

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 22 2022

SC Court of Appeals

The State, Respondent,

v.

Mutekis Jamar Williams, Appellant

Appellate Case № 2018-001147

Appeal from Charleston County
R. Markley Dennis, Jr. Circuit Judge

Unpublished Opinion № 2022-UP-114
Submitted November 1, 2021 - Filed March 16, 2022
Withdrawn, Substituted, and Refiled June 8, 2022

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Mutekis Jamar Williams, hereby requests that this Court rehear this matter based upon the following:

1. This Court correctly held in the Refiled opinion that the statement of Deputy Scott Brown was improperly admitted. This Court failed, however, to conduct an analysis of the facts to determine if the error was harmless beyond a reasonable doubt. As the South Carolina Supreme Court held, “Engaging in this harmless error analysis, we note that our jurisprudence

requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). In the analysis this court said, “Here, Deputy Brown’s reference to constructive possession could not reasonably have affected the result of the trial.” *State v. Williams*, Op. № 2022-UP-114 (S.C.Ct.App. filed June 8, 2022). This analysis is not the same as making a determination that beyond a reasonable doubt the improper testimony had no impact on the verdict of the jury.

Virtually all of the analysis conducted by the court involved credibility of witnesses. In the opinion, the court assumes the drugs did not belong to the sister. Under the testimony of Officer Brown, coupled with the now improper jury charge on constructive possession, the jury could have believed the drugs belonged to the sister and Mr. Williams was guilty because he was in possession of the car.

This Court improperly makes the assumption that because the jury asked for instructions on constructive possession again, they relied upon the jury charge and not the testimony of Deputy Brown. This is simply an assumption based on no facts. The jury just as easily could have well remembered the testimony of Deputy Brown and asked for the jury instructions again to see if what Deputy Brown stated was a correct statement of the law. Nothing in the trial transcript suggests they relied on the jury charge to the exclusion of the testimony of Deputy Brown. At the very least, neither this court nor any other court could conclude beyond a reasonable doubt that the jury relied upon the jury charge to the exclusion of the testimony of Deputy Brown. The fact that Mr. Williams directed the officers to the trunk is more an indication of innocence than guilt. If a person knew drugs were in the trunk, the most likely

response would be to direct the officers away from the trunk of the car he was driving.

This Court erred in even making a harmless error analysis. In finding the error harmless, this Court said, “We also note that here, unlike *Ellis*, the State did not refer to Deputy Brown’s testimony in its closing argument.” *State v. Williams*, Op. No 2022-UP-114 at 6. This finding ignores the fact that in the closing argument the solicitor, while not mentioning Deputy Brown, gave the exact same definition that Officer Brown made as to the meaning of constructive. Rec. on App. 251, ll 6-9. The trial judge gave a charge that was virtually identical to Deputy Brown.¹ This closing argument and jury charge told the jury Deputy Brown was correct. This same theme was stated in the opening statement. Rec. on App. at 60, ll 25 to 61, ll 8.


This Court erred in concluding that *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001) is distinguishable because the officer in *Ellis* was qualified as an expert. As our supreme court said in *Ellis*, “An officer’s improper opinion which goes to the heart of the case is not harmless.” *Id.* at 178, 547 S.E.2d at 491. The question here went to the heart of the case. This statement of the court did not distinguish between expert testimony and non-expert testimony. If a law enforcement officer gives an opinion as to the issue to be decided by the jury, an error of law has been committed and reversal is required. The court in *Ellis* also seemed to hold the testimony is reason to reverse the case as a matter of law. The court did not engage in a harmless error analysis. This court erred in engaging in such an analysis when the legal conclusion of the officer went to the heart of the case.

For the foregoing reasons, this Court should rehear this matter, reverse the conviction of

¹ After the decision of the South Carolina Supreme Court in *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021), reh'g denied (June 16, 2021), this jury charge would be improper.

Mutekis Jamar Williams and remand the matter for a new trial.

March 28, 2022

A handwritten signature in black ink, appearing to read "C. Rauch Wise", written over a horizontal line.

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**APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
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State of South Carolina Respondent,

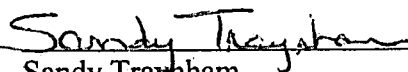
vs.

Mutekis Jamar Williams Appellant.

CERTIFICATE OF SERVICE

I, Sandy Traynham hereby Certify that I am the Secretary for C. Rauch Wise, attorney for the Appellant in the above entitled case. That on June 22, 2022, I did send via US Mail and e-mail a copy of the Petition for Rehearing in the above case addressed to Mark Reynolds Farthing at mfarthing@scag.gov, Office of the Attorney General, PO Box 11549, Columbia SC 29211

June 22, 2022


Sandy Traynham
Secretary

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