

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1121

STATE OF LOUISIANA

VERSUS

ANTHONY J. WILLIAMS

Judgment Rendered: December 23, 2008

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On Appeal from the Eighteenth Judicial District Court
In and For the Parish of Pointe Coupee
State of Louisiana
Docket Nos. 72291, 72378

Honorable James J. Best, Judge Presiding

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Anthony J. Williams

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

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McCLENDON, J.

The defendant, Anthony J. Williams, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. The defendant was charged by bill of information with four counts of attempted second degree murder, violations of LSA-R.S. 14:30.1 and LSA-R.S. 14:27. The defendant entered pleas of not guilty. After a trial by jury, the defendant was found guilty as charged. As to the second degree murder conviction, the trial court sentenced the defendant to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. As to the four counts of attempted second degree murder, the trial court sentenced the defendant to fifty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court ordered that the sentences be served concurrently. The defendant now appeals, arguing that the trial court erred in denying his motion for mistrial. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On or about February 5, 2006, a shooting took place on Louisiana Highway 1 South in Pointe Coupee Parish. At the time of the shooting, the victims were occupying a white Chevrolet Caprice Classic. Two of the victims were wounded; one of whom, Quinton Bridgewater, died as a result of his gunshot wound. The other, Brandon Brue, was shot in the foot. The other victims were passengers Montrell Brue, Stanley Brue, and Stanlasia Brue (a three-year-old child at the time of the offense). Over thirty gunshots were fired at the car.

According to trial testimony, the following events led to the shooting incident in question. As the defendant (also known as "Flee-Kee") and others left a Super Bowl party in New Roads around 6:00 p.m., shots were fired toward their car from a white car. After travelling to Rougon, the defendant, Williams, as well as Thomas James, Al Rogers, and Kevin Zeno, returned to New Roads later that night. Although Rogers, Zeno, and the defendant had obtained

firearms before returning, the testimony on whether James was armed was contradictory. Around 8:00 p.m., they spotted a white Chevrolet Caprice and the shooting in question occurred. James died before the trial took place, but Rogers and Zeno testified that the defendant, Williams, committed the shooting in question.¹

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court erred in denying his motion for mistrial. Citing LSA-C.Cr.P. art. 770(2), the defendant asserts that the state made an impermissible reference to another crime during closing arguments, and notes that there was no **Prieur** hearing and no basis for the admission of other crimes evidence. The defendant argues that the error was not harmless because the evidence of guilt was not overwhelming.

Generally, courts may not admit evidence of other crimes to show a defendant is a man of bad character who has acted in conformity with his bad character. Louisiana Code of Criminal Procedure art. 770 provides, in pertinent part:

Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the judge, district attorney, or a court official, during the trial or in argument, refers directly or indirectly to:

* * *

(2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible[.]

Mistrial is a drastic remedy and warranted only when substantial prejudice will otherwise result to the accused to deprive him of a fair trial. **State v. Booker**, 2002-1269, pp. 17-18 (La.App. 1 Cir. 2/14/03), 839 So.2d 455, 467, writ denied, 2003-1145 (La. 10/31/03), 857 So.2d 476. A trial court's ruling denying a mistrial will not be disturbed absent an abuse of discretion. **State v. Givens**, 99-3518, p. 12 (La. 1/17/01), 776 So.2d 443, 454.

The defendant cites several instances during the state's case-in-chief when the state mentioned James's death and questioned the other alleged co-

¹ According to forensic science expert Charles Watson, Jr., bullets from three different caliber weapons were recovered from the Chevrolet.

perpetrators regarding a plan with the defendant to withhold the facts of the shooting incident. The state initially referred to James's death during opening arguments when it noted that James should have been present at trial, but had died as the result of a recent shooting incident. The defendant also cites, among others, the following colloquy between the state and state witness Zeno:

Q. Y'all had a plan or whatever you want to call it, that y'all were going to have y'all stories together, so the State wouldn't be able to bring Flee-Kee to justice; right?

A. Yes, sir.

Q. And Thomas James is already dead; right?

A. (No audible response).

Q. Right?

A. Yes, sir.

Q. And boy if Flee-Kee gets off, Thomas James is dead, case closed; right?

A. Yes, sir.

Q. Plan didn't work, because you couldn't bluff us; could you? It wouldn't work. Thank you, nothing further.

Although the defendant did not object to those references at trial, or directly raise them as errors on appeal, the defendant did object and move for a mistrial after the following statements by the state during closing argument:

You see -- you see, Mr. Williams, you can go so far on just saying stuff, but sometimes there's a freight train, there's a freight train called justice, 'cause that's the only way you can get it. You can't get it by a person going out and killing the co-Defendant. You can't get it by the one side killing -- you can't do it. And it just --

In objecting to the above comments, the defense attorney stated, "Your Honor, let me object to that comment; that last comment, killing the co-Defendant. I didn't -- you know, I mean, I don't know if he's referring to Anthony Williams, or not, but Judge-- [.]"

In response, and after a sidebar discussion, the state continued the closing argument, as follows:

It's not about him. There's no evidence, and God knows I don't believe for one second that he would kill his friend, and wouldn't

even say that before you. It's not about that, but here again, you can object to anything you want. It's about the issue in this case. This case is about here. Didn't say he killed those other boys, 'cause he didn't, but at least he brought those boys to his office. Did he have it on his mind to hurt 'em? No. He could've if he wanted. He didn't do that. So, it's not about that! The fact that he tried to cover it up.

The defendant did not object at trial to the continued argument, but asserts, on appeal, that the state's continued comments only served to reinforce the previous, and objected to, prejudicial reference.

In **State v. Edwards**, 97-1797, p. 20 (La. 7/2/99), 750 So.2d 893, 906, cert. denied, 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999), the Louisiana Supreme Court held:

[A] comment must not "arguably" point to a prior crime; to trigger mandatory mistrial pursuant to Article 770(2), the remark must "unmistakably" point to evidence of another crime. **State v. Babin**, 336 So.2d 780 (La.1976) (where reference to a "mug shot" was not unmistakable reference to a crime committed by defendant); **State v. Harris**, 258 La. 720, 247 So.2d 847 (1971) (where no crime was evidenced by a police officer's reference to obtaining defendant's photograph from the Bureau of Investigation). In addition, the imputation must "unambiguously" point to defendant. **State v. Edwards**, 406 So.2d 1331, 1349 (La.1981), cert. denied sub nom. Edwards v. La., 456 U.S. 945, 102 S.Ct. 2011, 72 L.Ed.2d 467 (1982). The defendant has the burden of proving that a mistrial is warranted.

In the instant case, the state's references did not unmistakably point to evidence of another crime and did not unambiguously point to the defendant as having murdered James. Thus, we find that the motion for mistrial was properly denied. The sole assignment of error lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.