Circuit Court for Anne Arundel County
Case No. C-02-CR-22-001244

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 9

September Term, 2023

---

RONALD JOHN THOMAS

v.

STATE OF MARYLAND

---

Leahy,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Wright, J.

---

Filed: January 23, 2024

In this interlocutory appeal, Ronald John Thomas, appellant, challenges the denial by the Circuit Court for Anne Arundel County of his motion to dismiss an indictment on the ground of double jeopardy.[1] We affirm and remand for further proceedings.

## BACKGROUND

### The Previous Case[2]

Beginning on November 15, 2012, and continuing into December 2012, Thomas sent dozens of text messages to an acquaintance, Karen Bell, disclosing that he had used a hidden camera to record videos and take photographs of his ten-year-old niece, E., and her eight-year-old friend, S., while they were naked. Furthermore, in some of those text messages, Thomas admitted to Ms. Bell that he masturbated to those videos, and he sent one of the videos and two of the photographs to her.

In December 2012, Ms. Bell notified police of Thomas's disclosures to her. Anne Arundel County Police officers interviewed Ms. Bell and examined the text messages, videos, and photographs Thomas had sent to her. Police then obtained search warrants for Thomas's home and vehicles, and ultimately, they recovered several child pornographic images from the hard drive of Thomas's computer.

---

[1] "A defendant has the right to immediate appellate review of an adverse ruling concerning a double jeopardy claim." *Kendall v. State*, 429 Md. 476, 484 n.10 (2012) (citing *Pulley v. State*, 287 Md. 406, 414 (1980)).

[2] The prior case was resolved by an *Alford* plea. There is no transcript of that plea hearing in the record before us. We have derived the factual summary of the prior case from the State's pleading in this case (State's Opposition to Defendant's Motion to Dismiss for Double Jeopardy), which summarized the facts of the prior case. There is no reason to believe that the State's factual summary would differ in any substantive way from the statement of facts it was required to enter into the record at the plea hearing.

Police interviewed E.'s mother, and E. was interviewed by one or more forensic specialists at the Child Advocacy Center. At that time, E. "did not disclose any sexual abuse or any knowledge that [Thomas] was filming her."

In May 2013, a nine-count indictment was returned, in Case No. 02-K-13-001027 (Case No. 1027), charging Thomas with sexual abuse of a minor, two counts of conducting visual surveillance in a private place with prurient intent (one count for each victim), three counts of possession of child pornography, placing a camera in a private residence for purposes of conducting surreptitious video surveillance, and two counts of peeping tom. All the charged offenses were alleged to have occurred "on or about 11/9/2012 to 12/11/2012 in Anne Arundel County."

In July 2014, the State and Thomas reached a plea agreement, and Thomas entered *Alford*[3] pleas to two counts of the indictment, alleging private place visual surveillance with prurient intent of E. and S.; the State entered nolle prosequi on all remaining counts. At the sentencing hearing in December 2014, the circuit court struck the findings of guilt and entered probation before judgment, and it imposed a five-year term of supervised probation.

[3] The eponymous *Alford* plea, named after *North Carolina v. Alford*, 400 U.S. 25 (1970), "is a guilty plea containing a protestation of innocence." *Bishop v. State*, 417 Md. 1, 19 (2010) (quotation marks and citation omitted). Through an *Alford* plea, the defendant "voluntarily, knowingly, and understandingly consent[s] to the imposition of a prison sentence" even though "he is unwilling or unable to admit his participation in the acts constituting the crime." *Alford*, 400 U.S. at 37. Procedurally, "an *Alford* plea is the functional equivalent of a guilty plea[.]" *Ward v. State*, 83 Md. App. 474, 478 (1990).

**Subsequent Accusations**

In January 2022, E. accused Thomas of having sexually assaulted her as a child, approximately ten years previously, on two separate occasions.[4] On one occasion, according to E., when she was "approximately 9 years old," Thomas rubbed his hand on "the outside of her vagina" while she was at his home. On the other occasion, according to E., "around the same time period[,]" Thomas exposed himself to her while they "were swimming by themselves in the backyard pool" at her grandparents' home.

**Further Legal Proceedings**

Based on E.'s new allegations, in May 2022, a five-count indictment was returned, in Case No. C-02-CR-22-000669 (Case No. 669), charging Thomas with sexual abuse of a minor, third- and fourth-degree sexual offense, second-degree assault, and indecent exposure. All the charged offenses were alleged to have occurred "on or about January 1, 2012 through December 31, 2012, in Anne Arundel County."

