Circuit Court for Anne Arundel County
Case No. C-02-CR-22-000728

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 896

September Term, 2023

CHRISTOPHER PRADIA

v.

STATE OF MARYLAND

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: November 13, 2024

*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).

Appellant, Christopher Pradia, was indicted in the Circuit Court for Anne Arundel County on various charges, including second-degree rape. He filed a pretrial motion to dismiss the charges. Following a hearing, the court denied his motion. Appellant noted this timely appeal and presents two questions for our review:

1. Did the circuit court err in denying Appellant's motion to dismiss the indictment on a theory of collateral estoppel?

2. Did the circuit court err in denying Appellant's motion to dismiss the indictment for violation of due process based on the State's delay in indicting the case?

As to the first question, we hold that the circuit court did not err, and we affirm the judgment. The second question, we decline to answer because it is not allowable as an interlocutory appeal.

BACKGROUND

Appellant, Christopher Pradia, a naval officer stationed in Annapolis, was accused of sexual assault by another naval officer in October 2020. The incident was reported to the Naval Criminal Investigation Service ("NCIS") and an investigation was conducted that included the collection of evidence and interviews with various persons. NCIS notified the Annapolis Police Department (the "Department") of the allegations against Appellant in December 2020.

On November 26, 2021, Appellant's attorney contacted the Department regarding the status of its investigation. After the call, the Department contacted NCIS and was informed that no criminal investigation was pending. That same day, the Department

launched its own investigation. Sometime later, NCIS provided the Department with its interview of the victim, the victim's SAFE exam report and her photo.

On January 18 and 19, 2022, an Administrative Separation Hearing was held by the Navy Employment Board to determine whether Appellant had engaged in misconduct that would justify his dismissal from employment with the U.S. Navy. A panel of non-lawyers was convened and heard testimony under oath from Appellant, the naval officer alleging the assault, and witnesses who knew Appellant. Ultimately, the panel determined that the evidence did not support a finding, by a preponderance of the evidence, that Appellant had engaged in misconduct that warranted his dismissal. In accordance with procedure, the transcript and exhibits from the hearing were not preserved.

On June 3, 2022, Appellant was indicted in the Circuit Court for Anne Arundel County for second-degree rape and other related charges. He filed a motion to dismiss the indictment on two grounds: (1) collateral estoppel, and (2) a violation of his due process rights because of the delay in charging him. A hearing was held on May 18, 2023. On June 6, 2023, the court denied the motion to dismiss. Appellant timely appealed. The circuit court then stayed all proceedings on the merits pending this appeal.

STANDARD OF REVIEW

A pretrial order denying a motion to dismiss on the ground of double jeopardy is immediately appealable. *Bowling v. State*, 298 Md. 396, 401 n.4 (1984). "An appellate court reviews without deference a trial court's conclusion as to whether the prohibition on double jeopardy applies." *Scott v. State*, 454 Md. 146, 167 (2017). Where the trial court's

decision involves "an interpretation and application of Maryland constitutional, statutory, or case law," we determine *de novo*, whether the trial court's conclusions are legally correct. *Vanderpool v. State*, 261 Md. App. 163, 196, *cert. denied*, 487 Md. 461 (2024) (first quoting *Kimble v. State*, 242 Md. App. 73, 78 (2019); then quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). "[W]e review *de novo* a trial court's determination as to the existence *vel non* of a *Brady* violation, as it presents a constitutional issue." *Canales-Yanez v. State*, 472 Md. 132, 156 (2021) (citing *Ware v. State*, 348 Md. 19, 48 (1997)).

DISCUSSION

I. The court did not err in denying Appellant's motion to dismiss the indictment based on double jeopardy collateral estoppel.

Appellant argues the court erred in denying his motion to dismiss the charge of second-degree rape. He asserts that the doctrine of double jeopardy collateral estoppel bars the State from proceeding. Appellant contends that the Administrative Separation Hearing conducted by the U.S. Navy constituted a final judgment and resolved the ultimate issue, i.e., whether Appellate committed the sexual assault he was accused of. He argues that the prior process was judicial in nature and, although the U.S. Navy and the State are not in privity, any mutuality requirement is satisfied by the *Bartkus* exception. Appellant asserts that the State is acting as a "tool" of NCIS and brings this "sham" prosecution in response to its failed prosecution. Appellant relies, in part, on the holdings in *Bowling, Batson* and *Janes* to support his argument that administrative agency decisions have the same preclusive effect as court findings.

The State argues that the Administrative Separation Hearing did not result in a final judgment because agency findings can only have a preclusive effect over common law collateral estoppel claims, not those involving double jeopardy collateral estoppel claims. The State asserts that the Navy made an employment decision and there was no final judgment. The Administrative Separation Hearing, according to the State, was neither judicial nor quasi-judicial in nature. Finally, the State argues that there is no mutuality of parties, and the *Bartkus* exception does not apply.

