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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2022-001228

THE STATE,

Respondent,

vs.

MUTEKIS JAMAR WILLIAMS,

Petitioner.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

Other Authorities:

STATEMENT OF ISSUES ON CERTIORARI

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 found in the automobile?"

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 Williams was not prejudicial when the case against Mr. Williams was entirely circumstantial?"

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals correctly conclude any conceivable error resulting from the trial judge declining to strike a deputy's answer to one of the questions defense counsel posed to him on cross-examination was entirely harmless when: (1) the challenged testimony was wholly cumulative to other unobjected-to testimony elicited by defense counsel; and (2) the other evidence presented during trial overwhelmingly established Williams was in constructive possession of the cocaine found during the course of the traffic stop?

STATEMENT OF THE CASE

In July of 2015, Petitioner Mutekis Jamar Williams was arrested during the course of a routine traffic stop that led to the discovery of a large quantity of cocaine along with other incriminating evidence. In December of 2015, the Charleston County Grand Jury indicted Williams for one count of trafficking in cocaine in an amount of one-hundred grams or more. On June 11, 2018, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Williams as indicted. Following the verdict, the trial judge sentenced Williams to a term of imprisonment of twenty-five years. Williams then timely appealed.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming Williams's conviction. State v. Williams, Op. No. 2022-UP-114 (S.C. Ct. App. filed Mar. 16, 2022). Thereafter, both Williams and the State timely filed petitions for rehearing, and the petitions were both denied. However, the Court of Appeals withdrew its earlier opinion and issued a revised unpublished opinion again affirming Williams's conviction. State v. Williams, Op. No. 2022-UP-114 (S.C. Ct. App. refiled June 8, 2022). Following that, both Williams and the State again timely filed petitions for rehearing, and those petitions were once again denied. Williams then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on March 30, 2023.

STATEMENT OF FACTS

On the afternoon of July 21, 2015, Deputy Scott Brown of the Charleston County Sheriff's Office observed a motorist illegally driving well in excess of the posted speed limit on Highway 17 in Awendaw, South Carolina. (App'x pp. 60-61; p. 91). In response, Deputy Brown initiated a routine traffic stop of the motorist's vehicle and found Williams, who was the vehicle's sole occupant, in the driver's seat. (App'x p. 62; p. 87). Upon encountering Williams, Deputy Brown spoke with him and discovered he was driving a rental vehicle he was not authorized to drive based on the unambiguous terms of the pertinent rental agreement.[1] (App'x pp. 63-64; p. 77). Due to Williams's lack of authorization to validly drive the rental vehicle, Deputy Brown asked several fellow deputies from the Charleston County Sheriff's Office to respond to his location and assist with the stop so he would be prepared in the event the vehicle ultimately needed to be towed from the scene. (App'x p. 64; pp. 90-91; pp. 148-149). Following that request, Deputy Brown provided Williams's information to dispatch and, by doing so, learned an active warrant had been issued for Williams's arrest. (App'x pp. 64-65; p. 92).

Shortly after that, Deputy Corey Shelton arrived at the scene along with Deputy James Jacko, and Williams was quickly arrested based on the outstanding arrest warrant. (App'x pp. 65-66; pp. 90-91; pp. 148-149). As a part of that arrest, the officers searched Williams, found approximately $4,000 in cash inside his pockets, and collected a cell phone from him.[2] (App'x

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[1] Later on during trial, testimony was presented establishing the rental vehicle was rented by Williams's sister roughly a week earlier and was due to be returned to the rental company on the date of the traffic stop. (App'x pp. 157-158; p. 160).

[2] By stipulation, the solicitor agreed all the money in Williams's possession at the time of the traffic stop was lawfully obtained. (App'x p. 67). As to how it was obtained, an individual named Tanova King testified Williams picked her up one day and drove her to Columbia, South Carolina, so she could redeem several winning lottery tickets for him. (App'x pp. 169-171). King further asserted she cashed four checks she received after redeeming the lottery tickets and then gave the proceeds, which totaled $20,000, to Williams. (App'x pp. 171-172).

pp. 66-68; pp. 92-93). Deputy Shelton then informed Williams of his rights and asked him if he had anything else in the vehicle, and Williams responded he had approximately $8,000 more in cash inside it. (App'x pp. 68-69; p. 93; p. 149; p. 151). At that point, Williams was secured in Deputy Brown's patrol vehicle. (App'x p. 93; pp. 149-150).

