Circuit Court for Baltimore City
Case No.: 123313002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1421

September Term, 2024

OREAN OBRIAN FINDLEY

v.

STATE OF MARYLAND

Tang,
Kehoe, S.,
Raker, Irma
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: May 29, 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).

Orean Obrian Findley ("Mr. Findley"), appellant, was charged with second-degree rape, assault, burglary, kidnapping, and related offenses. He proceeded to a jury trial in the Circuit Court for Baltimore City. Through testimony of Sergeant Carlos Arias ("Sgt. Arias") taken on the second day of trial, the parties discovered that the State had failed to disclose thousands of pages of discoverable evidence. Mr. Findley moved to dismiss the case based on the discovery violation, which the Court denied. The State requested a mistrial. The court declared a mistrial over Mr. Findley's objection based on manifest necessity.

Mr. Findley filed a second motion to dismiss on double jeopardy grounds, which was denied after a hearing conducted on September 16, 2024. Mr. Findley appeals that denial, presenting the following question for our review:

> Whether the trial court abused its discretion when it denied [Mr.] Findley's motion to dismiss and found manifest necessity for a mistrial over defense objection, and without the trial court first making sufficient inquiry into alternative means?

For the reasons discussed, we shall affirm the judgment.

BACKGROUND

Our summary of the record is limited to the information necessary to address the issues raised in this interlocutory appeal.

Mr. Findley and E.M., the alleged victim, engaged in an inconsistent and admittedly toxic romantic relationship for several years before it ended on October 4, 2023. Though they had lived together prior to the demise of their relationship, at the time of the events in question, they lived in separate residences on the same block. Despite initiating the

breakup, Mr. Findley continually texted and called E.M. in the days after the relationship ended, claiming that E.M. owed him money and accusing her of infidelity. Mr. Findley threatened that E.M. would "regret it" if she did not call him back.

When she returned home on October 7, 2023, E.M. discovered a substantial amount of money was missing from her apartment, and she believed that Mr. Findley had taken it. E.M. confronted Mr. Findley over the phone and he stated that she would only get her money back if she had "a conversation with him and [got] into his car." E.M. agreed and they proceeded to drive around for about an hour and a half. According to E.M., Mr. Findley behaved erratically throughout the drive and physically assaulted her several times.

E.M. repeatedly asked Mr. Findley to take her home, but he refused, instead taking her to his apartment. Mr. Findley again claimed that he would return E.M.'s money if she had a conversation with him. Once in the apartment, he accused her of sleeping with another man and repeatedly struck her. Mr. Findley then told E.M. he would return the money to her if she had sex with him. He forcibly started to remove her clothes, and she allowed him to, allegedly in the hopes that he would ultimately return the money and stop physically harming her. After the intercourse commenced, however, E.M. told Mr. Findley to stop, but he did not, and she fought back. At the conclusion of the sexual encounter, Mr. Findley still declined to give the money back and was again violent with E.M. to the point that she was purportedly rendered unconscious for a short time. She was eventually able to leave. Upon returning home, she called her family and then the authorities.

Mr. Findley was indicted on charges of second-degree rape, assault, burglary, kidnapping, and related offenses. The State put forth four witnesses during its case in chief,

including Sgt. Arias, the investigating officer, who testified at the end of the second day of trial. During cross-examination, Sgt. Arias disclosed that he had requested and obtained a "cell phone dump"[1] of E.M.'s phone during the course of his investigation. The following exchange took place between Sgt. Arias and defense counsel:

> [DEFENSE COUNSEL]: Now, with regard to [E.M.'s] phone, you just looked at it yourself; correct?
>
> [SGT. ARIAS]: I actually submitted a request to get a cell phone dump for her cell phone.
>
> [DEFENSE COUNSEL]: Did you get a cell phone dump?
>
> [SGT. ARIAS]: From [E.M.'s]?
>
> [DEFENSE COUNSEL]: Yes.
>
> [SGT. ARIAS]: I did, yes.
>
> [DEFENSE COUNSEL]: You got an entire cell phone dump?
>
> [SGT. ARIAS]: Yes, ma'am.

