Circuit Court for Prince George's County
Case No. 15-0565X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1358

September Term, 2016

WILLIAM C. ADAMS, SR.

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: May 18, 2018

William C. Adams, Sr., appeals from the Circuit Court for Prince George's County's denial of his motion to dismiss criminal charges for violation of double jeopardy. He presents the following question for our review, which we have re-phrased slightly:

> Did the trial court err or abuse its discretion in declaring a mistrial *sua sponte*?

We shall hold that the trial court properly exercised its discretion in granting the mistrial, and hence, we shall affirm.

I.

Appellant was charged by the Grand Jury for Prince George's County with first degree assault, second degree assault, and use of a handgun in a crime of violence. The trial commenced in the Circuit Court on November 2, 2015, before a jury.

Because the sole issue in this appeal relates to the trial court's action in granting a mistrial *sua sponte*, we shall not recite the underlying facts of the criminal charge, and focus only on the facts related to the mistrial. On November 3, 2015, following presentation of evidence, jury instructions, and closing arguments, the jury began deliberations at 4:45 p.m. Less than one hour later, in open court, one juror advised the court that she could not participate as a juror. The following colloquy occurred:

> "THE COURT: Juror 41, would you go stand in the box, please. You can be seated. You don't have to stand. You can [be] seated. Just go in the jury box, please.
>
> Can you please tell me what the issue is? You can be seated.

[JUROR NUMBER 41]: I am emotionally not able to do this and I need to go home

THE COURT: And can you tell me what the issue is?

[JUROR NUMBER 41]: My choice and I'm not changing it.

THE COURT: Okay.

[JUROR NUMBER 41]: And my emotions from my family is affecting my decision. I can't do this and I remember your question and I did not think it would come into play and it did back there. I cannot do this.

THE COURT: What came into play?

[JUROR NUMBER 41]: He is not guilty. His son is a drug addict. His son needs help. His son—

THE COURT: Okay. All right. Thank you. Thank you. Thank you. Thank you.

Jennifer, would you take Number 41 into my chambers. Just go with Jennifer, please.

THE COURT: [DEFENSE COUNSEL].

[THE STATE]: Do you think possibly of them returning tomorrow? I don't know.

THE COURT: [DEFENSE COUNSEL].

[DEFENSE COUNSEL]: Given what she said, Your Honor—

THE COURT: We have probably zero choice. The only choice we have is to declare a mistrial.

[DEFENSE COUNSEL]: I think it's clear she's—

THE COURT: She's not all right. Is there any objection from the State?

> [THE STATE]: No.
>
> THE COURT: All right. Then based upon Juror 41 being unable to continue to deliberate, we will declare a mistrial."

The trial court declared a mistrial. Appellant filed a motion to dismiss the charges based on double jeopardy. The motion was set for a hearing before the same judge who granted the mistrial. New counsel represented Appellant; the prosecutor was the same prosecutor from the criminal trial. The prosecutor and the judge described the juror's demeanor as follows:

> "[THE STATE]: This was a situation where as defense counsel noted the juror came out. She was very emotional. She was buckled over. She was sobbing and weeping. Through her tears she explained that she made her mind up. I recall her saying something like she was in her feelings, but the whole point of the exercise was she was very uncomfortable; and it was clear that she could not continue.
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> ***
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> THE COURT: The Court received a note that simply said Juror Number 41 wanted to go home. When the Court received that note in open court, Juror Number 41 was called in. At that point she was in extreme emotional distress. She was crying. She did not have control of herself. She was blurting things out. As the transcript indicates, she told the Court that I am emotional and not able to do this. I need to go home. My choice. I am not changing it; and my emotions from my family is affecting my decision. I can't do this. And I remember your question, and I did not think it [] would come into play and it did back there and I cannot do this.
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> ***
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> THE COURT: [T]he transcript does not begin to describe what emotional condition she was in, nor how much of an

> interruption and distraction that she was to the courtroom, as well as to the other members of the jury.
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> ***
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> THE COURT: She said the family situation was in play. I asked her what came into play. As opposed to answering what came into play, we got the answer that he's not guilty, his son is the drug addict, his son needs help. So, that was the information in front of the court."

Essentially finding manifest necessity, the trial judge denied the motion to dismiss the charges based on double jeopardy grounds.

This timely interlocutory appeal followed.

II.

Before this Court, appellant argues several points of law, to which there is no disagreement. The Fifth Amendment to the United States Constitution guarantees that no person shall be twice put in jeopardy for the same offense. Jeopardy attaches when a jury is sworn. When the trial court declares a mistrial, the Double Jeopardy Clause prohibits retrial unless the defendant consented to the mistrial or there was manifest necessity for the mistrial. Appellant argues that manifest necessity exists only if there was a high degree of necessity for the mistrial, the trial court explored reasonable alternatives to the mistrial and found none available, and no reasonable alternative to the mistrial was available. He maintains that he did not consent nor acquiesce to the grant of the mistrial, that the court did not give appellant an opportunity on the record to state its position as to the mistrial,

and that the court did not consider any alternatives to the mistrial. Appellant suggests that "[h]ad the Court simply encouraged [the juror] to spend a reasonable amount of time on her appointed task, a mistrial could have been avoided," and that nothing on this record suggested that the juror was incapable of deliberating further.

