ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2018-001147

THE STATE,

Respondent,

vs.

MUTEKIS JAMAR WILLIAMS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

In July of 2015, Appellant 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 Appellant 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 Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of twenty-five years. Appellant then timely filed a notice of appeal.

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. (R. pp. 59-60; p. 90). In response, Deputy Brown initiated a routine traffic stop of the motorist's vehicle and found Appellant Mutekis Jamar Williams, who was the vehicle's sole occupant, in the driver's seat. (R. p. 61; p. 86). Upon encountering Appellant, 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 rental agreement associated with the vehicle.[1] (R. pp. 62-63; p. 76). Due to Appellant'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. (R. p. 63; pp. 89-90; pp. 147-148). Following that request, Deputy Brown provided Appellant's information to dispatch and, by doing so, learned an active warrant had been issued for Appellant's arrest. (R. pp. 63-64; p. 91).

Shortly after that, Deputy Corey Shelton arrived at the scene along with Deputy James Jacko, and Appellant was quickly arrested based on the outstanding arrest warrant. (R. pp. 64-65; pp. 89-90; pp. 147-148). As a part of that arrest, the officers searched Appellant, found approximately $4,000 in cash inside his pockets, and collected a cell phone from him.[2] (R. pp.

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[1] Later on during trial, testimony was presented establishing the rental vehicle was rented by Appellant's sister roughly a week earlier and was due to be returned to the rental company on the date of the traffic stop. (R. pp. 156-157; p. 159).

[2] By stipulation, the solicitor agreed all the money in Appellant's possession at the time of the traffic stop was lawfully obtained. (R. p. 66). As to how it was obtained, an individual named Tanova King testified Appellant picked her up one day and drove her to Columbia, South Carolina, so she could redeem several winning lottery tickets for him. (R. pp. 168-170). King

65-67; pp. 91-92). Deputy Shelton then informed Appellant of his rights and asked him if he had anything else in the vehicle, and Appellant responded he had approximately $8,000 more in cash inside it. (R. pp. 67-68; p. 92; p. 148; p. 150). At that point, Appellant was secured in Deputy Brown's patrol vehicle. (R. p. 92; pp. 148-149).

Once Appellant 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. (R. pp. 68-69; p. 86; pp. 92-93; pp. 148-149). While that search was being conducted, Deputy Jacko asked Appellant where the additional cash was located in the rental vehicle, and Appellant responded the cash could be found in a yellow bag inside a box concealed in the vehicle's trunk. (R. p. 79; pp. 149-150). 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. (R. p. 93; pp. 150-151). When he did so, the deputy found a box containing a bundle of cash wrapped in black plastic along with an open yellow bag containing a substance that appeared to be cocaine. (R. pp. 69-70; pp. 73-74; pp. 79-80; p. 100; p. 151). After the substance was found, Deputy Shelton conducted a field test on it and presumptively determined it was cocaine. (R. p. 70; p. 94). The deputies then secured the money and cocaine, and the rental vehicle was towed from the scene.[3] (R. p. 71; p. 96; p. 151; pp. 210-211).

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. (R. pp. 209-211). During the search, the detective found two more cell phones in the

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further asserted she cashed four checks she received after redeeming the lottery tickets and then gave the proceeds, which totaled $20,000, to Appellant. (R. pp. 170-171).

[3] Beyond that, Appellant also received a citation for careless driving as a result of his speeding violation. (R. p. 76).

vehicle's passenger compartment. (R. pp. 215-216). Furthermore, inside the trunk, Detective Bohlander found various paperwork with Appellant's name on it, letters addressed to Appellant, a bug-detecting device capable of locating concealed electronic recording equipment, and yet another cell phone. (R. pp. 228-231; pp. 223-224).

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. (R. p. 126; pp. 128-129; pp. 140-141). Once there, Kaitlin Schroeder, an expert drug analyst, analyzed that substance and conclusively confirmed it constituted 122.3 grams of cocaine. (R. pp. 127-128; pp. 140-141).

Subsequently, Appellant was indicted for trafficking in cocaine, and he proceeded forward to trial. (R. p. 8; pp. 285-286). At the conclusion of the trial, the jury convicted Appellant as indicted. (R. p. 277). The trial judge then sentenced Appellant to a twenty-five-year term of imprisonment. (R. p. 284).

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 trial judge did not abuse his broad discretion by declining to strike a deputy's answer to one of the questions defense counsel posed to him on cross-examination because the deputy's answer constituted a logical and contextually-appropriate response to defense counsel's question, and, since defense counsel opened the door to that testimony through his own questioning of the deputy, Appellant cannot now properly complain about the admission of that testimony on appeal. However, even assuming the trial judge somehow erred by declining to strike the deputy's answer, any error in that regard was entirely harmless in light of the cumulative nature of the challenged testimony in relation to other unobjected-to testimony coupled with the fact the other evidence presented during trial overwhelmingly established Appellant was in constructive possession of the cocaine found during the course of the traffic stop.

