Circuit Court for Charles County
Case No. 08-K-16-001115

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1758

September Term, 2017

---

LIONEL OBRIAN LEE

v.

STATE OF MARYLAND

---

Meredith,
Kehoe,
Berger,

JJ.

---

Opinion by Meredith, J.

---

Filed: March 19, 2020

This interlocutory appeal arises from a pending prosecution of Lionel Obrian Lee, appellant, in the Circuit Court for Charles County, on charges of child sexual abuse and third degree sexual offenses. Lee was previously convicted in Calvert County for second degree rape and a continuing course of sexual conduct with a minor, arising from his admitted long-term sexual abuse of C.J., who considered herself his step-daughter. Lee moved to dismiss the four counts charged in Charles County in this case, arguing that they put him in jeopardy a second time for the same conduct underlying his convictions in Calvert County. The circuit court denied Lee's motion to dismiss, concluding that there was "no double jeopardy issue" because the "time [of the alleged offenses] is different, the locations are different and so are the offenses." Lee then filed this interlocutory appeal, as permitted by Maryland case law. *See, e.g., Scriber v. State*, 437 Md. 399, 406-07 (2014) ("Denials of motions to dismiss on the ground of double jeopardy compose a category warranting immediate review.").

We conclude that Lee's convictions in Calvert County do not overlap with the charged crimes in Charles County for double jeopardy purposes. Consequently, we shall affirm the order denying Lee's motion to dismiss and remand this case for further proceedings.

## BACKGROUND

The prosecution that is the target of this appeal, which we will refer to as "the Charles County Case," commenced on December 2, 2016, when the State filed a four-count indictment docketed as Case No. K-16-1115 in the Circuit Court for Charles County.

These charges allege incidents of sexual abuse that occurred in Charles County between October 1, 2014, and December 31, 2015, as set forth in the following counts:

**[Count 1]**

> [Lee,] between on or about October 1, 2014 and December 31, 2015, at Charles County, Maryland, the State being unable to be more specific because of the youthful age of the victim and her inability to provide specific dates, the defendant being a household member and a person who had care and custody and responsibility for the supervision of [C.J.], a minor child under the age of eighteen (18) years, feloniously did cause sexual abuse to the said [C.J.], to wit: Lionel Lee engaged in vaginal intercourse with [C.J.], in violation of Criminal Law Article, Section 3-602(b)(2) . . . (Sex Abuse Minor: House/Fam[)] . . . .

**Count 2**

> [Lee,] between on or about October 1, 2014 and December 31, 2015, at Charles County, Maryland, the State being unable to be more specific because of the youthful age of the victim and her inability to provide specific dates, the defendant being a household member and a person who had care and custody and responsibility for the supervision of [C.J.], a minor child under the age of eighteen (18) years, feloniously did cause sexual abuse to the said [C.J.], to wit: Lionel Lee did digitally penetrate the genitals of [C.J.], in violation of Criminal Law Article, Section 3-602(b)(2) . . . (Sex Abuse Minor: House/Fam[)] . . . .

**Count 3**

> [Lee,] between on or about October 1, 2014 and December 31, 2015, at Charles County, Maryland, the State being unable to be more specific because of the youthful age of the victim and her inability to provide specific dates, unlawfully did commit a sexual offense in third degree, that is to say, Lionel Lee engaged in a sexual act, to wit: Lionel Lee engaged in vaginal intercourse with [C.J.], with [C.J.] being then and there fourteen/fifteen (14/15) years of age and the said Lionel Lee being then and there at least twenty-one (21) years of age, in violation of Criminal Law Article, Section 3-307 . . . . (Sex Offense Third Degree[)] . . . .

**Count 4**

> [Lee,] between on or about October 1, 2014 and December 31, 2015, at Charles County, Maryland, the State being unable to be more specific because of the youthful age of the victim and her inability to provide specific dates, unlawfully did commit a sexual offense in third degree, that is to say, Lionel Lee engaged in a sexual act, to wit: Lionel Lee digitally penetrated the genitals of [C.J.], with [C.J.] being then and there fourteen/fifteen (14/15) years of age and the said Lionel Lee being then and there at least twenty-one (21) years of age, in violation of Criminal Law Article, Section 3-307 . . . (Sex Offense Third Degree[).]

