IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, **Plaintiff,** **v.** **CLAUDE EDWARD WHITE,** **LANCELOT JAMES,** **SHARRIE ANN THELWELL-JAMES,** **ADESUMBO "SANDRA" ADESIOYE,** **JEAN MARIO PIERRE** **Defendants.**	**CASE NOS.:** **16-6682CF10A** **16-6685CF10A** **16-6683CF10A** **16-6714CF10A** **16-6716CF10A** **JUDGE: ANDREW L. SIEGEL**

ORDER GRANTING DEFENDANTS' JOINT MOTIONS TO DISMISS WITH PREJUDICE DUE TO THE LEAD PROSECUTOR INTENTIONALLY GOADING THE DEFENDANTS INTO MOVING FOR A MISTRIAL

THIS CAUSE came before the Court on the Defendants' Joint Motions to Dismiss with prejudice because the lead prosecutor, Assistant Statewide Prosecutor Cynthia Honick, engaged in bad faith conduct with the intent to provoke Defendants into moving for a mistrial. The motion was made in court on March 21, 2023, in conjunction with arguments to exclude State witness Steven Gilbert at a *Richardson*[1] hearing.

The Court granted Defendants' motion to exclude Mr. Gilbert from testifying further and struck his prior testimony. Subsequently, Defendants moved for a mistrial, which was also granted by the Court. These motions followed, and the Court held a hearing on Defendants' motions to dismiss. The Court granted the motion to dismiss with prejudice, and this Order follows.

[1] *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

Having considered Defendant's motions to dismiss, arguments of counsel at the hearing, Ms. Honick's demeanor and credibility during trial and during the *Richardson* hearing, the court file, applicable law, and otherwise being fully advised, the Court rules as follows:

HISTORY

1) February 13, 2023

Ms. Honick questioned Jennifer Jimenez about a prior investigation into Medical Arts for the illegal dispensing of oxycodone. When counsel for Defendant Thelwell-James moved for a mistrial, Ms. Honick declined to respond. The improper testimony was not inadvertently made by the witness but was directly elicited by Ms. Honick.[2]

2) February 14, 2023

Defendants moved for a mistrial because witness Tracy Schossow improperly testified that the Defendants violated the law. In a ruling adverse to the State, the Court ruled that Ms. Schossow could not testify as to the Defendants violating the law or the responsibilities of medical practitioners. The State did not have another witness who could offer expert testimony as to the duties and responsibilities of medical practitioners. The Court also instructed the jury to disregard certain portions of Ms. Schossow's testimony.

3) February 15, 2023

The Court limited the testimony of the State's witness, Mary Crane, precluding her from testifying as to statements made to her. The State was attempting to introduce a statement made by Defendant Adeisoye to prove the charged offenses.

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[2] At the hearing on the motion to dismiss, Ms. Honick claimed the defense opened the door to her line of questioning. The Court does not find this explanation to be credible since defense counsel referred to the general practice of so-called pill mills, and not in relation to Medical Arts, this case, or any of the Defendants.

Additionally, Ms. Honick renewed her objections to a prior adverse ruling. The Court had previously excluded records from TD bank which did not meet the business records hearsay exception due to an invalidly notarized business records affidavit.

The Court also allowed the Defendants to introduce a copy of the Department of Health's final agency order finding no probable cause of wrongdoing into evidence over the State's objections.

4) February 16, 2023

The Court did not allow records from TD bank to be introduced into evidence through Jennifer Jimenez.

5) February 22, 2023

Ms. Honick accused the Court and defense counsel of ex parte communications in front of the jury. When the Defendants moved for a mistrial, Ms. Honick declined to respond.

6) February 28, 2023

Ms. Honick entered the courtroom with several boxes marked conspicuously with the words "DEA evidence" in full view of the jury, knowing that many of the records within those boxes were irrelevant and inadmissible. The Court admonished Ms. Honick for doing so.

The Court also issued a ruling adverse to the State finding that the State could not introduce records through the witness Eric Fess.

7) March 1, 2023

The State filed supplemental discovery mid-trial listing Manuel Valente as custodian of records for TD Bank in an effort to circumvent the issues with the improperly

notarized business records affidavit. In a ruling adverse to the State, the Court excluded the witness, thus preventing the State from introducing the previously excluded TD Bank records into evidence through Mr. Valente.

