

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1965

September Term, 2024

MARCELL KENNARD BILLUPS

v.

STATE OF MARYLAND

Wells, C.J.,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 3, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Marcell Kennard Billups, appellant, proceeded to a jury trial in the Circuit Court for Prince George’s County on the charges of murder, arson, and use of a firearm in a crime of violence. During trial, the circuit court *sua sponte* declared a mistrial, over appellant’s objection, because it determined the State had committed discovery violations. Thereafter, appellant filed a motion dismiss the charges on Double Jeopardy grounds, asserting that the mistrial had been granted without manifest necessity. The court denied that motion without a hearing. Appellant now appeals raising a single issue: whether the court erred in denying his motion to dismiss because there was no manifest necessity for a mistrial. The State concedes that the court erred in denying the motion to dismiss. For the reasons that follow, we shall reverse the judgment and remand the case to the circuit court to dismiss the charges.

Prior to trial, appellant filed a supplemental request for discovery with respect to the arson investigation, which the court granted. Several months later, he filed a motion for discovery sanctions, wherein he claimed that all relevant discovery regarding the investigation of the alleged arson had not been produced. As relief, he requested the court to exclude any expert testimony related to that investigation. That motion was heard on the morning of trial, at which time, the State informed the court that it believed all relevant discovery had been provided. Defense counsel countered that she had consulted with an expert in arson investigations, who had informed her that additional records should exist that had not been provided. These alleged records included a fire and emergency medical services file, underlying data to support the fire inspector’s report, an evidence inventory and a chain of custody report. Based on the representations of the prosecutor, the trial court

determined that the State had provided all materials related to the arson investigation to appellant, and the case proceeded to trial.

On the first day of trial, the State called Prince George’s County Fire Department Lieutenant Jae Chong, who was the firefighter that initially responded to the fire, put the fire out, and located the victim’s body. During Lieutenant Chong’s testimony, the State refreshed his recollection with an EMS report, which, it turned out, had not been turned over to appellant during discovery. Defense counsel was given a chance to review that report and determined that it included five pages containing information that had been requested in appellant’s supplemental discovery request, including the names of three witnesses who went into the apartment and dealt with the victim’s body. The trial court concluded that a discovery violation had occurred, and that the proper remedy was to strike Lieutenant Chong’s testimony.

The State’s next witness was Luke Edwards, a fire investigator in the Office of the Fire Marshal, who was accepted as an expert in the causation and origin of fires. Investigator Edwards testified that he investigated the fire and determined that the origin was a stovetop in the kitchen. He further opined that the fire started because potatoes, which were wrapped in fabric, had been left on the burner and the burner had been turned on. During Investigator Edwards’ testimony, it became apparent that the State had not disclosed the existence of multiple witness interviews that had been conducted by Mr. Edwards. Moreover, it had not produced the entirety of his case file which contained factual narratives, investigative analysis on the origin and cause of the fire, and his handwritten notes from the witness interviews.

At this point, appellant renewed his request to exclude Mr. Edwards’ testimony as a sanction for the discovery violation. The court, however, declared a mistrial, over appellant’s objection. In doing so, it did not indicate why striking Mr. Edwards’ testimony, was not a reasonable alternative to a mistrial, other than noting that it did not think the prosecutor’s failure to disclose the materials was intentional. The court also did not explicitly consider any other alternatives to a mistrial.

On appeal, appellant contends that the court erred in denying his motion to dismiss because the court declared a mistrial, over his objection, without a manifest necessity. The State agrees, as do we. After jeopardy has attached, retrial is barred if a mistrial is declared over a defendant’s objection or without his consent, “unless there is a showing of ‘manifest necessity’ to declare the mistrial.” *State v. Woodson*, 338 Md. 322, 329 (1995). “Manifest necessity” justifying a mistrial only exists if “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.” *State v. Baker*, 453 Md. 32, 49 (2017) (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). If “‘reasonable alternatives to a mistrial, such as a continuance, are feasible [to] cure the problem[,]’” retrial is barred by the Fifth Amendment. *Id.* at 18 (quoting *Cornish v. State*, 272 Md. 312, 320 (1974)). On the other hand, if the court’s action “is necessary

to protect the interest of the defendant,” *Cornish*, 272 Md. at 319, or the court finds that a trial error will almost certainly result in reversal upon appeal, *State v. Crutchfield*, 318 Md. 200, 209 (1989), a mistrial is permissible. “To meet the ‘high degree’ of necessity, the Supreme Court has recognized that there must be no reasonable alternative to the declaration of a mistrial.” *Hubbard v. State*, 395 Md. 73, 91 (2006). Accordingly, in analyzing manifest necessity, the first and third factors are often examined in conjunction. *Id.*

The Supreme Court’s decision in *Hubbard* is instructive. In *Hubbard*, “a witness, whose identification testimony against one defendant had been suppressed, was to be called by the State to testify against the co-defendant in a joint trial.” 395 Md. at 77. After finding that “a curative instruction would not be helpful,” the judge declared a mistrial. *Id.* at 81. The Supreme Court reversed because the trial court could have avoided the mistrial by excluding the eyewitness, and therefore no manifest necessity existed. *Id.* at 93. Although the trial judge was concerned that this would prejudice the State’s case, the Court noted “[t]he State created the conundrum[.]” *Id.* at 95.

Here, excluding Investigator Edwards’ testimony was an available remedy that would have alleviated the need for a mistrial. Yet, the court never indicated why that alternative was ineffective, even though it had previously ordered the same remedy with respect to the discovery violations involving Lieutenant Chong. And it is difficult to envision how the discovery violations created a high necessity for a mistrial when, like *Hubbard*, the issue was caused entirely by the State and was brought to the court’s attention prior to the trial. Moreover, even if we assume that the State’s failure to provide the

discovery was not intentional, as the court found, the record demonstrates that the prosecutor had ample notice that additional materials might exist. Yet he failed to diligently follow up with either witness prior to their testimony. By ordering a mistrial, instead of striking Mr. Edwards' testimony, the court essentially rewarded the State's negligence by providing it with a more favorable opportunity to convict appellant. Under those circumstances we cannot say that the court's order of a mistrial was supported by manifest necessity. Consequently, the court erred in denying appellant's motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
REVERSED. CASE REMANDED WITH
INSTRUCTIONS TO DISMISS THE
CHARGES. COSTS TO BE PAID BY
PRINCE GEORGE'S COUNTY.**