IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	**CASE NO. 22SC183572**
	)	
	)	
vs.	)	
	)	
DEAMONTE KENDRICK,	)	
Defendant.	)	
_____	)	

DEAMONTE KENDRICK'S MOTION FOR MISTRIAL

COMES NOW Deamonte Kendrick ("Petitioner"), by and through his undersigned counsels, and brings this Motion for Mistrial showing as follows:

> 'We think, that in all cases of this nature, the law has invested courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. . . . But, after all, they have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the judges, under their oaths of office.'

Jones v. State, 232 Ga. 324, 327 (Ga. 1974) (quoting *United States v. Perez*, 22 U.S. 579, 580 (1824)).

The State has had witness-after-witness fail to provide the testimony that it would like the jury to hear. Rarely in the recent history of Fulton County Superior Court has one party had to impeach so many of its own witnesses, including at least the following key witnesses: Trontavious Stephens, Walter Murphy, Archellian

Bennett, Eduardo Nava- Flores, Adrian Bean, DeAngelo White, and, critically, Kenneth Copeland.

What is the State to do. Losing its case, apparently unconcerned about the need for public justice, the State clearly sought an opportunity to restart the trial by triggering an event in such egregious violation of the Constitutional rights of Kendrick that he would have no choice but to request a mistrial. Now, goaded by the State and the actions of Chief Judge Glanville, Kendrick has no option but to move this Court for a mistrial to respect the Constitutional rights of Kendrick and not defeat the ends of public justice. While this trial has been riddled with scores of errors, at least three demand an immediate mistrial.

First, placed in an impossible position by the State, this Court is faced with the task and requirement to reset this case to at least the point, the afternoon of June 12, 2024, when Kendrick moved Chief Judge Glanville to recuse himself, and he improperly failed to halt all proceedings pending determination of recusal. Since that date, the jury heard days of testimony from Mr. Kenneth Copeland – testimony that can't be unheard.

Second, Kendrick's Constitutional rights were violated when neither he nor his attorneys were present at a critical stage of the proceedings – the secret, ex parte meeting among the State, Chief Judge Glanville, Copeland, State investigators, court staff, and deputies.

Third, Kendrick's due process rights were violated when Chief Judge Glanville

wrongly coerced Copeland to testify.

None of the above three reasons for mistrial would exist absent the State's intention to goad Kendrick into the unfortunate position of having to regretfully request a mistrial.

Background

In January 2023, nearly 18 months ago, trial began in Fulton County Superior Court in State vs. Deamonte Kenrick, et al, 22SC183572. Jury selection took more than ten (10) months with trial before the selected jury beginning November 2023.

A secret, *ex parte* proceeding was held on June 10, 2024. In attendance were Chief Judge Glanville, sworn-witness Kenneth Copeland, Prosecutors Love and Hylton, investigators from the Fulton County D.A.'s Office, court staff, and members of the Fulton County Sheriff's Office.

A central figure, perhaps the central figure, in the State's case against Kendrick and the other defendants is Mr. Kenneth Copeland. On Friday, June 7, 2024, Copeland was sworn in. After being given a grant of immunity and being warned by Chief Judge Glanville that incarceration may be the result of refusing to testify, Copeland continued to plead the Fifth. Copeland was held in contempt and ordered incarcerated by Chief Judge Glanville on that date. Chief Judge Glanville instructed Copeland and all parties that Copeland would be returned to court on Monday, June 10, 2024, at 8:30 a.m. where Copeland would announce whether he was prepared to testify. Defense counsel were told to be present in Court at that time

and were in fact present.

Unknown to any member of defense counsel, an *ex parte* proceeding was held in Chief Judge Glanville's chambers on that date. Among the attendees were Chief Judge Glanville, ADA Love, ADA Hylton, investigators of the Fulton County District Attorney's Office, deputies, sworn-witness Copeland, court staff, and Copeland's attorney, Ms. Kayla Bumpus. No member of defense counsel was present at the *ex parte* proceeding, despite Copeland's invocation of his Fifth Amendment rights and the meeting being a critical phase of the trial. Neither Chief Judge Glanville, any member of court staff, nor the Fulton County DA's Office made any member of defense counsel aware of the *ex parte* proceeding either before, during, or after the proceeding.