8) March 3, 2023

In a ruling adverse to the State, the Court prevented Ms. Honick from attempting to elicit testimony about "structuring" from a lay witness. Counsel for Defendant argued that Ms. Honick had poisoned the jury by indicating that there was illegal "structuring" without there being any evidence of wrongdoing. This line of questioning was quickly shut down.

9) March 14, 2023

Ms. Honick led the direct examination of Steven Gilbert, the former DEA agent who was involved in the investigation. Mr. Gilbert testified that the documents to which Ms. Honick referred were "relevant." Counsel for the Defendants objected and the Court sustained the objection. Ms. Honick immediately asked Mr. Gilbert if he deemed the documents relevant to his investigation. Once again, the Court sustained the Defendants' objections. After asking a few more questions, Ms. Honick once again asked Mr. Gilbert about the documents' relevance. The Defendants' third objection was sustained.

In a ruling adverse to the State, the Court did not allow administrative regulations into evidence and instructed the jury to disregard Mr. Gilbert's testimony about the administrative regulations. Later, the State indicated that it had difficulty finding two key witnesses and was uncertain about whether they would be able to find them in time.

In another ruling adverse to the State, the Court excluded the administrative complaint against Tropical Health as well as all Department of Health investigative reports. The Court also excluded a blank prescription with a signature.

10) March 15, 2023

Ms. Honick directed the examination of Mr. Gilbert. Mr. Gilbert had not been listed as an expert witness and it appears the Defendants were led to believe his role was to lay a foundation for the introduction of certain documents that he seized during his investigation. Instead, Ms. Honick questioned Mr. Gilbert, ostensibly a lay witness, about his current occupation and training. When the Defendants objected, Ms. Honick argued that Mr. Gilbert's testimony was relevant.

Mr. Gilbert then testified, in response to Ms. Honick's questioning, that he worked as a financial investigator for a company contracted to provide financial investigators to the Organized Drug Enforcement Task Force. When asked about his training and experience, he testified that he is an anti-money laundering specialist certified by the largest international association of anti-money laundering specialists. Given that the Defendants were charged with money laundering, Counsels for all Defendants vehemently objected, accusing Ms. Honick of trial by ambush, and once again moved for a mistrial. Ms. Honick claimed that she was not asking Mr. Gilbert for his opinion but that he was merely going to testify as to simple additions. Defendants made a *Richardson* objection because Mr. Gilbert had not been listed in discovery as an expert witness.

As a result, the Court conducted a voir dire examination of Mr. Gilbert. Ms. Honick strenuously objected to any questioning regarding when Mr. Gilbert analyzed the documents provided to him by the State in an attempt to obfuscate information vital to the

Court's *Richardson* analysis. During voir dire, it was discovered that the State approached Mr. Gilbert in October or November of 2022 and gave him financial records in order for him to testify regarding money laundering. He was asked to present the financial data to the jury and he gave the State an opinion based on his experience. Although Ms. Honick claimed that Mr. Gilbert was merely going to testify as to "additions,"[3] it was discovered that Mr. Gilbert had used pivot tables in Microsoft Excel to essentially decipher the raw data in order to show cash flow through various accounts. In analyzing the data, Mr. Gilbert saw money being moved back and forth and being "layered," which is evidence of money laundering. Mr. Gilbert submitted the Excel spreadsheet to the State in January of 2023 prior to the trial commencing. The State did not provide this spreadsheet to the Defendants.

ANALYSIS

The Court finds that Ms. Honick acted in bad faith with the intent to provoke the Defendants into moving for a mistrial to gain a prosecutorial advantage at a second trial. However, the Court finds that Ms. Honick's co-counsels, Mr. Moses Aluicio and Ms. Monique Wilson, did NOT intend to goad the Defendants into moving for a mistrial and comported themselves in a fair and professional manner.

"[E]ven where the defendant moves for a mistrial, there is a narrow exception to the rule that the Double Jeopardy Clause is no bar to retrial." *Oregon v. Kennedy*, 456 U.S. 667, 673 (1982). "Only where the governmental conduct in question is intended to "goad" the defendant into moving for a mistrial may a defendant raise the bar of double

[3] If, indeed, Mr. Gilbert was going to testify as to nothing more than simple additions, the jury would not need to hear his testimony as a basic calculator would suffice.

jeopardy to a second trial after having succeeded in aborting the first on his own motion." *Id.* at 676.

