Circuit Court for Baltimore County
Case No. C-03-CR-20-002910

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1689

September Term, 2023

DONWIN RUMEAL BROOKS

v.

STATE OF MARYLAND

Arthur,
Albright,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: June 18, 2025

*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).

This appeal concerns the area of Double Jeopardy law that deals with Mistrial/Retrial after a Prior Acquittal. We must consider when a verdict becomes final for the purposes of Double Jeopardy and whether a trial judge acted within her discretion to not accept a verdict of Not Guilty and to permit a retrial of the defendant. We hold that the verdict of Not Guilty on Second-Degree Murder rendered by the jury at the conclusion of the criminal trial of appellant was a valid, final verdict and, therefore, there was no manifest necessity for retrial on that count and the trial judge erred when she entered a mistrial on that count.

Facts And Proceedings

The appellant, Donwin Rumeal Brooks, was indicted in the Circuit Court for Baltimore County on charges related to a July 2020 incident in which the victim, Trevor Hamlet, was shot and killed. A detailed recitation of the facts is not necessary for this appeal. A detailed account of the procedural history, however, is vital.

In September 2022, a 7-day trial was conducted before the Honorable Colleen A. Cavanaugh. At the conclusion of the trial, the following charges were submitted to the jury: First-Degree Murder, Second-Degree Murder, Conspiracy to Commit First-Degree Murder, Use of a Firearm in the Commission of a Crime of Violence, and Possession of a Handgun by a Prohibited Person. Following two days of jury deliberations, a juror sent a note to the judge indicating that they were unable to reach a decision. The court, at that point, told the jury to continue with their deliberations, saying:

> And I ask that you continue with your deliberations. You've had kind of bits and starts of deliberations. I feel like you had a good chunk of time

> yesterday to finally get into the evidence and get settled and today I know you've had a longer period of time to deliberate.
>
> But I mean we were in trial for almost six full days so I know there was a lot of evidence to go through and obviously all 12 of you do not agree at this point. I would just recommend that you listen to one another about why you may feel the way you feel, what evidence perhaps supports the way you feel and listen to your fellow jurors on the pros and cons of each piece of evidence and see if that can help you perhaps reexamine your position or come to an agreement between all of you, okay.

On the next day of deliberations, in the morning, the jury sent a note indicating again that they could not come to an agreement. The judge then gave a modified *Allen* charge to the jury. The jury deliberated for the rest of the day and came back the next day to continue. That morning the court received a third note from the jury. This note indicated that the jurors were "deadlock[ed], yet again…because someone continues to look at, quote, fictional, quote, not existing evidence that is not here, instead of what we do have. We cannot come to a consensus." After this note was received, the State requested a note be sent back to the jury asking if they had reached a verdict as to any counts and if they could see a reasonable probability of reaching a unanimous verdict as to any counts. After some clarification[1], the jurors responded "Yes" to the question of "Have you reached a verdict on any of the counts?" and "No" to the question of "Is there a reasonable possibility of reaching a unanimous verdict as to any count?"

[1] The court (and seemingly the attorneys) believed jurors did not understand the court's first note after they answered affirmatively to the first question but negatively to the second question. The court sent another note emphasizing the word unanimous in the first question. The response from the jury was, again, yes.

After this response was received by the parties, the State requested, over defense objection, that the court take a partial verdict. The court, pursuant to Maryland Rule 4-327(d), decided to take a partial verdict. The court wrote a note to the jury requesting that they "complete the verdict form for those counts on which you all unanimously agree." After a few minutes, the jury was brought into the courtroom and the following occurred:

THE COURT:	Okay, I understand that you were able to come to an agreement on one of the counts on the verdict sheet; is that correct? Okay. Keisha, go right ahead.
THE CLERK:	Ladies and gentlemen of the jury, have you agreed on a partial verdict?
THE JURY:	Yes.
THE CLERK:	Who shall say for you? Madam forelady, please stand. Madam forelady, what say you in the case of State of Maryland versus Donwin R. Brooks in case number C-03-CR-20-2910 as to Count 2, second degree murder?
FORELADY:	Not guilty.
THE COURT:	Okay. Go ahead.
THE CLERK:	You may have a seat. Ladies and gentlemen of the jury, you have heard the verdict your forelady has rendered. Jur[or] number 1, is this your verdict?
JUROR:	Yes.
THE CLERK:	Number 2, is this your verdict[?]
JUROR:	Yes.
THE CLERK:	Number 3, is this your verdict?
JUROR:	Yes.

