Circuit Court for Prince George's County
Case No. CT210350X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1237

September Term, 2024

TRISTAN THIGPEN

v.

STATE OF MARYLAND

Arthur,
Ripken,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 11, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The State charged appellant Tristan Thigpen with sexual abuse of a minor, second-degree sexual offense, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault. On the second day of a jury trial, the Circuit Court for Prince George's County declared a mistrial after the State's witness alluded to Thigpen's abuse of another victim.

After the mistrial, Thigpen moved to dismiss the indictment on double jeopardy grounds. The court denied the motion after a hearing. This timely appeal followed.

On appeal, Thigpen presents one question for review: "Did the trial court err when it denied [Thigpen's] motion to dismiss on double jeopardy grounds?"

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

The State charged Thigpen with sexually abusing A. from 2014 to 2018. A. was nine years old when the abuse allegedly began. He was 19 years old at the time of trial.

A. The Mistrial

During his testimony, A. mentioned that one instance of sexual abuse had occurred at a hotel outside Prince George's County. Without an objection, the prosecutor asked the court to instruct the jury to disregard A.'s statement about conduct that occurred outside of the County. A. expressed confusion about the court's instruction, stating: "Why would this—why—never mind."

A. went on to testify that in 2020 he told his sister about Thigpen's abuse. A. testified that his sister had disclosed that she had also been molested. At that point the

State requested a recess to advise A. that he could not testify that Thigpen had molested his sister:

> [THE STATE]: I am worried that he is going to say that his sister said that she was also molested by the Defendant. So can I have a brief minute to advise him? That we can talk about that again?
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: Yes. I mean, I have got no problem with [A.] saying that [his sister] was molested.
>
> [THE STATE]: Yes. I just want to make sure it doesn't go from there into by the Defendant.
>
> THE COURT: Okay. So we will take a break for about four or five minutes and come right back.

After the recess, A.'s direct examination resumed. He testified that his cousins had asked about the meaning of molestation. A. and his sister told the cousins not to worry about it.

A. testified about what happened after he and his sister went to their rooms that night:

> That night, I couldn't sleep. I had a fear of just something like that happening to [my sister]. So I eventually got out of my bed and went into her room, and I said . . . I got to talk to you. And then she was on the phone, and she was like, wait. I was like, no, I need to talk to you now.
>
> And then—then I asked her—I said who molested you? And she wouldn't tell me. She wouldn't tell me. And she was like, I'm not telling you why. And I said, was it [Thigpen]? Because it happened—that happened to me.

Defense counsel objected and moved for a mistrial. In making the motion, defense counsel conceded that the "State did everything" to avoid a mistrial by requesting

the break in order to advise A. about the limits on what he could say. "[T]his is exactly what we didn't want to happen, and it has happened," counsel said.

The prosecutor confirmed that he had advised A. not to testify that Thigpen had molested A.'s sister. He observed that, strictly speaking, A. had not violated the State's direction: A. did not say Thigpen "molested his sister." Defense counsel responded by speculating that A. had intentionally defied the prosecutor's advice.

The court granted a mistrial, ruling that the jury could not disregard A.'s insinuation that Thigpen had molested A.'s sister. "[T]his was not the State's doing," the court observed. "[T]he State knew there was a problem, warned [A.] before, and when he went out, told [A.] against just like three minutes beforehand not to do it."

The court could not determine whether A. had acted intentionally or whether "he just didn't understand what he was doing because he is young." The court informed defense counsel, however, that it did not believe that the State had intentionally elicited A.'s statements. "I do not believe that at all," the court said.

B. The Motion to Dismiss

In August 2024 Thigpen moved to dismiss on double jeopardy grounds. In the motion, Thigpen contended "that the government—through [A.'s.] premeditated conduct—intentionally sabotaged the trial, goading the defense into requesting a mistrial, and prejudicing the defendant's prospect for an acquittal." He relied on cases holding that a state may not retry a criminal defendant if the prosecution's misconduct forced the defendant to move for a mistrial. *See, e.g.*, *Oregon v. Kennedy*, 456 U.S. 667, 676 (1982).

Later that month, the court heard the motion to dismiss. Pointing to A.'s trial testimony and demeanor, defense counsel argued that the court had upset A. when it instructed the jury to disregard his testimony about the abuse that allegedly occurred outside of Prince George's County.

Defense counsel claimed that the conduct of A., the State's central witness, should be "imputed to the State" because A. had intentionally "sabotage[d] the trial[,]" and thus "goaded" Thigpen into seeking a mistrial. Defense counsel conceded that he knew of no precedent to support his argument that A.'s conduct should be imputed to the State for double jeopardy purposes.

