THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Hon. Markley Dennis Jr., Circuit Court Judge

Appellate Case No. 2018-001147

State of South Carolina ..... **Respondent,**

vs.

Mutekis Williams ..... **Appellant.**

INITIAL REPLY BRIEF

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
Bar No. 06188
rauchwise@gmail.com
(864) 229-5010

ATTORNEY FOR APPELLANT

Index

Page:

Table of Authorities ii

Question Presented:

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? 1

Conclusion 3

Table of Authorities

Cases: **Page:**

State v. Adcock, 194 S.C. 234, 9 S.E.2d 730 (1940) 2

State v. Beam, 336 S.C. 45, 518 S.E.2d 297 (Ct. App. 1999) 2

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998) 3

State v. Reed, 197 N.J. 280, 962 A.2d 1087 (2009) 2

State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981) 2

State v. Young, 364 S.C. 476, 613 S.E.2d 386 (Ct. App. 2005) 2

Argument

Question

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?

The question of defense counsel opened the door to the response.

The argument of the State that the question of defense counsel opened the door to the answer ignores the question actually asked and the law in this state.

First, the answer was not responsive. The simple question called for a "yes" or "no" answer. Instead, the answer was a legal conclusion that Mutekis Williams was guilty. The State has further argued that by casting the response in the brief as "unresponsive" and trial counsel below referring to it as a "legal conclusion" Mr. Williams is asserting a ground in the brief that is different from the one asserted below. They are the same. The "legal conclusion" below was an "unresponsive" answer. A legal conclusion will always be unresponsive unless trial counsel asked a witness for a legal conclusion. Therefore, "unresponsive," under the facts of this case, is the same as "legal conclusion." In addition, the non-responsive terminology is only used in the issue presented. The brief discusses the non-responsive answer in terms of being a legal conclusion.

Under no theory can the asking of a "yes" or "no" question in this case be interpreted to opening the door for the officer to give a non-responsive legal conclusion. If this is true, then in any similar case, where a defense lawyer asks about the drugs not being found on the person of the defendant, the officer can say "I believe the defendant is guilty because the drugs were in his

constructive possession." The response in this case, with the charge to the jury by the trial judge, simply told the jury the defendant was guilty.

In most cases where a party is accused opening the door, the objected to testimony comes from a question asked on redirect. *See, State v. Young,* 364 S.C. 476, 613 S.E.2d 386 (Ct. App. 2005) and *State v. Beam*, 336 S.C. 45, 518 S.E.2d 297 (Ct. App. 1999). While *State v. Sullivan,* 277 S.C. 35, 282 S.E.2d 838 (1981) apparently did involve a response to a question asked by the defense attorney, it did not involve a non-responsive answer that was a legal conclusion. In fact, no case cited by the State involves a legal conclusion that was non-responsive.

In support of the argument that reversal for a question for which the defendant opened the door for the response, the State cites *State v. Adcock*, 194 S.C. 234, 9 S.E.2d 730 (1940) for the proposition that the error must be a manifest. In *Adcock*, the opening of the door occurred in connection with a guilty plea. Such a case would obviously require a "manifest necessity" to overturn a guilty plea. The case is simply not controlling as to a trial with a witness making a legal conclusion as to guilt.

Also, Mr. Williams notes that the State did not attempt to discuss or explain why *State v. Reed*, 197 N.J. 280, 962 A.2d 1087 (2009) is not a persuasive authority in this case. The facts are very similar. Nor does the State appear to take issue with the position of Mr. Williams that the statement of Officer Brown is a legal conclusion. The State only argues the comment was "invited" and that it was harmless.

Harmless

The general proposition is to require reversal, the error must be prejudicial to the defendant. This is simply another way of saying that the error can be harmless. For if an error in

admitting improper testimony is prejudicial, it cannot be harmless. As this Court has said, "Unfair prejudice means an undue tendency to suggest decision on an improper basis." *State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998). As noted in the opening brief, the jury struggled as to the definition of constructive possession. Some members of the jury could have believed the sister of Mr. Williams was not credible. They could have believed that based upon the conclusion of the Officer Brown, that the sister of Mr. Williams owned the drugs, but Mr. Williams was in constructive possession because Officer Brown said he was and, therefore, Mr. Williams is guilty. The improper statement by Officer Brown permitted the jury to decide the case on an improper basis.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Opening Brief, this Court should find the trial court erred in not striking the testimony of Officer Scott Brown because the statement was an improper response to the question and prejudicial. This matter should be reversed and remanded for a new trial.

December 11, 2019

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Mutekis Williams

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Hon. Markley Dennis Jr., Circuit Court Judge

Appellate Case No. 2018-001147

State of South Carolina ..... Respondent,

vs.

Mutekis Williams ..... Appellant.

CERTIFICATE OF SERVICE

I hereby Certify that I am the attorney for the Appellant in the above entitled case. That on December 11, 2019, I did deposit in the United States Mail with proper postage affixed thereto, a copy of the Initial Reply Brief in the above case addressed to

Mark R. Farthing
Attorney General Office
P.O. Box 11549
Columbia, SC 29211

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 006188

Attorney for Appellant

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

December 11, 2019

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State vs. Mutekis Williams, Case No. 2018-001147

Dear Ms. Kitchings:

I am enclosing herewith the original and one (1) copy of the Initial Reply Brief together with the original Certificate of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

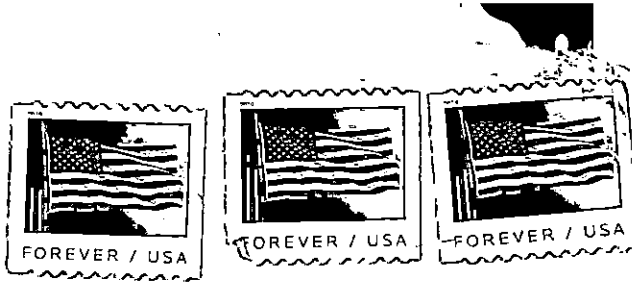
Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Mark R. Farthing

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646



Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211