No. 20-

IN THE

Supreme Court of the United States

MICHAEL SHOCK,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

JEFFREY M. ROSENZWEIG
Counsel of Record
300 Spring Street, Suite 310
Little Rock, AR 72201
(501) 372-5247
jrosenzweig@att.net

Attorney for Petitioner

298471

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Are significant discovery and *Brady* violations by the prosecuting attorney, necessitating the grant of a mistrial, sufficient to invoke the double jeopardy protections against "goading" as set forth in *Oregon v. Kennedy*?

RELATED CASES

State v. Shock, 12CR-17-166, Circuit Court of Cleburne County, Arkansas. Judgment entered June 24, 2019.

Shock v. State, CR-19-532, Arkansas Court of Appeals. Judgment entered March 11, 2020.

Shock v. State, CR-19-532, Arkansas Supreme Court. Judgment entered June 18, 2020.

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CITATION TO OPINION BELOW

The decision of the Arkansas Court of Appeals, the intermediate state appellate court, is reported as Shock v. State, 2020 Ark. App. 165, 596 S.W.3d 580. A copy of the opinion appears in the Appendix. (3a) The Arkansas Supreme Court denied the petition for review without a plenary opinion on June 18, 2020. The denial appears in the Appendix. (1a)

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The denial of review by the Arkansas Supreme Court was issued on June 18, 2020. This petition, being filed within the 150 days set forth in this Court's order of March 19, 2020, is timely.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment, United States Constitution

... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

Fourteenth Amendment, United States Constitution

...nor shall any State deprive any person of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

Michael Shock was charged in the Circuit Court of Cleburne County, Arkansas, with the rape of his five-

year-old granddaughter. His defense attorneys filed a discovery motion requesting all information to which he was entitled under the Arkansas Rules of Criminal Procedure, relevant case law and the state and United States Constitutions. (R. 29). He later filed several motions seeking additional information, including a motion for a bill of particulars seeking information as to the "time, place, manner, and means of the alleged offense…" (R.59) The State's response was that the information had been provided in the file. (R. 97) All requests for additional discovery were denied by the circuit court based upon the prosecutor's representations that the information was in the file or otherwise available. (R. 58, 396-97, 436, 439-40, 461-62, 466-67, 579-94, 621-26). Shock's defense was that he had not committed the offense — and could not have, because he was never alone with the child. (R. 580-581, 587) The discovery materials recorded that the child had said she was alone with her grandfather at the time of the supposed incident.

During discovery discussions, the defense was advised by the prosecutor that follow up interviews were conducted with the accuser and her mother, who was Shock's daughter-in-law. At two pretrial hearings, Shock asked for additional details about these conversations, including whether additional information regarding the allegations was disclosed in an attempt to get clarification on who else was present during the relevant time. (R. 408, 412-414, 440-441)) In each response to Shock's requests, the prosecutor asserted that she was aware of her responsibilities and that the extent of the State's knowledge about the allegations was included in the file. (R. 449)

Both during the prosecution's opening statement and in examination of its first witness, it became apparent that relevant exculpatory information had not been provided to Shock. (R. 814-816, 865) In particular, the prosecutor referred in her opening statement to an examination which had not been disclosed to the defense. (R 814-816) The prosecution's first witness, Samantha Shock, the mother of the accuser, then testified that the accuser had told her that there were several persons in the home during the time the incident purportedly occurred. This revelation corroborated Shock's defense. (R. 865). The prosecutor claimed she had no knowledge of this, although Ms. Shock testified she had told the prosecutor. The motions for mistrial on both grounds were denied. (R 866, 888)

It was only then disclosed that the prosecutor herself was representing Samantha Shock in civil litigation against another member of Shock's family and had been contacted by Samantha Shock in the prosecutor's private practice capacity with regard to the case on trial. Mistrial was denied on those issues as well. (R 954-955) (Arkansas permits certain classes prosecuting attorneys to have private law practices.)

The next day, the prosecutor revealed the existence of additional information to which Shock was clearly entitled under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). Although the defense had received two pages of medical records, the new revelation was that there were three additional pages discussing the details of a sexual medical examination, that a video of examination existed, and that an sexually transmitted disease examination was performed. Shock moved for a mistrial, arguing that information provided by the State was exculpatory and

was required to be turned over by the State. (R. 980-982) The prosecutor acceded to the mistrial motion.

