IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 23-330

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff below, Respondent,

v.

KEVIN SCOTT DICKENS,
Defendant below, Petitioner.

Appeal from the Circuit Court of Boone County
The Honorable Stacy L. Nowicki-Eldridge, Judge
Case No. CC-03-2022-F-28

AFFIRMED

Submitted: September 9, 2026
Filed: November 12, 2026

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JUSTICE KIRKPATRICK delivered the Opinion of the Court.

CHIEF JUSTICE BUNN and JUSTICE FLANIGAN dissent and reserve the right to file a separate Opinion.

SYLLABUS BY THE COURT

1. "The power of a court in a criminal case to discharge a jury without rendering a verdict is discretionary; but the power 'is a delicate and highly important trust' and must be exercised soundly, else the discharge will become in effect an acquittal of the accused under the Constitution, Article 3, Section 5, which inhibits second jeopardy." Syllabus Point 3, *State v. Little*, 120 W. Va. 213, 197 S.E. 626 (1938).

2. "Termination of a criminal trial arising from a manifest necessity will not result in double jeopardy barring a retrial." Syllabus Point 4, *Keller v. Ferguson*, 177 W. Va. 616, 355 S.E.2d 405 (1987).

3. "The determination of whether 'manifest necessity' that will justify ordering a mistrial over a defendant's objection exists is a matter within the discretion of the trial court, to be exercised according to the particular circumstances of each case." Syllabus Point 3, *Porter v. Ferguson*, 174 W. Va. 253, 324 S.E.2d 397 (1984).

KIRKPATRICK, Justice:

In the midst of the petitioner's January 2023 criminal trial, the judge, the petitioner, counsel for both parties, the court reporter, another member of court staff, and at least one juror became ill with COVID-19. Finding that this "unexpected health crisis" prevented completing the petitioner's trial "for an extended period," causing "obvious prejudice" to both parties and "endanger[ing] members of the jury[] and the public," the circuit court declared a mistrial. The petitioner was retried, convicted of voluntary manslaughter, and sentenced on that conviction. He now argues to this Court that double jeopardy principles barred his retrial because COVID-19 did not present a manifest necessity for declaring a mistrial and because the court failed to consider the parties' suggestion to briefly continue trial. Because the court acted within its discretion in determining that there was a manifest necessity for a mistrial, we find that his retrial was not barred by double jeopardy and affirm the court's sentencing order.

I. Factual and Procedural Background

On the evening of December 30, 2021, the petitioner, who had been drinking for several hours at one bar, traveled to another, Terry's Café. At Terry's Café, the petitioner observed an acquaintance, Jeremy Peters, seated at the bar. The petitioner and Mr. Peters spoke to one another, but it was disputed whether their conversation amounted to banter or something more antagonistic. Regardless, the interaction turned contentious and physical, and surveillance cameras in Terry's Café captured the ensuing physical

altercation. The surveillance footage showed that after bar staff separated the petitioner and Mr. Peters, Mr. Peters entered the bar's kitchen, retrieved a knife, and then concealed it behind his back. While the bar staff attempted to restrain the petitioner, he got turned around, and Mr. Peters took a few steps toward him. The petitioner completed his turn, now facing Mr. Peters again, and drew the concealed pistol he carried in his pocket. Mr. Peters turned away from the petitioner, and the petitioner shot him five times, killing him.

The petitioner was indicted on one count of the first-degree murder of Mr. Peters and three counts of wanton endangerment involving a firearm. His trial on these charges began on January 3, 2023, and a jury was selected and empaneled. On January 10, 2023, the circuit court placed on the record the fact that one juror, an alternate, had been excused. The court related that a COVID-19 test had been administered, which was negative, so the court did "not necessarily feel that we need to go into some sort of quarantine status or anything along those lines." But the alternate juror was "not well," "looked unwell," and "sound[ed] terrible," so the court excused the alternate juror. The court also noted that "we are down to" thirteen jurors, leaving one alternate "just in case something else—hopefully not—but in case something else transpires during all of this."