THE CLERK: Number 4, is this your verdict?

JUROR: Yes.

THE CLERK: Number 5, is this your verdict?

JUROR: Yes.

THE CLERK: Number 6, is this your verdict?

JUROR: Yes.

THE CLERK: Number 7, is this your verdict?

JUROR: Yes.

THE CLERK: Number 8, is this your verdict?

JUROR: Yes.

THE CLERK: Number 9, is this your verdict?

JUROR: Yes.

THE CLERK: Number 10, is this your verdict?

JUROR: Yes.

THE CLERK: Number 11, is this your verdict?

JUROR: Yes.

THE CLERK: Number 12, is this your verdict?

JUROR: Yes.

[THE STATE]: I'm sorry. Can we wait a second? Can I have one moment?

The State then requested a sidebar conference. At this sidebar conference, the State argued that this was not a consistent verdict and urged the court to not accept it. More specifically, the State argued that the verdict sheet prohibited the jury from considering the Second-Degree Murder charge until they reached a decision on the First-Degree Murder charge. Defense counsel, on the other hand, urged the court to accept the partial verdict of acquittal on Second-Degree Murder and to enter a directed verdict of Not Guilty on First-Degree Murder. The court ultimately decided in favor of the State and sent the jury back to continue deliberations with the following instruction:

> …I reviewed the verdict sheet. And I understand that there's been difficulty reaching a consensus on all of the counts.
>
> Unfortunately, Count 1 needs to be decided before Count 2 can be decided one way or the other. And that's what the verdict sheet states. If you find the Defendant guilty of Count 1, do not consider Count 2. Go onto 3.
>
> If you find the Defendant not guilty of Count 1, go onto Count 2. And so, basically, I need to know if a consensus can be reached on Count 1.

Shortly after returning to the jury room, the jury foreperson sent a note to the judge indicating that the jury could not come to a unanimous decision. Over defense objection the court then declared a mistrial on all counts. The appellant was reindicted for First-Degree Murder and Second-Degree Murder. On August 18, 2023, he filed a Motion to Dismiss, which was denied by the court. This appeal ensued.

Question Presented

The appellant presents us with a single contention that comprises numerous issues, which we will address in turn. He asks:

1. Did the circuit court err in denying appellant's Motion to Dismiss the First- and Second-Degree Murder charges against him as barred by Double Jeopardy?

Standard Of Review

The crux of appellant's question of whether the trial judge properly denied appellant's Motion to Dismiss depends on whether there was manifest necessity to declare a mistrial. This existence of manifest necessity for a mistrial is reviewed for an abuse of discretion. Simmons v. State, 436 Md. 202, 81 A.3d 383 (2013). *See also* Arizona v. Washington, 434 U.S. 497, 514, 98 S.Ct. 824, 834, 54 L.Ed.2d 7717, 733 (1978); State v. Fennell, 431 Md. 500, 66 A.3d 630 (2013).

Legal Inconsistency Cannot Exist Without At Least Two Verdicts

At the time the mistrial was declared, the trial judge indicated that she could not accept the jury's verdict because it was legally inconsistent. At the Motion to Dismiss hearing the State conceded this issue. The parties now both agree that what occurred in this case did not constitute a legally inconsistent verdict because there was only one verdict received by the court. A verdict of Not Guilty cannot be legally inconsistent with a non-verdict. There must be two actual, final verdicts for there to be a legal inconsistency between verdicts. Williams v. State, 478 Md. 99, 272 A.3d 347 (2022). Thus, there is no controversy in this case over legally inconsistent verdicts because there was only one verdict. We will not, therefore, address the issue of legally inconsistent verdicts any further.

Double Jeopardy

A criminal defendant is protected from being prosecuted twice for the same offense by both the Double Jeopardy Clause of the United States Constitution and the Maryland common law. U.S. Const. amend. V; Hubbard v. State, 395 Md. 73, 909 A.2d 270 (2006). This is a fundamental principle of our criminal jurisprudence. The United States Supreme Court acknowledged this in United States v. Jorn, 400 U.S. 470, 479, 91 S.Ct. 547, 554, 27 L.Ed.2d 543, 553 (1971):

> [T]o subject the individual to repeated prosecutions for the same offense would cut deeply into the framework of procedural protections which the Constitution establishes for the conduct of a criminal trial.