On December 19, 2016, shortly after this case was filed in Charles County, the State initiated a separate prosecution in Calvert County alleging that Lee abused C.J. during an earlier time period when she was as young as eleven years old and the family was living in Calvert County. That case ("the Calvert County Case"), in which a 47-count indictment was docketed in the Circuit Court for Calvert County as Case No. K-16-422, was resolved on July 20, 2017, pursuant to an agreement under which Lee entered an *Alford* plea to one charge of second degree rape (Count 44) and a guilty plea to one charge of a continuing course of sexual conduct with a minor under age 14 (Count 46). *See North Carolina v. Alford*, 400 U.S. 25 (1970); *see generally Jackson v. State*, 207 Md. App. 336, 361 (2012) ("An *Alford* plea is a 'guilty plea containing a protestation of innocence,' which 'lies somewhere between a plea of guilty and a plea of *nolo contendere*[,]' where 'a defendant does not contest or admit guilt.'" (Quoting *Bishop v. State*, 417 Md. 1, 18-19 (2010))).

The indictment in the Calvert County Case charged Lee with committing the following crimes between December 1, 2011, and September 30, 2014:

Count 44

> [Lee,] . . . **on or between the 1st day and the 31st day of December, in the year two thousand eleven**, at Calvert County aforesaid, did unlawfully commit a rape in the second degree upon the minor child [C.J.], in violation of the Maryland Criminal Laws Article, Section 3-304 . . . . (Rape – Second Degree[)] . . . .

Count 46

> [Lee,] . . . **on or between the 1st day of January, in the year two thousand twelve, and the 30th day of September, in the year two thousand fourteen**, at Calvert County aforesaid, did engage in a continuing course of conduct over a period of 90 days or more with a victim under the age of 14 years, to wit: [C.J.], which includes three or more acts in violation of Sections 3-303, 3-304, 3-305, 3-306, and 3-307 of the Criminal Laws Article, in violation of Maryland Criminal Laws Article, Section 3-315 . . . (Sex Abuse – Minor – Continuing Course of Conduct[).]

(Emphasis added.)

At the plea hearing in the Calvert County Case, the court and counsel acknowledged that the Charles County Case was then pending. The Calvert County prosecutor explained that, "whatever county sentences him first, Mr. Lee understands there is an independent case in Charles County," and that "neither side, but especially Calvert County, is not [sic] bound to a concurrent or a consecutive sentence." The prosecutor indicated that she anticipated that the Charles County Case could result in a sentence that would be consecutive to the sentence in the Calvert County Case, but if Charles County were to impose sentence first, she would be asking for a consecutive sentence in the case she was prosecuting.

The State then proffered evidentiary support for Lee's pleas, explaining that investigators in Charles County had developed evidence that led to the filing of cases in both counties:

> Had this matter gone to trial, the State would have shown that in October of 2016 the victim in this case, [C.J.], date of birth of . . . 1999, had made contact with the school resource officer on the advice of her boyfriend. Through that contact she had informed the school resource officer that there had been an inappropriate relationship with her and the individual she considered to be her step-dad, Lionel Obrian Lee . . . . Based on that information, the school resource officer, as they were residing in Charles County, forwarded the information to Charles County detectives. He began the investigation. His investigation showed that a sexual relationship had begun between the defendant and the victim when they first resided in Calvert County and then continued when they moved to Charles County, which was in October of 2013 [sic, eventually corrected to 2014].
>
> When the relationship began, [C.J.] lived with her father in another county, but would come and visit her mother in Calvert County when her mother and the defendant were living in Huntingtown, Calvert County, Maryland, that the sexual relationship started when the victim told Mr. Lee that she had a dream about sex with him, and that led to the act. The victim, although she indicated that she was 11 when it started, still considered that part consensual.
>
> She did indicate that that changed, that there came a time she did not feel comfortable and didn't want to have sex with him anymore, and she tried to make that clear to him, but that did not change.
>
> The sex and the sex acts of oral sex continued to happen. Specifically there was an incident where she tried to struggle and physically resist him, that the victim believes was in Calvert County under – well, that was in Calvert County, but under the age of 13, where when she tried to resist, the defendant actually threw a blanket over her face and held her down. She indicated that scared her and she felt that she must comply. Count 44, as it specifies, is December of 2011. At that point in time the victim was age 12, and that sexual intercourse did occur between them, and that was by force or threat of force because of the forced behavior with the blanket.