On January 17, 2023, just one week after the alternate juror was excused for health reasons, something else transpired. During a hearing convened via Zoom teleconferencing service, the circuit court recounted that trial had been underway for a couple weeks, and "[w]e had a health issue pop up, and one by one, several other people have been testing positive for Covid, including the [petitioner], who is incarcerated."

Specifically, in addition to the petitioner, one juror, the prosecutor, the court reporter, another court employee who kept watch over the petitioner, the petitioner's counsel, and the judge had all tested positive for COVID-19. As a result, upon the court's own motion, it declared a mistrial. The circuit court explained that, due to a holiday, "we have not had testimony for several days," and the court "anticipate[d] that we're not going to be having testimony from that point on for, you know, several more days, if we are capable of getting everybody in a symptom-free environment." The court "ha[d] to be concerned about health conditions of jurors as they sit in the jury box, and concerns for jurors as they sit in the jury box, and with this taking as many of us out, quite frankly, as what it has, I do have significant concerns for the health and safety of the jurors."

The circuit court then invited the parties to place objections on the record. The petitioner's counsel indicated that he had discussed the situation with the assistant prosecutor, and the two agreed on "pressing the pause button for a week." Though the petitioner's counsel acknowledged he could not speak to "the health of the jurors," he was hopeful that "by next week, there is the good likelihood that we can all be up and running." He continued, "And I don't know, [the assistant prosecutor] can share the State's perspective, but even if [the prosecutor] is not up and running, I think [the assistant prosecutor] is capable and prepared to go forward, I believe." The State placed no objections on the record or otherwise argued against (or for) a mistrial.

The circuit court remained steadfast in its ruling, unpersuaded by the petitioner's counsel's remarks: "I've already ruled. . . . I think that it is in the best interest

of the general public at this point, and the jurors, and the [c]ourt, and parties at this point, that I have made the decision, frankly that I have made." The petitioner's counsel then moved that the charges against the petitioner be dismissed on double jeopardy grounds. The court denied the motion, reasoning that "this is not something that was caused by the State, this is something that was caused by a virus."

In the circuit court's mistrial order, the court found that

> the Covid-19 outbreak presents a manifest necessity to declare a mistrial of the jury trial which began on January 3, 2023 during the September 2022 term of court, finding further that the ends of public justice would be defeated otherwise due to juror safety. The basis for the mistrial is in direct response to the Covid-19 outbreak which occurred during the second week of trial requiring jurors, the court reporter, the prosecuting attorney, the Judge and Judge's staff, along with the [petitioner] and the [petitioner's] Counsel to quarantine as a result of all testing positive for Covid 19. Because of this unforeseen and unexpected health crisis finalizing the trial became impossible for an extended period of time, which causes obvious prejudice for both the [petitioner], and to the State of West Virginia, and endangers members of the jury, and the public.

In determining that manifest necessity existed for a mistrial, the court also cited "unforeseen and unexpected delay and the prejudice caused thereby," "the length and duration of time required to remain in quarantine," and the "interest of public safety and health."

Additionally, the circuit court memorialized its denial of the petitioner's motion to dismiss the indictment on the basis of double jeopardy. The court found that "the unforeseen and unexpected outbreak of Covid-19 during the second week of this trial,

the public safety and health concerns for the jurors and all participants of the trial are all outside of the control of the State of West Virginia and fault will therefore not be attributed to the State"; thus, "double jeopardy will not be found to bar retrial."

The petitioner's retrial began on February 28, 2023. At its conclusion, the jury found the petitioner guilty of voluntary manslaughter and acquitted him of each wanton endangerment charge. The circuit court sentenced the petitioner to a determinate term of fifteen years of incarceration, and the petitioner now appeals from the court's May 4, 2023, sentencing order.

