STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Marion County
William H. Seals, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

MARVIN WILLIAMS, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

City-County Complex
180 N. Irby St., MSC-Q
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF ISSUE ON APPEAL

The trial court did not err in finding the victim's answer was vague and not necessarily a reference to prior incidents. Further, any reference to prior difficulties was oblique at best and not prejudicial. Any error was harmless beyond a reasonable doubt. (Appellant's issues I&II).

STATEMENT OF THE CASE

Appellant Williams was indicted by the Marion County grand jury for criminal domestic violence (CDV). The jury found Williams guilty as charged on February 18, 2016, the second day of trial. The jury deliberated for twenty-two minutes before returning the verdict. Tr. p. 241. The Honorable William H. Seals, Jr., sentenced Williams to one year imprisonment. It was Williams' second CDV conviction.

STATEMENT OF FACTS

Law enforcement responded to a 911 call and found Victim at the bottom of the stairs in front of the house, laying on the ground. Sergeant Tony Hayes explained they rolled Victim to her side and helped her stand up. Victim told officers one side was hurting. Tr. p. 116. **All three** law enforcement officers testified **to the observable injury to Victim's face.**[1] Sergeant Tony Hayes testified Victim's left side of the face was red and swollen. Tr. p. 124, lines 18-19. Officer Jamie Turner testified he saw distinct swelling on the left side of Victim's face. Tr. p. 146, lines 1-5. Lieutenant Brandon Gore observed, "Her left eye was swollen pretty good, what I call a goose egg on the side of her eye." Tr. p. 158, lines 2-3.

Victim told officers she and Williams argued. Williams hit her in the face and pushed her down the steps. Tr. p. 121, lines 18-23. The officers knocked on the front door to speak to Williams, but Williams did not answer. The officers declined to go through a gate to knock on the side door because of the pitbull in Williams' yard. Tr. pp. 116-17. Victim offered to go in the side door and open the front door. Law enforcement allowed her to do this, and she opened the front door after going in the side entrance. They summoned her out of the house so they could talk to Williams who sat in front of the doorway in a sofa chair. Tr. p. 118. Before the officers could finish explaining why they were there, Williams became belligerent and cursed loudly at them. Sergeant Hayes explained the following to the jury:

> I think I went to say, hey, Mr. Williams, and immediately he started in on us, cursing us, telling us to get the fuck out of his house. I think at that time I said, sir, and by the time I got the next sir out, basically

[1] Williams inaccurately claims Victim "had no visible injuries when law enforcement arrived . . ." Br. of App. p. 4.

> fuck you, get out my house. And at that point, we saw this wasn't going to be a civil conversation.

Tr. p. 119, lines 18-23. Sergeant Hayes added, "Every half a word we got out, he was yelling back at us." Tr. p. 120, lines 7-8. Additionally, Williams told the officers, "I threw her out. I threw her out the fucking house. If she's hurt, fuck her." Tr. p. 121, lines 5-7. He also called Victim a slut. Tr. p. 121, line 7. Sergeant Hayes explained they arrested Williams after he made an aggressive move towards the officers. As they took him to the patrol car, he continued cursing, even louder, which was why officers also charged Williams with disorderly conduct. The jury heard about this additional charge because it was elicited by defense counsel. Tr. p. 132, lines 17-24.

Officer Turner testified similarly. He checked for outstanding warrants while outside the home and noted the same address came back for both Williams and Victim. Tr. p. 146. Officer Turner also explained in the course of attempting to convince Williams come out of the house, a neighbor related to Williams attempted to calm Williams down, apparently to no avail. Tr. p. 147. Officer Turner agreed with Sergeant Hayes that Williams told them he "threw" Victim out of the house and Williams said "if she was hurt, then fuck her." Officer Turner explained they arrested Williams because he lunged toward them. Tr. p. 149. As Williams was led to the patrol car, he bowed up at Victim as he passed by and called her a slut, a whore, and other derogatory terms. Tr. p. 150. Lieutenant Gore's testimony was similar to the other officers. However, his recollection was Williams did not say he "threw" Victim out, but that he said he "pushed" Victim out of the house. Tr. p. 159.

Victim testified she was in a relationship with Williams since 2003 or 2004. They lived with each other at times over the years. Most recently, she moved in with Williams when she got ill and

could not work. Williams helped her move in. She was living with Williams for a month or more at the time of the assault. Tr. pp. 84-87. Victim explained the argument occurred while they were talking about an incident between Williams and someone else. Williams became mad with Victim over something she said. He told her "I want you to get the 'F' out of here." At first Victim said she was not leaving, but then said she was. As she walked out the door, Williams pushed her. Tr. p. 89. Victim explained he punched her in the face before she left. Tr. p. 90; p. 109.

