Circuit Court for Talbot County
Case No. C-20-CR-18-000090

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2220

September Term, 2018

TAVON BOWSER

v.

STATE OF MARYLAND

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

JJ.

Opinion by Shaw Geter, J.

Filed: January 8, 2020

Appealing, interlocutorily, from the denial by the Circuit Court for Talbot County of a motion to dismiss, appellant, Tavon Bowser, presents for our review one question: Did the court err in denying the motion? The State moves to dismiss the instant appeal, and alternatively, contends that the court did not err in denying the motion. For the following reasons, we grant the State's motion to dismiss. For guidance to the parties, we shall also explain why, even if we denied the State's motion, we would affirm the judgment of the circuit court.

Factual and Procedural Background

On July 27, 2017, Bowser was charged in the District Court for Talbot County (hereinafter "district court"), case number D-035-CR-17-000515, with five offenses: sexual abuse of a minor, fourth-degree sexual offense by engaging in a sexual act with the victim when she was fourteen or fifteen years old and being at least four years older than the victim, third-degree sexual offense, retaliating against a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act in violation of Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), § 9-303 of the Criminal Law Article ("CL"), and second-degree assault. On August 23, 2017, the State entered a nolle prosequi as to the charge of sexual abuse of a minor, and amended the charge of third-degree sexual offense to attempted third-degree sexual offense. On September 15, 2017, Bowser filed in the district court a demand for a jury trial. The district court subsequently transferred the case to the circuit court, which assigned to the charges case number C-20-CR-17-000207 (hereinafter "case number 17-207"), and scheduled trial to commence on January 17, 2018.

On January 12, 2018, the State filed a "Motion to Continue," in which it moved "to postpone trial . . . until after March 6, 2018." The State stated that due to a medical issue, a "necessary witness" would be "unable to testify on the trial date." Bowser's *Hicks* date[1] was March 16, 2018. Following a hearing, the court continued trial to March 14 and 15, 2018.

On March 7, 2018, the State filed a second "Motion to Continue," in which it stated:

> Trial in the above captioned case is currently set for March 14 and 15, 2018. The Criminal Information, based on information initially provided to authorities by the victim, includes several crimes, the most serious of which alleges Attempted Sex Offense in the 3rd Degree.
>
> In a pretrial meeting with undersigned counsel and victim/witness coordinator Karen Greene, the minor victim indicated that [Bowser] had violated her more extensively but that she had not told her family.
>
> The State conveyed this information to [defense counsel], and indicated [its] intent to enter a nolle prosequi and file a new charging document.

(Paragraph numbering omitted.) The following day, the State filed a "Motion to Continue and Consolidate," in which it repeated the contentions made in the previous motion to continue, and requested that the court "postpone the . . . case for consolidation with additional charges arising out [of] the same event to be charged forthwith." On March 9, 2018, Bowser filed objections to both motions, stating that he did not waive his rights "to be tried within 180 days after the earlier of either the initial appearance or appearance of counsel" pursuant to Md. Code (2001, 2008 Repl. Vol., 2017 Supp.), § 6-103(a) of the

[1] *State v. Hicks*, 285 Md. 310 (1979).

Criminal Procedure Article ("CP"),[2] or "to have a speedy trial," and "demand[ed] his right to have a speedy trial." Bowser contended "that any additional charges that would be consolidated [would] change the character of the offense charged," and stated that he did "not consent to any amendment or consolidation."

On the morning of March 13, 2018, Bowser was charged in the district court, case number D-035-CR-18-000170, with seven offenses: second-degree rape, third-degree sexual offense, fourth-degree sexual offense by engaging in sexual contact with the victim without her consent, fourth-degree sexual offense by engaging in a sexual act with the victim when she was fourteen years old and being at least four years older than the victim, second-degree assault, retaliating against a victim or witness, and fourth-degree sexual offense by engaging in vaginal intercourse with the victim when she was fourteen years old and being at least four years older than the victim. Later that day, the State, in the absence of Bowser and defense counsel, appeared before the circuit court and entered a nolle prosequi as to all of the charges in case number 17-207.