Ms. Honick could not have, in good faith, believed that her actions were permissible. *Cf.* *Richards v. State*, 140 So. 3d 1158, 1160 (Fla. 1st DCA 2014) (prosecutor did not goad the defendant into moving for a mistrial when the testimony elicited was relevant and the prosecutor believed it was admissible); *Roundtree v. State*, 706 So. 2d 95, 96 (Fla. 3d DCA 1998) (although the prosecutor knew that recalling an eyewitness could cause a mistrial, he acted in good-faith and argued a legitimate legal position to the court); *State v. Butler*, 528 So. 2d 1344, 1346 (Fla. 2d DCA 1988) (the detective's comment, while in response to the prosecutor's question, was not intentionally elicited); *Cooper v. State*, 716 So. 2d 823, 824 (Fla. 5th DCA 1998) (State did not intentionally elicit improper testimony); *State v. Santiago*, 928 So. 2d 480, 482 (Fla. 5th DCA 2006) (the prosecutor's motive for eliciting the testimony was simply to introduce evidence that he believed to be both relevant and admissible).

There was no legitimate justification for eliciting evidence of prior bad acts (the oxycodone investigation) which had no bearing on the alleged crimes at issue in the trial. There was no legitimate justification for intentionally eliciting previously prohibited testimony on two occasions shortly after the Court sustained an objection. There was no legitimate justification for bolstering the credibility of an alleged lay witness who was called to do simple addition by eliciting his training and experience, which happened to be in the field of one of the charged offenses. There was no legitimate justification for accusing counsels for the Defendants of ex parte communication within earshot of the

jury. And there was no legitimate justification for displaying boxes conspicuously marked as "DEA Evidence" in front of the jury.

Ms. Honick did not merely act in the heat of the trial to win the case. *Cf. Keen v. State*, 504 So. 2d 396, 402, fn. 5, (Fla. 1987), *disapproved of on other grounds by Owen v. State*, 596 So. 2d 985 (Fla. 1992). Rather, her actions were premeditated and intended to elicit inadmissible evidence in order to provoke a mistrial.

The facts in this case are most analogous to the facts in *Duncan v. State*, 525 So. 2d 938 (Fla. 3d DCA 1988), a rare case[4] in which the State was found to have goaded the defendant into moving for a mistrial.

In *Duncan*, the trial court had ruled that a gun found three days after the defendant's arrest would not be admitted into evidence at trial. The prosecutor requested a brief delay so that his associate could bring him something he required. During defense counsel's closing argument, the prosecutor removed a blue toy gun from his pocket and began twirling it around for the jury to see. When defense counsel was made aware of the prosecutor's actions, she moved for a mistrial. At a subsequent trial, the State was able to move the gun into evidence.

The Third District Court of Appeal adopted the Oregon supreme court's reasoning in *State v. Kennedy,* 295 Or. 260, 274, 666 P.2d 1316, 1325 (1983), " 'that a court may infer from the character and the circumstances of the prejudicial conduct that it was so intended [to provoke the defendant to demand a mistrial] without having to obtain an admission to that effect. When a court draws that inference, a retrial is barred.' " Duncan,

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[4] The Third District Court of Appeal did issue an affirmance without comment in *State v. Musso*, 653 So. 2d 517 (Fla. 3d DCA 1995), citing *Duncan* and *Kennedy*.

525 So. 2d at 942. The court held that the record showed that "the prosecutor crossed the line." Id.

At every stage of the proceedings where Ms. Honick's misconduct provoked a motion for mistrial, the State would have benefited from a mistrial being declared to fix the State's mounting evidentiary issues. *Cf. Richards*, 140 So. 3d at 1160; *State v. Butler*, 528 So. 2d 1344, 1346 (Fla. 2d DCA 1988); *State v. Tyson*, 86 So. 3d 538, 541 (Fla. 2d DCA 2012).