Generally, the doctrine of collateral estoppel precludes subsequent litigation on an identical issue that was decided in a prior adjudication. There must have been a final judgment on the merits, the party against whom the doctrine is asserted must be a party or in privity with a party to the prior adjudication, and the party against whom the doctrine is asserted must have been given a fair opportunity to be heard on the issue. *Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 369 (2016) (citing *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 391 (2000)). Maryland courts have determined that collateral estoppel "is applicable in criminal proceedings on three bases—as an independent common law doctrine, as a component of Fifth Amendment double jeopardy, and as a component of Maryland common law double jeopardy." *Janes v. State*, 350 Md. 284, 296 (1998).

The Maryland Supreme Court, in *Bowling v. State*, held that double jeopardy collateral estoppel precluded a criminal prosecution where an "ultimate factual issue" had been decided in a prior proceeding. *Bowling*, 298 Md. at 405. Bowling was indicted on charges, including assault, child abuse and sexual offenses, after a court had determined in

a CINA proceeding that the evidence presented did not establish that the acts happened. *Id.* at 399–400. While the CINA proceeding was not criminal, the CINA court made a determination about the ultimate issue of fact, i.e., whether the sexual assaults occurred. *Id.* at 403–04. The Supreme Court held that the CINA proceedings resulted in a final judgment, Bowling was a party to the CINA proceedings, and the resolution of the issue was a basis of the prior decision. *Id.* at 403. Therefore, the State was barred and "should not be given a second chance, thereby causing the defendant 'to "run the gantlet" a second time.'" *Id.* at 405 (first quoting *Ashe v. Swenson*, 397 U.S. 436, 446 (1970); then quoting *Green v. United States*, 355 U.S. 184, 190 (1957)).

In *Batson*, the Maryland Supreme Court adopted "the *Exxon* test" as the proper standard for determining whether an administrative agency's decision should be given the same preclusive effect as court findings. *Batson v. Shiflett*, 325 Md. 684, 705 (1992). The test, first applied in *Exxon Corp. v. Fischer*, 807 F.2d 842 (9th Cir. 1987), provides a three-pronged approach to determining the preclusive effect of agency decisions: "'(1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the . . . court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision.'" *Id.* at 701 (first quoting *Batson v. Shiflett*, 86 Md. App. 340, 356 (1991); then quoting *W. Coast Truck Lines, Inc. v. Am. Indus., Inc.*, 893 F.2d 229, 235 (9th Cir. 1990)). In *Batson,* an administrative law judge determined that Shiflett, while acting as president of a local union, was not authorized by the National Union to negotiate and execute a collective bargaining agreement. *Id.* at 694. The ALJ

ruled that the bargaining agreement was null and void. *Id.* In its ruling, the ALJ "discredited portions of Shiflett's testimony[.]" *Id.* Shiflett, then sued the National President, Batson, for defamation, asserting that he had been the subject of libelous statements that he had committed a crime in executing the contract. *Id.* at 696. The Supreme Court determined that the issue litigated in the administrative proceeding was whether the union "had the authority to negotiate and reach a binding agreement[.]" *Id.* at 707. The administrative agency's decision, "did not establish the truth of the allegedly libelous statements" that Shiflett was guilty of crimes. *Id.* at 708. Thus, the issue had not been litigated and "Shiflett was not collaterally estopped from proving the falsity of those statements" in the defamation case. *Id.*

In *Janes v. State*, the Maryland Supreme Court held that in the double jeopardy collateral estoppel context, the State was not prohibited from criminally prosecuting a defendant for motor vehicle violations, following a determination by an administrative law judge in his favor. 350 Md. at 302–03. The Court noted the distinctions between common law collateral estoppel and double jeopardy collateral estoppel, stating:

> In *Batson v. Shiflett, supra,* 325 Md. 684, 602 A.2d 1191, based on a well-established rule in the Federal system, we held that the independent common law doctrine of collateral estoppel may preclude relitigation in a civil action of an issue decided in a prior administrative proceeding (although in that case, we found the doctrine inapplicable). In *Bowling v. State, supra,* 298 Md. 396, 470 A.2d 797, we concluded that both the common law doctrine and double jeopardy-based collateral estoppel may serve to preclude the relitigation in a criminal case of an issue decided in the defendant's favor by a court in a prior civil action. **We are aware of no case, however, and none has been cited to us, clearly holding that the State is precluded by double**

> **jeopardy-based collateral estoppel from prosecuting a criminal case because of an earlier determination by an administrative agency**.

Id. at 299–300 (emphasis added).

The Court concluded that double jeopardy-based collateral estoppel did not preclude the prosecution of a DWI case because of a ruling made in an administrative proceeding. *Id.* at 302–03. The Court also noted that the General Assembly had provided in legislation that administrative findings by the MVA had no effect on subsequent criminal proceedings. *Id.* at 303–04.

