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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1377**

State of Minnesota,
Respondent,

vs.

Juan Carlos Tamez,
Appellant.

**Filed April 15, 2019
Affirmed
Smith, Tracy M., Judge**

Clay County District Court
File No. 14-CR-17-3514

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Anthony J. Weigel, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Kenneth J. Kohler, Drew J. Hushka, Vogel Law Firm, Moorhead, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Smith,
Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Juan Carlos Tamez was charged with a number of offenses arising out of
an incident of domestic abuse. After opening statements had begun at his trial, the district

court declared a mistrial based on discovery violations by Tamez. Tamez subsequently moved to dismiss the charges on the ground that retrial would violate his rights under the Double Jeopardy Clause. The district court denied the motion, and Tamez brings this interlocutory appeal. Because the district court did not abuse its discretion in deciding that a manifest necessity required a mistrial, the Double Jeopardy Clause does not bar a retrial of Tamez. We affirm.

FACTS

The complaint against Tamez alleges as follows. In September 2017, Tamez's minor daughter, S.E.T., was at the home of her grandmother, S.T., where S.E.T. had been living since April of that year. Tamez came to the house and confronted S.E.T., insisting that she return to live with him. During the confrontation, Tamez slapped S.E.T. in the face, pushed her down, and lifted her up by her hair, until S.T. got between Tamez and S.E.T. The complaint goes on to allege that Tamez later told the police that he "snapped" and admitted grabbing and hitting S.E.T. Tamez was charged with two counts of felony domestic assault and one count of malicious punishment of a child.

Trial on the charges began on Tuesday, July 10, 2018. On the Friday before the trial, July 6, the state received an email disclosure from defense counsel that indicated that defense counsel had met with six witnesses, including S.T. The disclosure stated in a cursory fashion that the witnesses' statements were consistent with their previous statements to either law-enforcement investigators or the defense investigator. However, the witnesses' previous statements to law-enforcement investigators and the defense

investigator were often inconsistent. Also, S.T. had not been interviewed by any of the investigators. Following up on the disclosure, the prosecutor asked defense counsel who, besides him, was present at the interviews, and he identified his clerk. On the morning of trial, the state subpoenaed the clerk. Later that day, during the jury's lunch break in the middle of voir dire, defense counsel asked the district court to quash the subpoena and the question of the adequacy of disclosure was discussed. Defense counsel initially argued that the disclosure was adequate but, by the end of the day, conceded the issue and agreed to provide a supplemental disclosure.

The following morning, defense counsel sent the prosecution an email that purported to attach notes from his clerk summarizing the witnesses' statements. Trial resumed that day. In his opening statement, defense counsel referred to text messages exchanged between S.E.T. and S.T. Counsel explained that the text messages indicated that, around the time of the incident, S.E.T. had disobeyed S.T.'s direction to come home and had lied to S.T. Defense counsel described the texts in detail.

Upon hearing these statements from counsel, the state objected. Discussion at the bench ensued, and the court went into recess. The state explained that the defense had not disclosed statements by S.T. Defense counsel replied that he had emailed his supplemental disclosure that morning, which included a summary of S.T.'s statement. It then became clear that defense counsel had failed to attach the supplemental disclosure.

Describing the situation as a "huge discovery issue," the district court asked the state for its suggested remedy. The state requested exclusion of the July 6 interview with S.T.

Defense counsel objected, arguing that exclusion would violate Tamez's right to a fair trial.

When asked for his suggestion for remedies, defense counsel stated:

[T]he only remedies that I can see at this point in time would be a continuance to allow the State to review the evidence that we tried to give to them and she didn't indicate that she didn't get it, or do a mistrial and start over.

Those are the only options. Otherwise you're depriving Mr. Tamez of a fair trial.

Before taking a break to consider the parties' suggestions, the district court stated, "It sounds to me like there was a lot that wasn't disclosed. I mean, there—we have some fairly significant disclosure issues here."

When the district court returned from the break, it explained what it was going to do:

While exclusion is clearly an available remedy, there is—the prejudice to Mr. Tamez is just too great to exclude the [interview]—because I think there's quite a lot of it, at least that's the impression that I'm getting. And these are discovery and disclosure violations and Mr. Tamez's right to a trial and to present his defense cannot be prejudiced significantly because of it and I think the prejudice in this case, with exclusion, would be significant.

. . . .

At this point, I'm not excluding.

