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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.

RESPONDENT'S SECOND PETITION FOR REHEARING

Through a revised unpublished decision issued on June 8, 2022, this Court—as it did in its earlier decision—affirmed Appellant Mutekis Jamar Williams's conviction for trafficking in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 filed Mar. 16, 2022) (withdrawn, substituted, and refiled June 8, 2022).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 doing so, this Court—just as it aptly did in its initial decision—correctly concluded any error on the part of the trial judge in refusing to strike the challenged portion of Deputy Brown's testimony could not have affected the outcome of Williams's case and, thus, was harmless. However, in its revised decision, this Court has now explicitly found the trial judge erred by refusing to strike the challenged portion of Deputy Brown's testimony. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") once again respectfully petitions for rehearing because this Court appears to have overlooked and misconstrued an important point when finding error on the part

of the trial judge.[1] More specifically, this Court overlooked the fact the trial judge's decision not to strike Deputy Brown's objected-to response did not constitute an abuse of discretion because defense counsel's question opened the door to the objected-to response.

Significantly, witnesses are permitted to explain their answers when responding to defense counsel's queries. Patterson v. State, 679 S.E.2d 716, 719 (Ga. 2009); see State v. King, 34 S.E.2d 3, 4 (N.C. 1945) (explaining a witness is entitled to "full opportunity" to correct or explain an answer in response to an impeaching question). Likewise, defense counsel's questioning may open the door to otherwise inadmissible evidence when defense counsel broaches a particular topic or elicits evidence on a particular matter. State v. Sullivan, 277 S.C. 35, 45, 282 S.E.2d 838, 844 (1981); see State v. Young, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005) ("The jurisprudence of this State contains a plethora of enlightening cases establishing and explicating the proposition that a defendant may open the door to what would otherwise be improper evidence."); State v. Beam, 336 S.C. 45, 53, 518 S.E.2d 297, 301 (Ct. App. 1999) (recognizing the door to otherwise inadmissible evidence can be opened by defense counsel's cross-examination of a prosecution witness).

In Williams's case, defense counsel—as part of his cross-examination of Deputy Brown—asked a series of questions related to the deputy's failure to contact Williams's sister, who was the person who rented the rental vehicle, about the cocaine he personally saw in the

[1] Although this Court again correctly affirmed Williams's conviction through its revised decision, the State is—just as it was doing through its original petition for rehearing—once again seeking rehearing solely for the purpose of best ensuring its arguments concerning the lack of any abuse of discretion on the part of the trial judge are not waived or foreclosed in any future proceedings that potentially may occur in Williams's case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91, n. 2, 579 S.E.2d 613, 615, n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

rental vehicle's trunk during the course of the traffic stop. In responding to that series of questions, Deputy Brown explained he did not call Williams's sister to ask her about the cocaine after seeing it in the trunk because Williams was the one in possession of the rental vehicle at the time the cocaine was found. Immediately in response to that answer, defense counsel sought further clarification by asking: "*But* it was in the trunk, right? It wasn't on his person?" (emphasis added). Deputy Brown then provided a logical, contextually-appropriate, and responsive reply to that follow-up query by indicating he believed the cocaine was in Williams's constructive possession.

Significantly, when viewed in the context of the questioning of which it was a part, defense counsel's clarifying question logically could have been construed as seeking an answer from Deputy Brown as to why he did not think he needed to ask Williams's sister about the cocaine since it was *not* found on Williams's person and, instead, was found in the rental vehicle's trunk.[2] See Fields v. State, 335 S.E.2d 466, 467 (Ga. Ct. App. 1985) (recognizing a

[2] Supporting a conclusion Deputy Brown's challenged answer was contextually-appropriate and responsive to the series of questions asked by defense counsel, defense counsel's last question about where specifically the cocaine was found that resulted in the challenged answer—if viewed in isolation as Williams seems to believe would be appropriate as opposed to in context—would have been seeking an answer about a fact that was already *well-established* during the trial prior to that point. More specifically, before that particular question—which, notably, was explicitly linked to the question and response that proceeded it with a "[b]ut"—was asked, Deputy Brown had already made clear through his testimony the cocaine was found inside the rental vehicle's trunk, and a recording of the stop had already been played for the jury in which the deputies were clearly depicted finding—and stating they found—the cocaine during a search of the vehicle's trunk. (R. pp. 69-70; p. 75; State's Ex. # 10 (Recording of Traffic Stop)). Under such circumstances, it was not unreasonable or illogical for Deputy Brown to believe defense counsel's questioning was seeking an explanation about *why* he had not called Williams's sister due to where the cocaine was located as opposed to solely seeking an answer about *where* the cocaine had been located, which was something that had already been established both by the deputy's own earlier testimony and by other conclusive evidence that had been presented to the jury. Cf. Curtis v. State, 308 S.E.2d 31, 32-33 (Ga. Ct. App. 1983) (concluding a witness's challenged answer to questioning from defense counsel was "not nonresponsive" and, thus, a mistrial was not warranted based on that answer after analyzing the

