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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari - COA
APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2022-001228

The State . . . . . Respondent,

vs.

Mutekis Jamar Williams . . . . . Petitioner.

PETITIONER'S REPLY TO RETURN

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Factual History

Petitioner takes exception to some of the factual conclusions made by the Respondent in their Return. Respondent has stated the money found in the trunk, "was in a yellow bag inside a box in the trunk, which was the exact color of bag in which the cocaine was ultimately found." Br. of Resp. at 5. In fact, the money was found wrapped in black plastic inside a box in the trunk. The cocaine was under the black plastic wrapped in a yellow plastic which was inside a ziploc type bag. App. at 74, l 20 to 75, l 5. No testimony was presented as to an attempt to test the bag for fingerprints or DNA.

Three cell phones were found in the automobile. One was found in a computer bag in the trunk and the other two were found inside the automobile. No testimony established to whom the cell phone were registered or whether Mr. Williams has ever used any of those three cell phones. App. at 221, l 16-22. For all the proof in this case shows, the phone could have been obtained by Eutopia Williams, the sister of Mr. Williams and the person who had rented the automobile or Mr. Williams father who had previously borrowed the automobile.

Argument

Question I

Did the trial court err in failing to strike the testimony of Officer Scott Brown when he stated in an unresponsive answer that Mutekis Williams was in constructive possession of the drugs in found in the automobile?

In response to this issue, the Respondent argues the issue was not preserved below in footnote 6 and that the door was opened in footnote 8. As to not being preserved, Respondent argues that an objection that the answer to a yes or no question is a legal conclusion, is not also an argument that the answer is not responsive. An objection that the answer is a legal conclusion is a subset of the objection that the answer is not responsive. A legal conclusion will rarely be responsive to a simple yess or not question,. In fact, had trial counsel made a general objection that the answer was not responsive, the Respondent would now have been arguing that the objection was too vague to constitute a valid objection.

As to opening the door, an answer that is not responsive to a simple yes or not question can never be said to have opened any door. The Court of Appeals correctly concluded in the amended opinion that the door was not opened and the issue was properly before the court. The Court of Appeals was correct in holding the admission of the statement was legal error.

Question II

Did the Court of Appeals err in holding that the error in failing to strike the opinion testimony of Officer Scott Brown as to the guilt of Mutekis Brown was not prejudicial when the case against Mr. Brown was entirely circumstantial?

The Respondent contends that because the drugs were found in the trunk under the money

belonging to Williams, with numerous letters located in a computer bag in the trunk, Mr. Williams was the driver of the automobile in which three cell phones were found, the evidence is overwhelming. What this case boils down to is the drugs were in a different color wrap from the money in the trunk of a car that did not belong to Mr. Williams. Such evidence is not overwhelming. Much is left to speculation. As noted earlier, no DNA or fingerprints were even attempted to be taken from the bag containing the drugs nor the box they were in.

This Court has previously stated, "The defendant's presence in the truck alone might not support a finding of possession but, coupled with the incriminating testimony of Prest, the State clearly made a jury issue on the question of possession." *State v. Tabory*, 260 S.C. 355, 365, 196 S.E.2d 111, 113 (1973). *See, also, State v. Brown*, 267 S.C. 311, 317, 227 S.E.2d 674, 677 (1976). If the only evidence against Mr. Williams were the fact that he was driving the automobile he had not rented, then, under *Tabory* and *Brown*, the case would not have been sufficient to submit to the jury. The mere fact that money belonging to Mr. Williams was found in the trunk on top of the cocaine can be used to distinguish this case from the two cases cited. The addition of this one fact does not make the evidence overwhelming such as to hold that the error of law in permitting the improper testimony of Officer Brown. The testimony as to other cell phones, without any testimony as to whom they actually belonged adds little if any probative evidence against Mr. Williams.

In this case the jury could have rejected the testimony of Mr. Williams sister that the cocaine did not belong to her. Aside from letters in a computer bag, nothing in the trunk was directly tied to Mr. Williams other than the money. The cell phones were not connected to Mr. Williams. To say the evidence is "overwhelming" is to ignore these facts. To say the improper

testimony played no rule in convicting Mr. Williams is speculative at best. This court should never hold that drugs found in an automobile driven by the defendant, but belonging to someone else is sufficient to convict.

The Respondent also argues that the improper testimony of Officer Brown was "wholly cumulative to other testimony defense counsel elected to elicit from Deputy Brown after the challenged testimony was elicited . . . ." Br. of Resp. at 16. The Respondent then, again, incorrectly states the money was found in the same color bag as the cocaine. As noted previously, this is not correct. The fact that defense counsel, in an attempt to lessen the harm to his client by the improper testimony, elicited other statements from Officer Brown, should not be a basis for holding the improper testimony was cumulative.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, this Court should hold that the error found by the Court of Appeals in permitting Officer Scott Brown to give his opinion as to the guilt of Mutekis Williams was prejudicial to Mr. Williams and reverse the conviction in this case.

November 28, 2022

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