Several defense counsel were later made aware of the *ex parte* proceeding with sworn witness Copeland, though not from Chief Judge Glanville nor from the DA's Office. Critically, Brady material was disclosed in the the *ex parte* proceeding and withheld from all defense counsel. A review of the recently released transcript of the *ex parte* proceeding reveals the occurrence of the following events:

- Copeland announced that he would invoke his 5th Amendment right and not testify.

- Copeland stated that he would rather sit in jail for two years than testify.

- Chief Judge Glanville informed Copeland that Glanville could keep sworn witness Copeland incarcerated until additional defendants were tried – not

just the six (6) defendants currently on trial.

- Copeland was informed that there were over a dozen defendants left to try.

- Following the above coercive actions by Chief Judge Glanville working in concert with the State, sworn witness Copeland stated at the *ex parte* proceeding that he would testify.

- Chief Judge Glanville also presented sworn witness Copeland with a printout of the perjury statute and the False Statement statute of the State of Georgia during the *ex parte* proceeding.

- Copeland stated that he would lie on the stand.

The State never gave Kendrick these critical Brady materials. These troubling facts not only implicate Chief Judge Glanville in an impermissible effort to join forces with the State to coerce Copeland to testify, but also demonstrate an illicit effort to repress Brady material that should be provided to Kendrick.

Following the secret, *ex parte* proceeding on June 10, 2024, Petitioner filed and presented a Motion to Recuse and accompanying Affidavit from Douglas Weinstein to Chief Judge Glanville on June 12, 2024. The Motion to Recuse was based on the impermissible secrecy of the *ex parte* proceeding and violations of the Judicial Code of Conduct that occurred during that secret proceeding. The motion was summarily denied instanter, with a formal Order issued on June 14, 2024.

Despite meeting all requirements of Uniform Superior Court Rule 25, the Motion for Recusal was summarily denied without following the required procedure of U.S.C.R. 25.3. A formal Order denying the Motion was entered on June 14, 2024, two (2) days after the Motion for Recusal was filed.

On July 1, 2024, Chief Judge Glanville reversed his Order of June 14, 2024, and referred Kendrick's Motion to Recuse to another judge to determine the merits of Kendrick's recusal motion. On July 15, 2024, Judge Krause recused Chief Judge Glanville.

Mistrial is Required as All Proceedings after June 12, 2024, are Void

This Honorable Court is now faced with the unenviable and impossible task of rewinding the case to the afternoon of June 12, 2024.

> . . . If a party files a motion to recuse a trial judge and the motion is denied, but it is later determined that the judge should have been disqualified to act in the case, all proceedings after the filing of the motion to recuse are 'invalid and of no effect.'

Propst v. Morgan, 288 Ga. 862, 864 (Ga. 2011). Kendrick moved Chief Judge Glanville to recuse during the afternoon of June 12, 2024, and he denied that motion. Critically, Chief Judge Glanville failed to follow U.S.C.R. 25.3 by not halting proceedings and sending the recusal motion to another judge to rule on the recusal. Subsequently, Judge Krause on July 15, 2024, found that Chief Judge Glanville should have been disqualified. Therefore, under *Propst*, all proceedings since the afternoon of June 12, 2024, are invalid and have no effect.

This Honorable Court is now saddled with the repurcusions of Chief Judge Glanville's failure to follow Rule 25. He should have halted all proceedings as required under Rule 25 and referred Kendrick's Motion to Recuse for assignment to another judge. Nevertheless, he persisted. Under repeated objections from Kendrick and other counsel, the tainted testimony of Copeland was presented to the jury over the course of four days – the remainder of the day on June 12 and on June 13, June 14, and June 17. During that time, Chief Judge Glanville, who should have been disqualified, repeatedly ruled against Kendrick and other defendants on multiple objections regarding the questioning of Copeland.

Now, this Court is tasked with unringing the bell.

How is this Court to accomplish this impossible task? How does this Court take the jurors notes from these days from the jurors? How can the jury unhear days and days of testimony? This is not a matter of a witness uttering a single statement that a court instructs the jury to disregard. It is neither feasible nor plausible that an instruction to disregard days of testimony can be followed.

Instructing someone to not picture flying elephants only results in the listener conjuring images of Dumbo.