The sexual intercourse and the oral sex continued between the two after December of 2011, specifically when it looks to the continuing course of conduct beginning in January of 2012, the victim turned 13 towards the end of that month. Sexual intercourse continued, as did oral sex in Calvert County until October 2013, at which point the defendant moved to Charles County, and the sexual intercourse continued there.

With the Charles County detective the victim engaged in text messages with the defendant. That was on November 4th. Through the course of those text messages, the victim being coached by the detective brought up aspects of the sexual relationship between them, specifically indicating that her boyfriend asked what grade she was in when she lost her virginity, she said I lied to him, but it made me realize about it, and I realized that we had been having sex for the last six years, isn't that crazy. Again, at this point, the victim was 17, so six years she would have been 11. He said, yeah, it's crazy, but I'm assuming you might have enjoyed it a tad bit, and she said, yeah, I guess, I did, but when you put a blanket over my face, that scared me. The defendant texted back, and I'm really sorry about that, I can promise you that will never happen again.

Continued on the conversation she, through being coached by the detective, worked on getting additional details for the detective. She specifically asked were you ever afraid I would get pregnant because you would cum inside of me, were you wearing a condom or were you risking it; he said he ne — they never wore protection, but he is pretty sure they can't have kids. When she asked how many times do you think we had sex, his answer was I'm well – and I'm sure well over a couple of hundred times.

She asked if it ever bothered him, and he said I was worried about – how did it make you feel, I almost didn't care except for the fact that I could go to prison for it. The text messages continued with him talking about oral sex between them as well.

Later that same day law enforcement made contact with the defendant. He gave a recorded statement. During that statement he did acknowledge that sexual relationship with the victim. He did give a timeline that included that those events occurred in Calvert County, which clearly go to the continued course, and obviously the acknowledgement of the blanket over the face, and the acknowledgement when she said there was a time I didn't want to continue.

> All of those events for this case occurred in Calvert County, Maryland.

When the court then asked whether the defense had "[a]ny additions or corrections for the purposes of the plea," the following ensued:

> [DEFENSE COUNSEL]: Yes, a correction, Your Honor. . . .
>
> 2014, October 2014, you indicated October 2013.
>
> [PROSECUTOR]: For when they moved to Charles County?
>
> [DEFENSE COUNSEL]: Yes.
>
> [PROSECUTOR]: I'm sorry, that's what the victim's mother told me. . . .
>
> Well, the continuing course has – we have – and they were going back and forth between Charles County and Calvert County for a period of time. So it's just we have the fact that a continuing course was from 2012 to 2014 in Calvert County because there was back and forth between the counties.
>
> THE COURT: All right.
>
> [DEFENSE COUNSEL]: With that correction, I believe it would be October 2014. We of course take issue with a certain number of the facts, but he does indicate that he is pleading guilty to that continuing course of action and freely admits to it. He is pleading to that other count, by Alford, and we would speak more at sentencing.

Based on "the facts reported by the Deputy State's Attorney in this case" and additional evidence that Lee's pleas were knowing and voluntary, the Circuit Court for Calvert County found Lee guilty on both counts and later sentenced him to twenty-five years.

The month after Lee was convicted in the Calvert County Case, he moved to dismiss the Charles County Case, arguing, *inter alia*, that all four counts are barred by double

jeopardy. The State opposed the motion to dismiss on the ground that those charges covered different crimes that Lee committed in Charles County after moving there in October 2014.

At a hearing on Lee's motion, the prosecutor argued that neither "the time periods," nor the "elements of each charge" were "overlapping here[,]" explaining "[t]hat was purposely done" based on the mother's testimony that the family moved from Calvert County to Charles County in October 2014. The Circuit Court for Charles County ruled that there was no "double jeopardy issue" because "[t]he time is different, the locations are different, and so are the offenses[.]" The court denied Lee's motion to dismiss.

Lee noted this timely interlocutory appeal. *See generally Scriber, supra*, 437 Md. at 406; *Bunting v. State*, 312 Md. 472, 477-78 (1988) ("under the collateral order doctrine, a defendant may take an immediate appeal from the denial of a motion to dismiss on the ground of double jeopardy"). The circuit court granted Lee's motion to stay proceedings pending this appeal.

