NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-0131**
VERSUS	*	**COURT OF APPEAL**
CALVIN COLEMAN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 416-083, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby)

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CONVICTION AFFIRMED; SENTENCE AFFIRMED

STATEMENT OF CASE

On August 10, 2000, defendant Calvin Coleman was indicted by an Orleans Parish grand jury with first-degree murder. He pled not guilty at arraignment. Defendant filed pre-trial motions. The state provided discovery. The trial court heard and denied defendant's motions to suppress identification and statement. The first trial commenced on May 7, 2001, but the jury was unable to reach a unanimous decision. On July 16, 2001, the state amended the indictment to charge second-degree murder prior to the commencement of the second trial. On July 17, 2001, the jury found defendant guilty as charged. On August 14, 2001, defendant was sentenced to life imprisonment without benefit of probation, parole, or suspension of sentence. Defendant now appeals.

STATEMENT OF FACT

Detective Bernard Crowden testified that on May 19, 2000 he proceeded to 1132 Carondelet Street to investigate a shooting. Upon arrival, he observed a prone unresponsive black male with an apparent gunshot wound to the chest. The body was situated in the threshold of an apartment

occupied by Miss Annie Jones. A small vial of cocaine was recovered near the body. Vertis Alexander occupied an apartment located at the end of the hallway. Detective Crowden and other officers were able to locate five potential witnesses who accompanied the officers back to the police station. Based upon Crowden's interviews with the witnesses, Calvin Coleman was developed as a suspect in the homicide and Detective Crowden obtained a warrant for his arrest.

Dr. James Traylor testified as an expert in forensic medicine and told the jury that he performed an autopsy on the victim, Tony Cressey. He determined that Cressey died as a result of gunshot wounds inflicted in a homicide. Tests revealed the presence of cocaine in the deceased's urine.

Annie Jones testified that she was acquainted with the defendant from seeing him in the neighborhood for several weeks prior to the shooting. Furthermore, she had seen him around the apartment building all day before the shooting. Annie Jones related that on the day of the shooting she was inside her apartment when she heard a popping sound and then heard screaming. She immediately opened her door to check on the safety of her godchild, who was right outside. She saw the victim lying on the floor. Calvin Coleman, who she knew by the moniker of "Casino," was standing over the victim with one hand in his pocket. She recognized him at once. In

defendant's other hand she observed a handgun. She grabbed the baby and told her daughter to call 911. Later, Jones readily identified Coleman from a photographic lineup.

Arc Angelety testified that he has known the defendant for approximately two years. On the day of the shooting, Angelety was at 1132 Carondelet Street with his girlfriend Derwanda. Angelety and Derwanda were coming down the stairs when he heard Calvin Coleman and the victim arguing. He recalled something to the effect of "Give me your money" and "You think I'm playing" being said. When Angelety looked he saw that Coleman was clenching Cressey's shirt and that he had a gun to Cressey's head. Coleman was telling Cressey to give it up, and when Cressey pulled away, Coleman shot him in the chest. Angelety saw Coleman reach into Cressey's pocket and remove a large amount of money. He and Derwanda ran out of the building and then heard more gunshots.

Derwanda grew concerned as her son was in the apartment, and the two returned where they remained until the police arrived. Angelety stated that he did not speak to any officers at the scene and left without stating that he had witnessed the murder.

Two weeks later, Derwanda was murdered, and Angelety contacted the police. He met with Detective Crowden and gave a statement as to what

he observed. He identified Calvin Coleman from a photographic lineup.

Vertis Alexander testified that he was living in the building at 1132 Carondelet Street. Alexander had known the victim for approximately two years and the defendant for approximately four years. On the day of the shooting, Alexander was in his kitchen when he heard a couple of shots. Initially he entered the hallway to see what had happened and then he heard the sound of someone approaching and he retreated to his apartment and peered out into the hallway from behind his door. Alexander stated that he saw the defendant coming down the hall with a gun in his hand. Alexander asked him several times what had happened but he did not respond. Finally, the defendant asked Alexander for his keys, but Alexander explained that he had left them in the washroom. Coleman did not say anything else and left the building.