(Emphasis supplied.) The Fifth Amendment's Double Jeopardy Clause was made applicable to the state of Maryland in the case of Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). Therefore, a criminal defendant is protected from being twice put in jeopardy under both federal Double Jeopardy law and Maryland state law.

Important to the Double Jeopardy analysis, however, is the concept that retrial will not be barred if there was manifest necessity to declare a mistrial. Simmons v. State, 436 Md. 202, 81 A.3d 383 (2013).

Manifest Necessity Is Required For A Mistrial Declared Over Defense Objection

When a mistrial is declared over defense objection, that decision must be supported by manifest necessity. We must, therefore, consider what the term manifest necessity means. This Court noted in State v. Baker, 453 Md. 32, 54-55, 160 A.3d 559 (2017) that the term is not easily defined and often exists on a "spectrum of circumstances precipitating

the declaration of a mistrial." The Court in Baker went on to note that "the hung jury [is] considered to be the classic example of what constitutes manifest necessity for a mistrial." Baker at 55 (quoting State v. Crutchfield, 318 Md. 200, 209, 567 A.2d 449 (1989)). A hung jury does not exist, however, when a verdict has been received in open court and the jurors were polled with the results of the poll being that all jurors affirmed the verdict as announced.

If a mistrial is granted over defense objection and that decision to grant a mistrial is not supported by manifest necessity, then Double Jeopardy principles prohibit the State from retrying the defendant. If manifest necessity existed for the declaration of a mistrial on some counts but not others, the State is only permitted to retry the defendant on those counts where manifest necessity to declare a mistrial actually existed. Hubbard v. State, 395 Md. 73, 91, 909 A.2d 270 (2006).

The State argues that the circuit court properly exercised its discretion in finding manifest necessity to declare a mistrial on all counts based on its observations of the jury, which, according to the trial judge, indicated a lack of unanimity amongst the jurors. Appellant, to the contrary, argues that the circuit court abused its discretion by not accepting and recording the Not Guilty verdict after it was polled.

Partial Verdicts

The circuit court, at the request of the State, properly took a partial verdict from the jury in this case. Maryland law allows a trial court to take a partial verdict on all counts

that a jury has decided. Any counts unable to be resolved by the jury are subject to retrial. Maryland Rule 4-327(d) provides:

> (d) **Two or More Counts**. When there are two or more counts, the jury may return a verdict with respect to a count as to which it has agreed, and any counts as to which the jury cannot agree may be tried again.

(Emphasis in original.) On the fourth day of deliberations, the State prompted the court to inquire with the jury, after multiple notes from the jury reported they were deadlocked, if there were any counts at all that the jury had been able to decide. When the jury sent back a note responding affirmatively, the State requested that the court take a partial verdict while the defense requested that the court not take a partial verdict.

The court, citing Maryland Rule 4-327(d), chose to take a partial verdict over defense objection:

> All right, so I am reading the Rule 4[-]327. It says subsection D, When there are two more counts, a jury may return a verdict with respect to a count as to which it has agreed and any count as to which a jury cannot agree may be tried again. So I think it's pretty clear. I can take a partial verdict. So what I would like to do is write a note back saying, Please complete the verdict form for those counts on which you all unanimously agree.

(Emphasis supplied.) The State and defense counsel agreed to the language proposed by the judge and, therefore, the note was delivered to the jury. After a few minutes, the jury was brought back into the courtroom to deliver their partial verdict:

> THE CLERK: Ladies and gentlemen of the jury, have you agreed on a partial verdict?
>
> THE JURY: Yes.
>
> THE CLERK: Who shall say for you? Madam forelady, please stand. Madam forelady, what say you in the case of State of

Maryland versus Donwin R. Brooks in case number C-03-CR-20-2910 as to Count 2, second degree murder?

FORELADY: Not guilty.

THE COURT: Okay. Go ahead.

Following the pronouncement of the verdict by the jury's foreperson, the jury was immediately polled by the clerk. One by one, all twelve members of the jury were asked if what was announced by the forelady was their verdict. One by one, all twelve members of the jury responded with a simple, "Yes." As evidenced by the transcript, there was not a single utterance of equivocation or uncertainty during the polling. It was only after the final member of the jury, Juror 12, answered affirmatively to the clerk that the State interjected.