## DISCUSSION

Lee contends that the circuit court erred in denying his motion to dismiss the Charles County Case on double jeopardy grounds because he "was placed in jeopardy in Calvert County for the conduct that is the subject of the Charles County indictment." In Lee's view, when the Calvert County prosecutor, during the plea hearing, mentioned Lee's conduct in Charles County, the prosecutor's comments operated to place Lee in jeopardy for his sexual offenses in both jurisdictions. Lee maintains that, "by relying on Mr. Lee's

conduct in Charles County while presenting facts in support of the guilty plea in Calvert County, the Calvert County prosecutor widened the jeopardy scope of the Calvert County conviction to include Mr. Lee's conduct in Charles County – the same conduct that is the subject of the Charles County indictment."

In support of this contention, Lee cites and discusses at length four cases: *Copsey v. State*, 67 Md. App. 223 (1986); *Beatty v. State*, 56 Md. App. 627 (1983); *Warren*, *supra*, 226 Md. App. 596; and *State v. Bey*, 452 Md. 255 (2017). But, based upon our review of the double jeopardy principles set forth in those cases, we conclude that the charges and plea entered in the Calvert County Case did not put Lee in jeopardy for the offenses charged in the Charles County Case.

**Legal Standards Governing Dismissal on Double Jeopardy Grounds**

The Fifth Amendment to the Constitution of the United States and the common law of Maryland "provide for a prohibition on double jeopardy[,]" under which "a court cannot subject a defendant to multiple trials and sentences for one offense." *Scott v. State*, 454 Md. 146, 152, 167 (2017), *cert. denied*, 138 S. Ct. 652 (2018). This guarantee is "[t]he root stock" of *res judicata*, the principle under which

> "a final and valid judgment rendered in one proceeding between two parties operates as a bar in a second proceeding between them on all matters that have been or could have been decided in the original litigation, where the second proceeding involves the same subject matter as the first cause of action."

*Beatty*, *supra*, 56 Md. App. at 633 (quoting *Cook v. State*, 281 Md. 665, 668 (1978)).

"An appellate court reviews without deference a trial court's conclusion as to whether the prohibition on double jeopardy applies." *Scott*, *supra*, 454 Md. at 167. "[A]s a general rule, . . . jeopardy attaches when a guilty plea is accepted by a court, and this bars the subsequent prosecution on charges based on the same act." *Banks v. State*, 56 Md. App. 38, 47 (1983). "[T]he two common law pleas in bar" that are premised upon this protection against double jeopardy are "*autrefois acquit* (former acquittal) and *autrefois convict* (former conviction)." *Copsey*, *supra*, 67 Md. App. at 225. A "plea of former conviction" operates to prevent "a defendant who has once been convicted of an offense from being exposed to the hazard of being twice punished for that same offense." *Id*. at 226.

The Court of Appeals established the following test for determining whether double jeopardy bars a subsequent prosecution:

> In order for two charges to represent the same offense for double jeopardy purposes, they must be the same "in fact" and "in law." To determine whether charges are the same in fact, we look to whether they arise out of the same incident or course of conduct. To determine whether two offenses arising out of the same incident are the same in law, we apply the "same elements" test set forth by the Supreme Court of the United States in *Blockburger*. "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."

*Scriber*, *supra*, 437 Md. at 408 (citations omitted).

This Court has summarized jurisprudence on this inquiry as follows:

> The "same act or transaction" inquiry often turns on whether the defendant's conduct was "one single and continuous course of conduct,"

> without a "break in conduct" or "time between the acts." *Purnell v. State*, 375 Md. 678, 698 (2003). The burden of proving distinct acts or transactions for purposes of separate units of prosecution falls on the State. *Snowden v. State*, 321 Md. 612, 618 (1991). Accordingly, when the indictment or . . . verdict reflects ambiguity as to whether the . . . convictions [are based] on distinct acts, the ambiguity must be resolved in favor of the defendant. *Williams v. State*, 187 Md. App. 470, 477 [(2009).]

*Morris v. State*, 192 Md. App. 1, 39 (2010).