Given the impossibility of erasing the proceedings since June 12, 2024 – proceedings that are void due to the State knowingly, improperly requesting Chief Judge Glanville to hold an improper *ex parte* meeting with a sworn witness and Chief Judge Glanville subsequently failing to halt proceedings as required by U.S.C.R. 25.3

– this Honorable Court has no alternative but to declare a mistrial.

This motion for mistrial would not exist absent the State requesting the improper *ex parte* proceeding. Simply put, Kendrick was goaded into requesting this mistrial through the State's intentional effort to put Kendrick into this position.

Mistrial is Required as the June 12, 2024, Secret, Ex Parte Meeting Was at a Critical Stage and Violated Kendrick's Rights

Kendrick's Constitutional rights were violated when neither he nor his attorneys were present at a critical stage of the proceedings – the secret, ex parte meeting among the State, Chief Judge Glanville, Copeland, State investigators, court staff, and deputies.

Defendants were not provided notice of the hearing. "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. "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).

Here, the outcome of this case is substantially affected by the bullying of Copeland into changing his mind regarding testifying. Copeland is the key witness

to the State's allegation that Kendrick was involved in the murder of Donovan Thomas. While the case against Kendrick is weak at best even with the testimony of Copeland, without Copeland the State has virtually nothing attaching Kendrick to the murder of Thomas. The *ex parte* meeting with Copeland was thus a critical stage of the trial in which Kendrick had a right to participate.

A mistrial should be ordered by this Court given that Chief Judge Glanville denied Kendrick's Constitutional right to be present at a critical stage of the trial – the *ex parte* meeting with Copeland. Furthermore, this mistrial is a direct result of the State putting into motion the *ex parte* meeting knowing that such a meeting would goad Kendrick into moving for mistrial.

Mistrial is Required as Chief Judge Glanville Tainted the Proceedings by Improperly Coercing Copeland to Testify

Copeland's testimony is tainted by the improper meeting prompted by the State where Chief Judge Glanville wrongly coerced Copeland to testify. Chief Judge Glanville's coercion of testimony by sworn witness Copeland, in the face of Copeland's repeated refusal to testify and Copeland's statements that he would lie on the stand, was an act of impermissible intimidation and a violation of the Judicial Code of Conduct.

Kendrick's Constitutional rights to due process and a fair trial have been violated by the above actions, and the State's actions in working with Chief Judge Glanville on the coercion has intentionally goaded Kendrick into the only possible

outcome – this motion for mistrial that should be granted by this Court.

As a natural result of the State's actions, Chief Judge Glanville has violated multiple rules of the Judicial Code of Conduct, the violation of which denied Kendrick's Constitutional rights to due process and a fair trial. As requested by the State, Chief Judge Glanville held an improper *ex parte* proceeding[1] conducted with sworn witness Copeland. The secret, *ex parte* proceeding with sworn witness Copeland was also a violation of at least Section 2.9[2] of the Georgia Code of Judicial

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[1] Uniform Superior Court Rule 4.1 generally prohibits ex parte communications: "Except as authorized by law or by rule, judges shall neither initiate nor consider ex parte communications by interested parties or their attorneys concerning a pending or impending proceeding." Ex parte hearings are only authorized in the case of extraordinary matters such as temporary restraining orders and temporary injunctions. "In other judicial hearings, both parties should be notified of the hearing with an opportunity of attending and voicing any objection that may be properly registered. "*City of Pendergrass v. Skelton*, 278 Ga. App. 37, 39, 628 S.E.2d 136 (2006).

[2] Ga. Code of Judicial Conduct 2.9 - Assuring Fair Hearings and Averting Ex Parte Communications provides:
(A) Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Judges shall not initiate, permit, or consider ex parte communications, or consider other communications made to them outside the presence of the parties, or their lawyers, concerning a pending proceeding or impending matter, subject to the following exceptions.
(1) Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided that:
(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.
(2) Judges may obtain the advice of a disinterested expert on
the law applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

Conduct which assures every person a fair hearing. "Ex parte communications are presumed to have been in error." *City of Pendergrass v. Skelton*, 628 S.E.2d 136, 278 Ga. App. 37 (Ga. App. 2006).

Likely prompted by the State, not only did Chief Judge Glanville fail to notify defense counsel about the *ex parte* proceeding as required by Rule 2.9, but Chief Judge Glanville made every effort to conceal the proceeding.