Shock then moved to dismiss the prosecution on double jeopardy grounds. In the hearing on dismissal, it was established that the entire medical record was in the possession of the State's lead detective some four months before the trial and before all of Shock's discovery requests were made. The circuit court denied Shock's motion. (R. 1150) Shock then took an interlocutory appeal on double jeopardy grounds. The intermediate Arkansas Court of Appeals denied relief, as did the Arkansas Supreme Court. Shock now seeks certiorari review in this Court.

REASONS FOR GRANTING THE WRIT AND ARGUMENT

SIGNIFICANT DISCOVERY AND *BRADY* VIOLATIONS BY THE PROSECUTING ATTORNEY NECESSITATING THE GRANT OF A MISTRIAL ARE SUFFICIENT TO INVOKE THE DOUBLE JEOPARDY PROTECTIONS CONCERNING "GOADING" UNDER *OREGON V. KENNEDY*.

This case presents this Court an opportunity to clarify what sorts of prosecutorial misconduct may constitute grounds to invoke double jeopardy under the Fifth and Fourteenth Amendments when a mistrial is declared as a result of the misconduct.

In *Oregon v. Kennedy*, 456 U.S. 667, 676, 102 S.Ct. 2083, 2089 (1982), this Court observed:

> 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 jeopardy to a second trial after having succeeded in aborting the first on his own motion.

Arkansas has interpreted this decision to preclude double jeopardy dismissal even when the defense, during trial, has ascertained intentional discovery violations for which the only logical resolution had to be a mistrial. That interpretation improperly restricts "goading" to in-trial misconduct and declines to penalize the prosecution for intentional misconduct occurring through the pretrial discovery process. That cannot be the law, and if it now is, should not be.

In this case, *Shock v. State*, 2020 Ark. App. 165, 5-6, 596 S.W.3d 580, 584, a panel of the intermediate Arkansas Court of Appeals wrote:

> Appellant first argues that the circuit court erred in denying his motion to dismiss because the State's repeated discovery and Brady violations were intended to provoke a mistrial. He points to his repeated attempts to obtain a mistrial for the State's failure to disclose before trial (1) the existence of a sexual-assault medical exam of the victim; (2) that the victim and appellant had been alone together; and (3) the prosecutor's previous representation of Ms. Shock in a civil matter. The circuit court reviewed the issues and found that the prosecutor had not intentionally attempted to "goad" appellant into requesting a mistrial.

We cannot say that the circuit court's finding is clearly erroneous, and on de novo review, we affirm its denial of appellant's motion to dismiss. Appellant moved multiple times for mistrial before it was ultimately granted by the court. The State responded to each motion, refuting appellant's arguments and denying that a mistrial was warranted, suggesting that the State specifically did not want the case to end in a mistrial. It was not until the prosecutor questioned the SANE nurse during a break in Ms. Shock's testimony that the State discovered multiple pages from the medical examination had not been provided to appellant during discovery. At appellant's renewal of his motion for mistrial, the prosecutor agreed that it should be granted although it made her "physically ill." We cannot say the circuit court's finding that the prosecutor did not intentionally goad appellant into moving for a mistrial is clearly erroneous.

Further, although the State does not concede that the failure to provide the evidence amounted to a Brady violation, our supreme court has held that the law is well settled that the remedy for a *Brady* violation is a new trial, which appellant is receiving in this case. Green, 2011 Ark. 92, at 11, 380 S.W.3d at 375. **Prosecutorial misconduct, even intentional and reversible misconduct, does not preclude retrial of the case. Id. To invoke the double-jeopardy bar, a defendant must show that the misconduct was motivated not by a desire to**

> **obtain a conviction but by a desire to provoke the defendant into moving for a mistrial**. [emphasis supplied by Shock] Id. (quoting *State v. Williams*, 268 Kan. 1, 988 P.2d 722, 728 (1999)). Appellant has failed to make that showing here.

Since the Arkansas Supreme Court denied the petition for review without a written opinion, this Court looks through to the Court of Appeals's decision. *Wilson v Sellers*, 138 S.Ct. 1188 (2018).

The Court of Appeals's conclusion that "intentional and reversible misconduct" does not invoke the double jeopardy bar is too crabbed a reading of *Oregon v. Kennedy* and evinces a too restrictive a definition of "goad." This Court should grant certiorari to clarify the standard.

