Circuit Court for Prince George's County
Case No. CT200499A

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1021

September Term, 2023

KAI ANGEL SUDAMA

v.

STATE OF MARYLAND

Graeff,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 15, 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).

In the Circuit Court for Prince George's County, the appellant, Kai Angel Sudama, was charged with murder, home invasion, conspiracy to commit home invasion, and armed robbery. The charges stemmed from a January 2020 home invasion that resulted in the death of Billy Smith. On the eighth day of the jury trial in August 2022, the court declared a mistrial after a detective improperly referenced a "previous home invasion" during her testimony.

After the mistrial, the appellant moved to dismiss the indictment on double jeopardy grounds, arguing that the State had "intentionally placed inadmissible evidence before the jury in an attempt to provoke the defendant into moving for a mistrial." The court denied the motion after a hearing. This timely appeal followed.

On appeal, the appellant presents one question for our review:

> Whether the trial court committed [an] error when it denied the defense's motion to dismiss the indictment on double jeopardy grounds, and in doing so finding that the State did not intentionally provoke the defendant into moving for a mistrial when a State's Witness provided impermissible testimony during the trial?

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

BACKGROUND

On January 17, 2020, three men broke into an apartment on Mandan Road in Greenbelt, confronting resident Billy Smith. During the ensuing struggle, Smith was stabbed multiple times and killed. The police investigation led to charges against the appellant and co-defendant, Ishmail Wurie Jabbie.

Before trial, the State moved to introduce evidence of a previous home invasion at the same address under Md. Rule 5-404(b). The court denied this motion, excluding any mention of the prior home invasion.

The appellant and Jabbie's joint jury trial began on August 1, 2022. On the eighth day of the trial, the State called Detective Ireleis Fernandez to testify about her investigation, which included analysis of phone records.

When asked about phone records for the appellant's number, Detective Fernandez testified that she "was looking for who he was in frequent contact with before and after the incident." The prosecutor then asked whether a particular number caught Detective Fernandez's attention with this frequent contact. Defense counsel objected, and the court sustained the objection because of a lack of foundation for the frequency of contact. The court instructed the prosecutor to elicit details instead of conclusions.

Following this guidance, the prosecutor asked Detective Fernandez to identify which phone number caught her attention. The prosecutor then asked Detective Fernandez: "And why did this 571 number get your attention?" Detective Fernandez responded: "Because I remembered it from a previous home invasion."

Defense counsel immediately moved for a mistrial. The court granted the mistrial, ruling as follows:

> And I do understand that granting a mistrial is not something that the Court should take lightly, but I am finding manifest necessity to grant the mistrial based on the testimony of the detective.
>
> I do not believe that it was intentional on either the State or the detective's part, but again the bell has rung.

In December 2022, the appellant moved to dismiss the indictment on double jeopardy grounds, arguing that the State had "intentionally placed inadmissible evidence before the jury in an attempt to provoke the defendant into moving for a mistrial."

At the hearing on the motion to dismiss in June 2023, Detective Fernandez testified that the prosecutor had warned her not to mention the prior home invasion. She also testified that this was her first homicide investigation, her first home invasion case, and her first time testifying in a jury trial.

The court found that the prosecutor's question had not been designed to elicit testimony about the home invasion. The court also found that Detective Fernandez was "extremely inexperienced on the stand," she referenced the prior home invasion "because in her mind that was what she was being asked," and she had no intention "to violate the Court's order" or "sabotage this trial." Thus, the court denied the motion to dismiss.

DISCUSSION

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

The appellant contends that the trial court erred in denying his motion to dismiss because the State intentionally provoked the mistrial by introducing inadmissible evidence. Specifically, the appellant claims that intent can be inferred from the prosecutor's motion

to introduce Rule 5-404(b) evidence. According to the appellant, the prosecutor's question to Detective Fernandez should have been anticipated to elicit the improper response.

The State responds that the circuit court properly found no prosecutorial intent to goad the appellant into requesting a mistrial. The State emphasizes that the circuit court made a finding of fact that the prosecution did not intentionally elicit the improper testimony or goad the appellant into moving for a mistrial. The State argues that these factual findings are dispositive because they are not clearly erroneous.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution provides: "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb[.]" U.S. CONST. amend V. "The clause's purpose is to assure finality for the benefit of the defendant in criminal trials." *Nicholson v. State*, 157 Md. App. 304, 310 (2004).

"Ordinarily, a defense request for a mistrial is treated as a waiver of any double jeopardy claim." *West v. State*, 52 Md. App. 624, 631 (1982). The Supreme Court of the United States recognized a narrow exception in *Oregon v. Kennedy*: "Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." 456 U.S. at 676. This Court "amplified the definition of intentional goading, explaining it as the act of deliberately 'sabotaging a trial that is going badly.'" *Giddins v. State*, 163 Md. App. 322, 340 (2005) (quoting *Fields*, 96 Md. App. at 746), *aff'd*, 393 Md. 1 (2006).

Here, the prosecutor's inquiry focused on phone records analysis and frequency of contact. In this context, the circuit court properly concluded that the State's question was not designed to elicit testimony about the previous home invasion.

The events preceding the mistrial show that the State lacked any intent to provoke a mistrial. Indeed, the court sustained defense counsel's objection to the prosecutor's question about a phone number that had "frequent contact" with the appellant. In support of that objection, defense counsel argued there was a lack of a foundation to conclude that the phone records showed "frequent contact[.]" The court instructed the prosecutor to "ask for details" instead of "conclusions[.]"

Following the court's instruction, the prosecutor asked Detective Fernandez: "And as you were looking . . . through these phone records what number . . . caught your attention when you were looking through them?" Then, the answer to the next question caused the mistrial: "And why did this 571 number get your attention?" In context, the prosecutor sought to elicit testimony about call frequency in the phone records, not prior criminal activity.

Detective Fernandez lacked experience testifying, which supports the circuit court's findings. At the hearing on the motion to dismiss, Detective Fernandez testified that this was her first homicide investigation, first home invasion case, and first time testifying in a jury trial. The circuit court found her to be "extremely inexperienced on the stand[.]" These details show that the detective misunderstood the prosecutor's question and did not participate in any prosecutorial misconduct. Significantly, Detective Fernandez testified that the prosecutor had warned her not to mention the prior home invasion.

The appellant's arguments on appeal fail to overcome the court's findings. First, the appellant contends that the State had persistently sought to introduce Rule 5-404(b) evidence, and that persistence shows an intent to thwart the court's ruling at trial. The prosecutor's advocacy for admission of evidence does not establish an intent to subvert the court's ruling. Moreover, the prosecutor's warning to Detective Fernandez shows respect for the court's decision to exclude the Rule 5-404(b) evidence.

Second, the appellant argues the prosecutor should have known that her question would have produced Detective Fernandez's improper answer. We disagree. The prosecutor was following the court's instructions and attempting to establish that two phone numbers were in frequent contact.

In sum, the evidence shows that a witness misunderstood a proper question and gave an improper answer despite a warning from the prosecutor. The court's findings were not clearly erroneous. No evidence supports a finding that the prosecutor intended to provoke a mistrial.

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

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