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Apr 29 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.

RETURN TO APPELLANT'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Through an unpublished decision issued on March 16, 2022, this Court affirmed the Appellant Mutekis Jamar Williams's conviction for trafficking in cocaine.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 affirming that conviction, this Court correctly rejected Williams's contention the trial judge committed reversible error by declining to strike an answer given directly in response to defense counsel's questioning in light of the fact any conceivable error resulting from the admission of that challenged answer was harmless beyond a reasonable doubt. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, both Williams and the State petitioned this Court for rehearing, and this Court—along with asking Williams to file a return to the State's petition—asked the State to file a return to Williams's petition. For the following reasons, Williams's petition should be denied.

Turning to Williams's first contention in his petition, Williams maintains this Court failed to recognize the proverbial door was not, in fact, opened to Deputy Brown's challenged

response through defense counsel's act of posing a purported "simple 'yes' or 'no' question" to the officer. Importantly though, contrary to Williams's contention, defense counsel's query to Deputy Brown was *not* simply a "yes" or "no" question calling for a response totally unrelated to the one given and, instead, was a compound question that was a component part of a series of related questions asked in succession. And, critically, that compound question—when viewed in the context of the series of questions of which it was an integral and related part—could logically 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 found in the rental vehicle's trunk as opposed to on Williams's person. Accordingly, that question opened the door to Deputy Brown's *responsive* answer explaining he did not think he needed to ask Williams's sister about the cocaine despite it not being found in Williams's actual possession due to his fact-based belief it was in Williams's constructive possession under the circumstances involved, and, as a result, the trial judge did not abuse his broad discretion by declining to strike the deputy's contextually-appropriate response to defense counsel's questioning.¹ Cf. 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

¹ Supporting a conclusion Deputy Brown's answer was responsive to defense counsel's question, defense counsel did not object to it on the ground it was not responsive during trial 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 Williams has argued on appeal Deputy Brown's answer was improper and inadmissible because it was not responsive, that particular argument was not properly preserved for appellate review and could not appropriately be considered for the first time on appeal. 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."); 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.").

complain of prejudice from its admission.”); see also State v. Washington, 315 S.C. 108, 110, 432 S.E.2d 448, 449 (1993) (“Appellant may not now be heard to complain of the admission of evidence elicited by his own counsel.”); cf. Patterson v. State, 679 S.E.2d 716, 719 (Ga. 2009) (“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)).

Turning to his second contention, Williams maintains this Court erred by finding our Supreme Court’s earlier decision in State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001), was distinguishable from his own case. Critically though, the decision in Ellis was, in fact, distinguishable because—amongst other differences—Ellis did *not* involve a situation in which the door had been opened to challenged testimony as occurred in Williams’s case. 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); cf. State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001) (analyzing an evidentiary issue related to the admission of expert testimony that had nothing to do with the matter of whether the door had been opened to the testimony). Based on that critical distinction,

Ellis was simply not applicable to Williams's case and certainly did not require or mandate reversal.

Turning to his third and fourth contentions, Williams appears to challenge this Court's determination any error committed in connection to Deputy Brown's testimony was entirely harmless under the circumstances involved. To the contrary, any error resulting from the admission of the challenged portion of Deputy Brown's testimony was, in fact, entirely harmless in light of the overwhelming evidence of Williams's constructive possession of the cocaine, which included evidence establishing the cocaine was found in a bag described by Williams directly next to a large quantity of cash over which Williams claimed ownership inside the trunk of a rental vehicle Williams was in sole possession of that also contained Williams'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). Under such circumstances, the admission of Deputy Brown's responsive answer to defense counsel's question—even if somehow improper—could not have had impact on the outcome of Williams's case, and, thus, this Court correctly affirmed Williams's conviction.

Finally, turning to his fifth and final contention, Williams appears to maintain this Court erred by giving consideration to the additional—and cumulative—testimony defense counsel elicited from Deputy Brown about his views on Williams's constructive possession of the cocaine after defense counsel's objection to the challenged testimony was overruled. To the contrary, defense counsel's act of intentionally eliciting further testimony from Deputy Brown, which—just like the challenged testimony—also established Deputy Brown believed the cocaine

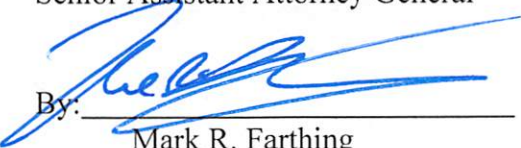
was in Williams's constructive possession and included a more complete and previously-unarticulated explanation as to *why* he held that particular belief, rendered any conceivable error in the challenged testimony's admission entirely harmless since the unobjected-to testimony was wholly cumulative to the objected-to testimony. 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."); see also Washington, 315 S.C. at 110, 432 S.E.2d at 449 (explaining a party cannot complain on appeal about evidence the party's own counsel elicited during trial); cf. State v. Pickrell, 435 S.C. 417, 446-447, 867 S.E.2d 465, 481 (Ct. App. 2021) ("Because Investigator Bailey's direct examination testimony complained of on appeal *is cumulative to his cross-examination testimony*, as well as to Investigator Taylor's testimony, Appellant cannot show prejudice from the admission of Investigator Bailey's testimony in this regard, and any possible error is harmless." (emphasis added)). As a result, it was entirely appropriate for this Court to consider the cumulative nature of the unobjected-to testimony when conducting its harmless error analysis, and this Court correctly affirmed Williams's conviction after finding any conceivable error in the admission of the objected-to testimony was harmless beyond a reasonable doubt.

Accordingly, for all those reasons coupled with the arguments raised in the Final Brief of Respondent, this Court should deny Williams's petition for rehearing and uphold its decision correctly affirming Williams's conviction. However, for the reasons urged in the State's petition for rehearing, the State respectfully submits this Court should 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 Williams's conviction without finding any error on the part of the trial judge.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Attorney General

By: 

Mark R. Farthing
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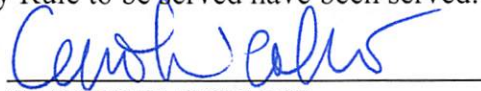
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Return to Appellant'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 29th day of April, 2022.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Caroline Collins

From: Caroline Collins
Sent: Friday, April 29, 2022 4:53 PM
To: 'Rauch Wise'
Cc: Mark Farthing; William Blitch
Subject: The State v. Mutekis Jamar Williams (2018-001147)
Attachments: Williams.Return to Pet for Rehearing (02969198xD2C78).PDF

Good Afternoon Mr. Wise,

Attached please find a copy of the Return to Appellant's Petition for Rehearing in The State v. Mutekis Jamar Williams (2018-001147). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

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

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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