

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

MARK BENOIT,

Appellant,

v.

Case No. 5D12-711

STATE OF FLORIDA,

Appellee.

_____ /

Decision filed January 25, 2013

Appeal from the Circuit Court
for Volusia County,
Randell H. Rowe, III, Judge.

James S. Purdy, Public Defender, and
David S. Morgan, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

TORPY and EVANDER, JJ., concur.

ORFINGER, C.J., concurring specially with opinion.

I concur with the decision to affirm Mr. Benoit's convictions. While the State clearly, in my view, violated the court's order in limine, it was within the trial court's discretion to deny the motion for mistrial.

In her opening statement, the prosecutor referred to matters that the trial court previously ruled were inadmissible. Then, when the mistrial motion was made, the prosecutor claimed that she did not violate the order in limine, arguing that her opening statement was not evidence and the order only precluded the matters referred to from being introduced into evidence. That explanation is disingenuous at best and fails even the "straight face" test. The prosecutor should have been sanctioned for what was a blatant violation of the court's order. The State should demand better from its assistant state attorneys.