

IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA.

STATE OF FLORIDA,
Plaintiff,
vs.

CASE NO. 05-2017-CF-029663-AXXX-XX

ROBERT CARL CASON,
Defendant.

MOTION FOR MISTRIAL WITH PREJUDICE AND/OR
MOTION FOR DISMISSAL

Defendant, ROBERT CARL CASON, by and through the undersigned counsel, moves the Honorable Court for a mistrial with prejudice and/or a dismissal of the charges in this cause.

In support, Defendant states:

1. Defendant is charged with two counts of Aggravated Battery and two counts of Battery.
2. Further, Defendant is subject to HFO and PRR designation, rendering him subject to a sentence of double the statutory maximum.
3. A jury trial commenced on April 18, 2022.
4. The State began its case in chief on April 19, 2022.
5. The State elicited blatantly false and/or misleading testimony when it called several civilian witnesses who testified that they never brought alcoholic beverages (or any beverages) into Defendant's taxi van on May 28, 2017.
6. The State knew that the testimony was false and/or misleading and took no actions to cure it.
7. The issue is material to a fair trial.

MEMORANDUM OF LAW

Although a motion by the defendant for a mistrial will not ordinarily bar a retrial, even where the motion is necessitated by prosecutorial error, *United States v. Jorn*, 400 U.S. 470, 91 S.Ct. 547, 27 L.Ed.2d 543 (1971), there is a narrow exception to the general rule. “Where a mistrial consented to by the defendant is based on bad faith prosecutorial or trial court misconduct intentionally designed to provoke a mistrial, the state is barred by double jeopardy from ever retrying the defendant for the same crime.” *Iglesias*, 374 So.2d at 1062; *see also Keen v. State*, 504 So.2d 396 (Fla. 1987).

The rationale for the exception to the general rule permitting retrial after a mistrial declared with the defendant’s consent is illustrated by the situation in which the prosecutor commits prejudicial error with the intent to provoke a mistrial. In this situation the defendant’s choice to continue the tainted proceeding or to abort the proceeding and begin anew is inadequate to protect his double jeopardy interests. For, absent a bar to reprosecution, the defendant would simply play into the prosecutor’s hands by moving for a mistrial. The defendant’s other option — to continue the tainted proceeding — would be no option at all if, as we might expect given the prosecutor’s intent, the prosecutorial error has virtually guaranteed conviction. There is no room in the balance of competing interests for this type of manipulation of the mistrial device. Or to put it another way, whereas we tolerate some incidental infringement upon a defendant’s double jeopardy interests for the sake of society’s interest in obtaining a verdict of guilt or innocence, when the prosecutor seeks to obtain an advantage by intentionally subverting double jeopardy interests, the balance invariably tips in favor of a bar to reprosecution.

Oregon v. Kennedy, 456 U.S. 667, 686, 102 S.Ct. 2083, 2095, 72 L.Ed.2d 416, 431 (1982) (Stevens, J., concurring).

To provoke a mistrial intentionally would allow a prosecutor “to shop for a more favorable trier of fact, or to correct deficiencies in [his] case, or to obtain an unwarranted preview of the defendant’s evidence.” *Id.* The test, therefore, is one of prosecutorial intent. Under the narrow standard fashioned in *Kennedy*, only if governmental conduct is intended to “goad” the defendant into requesting a mistrial will double jeopardy bar a retrial. “The court must infer the existence or non-existence of such intent from the objective facts and

circumstances of each case.” *Duncan v. State*, 525 So. 2d 938 (3rd DCA 1988) (citing 456 U.S. at 680, 102 S.Ct. at 2092, 72 L.Ed.2d at 427 (Powell, J., concurring)).

WHEREFORE the Defendant, ROBERT CASON, moves the Honorable Court for a mistrial with prejudice and/or a dismissal of the Information in the above-styled cause.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-service to the Office of the State Attorney on this 21st day of April 2022.

LAW OFFICES OF DANIEL MARTINEZ, PLLC

/s/ Daniel Martinez

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