The discovery violations infesting this case are so flagrant and numerous that they can only be described as intentional: The failure despite repeated requests to disclose statements of the accuser corroborating the defense; the failure to provide medical records which clearly were in the possession of the prosecutor and not handed over; and the failure of the prosecutor to disclose her ties to the accuser and her mother.

The Arkansas Court of Appeals failed to take into account the real-world purposes and ramifications of intentional discovery violations. "If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor." *United States v. Agurs*, 427 U.S. 97, 110, 96

S.Ct. 2392, 2401 (1976). Nonetheless, intentional discovery violations are motivated by the illicit desire to obtain a conviction at all costs. When defense counsel is either lucky enough, alert enough or skilled enough to smoke out the violations during the trial itself, the defense is obviously "goaded" or provoked into seeking the mistrial. The subtext of Arkansas's narrow reading of *Kennedy* is that the prosecution pays no penalty for its intentional misconduct.

Moreover, this conflicts with the doctrine permitting dismissal with prejudice for intentional discovery violations. In *United States v. Bundy*, 968 F.3d 1019 (9th Cir. 2020), the Court wrote:

> Days into the Bundys' trial, the government began disclosing information in its possession that, under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), was arguably useful to the defense and should have been produced to the defendants well before trial. As additional documents came forth, the district court held a series of hearings, eventually deciding that the trial could not go forward and that the indictments must be dismissed with prejudice. Under *Brady*, "[t]he prosecution is trusted to turn over evidence to the defense because its interest 'is not that it shall win a case, but that justice shall be done.' " *Amado v. Gonzalez*, 758 F.3d 1119, 1133–34 (9th Cir. 2014) (quoting *Strickler v. Greene*, 527 U.S. 263, 281, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). A district court is imbued with discretion in the supervision of proceedings before it and may

> dismiss an action when, in its judgment, "the defendant suffers substantial prejudice and where no lesser remedial action is available." *United States v. Chapman*, 524 F.3d 1073, 1087 (9th Cir. 2008) (citations and quotation marks omitted). Finding no abuse of discretion, we affirm the judgment of the district court.

This case presents the opportunity to clarify what this Court meant in *Kennedy*. The Court should make clear that the double jeopardy bar to retrial can be invoked for pretrial misbehavior discovered during the trial, and not just trial misbehavior.

CONCLUSION

This Court should grant certiorari, and upon plenary consideration should hold that discovery and Brady violations constitute "goading" within the meaning of the double jeopardy clause and *Oregon v. Kennedy*.

Respectfully submitted,

JEFFREY M. ROSENZWEIG
Counsel of Record
300 Spring Street, Suite 310
Little Rock, AR 72201
(501) 372-5247
jrosenzweig@att.net

Attorney for Petitioner

APPENDIX

APPENDIX A — ORDER DENYING REVIEW OF THE ARKANSAS SUPREME COURT, DATED JUNE 18, 2020

OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

JUNE 18, 2020

RE: SUPREME COURT CASE NO. CR-19-532
MICHAEL SHOCK V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE ABOVE STYLED CASE:

"APPELLANT'S PETITION FOR REVIEW IS DENIED. HART, J., WOULD GRANT. KEMP, C.J., NOT PARTICIPATING."

SINCERELY,

/s/_____
STACEY PECTOL, CLERK

APPENDIX B — ORDER DENYING REHEARING OF THE ARKANSAS COURT OF APPEALS, DATED APRIL 15, 2020

OFFICE OF THE CLERK
ARKANSAS COURT OF APPEALS
625 MARSHALL STREET
LITTLE ROCK, AR 72201

APRIL 15, 2020

RE: COURT OF APPEALS CASE NO. CR-19-532
MICHAEL SHOCK V. STATE OF ARKANSAS

THE ARKANSAS COURT OF APPEALS ISSUED THE FOLLOWING ORDER TODAY IN THE ABOVE STYLED CASE:

"APPELLANT'S PETITION FOR REHEARING IS DENIED. MURPHY, J., NOT PARTICIPATING."

SINCERELY,

/s/_____
STACEY PECTOL, CLERK

APPENDIX C — OPINION OF THE ARKANSAS COURT OF APPEALS, DIVISION THREE, DATED MARCH 11, 2020

ARKANSAS COURT OF APPEALS
DIVISION THREE

No. CR-19-532

MICHAEL SHOCK,

Appellant,

v.

