

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Case No. 20-F-426-K

RONNIE COCHRAN

Defendant.

ORDER FOLLOWING HEARING ON MOTION TO DISMISS

This matter came before the court on December 8, 2023, by the State of West Virginia, by Assistant Prosecuting Attorney, Joshua Thompson, Esquire, and the Defendant, Ronnie E. Cochran, by counsel, John D. Wooton, Sr., Esquire, and John D. (Jody) Wooton, Jr., Esquire, for a hearing concerning a motion to dismiss all charges on the grounds of Double Jeopardy.

Defendant's Motion to Dismiss All Charges On Grounds of Double Jeopardy

Defendant moves the court to dismiss all charges against him on grounds of Double Jeopardy after he successfully moved the Court to grant a mistrial following a statement made by the assistant prosecuting attorney in his opening which alluded to the possibility that the defendant would take the stand and testify on his own behalf. In support of his motion, the Defendant relies on the case of Oregon v.

Kennedy, 456 U.S. 667 (1982), which sets forth the narrow exception to the well-established principle at that double jeopardy does not attach in the case of a mistrial that was requested by the Defendant.

Analysis

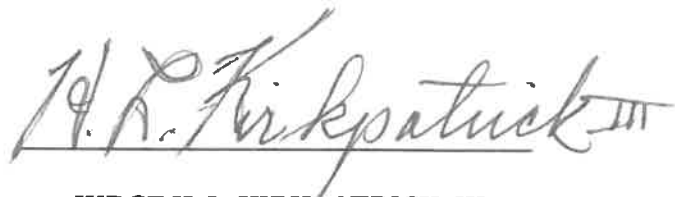
In the case at bar, the Defendant contends that the Constitutional guarantee against double jeopardy was breached when the prosecuting attorney alluded to his possible testimony during his opening statement, prompting the defendant to move for a mistrial. His basis for this claim is that, pursuant to Oregon v. Kennedy, 456 U.S. 667 (1982), the United State Supreme Court enumerated a very narrow exception to the general rule that Double Jeopardy does not attach in the instance of a mistrial, and that exception is when the prosecuting attorney's statement was intentional, designed to goad the defendant into requesting a mistrial. The defense believes that this was the prosecutor's intent in the instant case. This Court disagrees.

After reviewing the trial transcript in this matter, and the transcript of the hearing on the motion to dismiss, this court determines that the statement in question made by the assistant prosecuting attorney was uttered inadvertently and not with any intent to cause a mistrial. The court observes that there was no demonstrated effort on the part of the assistant prosecutor to goad the defendant into moving for a mistrial. The assistant prosecutor has described it as "the most embarrassing thing I've ever done in a courtroom", and has pointed out that the State gained no advantage from the mistrial. There certainly has not been any

evidence to the contrary, inasmuch as the State's remark occurred in opening statements, before any evidence was presented.

WHEREFORE, it is hereby **ORDERED** that Defendant's Motion to Dismiss All Charges is hereby **DENIED**, and all objections exceptions to this ruling are preserved.

ENTERED this 18th day of January, 2024.

A handwritten signature in cursive script, reading "H. L. Kirkpatrick III", written in dark ink. The signature is fluid and stylized, with the letters "H", "L", and "K" being particularly prominent. The signature is written over a horizontal line.

JUDGE H. L. KIRKPATRICK, III