Here, the Navy Employment Board's Administrative Separation Hearing was conducted and decided by a panel of non-lawyers where the rules of evidence and procedure did not apply. The hearing centered on issues of employment and "misconduct." After deliberations, the panel's ultimate ruling was that "by a vote of 3 to 0, the preponderance of the evidence does not support the basis of separation." As stated by Appellant's attorney at the motions hearing, the Board's purpose was to determine "whether or not . . . misconduct had occurred[,] . . . [w]hether to be separated or retained and whether or not it would be an honorable or dishonorable discharge[]." The State argued, in the motions hearing, that a determination made by an Administrative Separation Hearing panel could be rejected by a commanding officer.

As previously noted, the hearing was convened to determine whether misconduct had occurred and not whether a sexual assault happened. The hearing lacked important features associated with judicial or quasi-judicial formalities, such as a presiding judicial officer with a formal legal education, the application of the rules of evidence and procedure,

the ability to enter a final judgment as opposed to a recommendation and a transcript of the proceedings.

Based on this record, we hold that the administrative hearing was neither judicial nor quasi-judicial in nature and the panel did not determine the ultimate issue of fact, i.e., whether Appellant committed a sexual assault. Its resolution of whether an assault occurred was not necessary for its decision and thus, two requirements of the collateral estoppel doctrine have not been met.

Another key component of the collateral estoppel doctrine is the requirement that the "parties are the same as, or in privity with, those who participated in the first litigation." *Garrity*, 447 Md. at 368–69. In civil cases where all other elements are satisfied, the requirement is relaxed. *Id.* at 369. In criminal cases, the Maryland Supreme Court has held that, where the parties are not the same, in other words, where there is a non-mutuality of parties, "collateral estoppel is inappropriate." *State v. Johnson*, 367 Md. 418, 429 (2002). Applying non-mutual collateral estoppel would undermine the "government's important interest in the enforcement of its criminal laws." *Id.* at 430; *see also Bailey v. State*, 303 Md. 650, 660–61 (1985) (refusing to apply collateral estoppel where a defendant was convicted in both New Jersey and Maryland on the same facts because the two states constituted different parties).

In the case of *Bartkus v. People of State of Ill.*, 359 U.S. 121, 123–24 (1959), the U.S. Supreme Court, in a criminal case, referred in *dicta* to a potential exception to the mutuality requirement. The issue there, was whether Bartkus had been deprived of due

process under the Fourteenth Amendment, where state prosecutions were initiated based on the same facts, following his acquittals in a federal case. *Id.* at 122. He argued that the state prosecutions were a tool of federal authorities and not separately conducted. *Id.* at 123–24. Federal authorities had provided state officials with its evidence, including evidence acquired after the federal acquittal. *Id.* at 122. In its recitation of the facts, the Court stated that the record established that the prosecutions were conducted separately and that "federal officials acted in cooperation with state authorities, as is the conventional practice between the two sets of prosecutors throughout the country." *Id.* at 123. The Court further stated that the record did not support a claim that the state prosecution "was merely a tool of the federal authorities" and "[i]t [did] not sustain a conclusion that the state prosecution was a sham and a cover for a federal prosecution, and thereby in essential fact another federal prosecution." *Id.* at 123–24. Importantly, the Court did not set forth an exception or test and ultimately held that Bartkus had not been deprived of his due process rights. *Id.*

In *Grandison,* the appellant argued that the *Bartkus* exception applied because he was prosecuted by a Maryland federal court for conspiracy to murder witnesses and subsequently in a Maryland state court for first-degree murder of those same witnesses. 234 Md. App. 564, 576 (2017). While not adopting the exception, we explained that the appellant's burden of proving that "'federal officials are controlling or manipulating the state processes is **substantial**[,]' namely, that he 'must demonstrate that the state officials

had little or no independent volition in the state proceedings.'" *Id.* at 579 (emphasis added) (quoting *United States v. Liddy*, 542 F.2d 76, 79 (D.C. Cir. 1976)).

Appellant also cites *In re Kunstler*, 914 F.2d 505 (4th Cir. 1990) and *United States v. Aboumoussallem*, 726 F.2d 906 (2d Cir. 1984) in support of his position. Although both cases acknowledge the possible existence of a *Bartkus* exception, neither court discussed the merits of its application to the facts before simply concluding that the *Bartkus* exception did not apply. *Kunstler*, 914 F.2d at 517; *Aboumoussallem*, 726 F.2d at 909–10 (finding that a joint federal-state task force did not prevent separate prosecutions).