In the Calvert County Case, Lee was convicted of: (1) second degree rape in violation of Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("Crim. Law"), § 3-304, prohibiting "vaginal intercourse or a sexual act with" a victim "under the age of 14 years" when "the person performing the act is at least 4 years older than the victim"; and (2) "a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303 [first degree rape], § 3-304 [second degree rape], § 3-305 [first degree sex offense], § 3-306 [second degree sex offense], or § 3-307 [third degree sex offense] . . . over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct[,]" in violation of Crim. Law § 3-315. Under the latter statute, the trier of fact may determine whether "the required number of acts occurred" and "need not determine which acts constitute the required number of acts." Crim. Law § 3-315(c). When the State charges a defendant under this section, it may not separately charge the defendant with violating any of those underlying sections "involving the same victim . . . ***unless*** *the other violation charged occurred outside the time period* charged under" Crim. Law § 3-315 (emphasis added).

In the Charles County Case that is the subject of this appeal, the State has charged Lee with two counts of violating Crim. Law § 3-307, sexual offense in the third degree, which encompasses "sexual contact" with a victim under 14 years old by a person who is four or more years older and any "sexual act" or "vaginal intercourse" with a victim who is "14 or 15 years old" by a person who is 21 years or older. In addition, the State charged Lee with two counts of sexual abuse of a minor in violation of Crim. Law § 3-602(b)(1), which provides that "[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor." "Sexual abuse" is statutorily defined to "mean[] an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not." Crim. Law § 3-602(a)(4)(i). The term "sexual abuse" expressly includes incest, rape, and sexual offenses of every degree. *See* Crim. Law § 3-602(a)(4)(ii).

When considering a double jeopardy challenge to sequential prosecutions charging sexual acts with a child, we acknowledge that the flexible nature of Crim. Law § 3-602, an "umbrella crime," requires careful consideration. Judge Moylan explained in *Warren*:

> In analyzing double jeopardy scenarios, an umbrella crime such as Sexual Child Abuse, pursuant to § 3-602, poses especially perplexing problems, because an umbrella crime may appear in ever changing shapes and sizes. It is an accordion. It may be pressed together so tightly that at times it embraces a single constituent crime. It may actually be compressed even more tightly, embracing only instances of sexually abusive behavior that are not actually criminal. The accordion of Sexual Child Abuse, on the other hand, may at times be opened up so expansively as to embrace dozens, nay hundreds, of constituent criminal acts, charged or uncharged. Even if embracing a hundred constituent criminal acts, however, the umbrella crime of Sexual

> Child Abuse itself remains a single and indivisible crime. It does not fragment with the multiplication of its supporting evidence.
>
> Although the actual evidence or the supportive theories of Sexual Child Abuse may, like accordions or umbrellas, expand and contract unpredictably, our only concern for purposes of double jeopardy assessment is with the maximum risk or jeopardy. We measure the spectrum of jeopardy at its widest, which is as of the moment it first attaches, before any evidence has been offered or even alluded to in opening statement, before any words have been spoken, before any theories have been propounded. Any possible limitation on the scope of jeopardy would have to appear explicitly in the charging document itself.

*Warren*, *supra*, 226 Md. App. at 615-16 (footnote omitted).

**Lee's Charges**

Lee contends that, as a result of the Calvert County prosecutor's references to Lee's "conduct in Charles County while offering facts in support of the Calvert County guilty plea," he "unequivocally stood in jeopardy in Calvert County for the criminal offenses subsequently charged in Charles County." We disagree.

To determine the scope of the Calvert County convictions, we look first "at the effective charging document upon which judgment was entered[.]" *Anderson v. State*, 385 Md. 123, 140 (2005). The crimes charged in Charles County -- child sexual abuse and third degree sexual offense -- differ from the second degree rape and continuing course of conduct crimes adjudicated in Calvert County, not only as to the nature and elements of the offenses, but also as to temporal and geographic scope of the underlying conduct. Whereas the Calvert County Case put Lee in jeopardy for acts that occurred in Calvert County between December 1, 2011, and September 30, 2014, the Charles County Case put