witness is entitled to explain an answer and finding an answer to be appropriate and responsive where "it was consistent with the line of questioning pursued by the defense counsel"); cf. State v. White, 361 S.C. 407, 415-416, 605 S.E.2d 540, 544 (2004) ("White argues that Badger improperly testified she believed the victim. We conclude that White opened the door to this testimony *by cross-examining Badger as to whether she had cases in which she did not believe the alleged victim*." (emphasis added)). And, by asking that question, defense counsel opened the door to Deputy Brown answering it in a truthful and responsive manner, which is exactly what the deputy did when he explained he believed Williams was in constructive possession of the cocaine despite it not being in Williams's actual possession at the time it was found. Cf. Sullivan, 277 S.C. at 45, 282 S.E.2d at 844 ("[D]efense counsel asked Agent Powell on cross-examination whether the plastic was common place or specially made. This question opened the door for Powell's response that it was used inside the aircraft to set bales of marijuana on."). Accordingly, even if testimony regarding Deputy Brown's personal beliefs on the issue of constructive possession might not have otherwise been admissible as a part of the State's case-in-chief, Deputy Brown's response was not improper under the circumstances since it simply answered defense counsel's question with an appropriate explanatory reply, which—notably—was based solely on the deputy's own perceptions and helped explain why he failed to take the investigative step about which he was being actively questioned. See Rule 701, SCRE ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences

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following sequence of events that occurred during Curtis's trial: "During cross-examination of the police officer who had conducted a photo identification with the victim, [Curtis]'s counsel brought out the fact that the victim had already identified [Curtis] by name before seeing the photographs. Counsel then asked, 'So you weren't surprised when she picked out his picture, she already knew his name, is that right?' When the witness replied, 'No, sir, after doing some research on this name, I was not surprised at all when she picked out his picture,' counsel moved for a mistrial on the ground that the witness had put [Curtis]'s character in issue by a nonresponsive answer.").

is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."); 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. Patterson, 679 S.E.2d at 719 ("Kinsman's testimony concerning his fear of appellant and his knowledge that appellant was a violent person was in response to defense counsel queries about the witness's failure to leave appellant or seek help from police when appellant left the witness alone shortly before the victim was killed. Inasmuch as the witness's responses were in explanation of his answer and a witness is entitled to explain his answer, and counsel will not be heard to object to testimony unfavorable to his client that he elicited, we find no error in the trial court's denial of the motion for mistrial." (citations omitted)). Based on that, the trial judge did not abuse his broad discretion over evidentiary matters by declining to strike the deputy's response. [3] See State v. Adcock, 194 S.C. 234, __, 9 S.E.2d 730, 732 (1940) (explaining an appellate court will only reverse a trial judge's ruling admitting evidence to which the trial judge found the door had been opened for a "manifest" abuse of discretion); cf. State v. Culbreath, 377 S.C. 326, 333-334, 659 S.E.2d 268, 272 (Ct. App. 2008) (holding the trial judge did not abuse his discretion by

[3] Moreover, just as this Court has already twice correctly concluded, any error that could have resulted from the admission of Deputy Brown's objected-to testimony was entirely harmless under the circumstances involved in Williams's case. 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."); State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); 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.").

rejecting Culbreath's motion for a mistrial based on the admission of prior bad act testimony when the testimony was only elicited in response to a question from defense counsel).

For all the foregoing reasons coupled with the reasons articulated in both the State's brief and the State's earlier petition for rehearing, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its revised opinion, and issue a new opinion affirming Williams's conviction without finding any error on the part of the trial judge.

Respectfully submitted,

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Attorney General

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By: _____
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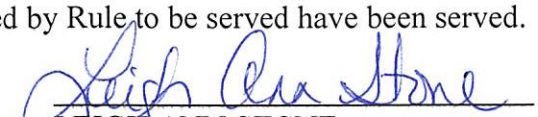
PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Respondent'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 23rd day of June, 2022.



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From: Leigh Ann Stone
Sent: Thursday, June 23, 2022 3:32 PM
To: 'Rauch Wise'
Cc: Mark Farthing; William Blitch
Subject: State v. Mutekis J. Williams (2018-001147)
Attachments: Williams.Second Pet for Rehearing (03020463xD2C78).PDF

Good Afternoon Mr. Wise,

Attached please find a copy of the Respondent's Second Petition for Rehearing in The State v. Mutekis J. Williams (2018-001147). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. A hardcopy will also be mailed to the address on the proof of service as listed.

If you will, please reply to confirm receipt of this email.

Thank you!

LEIGH ANN STONE, Legal Assistant
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