For the reasons stated, the judgment is affirmed.

GLAZE, J., not participating.

Supplemental Opinion on Denial of Rehearing
April 20, 1987

727 S.W.2d 383

TRIAL — MISTRIAL — WIDE LATITUDE AFFORDED TRIAL COURTS IN GRANTING — STANDARD OF REVIEW. — Where the trial court remarked that the answer of the witness was not responsive to the prosecutor's question and the court was evidently satisfied that the state had not intentionally elicited an improper response, there is no apparent abuse of discretion in the court's refusal to grant a mistrial, given the wide latitude afforded trial courts in acting on mistrial motions.

STEELE HAYS, Justice. In our original opinion we cited the testimony of J.R. Robinson, a witness for the state (Point IV, "Prior Convictions and Other Acts of Misconduct"). After the prosecution had asked Robinson on redirect if there was another occasion when Robinson and Dick Watson, appellant's father, had gone to the back of appellant's farm, Robinson answered, "Yes, he took me there to get some marijuana." This response brought the following (R. p. 583):

By Mr. Delinger (Defense Counsel):

Well, we move for a mistrial, and in the alternative we would ask the court that the jury be admonished to disregard that last statement.

By the Court:

I will deny the mistrial but I will admonish the jury.

By Mr. Delinger:

All right. Thank you, Judge. [The jury was then admonished accordingly].

In our original opinion we said that because the trial court granted one of the two remedies sought—the admonition—there could be no error since the defense had asked for one or the other.

By petition for rehearing the appellant argues that we overlooked a later development in the trial reflecting that the motion was first for a mistrial and, if denied, then for an admonition. After a noon recess the following occurred (R. p. 584):

> By Mr. Delinger:
>
> (At the bench) My motion, I phrased it incorrectly, I moved for a mistrial first, and then I said or in the alternative for an admonition to the jury. I didn't mean to withdraw my moving for the mistrial. And then you ruled no, then I moved for an admonishment.
>
> By the Court:
>
> That's right. I took it in that order.

In light of the trial court's comment, we accept appellant's point that his motion for a mistrial was preserved and should be decided on the merits.

We have reviewed J.R. Robinson's testimony in full. Robinson was called by the state and on direct examination he was asked nothing about appellant's father or about being at the back of appellant's farm. On cross-examination defense counsel brought out that Robinson and Dick Watson were friends, that Dick Watson had given Robinson between 15 and 20 pounds of marijuana for helping him cut wood. Robinson was also asked by the defense about other trips to appellant's farm. On redirect, the prosecutor asked if there had been one other time he and Dick Watson had gone to the back of the farm and Robinson gave the answer already quoted, prompting the mistrial motion.

In denying the motion for a mistrial the trial court remarked that the answer was not responsive to the question posed. Whether the question could have been answered simply yes or no, rendering the reference to marijuana as voluntary by the witness, was for the trial judge to decide. Evidently he was satisfied the state had not intentionally elicited an improper response from the witness and given the wide latitude afforded trial courts in acting on mistrial motions we see no abuse of discretion. We do not regard the incident as so manifestly prejudicial as to require a

mistrial. *Mosier* v. *State*, 285 Ark. 67, 684 S.W.2d 810 (1985).

Rehearing denied.