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Mar 31 2022

SC Court of Appeals

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.

RESPONDENT’S PETITION FOR REHEARING

Through an unpublished decision issued on March 16, 2022, this Court affirmed the Appellant Mutekis Jamar Williams’s conviction for trafficking in cocaine. State v. Williams, Op. No. 2022-UP-114 (S.C. Ct. App. filed Mar. 16, 2022). In doing so, this Court correctly concluded any error on the part of the trial judge in refusing to strike the challenged portion of Deputy Brown’s testimony could not have affected the outcome of Williams’s case and, thus, was harmless. However, before reaching that correct conclusion, this Court appears to have found the trial judge erred by refusing to strike the challenged portion of Deputy Brown’s testimony. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent (“the State”) respectfully petitions for rehearing because this Court appears to have overlooked and misconstrued an important point when appearing to find error on the part of the trial judge.¹

¹ Although this Court correctly affirmed Williams’s conviction through its decision, the State is currently seeking rehearing solely for the purpose of best ensuring its arguments concerning the

More specifically, this Court overlooked the fact the trial judge’s decision not to strike Deputy Brown’s objected-to response did not constitute an abuse of discretion because defense counsel’s question opened the door to the objected-to response.

Significantly, witnesses are permitted to explain their answers when responding 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 question). Likewise, 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).

In Williams’s case, defense counsel—as part of his cross-examination of Deputy Brown—asked a series of questions related to the deputy’s failure to contact Williams’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

lack of any abuse of discretion on the part of the trial judge are not waived or foreclosed in any future proceedings that potentially may occur in Williams’s case. See State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. State v. Humphries, 354 S.C. 87, 91, n. 2, 579 S.E.2d 613, 615, n. 2 (2003) (declining to address an additional sustaining ground raised by the State that was founded upon a contention the Court of Appeals incorrectly held the trial judge erred).

questions, Deputy Brown explained he did not call Williams's sister to ask her about the cocaine after seeing it in the trunk because Williams 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 Williams'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 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."). 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. 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 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 training.”); 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.”); 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)). Based on that, the trial judge did not abuse his broad discretion over evidentiary matters by declining to strike the deputy’s response.² See State v. Adcock, 194 S.C.

² Moreover, just as this Court already correctly concluded, any error that could have resulted from the admission of Deputy Brown’s objected-to testimony was entirely harmless under the circumstances involved in Williams’s case. 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

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).

For all the foregoing reasons coupled with the reasons articulated in the State’s brief, the State respectfully requests this Court reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming Wililams’s conviction without finding any error on the part of the trial judge.

Respectfully submitted,

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Attorney General

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Senior Assistant Attorney General

By: 

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March 31, 2022

harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.”); 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.”).

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PROOF OF SERVICE

I, Leigh Ann Stone, certify I have served the within Respondent's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify all parties required by Rule to be served have been served.
This 31st day of March, 2022.


LEIGH ANN STONE
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Leigh Ann Stone

From: Leigh Ann Stone
Sent: Thursday, March 31, 2022 12:01 PM
To: 'rauchwise@gmail.com'
Cc: Mark Farthing; William Blich
Subject: The State v. Mutekis J. Williams (2018-001147)
Attachments: Williams.Pet for Rehearing (02939678xD2C78).PDF

Good Afternoon Mr. Wise,

Attached please find a copy of the Respondent's Petition for Rehearing in The State v. Mutekis J. Williams (2018-001147). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. A hardcopy will also be mailed to the address on the proof of service as listed.

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

Thank you!

LEIGH ANN STONE, Legal Assistant
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