Once Williams had been secured, Deputy Brown and Deputy Shelton began conducting an inventory search of the rental vehicle to prepare it to be towed from the scene. (App'x pp. 69-70; p. 87; pp. 93-94; pp. 149-150). While that search was being conducted, Deputy Jacko asked Williams where the additional cash was located in the rental vehicle, and Williams responded the cash could be found in a yellow bag inside a box concealed in the vehicle's trunk. (App'x p. 80; p. 82; pp. 150-151). Deputy Jacko then relayed that information to the other officers, and Deputy Shelton proceeded to conduct a search of the rental vehicle's trunk based on it. (App'x p. 94; pp. 151-152). When he did so, the deputy found a box containing both a bundle of cash wrapped in black plastic *and* an open yellow bag containing—or wrapped around—a plastic bag with a substance that appeared to be cocaine inside it. (App'x pp. 70-71; pp. 74-75; pp. 80-82; p. 101; p. 152). After the substance was found, Deputy Shelton conducted a field test on it and presumptively determined it was cocaine. (App'x p. 71; p. 95). The deputies then secured the money and cocaine, and the rental vehicle was towed from the scene.[3] (App'x p. 72; p. 97; p. 152; pp. 211-212).

Thereafter, Detective Harry Bohlander of the Charleston County Sheriff's Office obtained a search warrant for the rental vehicle and conducted a more comprehensive search of it. (App'x pp. 210-212). During the search, the detective found two more cell phones in the vehicle's passenger compartment. (App'x pp. 216-217). Furthermore, inside the trunk,

[3] Beyond that, Williams also received a citation for careless driving as a result of his speeding violation. (App'x p. 77).

Detective Bohlander found various paperwork with Williams's name on it, letters addressed to Williams, a bug-detecting device capable of locating concealed electronic recording equipment, and yet another cell phone. (App'x pp. 229-232; pp. 224-225).

As the investigation into the officers' discoveries continued, the substance found during the course of the traffic was transported to the Charleston Police Department's forensic laboratory for analysis. (App'x p. 127; pp. 129-130; pp. 141-142). Once there, Kaitlin Schroeder, an expert drug analyst, analyzed that substance and conclusively confirmed it constituted 122.3 grams of cocaine. (App'x pp. 128-129; pp. 141-142).

Subsequently, Williams was indicted for trafficking in cocaine, and he proceeded forward to trial. (App'x p. 9; pp. 286-287). Towards the outset of trial, the parties presented their respective theories of Williams's case to the jury through their opening statements. (App'x pp. 53-59). During the State's opening statement, the solicitor briefly discussed the evidence she intended to introduce along with the elements of the offense for which Williams was indicted. (App'x pp. 53-57). In discussing the indicted offense, the solicitor explained Williams's "straight-forward" case did not involve actual possession of cocaine and, instead, involved constructive possession, which she correctly indicated involved the ability to exercise dominion and control over an object. (App'x pp. 56-57). Conversely, during the defense's opening statement, defense counsel contended Williams's case was not as simple as the solicitor claimed while confusingly asserting constructive possession required proof Williams "actually" possessed the drugs. (App'x p. 68).

As the trial proceeded forward, Deputy Brown testified about the details of the traffic stop that resulted in the discovery of a large quantity of cocaine worth between $11,000 and $12,000 directly next to a large stash of cash Williams candidly claimed belonged to him, and a

recording of that stop was admitted into evidence and played for the jury. (App'x pp. 60-76). Following the presentation of that testimony and evidence, defense counsel—on cross-examination—elicited testimony from Deputy Brown establishing Williams *stated* during the traffic stop some of his cash was in a yellow bag inside a box in the trunk, which was the exact color of bag being used to conceal the cocaine when it was ultimately found. (App'x pp. 70-71; p. 80). As defense counsel's questioning continued, the following exchange occurred:

> **[Defense Counsel]**: You saw the bag of suspected cocaine, correct?
>
> **[Deputy Brown]**: Correct.
>
> **[Defense Counsel]**: Did you contact [Williams's sister] to see if she had any knowledge of that since she was the authorized renter of the vehicle?
>
> **[Deputy Brown]**: No, because the defendant was in possession of the vehicle.
>
> **[Defense Counsel]**: But it was in the trunk, right? It wasn't on his person?
>
> **[Deputy Brown]**: It was in his constructive possession.

(App'x pp. 81-82). At that point, defense counsel immediately asked the trial judge to strike Deputy Brown's answer to the last question because it purportedly constituted "a legal argument," and the trial judge declined to do so while responding: "He answered the question." (App'x p. 82). Following that ruling, defense counsel—without raising any other contentions or objections—resumed his questioning and asked the deputy whether he had simply assumed the cocaine was Williams's based on the fact it had been found in the trunk of the rental vehicle, and Deputy Brown responded his conclusion about the cocaine's ownership was based on all the information known to him, including his knowledge of Williams's reference to a yellow bag. (App'x p. 82).