That afternoon, Bowser filed an "Objection to State's Election to Enter a Nolle Prosequi," in which he stated:

> As of Tuesday, March 13, 2018, counsel was informed by chambers that the [c]ourt would entertain the State's request and the defendant's response via a conference call on the record. Chambers indicated counsel would be contacted later in the day as to the date and time of that call to take place on March 13, 2018. Counsel then continued to her office in Annapolis at the direction of chambers since she was to be contacted by phone.

[2]CP § 6-103(a) states that a date for trial of a criminal matter "may not be later than 180 days after the earlier of" the "appearance of counsel" or "the first appearance of the defendant before the circuit court."

> As of 11:30am on March 13, 2018, the [c]ourt had not scheduled the call and there was no ruling on the State's Motion.
>
> The Deputy State['s] Attorney for Talbot County had Assistant State['s] Attorney Colin Carmello call the case in open court with neither counsel nor Mr. Bowser present. Counsel for the State knew undersigned counsel was not present in the courtroom.
>
> The State elected, as it can, to enter a Nolle Prosequi to all charges in the above-captioned case. However[,] had the defendant been in court he would have objected to the entering of the Nolle Prosequi based on his right to have a speedy trial which has been violated as well as his right to be tried within 180 days under Hicks.

(Paragraph numbering omitted.) On April 19-20, 2018, the district court transferred case number D-035-CR-18-000170 to the circuit court, which assigned to the charges case number C-20-CR-18-000090 (hereinafter "case number 18-90"). The charging document specified that Bowser was charged with committing the offenses "on or between March 1, 2017 and March 31, 2017." The document further specified that Bowser was charged with retaliating against a victim or witness for reporting a crime or delinquent act in violation of CL § 9-302(a), rather than CL § 9-303.

On May 22, 2018, Bowser filed a motion to dismiss the case with prejudice, "for violating [his] right to a speedy trial." On June 25, 2018, Bowser filed a supplement to the motion, in which he contended that in "elect[ing] to enter a nolle prosequi to the original charges," the "State deliberately circumvented and avoided the possibility of an adverse ruling from the court."

On August 10, 2018, the court held a hearing on the motion. Following argument, the court concluded:

> There's no question in this [c]ourt's mind that this [d]efendant has been prejudiced, not presumptively but actually prejudiced . . . . Question is whether that actual prejudice is such that it reaches a constitutional dimension and I find that the delay does reach that dimension. The delay was purposely made by the State to gain a tactical advantage by the [nolle prosequi]. So the issues of a constitutional dimension have been satisfied in the mind of the [c]ourt. But, we have to remember the old charges and [there are] new charges. What I have said refers absolutely to the old charges and I'm going to find that the old charges are going to be barred for lack of a speedy trial. That however does not apply to the new charges.

Accordingly, the court barred the State from pursuing the counts of fourth-degree sexual offense by engaging in a sexual act with the victim when she was fourteen years old and being at least four years older than the victim and second-degree assault, but allowed the State to pursue the remaining charges. The court specifically found that the State was allowed to pursue the charge of retaliating against a victim or witness for reporting a crime or delinquent act in violation of CL § 9-302(a), because the "new charge" was for "inducing or inhibiting a witness."

On September 11, 2018, Bowser filed a second motion to dismiss, in which he contended that when the "State's right to note an appeal of" the partial granting of the first motion to dismiss "expired on September 10, 2018," the "ruling . . . became a final judgment on the merits." Citing our opinion in *State v. Armstrong*, 46 Md. App. 641 (1980), Bowser contended, among other arguments, that the "dismissal of the assault count constitutes a finding that no assault, in any form, occurred," and the "principles of *res judicata* should bar the prosecution from re-litigating the same factual issue." (Italics added.) Following a hearing, the court denied the motion.

Discussion

Now on appeal, Bowser contends that, under *Armstrong*, "the doctrine of *res judicata*" prohibits his subsequent prosecution for not only "identical charges," but also "lesser included offenses of the dismissed or barred offenses, and greater offenses that include the dismissed or barred offenses." The State moves to dismiss the instant appeal as "not permitted by law" (capitalization omitted), because "Bowser admittedly is not appealing from the denial of a double jeopardy-based motion to dismiss," and the court's "ruling is not effectively unreviewable[] if Bowser is required to wait after trial to appeal the ruling." (Quotations omitted.) Bowser counters that "[a]lthough the . . . court's August 2018 order dismissing counts occurred before jeopardy attached and therefore did not give rise to a meritorious double jeopardy claim, it was, as *Armstrong* explained, a decision on the merits that precludes subsequent prosecution, and is analogous to double jeopardy in the sense that the protection against trial it affords cannot be adequately vindicated by a reversal after conviction." (Citation omitted.)