Victim fell down the stairs. Williams looked at her on the bottom of the stairs and then slammed the door. She picked up her phone and dialed 911. Officers arrived as she still lay on the ground. Tr. pp. 90-91. Victim went through the side door and opened the front door for the officers. She then was directed to go outside. Tr. pp. 94-97.

Williams, in contrast to Victim's testimony, claimed he and Victim were dating early on, but were just friends afterwards. He denied they ever lived together, although he agreed he allowed her to stay with him until she found a place to live. That night, she was watching the children while he was fixing things and networking (he claimed he was a handyman). Before coming home, he bought an 18-pack of beer. He explained, "I occasionally drink because I was reforming myself from my old lifestyle." He testified they had a "fruitless argument over nothing." He was annoyed because she drank all his beer. Williams claimed Victim called him a mother fucker and told him he needed a dick during the argument. He claimed he told her to leave because there were children in the residence and he did not want them to hear her cursing. He claimed Victim left on her own. Tr. pp. 175-180 (direct quote, p. 178, lines 21-23).

Williams claimed not to hear any knocking, but did hear someone opening the gate. He

explained to the jury, "I know this heifer ain't in my gate. She's supposed to be gone. She ain't in my gate, you know." Tr. p. 183, lines 10-12. Williams claimed the officers rushed in and seized him, dislocating his shoulder. Tr. p. 183. On cross-examination, Williams agreed he was yelling profanities at both police and Victim. He agreed he told officers he "threw" Victim out of the house. He also agreed he said that if Victim was hurt, "F her." Tr. p. 192, lines 18-20. He agreed he was angry that night, and gave the following explanation why, "Yeah, I was because how can you ask for my help and then at the same time you sit here, you know, putting my – putting my nieces in danger with all this vile talk, you know, . . ." Tr. p. 192, line 24 – p. 193, line 1. However, Williams agreed he was also using profanity. Tr. p. 193, lines 3-7.

Williams claimed he was paying Victim to watch the children, explaining, "Yeah. Yeah. To catch them, I would give her a couple of dollars if I made a good lick that day as far as hustling. I would throw her a couple bones for doing that." Tr. p. 193, lines 13-15.

ARGUMENT

The trial court did not err in finding the victim's answer was vague and not necessarily a reference to prior incidents. Further, any reference to prior difficulties was oblique at best and not prejudicial. Any error was harmless beyond a reasonable doubt. (Appellant's issues I&II).

Williams complains the trial court erred in not sustaining his objection to Victim's testimony about possible references to prior bad acts. There are two instances Williams complains about, although Williams waived objection to the first instance, which occurred during the following testimony:

> Q: Just . . . tell me about when he got home.
>
> A: Okay. Well, when he got home, he was already outraged. He was already angry. He came in. We sat down. We talked about the incident that happened earlier. He got angry with me because something that I said – that I said this – well, he said – anyway, he got angry with something I said.
>
> Q: Okay.
>
> A: So he told me I want you to get the F on out of here. So I'm like that. I told him not right now. I'm not leaving to go nowhere. He continued to keep arguing and arguing. I said, okay, I'll leave. As I walked towards the door, he was behind me. As soon as I opened the door, I was pushed out.
>
> Q: Okay. Did he ever hit you or put his hands on you?
>
> A: Many of times
>
> Q: On this time, did he –
>
> A: Yes, he did.
>
> Q: -- slap you on the face?

Tr. p. 88, line 25 – p. 89, line 17. Testimony continued on after a bench conference. Tr. pp. 89-90. Defense counsel later noted he waived objection during this bench conference because the testimony was open to interpretation. Tr. p. 92, lines 17-19. Naturally, defense counsel waived any objection to this specific testimony. A defendant cannot acquiesce in an issue at trial and then complain about it on appeal. State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998). "An objection withdrawn at trial constitutes an express waiver of the issue and does not preserve the issue for appellate review." Ligon v. Norris, 371 S.C. 625, 634, 640 S.E.2d 469, 472 (Ct. App. 2006).