Thomas filed a motion to dismiss on the ground of double jeopardy, pointing out that the new indictment charged sexual abuse of a minor during a time period that overlapped, in part, with the time period alleged in the indictment in the prior case, and that furthermore, the nolle prosequi in that case, entered as part of a plea agreement, barred a subsequent prosecution. In response, the State filed a new indictment, in Case No. C-02-CR-22-001244 (Case No. 1244), that is, the present case, once again charging

[4] According to the State, E.'s "parents never told her about" Thomas's "prior case for secretly recording her until *after* she disclosed to them about the sexual abuse giving rise to the [subsequent] case, in early January 2022."

Thomas with sexual abuse of a minor, third- and fourth-degree sexual offense, second-degree assault, and indecent exposure, and it entered nolle prosequi in Case No. 669. The new indictment was similar to that in Case No. 669 except that it stated additional detail about the charged offenses, and, in the new indictment, all the charged offenses were alleged to have occurred "on or about January 1, 2012 through November 8, 2012, in Anne Arundel County."

Thomas filed a new motion to dismiss on the ground of double jeopardy, restating the same arguments raised in his previous motion in Case No. 669. The State filed an opposition to Thomas's motion to dismiss, in which it acknowledged that it had "superseded" the indictment in Case No. 669 "to correct an error that could not be fixed by way of an amendment." According to the State, double jeopardy does not bar the new prosecution because "there is no overlap in dates[,]" and because "the factual circumstances giving rise to each indictment are entirely different."

In February 2023, the circuit court held a hearing on Thomas's motion to dismiss. After argument by the parties, the court denied the motion, declaring that the charges in Case No. 1027 (the case resolved through an *Alford* plea) are not the same as those alleged in Case No. 1244 and that, even were we to assume that they are, "they are for different time periods." This timely appeal followed.

## DISCUSSION

### Parties' Contentions

Thomas contends that the present prosecution is barred by the prior one, which ended in his *Alford* plea and the State's agreement to enter nolle prosequi to the remaining

charges in that case, including a charge of child sexual abuse during a time interval that, he contends, overlaps with the time interval in the present case. Relying upon *Anderson v. State*, 385 Md. 123 (2005), Thomas maintains that the circuit court erred in "analyzing the scope of [his prior] jeopardy through the factual allegations in" Case No. 1027 rather than the indictment in that case. Relying upon *Warren v. State*, 226 Md. App. 596 (2016), Thomas asserts that the circuit court erred in ruling that he "could not be placed twice in jeopardy in this case because the allegations in the first case did not involve allegations of touching, while the second case does." Finally, Thomas contends that the State's dismissal of the indictment in Case No. 669 was a "cynical attempt to circumvent double jeopardy" which "should not be rewarded" and that the filing of the superseding indictment was "tantamount to allowing the State to defeat [his] double jeopardy plea at bar by picking a random date."

The State counters that the indictment in Case No. 1244 "does not charge [Thomas] with committing the same offense as the indictment in" Case No. 1027. The State observes that the indictment in Case No. 1027 "charged Thomas with sexual abuse of a minor in violation of [Criminal Law Article ("CR"),] § 3-602, on or about November 9, 2012, to December 11, 2012[,]" whereas the indictment in Case No. 1244 "charged Thomas with sexual abuse of a minor in violation of CR § 3-602 on or about January 1, 2012, through November 8, 2012." Disputing Thomas's contention that the difference in the time frames between the two indictments is merely a "cynical attempt to circumvent double jeopardy[,]" the State insists that "there is nothing to indicate the end of time[]frame in the present indictment was chosen 'arbitrarily' or at 'random.'" According to the State, there

were two entirely legitimate reasons for filing the superseding indictment: first, to address Thomas's double jeopardy concerns, and second, because the complainant's statements and other circumstantial evidence that the newly charged events happened in the "summertime" establish that the time frame of the new indictment does not overlap with that of the indictment in Case No. 1027.

**Analysis**

*Double Jeopardy and the Plea of Autrefois Convict*

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb[.]" The Fifth Amendment prohibition against double jeopardy "is applicable to the states through the Fourteenth Amendment." *Scriber v. State*, 437 Md. 399, 407 (2014); *see Benton v. Maryland*, 395 U.S. 784, 794 (1969). Although the Constitution of Maryland does not expressly prohibit double jeopardy, "Maryland common law provides well-established protections for individuals against being twice put in jeopardy." *Scriber*, 437 Md. at 408 (quotation marks and citation omitted).