In *Armstrong*, we reviewed a court's dismissal of indictments where the court had dismissed preceding indictments for a violation of former Rule 746,[3] and the State "aborted its appeals from those actions and attempted to salvage the prosecutions by obtaining new indictments." 46 Md. App. at 642. On appeal, the State contended that "subject only to double jeopardy constraints," the "State is fully at liberty to bring new indictments based

[3]Rule 746 a stated that "[w]ithin 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 723 . . . , a trial date shall be set which shall be not later than 120 days after the appearance or waiver of counsel or after the appearance of defendant before the court pursuant to Rule 723[.]"

upon the same charges that were earlier dismissed, whatever the reason for the dismissal and whether the dismissal was with or without prejudice." *Id.* at 646. Rejecting the State's contention, we concluded that "when a criminal charge is dismissed for want of a speedy trial, whether based on the Sixth Amendment or Rule 746, the State is not at liberty to revive the prosecution by means of a new charging document." *Id.* at 651. We explained:

> The concept upon which we rely is not precisely that of *res judicata*, although it embodies most of the essentials of that broader doctrine. The dismissal of the indictments on the basis of *Hicks* clearly amounted to final judgments upon the same claim between the same parties. That the judgments may have been erroneous ones would be of no consequence in determining the applicability of *res judicata*. The normal remedy for correcting error in a final judgment is an appeal, not a new action. As stated by Freeman, [2 *Freeman on Judgments*, 5th Ed., § 727,] "[n]either can the force of a judgment as res judicata be destroyed or impaired by showing that it was clearly erroneous and ought not to have been rendered, if the court had jurisdiction[.]"
>
> The only element of *res judicata* that is arguably lacking here is that which requires the prior judgment to be one that was rendered "on the merits." Traditionally, civil judgments of nonsuit, *non prosequitur*, or *nolle prosequi*, and dismissals for failure to prosecute the action diligently have not been regarded as rendered on the merits sufficient to estop a subsequent action on the same claim. But, as Freeman also notes (§ 724), the term "merits,"
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> > ". . . may refer to the merits of the whole case or controversy between the parties, or it may be restricted to the merits of some particular issue of law or fact, the adjudication of which may prevent a consideration and determination of the substantial rights of the parties upon the whole controversy. *There is no doubt about the conclusiveness of the judgment as to the matters actually adjudicated even though it is a judgment on the merits only in the latter restricted sense . . . .*" (Emphasis supplied.)
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> The "restricted sense" of the requirement alluded to by Freeman has special relevance, we think, in the context of a dismissal based upon lack of a speedy trial, for the reasons already noted. The right of a defendant to have

> criminal charges lodged against him resolved promptly is of Constitutional dimension and is imbued with public policy considerations of the highest magnitude. Both the Court of Appeals, through Rule 746, and the General Assembly, through Md. Ann. Code art. 27, § 591, have set specific limits in that regard. Effective enforcement of that right, and those limits, even in the absence of *Hicks*, requires that a dismissal on speedy trial grounds, which does "prevent a consideration and determination of the substantial rights of the parties upon the whole controversy," be deemed a judgment on the merits, whatever the result might be in a civil context to which these special considerations are inapplicable.
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> Accordingly, we conclude that the State was barred from re-prosecuting appellees on the charges earlier dismissed, and that the second indictments were properly dismissed.

Id. at 652–53 (citations omitted).