STATE OF ARKANSAS,

Appellee.

March 11, 2020, Opinion Delivered

APPEAL FROM THE CLEBURNE COUNTY CIRCUIT COURT. NO. 12CR-17-166. HONORABLE TIM WEAVER, JUDGE.

Judges: RITA W. GRUBER, Chief Judge. VIRDEN and KLAPPENBACH, JJ., agree.

RITA W. GRUBER, Chief Judge

Michael Shock appeals the circuit court's denial of his motion to dismiss the charges against him on double-jeopardy grounds based on prosecutorial misconduct of

withholding pretrial discovery information. He contends on appeal that the State's repeated discovery violations during his first trial were intended to provoke him to move for a mistrial and thus that double jeopardy barred a second trial under the standard set by the United States Supreme Court under the federal constitution in *Oregon v. Kennedy*, 456 U.S. 667, 102 S. Ct. 2083, 72 L. Ed. 2d 416 (1982). In the alternative, he asks this court to expand double-jeopardy protections under the Arkansas Constitution to include prosecutorial misconduct beyond the intention to provoke the defendant into moving for a mistrial. We affirm the denial of appellant's motion to dismiss.

On October 17, 2017, appellant was charged with one count of rape of his granddaughter, LS, who was five years old at the time. The victim first reported the allegations to her mother, Samantha Shock. Several days later, LS was interviewed at the child-safety center in Searcy, where a SANE[1] nurse also performed a physical exam, tested for sexually transmitted diseases, and checked for evidence of sexual abuse. The medical summary indicated the absence of any physical findings of sexual abuse, and the lab report was negative for sexually transmitted diseases. After receiving the State's file in response to his broad discovery motion, appellant filed several pretrial motions requesting additional information, including a bill of particulars contending that the file the State had provided was insufficient to apprise him of the time, place, manner, and means of the alleged offense. His motions were denied.

1. Sexual Abuse Nurse Examiner

Appendix C

The trial began on December 5, 2018, and the State called Ms. Shock as its first witness. During her testimony, appellant moved for a mistrial, arguing that Ms. Shock was testifying about new information that "[appellant] and LS were in her room by themselves." He argued that this information had not been disclosed despite his request for a bill of particulars. The court denied his motion. Ms. Shock's testimony continued, and she described the medical exam performed on LS at the child-safety center. The State concluded its direct examination of Ms. Shock, and the court recessed for the day.

At the beginning of the second day of trial before he began his cross-examination of Ms. Shock, defense counsel moved for a mistrial, alleging he had been provided no evidence during discovery that a medical examination or testing had taken place. Defense counsel proffered two pages he alleged the State had provided to him from the child-safety center, which did not include results of a sexual-assault physical examination or suggest that LS had been tested for sexually transmitted diseases. Appellant argued that the noted absence of physical findings of sexual abuse and the negative lab results for sexually transmitted diseases was exculpatory and was required to have been disclosed by the State. The State responded that they had provided the name of the SANE nurse as a witness and that they had given appellant the relevant documents regarding her examination. The court denied the motion for mistrial, finding that the State had provided the information.

Appendix C

Defense counsel continued his cross-examination of Ms. Shock and again moved for a mistrial based on the State's failure to disclose that the prosecutor had represented Ms. Shock years earlier in a civil action when the prosecutor was in private practice. The circuit court denied the motion and continued with the proceedings.

During a subsequent break in Ms. Shock's testimony, the prosecutor told the court that she had asked the SANE nurse during the break to confirm the number of pages contained in the medical records. The prosecutor discovered that there were numerous pages, including lab results, that had not been provided to defense counsel. Appellant moved for a mistrial, which the State conceded had merit, and the court granted it.

On March 20, 2019, prior to appellant's second trial, he filed a motion to dismiss on double-jeopardy grounds under the federal and state constitutions, arguing that the State's failure to turn over inculpatory and exculpatory information was a *Brady*[2] violation, constituted prosecutorial misconduct, and was disclosed during trial to provoke a mistrial and avoid an acquittal. Therefore, he argued, under the United States Supreme Court's opinion in *Kennedy*, double jeopardy attached to bar re-prosecution. The circuit court denied appellant's motion, specifically finding no bad faith on behalf of the

2. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (holding suppression by the prosecution of requested evidence favorable to an accused violates due process when the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of prosecution).