II. Standard of Review

In his lone assignment of error, the petitioner argues that the circuit court erred in declaring a mistrial. We review the court's decision for an abuse of discretion:

> The power of a court in a criminal case to discharge a jury without rendering a verdict is discretionary; but the power "is a delicate and highly important trust" and must be exercised soundly, else the discharge will become in effect an acquittal of the accused under the Constitution, Article 3, Section 5, which inhibits second jeopardy.

Syl. Pt. 3, *State v. Little*, 120 W. Va. 213, 197 S.E. 626 (1938); *see also State v. Swafford*, 206 W. Va. 390, 395, 524 S.E.2d 906, 911 (1999) ("[T]he decision to declare a mistrial and discharge the jury is a matter within the sound discretion of the trial court.").

III. Discussion

The petitioner now asks this Court whether, "[i]n 2023, . . . a mistrial [was] 'manifestly necessary' where neither party requested one, both believed a one-week recess would be appropriate, and the court expressly refused to consider the parties' position because it had decided before the hearing?" The petitioner would have this Court answer that question in the negative because, he claims, the circuit court abused its discretion in determining that a manifest necessity existed to terminate his trial and by failing to consider alternatives before declaring a mistrial.

The Double Jeopardy Clause contained in the Fifth Amendment to the United States Constitution protects any person from being "subject for the same offence to be twice put in jeopardy of life or limb."[1] Similarly, Article III, Section 5 of the West Virginia Constitution provides that "[n]o person shall . . . in any criminal case, . . . be twice put in jeopardy of life or liberty for the same offense."[2] But double jeopardy protections are not dependent on a completed trial. Since "[o]ne is in jeopardy when he has been placed on

[1] Through the Fourteenth Amendment to the United States Constitution, this provision was made applicable to the states. *See Benton v. Maryland*, 395 U.S. 784 (1969).

[2] This Court's double jeopardy principles "have been patterned after the United States Supreme Court's interpretation of the Double Jeopardy Clause found in the Fifth Amendment to the United States Constitution." *State v. Rummer*, 189 W. Va. 369, 373, 432 S.E.2d 39, 43 (1993). And "[t]he scope of the Double Jeopardy Clause in the Fifth Amendment of the Federal Constitution is at least coextensive with that of the Double Jeopardy Clause in the West Virginia Constitution." Syl. Pt. 1, *State v. Greene*, 196 W. Va. 500, 473 S.E.2d 921 (1996). Neither party suggests that the Double Jeopardy Clause in the West Virginia Constitution affords greater protection in this context than the federal constitution, and we have historically made no distinction in the scope of protection in this arena. *See, e.g.*, *Keller v. Ferguson*, 177 W. Va. 616, 355 S.E.2d 405 (1987); *Porter v. Ferguson*, 174 W. Va. 253, 324 S.E.2d 397 (1984).

trial on a valid indictment, before a court of competent jurisdiction, has been arraigned, has pleaded and a jury has been impaneled and sworn," *Brooks v. Boles*, 151 W. Va. 576, 583, 153 S.E.2d 526, 530 (1967), double jeopardy is "implicated where the jury is discharged before it has arrived at a verdict," as occurred here. *Swafford*, 206 W. Va. at 394, 524 S.E.2d at 910 (citing *Keller*, 177 W. Va. at 620, 355 S.E.2d at 408). And because jeopardy attaches once a jury is empaneled and sworn, the protection afforded by the Double Jeopardy Clauses includes a defendant's "valued right to have his trial completed by a particular tribunal." *Arizona v. Washington*, 434 U.S. 497, 503 (1978) (quoting *United States v. Jorn*, 400 U.S. 470, 484 (1971) (plurality opinion)).

Not all terminations of a criminal trial over a defendant's objection and before the jury has rendered its verdict result in a bar to retrial, however.

> Because of the variety of circumstances that may make it necessary to discharge a jury before a trial is concluded, and because those circumstances do not invariably create unfairness to the accused, his valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury.