The calendar and the timing doesn't allow for a continuance, so my only option at this point is a sua sponte mistrial, which I don't want to do either.

So I'm saying I'm not excluding. So your request to exclude, [prosecuting attorney], is denied.

I would intend to declare a mistrial

The district court did not ask defense counsel whether he consented to the mistrial, nor did defense counsel affirmatively express his objection.

Tamez subsequently moved to dismiss the case, arguing that a retrial would be barred by double jeopardy. The district court denied the motion, and this interlocutory appeal followed.

D E C I S I O N

“The United States and Minnesota Constitutions prohibit trying a defendant twice for the same crime.” *State v. Roeschelein*, 776 N.W.2d 480, 483 (Minn. App. 2009); *see* U.S. Const. amend. V; Minn. Const. art. I, § 7. It is undisputed that jeopardy attached at Tamez’s first trial. *See State v. McDonald*, 215 N.W.2d 607, 609 (Minn. 1974) (explaining that jeopardy generally attaches once a jury is impaneled and sworn). However, “[w]hen a mistrial has been declared, the conclusion that jeopardy has attached begins, rather than ends, the inquiry as to whether the Double Jeopardy Clause bars retrial.” *State v. Long*, 562 N.W.2d 292, 296 (Minn. 1997) (quotation omitted).

Under certain circumstances, the court may retry a defendant after a mistrial without violating the protection against double jeopardy. “[I]f a defendant consents to the district court’s declaring a mistrial, he waives any claim that retrial is barred under the double jeopardy doctrine.” *State v. Hunter*, 815 N.W.2d 518, 521 (Minn. App. 2012). “If, on the other hand, a defendant objects to the declaration of a mistrial, double jeopardy bars a

second trial unless a ‘manifest necessity’ required the first trial to be terminated.” *Id.* at 522 (quoting *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985)). Tamez argues that he did not consent to the mistrial and that there was no manifest necessity for a mistrial.

We begin with the manifest-necessity argument, assuming that Tamez did not consent to the mistrial. Appellate courts “review a district court’s sua sponte decision to declare a mistrial without the defendant’s consent for an abuse of discretion.” *Id.* While it is true that “[m]anifest necessity is an objective necessity, apparent not only to the district court but to any reviewing court,” *id.* (quotation omitted), the “overriding interest in the evenhanded administration of justice requires that [an appellate court] accord the highest degree of respect to the trial court’s evaluation that a mistrial was necessary, *Long*, 562 N.W.2d at 296 (quotation omitted).

“The manifest necessity standard is a flexible standard which seeks fairness to the defendant, the government, and the public interest alike.” *Id.* (quotation omitted) “Although Minnesota appellate courts have not established ‘clear-cut guidelines as to what constitutes manifest necessity,’ on review, one consideration is ‘whether the court adequately assessed less drastic alternatives.’” *Roeschelein*, 776 N.W.2d at 484 (quoting *Long*, 562 N.W.2d at 296).

Tamez argues that there was no manifest necessity for a mistrial because continuance was the less drastic alternative. He correctly points out that the record does not elucidate specifically how the district court’s schedule conflicted with a continuance and thereby necessitated a mistrial. But the district court considered the possibility of a

continuance. It stated that there was “not enough time to both continue and get this trial in” and that “[t]he calendar and the timing [did not] allow for a continuance.” We decline to second-guess the district court’s prudence in managing its own docket. *Cf. Weitzel v. State*, 883 N.W.2d 553, 560 (Minn. 2016) (“[A] state district court has the authority to control the disposition of cases on its dockets with economy of time and effort for itself, for counsel, and for litigants.”). The district court’s finding in this context does not have to be meticulously proven by the record; rather, it receives “the highest degree of respect” from an appellate court. *Long*, 562 N.W.2d at 296 (quotation omitted).

Moreover, the district court expressed great concern about the magnitude of the discovery violations. The information contained in the opening statement, as the district court noted, was not only undisclosed but also contrary to defense counsel’s prior representation. Defense counsel stated that the July 6 interview was consistent with the witnesses’ statements made to the investigators although S.T., whom the state had subpoenaed, had not made any statement to the investigators. *Cf. Minn. R. Crim. P. 9.02*, subd. 1(4) (“The defendant must disclose . . . [s]tatements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense . . .”). The district court expressed its suspicion that the state would be surprised with even more undisclosed information during trial, for which a jury had already been sworn.