Ms. Honick, on at least two occasions, declined to oppose the Defendants' motions for mistrial, from which it can be inferred that she wanted the Court to declare a mistrial. At the hearing on the motion to dismiss, Ms. Honick did not provide an adequate or credible explanation for why her conduct did not constitute intentional goading. Instead, after causing a mistrial to be declared, she attempted to shift the blame for the mistrial onto Defendants' alleged lack of preparation for trial.[5]

The Court has considered factors that may not be apparent on the face of a cold record. The Court observed defense counsels' outrage and dismay in the face of blatantly improper conduct and testimony. The Court also observed the demeanor and credibility of Ms. Honick throughout the proceedings and at the hearing on the motion to dismiss. Throughout these proceedings, Ms. Honick engaged in a course of bad faith conduct in flagrant disregard of the Defendants' rights.

Ms. Honick also committed an egregious discovery violation in bad faith and without any justification. However, while the Court considered Ms. Honick's discovery violation to infer her intent to goad in light of the totality of circumstances, the Court is not

[5] It was in fact the State who appeared to be underprepared at trial, which, in the Court's opinion is a situation that Ms. Honick hoped to remedy at a second trial.

granting the motion to dismiss with prejudice on the basis of a discovery violation. *See McArthur v. State*, 671 So. 2d 867, 870, fn. 3, (Fla. 4th DCA 1996); *State v. Zamora*, 538 So. 2d 95, 96 (Fla. 3d DCA 1989). Rather, it is evidence indicative of Ms. Honick's willingness to engage in misconduct for the purpose of gaining any prosecutorial advantage.

Ms. Honick's actions were not merely harassing or overreaching. *Kennedy*, 456 U.S. at 675. This was a course of misconduct in the face of a steadily weakening case due to a string of adverse evidentiary rulings. *See Rutherford v. State*, 545 So. 2d 853, 855 (Fla. 1989) ("[t]he objective of seeking to cause the other party to move for a mistrial is to "save" a losing case."). She had ample motive to intentionally goad the Defendants into moving for a mistrial.

As the trial went on, the State was unable to introduce several key pieces of evidence. If the Court were to grant a mistrial, the State would get a second bite at the apple. The State could list a new expert witness on anti-money laundering such as Mr. Gilbert. The State could fix the faulty calculations of its previous expert. The State could get an expert witness to testify as to the practices and responsibilities of a medical doctor. The State could get a new business records affidavit for the TD Bank records, or list a records custodian. The State would have additional time to find the two witnesses who may not have been able to testify in time. The State would get the chance to correct the plethora of missteps that occurred in the first trial. Perhaps the State could get a fresh start before a new judge. And perhaps the Defendants would be worn down into taking a plea in the face of mounting financial difficulties.

While each instance of Ms. Honick's misconduct, standing alone, may appear to be unintentional, the cumulative nature of her misconduct is indicative of her intention to goad the Defendants into moving for a mistrial. It is unfathomable that a seasoned prosecutor like Ms. Honick would inadvertently engage in such blatant misconduct. A seasoned prosecutor would know that improper testimony about prior bad acts would draw a motion for mistrial. A seasoned prosecutor would know that gratuitously displaying boxes marked "DEA Evidence" would draw a motion for mistrial, just as the twirling of the toy gun did in *Duncan*. A seasoned prosecutor would know that accusing defense counsel of engaging in unethical conduct in front of the jury would draw a motion for mistrial. A seasoned prosecutor would know that repeatedly eliciting testimony that had been excluded would draw a motion for a mistrial. A seasoned prosecutor would know that improperly bolstering the credibility of a lay witness with evidence of his anti-money laundering expertise and occupation in a money laundering case would draw a vigorous motion for a mistrial. And a seasoned prosecutor would not merely stand mute when a defendant moves for a mistrial.

Based on the above, the Court infers and finds that Ms. Honick deliberately goaded the Defendants into moving for a mistrial so that she could save a losing case. It is evident that Ms. Honick allowed her displeasure, disagreement, and frustration with the Court's rulings and the downward trajectory of the State's case to overshadow her prosecutorial duty to seek justice and respect the Constitution. *See Delhall v. State*, 95 So. 3d 134, 170 (Fla. 2012).

The Court is aware that granting a motion to dismiss with prejudice is an extreme remedy reserved for the most egregious misconduct. The Court does not make these findings lightly or take any pleasure in the outcome.

Based on the above, it is

ORDERED AND ADJUDGED that Defendant's Joint Motions to Dismiss with Prejudice are hereby **GRANTED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 27th day of March, 2023.

ANDREW L. SIEGEL
CIRCUIT COURT JUDGE

Copies furnished to:

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