The Double Jeopardy Clause "had its origin in the three common-law pleas of *autrefois acquit*, *autrefois convict*, and pardon." *United States v. Scott*, 437 U.S. 82, 87 (1978). Those three pleas "prevented the retrial of a person who had previously been acquitted, convicted, or pardoned for the same offense." *Id.* This case implicates the plea of autrefois convict, also known as "former conviction," the purpose of which is 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." *Copsey v. State*, 67 Md. App. 223, 225-26 (1986).

"In order for two charges to represent the same offense for double jeopardy purposes, they must be the same 'in fact' and 'in law.'" *Scriber*, 437 Md. at 408 (citing *Anderson*, 385 Md. at 131). "To determine whether charges are the same in fact, we look to whether they arise out of the same incident or course of conduct[,]" and "[t]o determine whether two offenses arising out of the same incident are the same in law, we apply" the required evidence test derived from *Blockburger v. United States*, 284 U.S. 299, 304 (1932). *Scriber*, 437 Md. at 408. *Accord Anderson*, 385 Md. at 131.

*The State's Authority to Enter Nolle Prosequi*

Maryland Rule 4-247 provides:

> (a) **Disposition by nolle prosequi. –** The State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court. The defendant need not be present in court when the nolle prosequi is entered, but if neither the defendant nor the defendant's attorney is present, the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. Notice shall not be sent if either the defendant or the defendant's attorney was present in court when the nolle prosequi was entered. If notice is required, the clerk may send one notice that lists all of the charges that were dismissed.
>
> (b) **Effect of nolle prosequi. –** When a nolle prosequi has been entered on a charge, any conditions of pretrial release on that charge are terminated, and any bail bond posted for the defendant on that charge shall be released. The clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of that charge.

This rule and its predecessors (e.g., former Rule 782 a and b (1984) and former Rule 711 (1976)) have long been interpreted as conferring broad discretion on the State's

Attorney to nol pros charges prior to the attachment of jeopardy. *See*, *e.g.*, *State v. Martin*, 367 Md. 53, 55 (2001) (declaring that the "'entry of a nolle prosequi is generally within the sole discretion of the prosecuting attorney, free from judicial control and not dependent upon the defendant's consent'" (quoting *Ward v. State*, 290 Md. 76, 83 (1981))); *id.* at 56 (recognizing that "'under the concept of fundamental fairness with respect to a trial in a criminal cause, the broad authority vested in a prosecutor to enter a nolle prosequi may be fettered in the proper circumstances'" (quoting *Hook v. State*, 315 Md. 25, 37 (1989))). Although generally the entry of nolle prosequi of a charging document is a bar only to further prosecution on the same charging document, there is an exception where the State entered a nolle prosequi as part of a plea agreement, and the defendant complied with the terms of that agreement. *Gilmer v. State*, 389 Md. 656, 671 (2005); *Fleeger v. State*, 301 Md. 155, 162 (1984). In that case, the entry of nolle prosequi bars a future prosecution for the same charges. *Gilmer*, 389 Md. at 671. *See State v. Simms*, 456 Md. 551, 559-61 (2017) (discussing the effect of a nol pros on a subsequent prosecution).

*Application to the Present Case*

As a preliminary matter, we note that, under the plea agreement in Case No. 1027, seven counts of that indictment were nol prossed, including the flagship charge of sexual abuse of a minor in violation of CR § 3-602, on or about November 9, 2012, to December 11, 2012. Moreover, it is undisputed that Thomas complied with the terms of the plea agreement in that case. Therefore, applying *Gilmer* and *Fleeger*, we conclude that Thomas

may not be re-prosecuted for that offense.[5] Accordingly, we accept the State's apparent concession on that point.

The central issue in this appeal is whether the charges in Indictment No. 1244 are the same "in fact" as the charges in Indictment No. 1027. If that condition does not hold, then it does not matter whether any of the charges in the two indictments theoretically would be the same offense under *Blockburger*. *Scriber*, 437 Md. at 408; *Anderson*, 385 Md. at 131.

"To determine whether charges are the same in fact, we look to whether they arise out of the same incident or course of conduct." *Scriber*, 437 Md. at 408. The answer to that question is apparent from the faces of the indictments. Indictment No. 1027 covered acts alleged to have occurred "on or about 11/9/2012 to 12/11/2012 in Anne Arundel County." Indictment No. 1244 covers acts alleged to have occurred "on or about January 1, 2012 through November 8, 2012, in Anne Arundel County." These time frames do not overlap, and we conclude that double jeopardy does not bar the State from proceeding on Indictment No. 1244.

