THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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May 09 2022
SC 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Unpublished Opinion № 2022-UP-114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

Reply to Return to Petition for Rehearing

In contending that the question of defense opened the door to the response, the State has failed to explain how the proverbial door was opened. The question was a simple yes or no question. The question was, "But it [the drugs] was in the trunk, right? It wasn't on his person?" Rec. on App. at 81, ll 8-9. The only obvious answer to the question was "yes." The question does not call for an explanation. The State has argued the question could be interpreted as asking the officer why he thought Mr. Williams was guilty. No "why" question was asked. As with all good cross examinations, the question was a simple yes or no question. No competent defense lawyer would ever ask a question as to why an officer would believe the defendant guilty. Defense counsel is entitled to have his yes or no question answered with a yes or no.

The State correctly cites *Patterson v. State*, 285 Ga. 597, 679 S.E.2d 716 (2009) as an example of a defense lawyer opening the door. The question there opened the door to the reason for the witness' fear of the defendant. The answer of the witness was not a legal conclusion.

Mr. Williams agrees that a witness is entitled to explain their answer. The explanation, however, can never be a legal conclusion. The law is very clear a witness, lay or expert, may not give a legal conclusion. "It is well settled that an expert witness may not testify with respect to legal conclusions." *Caracci v. Patel*, 31 N.E.3d 460, 467 (Il. App.2015); "An expert witness exceeds the scope of permissible testimony when 'the witness's legal conclusions blur the separate and distinct responsibilities of the judge, jury and witness, or there is danger that a juror may turn to the [witness's legal conclusion] rather than the judge for guidance on the applicable law.'" *State v. Chapman*, 338 P.3d 230, 235 (UT App. 2014)(internal citations omitted). "Constructive possession is a legal conclusion, derived from factual evidence, that someone who does not have physical possession of a thing in fact has legal possession of it." *People v. Whalen*, 145 Ill. App. 3d 125, 132, 495 N.E.2d 122, 127 (1986). This court has said, "The opinion here was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question." *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020), reh'g denied (Feb. 20, 2020), cert. denied (Oct. 19, 2020)

The State also is in error when it contends that the ground argued on appeal is different from the ground argued below. The State contends that because trial counsel did not object on the ground that the answer was not responsive. To argue that an objection that the statement is a legal conclusion is different from the argument that the statement is not responsive is in this case

a distinction without a difference. The legal conclusion was not responsive to the question and is therefore under the facts the same objection.

To argue that attempts by defense counsel to continue to cross-examine Officer Brown as to the improper answer, is to simply argue trial counsel, by advocating for his client, waives the original issue. This simply cannot be a correct statement of the law. No defense counsel, after an objection is overruled, should have to choose between advocating for his client and waiving an issue for appeal.

As to whether the issue is harmless, our Supreme Court has established the proper basis for determining if an issue is harmless. The court said, "Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012). Against this standard a legal conclusion by the investigating officer as to the guilt of Mr. Williams is not harmless.

For the foregoing reasons, and the reasons in the original Petition for Rehearing, this Court should rehear this matter and reverse the conviction of Mutekis Jamar Williams.

May 9, 2022

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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 May 9, 2022, I did send via e-mail a copy of the Reply to Return to 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.

May 9, 2022

Sandy Traynham
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