Id. at 505. In particular, "[t]ermination of a criminal trial arising from a manifest necessity will not result in double jeopardy barring a retrial." *Keller*, 177 W. Va. at 617, 355 S.E.2d at 405, Syl. Pt. 4; *see also* W. Va. Code § 62-3-7 (1923) ("And in any criminal case the

court may discharge the jury, when it appears that they cannot agree in a verdict, or that there is manifest necessity for such discharge.").[3]

In the question posed by the petitioner to this Court, he first disputes that the scenario faced by the circuit court presented manifest necessity for a mistrial. The petitioner contends that when the circuit court declared a mistrial in 2023, COVID-19 no longer presented the type of illness that would support a finding of manifest necessity. U.S. Centers for Disease Control and Prevention ("CDC") guidance was, according to the petitioner, to "quarantine for five days and re-test," and since the judicial system had dealt with COVID-19 for three years by the time of the petitioner's first trial, making the disease "predictable," it was no longer "impossible for the trial to continue."

As reflected by our standard of review of a circuit court's mistrial declaration, "[t]he determination of whether 'manifest necessity' that will justify ordering a mistrial over a defendant's objection exists is a matter within the discretion of the trial court, to be exercised according to the particular circumstances of each case." *Porter*, 174 W. Va. at 255, 324 S.E.2d at 398, Syl. Pt. 3; *see also State v. Oldaker*, 172 W. Va. 258, 265, 304 S.E.2d 843, 849 (1983) ("A trial court's decision about a mistrial will only be reversed for abuse of discretion."). The "strictest scrutiny" of a circuit court's mistrial declaration is reserved for when "the basis for the mistrial is the unavailability of critical

[3] The statute's "contours are determined by constitutional principles governing double jeopardy." *Keller*, 177 W. Va. at 619 n.6, 355 S.E.2d at 408 n.6.

prosecution evidence, or when there is reason to believe that the prosecutor is using the superior resources of the State to harass or to achieve a tactical advantage over the accused." *State ex rel. Betts v. Scott*, 165 W. Va. 73, 79, 267 S.E.2d 173, 177 (1980) (quoting *Washington*, 434 U.S. at 508)). But here, where those concerns are not at play, our review is "less stringent." *Porter*, 174 W. Va. at 257, 324 S.E.2d at 400 (applying a "less stringent" standard of review to the circuit court's mistrial declaration premised on an evaluation of the likelihood that the jury's partiality may have been affected by defense counsel's improper conduct).

Manifest necessity "may arise from various circumstances." *State ex rel. Brooks v. Worrell*, 156 W. Va. 8, 11, 190 S.E.2d 474, 476 (1972). Although the circumstances "must be forceful to warrant a mistrial," *id.*, and present a "high degree" of necessity before we will conclude that a mistrial was appropriately declared, *Washington*, 434 U.S. at 506, illness of even one key trial participant has long been recognized as a circumstance that can give rise to a manifest necessity:

> Under the provisions of the Code and decided cases, it has been held that where unforeseeable circumstances arise during the trial of a case, *such as*, *illness* or death *of a juror, the accused, the judge or counsel*, making the completion of the trial impossible, a manifest necessity to discharge the jury will exist and the declaration of a mistrial will be justified.

Brooks, 156 W. Va. at 11–12, 190 S.E.2d at 476 (emphasis added); *see also State ex rel. Dandy v. Thompson*, 148 W. Va. 263, 269, 134 S.E.2d 730, 734 (1964) ("Such occurrences as the illness or death of a juror, the accused, the judge or counsel exemplify cases in which a manifest necessity exists which would warrant the discharge of the jury.").