Alexander proceeded to the end of the hallway and observed Toney Cressey on the floor. Alexander stated he was moving his head. The screen door was on his head and Alexander held the door open. Alexander spoke briefly with the police and stated that he could identify the shooter if he saw him again.

Alexander admitted that he has previous convictions for possession of cocaine and for distribution of cocaine. Furthermore, he had a pending case

for distribution of cocaine in another section of Criminal District Court. Alexander was aware that if convicted in the pending case he could receive a life sentence. Approximately one month after the shooting, after consulting with his attorney, Alexander made a statement to police at his attorney's office and identified Calvin Coleman from a photographic lineup.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR NUMBER 1

Defendant assigns as error the denial of defendant's motion to quash. The record reflects that after the jury had been selected and prior to their being sworn, the defendant urged a motion to quash the indictment on the basis of a ruling entered two weeks prior by Judge Arthur Hunter in another case that the grand jury and or the grand jury foreman had been selected in a racially discriminatory manner. Defendant did not present any evidence. The motion was not in writing, as mandated by La. C.Cr.P. art. 536, and defendant did not allege any basis to conclude that Judge Hunter's ruling had any bearing on the grand jury involved in this case. Essentially, defendant did not present any basis from which the trial court could have possibly granted the motion. Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 2

Defendant alleges as error the denial of his motion for mistrial because he was prejudiced by the introduction of evidence of another crime.

La. C.Cr.P. 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.

La.C.Cr.P. art. 771, in pertinent part, provides:

> [T]he court shall promptly admonish the jury to disregard a remark or comment made during the trial, or in argument within the hearing of the jury, when the remark is irrelevant or immaterial and of such a nature that it might create prejudice against the defendant, or the state, in the mind of the jury:
>
> (1) When the remark or comment is made by the judge, the district attorney, or a court official, and the remark is not within the scope of Article 770;

In *State v. Edwards*, 97-1797 (La. 7/2/99), 750 So.2d 893 (La. 1999), the court reviewed the relevant jurisprudence as follows:

> A mistrial is warranted under La.Code Crim.P. art. 770 when certain remarks are considered so prejudicial and potentially damaging to a defendant's rights that even jury admonition could not provide a cure. *State v. Johnson*, 94-1379

> (La. 11/27/95), 664 So.2d 94. Potentially damaging remarks include reference to race or religion, when not material or relevant to the case, and direct or indirect reference to another crime committed or alleged to be committed by the defendant, unless that evidence is otherwise admissible. La. Code Crim. P. art. 770. The comment must be within earshot of the jury and must be made by a judge, district attorney, or other court official. Id. Comments must be viewed in light of the context in which they are made. *State v. Webb*, 419 So.2d 436, 440 (La.1982). Moreover, 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. *See State v. May*, 362 So.2d 516 (La.1978).

Id. 97-1797, p. 19-20, 750 So.2d at 906.

On redirect, the following exchange occurred between the prosecutor and the witness Vertis Alexander:

> Q. When you went to Mr. Wainwright's office, did you go there expecting to exchange testimony for any kind of a deal?
>
> A. No.
>
> Q. Why did you go to Mr. Wainwright's office?
>
> A. I went to Mr. Wainwright's office only after a lady that was involved in this case was murdered. And I understood that since -- what I seen, that anything might happen. If she was

> murdered and she was an eyewitness in the case, and I was more or less one, too.

An objection was entered and the jury was excused. Initially, defense counsel stated his objection as follows: "We have a witness now saying that a person who is dead made an eyewitness identification, and that cannot be cross-examined. I don't know how we are going to cross-examine that." The prosecutor responded:

> Your Honor, this was adjudicated in the last trial. The door was opened the last time because there was an allegation that Mr. Vertis Alexander was fishing for a deal, which was the direct allegation of the defense attorney.
>
> There was no direct allegation that this defendant had anything to do with that murder. This was fully adjudicated in the last trial, and I think that it's appropriate to explain why he came forward to his attorney. That's the reason behind it.
>
> * * *
>
> I think the jury has the right to know not every detail of what happened but certainly his reason for coming in.