Assuming *arguendo*, here, that there is a *Bartkus* exception, which Maryland has not adopted, and assuming *arguendo* that such an exception would apply, we hold that Appellant has not established that the state prosecution is a sham proceeding.[1] It is undisputed that the Department did not begin its investigation until after Appellant's attorney contacted them, which in turn led to a discussion with NCIS. While Appellant contends that this communication supports his assertion that NCIS demanded that the Department act as its tool in prosecuting Appellant, according to Lieutenant O'Herlihy, the

[1] Federal and state involvement must be extreme to warrant application of the *Bartkus* exception. *Compare Evans v. Smith*, 54 F. Supp. 2d 503, 538 (D. Md. 1999), *aff'd*, 220 F.3d 306 (4th Cir. 2000) (holding that because the state and federal government prosecuted different issues arising from the same crime, they "each had an interest served by [the defendant's] prosecution" and *Bartkus* did not apply), *with United States v. Belcher*, 762 F.Supp. 666, 671 (W.D.Va.1991) (holding that the *Bartkus* exception applied where a state and federal prosecution was led by the same prosecutor because it violated the principles of federalism).

Department had no knowledge of the Navy proceedings. Further, Appellant has presented no evidence that NCIS demanded, forced, or discussed with the Department the need to launch an investigation. The fact that NCIS shared investigative materials with the Department and informed it that it was not seeking criminal charges does not merit the application of a potential *Bartkus* exception. Cooperation between federal and state agencies is commonplace and is a legitimate tool in law enforcement. *See Bartkus*, 359 U.S. at 123 (describing federal and state cooperation as a "conventional practice").

II. Appellant's due process claim alleging preindictment delay is not an allowable interlocutory appeal.

Appellant argues that he has been subjected to an unfair and excessive preindictment delay, amounting to a lack of due process. Appellant asserts that he has suffered prejudice because of the anxiety resulting from the surprise of being charged again for an incident that he believed was resolved; several witnesses favorable to his defense are no longer stationed in Maryland and are not subject to subpoena power due to military status; the passage of time renders available witnesses less likely to remember events from 2020; and the transcript from the Navy's hearing was not preserved. Appellant contends that, as a result, the State has a tactical advantage in litigation and this serves as evidence of an intentional delay to his detriment.

The State argues, as a preliminary matter, that the denial of Appellant's motion to dismiss the indictment is not immediately appealable. According to the State, on issues involving the Sixth Amendment right to a speedy trial, Appellant must wait until a final

judgment has been rendered. If considered, the State asserts that the circuit court properly denied Appellant's motion to dismiss.

When there are pending proceedings in which issues on the merits of the case remain to be decided, a "*pretrial* or trial order will not [normally] be heard" in the appellate courts. *Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 666 (1983) (emphasis added). "Such orders are considered interlocutory, not final, and nonappealable until after entry of a final judgment." *Id.*; *see also In re M. P.*, 487 Md. 53, 68 (2024) (stating that a final judgment is generally required for an appeal of a motion to dismiss but applying the exception for double jeopardy claims); *Nicholson v. State*, 157 Md. App. 304, 309 (2004) (recognizing that a motion to dismiss is ordinarily not considered a final judgment unless the appeal involves double jeopardy claims).

In *Brady v. State*, the appellant argued that he was denied his right to a speedy trial and due process of law because of a delay. 36 Md. App. 283, 289 (1977). The defendant was charged and indicted in 1973; however, the trial was postponed multiple times and the prosecution subsequently entered a *nolle prosequi* on the indictments in 1974. *Id.* at 284. In 1975, the defendant was again charged and indicted. *Id.* at 285. This Court declined to examine the issue, holding that motions to dismiss involving preindictment delays are "so intertwined with speedy trial problems" that they are not immediately appealable. *Id.* at 289.

Under Rule 2-602(b) or, alternatively, Rule 8-602(e)(1)(C), several types of orders can be appealed. They are interlocutory orders that are appealable by statute; orders that

are appealable by the common-law collateral order doctrine; and orders that adjudicate completely one of multiple claims in an action and are certified (and certifiable). *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 286 (2014); *see Parrott v. State*, 301 Md. 411, 424–25 (1984) (holding that a grant or denial of a motion for removal is not subject to the collateral order doctrine and recognizing that speedy trials problems similarly do not fall within this exception). There is no exception to the final judgment rule when a nonappealable interlocutory order is paired with a ripe one. *Md. Bd. of Physicians v. Geier*, 225 Md. App. 114, 141 (2015) (citing *Forward v. McNeily*, 148 Md. App. 290, 296 n.2 (2002)).

Here, Appellant's appeal asserting due process violations resulting from a preindictment delay constitutes an impermissible interlocutory appeal. Appellant has not yet been subjected to a trial on the merits and Appellant's due process claim does not fall under any of the narrow exceptions delineated by statute or case law. The fact that his claim is paired with a collateral estoppel claim, a readily appealable issue, does not, otherwise, permit our consideration.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.