IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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STATE OF WEST VIRGINIA,

Plaintiff Below, Respondent,

v. **No.: 24-98**

RONNIE COCHRAN,

Defendant Below, Petitioner.

Reply Brief of Petitioner Ronnie Cochran

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INTRODUCTION

In its Response Brief, the State of West Virginia (the "State") proffers the simple argument that the statement and actions of the Assistant Prosecuting Attorney at issue in this appeal were merely a mistake and were not done intentionally. In support of this assertion, the State makes the naked claim that the Assistant Prosecuting Attorney did not have any motivation for his actions nor benefit to him from them.

But these arguments fail because the evidence and circumstances clearly show that the Assistant Prosecuting Attorney's statement and actions were certainly intentional and that he had ample motivation and benefit to be derived from those actions. For instance, the Assistant Prosecuting Attorney had to know his statement was immediately improper because he was the one who moved for, and got, the Court Order precluding the parties from any statement as to testimony by Petitioner Ronnie Cochran ("Mr. Cochran"). Further, he admitted to deciding to make the statement the night before the opening statements after hearing what was said by Defense Counsel the day before during *voir dire*. Moreover, the Assistant Prosecuting Attorney admitted he knew what he said would result in a mistrial and said it anyway. Accordingly, the evidence and circumstances elucidate the Assistant Prosecuting Attorney's motivation and benefit as well. The Assistant Prosecuting Attorney did not like the way *voir dire* had proceeded the day before and the resulting jury that it impaneled. And he felt unready for trial. Consequently, thinking he had nothing to lose if caught and would get a second chance at trial if a mistrial were declared, the Assistant Prosecuting Attorney planned overnight to make the statement to the jury to influence them in his favor that Mr. Cochran would testify at trial that it was self-defense.

But such conduct is impermissible and constitutes double-jeopardy under the exception set forth in Oregon v. Kennedy, 456 U.S. 667 (1982). Thus, for these reasons as set forth in greater detail below, as well as the reasons included in Mr. Cochran's Appellate Brief, this Court should reverse the Circuit Court's Order denying the Motion to Dismiss, dismiss all charges against Mr. Cochran, and award any other relief the Court may deem just and appropriate.

DISCUSSION

The evidence established that the Assistant Prosecuting Attorney acted intentionally to cause a mistrial and to goad Mr. Cochran into moving for its issuance and that the Circuit Court was clearly wrong to find otherwise. Indeed, the circumstances and actions of the Assistant Prosecuting Attorney undercut the State's claim that the actions in question were merely an honest mistake. First and foremost, it was the Assistant Prosecuting Attorney, prior to trial, who set the rules and moved the Circuit Court to prohibit any discussion or inference to the jury as to whether Mr. Cochran would testify. (JA 000037-38.) In other words, the Assistant Prosecuting Attorney, more than anyone else, knew that it was impermissible to discuss Mr. Cochran's testimony. And, then right out of the gate in his opening statement, the Assistant Prosecuting Attorney violated that very order he had sought and received. (JA 000081.) Specifically, the Assistant Prosecuting Attorney told the jury in plain, unambiguous terms, "Ronnie Cochran will likely come up here and say it was self-defense." (Id.)

Second, the Assistant Prosecuting Attorney's actions were clearly intentional based on the Assistant Prosecuting Attorney's own admissions. Indeed, the Assistant Prosecuting Attorney conceded that he planned this statement in his opening after believing that defense counsel had indicated during *voir dire* the day before that Mr. Cochran would testify he acted in

self-defense. (JA 000149-150.) In other words, the Assistant Prosecuting Attorney conspired over the course of twenty-four (24) hours to knowingly violate the Order to gain an advantage with the jury. (Id.) That is to say, wanting to attack the jury's understanding from *voir dire* that this case may involve the defense of self-defense, the Assistant Prosecuting Attorney planned and prepared his statement for his opening to undercut Mr. Cochran's planned defense. (Id.)

Third, the Assistant Prosecuting Attorney was fully aware that his statement would lead to a mistrial. Indeed, he admitted as much to the Circuit Court at the hearing on Mr. Cochran's Motion to Dismiss. (JA 000168.) In fact, the Assistant Prosecuting Attorney admitted that his statement required counsel for Mr. Cochran to move for a mistrial. (JA 000168.)

Fourth, the Assistant Prosecuting Attorney's subsequent actions further confirmed that his actions and statement were intentional and not a mere mistake. When defense counsel first confronted the Assistant Prosecuting Attorney regarding his breach of the Order, the Assistant Prosecuting Attorney advised counsel, "okay, I've been put on notice." (JA 000081.) But he was already on notice from the Order. Then, when the Court excused the jury and came back to take up the Motion for Mistrial, the Assistant Prosecuting Attorney tried to convince the Court he had not said Mr. Cochran would testify but claimed, "I believe I said argue and I didn't say testify because I've been put on notice of that." (JA 000084.) But both transcriptions revealed the Assistant Prosecuting Attorney told the jury during his opening that "Ronnie Cochran had every opportunity in the world to not have this happen on that night. He will likely come up here and tell you it was self-defense." (Id.) The Assistant Prosecuting Attorney next claimed that he was referring to defense counsel and not to Mr. Cochran and had pointed to defense counsel

when making the statement. (JA 000149.) But this too was proven to be false as news video showed otherwise. (JA 000162-163.)

Therefore, the evidence in this case established the Assistant Prosecuting Attorney made the improper statement intentionally, knowing it would result in a mistrial. The Assistant Prosecuting Attorney violated a court Order, which he himself had sought. He did so intentionally and premeditatively after defense counsel's *voir dire*, so as to gain an advantage in the trial related to Mr. Cochran's self-defense assertion. When caught, he tried to avoid responsibility, claiming he said "argue" and not "testify." When the Circuit Court uncovered that to be false, the Assistant Prosecuting Attorney claimed he was referring to defense counsel and not to Mr. Cochran. But this too was proven to be false through a news video recording of the event. Thus, for all these reasons, the Kennedy exception exists here and this Court should reverse the denial of Mr. Cochran's Motion to Dismiss and dismiss all charges against Mr. Cochran with prejudice.

CONCLUSION

For the reasons set forth above, the Court should reverse the Circuit Court's Order denying the Motion to Dismiss, dismiss all charges against Mr. Cochran, and award any other relief the Court may deem just and appropriate.

Signed: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July 2024, true and accurate copies of the foregoing **Reply Brief of Petitioner Ronnie Cochran** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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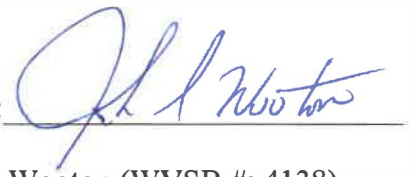
Signed: 

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