



IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA	)	
	)	
V.	)	Case No.: CC-2024-000430.00
	)	
HARRISON JAMARION ALLEN	)	
Defendant.	)	

ORDER ON DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

This matter is before the Court on the Defendant's Motion to Dismiss With Prejudice for Deliberate State Interference with a Central Defense Witness and Bar Retrial. The State has filed a written response in opposition. The Court has considered the Defendant's motion, the State's response, the transcript and record of the trial proceedings, the Court's prior Order declaring a mistrial, and the applicable law.

In setting forth the procedural history relevant to the present motion, the Court relies upon the transcript and record of the proceedings.

I. Procedural Background

On September 1, 2026, the Court granted the Defendant's motion for a mistrial. In its written Order, the Court expressly declined to reach the Defendant's request that the mistrial be declared with prejudice and made no determination concerning the effect of the mistrial upon future proceedings.

The Defendant thereafter filed the present Motion to Dismiss With Prejudice. The State filed a response in opposition. The question whether retrial is barred is therefore now before the Court.

II. Applicable Law

When a defendant requests and obtains a mistrial, the Double Jeopardy Clause ordinarily does not bar retrial. *Oregon v. Kennedy*, 456 U.S. 667, 672 (1982). The exception applicable to a defendant-requested mistrial is limited to circumstances in which the governmental conduct giving rise to the successful motion for mistrial was intended to provoke the defendant into moving for a mistrial. *Id.* at 679.

The Alabama Supreme Court applied this standard in *Ex parte State (In re R.E.D.)*, 304 So. 3d 1170 (Ala. 2020). Before a defendant is entitled to have the issue of prosecutorial intent submitted for factual determination, the defendant must present “substantial evidence that could rationally support a conclusion that the State acted intentionally to goad the criminal defendant into filing a motion for a mistrial.” *Id.* at 1175.

The inquiry is one of specific intent. The fact that conduct may have contributed to circumstances resulting in a mistrial does not, without more, establish the intent required by *Kennedy*. See *Kennedy*, 456 U.S. at 675–79.

Whether the requisite intent exists may be determined from the objective facts and circumstances. *Id.* at 675. In *R.E.D.*, the Alabama Supreme Court recognized that the circumstances surrounding the course of the trial may be relevant to determining whether substantial evidence of the required intent exists. 304 So. 3d at 1175–76.

The Alabama Court of Criminal Appeals applied these principles in *Flynn v. State*, 409 So. 3d 80 (Ala. Crim. App. 2024). In considering whether the defendant had presented substantial evidence of an intent to provoke a mistrial, the Court considered the objective circumstances surrounding the proceedings, including the State’s opposition to the defendant’s request for a mistrial.

Accordingly, the issue presently before this Court is narrow. The question is not whether the circumstances presented during trial were sufficient to warrant granting the Defendant’s motion for mistrial. That issue was resolved when the Court granted the motion. The question now presented is whether the Defendant has presented substantial evidence from which a rational factfinder could conclude that the State acted with the specific intent to provoke the Defendant into requesting a mistrial.

III. Analysis

The Court has considered the circumstances identified in the Defendant’s motion together with the transcript and record of the proceedings. In conducting this analysis, the Court distinguishes between allegations and argument of counsel and evidence contained in the record and bases the following on evidence in the record. The circumstances concerning Ms. Black and her anticipated testimony were relevant to the Court’s determination that the Defendant’s motion for mistrial should be granted. The present inquiry, however, is different. Under *Kennedy* and *R.E.D.*, the issue is whether the Defendant has presented substantial evidence of

the specific intent to provoke the Defendant into requesting a mistrial. The objective circumstances reflected in the record do not provide substantial evidence of that specific intent.

During the August 31 proceedings concerning Ms. Black, the State stated that the jury was waiting and that it was “ready to move forward with this trial.” On September 1, after defense counsel advised the Court that Ms. Black had been served and was expected to appear, the State stated that it was “eager to move forward with this case.” When the Defendant’s pending motion for mistrial was ultimately considered, the State opposed the motion and maintained that the trial should proceed. The Court’s prior written Order likewise reflects that the State opposed the motion and requested that the trial proceed.

The State’s opposition to the mistrial is not, standing alone, dispositive of the question of intent. It is, however, an objective circumstance relevant to the inquiry required by *Kennedy*. See *Flynn*, 409 So. 3d 80.

The record further reflects that the Defendant requested the mistrial and maintained that request after Ms. Black invoked her Fifth Amendment privilege. Before granting the motion, the Court asked defense counsel whether anything short of a mistrial would permit the defense to proceed. Defense counsel represented that Ms. Black possessed direct, firsthand knowledge that could not be supplied by another witness. The Court’s prior Order reflects that the defense continued to request a mistrial and represented that no other witness could supply the firsthand evidence it sought from Ms. Black.

Having considered the record as a whole, the Court concludes that the Defendant has not presented substantial evidence from which a rational factfinder could conclude that the State acted with the specific intent to provoke the Defendant into requesting a mistrial.

Because the Defendant has not presented substantial evidence satisfying the threshold established in *R.E.D.*, the Defendant is not entitled to a factual proceeding on the issue of prosecutorial intent. Retrial is therefore not barred under the exception recognized in *Kennedy*.

IV. Alternative Basis for Dismissal

The Defendant also asserts that the circumstances concerning Ms. Black independently require dismissal of the indictment based upon the Defendant’s

constitutional right to present a defense. The Court has considered the authorities cited by the Defendant, including *Thomas v. State*, 418 So.2d 921 (Ala. Crim..App. 1981).

Dismissal of an indictment with prejudice is an extraordinary remedy. See *Ex parte State (In re State v. Martin)*, 287 So.3d 384 (Ala. 2018). On the record presently before the Court, the Defendant has not established that the circumstances at issue prevent a fair retrial or that any resulting prejudice cannot be addressed through a lesser remedy. Accordingly, dismissal with prejudice is not warranted on this alternative ground.

V. Remaining Requests

The Defendant alternatively requests an evidentiary proceeding concerning the State's intent. Because the Defendant has not presented substantial evidence satisfying the threshold established in *R.E.D.*, that request is **DENIED**.

The Defendant also requests disclosure and preservation of communications and other materials relating to Ms. Black. The requested disclosure is not necessary for resolution of the present motion. Nothing in this Order alters any preservation or disclosure obligation otherwise imposed by law, rule, or prior order of this Court. All other relief requested by either party in connection with the Defendant's motion and the State's response is DENIED as unnecessary to the Court's determination of the issues presently before it.

VI. Conclusion

For the reasons stated above, the Court concludes that the Defendant has not presented substantial evidence from which a rational factfinder could conclude that the State acted with the specific intent to provoke the Defendant into requesting a mistrial as required by *Oregon v Kennedy*, 456 U.S. 667 (1982), and *Ex parte State (In re R.E.D.)*, 304 So.3d 1170 (Ala. 2020). The Defendant has not establish an alternative basis for dismissal of the indictment with prejudice.

Accordingly, the Defendant's Motion to Dismiss with Prejudice is DENIED.

DONE this 9th day of September, 2026.

/s/ EMILY N JOHNSTON
CIRCUIT JUDGE