

SUPREME COURT OF LOUISIANA

No. 97-KA-1797

STATE OF LOUISIANA

Versus

CEDRIC D. EDWARDS

LEMMON, J., Concurring

Because La. Code Crim. Proc. art. 770(2) provides for a mandatory mistrial when a court official refers, in the presence of the jury, to another crime committed by the defendant, prosecutors must carefully avoid the temptation to take a cheap shot that conveys to the jury the fact of a prior conviction that is otherwise inadmissible.

During the examination of a police officer in this case, the prosecutor asked how the officer knew defendant's address where the critical evidence was found. The officer answered that the information was obtained through the probation officer. Defense counsel immediately objected and moved for a mistrial under Article 770(2), but the trial judge denied the motion.

The prosecutor, who was a court officer, obviously asked the question, not to secure totally irrelevant information,¹ but rather to orchestrate a communication to the jury that defendant had been convicted of another crime and was on parole at the time of this crime. The prosecutor asked the question with full knowledge that the answer would be extremely prejudicial to defendant, but nevertheless deliberately elicited the totally irrelevant and highly prejudicial information. Since eliciting the information

¹The information sought by the question was absolutely and totally irrelevant to any issue in the case. The source of the officer's knowledge of defendant's address did not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." La. Code Evid. art. 401.

could serve no other purpose, one can only conclude that the prosecutor asked the question in order to get inadmissible, but highly prejudicial, information before the jury.

Nevertheless, this was an indirect reference that, as the majority points out, did not “unmistakably” point to evidence of another crime, and the testifying witness, although prompted by a court official, was not himself a court official. Inasmuch as a mandatory mistrial was not required and the misconduct occurred during the guilt phase where defendant’s identity was clearly established beyond a reasonable doubt, I concur in the decision.