The following exchange between Judge Cannizzaro and defendant's attorney, Joseph Meyer ensued:

> **The Court**: I agree with you. I think they do, too. Somebody was murdered. She was supposedly an eyewitness. He goes to Mr. Wainwright's office out of fear. I think that's legitimate. Mr. Meyer is attempting to couch it in terms of a deal. He says, no; that's why he went. I think that's proper.
>
> **Mr. Meyer**: Now I have to defend against two murders.
>
> **The Court**: Well I disagree with that. He's only giving you his

> reason as to why he went to his lawyer's office. He never said this man – He's not assessing blame for anything. He said an eyewitness was murdered. He went to his lawyer's office; what should he do? That's fair game, in my opinion.

Although defendant objected to testimony on the basis that he was unable to cross examine the witness, it appears that the error assigned here was preserved when counsel complained that he had to defend against two murders.

The state contends that the assignment or error is unfounded as the defense opened the door to the testimony concerning why Alexander went to his attorney's office. The record reflects that during cross-examination defense counsel alleged that Alexander sought out his attorney in an effort to obtain a deal in his pending case in exchange for his testimony.

In *State v. Ingram*, 29,172 (La. App. 2 Cir. 1/24/97) 688 So.2d 657, the defendant was charged with aggravated rape of a minor. During cross examination of the victim, the defense sought to establish that the defendant's relationship with the minor was characterized by normal discipline and to highlight the fact that the victim had not told anyone that she had been sexually abused. On redirect, the state elicited testimony relating to an incident in which the defendant had beaten the victim and injured one of her eyes. The defendant moved for a mistrial alleging that the state had introduced evidence of other crimes relating to cruelty of a

juvenile. In denying defendant's claim on appeal the court stated:

> A witness who has been cross-examined is subject to redirect examination as to matters covered on cross-examination and, in the discretion of the court, as to other matters in the case. La. C.E. art. 611 D; *see State v. Wiley*, 614 So.2d 862, 871 (La. App. 2d Cir.1993). A trial court's ruling allowing exploration of such matters on redirect will not be disturbed on appeal absent an abuse of the trial court's "broad discretion." *State v. Robinson*, 624 So.2d 1260, 1264 (La. App. 2d Cir.1993), *writ denied*, 93-2899 (La. 2/11/94), 634 So.2d 372.
>
> The trial judge did not abuse his broad discretion. K.T.'s testimony on redirect was admissible because defendant opened the door to it on cross-examination. After the defense cross-examined her regarding an uncharged crime as to which the state did not introduce evidence, the court could permit the state on redirect to inquire on the subject as far as is necessary for a proper explanation of the testimony given on the cross-examination regarding the other crime. *State v. Graham*, 486 So.2d 1139, 1144 (La. App. 2d Cir.), *writ denied*, 493 So.2d 633 (1986); *State v. Huizar*, 414 So.2d 741, 750 (La.1982).

Id., 29,172 at p. 18, 688 So.2d at 668.

Similarly, after defense counsel suggested that the witness's reason for coming forward with evidence in the case was in an effort to make a deal, the state was entitled to assert a contrary explanation for the witness's actions. Additionally, from the colloquy between the judge and counsel, it is apparent that the testimony did not come as a surprise, having occurred at the first trial, and that when defense counsel sought to characterize the witness's testimony as self-serving, he likely anticipated the response.

Furthermore, as noted by the prosecutor and the trial court, there was

no allegation that the defendant was responsible for the witness's murder. The mere mentioning of another crime is insufficient to trigger La. C.Cr.P. art. 770. The reference must be to another crime alleged to have been committed by the defendant. Thus, we find this assignment of error without merit.

For these reasons, we affirm the conviction and sentence of Calvin Coleman.

CONVICTION AFFIRMED; SENTENCE AFFIRMED