This was apparently news to both the prosecution and the defense, as neither had knowledge that any such evidence existed, and both believed that Sgt. Arias had made a mistake. The following bench conference ensued:

> [DEFENSE COUNSEL]: I have never been provided with a cell phone dump of the victim in this case.
>
> [PROSECUTION]: I don't have the cell phone dump in this case, Your Honor. I tend to believe that he's mistaken. No cell phone dump was provided to the State, none was requested, none was given to (unintelligible). He might be mistaken.

[1] A colloquial phrase used by police officers, which means to extract, or the extraction of, data from cell phones.

> [THE COURT]: So, if there's a cell extraction, I need to know why it wasn't provided. Which I don't think we're going to get the answer to that right at this moment. So, it's an issue we're going to have to deal with.
>
> [DEFENSE COUNSEL]: Well, depending upon if we finish with the detective, then I may need the ability to recall him once we make that verification because I think it should be clarified for the jury.
>
> [PROSECUTION]: I just want to be perfectly clear. I do not have a cell phone dump in my possession.
>
> [DEFENSE COUNSEL]: I don't think it was done.
>
> [PROSECUTION]: Okay.
>
> [DEFENSE COUNSEL]: I don't think it was done, Counsel.
>
> [PROSECUTION]: I kind of agree.

At the conclusion of the second day of the hearing, the court instructed the State to check in with Sgt. Arias as to the existence of the "cell phone dump." Upon questioning by both parties the following day, Sgt. Arias confirmed that he had requested and obtained the cell phone extraction, as well as a litany of other evidence, including body camera footage, license plate readings, the results from door-to-door canvassing, and, potentially, Global Positioning System ("GPS") location data. He explained that he had uploaded this information to the filesharing system used by the police and state prosecutors, but that the link expired after thirty days because of the size of the file. It further came to light that Sgt. Arias believed that anything he uploaded into the system could be seen by the State when that is, in fact, not the case. By this point in the trial, the State had concluded its case-in-chief, and Mr. Findley had not been able to cross-examine the State's witnesses regarding the evidence Sgt. Arias had accumulated.

Mr. Findley moved to dismiss the case with prejudice because of the discovery violations, specifically alleging that the State had been in possession of exculpatory evidence that it did not properly disclose. The State, on the other hand, suggested the court declare a mistrial to remedy the discovery violation.

The court agreed with Mr. Findley that there had been a significant discovery violation but determined that "dismissal is not an appropriate remedy, instead finding manifest necessity to declare a mistrial." In so concluding, the court found that the undivulged evidence was not clearly exculpatory, that it would be "exceedingly difficult" for Mr. Findley and his counsel to review the voluminous evidence quickly, and that Mr. Findley could not easily adjust his approach as he had already presented an opening statement and cross-examined witnesses without the benefit of this evidence. The court further determined that "the failure to disclose was not done maliciously or with an intent to deceive or to hide evidence," but rather "reflects inattention to detail." Mr. Findley objected to the court's mistrial declaration.

On June 25, 2024, Mr. Findley filed a motion to dismiss on double jeopardy grounds, arguing that Sgt. Arias, the State, or both intentionally withheld "exculpatory and potentially exculpatory evidence" from Mr. Findley and his counsel, that since the conclusion of the hearing on June 4, 2024, the State had still failed to turn over the discoverable evidence, and that manifest necessity for a mistrial did not exist in this case. The State filed an untimely opposition on September 12, 2024, to which Mr. Findley replied three days later. After argument on September 16, 2024, the court denied Mr. Findley's motion to dismiss, finding "no misconduct" on the part of the State and that,

though Sgt. Arias's handling of the case was "sloppy and negligent," it did not "rise to the level of any intentional or malicious conduct." The court determined that there was "no irreparable prejudice" to Mr. Findley that would warrant the extreme measure of a dismissal and reiterated its prior findings as to the manifest necessity for a mistrial. On the same day, Mr. Findley filed the instant interlocutory appeal challenging the court's denial of his motion to dismiss on double jeopardy grounds.

STANDARD OF REVIEW

The court's decision to grant a mistrial is reviewed for abuse of discretion. *State v. Baker*, 453 Md. 32, 46 (2017) ("It is well-settled that a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is abuse of discretion.") (internal quotations and citations omitted). When assessing a potential abuse of discretion, we "look to whether the trial judge's exercise of discretion was 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id.* (internal quotations and citations omitted).

DISCUSSION

A. Parties' Contentions

Mr. Findley argues that the circuit court abused its discretion in declaring a mistrial over his objection when no manifest necessity existed. He asserts that there were reasonable, less extreme alternatives to mistrial, specifically claiming that the court could have continued the case, instructed the jury as to certain parts of Sgt. Arias's testimony, struck part of the testimony, recalled Sgt. Arias for further cross-examination, allowed Mr. Findley to call additional witnesses to combat the nondisclosure, and, lastly, dismissed the

case with prejudice. He further contends that there is no indication in the record that the court adequately considered any of these proposed alternatives.

The State, on the other hand, maintains that the court's determination as to manifest necessity and the declaration of a mistrial were warranted. It argues that a mistrial was the appropriate sanction for a discovery violation of this magnitude, as the violation was uncovered at the end of the State's case-in-chief, and Mr. Findley's defense relied in large part on the State's failure to conduct a thorough investigation. The State further asserts that there was a high degree of necessity for the mistrial, the court did consider reasonable alternatives, and that those alternatives were unreasonable under the circumstances.

B. Manifest Necessity and Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, provides, in relevant part, that "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." *Simmons v. State*, 436 Md. 202, 213 (2013) (citing *Benton v. Maryland*, 395 U.S. 784, 793–94 (1969)). Our Supreme Court has recognized that, while there is "no double jeopardy clause in the Maryland Constitution, . . . Maryland common law double jeopardy principles also protect an accused against twice being put in jeopardy for the same offense." *Id.* at 213 (citation and quotation marks omitted). Jeopardy generally does not attach, however, until a jury "has been empaneled and sworn." *Id.* While the attachment of jeopardy generally bars a retrial for the same offense, it does not establish that a subsequent trial will *always* be barred. *See Hubbard v. State*, 395 Md. 73, 89 (2006) (explaining that "[r]etrial is not automatically barred . . . when a criminal proceeding is

concluded after jeopardy attaches but without resolving the merits of the case." (referencing *Arizona v. Washington*, 434 U.S. 497, 505 (1978))). "When a mistrial is granted over the objection of the defendant, double jeopardy principles will not bar a retrial if there exists 'manifest necessity' for the mistrial. In that situation, the prosecutor bears the heavy burden of demonstrating manifest necessity." *Simmons*, 436 Md. at 213–14 (footnote omitted).[2]

A finding of "manifest necessity" requires that "1) there was a 'high degree' of necessity for the mistrial; 2) the trial court engaged 'in the process of exploring reasonable alternatives' to a mistrial and determined that none was available; and 3) no reasonable alternative to a mistrial was, in fact, available." *Baker*, 453 Md. at 49 (internal citations omitted). "[I]n order to determine manifest necessity to declare a mistrial, the trial judge must weigh the unique facts and circumstances of each case, explore reasonable alternatives, and determine that no reasonable alternative exists." *Quinones v. State*, 215 Md. App. 1, 17 (2013). "A retrial is permitted where the trial judge's action in declaring a mistrial is necessary to protect the interest of the defendant[.]" *Cornish v. State*, 272 Md. 312, 319 (1974). Additionally, "[m]anifest necessity exists where there has been a procedural error in the proceedings which would necessitate a reversal on appeal." *State v. Crutchfield*, 318 Md. 200, 209 (1989). "To meet the 'high degree' of necessity, the Supreme Court has recognized that there must be no reasonable alternative to the

[2] *See also Terry v. State*, No. 2423, Sept. Term 2019, 2021 WL 4144072, at *11 (Md. App. Sept. 13, 2021) (unreported opinion) (although unreported, the opinion is instructive on the issue at hand).

declaration of a mistrial." *Hubbard*, 395 Md. at 91. As such, the first and third *Baker* factors are often considered together. *See id*. We review whether "the trial judge acted responsibly and deliberately, and accorded careful consideration to the defendant's interest in having the trial concluded in a single proceeding." *Baker,* 453 Md. at 49 (cleaned up) (quoting *Washington*, 434 U.S. at 516).

In this case, at the time the trial court declared a mistrial, the jury had been empaneled and sworn, so jeopardy had attached. *See Hubbard*, 395 Md. at 90. Additionally, the record reflects that a mistrial was granted over Mr. Findley's objection. Therefore, we must examine whether the circuit court correctly found manifest necessity in granting a mistrial.

C. *Baker* Factor 2: Court's Consideration of Reasonable Alternatives

Mr. Findley contends that the court did not adequately consider the alternatives to mistrial. The record, however, does not support this argument. After learning of the potential discovery violation, the court instructed the State to verify that Sgt. Arias was, in fact, in possession of the evidence in question. Once Sgt. Arias confirmed the existence of the evidence, the court brought him back in for additional questioning on the record. The court then asked the parties to suggest possible solutions for the discovery violation. In response, the State requested a mistrial, while Mr. Findley asked for a dismissal, claiming that the court could not undo the damage caused by the failed disclosure through any lesser means. Though neither party explicitly requested it, the court considered the possibility of granting a continuance but found it highly impractical due to the court's schedule and the large amount of evidence that defense counsel would need to sort through before being

able to lodge a new defense. The court was also sympathetic to Mr. Findley's argument that his counsel would not be able to reverse course as the initial approach to Mr. Findley's defense was predicated upon the lack of investigation and evidence presented. The court clearly considered multiple alternatives to mistrial, including dismissal and continuance.

On appeal, for the first time, Mr. Findley argues that the court could have considered sending the jury home for a few days while defense counsel reviewed the discovery.[3] He also argues that the court could have considered striking the detective's testimony, instructed the jury regarding certain aspects of his testimony, or allowed the defense to call extrinsic witnesses to explore areas related to withheld discovery. However, defense counsel had argued to the circuit court that some of the undisclosed discovery was exculpatory and the belief there was no additional discovery "led [defense counsel] down a path of cross-examination or prevent[ed] us from pursuing an effective defense when cross-examining witnesses[.]" Counsel asserted that "water has flowed through the dam, so to speak, and can't really be undone." In other words, the circuit court's consideration of Mr. Findley's newly-developed alternatives on appeal could not have cured the prejudice to the defense's overall trial strategy because the damage had already been done.

D. *Baker* Factors 1 and 3: High Degree of Necessity and Reasonable Alternatives

We discern no abuse of discretion in the court's determination that a mistrial was necessary, and that no reasonable alternative was available.

[3] This contention contradicts the position Mr. Findley took earlier. In his motion to dismiss filed on June 25, 2024—twenty days after the trial—defense counsel stated that the defense had not received any additional discovery.

The level of necessity for declaring a mistrial in the case at hand is closely tied to the court's determination as to the appropriate sanction for the discovery violation. When a discovery violation occurs, the court "has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction at all is necessary." *Thomas v. State*, 397 Md. 557, 570 (2007). In so doing, it may consider imposing one of the proposed sanctions listed in Rule 4-263(n), which include, "permit[ting] the discovery of the matters not previously disclosed, strik[ing] any or all testimony to which the undisclosed matter relates, grant[ing] a reasonable continuance, prohibit[ing] the party from introducing in evidence the matter not disclosed, grant[ing] a mistrial, or enter[ing] any other order appropriate under the circumstances." (Emphasis added). "In exercising its discretion regarding sanctions for discovery violations, a trial court should consider: (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feas[i]bility of curing any prejudice with a continuance; and (4) any other relevant circumstances." *Thomas*, 397 at 570–71 (footnote and citations omitted). It is generally best practice for "the court [to] impose the least severe sanction that is consistent with the purpose of the discovery rules." *Id.* at 571 (citations omitted).

Here, when analyzing "the reasons why the disclosure was not made," the court concluded that the State did not disclose the cell phone extraction and other evidence due to an "inattention to detail" and not "with an intent to deceive or to hide evidence." At the September 16, 2024, hearing on Mr. Findley's motion to dismiss, the court again found "no misconduct" on the part of the State and determined that Sgt. Arias's "sloppy and negligent" mismanagement of the case did not "rise to the level of any intentional or

malicious conduct." We agree. It appears that the State's failure to disclose the discoverable evidence resulted from a miscommunication between the prosecutor and Sgt. Arias as well as a failure of both to understand the filesharing system.

The discovery violation also prejudiced Mr. Findley, because, as the court noted, defense counsel "formulated her approach to the defense of this case and the examination of witnesses without the benefit of this additional information." Furthermore, it is clear from the opening statement and cross-examination of the victim that Mr. Findley's defense focused in large part on the failure of Sgt. Arias to perform a full, detailed investigation and of the State to provide sufficient evidence to support any conviction. Mr. Findley's approach to his defense was telegraphed to the jury, and the court cannot "unring the bell" so to speak. As such, Mr. Findley was certainly prejudiced by the nondisclosure.

Additionally, we agree that curing the prejudicial discovery violation with a continuance was not feasible. The jury had already heard Mr. Findley's opening statement as well as the cross-examination of every witness. Indeed, it had heard the exchange between Mr. Findley's counsel and Sgt. Arias in which counsel harped on a lack of investigation, but Sgt. Arias insisted that more evidence had been obtained than was previously thought. Moreover, the court considered a possible continuance prior to declaring a mistrial but found it practically impossible given the court's schedule as well as the "thousands of thousands of thousands of files" that were not properly disclosed to Mr. Findley.

Turning to factors 1 and 3 of *Baker*, and incorporating our analysis above, we find no fault with the court's determination that there was a high degree of necessity for a

mistrial as the prejudice from the undisclosed discovery was severe and affected Mr. Findley's presentation of evidence and trial strategy. Based on the arguments asserted by defense counsel below, no other alternatives considered by the court could not adequately cure the discovery violation.

As mentioned, Mr. Findley claims that the court could have employed several less-restrictive alternatives to cure the discovery violation. These include: continuing the case, "instruct[ing] the jury about certain aspects of the detective's testimony, . . . [striking] testimony or allow[ing] it to be reopened, permit[ing] the defendant to call extrinsic witnesses to explore areas related to the withheld discovery…, [or] properly dismiss[ing] the[] charges with prejudice." Though Mr. Findley now claims there were several possible alternatives to mistrial, these arguments directly contradict his arguments before the trial court. As stated earlier, Mr. Findley made no mention of any alternatives when discussing the issue with the trial judge, contending instead that the discovery violation was so egregious that the only remedy was dismissal of the case. On appeal, however, Mr. Findley argues the exact opposite. We are not persuaded that a discovery violation that was allegedly so dire at the trial court level could have been cured by a continuance, striking of testimony, additional cross-examination, and some pointed jury instructions. Accordingly, the court did not abuse its discretion in denying Mr. Findley's motion to dismiss on double jeopardy grounds.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.