

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
June 26, 2001 Session

STATE OF TENNESSEE v. DEMETRIUS HOLMES

**Direct Appeal from the Criminal Court for Knox County
No. 67734 Richard R. Baumgartner, Judge**

No. E2000-02263-CCA-R3-CD

Robert W. Wedemeyer, J., dissenting

I respectfully dissent. I agree with the majority opinion that the granting or denial of a mistrial is a matter within the sound discretion of the trial court and that a trial court should grant a mistrial only when it is of “manifest necessity.” I would add that the burden of establishing a “manifest necessity” is upon the appellant. State v. Williams, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996).

From the entire record pertaining to the issue of a mistrial in this case, I conclude that the testimony by Detective Clowers was an inappropriate comment that was not responsive to defense counsel’s question and that was prejudicial to the Defendant. However, in light of the overwhelming evidence of the Defendant’s guilt presented in this case and in light of the curative instruction regarding Detective Clowers’ statement, I also conclude that the trial court did not abuse its discretion in denying the motion for a mistrial. Further, I conclude that if any error was committed by the trial court concerning this issue, such error was harmless. See Tenn. R. App. P. 36(b). Therefore, I would affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE