

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

<b>STATE OF GEORGIA,</b>	)	
	)	<b>INDICTMENT NO.</b>
<b>v.</b>	)	<b>22SC183572</b>
	)	
<b>DEAMONTE KENDRICK,</b>	)	<b>JUDGE WHITAKER</b>
	)	
<b>Defendant.</b>	)	

**ORDER DENYING DEFENDANT KENDRICK'S MOTION FOR MISTRIAL AND  
SUPPLEMENT TO SAME**

Before the Court is Defendant Kendrick's July 23, 2024 motion for mistrial, supplemented on July 31, 2024. The Court has also considered the State's response, oral argument by the parties, the transcripts of the June 7 and June 10, 2024 ex parte proceedings, and the applicable law.

The motion for mistrial asserts three grounds for mistrial, with the supplement asserting a related fourth ground: (1) that it is impossible to redo the proceedings that occurred on June 12, 13, 14, and 17 before the jury, in the interim between Defendant's June 12, 2024 motion to recuse the predecessor trial judge and his ultimate recusal; (2) that Defendant's Constitutional right to be present at a critical stage of the proceedings was denied when neither he nor his counsel were present for the June 10, 2024 in chambers on-the-record ex parte discussions amongst the Court, prosecutors Love and Hylton, counsel for witness Copeland, and witness Copeland himself; (3) that Defendant's due process rights were violated when the predecessor trial judge allegedly aligned himself with the prosecution team by his comments during the June 7, 2024 in-court on-the-record ex parte discussion between the Court and prosecutors Love and Hylton and allegedly coerced witness Copeland into testifying during the June 10 ex parte meeting; and (4) as raised in the Defendant's Supplement that bias of the predecessor judge constitutes due process violations of Defendant's rights under the Constitutions of the United States and the State of Georgia.

Kendrick also asserts that the motion for mistrial was goaded by the State when it requested that the predecessor judge hold the June 10, 2024 ex parte meeting, which has been the subject of much discussion in this case, absented Kendrick from that meeting, and joined with the predecessor judge in the coercion of witness Kenneth Copeland.

**Impossibility of addressing or redoing the proceedings post June 12, 2024 which are void**

Defendant Kendrick raises issues that the Court has already addressed in granting Defendant Williams’ “Motion to Invalidate and Strike all Proceedings that Occurred in the above-referenced Case on and after the Initial Motion to Recuse Judge Glanville was filed on June 12, 2024.” As noted in the Order Granting Defendant William’s Motion, the Court has been working with the parties on which testimony and evidence should be resubmitted/re-presented to the jury in this case and whether any other the evidence at issue will be stipulated to as well any needed rulings and/or instructions related to same.<sup>1</sup> As such the Court does not find that there is an impossibility to addressing these issues and therefore there is not a basis to grant Defendant Kendrick’s Motion for Mistrial on these grounds.

**The June 10, 2024 ex parte meeting**

On June 10, 2024<sup>2</sup>, at the behest of prosecutor Love, the predecessor judge held an on-the-record in chambers meeting with Love and stand-in counsel for Copeland, Kayla Bumpus. Jun. 10, 2024 Transcript of ex parte (XPT), p. 3-22. Following a recess at which time Love departed the meeting, Copeland and prosecutor Hylton joined the meeting. Defendant’s motion raises

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<sup>1</sup> The Order Granting Defendant’s Williams Motion noted that the Court would work with the parties and since that time the Court has done just that, formulating instructions and addressing evidentiary issues with the input of all parties.

<sup>2</sup> Defendant Kendrick’s Motion mentions a June 12, 2024 ex parte meeting, which the Court believes to be a scrivener’s error as the Court is not aware of any ex parte meeting occurring on June 12, 2024, although that date is the date that Mr. Kendrick filed the Motion to Recuse Judge Glanville which ultimately lead to the current Judge presiding over this case.

several challenges to this ex parte meeting: did Defendant have a right to be present and did the ex parte meeting amount to coercion of Copeland's testimony, and did the predecessor judge's comments and participation in the ex parte meeting rise to the level of due process violations.

**The ex parte meeting was at a critical stage and violated Kendrick's Rights**

Defendant argues that the June 10, 2024 ex parte meeting was at a critical stage and violated his rights since he was not permitted to be present. "A 'critical stage' is 'one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or one in which the outcome of the case is substantially affected in some other way.'" Brenan v. State, 868 S.E.2d 782, 787 (Ga 2022) (internal citations omitted).

Defendant is correct that this meeting was about more than just the parameters of Copeland's immunity and whether he understood its potential ramifications. The initial stage of the meeting, before the first break, centered on the prosecution's concern with whether Copeland's main counsel was laboring under a conflict of interest<sup>3</sup> and with the logistics of handling Copeland's testimony with stand-in counsel. But because these topics were all ancillary to Copeland's immunity grant, the topic of the meeting remained at its core, and as asserted by the prosecution, Copeland's immunity grant.

