RECEIVED
Mar 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Mutekis Jamar Williams, Appellant

Appellate Case № 2018-001147

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

Unpublished Opinion № 2022-UP-114
Submitted November 1, 2021 - Filed March 16, 2022

Petition for Rehearing

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

1. If this Court intended to hold that counsel for Mutekis Jamar Williams opened the door to the response by Deputy Brown, this Court failed to recognize that "arguably" opening the door is not opening the door. In addition, this Court failed to explain how the simple "yes" or "no" question opened the door to an officer giving his legal opinion to the guilt of Mr. Williams. Trial counsel asked no question that opened the door to the response by Officer Brown. If this is an example of opening the door, then this Court would be sanctioning any response to a "yes" or

"no" question as opening the door to an improper opinion response. "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. Young*, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005), aff'd as modified, 378 S.C. 101, 661 S.E.2d 387 (2008). In no case, has the door been opened by asking a simple yes or not question, unless the question related to character. In no case has the door ever been opened to an opinion of guilt by the investigating officer. This Court should not create this exception now.

2. This Court erred in concluding that *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001) is distinguishable because the officer in *Ellis* was qualified as an expert. As our supreme court said in *Ellis,* "An officer's improper opinion which goes to the heart of the case is not harmless." *Id.* at 178, 547 S.E.2d at 491. The court did not distinguish between expert testimony and non-expert testimony. If a law enforcement officer gives an opinion as to the issue to be decided by the jury, an error of law has been committed and reversal is required.

3. This Court erred in finding the error was harmless. In finding the error harmless, this Court ignored the above quote from Ellis. In addition, this Court said, "We also note that here, unlike *Ellis,* the State did not refer to Deputy Brown's testimony in its closing argument." *State v. Williams,* Op. № 2022-UP-114 at 6. This finding ignores the fact that in the closing the solicitor, while not mentioning Officer Brown, gave the exact same argument that Officer Brown made as to the definition of constructive. Rec. on App. 251, ll 6-9.[1] This argument simply told the jury Officer Brown was correct. This same theme was stated in the opening statement. Rec.

---

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

on App. at 60, l 25 to 61, l 8.

4. The Court improperly concluded that the request by the jury to hear again the definition of constructive possession, "[I]dicates the jury properly relied on the trial court, not Deputy Brown, for legal instructions." *Williams,* at 6. No fact suggests this conclusion. The jury could have just as easily have concluded that Officer Brown knew about which he spoke because the judge told them the same thing. This would have given more credibility to Officer Brown's testimony. Furthermore, the failure to ask for the testimony of Officer Brown is of no consequence. The jury just as easily could have well remembered what Officer Brown said about constructive possession and therefore the jury did not need to clarify Officer Brown's opinion as to Mr. Williams being in constructive possession of the drugs.

5. This Court erred in concluding that continued cross-examination of Officer Brown, "[A]llowed Deputy Brown to elaborate, without objection, and explain that he 'put it together with other evidence.'" *Williams* at 6. This continued cross examination did not waive the original objection. Furthermore, this cross examination did not erase the harm caused by the original improper opinion evidence given by Officer Brown.

For the foregoing reasons, this Court should rehear this matter and reverse the conviction of Mutekis Jamar Williams.

March 28, 2022

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S. C. Bar № 6188
rauchwise@gmail.com

Attorney for Mutekis J. Williams

RECEIVED
Mar 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2018-001147
Unpublished Opinion No 2022-UP-114
Submitted November 1, 2021 - Filed March 16, 2022

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

vs.

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

CERTIFICATE OF SERVICE

I Sandy Traynham hereby Certify that I am the Secretary for C. Rauch Wise, attorney for the Appellant in the above entitled case. That on March 28, 2022, I did send via e-mail a copy of the Petition for Rehearing in the above case addressed to Mark Reynolds Farthing at mfarthing@scag.gov and Scarlett Anne Wilson, at wilsons@scsolicitor9.org.

March 28, 2022

Sandy Traynham

Sandy Traynham
Secretary

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Appellant