Nearly eight years after *Armstrong*, the Court of Appeals issued its opinion in *Bunting v. State*, 312 Md. 472 (1988), in which the Court reviewed "whether a circuit court's pretrial ruling that [the] single transfer rule of Article [III(d) of the Interstate Agreement on Detainers, Md. Code (1957, 1987 Repl. Vol.), Art. 27, § 616D(d)] was violated and the court's consequent refusal to dismiss charges against a defendant constitute an appealable judgment." *Bunting*, 312 Md. at 474 (quotations omitted). While Bunting was imprisoned in the federal penitentiary at Lewisburg, Pennsylvania, he was charged, in Somerset County, Maryland, with several counts of felony theft. *Id.* Because of these charges, the State of Maryland lodged detainers with the federal authorities at Lewisburg, who were subject to the Interstate Agreement on Detainers. *Id.* at 475 (citing 18 U.S.C. App. § 2 (1982)). In accordance with the Agreement, Bunting requested final disposition of the state charges. *Id.* Thereafter, Bunting was transported to Somerset

County to attend a hearing on motions filed by the defense. *Id.* The following day he was transported back to Lewisburg. *Id.*

Bunting moved to dismiss the Maryland charges, claiming that the State had violated the single transfer rule of Article III(d). *Id.* The motion was denied, and he appealed. *Bunting v. State*, 312 Md. 472, 475 (1998). The State moved to dismiss the appeal on the ground that it was not from a final judgment. *Id.* In response, Bunting asserted that the collateral order doctrine authorized the appeal. *Id.* at 476. The Court disagreed and granted the State's motion to dismiss. *Id.*

The Court of Appeals granted Bunting's petition for a writ of certiorari. *Id.* (footnotes omitted). Affirming our judgment, the Court stated:

> [T]he collateral order doctrine treats as final and appealable a limited class of orders which do not terminate the litigation in the trial court. In order to fit within this narrow class, however, the challenged order generally must meet four requirements:
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> > The order must (1) conclusively determine the disputed question, (2) resolve an important issue, (3) be completely separate from the merits of the action, and (4) be effectively unreviewable on appeal from a final judgment.
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> * * *
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> In . . . *Abney v. United States*, 431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)[,] the Supreme Court held that the collateral order doctrine encompassed the denial of a criminal defendant's motion to dismiss an indictment on the ground of double jeopardy. Relying on the language of the federal Constitution and on prior decisions, the Court reasoned that the guarantee against double jeopardy is more than a prohibition against double punishment; by its very nature, the Double Jeopardy Clause grants a defendant the right not to stand trial under certain circumstances. 431 U.S. at 659–662, 97 S.Ct. at 2040–2042, 52 L.Ed. at 660–662. That right would be irretrievably lost if a defendant had to await termination of the criminal trial before appealing an order denying a motion to dismiss on the ground of

double jeopardy. Consequently, the Supreme Court concluded that the order was not effectively reviewable on appeal from a final judgment of conviction. *See also Helstoski v. Meanor*, 442 U.S. 500, 99 S.Ct. 2445, 61 L.Ed.2d 30 (1979) (involving the speech and debate clause of the federal Constitution, Art. I, § 6).

This Court has also recognized that, 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. *Parrott v. State*, 301 Md. 411, 424–425, 483 A.2d 68, 75 (1984).

* * *

This Court's decision in *Stewart v. State,* 282 Md. 557, 386 A.2d 1206 (1978), clearly illustrates that only a very few rights are analogous to the Double Jeopardy Clause's entitlement not to stand trial. In that case, we held that the denial of a pretrial motion to dismiss on the ground of an alleged violation of the defendant's speedy trial rights did not fall within the collateral order doctrine. In reaching that decision, we largely relied on *United States v. MacDonald,* 435 U.S. 850, 98 S.Ct. 1547, 56 L.Ed.2d 18 (1978), in which the Supreme Court distinguished *Abney v. United States*, *supra*, by pointing out (435 U.S. at 861, 98 S.Ct. at 1553, 56 L.Ed.2d at 27): "It is the delay before trial, not the trial itself, that offends against the constitutional guarantee of a speedy trial." . . . .

. . . . [M]erely because a defendant may have the charges against him dismissed if the trial court accepts his contentions, it does not follow that his statutory right is to avoid trial altogether. As the Supreme Court observed in *United States v. MacDonald*, *supra,* 435 U.S. at 860 n. 7, 98 S.Ct. at 1552–1553 n. 7, 56 L.Ed.2d at 27 n. 7[]:

> Certainly, the fact that this court has held dismissal of the indictment to be the proper remedy when the Sixth Amendment right to a speedy trial has been violated . . . does not mean that a defendant enjoys a 'right not to be tried,' which must be safeguarded by interlocutory appellate review. Dismissal of the indictment is the proper sanction when a defendant has been granted immunity from prosecution, when his indictment is defective, or, usually, when the only evidence against him was seized in violation of the Fourth Amendment. Obviously, however, this has not led the Court to conclude that such defendants can pursue interlocutory appeals.