In response, the prosecutor told the court that he thought the trial had been "going very well" and that he "was probably more frustrated than anyone at the fact that it was a mistrial." As to A.'s intentions, the State made the following proffer:

> I don't think that [A.] knows what a mistrial is. I explained to him that the case, we would have lots of problems. Your Honor let me explain to him outside the court twice. I believe Your Honor actually made statements to him letting him know not to say it. He is not here, so I won't elicit testimony about why he did or did not say that.
>
> But I can represent to the Court that I believe that there—somewhere inside of him he knew that he was toeing the line when he said that, and I get that from my conversations with him. But I don't think he realized. He's a 19-year-old kid, and he said what he said, but I don't think that that in any way, shape or form is a representation by the State or shows that the State in any way wanted to goad the defense into a mistrial or in fact wanted a mistrial.

The court observed that the mistrial occurred early in the trial, during the second witness's testimony. "[W]hen you see somebody trying to throw a trial," the court said, "you see it because they are losing." When A. said what he said, however, "nobody

[was] winning or losing." The court could not determine whether A. had intended to cause a mistrial.

The court denied Thigpen's motion to dismiss for two reasons. First, the court found that the State did not goad Thigpen into requesting a mistrial. Second, the court was unconvinced that A. knew his testimony would result in a mistrial.

DISCUSSION

Thigpen concedes that the prosecutor did not intend to cause a mistrial. Instead, Thigpen claims that the State's key witness, A., intentionally goaded Thigpen into seeking a mistrial. According to Thigpen, a retrial would violate the Fifth Amendment's prohibition on double jeopardy because, he says, A.'s conduct should be imputed to the State.

The State argues that the circuit court properly rejected Thigpen's argument that the State, through A., deliberately sabotaged the trial. The State contends that the court's factual findings are dispositive because they are not clearly erroneous.

This court examines "without deference a trial court's conclusion as to whether the prohibition on double jeopardy applies." *Scott v. State*, 454 Md. 146, 167 (2017). Whether the State intentionally provoked a mistrial is a factual finding, which we review for clear error. *Oregon v. Kennedy*, 456 U.S. 667, 675 (1982); *Fields v. State*, 96 Md. App. 722, 742 (1993).

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution provides: "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb[.]" U.S. CONST. amend V. "The clause's purpose is to

assure finality for the benefit of the defendant in criminal trials." *Nicholson v. State*, 157 Md. App. 304, 310 (2004).

"Ordinarily, a defense request for a mistrial is treated as a waiver of any double jeopardy claim." *West v. State*, 52 Md. App. 624, 631 (1982). The Supreme Court of the United States has, however, recognized a narrow exception: "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." *Oregon v. Kennedy*, 456 U.S. at 676. This Court has "amplified the definition of intentional goading, explaining it as the act of deliberately 'sabotaging a trial that is going badly.'" *Giddins v. State*, 163 Md. App. 322, 340 (2005) (quoting *Fields v. State*, 96 Md. App. at 746).

Thigpen cites no authority for the contention that a civilian witness's conduct can be imputed to the State in this context. Instead, he cites cases about the State's obligation to disclose items in the possession of law enforcement officers. Nothing in those cases suggests that the Double Jeopardy Clause bars the State from retrying a defendant after a civilian witness defies or ignores the prosecutor's admonitions and causes a mistrial.

Furthermore, when a prosecutor warns a civilian witness not to mention certain information, the witness's subsequent "blurt" or unresponsive answer does not trigger double jeopardy protection. In *Lee v. State*, 47 Md. App. 367, 371 (1980), the prosecutor "specifically cautioned" the State's witness not to refer to Lee's involvement in a prior robbery. Despite that warning, the witness offered unresponsive testimony about Lee's involvement in a prior robbery. *Id*. at 370. After the court granted Lee's motion for a

mistrial, he unsuccessfully argued that the Double Jeopardy Clause barred retrial. *Id*. at 371.

This Court upheld the trial court's denial of Lee's motion to dismiss. "Having admonished the witness not to mention the earlier uncharged robbery," we explained, "there was little the prosecutor could do to prevent either the 'blurt' or the unresponsive answer given by the witness." *Id*. Because nothing in the record showed that the prosecutor "sought or wanted a mistrial" or "endeavored to deprive [Lee] of a fair trial[,]" the witness's conduct could not be attributed to the State. *Id*.

Lee applies here. The prosecutor took affirmative steps to avoid a mistrial, interrupting A. when necessary and warning A. about the proper limits of his testimony. Nothing in the record suggests that the State endeavored to deprive Thigpen of a fair trial or sought a mistrial. To the contrary, the prosecutor repeatedly took steps to ensure Thigpen's right to a fair trial and argued against the mistrial declaration. Under *Lee*, that ends our inquiry.

For all these reasons, the court did not err in denying Thigpen's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.