In determining that a manifest necessity existed, the circuit court was faced with an illness that affected not just "a juror, the accused, the judge or counsel," *Brooks*, 156 W. Va. at 12, 190 S.E.2d at 476, but all the above, plus the court reporter and another staff member. COVID-19 incapacitated seven essential trial participants, and the court had a firsthand view of the ill participants' various conditions, as well as the threat posed to and by the remaining trial participants who were exposed.[4] In view of the information gleaned from this firsthand view, the court was best positioned to assess the impact COVID-19 had on the petitioner's trial, and it was in the best position to determine whether

[4] In this same vein, we dispute the accuracy of the petitioner's recitation of CDC guidance in 2023. In contending that a five-day isolation period was sufficient, the petitioner relies on a CDC press release titled, "CDC streamlines COVID-19 guidance to help the public better protect themselves and understand their risk," https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2022/p0811-covid-guidance.html (last visited Nov. 11, 2026) ("CDC guidance"). According to that press release, the CDC recommended isolating for "*at least* 5 days" after a positive COVID-19 test. *Id.* (emphasis added). But even if the criteria for ending isolation was met, such as having remained fever-free for twenty-four hours, the CDC still advised those who ended isolation to "avoid being around people who are more likely to get very sick from COVID-19 until at least day 11." *Id.* Moreover, the CDC guidance for those who experienced moderate systems was different, with the CDC recommending a ten-day isolation period. *Id.* For those with severe illness or a weakened immune system, the CDC advised not to end isolation until consulting a physician. *Id.*

The CDC guidance reveals the highly unpredictable and varied responses COVID-19 can induce, with the disease trajectory further potentially affected by similarly varied personal characteristics, such as age and underlying health conditions. *See* CDC, "Underlying Conditions and the Higher Risk for Severe COVID-19, https://www.cdc.gov/covid/hcp/clinical-care/underlying-conditions.html (last visited Nov. 11, 2026). The highly individualized COVID-19 experience, coupled with the threat of varying severity the disease posed to those with whom a person is in close contact, such as during a trial, illustrates why courts are afforded discretion in determining whether a given situation constitutes a manifest necessity.

the COVID-19 outbreak constituted a manifest necessity—a determination that is accorded the "highest degree of respect"—precisely because "the court is most familiar [with the] facts surrounding a mistrial." *Shaw v. Norris*, 33 F.3d 958, 962 (8th Cir. 1994) (quoting *United States v. Holley*, 986 F.2d 100, 104 (5th Cir. 1993)); *see also Walls v. Konteh*, 490 F.3d 432, 437 (6th Cir. 2007) ("[T]he trial judge is in the best position to determine whether the situation in his [or her] courtroom warrants the declaration of a mistrial." (quoting *State v. Walls*, No. L-01-1492, 2003 WL 220460, at *1–*2 (Ohio App. Jan. 31, 2003)); *Porter*, 174 W. Va. at 257 n.5, 324 S.E.2d at 400 n.5 (recognizing that the trial court is "far more 'conversant with the factors relevant to the determination' than any reviewing court can be" (quoting *Washington*, 434 U.S. at 514)). As a result, we start from a point of deference in reviewing the court's determination that the outbreak—which created a "health crisis" that affected juror safety; "endanger[ed] members of the jury, and the public"; and made it "impossible for an extended period of time" to complete the trial—constituted a manifest necessity. *See Shaw*, 33 F.3d at 962. ("[T]he state trial judge's decision must be afforded special deference due to his unique ability to view [the ill juror], and [the judge's consequent determination that manifest necessity existed due to juror illness] should not now be second-guessed."); *see also Washington*, 434 U.S. at 506 ("Indeed, it is manifest that the key word 'necessity' cannot be interpreted literally . . . ."); *Oldaker*, 172 W. Va. at 265, 304 S.E.2d at 849 (describing illness that would make completion of trial "impossible" as "incapacitat[ing]").