The State's argument that the verdict is defective because the jury did not follow the verdict sheet is unpersuasive when the language given to them by the judge immediately prior to them rendering their partial verdict is considered. The final note sent by the judge to the jury requested that they "complete the verdict form for those counts on which you all unanimously agree." The jury was simply following the judge's instructions when they filled out the verdict sheet. This was entirely permissible.

Finality Of Verdicts

It is settled law that when a verdict of Not Guilty is delivered by a jury in a criminal trial, "that verdict is final and cannot be set aside. Any attempt to do so by the prosecutor is barred by what at common law was the plea of autrefois acquit." Pugh v. State, 271 Md. 701, 319 A.2d 542 (1974). The Court in Pugh informed that "Nothing more is required under the rule for a 'verdict' other than a deliberate pronouncement of 'guilty' or 'not

guilty' in light of the facts and the law." The pronouncement of the Not Guilty verdict in this case appears to have been made deliberately by the jury in light of the facts and the law. After an intentional verdict of Not Guilty is given, nothing more is required to make it a final verdict.

The State argues, correctly, that the trial judge is duty-bound to "guard against the danger of transforming a provisional decision into a final verdict." Caldwell v. State, 164 Md. App. 612, 884 A.2d 199 (2005). The State points us to Smith v. State, 299 Md. 158, 472 A.2d 988 (1984) for the proposition that a verdict is not final until it is accepted by the trial judge.

Smith, however, is distinguishable from the case now before us because in that case there was confusion and questions were posed by the jury during the polling procedure. Unlike in Smith, each juror in this case responded with a simple and unequivocal "Yes" when asked if the verdict of Not Guilty to Second-Degree Murder that was announced by the forelady was their verdict. By contrast, the polling in Smith resulted in responses such as "You mean personally?" and "No. They are not [the same as the forelady], first count." Additionally, the trial court in Smith had to stop and restart the polling procedure multiple times. There was no such confusion during the polling procedure in the case at bar.

We find Fennell v. State, 431 Md. 500, 66 A.3d 630 (2013) to be particularly instructive. In Fennell, the judge declared a mistrial as to all charges even though the court had been advised of the jury's intention to render verdicts on three of the charges. While the judge in Fennell was merely on notice of the jury's intention to render a partial verdict,

the judge in the case now before us actually received and polled in open court a partial verdict by the jury. The Supreme Court of Maryland and the Maryland Appellate Court were both in agreement in Fennell that no manifest necessity existed for the declaration of a retrial on the counts where the jury intended to render a verdict but were not permitted to do so. Therefore, where the jury rendered an actual verdict and was polled on that verdict, there was no manifest necessity for a retrial on that charge.

The Special Weight Of An Acquittal

Verdicts of acquittal are accorded "special weight" under the law. Caldwell v. State, 164 Md. App. 612, 884 A.2d 199 (2005) (quoting United States v. DiFrancesco, 449 U.S. 117, 129, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980)). Once a verdict of acquittal is final it may not be set aside even if "based upon egregiously erroneous foundations." Caldwell, 164 Md. App. at 650 (quoting Fong Foo v. United States, 369 U.S. 141, 143, 82 S.Ct. 671, 7 L.Ed.2d 629 (1962)). The special treatment of an acquittal was made exceptionally clear in the case of Ball v. United States, 163 U.S. 662, 671, 16 S.Ct. 1192, 41 L.Ed. 300 (1896). In Ball, three defendants were tried jointly for murder. Two of the defendants were found guilty while one was acquitted. The convictions were overturned on appeal due to a defective indictment. All three defendants were subsequently reindicted, all three were convicted, and all three appealed. The United States Supreme Court rejected the Double Jeopardy claims of the two convicted defendants but reversed the conviction of the defendant who had been previously acquitted. The Court proclaimed:

> As to the defendant who had been acquitted by the verdict duly returned and received, the court could take no other action than to order his discharge. The

> verdict of acquittal was final, and could not be reviewed, on error or otherwise, without putting [the defendant] twice in jeopardy, and thereby violating the constitution.

(Emphasis supplied.) *See also* Yeager v. United States, 557 U.S. 110, 129 S.Ct. 2360, 174 L.Ed.2d 78 (2009) (noting that a jury's verdict of acquittal is "unassailable.").

Hearkening Or Polling The Jury Secures Unanimity

Under Maryland law, hearkening and polling the jury both serve the same purpose. That purpose was explained in Smith v. State, 299 Md. 158, 472 A.2d 988 (1984) (quoting Givens v. State, 76 Md. 485, 25 A. 689 (1893)):

> It is to secure certainty and accuracy, and to enable the jury to correct a verdict, which they have mistaken, or which their foreman has improperly delivered[.]