Appellant 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. In support of that contention, Appellant maintains—for the first time—the deputy's answer was not responsive to defense counsel's question.[4] Furthermore, Appellant maintains the deputy's answer constituted inadmissible opinion evidence as to a legal conclusion on the issue of constructive possession and, therefore, was unfairly prejudicial to him. Contrary

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[4] 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." (R. p. 81). 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. (R. p. 81). Accordingly, to the extent Appellant is arguing on appeal Deputy Brown's answer was improper and inadmissible because it was not responsive to defense counsel's question, that particular argument is not properly preserved for appellate review 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."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); 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."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal.").

to Appellant's contention, the trial judge properly declined to strike Deputy Brown's answer because—just as the trial judge recognized—it constituted a logical and contextually-appropriate response to the question the deputy was asked. Under such circumstances, Deputy Brown's answer did not constitute an improper or inadmissible response to the question posed to him, and Appellant could not properly complain about an answer to which his own defense counsel opened the door through his questioning. However, even assuming the trial judge somehow erred by declining to strike the deputy's answer, any possible error was harmless beyond a reasonable doubt 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 during trial overwhelmingly established Appellant was in constructive possession of the cocaine found during the course of the traffic stop. Appellant's conviction should be affirmed.

RELEVANT FACTS

Towards the outset of trial, the parties presented their respective theories of Appellant's case to the jury through their opening statements. (R. pp. 52-58). 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 Appellant was indicted. (R. pp. 52-56). In discussing the indicted offense, the solicitor explained Appellant'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. (R. pp. 55-56). Conversely, during the defense's opening statement, defense counsel contended Appellant's case was not as simple as the solicitor claimed while confusingly asserting constructive possession required proof Appellant "actually" possessed the drugs. (R. p. 67).

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 that was worth between $11,000 and $12,000 directly next to a large stash of cash that Appellant candidly claimed belonged to him, and a recording of that stop was admitted into evidence and played for the jury. (R. pp. 59-75). Following the presentation of that testimony and evidence, defense counsel—on cross-examination—elicited testimony from Deputy Brown establishing Appellant 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 in which the cocaine was ultimately found. (R. pp. 69-70; p. 79). 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 [Appellant'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.

(R. pp. 80-81). 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." (R. p. 81). 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 Appellant'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 Appellant's reference to a yellow bag. (R. p. 81).

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 Appellant's cocaine was found inside a box in the rental vehicle's trunk directly next to the cash Appellant indicated would be found inside a box in the trunk. (R. pp. 89-92; pp. 147-154). 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 Appellant, 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 Appellant's name on them that were found in the trunk along with the cocaine. (R. pp 221-223). Furthermore, Schroeder verified the substance recovered during the traffic stop constituted over 100 grams of cocaine, and the cocaine was admitted into evidence. (R. pp. 126-141). Beyond that, Appellant'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 Appellant borrow it that day, and confirmed neither the cash nor the cocaine found during the course of the stop belonged to her. (R. pp. 156-166).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (R. pp. 234-254). During the State's closing argument, the solicitor called the jurors' attention to all the facts and circumstances establishing Appellant 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 Appellant's knowledge, the fact Appellant'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 Appellant's cash was—by his own admission—present in the trunk, and the fact the cocaine was found inside the same box as Appellant's cash in a yellow bag shortly after Appellant had referenced a yellow bag.[5] (R. pp. 234-246). Conversely, during the defense's closing argument, defense counsel conceded Appellant's cash and other property was 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. (R. pp. 247-254).

Following the parties' closing arguments, the trial judge instructed the jury on the applicable law. (R. pp. 255-270). 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. (R. pp. 256-263). Additionally, the trial judge defined the elements of trafficking in cocaine and explained the differences between actual and constructive possession. (R. pp. 264-265). Specifically, the trial judge stated:

> Possession[,] ladies and gentleman[,] may be either actual or constructive. Actual possession as the name would imply means that the cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control over the cocaine itself or the property in which the cocaine was found.

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[5] Notably, in arguing the State's evidence demonstrated Appellant 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 Appellant was in constructive possession of the cocaine. (R. pp. 234-246).

(R. pp. 264-265). Furthermore, the trial judge cautioned the jurors mere presence was not alone sufficient to establish possession. (R. p. 265).

Subsequently, the case was submitted to the jury, and the jurors began their deliberations. (R. pp. 270-271). 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 of the testimony of Deputy *Shelton*.[6] (R. pp. 272-276). At the conclusion of their deliberations, the jury convicted Appellant as indicted. (R. p. 277). The trial judge then imposed a twenty-five-year sentence upon Appellant for trafficking in cocaine. (R. p. 284).