Our determination that the circuit court's finding of manifest necessity is entitled to deference does not end the inquiry, though. The deference accorded to a court's determination that a manifest necessity exists can vanish when the court fails to exercise its discretion soundly. *See United States v. Wecht*, 541 F.3d 493, 507 (3d Cir. 2008) ("But 'the deference accorded the trial judge's finding of manifest necessity can disappear, even in the classic case of a hung jury, when the trial judge has not exercised sound discretion.'" (quoting *United States v. Berroa*, 374 F.3d 1053, 1057 (11th Cir. 2004)). Accordingly, this brings us to the second component of the petitioner's argument to this Court. He posits that the circuit court abused its discretion by failing to consider the parties' plan to recess briefly, which, he maintains, was reasonable, particularly in view of the claimed waning seriousness of the COVID-19 pandemic. In short, the petitioner contends that the circuit court acted precipitately.

"In order to ensure that [the defendant's] interest [in completing trial by his first selected jury] is adequately protected, reviewing courts have an obligation to satisfy themselves that . . . the trial judge exercised 'sound discretion' in declaring a mistrial." *Washington*, 434 U.S. at 514 (quoting *United States v. Perez*, 22 U.S. 579, 580 (1824)). A court must not act "irrationally," "irresponsibly," or "precipitately." *Id.* at 514–15. To that end, "it must be shown that the trial court explored reasonable alternatives to a mistrial before granting a mistrial." *Betts*, 165 W. Va. at 79, 267 S.E.2d at 177. Likewise, Rule 26.3 of the West Virginia Rules of Criminal Procedure requires, "Before ordering a mistrial, the court shall provide an opportunity for the state and for each defendant to

comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives."

We recognize at the outset that the circuit court failed to comply with Rule 26.3. The court neglected to provide an opportunity for the parties to comment on the propriety of a mistrial and offer alternatives to a mistrial *before* declaring one. In most instances, the failure to comply with the rule will suggest that the circuit court failed to exercise sound discretion in declaring a mistrial. *See Wecht*, 541 F.3d at 506 ("As Rule 26.3 [of the Federal Rules of Criminal Procedure] mandates that a trial court provide the parties an opportunity to be heard, the failure to comply with that mandate necessarily creates a strong suggestion that a trial judge did not exercise sound discretion." (quoting *Berroa*, 374 F.3d at 1058)). However, the rule is procedural; it is not a constitutional mandate. *See Washington*, 434 U.S. at 516–17 ("Since the record provides sufficient justification for the state-court ruling, the failure to explain that ruling more completely does not render it constitutionally defective."); *see also Harris v. Young*, 607 F.2d 1081, 1085 n.4 (4th Cir. 1979) ("We recognize the Fifth Amendment does not require a trial judge to make an explicit finding of 'manifest necessity' before ordering a mistrial; and that he need not discuss and reject, on the record, alternatives to a mistrial."). And even if "[s]ome loss of deference" is appropriate due to the lack of sound discretion a failure to comply with Rule 26 might evidence, it "does not necessarily mean that there was no manifest necessity to declare a mistrial as a matter of substantive fact." *Wecht*, 541 F.3d at 507; *see*

also id. ("A district court still could have come to a correct conclusion based on the record facts . . . .").

We find that, despite an inexact procedure, the record shows that the circuit court actually exercised its discretion and exercised it soundly. First, the January 17, 2023, teleconference at which the court declared a mistrial does not stand in isolation. Only one week prior to the teleconference, the court excused an alternate juror due to an illness with symptoms similar to COVID-19, prompting a COVID-19 test and recognition that a quarantine could be necessary. Ultimately, the need to quarantine then was eliminated when the test was negative for COVID-19. But within seven days, however, after the loss of one trial participant due to illness, approximately seven other trial participants were sick with a highly contagious disease, to which the remaining trial participants had, consequently, been exposed. At that culmination, the court declared a mistrial, then allowed the parties to place their objections on the record, including the petitioner's argument for a continuance. The court went on to restate its initial ruling. Although that procedure does not strictly comply with Rule 26.3, the record nonetheless reflects that the petitioner argued for a continuance rather than a mistrial and that the court implicitly rejected this proposed alternative, which it was possessed with the discretion to do.