(Emphasis supplied.) The act of hearkening or polling the jury thus provides an extra layer of certainty that the verdict announced by the foreman is the actual verdict of all twelve jurors. In State v. Santiago, 412 Md. 28, 37, 985 A.2d 556 (2009), the Supreme Court of Maryland wrote, "polling is a fully commensurable substitute for hearkening." (citing Smith, 299 Md. at 166, 472 A.2d at 991 (quoting Ross v. State, 24 Md.App. 246, 254, 330 A.2d 507, 512 (1975), *rev'd on other grounds*, 276 Md. 664, 350 A.2d 680 (1976))).

Maryland courts have had numerous occasions on which to consider unanimity of a jury verdict. As noted by Appellant in his Reply Brief, these cases differ from the present case in that they each involve affirmative expressions of dissent or equivocation" by jurors when the verdict was announced or during polling. In Lattisaw v. State, 329 Md. 339, 619 A.2d 548 (1993), for example, one of the jurors answered, "yes, with reluctance" during

polling. Similarly, in Bishop v. State, 341 Md. 288, 670 A.2d 452 (1996) polling elicited the response of "uhh, reluctantly, yes" from one of the jurors. Finally, in Rice v. State, 124 Md. App. 218, 225, 720 A.2d 1287 (1998) the foreperson announced the verdict on one of the charges as "guilty, with reservations." These responses are clearly different from those in the present case where the foreperson announced, "Not Guilty" and the remaining eleven jurors all responded with a simple and unequivocal, "Yes" when polled.

The unequivocal polling of the jury in this case ensured certainty that the verdict of Not Guilty announced by the forelady was the unanimous verdict of the jury. Any concerns a trial judge may have regarding unanimity can be properly assuaged by a simple, explicit response of "Yes" uttered by all twelve jurors during polling. Rice v. State, 124 Md. App. 218, 225, 720 A.2d 1287 (1998). When polling is concluded with such unequivocal responses of assent as occurred in this case, "the reception of the verdict and discharge of the jury is but a ministerial act, involving no judicial discretion." Ball v. United States, 163 U.S. 662, 16 S.Ct. 1192, 41 L.Ed. 300 (1896).

Did The Acquittal On Count 2 Constitute A Final Verdict?

The dispositive question that we must consider is whether the trial judge had discretion to reject the partial verdict of acquittal on Count 2 after it was announced and polled in open court? We believe that it was not within the discretion of the trial judge to reject a Not Guilty verdict that was properly received and polled in open court. We hold, therefore, that a verdict announced in open court and properly polled constitutes a final verdict that is not within the judge's discretion to set aside. There was a valid, final verdict

of Not Guilty rendered on the charge of Second-Degree Murder, which meant there was no manifest necessity for a mistrial to be declared on that count and, therefore, the defendant's Motion to Dismiss should have been granted.

Collateral Estoppel Bars Retrial On First-Degree Murder

Appellant argues that the State should be barred on retrying him for First-Degree Murder because of his acquittal on Second-Degree Murder. We agree. The doctrine of collateral estoppel is part of the Fifth Amendment prohibition against Double Jeopardy. Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). The United States Supreme Court explained the doctrine of collateral estoppel in Ashe:

> [W]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. Although first developed in civil litigation, collateral estoppel has been an established rule of federal criminal law at least since this Court's decision more than 50 years ago in United States v. Oppenheimer.

(Internal citation omitted.) Second-Degree Murder is considered a lesser included offense of First-Degree Murder under Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). The Supreme Court of Maryland defined a lesser included offense in Gianiny v. State, 320 Md. 337, 341, 577 A.2d 795 (1990) as "[an offense] which requires no proof beyond that which is required for conviction of the greater offense." The only differentiating factor between First-Degree Murder and Second-Degree Murder under Maryland Law is premeditation or deliberation.

Therefore, we agree with Appellant that a rational jury could not have acquitted Appellant of Second-Degree Murder without necessarily deciding that he was not guilty of

intentionally killing the victim in this case. It is of note that the State agrees, as noted in Appellee's Brief, that a final verdict of Not Guilty on Second-Degree Murder precludes the State from retrying the defendant on First-Degree Murder.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; COSTS TO BE PAID BY BALTIMORE COUNTY.