Thereafter, the evidentiary phase of the trial continued on, and the other deputies involved in the traffic stop offered their recollections of the incident while noting Williams's cocaine was found inside a box in the rental vehicle's trunk directly next to the cash Williams indicated would be found inside a box in the trunk. (App'x pp. 90-95; p. 101; pp. 148-157). Similarly, Detective Bohlander discussed the other incriminating evidence he found during his search of the rental vehicle, which included an additional three cell phones beyond the one collected from Williams, a tool that would be useful for determining whether someone—like an informant working for the police—was equipped with a secret recording device, and a number of documents and letters with Williams's name on them that were found in the trunk along with the cocaine. (App'x pp 222-224). Furthermore, Schroeder verified the substance recovered during the traffic stop constituted over 100 grams of cocaine, and the cocaine was admitted into evidence. (App'x pp. 127-142). Beyond that, Williams's sister testified as part of the State's case, indicated she rented the rental vehicle approximately a week before the date of the traffic stop, asserted she let Williams borrow it that day, and confirmed neither the cash nor the cocaine found during the course of the stop belonged to her or her father, who was the only other person who used the rental vehicle. (App'x pp. 157-167).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (App'x pp. 235-255). During the State's closing argument, the solicitor called the jurors' attention to all the facts and circumstances establishing Williams knew about and was in constructive—but not actual—possession of the cocaine found in the rental vehicle's trunk, including the fact the cocaine was simply too valuable to have been present in the vehicle without Williams's knowledge, the fact Williams's mail was present in the trunk along with the cocaine, the fact there were items associated with narcotics activity present in the trunk, the fact

Williams's cash was—by his own admission—present in the trunk, and the fact the cocaine was found inside the same box as Williams's cash concealed by a yellow bag shortly after Williams had referenced a yellow bag.[4] (App'x pp. 235-247). Conversely, during the defense's closing argument, defense counsel conceded Williams's cash and other belongings were found in close proximity to the cocaine but nonetheless contended no one could truly know the identity of the cocaine's owner based on the evidence presented since there was purportedly no evidence—such as fingerprint evidence—that could specifically connect any particular individual to the cocaine. (App'x pp. 248-255).

Following the parties' closing arguments, the trial judge instructed the jury on the applicable law. (App'x pp. 256-271). In doing so, the trial judge thoroughly instructed the jury on reasonable doubt and the State's burden of proof, explained the presumption of innocence, advised the jurors they were the sole judges of the facts, discussed the differences between direct and circumstantial evidence, and indicated the jurors were required to apply the law as he instructed it to them. (App'x pp. 257-264). Additionally, the trial judge defined the elements of trafficking in cocaine and explained the differences between actual and constructive possession. (App'x pp. 265-266). Furthermore, the trial judge cautioned the jurors mere presence was not alone sufficient to establish possession. (App'x p. 266).

Subsequently, the case was submitted to the jury, and the jurors began their deliberations. (App'x pp. 271-272). During the course of the deliberations, the jury submitted several notes, including notes asking to be re-instructed on constructive possession and requesting a transcript

[4] Notably, in arguing the State's evidence demonstrated Williams was in constructive possession of the cocaine, the solicitor did *not* at any point mention or discuss Deputy Brown's testimony indicating the officer believed Williams was in constructive possession of the cocaine. (App'x pp. 235-247).

of the testimony of Deputy *Shelton*.[5] (App'x pp. 273-277). At the conclusion of their deliberations, the jury convicted Williams as indicted. (App'x p. 278). The trial judge then sentenced Williams to a twenty-five-year term of imprisonment. (App'x p. 285).

Following his conviction, Williams appealed, arguing the trial judge erred by refusing to strike the purportedly non-responsive answer Deputy Brown gave to defense counsel's question.[6] (App'x pp. 293-305). Ultimately, on appeal, the Court of Appeals affirmed. (App'x pp. 359-364). In doing so, the Court of Appeals initially found—while citing to Rule 701 of the South Carolina Rules of Evidence—Deputy Brown's challenged answer to defense counsel's question was improper because it was not responsive and constituted a legal conclusion. (App'x pp. 362-

[5] Initially, the jury also asked for a transcript of Deputy Brown's testimony but then cancelled that request before the trial judge could act upon it. (App'x p. 275). Ultimately, the trial judge directed the court reporter to replay Deputy Shelton's testimony for the jury in lieu of providing a transcript of it. (App'x pp. 275-277).