The State maintains that the trial court's declaration of a mistrial was a proper exercise of the court's discretion and that the record evidences that the trial court was aware of possible alternatives, but determined properly that a mistrial was the only available choice. First, appellant, by his silence, acquiesced to the court's action and hence has not preserved any objection to the grant of the mistrial. Second, assuming preservation *arguendo*, the record shows that this juror "was overwrought with emotion and proving to be an interruption and distraction to the courtroom and the remaining deliberating jurors." Third, applying the presumption that the trial judge knows the law, the court was well aware of the alternatives and it determined properly that a mistrial was the "only choice" available. Instructing the juror to continue to deliberate ignores the court's factual assessment that the juror was unable to continue with deliberations. Finally, appellant's suggestion that the trial court should have considered continuing with eleven jurors was not a reasonable alternative. That option requires the consent of both the State and the defendant, and this record does not support a finding that such an "irregular process" was a viable option.

III.

We address first the State's argument that appellant acquiesced to the court's grant of the mistrial. The record, excerpted *infra*, shows that the trial judge interrupted defense counsel and did not inquire of defense counsel's position as to a mistrial. We do not find consent or acquiescence by appellant on this record.

A retrial following the declaration of a mistrial is barred by double jeopardy principles if the court declared a mistrial over the defendant's objection and without manifest necessity. *State v. Baker*, 453 Md. 32, 47 (2017). We review the grant of a mistrial under an abuse of discretion standard. *Id.* at 46; *Simmons v. State*, 436 Md. 202, 212–13 (2013). In evaluating whether there was a manifest necessity to grant the mistrial, we consider the totality of the circumstances and review the trial court's legal conclusions without deference. *State v. Fennell*, 431 Md. 500, 513 (2013).

In *United States v. Perez*, 22 U.S. (9 Wheat.) 579 (1824), the United States Supreme Court set forth the test for declaring a mistrial based on manifest necessity. The Court stated as follows:

> "We think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes . . . . But, after all, they have the right to order the discharge; and the

> security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office."

Id. at 580. The above standard set out in *Perez* has not changed but some guidelines have been set out. *See State of Illinois v. Somerville*, 410 U.S. 458, 461–64 (1973); *United States v. Jorn*, 400 U.S. 470, 480–82 (1971); *Downum v. United States*, 372 U.S. 734, 735–36, (1963); *Gori v. United States*, 367 U.S. 364, 367–68 (1961); *Wade v. Hunter*, 336 U.S. 684, 689–90 (1949); *Keerl v. Montana*, 213 U.S. 135, 137 (1909); *Dreyer v. Illinois*, 187 U.S. 71, 85–86 (1902); *Thompson v. United States*, 155 U.S. 271, 274 (1894); *Logan v. United States*, 144 U.S. 263, 298 (1892); *Simmons v. United States*, 142 U.S. 148, 154 (1891).

One guideline is the notion of "manifest necessity." The Court of Appeals noted as follows in *Mansfield v. State*, 422 Md. 269, 287 (2011):

> "Whether manifest necessity to declare a mistrial and, thus, whether the prohibition of the double jeopardy clause is triggered depend upon the unique facts and circumstances of each case. While it is in the sound discretion of the trial judge to declare a mistrial, he or she may do so only if a 'high degree' of necessity demands that he or she do so."

In addition to a "high degree of necessity," a manifest necessity determination includes a finding by the trial court that no reasonable alternatives to a mistrial were actually available. *Baker*, 453 Md. at 48. In *Baker*, Judge Joseph Getty, writing for the Court, explained a reviewing court's analysis:

> "'Reviewing courts have an obligation to satisfy themselves that . . . the trial judge exercised "sound discretion" in declaring a mistrial.' However, 'the absence of an explicit finding of

> "manifest necessity" . . . does not render [the trial court's ruling] constitutionally defective.' Instead, the reviewing court must be 'persuaded by the record that 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.'"

Id. at 49 (internal citations omitted).

We conclude that the trial court exercised its discretion properly in finding manifest necessity and declaring a mistrial. While the juror was not physically ill, the trial court clearly had before it an extremely emotionally disturbed juror. The trial judge explained on the record the high degree of emotional distress and disruption the juror created. The trial judge was there and in the best position to judge the extent and gravity of the situation. We recognize that the record does not show explicitly the options the trial judge considered, but we do engage in the presumption (supported by the trial judge's comments) that the judge knew and applied the law properly. Although we do not give carte blanche to the trial judge in assessing manifest necessity, under the facts and circumstances herein presented, we defer to the trial judge's observations and assessment of the juror's condition and her ability to continue, and to the conclusion that no other option existed but to declare a mistrial.

We hold that the trial court did not err and exercised its discretion properly in granting a mistrial.

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