Because the meeting dealt with Copeland's immunity grant and its ancillary issues, it was not a critical state of the trial at which the Defendant had a right to be present. See Snyder v. Comm. of Massachusetts, 291 U.S. 97, 105, 54 S. Ct. 330, 78 L. Ed. 674 (1934) (criminal defendant has a right to be present when his presence "has a relation, reasonably substantial, to the fullness of his opportunity to defend himself against the charge" but not when "his presence would be useless or its benefit but a shadow"); United States v. Gagnon, 470 U.S. 522, 526, 105 S. Ct.

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<sup>3</sup> This Court sympathizes with Mr. Melnick's understandable indignation at having his professionalism and his loyalties to his client questioned. The Court likewise appreciates defense counsel's umbrage.

1482, 84 L. Ed. 2d 486 (1985) (“the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only”).

The fact that here, discussions included what testimony would subject the witness to a charge of perjury; what would subject him to punishment for contempt of the order compelling his testimony; and what that sanction might entail (even if incorrect) does not change the analysis. Defendant’s rights were still not the subject matter under consideration. See also State v. Lowery, 308 Kan. 1183, 1212-1214, 427 P.3d 865 (2018) (no right to be present at hearing to compel witness testimony pursuant to immunity grant);<sup>4</sup> Chestnut v. New York, No. 06-CV-2172 (JS), 2009 U.S. Dist. LEXIS 110208, at \*11-14 (II A) (E.D.N.Y. Nov. 24, 2009) (ex parte meeting at trial court’s behest between court, prosecutor, and counsel for witness, initiated after defendant and his attorney had left the courtroom during a recess at the close of the witness’ direct examination, and held to ensure witness understood his deal with the prosecution and that he was not unknowingly incriminating himself and understood his constitutional rights held to be an “ancillary proceeding dealing only with the rights of the witness” at which defendant had no right to be present.

**The predecessor judge Improperly Coerced Copeland to Testify**

Separate from any defense right to be present for ancillary proceedings concerning witness immunity, Defendant has a right to a trial free of coerced testimony. Defendant asserts that certain arguably inaccurate representations made by the prosecutors and the predecessor judge to Copeland about the law of derivative use immunity, the applicable statute of limitations (relating

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<sup>4</sup> Lowery found that because the hearing there also included discussion and ruling on the *defendant’s* motion (a midtrial motion in limine regarding the witness using “street names’ during testimony), absence of the defense violated defendant’s statutory right to be present, though any constitutional error was waived. Here, there was no ex parte hearing or discussion of any defense motions. This analysis confirms that the key to whether the defendant has a right to be present for witness immunity proceedings is whether for some reason the *defendant’s* rights are *also* a subject matter under consideration.

to what crime or crimes, the defense does not specify), and the length of his possible incarceration for contempt coerced Copeland into testifying.

“Under both the federal and state Constitutions, a criminal defendant has a right to be present during critical stages of his trial.” Allen v. State, 310 Ga. 411, 418 (5), 851 S.E.2d 541 (2020). Defense counsel should have been afforded an opportunity to attend any hearing where a sworn witness in a critical stage of the trial is being coerced to testify.

Webb v. Texas, 409 U.S. 95, 95-96, 93 S. Ct. 351, 34 L.Ed.2d 330 (1972), is the touchstone for evaluating claims of coercion by the trial court of a witness’ testimony. Archer v. State, 383 Md. 329, 335-351, 859 A.2d 210 (2004), provides another example of a trial court overstepping its proper role of neutral arbiter and rendering involuntary a witness’ determination whether to testify.

Here, Copeland had the benefit of counsel; the predecessor judge did not on the whole use intimidating rhetoric, but rather sought to ensure that Copeland understood the nuances of the decision he had to make; and he explained that many of the decisions about what could happen to Copeland were not his to make but were up to the prosecutors. Still, some of the information provided to Copeland may have been inaccurate.

While it is likely that Copeland was not induced by any inadvertent or other inaccuracy to testify, the cleaner approach is simply to pretermitt this issue, acknowledging past inaccuracies, and advise Copeland anew. This is the course that the Court has proposed, and the parties have affirmed its efficacy.<sup>5</sup>

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<sup>5</sup> Copeland has since been recalled into open court on August 6, 2024, and in the presence of his counsel Melnick (who also privately consulted with and advised Copeland) was provided clarifying and correct information on matters potentially impacting his choice whether or not to testify. All parties were present and consulted with the Court prior to Copeland being readvised.

**Bias on the part of the predecessor judge constitutes due process violations**

Based on the comments in the ex parte transcript made by the predecessor judge about counsel, both for the defendants and for witness Copeland, as well as about “outside agitators” Defendant asserts that the predecessor judge during this conference<sup>6</sup> revealed his partiality to the State. Premitting the questionable accurateness of such characterizations and/or discussions, this issue has been mooted by the recusal of that judge from the case.

WHEREFORE for all of the foregoing reasons Defendant Kendrick Motion for Mistrial and Supplement to same are hereby DENIED.

SO ORDERED this 8<sup>th</sup> day of August 2024.



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Judge Paige Reese Whitaker  
Superior Court of Fulton County

*Service via e-filing system.*

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<sup>6</sup> The predecessor judge’s remarks regarding “outside agitators” are virtually identical to the remarks he had just made on the same topic in open court – remarks which he addressed to *all* counsel, 6/7/24 T. at 63, 65, 66), and which could not therefore logically include defense counsel.