Third District Court of Appeal

State of Florida

Opinion filed September 16, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2075
Lower Tribunal No. 18-20399B

Willie Warren,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Alan S. Fine, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Kseniya Smychkouskaya, Assistant Attorney General, for appellee.

Before EMAS, C.J., and LINDSEY and GORDO, JJ.

EMAS, C.J.

Warren was charged with three felony counts of sale/possession with intent to sell cocaine, and one misdemeanor count of possession of marijuana. Following a jury trial, Warren was acquitted of the three felony charges and found guilty of the misdemeanor marijuana charge. The trial court withheld adjudication and placed Warren on ten months' administrative probation, with credit for time previously served in the Miami-Dade County Jail. Warren appeals his conviction and sentence, contending that the trial court committed fundamental error in offering what Warren characterizes as "prosecution-friendly" hypotheticals during voir dire, requiring reversal and remand for a new trial notwithstanding the absence of any objection to preserve this asserted error. We conclude that no fundamental error occurred, and affirm. See Rutherford v. Moore, 774 So. 2d 637, 646 (Fla. 2000) (noting that fundamental error has been defined as error that "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error," in other words error "so prejudicial as to vitiate the entire trial") (citations omitted).

We hasten to add, however, that while a trial judge is tasked with explaining to jurors the law they are to apply, the trial judge should rely upon, and seldom stray from, Florida's Standard Jury Instructions. This should not be interpreted as prohibiting a trial judge from using a hypothetical that properly explains the law, but due care must be taken in the process. In the instant case, the trial judge, after

reading the instruction on reasonable doubt,[1] used examples that included a cat eating a mouse in a box, a Star Trek transporter, and a Harry Potter spell. Such remarks carry the potential for confusion, a danger heightened by the fact that the remarks emanate from the bench. Trial judges must be ever mindful "that the high position which a judge holds in the scheme of the trial magnifies, in the minds of the jurors, the meaning of comments by the judge, to which he himself may not attach particular importance." Kellum v. State, 104 So. 2d 99, 104 (Fla. 3d DCA 1958). We do not question the trial court's laudable intentions in this regard. Nevertheless, and as our sister court did in Daymon v. State, 744 So. 2d 581, 582 (Fla. 2d DCA 1999), we "urge the trial court to exercise extreme caution when deviating from the . . . standard jury instructions." [2]

Affirmed.

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[1] See Fla. Std. Jury Instr. (Crim.) 3.7

[2] The instant case is distinguishable from those cases in which "the trial judge determines that an applicable standard jury instruction is erroneous or inadequate, in which event the judge shall modify the standard instruction or give such other instruction as the trial judge determines to be necessary to instruct the jury accurately and sufficiently on the circumstances of the case." Fla. R. Jud. Admin. 2.580(a). See also Chicone v. State, 684 So. 2d 736 (Fla. 1996); Radillo v. State, 582 So. 2d 634, 638 n. 5 (Fla. 3d DCA 1991).