[6] Significantly, during trial, defense counsel did *not* assert to the trial judge Deputy Brown's answer to his question was objectionable on the ground it was not responsive and, instead, solely asserted the answer should be stricken on the ground it constituted "a legal argument." (App'x p. 82). Then, when the trial judge responded to defense counsel's assertion by stating Deputy Brown had answered the question, defense counsel did *not* dispute that conclusion in any way or raise any other arguments or contentions in support of his request for the answer to be stricken. (App'x p. 82). Accordingly, to the extent Williams argued—and continues to argue—on appeal Deputy Brown's answer was improper and inadmissible because it was not responsive to defense counsel's question, that particular argument was not properly preserved for appellate review and could not—and cannot—appropriately be considered on appeal since it was not actually raised to the trial judge during the course of the trial. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue during trial and then complain of an error with the issue on appeal); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); see also State v. Berry, 418 S.C. 500, 503-504, 795 S.E.2d 26, 28 (2016) (vacating the analysis of the Court of Appeals because it addressed an issue that was not properly preserved for appellate review); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved.").

363). The Court of Appeals then proceeded to analyze whether Williams was prejudiced by the purported error and concluded the error was harmless for several different reasons. (App'x pp. 363-364). More specifically, the Court of Appeals determined the error was harmless because: (1) Williams's guilt was conclusively proven by other competent evidence, including the evidence establishing the drugs were found concealed by a yellow bag in the trunk after Williams stated his money was in a yellow bag in the trunk; (2) the challenged testimony was followed by cumulative testimony elicited without objection by defense counsel that further established why Deputy Brown believed Williams was in constructive possession of the drugs; (3) the solicitor did not refer to the challenged testimony during closing argument, which helped to minimize its impact; and (4) the trial judge's jury instructions explaining actual and constructive possession coupled with the other factors present supported a conclusion the jurors did not improperly rely upon the challenged testimony from Deputy Brown. (App'x pp. 363-364).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). Likewise, when reviewing a decision as to whether a party opened the door to the admission of otherwise inadmissible evidence during trial, the appellate court will afford broad discretion to the trial judge because such a matter ordinarily rests within the trial judge's discretion. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). Significantly, an appellate court will not reverse a trial judge's evidentiary ruling absent a clear prejudicial abuse of the trial judge's broad discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). 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); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The Court of Appeals correctly concluded any conceivable error resulting from the trial judge declining to strike a deputy's answer to one of the questions defense counsel posed to him on cross-examination was entirely harmless because: (1) the challenged testimony was wholly cumulative to other unobjected-to testimony elicited by defense counsel; and (2) the other evidence presented during trial overwhelmingly established Williams was in constructive possession of the cocaine found during the course of the traffic stop.

Williams contends the trial judge committed reversible error by declining to strike Deputy Brown's answer to one of the questions posed to him by defense counsel during cross-examination because the answer was purportedly non-responsive and improper. Williams further contends the Court of Appeals erred by finding the trial judge's error in that regard was harmless under the circumstances involved. Contrary to Williams's contentions, any possible error that occurred as a result of Deputy Brown's challenged response to defense counsel's question was harmless beyond a reasonable doubt and could not have reasonably contributed to the verdict because: (1) the challenged portion of Deputy Brown's testimony was entirely cumulative to other unobjected-to testimony elicited by defense counsel; and (2) the other evidence presented—which included evidence establishing the cocaine was found concealed by a yellow bag inside a box *also* containing cash after Williams indicated his cash was located in a yellow bag inside a box—during trial overwhelmingly established Williams was in constructive possession of the cocaine found during the course of the traffic stop.[7] Under such circumstances, the Court of Appeals correctly found any conceivable error was harmless in Williams's case. Williams's conviction should be affirmed.

[7] Tellingly, Williams never acknowledges at any point in his brief the cocaine was found in the very same box and concealed by the very same type of bag—a yellow one—in which he told the deputy his stash of cash would be found. (Pet. Br. pp. 1-13).

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Even after an error is found, the appellate court must review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see 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."). Ultimately, if an error could not have reasonably contributed to the verdict, that error is harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008); 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). Moreover, "[w]hen guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently

made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

In the case at bar, even assuming the trial judge somehow erred by declining to strike Deputy Brown's *responsive* answer suggesting he personally believed Williams was in constructive possession of the cocaine, any error that could have resulted from the admission of that testimony was entirely harmless under the specific circumstances involved.[8] See State v.