Lee in jeopardy only for acts that occurred in Charles County on or after October 1, 2014. The following comparison summarizes these dispositive distinctions between the two prosecutions:

| | **Calvert County Case** | **Charles County Case** |
|---|---|---|
| Filing date | December 19, 2016 | December 2, 2016 |
| Case no. | K-16-422 | K-16-115 |
| Number of counts | 47 counts | 4 counts |
| Convicted + charged crimes/ **dates of crimes/** *location of crimes* | Pleas accepted July 20, 2017, on two counts:<br><br>Count 44: Second degree rape, **between December 1 and 31, 2011,** *in Calvert County*<br><br>Count 46: Continuing course of sexual conduct with minor, **between January 1, 2012 and September 30, 2014**, *in Calvert County* | Count 1: Sexual abuse of minor (vaginal intercourse), **between October 1, 2014, and December 31, 2015**, *in Charles County*<br><br>Count 2: Sexual abuse of minor (digital penetration), **between October 1, 2014, and December 31, 2015**, *in Charles County*<br><br>Count 3: Third degree sex offense (vaginal intercourse), **between October 1, 2014, and December 31, 2015**, *in Charles County*<br><br>Count 4: Third degree sex offense (digital penetration), **between October 1, 2014, and December 31, 2015**, *in Charles County* |

Based on the express language of Counts 44 and 46 in the Calvert County indictment, the convictions in the Calvert County Case do not overlap – as to conduct, date, or location – with the charges in this Charles County Case. As detailed above, the Calvert County convictions were distinguished, by location and time period, from the charges filed in Charles County. Because the two prosecutions are not premised on the same acts or transactions, the Circuit Court for Charles County did not err in denying Lee's motion to dismiss this action on double jeopardy grounds.

We reject Lee's contention that the Calvert County prosecutor's discussion of the evidence that had been developed during the criminal investigation put Lee in jeopardy in

the Calvert County Case for the abuse that took place after September 30, 2014, in Charles County. As detailed above, the State proffered that, when the victim was seventeen years old, Lee admitted the nature (intercourse and oral sex), duration (six years), and frequency ("hundreds of incidents") of his sexual abuse, first in text messages with the victim and later that same day in a recorded interview with Charles County investigators. The Calvert County prosecutor's account of how the abuse was discovered and investigated necessarily made mention of events in Charles County. Yet, the prosecutor expressly confirmed that Count 44 was limited to one instance of vaginal intercourse that took place sometime in December 2011, and that Count 46 covered all other sexual abuse that took place thereafter, up *until* the family moved to Charles County in October 2014, so that the continuing conduct count encompassed only sexual abuse that occurred in Calvert County from January 1, 2012, through September 30, 2014. In the Calvert County prosecutor's final statement before the pleas were accepted, she told the court that both crimes to which Lee was entering pleas "occurred in Calvert County." The jeopardy that attached when the court accepted those pleas encompassed only the abuse Lee was convicted of committing in that county during that time period.

The cases that Lee discusses at length in his brief do not support a different analysis or conclusion. In *Copsey,* the State charged that, for a period of more than five years, Copsey regularly picked up the minor victim at a gas station located in St. Mary's County, drove him a short distance into Charles County where he sexually abused the child, and then returned him to St. Mary's County. *See Copsey, supra,* 67 Md. App. at 226, 228-29.

Even though little of the sexual conduct occurred in St. Mary's County, Copsey was convicted in St. Mary's County on a charge of committing a continuing sexual offense over a specified period of nearly six years. *See id.* at 226-27. Later, Copsey was charged in Charles County with a continuing sexual offense "over a shorter but included period of time." *Id.* at 226, 228. Copsey pleaded his prior conviction as a complete bar. *See id.* 226-28.

Reversing the denial of Copsey's motion to dismiss, this Court held that "the charge as to which the appellant stood in jeopardy in St. Mary's County on July 9, 1985, operated to place him in jeopardy for all sexual offenses against the named victim between January 1, 1979 and November 1, 1984," so that he could not subsequently be tried in Charles County on charges that overlapped temporally and geographically. *See id.* at 228-30. Under applicable venue statutes, the State had the option to prosecute Copsey in either St. Mary's County, where each criminal episode began and ended, or in Charles County, where most of the sexual offenses occurred. *See id.* at 229-30. The continuing course of sexual abuse that was charged in St. Mary's County encompassed all of the crimes that occurred as Copsey repeatedly transported the victim from one county to the other and back again, throughout the entire period identified in the charging document. *See id.* at 227-28, 230-31. We reasoned that the charges in St. Mary's County determined the "breadth of jeopardy," thereby precluding subsequent prosecution in another jurisdiction for underlying sexual offenses committed against the same victim during the same time period. *See id.* Consequently, the Charles County prosecution placed Copsey in double jeopardy

for crimes as to which he had already been convicted of in St. Mary's County. *See id.* at 234.