ANALYSIS

A. Propriety of the Trial Judge's Decision Not to Strike Deputy Brown's Response to One of Defense Counsel's Questions on Cross-Examination

Generally speaking, the key purpose of cross-examination is to weaken or disprove the opposing side's case. State v. Hughey, 214 S.C. 111, 112, 51 S.E.2d 376, 377 (1949). When conducting cross-examination of a witness, defense counsel is ordinarily entitled to "wide latitude" over what questions to ask and what topics to broach. State v. Elders, 118 S.C. 44, __, 109 S.E. 806, 806 (1921); see Tate v. Le Master, 231 S.C. 429, 440, 99 S.E.2d 39, 45 (1957) (recognizing counsel is entitled to "wide latitude" when conducting cross-examination). However, when responding to questioning on cross-examination, a witness is obviously permitted to explain his or her answers to defense counsel's queries. Patterson v. State, 679 S.E.2d 716, 719 (Ga. 2009); see State v. King, 34 S.E.2d 3, 4 (N.C. 1945) (explaining a witness is entitled to "full opportunity" to correct or explain an answer in response to an impeaching

[6] 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. (R. p. 274). 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. (R. pp. 274-276).

question). Moreover, defense counsel's questioning may open the door to otherwise inadmissible evidence when defense counsel broaches a particular topic or elicits evidence on a particular matter. State v. Sullivan, 277 S.C. 35, 45, 282 S.E.2d 838, 844 (1981); see State v. Young, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005) ("The jurisprudence of this State contains a plethora of enlightening cases establishing and explicating the proposition that a defendant may open the door to what would otherwise be improper evidence."); 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). Significantly, a party cannot complain of prejudice resulting from the admission of evidence to which the party opened the door. State v. Rice, 375 S.C. 302, 329, 652 S.E.2d 409, 422 (Ct. App. 2007), overruled on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (Ct. App. 2011); 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).

In the case sub judice, defense counsel—as part of his cross-examination of Deputy Brown—asked a series of questions related to the deputy's failure to contact Appellant's sister, who was the person who rented the rental vehicle, about the cocaine he personally saw in the rental vehicle's trunk during the course of the traffic stop. In responding to that series of questions, Deputy Brown explained he did not call Appellant's sister to ask her about the cocaine after seeing it in the trunk because Appellant was the one in possession of the rental vehicle at the time the cocaine was found. Immediately in response to that answer, defense counsel sought further clarification by asking: "But it was in the trunk, right? It wasn't on his person?" Deputy

Brown then provided a logical, contextually-appropriate, and responsive reply to that follow-up query by indicating he believed the cocaine was in Appellant's constructive possession.

Significantly, when viewed in the context of the questioning of which it was a part, defense counsel's clarifying question logically could be construed as seeking an answer from Deputy Brown as to why he did not think he needed to ask Appellant's sister about the cocaine since it was *not* found on Appellant's person and, instead, was found in the rental vehicle's trunk.[7] 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."). Perhaps, upon receiving the deputy's answer, defense counsel may have regretted that question as being one too many on his part. See Beam, 336 S.C. at 51, 518 S.E.2d at 300 ("Counsel simply asked that proverbial 'one question too many' and is dissatisfied with the result from taking that risk."). However, since he did ask it, defense counsel opened the door to Deputy Brown answering the query in a truthful and responsive manner, and the deputy did just that by explaining he believed Appellant was in constructive possession of the cocaine despite it not being in Appellant's actual possession at the time it was found. Cf. Sullivan, 277 S.C. at 45, 282 S.E.2d at 844 ("[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

[7] Perhaps tellingly, Appellant omitted from his appellate brief any reference to the questions immediately preceding defense counsel's follow-up question that led to the response Appellant is now challenging on appeal. (App. Br. pp. 1-10).

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. Cf. Patterson, 679 S.E.2d at 719 ("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)).

Because Deputy Brown provided a contextually-appropriate and responsive answer to a question posed directly to him by defense counsel, the trial judge did not abuse his broad discretion over evidentiary matters by declining to strike the deputy's response. 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). Likewise, Appellant cannot now validly complain on appeal about testimony directly elicited by his own defense counsel's questioning. See 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."); State v. Robinson, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991) ("Since appellant opened the door to this evidence, he cannot complain of prejudice from its admission."); State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."). For all those reasons, Appellant's conviction should be affirmed.

B. Harmlessness of Any Possible Error on the Part of the Trial Judge in Declining to Strike Deputy Brown's Answer to One of Defense Counsel's Questions

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 does not contribute 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). 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 Appellant was in constructive possession of the cocaine, any error that could have resulted from the admission of that testimony was entirely harmless under the circumstances involved. Initially, any error was entirely 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—also established he believed the cocaine was in Appellant's possession *and* 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. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."). 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 Appellant's constructive possession of the cocaine, which included the evidence establishing the cocaine was found in a bag described by Appellant directly next to a large quantity of cash over which Appellant claimed ownership inside the trunk of a rental vehicle Appellant was in sole possession of that also contained Appellant's personal mail along with other evidence 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 Appellant's case, and, thus, its admission—even if somehow erroneous—was not sufficiently harmful to Appellant to warrant a reversal of his conviction on appeal. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[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."); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 14, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2018-001147

THE STATE,

Respondent,

vs.

MUTEKIS JAMAR WILLIAMS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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