State and no attempt by the prosecutor to "goad" appellant into requesting a mistrial. This appeal is from that denial.

A double-jeopardy claim may be raised by interlocutory appeal because if a defendant is illegally tried a second time, the right is forfeited. *Zawodniak v. State*, 339 Ark. 66, 68, 3 S.W.3d 292, 293 (1999). We review a circuit court's denial of a motion to dismiss on double-jeopardy grounds de novo. *Winkle v. State*, 366 Ark. 318, 235 S.W.3d 482 (2006). When the analysis presents itself as a mixed question of law and fact, we give the factual determinations made by the circuit court due deference and will not reverse them unless clearly erroneous. *Id.* at 320, 235 S.W.3d at 483. However, "the ultimate decision by the circuit court that the defendant's protection against double jeopardy was not violated is reviewed de novo, with no deference given to the circuit court's determination." *Green v. State*, 2011 Ark. 92, at 4, 380 S.W.3d 368, 371.

The Double Jeopardy Clause of the Fifth Amendment protects a criminal defendant from repeated prosecutions for the same offense. *United States v. Dinitz*, 424 U.S. 600, 606, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1976). The Double Jeopardy Clause, however, does not offer the defendant a guarantee that the State will vindicate its societal interest in the enforcement of the criminal laws in one proceeding. *Kennedy*, 456 U.S. at 672. It protects criminal defendants from (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *Wilcox v. State*, 342 Ark. 388, 39 S.W.3d 434 (2000) (citing *North Carolina v. Pearce*, 395 U.S. 711, 89 S.

Ct. 2072, 23 L. Ed. 2d 656 (1969)). There is also a narrow exception to the rule that the Double Jeopardy Clause will not bar retrial when a defendant moves for a mistrial "where the governmental conduct in question is intended to 'goad' a defendant into moving for a mistrial." *Kennedy*, 456 U.S. at 676. The examination of the prosecutor's intent calls for the circuit court to make a finding of fact by inferring the existence or nonexistence of intent from objective facts and circumstances. *McClendon v. State*, 2017 Ark. App. 295, at 6, 523 S.W.3d 374, 377; *Jackson v. State*, 322 Ark. 710, 911 S.W.2d 578 (1995).

Appellant first argues that the circuit court erred in denying his motion to dismiss because the State's repeated discovery and *Brady* violations were intended to provoke a mistrial. He points to his repeated attempts to obtain a mistrial for the State's failure to disclose before trial (1) the existence of a sexual-assault medical exam of the victim; (2) that the victim and appellant had been alone together; and (3) the prosecutor's previous representation of Ms. Shock in a civil matter. The circuit court reviewed the issues and found that the prosecutor had not intentionally attempted to "goad" appellant into requesting a mistrial.

We cannot say that the circuit court's finding is clearly erroneous, and on de novo review, we affirm its denial of appellant's motion to dismiss. Appellant moved multiple times for mistrial before it was ultimately granted by the court. The State responded to each motion, refuting appellant's arguments and denying that a mistrial was warranted, suggesting that the State specifically did not

want the case to end in a mistrial. It was not until the prosecutor questioned the SANE nurse during a break in Ms. Shock's testimony that the State discovered multiple pages from the medical examination had not been provided to appellant during discovery. At appellant's renewal of his motion for mistrial, the prosecutor agreed that it should be granted although it made her "physically ill." We cannot say the circuit court's finding that the prosecutor did not intentionally goad appellant into moving for a mistrial is clearly erroneous.

Further, although the State does not concede that the failure to provide the evidence amounted to a *Brady* violation,[3] our supreme court has held that the law is well settled that the remedy for a *Brady* violation is a new trial, which appellant is receiving in this case. *Green*, 2011 Ark. 92, at 11, 380 S.W.3d at 375. Prosecutorial misconduct, even intentional and reversible misconduct, does not preclude retrial of the case. *Id.* To invoke the double-jeopardy bar, a defendant must show that the misconduct was motivated not by a desire to obtain a conviction but by a desire to provoke the defendant into moving for a mistrial. *Id.* (quoting *State v. Williams*, 268 Kan. 1, 988 P.2d 722, 728 (Kan. 1999)). Appellant has failed to make that showing here.