[8] Although the Court of Appeals ultimately found error on the part of the trial judge for refusing to strike Deputy Brown's challenged answer, the question from defense counsel that elicited that challenged response—when viewed in the context of the questioning of which it was a part—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. See Fields v. State, 335 S.E.2d 466, 467 (Ga. Ct. App. 1985) (recognizing a 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. See State v. Anderson, 229 S.C. 403, 410, 93 S.E.2d 210, 214 (1956) (instructing an appellant cannot complain about the admission of testimony to which his or her own questioning opened the door); 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); cf. State v. Sullivan, 277 S.C. 35, 45, 282 S.E.2d 838, 844 (1981) ("[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 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

Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (explaining "[t]he circumstances of each individual case are to be considered" when conducting a harmless error analysis). Initially, any error was harmless because the challenged portion of Deputy Brown's testimony regarding his personal thoughts on the issue of constructive possession was wholly cumulative to the unobjected-to testimony defense counsel subsequently elicited from the deputy, which—just like the challenged testimony—established he believed the cocaine was in Williams's possession *and* which 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. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted."); 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."). Furthermore, any error resulting from the admission of the challenged portion of Deputy Brown's testimony was entirely harmless in light of the other overwhelming evidence of Williams's constructive

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training."); cf. Patterson v. State, 679 S.E.2d 716, 719 (Ga. 2009) ("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—and should not have been found to have abused—his broad discretion over evidentiary matters by declining to strike the deputy's response upon correctly recognizing defense counsel's question opened the door to it. 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 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).

possession of the cocaine, which included the evidence establishing the cocaine was found in a yellow bag described by Williams directly next to—and inside the same box as—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 numerous items commonly associated with narcotics activity. 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). For those reasons, the challenged portion of Deputy Brown's testimony could not have contributed to or impacted the outcome of Williams's case, and, thus, its admission—even if somehow erroneous—was not sufficiently harmful to Williams to warrant a reversal of his conviction on appeal. See Bryant, 369 S.C. at 518, 633 S.E.2d at 156 ("[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.").

Accordingly, since the challenged testimony was wholly cumulative to other testimony defense counsel elected to elicit from Deputy Brown after the challenged testimony was elicited and Williams's guilt was conclusively established by the other evidence presented (which, as noted, conclusively established the cocaine was found in a yellow bag inside the very same box as Williams's money *after* Williams personally stated his money was in a yellow bag inside a box), the Court of Appeals correctly concluded any conceivable error resulting from the trial judge's refusal to strike the challenged testimony was harmless under the circumstances

involved.[9] Cf. State v. Barron, 268 S.C. 318, 319, 233 S.E.2d 110, 110 (1977) ("We agree that it was error to allow the State to introduce evidence of appellant's character when he had not first tendered that issue. This was, however, harmless error due to the later admission of identical reputation testimony without objection. . . . Since the later reputation testimony was competent, the error in allowing the earlier testimony over objection could have in no way been prejudicial to appellant." (citations omitted)). Williams's conviction should be affirmed.

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[9] In arguing to the contrary, Williams heavily relies upon this Court's earlier decision in State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001), while seeming to suggest that decision established the admission of improper opinion testimony from a law enforcement officer can never be harmless. (Pet. Br. p. 8; p. 11; p. 13). Thus, in essence, Williams appears to be suggesting the Court of Appeals was wrong to affirm his conviction because the Ellis decision purportedly 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, this Court did not create any categorical rules of reversal in Ellis and, instead, only found reversible error occurred in that case after finding Ellis was prejudiced under the specific circumstances involved. See 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."); cf. State v. Tapp, 398 S.C. 376, 391, 728 S.E.2d 468, 476 (2012) (finding the improper admission of expert testimony from a special agent qualified as an expert in crime scene analysis and victimology to be harmless beyond a reasonable doubt after concluding it could not have contributed to the verdict under the circumstances involved). 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 the Court of Appeals properly conducted just such an analysis before correctly concluding any error in Williams's case was harmless based on the particular circumstances involved. 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.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision to affirm by the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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May 8, 2023

Caroline Collins

From: Caroline Collins
Sent: Monday, May 8, 2023 11:09 AM
To: Rauch Wise
Cc: Mark Farthing
Subject: The State v. Mutekis Jamar Williams (2022-001228)
Attachments: Williams.BOR (03285397xD2C78).PDF

Good Morning Mr. Wise,

Attached please find the Brief of Respondent in The State v. Mutekis Jamar Williams (2022-001228). This brief will be submitted to the South Carolina Supreme Court today via the AIS One Drive System.

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

Thank you!

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