The second occurrence came as Victim continued explaining what happened as follows:

> Q: Okay. Do you remember which officer it was?
>
> A: I don't remember which one.
>
> Q: Okay.
>
> A: I'm not sure, but I know one of the -- I remember them saying – because they asked me what happened. First of all, they asked me what happened. I told them what had happened. I told them that he was in the house. They went to try knocking on the door. They couldn't get in. I told them I know how to access because Marvin Williams showed me how I could get in through the side door. I said to the officer that you stick right here because this has happened so many times I'm not going to let him get away with it again. So I went to the side door.

Tr. p. 91, line 20 – p. 92, line 7.

Counsel objected and this time asked to be heard outside the jury. Counsel argued Victim was trying to bring up prior incidents and argued they were inadmissible. Counsel also asked for a mistrial. Tr. p. 92, lines 16-22. The prosecutor agreed she said something happened many times but did not know what Victim meant, noting Victim did not clarify whether what happened before was

getting locked out of the house. The prosecutor noted she did not say Williams physically abused her in the past. Tr. p. 92, line 24 – p. 93, line 7.

The trial court requested the court reporter play back the testimony. The trial court then observed the following before overruling the objection:

> She just said this happened so many times. It could be that she'd been locked out of the house so many times. She doesn't say anything about being hit or bruised or slapped or anything. She said they knocked on the door and they couldn't get in. She said I'll show you how to get in. This has happened so many times.
>
> And that's all she said. But I do want to make clear let's don't talk about anything from the past.

Tr. p. 93, line 18 – p. 94, line 1. Victim answered, "Yes, sir." Before the jury returned to the courtroom, the trial court further admonished Victim: "We're talking about this night, July 4th, only." Tr. p. 94, lines 2-4. Victim said she understood. Tr. p. 94, lines 5-7.

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 and will not reverse a decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). A trial court abuses its discretion when it commits an error of law or makes a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

"The exercise of a sound judicial discretion must and should be performed in every case with a conscientious regard for what is just and proper under the circumstances." State v. Scates, 212 S.C. 150, 155-56, 46 S.E.2d 693, 695 (1948). "Trial judges in South Carolina, as elsewhere, are

allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

In the instant case, the trial court noted the vagueness of the testimony, and decided to overrule the objection to what was an oblique reference, at best, to other instances of abuse. The testimony certainly did not warrant granting a mistrial. "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005) (citations omitted). "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988).

"[A] vague reference to a defendant's prior [crimes] is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003). In the instant case, Victim's non-responsive testimony was simply too oblique to prejudice Williams.

Even assuming the jury interpreted the slight references to refer to some prior incident,

evidence of the vague events did not come from any other source at trial. To the extent the trial hinged on Victim's testimony, as Williams would have it, then no danger of prejudice existed. For instance, in State v. Aiken, 322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996), the co-defendant on a robbery charge testified as to other robberies they committed together in the area. The Supreme Court found the testimony admissible under the common plan or scheme exception to Rule 404, SCRE, and then observed the following concerning the danger of unfair prejudice:

> [T]he chance that the admission of this evidence unfairly prejudiced Aiken was small because if the jury found [co-defendant] to be credible, it would likely believe his testimony that Aiken was guilty of the [robbery] he was charged with and have no reason to consider the testimony concerning the other robberies.

Id. at 181, 470 S.E.2d at 406-07.

"Harmless error rules . . . 'serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial.'" State v. White, 410 S.C. 56, 59, 762 S.E.2d 726, 728 (Ct. App. 2014) (quoting Chapman v. California, 386 U.S. 18, 22 (1967)). The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990).

Williams' argument against harmless error quickly falls apart because of the mistaken claim Williams made that Victim did not suffer any visible injuries. Instead, all three officers testified the left side of Victim's face was red and swollen. Tr. p. 124, lines 18-19; p. 146, lines 1-5; p. 158, lines 2-3. Further, even by Williams' admission, he was cursing and angry when approached by officers,

who found Victim on the ground when they arrived. Williams agreed he called Victim names as he was led to the patrol car. Finally, far more prejudice ensued when Williams called Victim a heifer in front of the jury than Victim's oblique reference to any past incidents. In the instant case, the vague reference to prior acts simply did not affect the result of trial and the alleged error was harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Marion County
The Honorable William S. Seals, Jr., Circuit Court Judge

Appellate Case No: 2016-000545

THE STATE,

Respondent,

v.

MARVIN WILLIAMS, JR.,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record Lara M. Caudy, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 4th day of May, 2017.

Anne Mueller

Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

May 4, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: The State v. Marvin Williams, Jr.
Appellate Case No: 2016-000545

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the Initial Brief and Designation of Witnesses, including proof of service, in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

cc: Lara M. Caudy (with two copies)
Ms. Trisha Allen