In reaching that conclusion, this Court pointed out that prosecutors *could have* pursued charges in both jurisdictions by more narrowly focusing the offenses charged in each action county:

> This by no means suggests that both St. Mary's County and Charles County could not theoretically have gone after the appellant if their grand strategy had been carefully orchestrated. If the two state's attorneys had put their heads together and agreed:
>
> > "Hey, let's get this guy twice. You go after him in your jurisdiction with a charging document meticulously confined to conduct having occurred on your side of the county line, and I'll go after him in my jurisdiction with a charging document meticulously confined to conduct having occurred on my side of the county line,"
>
> there would be no constitutional impediment. Close orchestration would be required, however, to avoid an inadvertent constitutional impediment. There was no such close orchestration here.

*Id*. at 231-32.

In Lee's cases, the prosecutors complied with the guidance provided by Judge Moylan in *Copsey*, clearly differentiating between charges in the two cases with respect to both the locations and the dates of the offenses. In contrast to the State's failure to plead temporal or geographic restrictions in *Copsey*, the prosecutors in the Lee's two cases each charged Lee with crimes that were committed only in their own jurisdictions during different time periods. The Calvert County Case charged separate crimes (a rape and a continuing course of sexual abuse) that took place solely in that jurisdiction, during stated

periods (*i.e.*, during December 2011 for the rape; and between January 2012 and September 2014 for the child sexual abuse). These charges did not overlap at all with the crimes later charged in the Charles County Case – child sexual abuse and third degree sex offense, occurring in Charles County between October 1, 2014, and December 31, 2015.

Lee's reliance upon *Beatty v. State*, 56 Md. App. 627 (1983), is similarly misplaced. In that case, the victim was kidnapped and raped in Prince George's County, then taken to St. Mary's County, where she was raped again and murdered. *See id.* at 632-33. This Court agreed with Beatty and his co-defendant that they could be tried in only one jurisdiction for kidnapping, because that offense was a single continuous criminal transaction. *See id.* at 635-36. But we rejected Beatty's argument that the other "charges must be asserted in a single criminal proceeding against a defendant or [else] those not so joined are barred by *res judicata*." *Id.* at 634-35. To the contrary, we pointed out, crimes committed in different counties may properly be prosecuted separately:

> What appellants overlook is that the crimes that were committed in the two political subdivisions were separate. The rape of the victim in Prince George's County, together with other sexual violations that took place there, were crimes committed solely within that County. . . . The crimes that were begun and completed in Prince George's County could not properly be charged in St. Mary's County. Thus, *res judicata* does not bar prosecution of Beatty . . . in Prince George's County for the offenses they committed in that County.

*Id*. at 634. *Beatty* undermines Lee's double jeopardy claim because the crimes charged in the Charles County Case between October 1, 2014, and December 31, 2015, were distinct from the crimes that Lee committed in Calvert County prior to October 1, 2014.

*Warren* likewise undercuts Lee's double jeopardy argument. In that case, Warren went to trial on eight counts charging him with child sexual abuse against a single victim over a four-and-a-half year period. *See Warren*, *supra*, 226 Md. App. at 599-603, 610-11. During that prosecution, the State was prevented from using four belatedly discovered photographs to prove its case. *See id.* at 601-02. A month after Warren was convicted on two counts, the State filed a second case in the same jurisdiction, charging Warren with four counts of child sexual abuse corresponding to the acts depicted in the previously excluded photos. *See id.* at 602, 622. This Court held that the second prosecution was barred by double jeopardy because three of those counts covered conduct that fell entirely within periods covered by counts litigated in the first trial, and the fourth count alleged abuse over a 120 day period that overlapped by ninety days with the period of jeopardy covered in the prior prosecution. *See id.* at 611-13, 622-23.