Despite the petitioner's claims of predictability, COVID-19 was anything but predictable. *See* CDC Guidance, *supra* note 4. The circuit court recognized this, noting that the trial could resume only "*if* we are capable of getting everybody in a symptom-free environment" and concluding that "finalizing the trial became impossible for an extended

period of time." (Emphasis added.) Quarantine periods depend on the severity of the illness and the susceptibility of those around whom someone plans to be present; and the incubation period varied, thus affecting when the court could even know the full extent of the outbreak. The court justifiably had great concern for the "health and safety of the jurors" in view of the fact that COVID-19 had "tak[en] as many of us out, quite frankly, as what it has." It also had justifiable concern for the prejudice to the State's and the petitioner's respective cases that a continued delay of indeterminate length would have on the jury's ability to render a just judgment. The record on the whole reflects that the court was ultimately unwilling to subject the parties to the prejudice it determined would result from a continuance of unknowable duration. *See United States v. Dennison*, 73 F.4th 70, 80–81 (1st Cir. 2023) (finding district court did not abuse discretion in declining to order a week- to ten-day continuance following exposure to COVID-19 where, given "unpredictable" course infection takes and inability to predict whether "all essential persons" would be COVID-free after continuance, "the district court faced a possible continuance of indeterminate length"). Even though the court arrived at its determination through a less-than-ideal process, the record ultimately reflects that the court soundly exercised its discretion after being confronted with COVID-19's staggering upheaval of the petitioner's trial. *See Abdi v. Georgia*, 744 F.2d 1500, 1504 (11th Cir. 1984) ("But not all fast decisions are abrupt decisions; an abrupt decision must be *inappropriately* fast. A quick decision could be proper where, as in this case, the misconduct is particularly flagrant.").

Finally, we recognize that other courts may have determined to proceed with the petitioner's trial after a continuance, but "the overriding interest in the evenhanded administration of justice requires that we accord the highest degree of respect to the trial judge's evaluation" of the impact of the COVID-19 outbreak on the trial. *Washington*, 434 U.S. at 511; *see also id.* ("[T]he District Court was quite correct in believing that some trial judges might have proceeded with the trial after giving the jury appropriate cautionary instructions. In a strict, literal sense, the mistrial was not 'necessary.'"); *Abdi*, 744 F.2d at 1504 ("Other judges in this situation might have disposed of the problem differently or developed a more thorough record regarding the possible alternatives to a mistrial."). Nevertheless, we give deference to a court's mistrial declaration when appropriate because "[t]he interest in orderly, impartial procedure would be impaired if [the court] were deterred from exercising that power by a concern that any time a reviewing court disagreed with his assessment of the trial situation a retrial would automatically be barred." *Washington*, 434 U.S. at 513. So, despite an imperfect procedure, under the specific and, hopefully, singular facts of this case, we cannot say that the circuit court abused its discretion or acted precipitately in determining that COVID-19's uncontrolled spread to essential participants in the petitioner's trial presented a manifest necessity for a mistrial. As evidenced acutely by its effects on the petitioner's trial, the COVID-19 pandemic was an unprecedented time that fundamentally transformed global society, health care, and daily life. Because the record on the whole reflects that the court acted responsibly and deliberately in declaring that the COVID-19 outbreak constituted a manifest necessity, petitioner's right to have his first trial concluded yielded to the public interest in affording

the State one full and fair opportunity to present his evidence to an impartial jury, and the petitioner's retrial was not barred under the Double Jeopardy Clauses. *See Keller*, 177 W. Va. at 617, 355 S.E.2d at 405, Syl. Pt. 4 ("Termination of a criminal trial arising from a manifest necessity will not result in double jeopardy barring a retrial.").

IV. Conclusion

For the foregoing reasons, we affirm the Boone County Circuit Court's May 4, 2023, sentencing order.

Affirmed.