Chief Judge Glanville should not have coerced sworn witness Copeland to testify. "A trial judge should not attempt to intimidate a witness to testify in behalf of the State, either in or out of the presence of the jury." *Wynne v. State*, 228 S.E.2d 378, 381, 139 Ga.App. 355 (Ga. App. 1976); see also, *Benton v. State*, 58 Ga.App. 633, 199 S.E. 561 (Ga. App. 1938).

The situation of the present case is analogous to the situation in *Webb v. Texas*, 409 U.S. 95 (1972). While in *Webb* a trial judge *intimidated a defense witness into not testifying*, the corollary is present here where a trial judge, Chief Judge

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(3) Judges may consult with court staff and court officials whose functions are to aid in carrying out adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.
(4) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle pending proceedings.
(5) Judges may initiate, permit, or consider ex parte communications when authorized by law to do so, such as when issuing temporary protective orders, arrest warrants, or search warrants, or when serving on therapeutic, problem-solving, or accountability courts, including drugs courts, mental health courts, and veterans' courts.

Glanville, *intimated a State's witness into testifying*. The Supreme Court's language in *Webb* is instructive. In reversing a conviction, the Supreme Court said that

> in light of the great disparity between the posture of the presiding judge and that of a witness in these circumstances, the unnecessarily strong terms used by the judge could well have exerted such duress on the witness' mind as to preclude him from making a free and voluntary choice whether or not to testify.

Id. at 98. That same disparity occurred with Copeland. A trial judge in his chambers in cooperation with prosecutors, surrounded by investigators and law enforcement, coerced Copeland with the threat of years of jailing. The State and the judge exerted such duress to preclude Copeland from making a free and voluntary choice whether to testify. Thus, Kendrick, who was neither present nor represented in the *ex parte* meeting, was deprived of his 14th Amendment due process rights.

As in Webb, this Court can't "repair the infringement of [Kendrick's] due process rights under the Fourteenth Amendment." Regardless of whether the violation was under *Webb* or *Wynne*, Kendrick's rights were violated by the judge's intimidation and coercion of Copeland. As the State likely expected, Kendrick has now been goaded into seeking a mistrial because of this due process violation and respectfully, regretfully requests a mistrial.

Wherefore, Kendrick respectfully and regretfully requests this Honorable Court to declare a mistrial based on: the practical impossibility of voiding the case after June 12, 2024; the violation of Kendrick's rights by his being absented at a critical stage of the proceedings; and/or the tainting of the testimony of Copeland by

the improper coercion of his testimony by Chief Judge Glanville. Furthermore, Kendrick respectfully requests this Honorable Court find that this request for mistrial was goaded by the State when it requested that Chief Judge Glanville hold the *ex parte* meeting, absented Kendrick from the meeting, and joined with Chief Judge Glanville in the coercion of Copeland.

This the 23rd day of July, 2024.

Respectfully submitted,

/s/ Douglas S. Weinstein

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STATE OF GEORGIA

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	)	**22SC183572**
	)	
vs.	)	
	)	
DEAMONTE KENDRICK,	)	
Defendant.	)	
	)	

RULE NISI

WHEREFORE THE DEFENDANT having filed a Motion for Mistrial in the above-captioned matter:

IT IS HEREBY ORDERED that the Defendant's above motion, shall be set down for hearing on a date certain, to wit: on the ____ day of _____ 2024, at _____ o'clock a.m./p.m. in courtroom_____ of the Superior Court of Fulton County, Georgia.

SO ORDERED THIS the ___ day of _____, 2024.

_____
The Honorable Paige Reese Whitaker
Judge, Superior Court of Fulton County, Georgia

Prepared by:
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Defendant.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document via electronic filing addressed as follows:

Clerk of Superior Court of Fulton County
136 Pryor Street SW
Atlanta, GA 30303

Fulton County District Attorney's Office
136 Pryor Street SW
Atlanta, GA 30303

The Chambers of the Honorable Paige Reese Whitaker
Judge, Fulton County Superior Court
185 Central Ave., S.W.
Atlanta, GA 30303-3695

This the 23rd day of July, 2024.

/s/ Douglas S. Weinstein
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