Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1551
Lower Tribunal No. 16-11280A

Mackenson Cherisme,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jose L. Fernandez, Judge.

Carlos J. Martinez, Public Defender, and Shannon Hemmendinger, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Brian H. Zack, Assistant Attorney General, for appellee.

Before EMAS, C.J., and HENDON and MILLER, JJ.

PER CURIAM.

We affirm Cherisme's convictions for attempted second-degree murder and aggravated battery with a firearm. We find no abuse of discretion in the trial court's denial of the defense motion for mistrial, as the comment in the instant case was not "so prejudicial as to vitiate the entire trial." Hamilton v. State, 703 So. 2d 1038, 1041 (Fla. 1997).

The victim's singular comment came during his testimony in which he described Cherisme's co-defendant as "the one in jail." The comment was unsolicited by the State; was brief, isolated and inadvertent; was not referenced during the remainder of the trial; and was followed by the trial court's curative instruction. "An accused is entitled to a fair trial, not a perfect one." Vedder v. State, 313 So. 2d 49, 50 (Fla. 3d DCA 1975) (citing Lutwak v. U.S., 344 U.S. 606, 619 (1953)). See also Guzman v. State, 214 So. 3d 625, 633 (Fla. 2017) (applying abuse of discretion standard to review of trial court's denial of motion for mistrial after witness testified that murder defendant was in jail at the time the DNA sample was taken from him, observing "a reasonable juror would know that [the defendant] had been in jail for at least some period of time prior to trial because he was charged with first-degree murder" and further noting that the witness' reference to jail was brief, isolated, inadvertent, and not so prejudicial as to vitiate the entire trial)(additional citations omitted)); Givens v. State, 748 So. 2d 381 (Fla. 3d DCA 2000); Ruger v. State, 941 So. 2d 1182 (Fla. 4th DCA 2006).

Affirmed.