These circumstances make Tamez’s case much like *State v. Gouleed*, 720 N.W.2d 794 (Minn. 2006). In *Gouleed*, the defense’s expert witness, Dr. Plunkett, provided multiple microscopic slides of autopsy samples in support of his testimony that certain

injuries sustained by the victim significantly predated her death. 720 N.W.2d at 798. To date the injuries, some of the slides had been processed with a technique called iron-staining, the effectiveness of which Dr. Plunkett also testified to. *Id.* Both parties assumed that Dr. Plunkett was using the slides as he received them from the prosecution's expert who had performed the autopsy. *Id.* However, when asked on direct examination, Dr. Plunkett stated that he had iron-stained the slides himself. *Id.* The fact that Dr. Plunkett had independently stained the slides and performed testing was not previously disclosed. *Id.* The district court eventually declared a mistrial due to the discovery violation, and the defendant moved to dismiss the case on double-jeopardy grounds before retrial. *Id.* at 799.

Just like in this case, as the dissent in *Gouleed* points out, the district court in *Gouleed* did not explain specifically why it dismissed “the possibility of granting a continuance so that the state could recall [its expert] to rebut Dr. Plunkett’s testimony.” *State v. Gouleed*, 720 N.W.2d 794, 806 (Minn. 2006) (Page, J., dissenting). However, the majority affirmed the district court, holding that the court acted within its discretion when it determined “that continuing the trial would not be fair to either party” and declared the mistrial. *Gouleed*, 720 N.W.2d at 801-02. Integral to the majority’s decision was the “observation that the discovery violation went to the very heart of the state’s case”—“the medical significance of the prior injuries.” *Id.* at 801. Noting that “the iron-stained slides provided a visual basis and critical support for Dr. Plunkett’s conclusion that some of [the victim’s] injuries significantly predated her death,” the supreme court gave deference to

the district court's assessment of "the impact of the undisclosed iron-staining evidence on the fairness of the proceedings." *Id.*

The same deference should be given here. The undisclosed information referred to in the opening statement indicated that S.E.T. lied to and disobeyed S.T. As in *Gouleed*, "the state would have had to respond" to such evidence, in this case to safeguard S.E.T.'s credibility, which goes to the "heart of the state's case," and the state "should have had [the] evidence in advance of trial." *Id.* *Gouleed* explains that, in such a situation, "the district court is 'best situated to decide whether, for compelling reasons, 'the ends of substantial justice cannot be attained without discontinuing the trial.'"" *Id.* (quoting *Long*, 562 N.W.2d at 296).

The analogy between *Gouleed* and this case is made even stronger by the fact that, in both cases, the defendant's failure to disclose induced the mistrial. And, in both cases, the district courts considered excluding the defense evidence at issue but ordered a mistrial so that the defendants would be able to fully present their defenses at the next trial. Admittedly, here, as in *Gouleed*, the record is "somewhat lacking" to assure a reviewing court that the district court explored the possibility of continuance to the fullest extent possible. *Id.* at 802. But, as in *Gouleed*, the record reflects that the district court did not act "abruptly" or with "no effort to exercise a sound discretion to assure" that there was a manifest necessity for a mistrial. *Id.* (quotation omitted). Following *Gouleed*, we conclude

that the district court did not abuse its discretion by declaring a mistrial.¹ Double jeopardy therefore does not preclude Tamez's retrial.

Affirmed.

¹ Tamez does not discuss *Gouleed*, but his reply brief contains an argument that implicates *Gouleed*. He argues that the mistrial was “a prophylactic to potential issues,” not a manifest necessity. He is correct in that the district court never determined, and it is not clear from the record, whether the discovery violations resulted in actual prejudice to the state. However, Tamez's position largely echoes the dissent's concern in *Gouleed*:

[T]he state's objection to Dr. Plunkett's independent iron-staining of some of the slides was not that the staining presented new evidence or a new theory that the state was not aware of and could not respond to in the absence of a new trial, but rather that Gouleed failed to inform the state that Dr. Plunkett had conducted his own iron-staining. . . . Dr. Plunkett's testimony about what the slides he tested showed was consistent with his reasoning and opinion from his [written] report, which the state had reviewed. As such, Gouleed's discovery violation, if any, was procedural rather than substantive.

Gouleed, 720 N.W.2d at 805-06. Apparently, the majority in *Gouleed* rejected a rule that a discovery violation must be determined to be prejudicial to serve as a manifest necessity for mistrial.