Thomas's reliance on *Warren* is misplaced. Warren had been charged in an eight-count criminal information with sexual abuse of a minor in violation of CR § 3-602,

[5] For the same reason, Thomas cannot be re-prosecuted for any of the other charges in Indictment No. 1027 that were nol prossed. Because those charges are not facially the same as any of the other charges in Indictment No. 1244, we would have to consider whether any of the charges in the two indictments are the same under *Blockburger*, but only if the charges in the two indictments were the same in fact. As we explain next, the charges in the two indictments are not the same in fact, and therefore, we need not consider the extent to which any of the nol prossed charges in Case No. 1027 are the same for double jeopardy purposes as any of the charges in Case No. 1244.

second-degree sexual offense, and other offenses, all alleged to have occurred '"between July 1, 2008 and December 31, 2012."' *Warren*, 226 Md. App. at 600-01. The prosecution's case "essentially rested on the credibility and the persuasiveness of" the thirteen-year-old victim. *Id.* at 601. On the first day of trial, investigators from the United States Department of Homeland Security informed prosecutors that they had uncovered "irrefutable photographic evidence establishing four acts of sexual abuse" by Warren and "pinpointing a precise date for each such act." *Id.* "The trial court ruled, however, that the State would not be permitted to use any of the images retrieved by Homeland Security because neither [Warren] nor defense counsel had seen the images in time to prepare to defend against them." *Id.* at 602. The jury, nonetheless, found Warren guilty of sexual abuse of a minor and second-degree sexual offense. *Id.* at 600.

Three months later, in July 2014, the State filed a new indictment, charging Warren with four counts of sexual abuse of a minor, based upon the four photographs that Homeland Security had recovered from Warren's computer. *Id.* at 602. "Two of the new counts alleged precise dates—December 6, 2009, and February 15, 2010—both of which fell squarely within the earlier four and one-half year range of [former] jeopardy." *Id.* at 611. "The third of the new counts charged conduct allegedly occurring within the one year period between January 1, 2012, through December 31, 2012, all of which fell within the earlier period of jeopardy[,]" and the fourth count "covered the period of October 1, 2012, through January 30, 2013[,]" the first three months of which "overlapped the earlier period of jeopardy." *Id.* at 611-12.

Warren raised an unsuccessful double jeopardy challenge, and he was thereafter convicted in a bench trial "on all four counts of the new indictment." *Id.* at 602. He appealed, contending that the second trial was barred by double jeopardy. *Id.* at 603.

We began our analysis by measuring the scope of prior jeopardy and concluded that it was determined by "the words of the . . . criminal information." *Id.* at 606. We then looked to the second indictment, which alleged four counts of the "umbrella crime" of sexual abuse of a minor. *Id.* at 616. Observing that the crime of sexual abuse of a minor is broadly defined and "'encompasses "any" act that involves sexual molestation or exploitation of a child[,]'" *id.* at 613 (quoting *Tribbitt v. State*, 403 Md. 638, 650 (2008)), we concluded that, regardless of the acts upon which it is based or the evidence used to prove it, sexual abuse of a minor is "a single and indivisible crime." *Id.* at 616. Comparing the charges in the criminal information with those in the indictment, we concluded that the second prosecution was barred by double jeopardy. *Id.* at 622-23. For good measure, we examined the evidence used at the two trials and concluded that, "[s]elf-evidently, [Warren] was convicted again on January 14, 2015, of Sexual Child Abuse based on the same evidence upon which he had earlier been convicted of Sexual Child Abuse on April 22, 2014[.]" *Id.* at 620.

This case is distinguishable from *Warren*. Here, unlike in *Warren*, the time periods of the two indictments (Nos. 1027 and 1244) do not overlap. *See id.* at 618 (declaring that, "[o]nce [a defendant] is in jeopardy for Sexual Child Abuse of a particular child **within a particular period of time**, the State may not subsequently limit that jeopardy by deciding that [he] is only in jeopardy for the constituent forms of child abuse that it decides to present

and is not in jeopardy from other constituent acts of abuse which it could have presented but chose not to" (emphasis added)).

One of the acts forming the basis of the new charges is alleged to have occurred while Thomas and E. were together in a swimming pool (in the State's characterization, in the "summertime"), and the other act is alleged to have occurred "around the same time period[.]" Plainly, neither act alleged in the new indictment could have taken place during the time period encompassed by the prior indictment, which was "on or about 11/9/2012 to 12/11/2012[.]" Therefore, the charges in Indictment No. 1244 are not the same in fact as those in Indictment No. 1027, and trial in Case No. 1244 is not barred by double jeopardy. *Scriber*, 437 Md. at 408; *Anderson*, 385 Md. at 131. The circuit court did not err in denying Thomas's motion to dismiss.

**ORDER OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY DENYING THE MOTION TO DISMISS AFFIRMED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLANT.**