* * *

> [N]umerous "rights" can readily be characterized as entitling a party to avoid trial under some circumstances. For example, the "right" to summary judgment might be characterized as a right not to stand trial unless the opposing party has created a genuine issue of material fact. Similarly, the statute of limitations might be characterized as granting a defendant a right not to be tried out of time. If all "rights" which could be characterized in this manner were treated like the right against double jeopardy, the collateral order doctrine would largely erode the final judgment rule. Consequently, it is important that we narrowly construe the notion of an entitlement not to be sued or prosecuted.

Bunting, 312 Md. at 476–82 (internal citations, quotations, brackets, and footnote omitted).

Here, Bowser explicitly appeals from the court's order denying his second motion to dismiss "based on [a] *res judicata* theory." The Court of Appeals, however, did not conclude in *Bunting*, and has not concluded since, that a *res judicata* claim constitutes an "extraordinary situation" that allows a defendant to pursue an interlocutory appeal. Also, the fact that the charges against Bowser may have been dismissed if the circuit court had accepted his contention does not mean that he has a right to avoid trial altogether. Like the Court in *Bunting*, we narrowly construe the notion of an entitlement not to be prosecuted, and treating a *res judicata* claim like the right against double jeopardy would erode the final judgment rule and lead to a proliferation of appeals. Hence, we are not persuaded that such a claim constitutes an extraordinary situation allowing Bowser to pursue an interlocutory appeal.

Bowser contends that the "right at issue in the present appeal is no less important" than the right to interlocutory review of the denial of a motion to enforce a plea agreement, which we found in *Rios v. State*, 186 Md. App. 354 (2009), and *Y.Y. v. State*, 205 Md. App.

724 (2012), to constitute an "extraordinary situation" requiring such review. But, in those cases, we explicitly stated that "the enforceability of alleged plea agreements is a proper basis for interlocutory appeals because of the strong public policy that favors the plea negotiation process." *Rios*, 186 Md. App. at 366 (citation omitted). *Accord Y.Y.*, 205 Md. App. at 736–37. There is no strong public policy that favors prohibiting the State, on the basis of *res judicata*, from prosecuting a defendant for an offense following the dismissal of a lesser included offense due to a violation of the defendant's right to a speedy trial. Thus, we grant the State's motion to dismiss the instant appeal.

Even if we denied the State's motion, Bowser would not prevail. It is true that in *Armstrong*, we affirmed the dismissal of charges filed subsequent to a violation of the appellants' right to a speedy trial upon a concept similar to that of *res judicata*. But, we also recognized that the "merits" on which a prior judgment was rendered may be restricted to a particular issue of law *or* of fact, and that a judgment on the merits of a particular issue of law or fact may not require a judgment as to the merits of the whole case. Here, it is clear that the court dismissed the charges of fourth-degree sexual offense and second-degree-assault on the merits of a particular issue of law, specifically that Bowser's right to a speedy trial had been violated by the State's entering a nolle prosequi to the original charges and subsequently re-charging Bowser with two of the same offenses. The court did not dismiss the charges on the merits of a particular issue of fact, such as whether Bowser actually committed upon the victim a sexual act or an act constituting a second-degree assault. Because the court did not specifically conclude that Bowser did not commit upon the victim an act constituting a fourth-degree sexual offense or second-degree assault,

the doctrine of *res judicata* does not prohibit the State from prosecuting Bowser for offenses of which fourth-degree sexual offense or second-degree assault are a lesser included offense.