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3. There are three elements of a *Brady* violation: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued. *Williams v. State*, 2017 Ark. 313, at 3, 530 S.W.3d 844, 846. We express no opinion whether the violations in this case met this standard.

Appendix C

Finally, appellant asks us to consider expanding double-jeopardy considerations under the Arkansas Constitution to include a more objective, broader standard involving prosecutorial-misconduct allegations. Our supreme court has declined to extend the holding of *Kennedy* beyond those instances in which the prosecution has intentionally provoked a mistrial. *Green, supra; Jackson, supra.* We must follow the precedent set by the supreme court and are powerless to overrule its decisions. *Rice v. Ragsdale*, 104 Ark. App. 364, 368, 292 S.W.3d 856, 860 (2009).

Accordingly, we affirm the circuit court's decision denying appellant's motion to dismiss.

Affirmed.

VIRDEN and KLAPPENBACH, JJ., agree.

APPENDIX D — EXCERPT OF TRANSCRIPT OF THE CIRCUIT COURT OF CLEBURNE COUNTY, ARKANSAS, FOURTH DIVISION, DATED APRIL 16, 2019

[998]IN THE CIRCUIT COURT OF
CLEBURNE COUNTY, ARKANSAS
FOURTH DIVISION

NO. CR-2017-166

STATE OF ARKANSAS,

Plaintiff,

vs.

MICHAEL C. SHOCK,

Defendant.

PROCEEDINGS

BE IT REMEMBERED that on this 16th day of April, 2019, before the Honorable Tim Weaver, Judge within and for the 16th Judicial District, of which Cleburne County is a part, the above-styled cause was heard before the Court.

The following is a true, correct and complete transcription of the record made on the above date.

BY THE COURT: State versus Michael Shock, CR-2017-166. We've got some hearings for today. How long do y'all anticipate those hearings will take?

BY MR. SMITH: Judge, Mr. Benca's got a pending motion to dismiss. The State's got a pending motion to quash subpoena for Ms. Meyer. Probably 30 to 45 minutes, I'd say.

***

[1012]to spend a bunch of money. The State has also spent a bunch of money and resources in preparing for trial. And so, we certainly fought this tooth and nail. And I don't think there's any way you can find that we provoked them into a mistrial.

THE RULING

BY THE COURT:

Based on the record, I'm going to agree. I find that back when Ms. Meyer represented to this Court that she was surprised and there's nothing before this Court that would indicate that Ms. Meyer orchestrated this to goad the defendant into asking for a mistrial. So, I think - - I have everything I would need to make a ruling. And I will make the ruling that I do not need Ms. Meyer - - Judge Meyer now, to make that - - those same statements on the record. I've not been shown that there's anything of over and beyond what occurred back then that would have any relevance to this case going forward.

BY MR. SMITH: Yes, sir.

BY MR. BENCA: So, the motion to quash is denied? Is that correct, Judge?

BY THE COURT: The motion to quash will be granted.

BY MR. BENCA: Okay. I'm sorry. That's what I meant.

BY THE COURT: Correct.

BY MR. SMITH: Motion to quash is granted.

BY MR. BENCA: Granted.

***

[1016](THEREUPON, JOINT EXHIBIT 1 IS MARKED AND ADMITTED INTO EVIDENCE)

(THEREUPON, JOINT EXHIBIT 2 IS MARKED AND ADMITTED INTO EVIDENCE)

BY THE COURT: And I will be the one that the State says is all they had, the two pages plus an error page. And the other one is the one that the defendant - -

BY COURT REPORTER: So, which is which?

BY MR. BENCA: That we agree was faxed to the sheriff's office on 8/15 of 2018.

BY MR. SMITH: This is 1 and this is 2.

BY COURT REPORTER: This is 1 and this is 2. Okay.

BY THE COURT: Based on the record before this Court, I do not find any bad faith or an attempt by the State to goad the defendant into requesting a mistrial. And I'm going to deny the motion to dismiss.

BY MR. BENCA: Thank you, You Honor.

BY THE COURT: I find that jeopardy never attached. So - -

BY MR. BENCA: So, what I will do is I'll keep the Court in contact with regard to the notice of appeal. And then I'll get the State involved.

BY THE COURT: And you understand because the age of this child, I'm under some pressure to make sure that it gets sent forward. And you're representing to this Court that you

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