Unlike this case, *Warren* did not involve prosecutions in two different jurisdictions because all of Warren's abuse occurred in the same county. Furthermore, this case differs from *Warren* because the time period it covers does not overlap any of the prior periods covered by the prosecution in the Calvert County Case. As we have pointed out, the charging documents in each case were expressly restricted to acts of sexual abuse that occurred during separate time periods in the respective jurisdictions.

Finally, *State v. Bey*, *supra*, 452 Md. 255, is also factually and legally inapposite. Bey was convicted of multiple counts of violating Crim. Law § 3-315, which, as stated above, prohibits a continuing course of sexual conduct with a minor. Each count charged

one type of sexual act that occurred during consecutive years in the victim's life. *See id.* at 261-63. "For example, for the year that the victim was eleven years old, Bey was charged with three continuing course of conduct counts, alleging three or more acts of second-degree rape (Count 4), three of more acts of fellatio (Count 5), and three or more acts of cunnilingus (Count 6)." *Id.* at 261-62. Bey argued that he had been punished multiple times for a single violation of § 3-315, consisting of one continuous course of conduct involving a single victim, stretching over an uninterrupted period. *See id.* at 259.

The Court of Appeals affirmed Bey's convictions but merged his sentences, explaining:

> Criminal Law Article § 3-315 ("Crim. Law"), entitled "Continuing course of conduct against child[,]" prohibits multiple convictions and sentences per victim, regardless of the duration of the abuse or the type of sexual acts committed. The plain language of the statute prohibits a defendant from being convicted and sentenced for each type of prohibited sexual act as a separate unit of prosecution. Moreover, we determine, after exhaustion of the rules of statutory construction, that the statute is ambiguous regarding whether a defendant may be convicted and sentenced for multiple uninterrupted ninety-day minimum intervals of a continuing course of conduct. Thus, the rule of lenity operates to bar multiple punishments.

*Id*. at 259-60, 276.

*Bey* materially differs from Lee's cases because it involved multiple prosecutions under § 3-315 within the same jurisdiction. In contrast, Lee was convicted of a single § 3-315 count of continuing conduct with a minor, based on his sexual abuse of C.J. in Calvert County between January 1, 2012, and September 30, 2014. The Charles County prosecutor did not charge Lee with another § 3-315 violation. Lee concedes that he did not face

multiple prosecutions under that statute, but nevertheless argues that, "[b]y subsequently indicting [him] in Charles County for continuing to engage in sexual crimes with the same victim during a consecutive interval of time, the State is attempting to obtain multiple convictions and sentences for what is essentially one continuous course of conduct in direct contravention of *Bey*." In Lee's view, "the State cannot circumvent *Bey* by charging Mr. Lee in a new indictment with committing crimes that qualify as predicate acts to and that are embraced by the continuing course of conduct to which he has already [pled] guilty."

We are not persuaded that *Bey* extends to the circumstances of Lee's two cases. We acknowledge that a prosecution for child sexual abuse under § 3-602, like a prosecution for continuing course of conduct in violation of § 3-315, could encompass multiple incidents of sexual contact that occur over identified periods. And, as in this case, those periods might be "consecutive" to each other. What Lee overlooks, however, is that all of the abuse underlying the multiple § 3-315 charges against Bey occurred in the same county, whereas the abuse underlying Lee's § 3-315 conviction took place in a different jurisdiction (Calvert County) than the abuse underlying the § 3-602 charges (Charles County). We find nothing in *Bey* to prohibit sequential prosecutions, under different statutes, for sexual abuse that occurred in different jurisdictions during different time periods. *See Copsey*, 67 Md. App. at 231-32; *Beatty*, 56 Md. App. at 634. Nor do we perceive any statutory ambiguity requiring application of the rule of lenity to preclude enforcement of both criminal statutes in these circumstances. As the State points out in its brief, "under CL § 3-315(d)(2), a person may be charged with a sexual offense involving the same victim 'if the violation

charged occurred outside the time period charged' under CL § 3-315. In short, the holding in *Bey* has no effect whatsoever on this case."

We conclude that double jeopardy does not bar the charges against Lee in the Charles County Case, and therefore, the circuit court did not err in denying Lee's motion to dismiss those charges.

**ORDER DENYING MOTION TO DISMISS AFFIRMED, AND CASE REMANDED TO THE CIRCUIT COURT FOR CHARLES COUNTY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLANT.**