Bowser contends that, because the "protections of Rule 4-271,[4] CP § 6-103, and *Hicks* would have little significance if the State can evade them simply by charging a greater including crime," and "allowing the State to circumvent them by charging a greater including offense would deter defendants from raising the speedy trial challenges needed to vindicate the important societal interests at stake," a "[h]olding that an order dismissing counts and/or barring prosecution of certain offenses based on a violation of the 180-day rule also precludes subsequent prosecution of lesser-included or greater including offenses would best serve the interests underlying the rule and the prohibition on using nolle prosequis to circumvent the rule." (Italics omitted.) But, the Court of Appeals has consistently declined to issue such a holding, despite multiple opportunities since *Armstrong* to do so. The first such opportunity arose in *Curley v. State*, 299 Md. 449 (1984), in which the Court reviewed whether charges were required to be dismissed pursuant to Md. Code (1957, 1982 Repl. Vol., 1983 Supp.), Art. 27, § 591, and former Rule 746, "where the prosecuting attorney files a [nolle prosequi] prior to the expiration of the 180-day period and thereafter causes the same charge or charges to be refiled against the defendant." *Curley*, 299 Md. at 452. The Court held

[4]Rule 4-271(a)(1) states: "The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events."

> that when a circuit court criminal case is nol prossed, and the [S]tate later has *the same charges* refiled, the 180-day period for trial prescribed by § 591 and Rule 746 ordinarily begins to run with the arraignment or first appearance of defense counsel under the second prosecution. If, however, it is shown that the nol pros had the purpose or the effect of circumventing the requirements of § 591 and Rule 746, the 180-day period will commence to run with the arraignment or first appearance of counsel under the first prosecution.

Curley, 299 Md. at 462 (emphasis added). Notably, the Court did not extend its holding to new charges of which the initial charges were lesser included offenses.

Since *Curley*, the Court of Appeals has repeatedly affirmed that its holding applies only "where criminal charges are nol prossed and *identical* charges are refiled[.]" *State v. Huntley*, 411 Md. 288, 293 (2009) (emphasis added). *See also State v. Simms*, 456 Md. 551, 561 (2017); *Huntley*, 411 Md. at 294–95; *State v. Price*, 385 Md. 261, 269–70 (2005); *State v. Brown*, 341 Md. 609, 616–17 (1996); *State v. Henson*, 335 Md. 326, 338 (1994). The Court of Appeals has never extended its holding to new charges of which the initial charges were lesser included offenses, and we shall not so hold here.

Bowser next contends that the State is prohibited from prosecuting him for lesser included or greater including offenses because "[t]wo crimes based on the same conduct are considered the same offense for double jeopardy purposes if one is a lesser-included offense of the other," and "[t]here is no sound policy reason for treating greater and lesser-included offenses as the same offense for double jeopardy protections, but as different offenses for speedy trial protections and the *res judicata* bar discussed in *Armstrong*." But, we do not yet know whether the second-degree assault charged in case number 18-90 occurred in conjunction with the greater offenses listed in the charging document. In the document, the State contends that the second-degree assault occurred not during a

particular incident, but during a month-long period of time, and hence, the assault may have occurred during an incident other than that which gave rise to the remaining charges. Also, Bowser does not cite any case, and we are unaware of any, upon which we could find *prior* to the attachment of jeopardy that the second-degree assault constituted a lesser included offense of the other offenses for purposes of double jeopardy. Hence, the State is not precluded from prosecuting Bowser for those offenses.

Alternatively, Bowser contends that the court's order "barring further prosecution of" the offense of retaliating against a victim or witness as charged in case number 17-207 "requires dismissal of" the offense as charged in case number 18-90, "because they both charge the same crime." (Capitalization and boldface omitted.) Conceding that "Bowser's claim appears to be facially correct at this point in the proceedings," the State counters that Bowser cannot "appeal that [issue] as an interlocutory order," and "at the hearing on Bowser's *res judicata*-based motion to dismiss, Bowser did not argue that [the counts] were identical charges, and . . . did not ask [the court] to dismiss [the charge in case number 18-90] on that basis." (Italics added.)

We agree with the State. The Court of Appeals did not conclude in *Bunting*, and has not concluded since, that a claim that a defendant has been charged with an offense identical to a charge previously dismissed due to the violation of the defendant's right to a speedy trial constitutes an "extraordinary situation" that allows the defendant to pursue an interlocutory appeal. Also, Bowser does not dispute that he failed to raise this contention at the hearing on his second motion to dismiss, and hence, the contention is waived. The

State may prosecute Bowser for the offense of retaliating against a victim or witness as charged in case number 18-90, and the court did not err in denying the motion to dismiss.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.