehearing, the State again respectfully submits this Court should reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming Williams's conviction without finding any error on the part of the trial judge.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Attorney General

By:_____
Mark R. Farthing
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July 7, 2022

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PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Return to Appellant's Second Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify all parties required by Rule to be served have been served.
This 7th day of July, 2022.

LEIGH ANN STONE
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Leigh Ann Stone

From: Leigh Ann Stone
Sent: Thursday, July 7, 2022 3:21 PM
To: Rauch Wise
Cc: Mark Farthing; William Blitch
Subject: State v. Mutekis Jamar Williams (2018-001147)
Attachments: Williams.Return to Second Pet for Rehearing (03037911xD2C78).PDF

Good Afternoon Mr. Wise,

Attached please find a copy of the Return to Appellant's Second Petition for Rehearing in The State v. Mutekis Jamar Williams (2018-001147). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

Please let us know if further information is needed.

Thank you,

LEIGH ANN STONE, Legal Assistant
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