

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

RICHARD SCOTT MITTON,
Appellant.

Opinion

No. 20221076-CA

Filed September 11, 2026

First District Court, Brigham City Department
The Honorable Brandon J. Maynard
The Honorable Spencer D. Walsh
No. 211100057

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JUDGE AMY J. OLIVER authored this Opinion, in which
JUDGES RYAN M. HARRIS and RYAN D. TENNEY concurred.

OLIVER, Judge:

¶1 This case comes before us again on remand from our supreme court's decision in *State v. Mitton*, 2026 UT 11, 589 P.3d 908. Pursuant to that remand, we are tasked with reevaluating the district court's denial of Richard Scott Mitton's motion to dismiss on double jeopardy grounds. *Id.* ¶ 54. We conclude that Utah's single criminal episode statute precludes the retrial of Mitton on the amended charges. Therefore, the district court erred in denying Mitton's motion to dismiss. We remand this case to the district court to enter an order granting Mitton's motion to dismiss on double jeopardy grounds.

BACKGROUND¹

¶2 In late 2020, Mitton and his brother-in-law got into an altercation, which left the brother-in-law with serious injuries. The State charged Mitton with two counts of aggravated assault, both third-degree felonies, and the case proceeded to a jury trial presided over by Judge Maynard. Following the first day of trial, Judge Maynard disclosed to the parties that he was distantly related to one of the witnesses. Later that night, Mitton moved to disqualify Judge Maynard. The next morning, Judge Cannell, the presiding judge of the First District Court, granted the motion, transferred the case to Judge Walsh and declared a mistrial.² Judge Maynard excused the jury and then informed the parties about what had transpired.

¶3 The next day, the State filed an amended information based on the same altercation, this time charging Mitton with one second-degree felony and one third-degree felony. Shortly thereafter, Mitton filed a motion to dismiss with prejudice, arguing that the amended information violated double jeopardy protections. Judge Walsh heard arguments on the motion and took it under advisement. Before Judge Walsh issued his ruling—and four months after the declaration of a mistrial—Judge Cannell issued a second amended order, providing “further information regarding [the] decision making process to” declare a mistrial. In that order Judge Cannell determined that keeping the jury empaneled “would not have even been a possibility from a logistical standpoint” due to “calendaring constraints” that

1. For a more fulsome recitation of the facts, see *State v. Mitton*, 2024 UT App 44, ¶¶ 3–15, 548 P.3d 908, *rev’d*, 2026 UT 11, 589 P.3d 724, and *State v. Mitton*, 2026 UT 11, ¶¶ 7–15, 589 P.3d 724.

2. Judge Cannell’s initial order contained only three sentences. He issued an amended order six days later, which was “intended to replace” his initial order.

would have made it “several days, if not several weeks or months, before the retrial could proceed.” Relying entirely on this second amended order, Judge Walsh determined that there had been “legal necessity to declare a mistrial” and denied Mitton’s motion.

¶4 Mitton then filed an interlocutory appeal. In our resolution of the appeal, we followed the guidelines given by our supreme court to district courts for legal necessity determinations in the face of constitutional double jeopardy challenges. We concluded that, particularly under *State v. Manatau*, 2014 UT 7, 322 P.3d 739, “the elements of legal necessity were not established where the court failed to give the parties an opportunity to object to the declaration of a mistrial,” *State v. Mitton*, 2024 UT App 44, ¶ 30, 548 P.3d 908, *rev’d*, 2026 UT 11, 589 P.3d 724. We thus agreed with Mitton that “Utah’s constitutional protections against double jeopardy prohibit[ted]” his retrial. *Id.*

¶5 The supreme court then granted certiorari to address “whether the legal necessity exception to Utah’s constitutional prohibition against double jeopardy can apply even where the parties were not afforded an opportunity to object before a mistrial was declared and the jury discharged.” *Mitton*, 2026 UT 11, ¶ 20. The court held that the exception may still apply even when parties are not afforded such an opportunity. *Id.* ¶ 27. The supreme court then remanded the case to this court and instructed us to “conduct an independent assessment of the record to determine whether Judge Cannell had any reasonable alternatives to declaring a mistrial under the circumstances as they existed when Judge Maynard was disqualified mid-trial” and to “resolve any uncertainty caused by gaps in the record in Mitton’s favor.” *Id.* ¶ 54.

ISSUE AND STANDARD OF REVIEW

¶6 We again review Mitton’s argument that the district court erred in denying his motion to dismiss on double jeopardy

grounds. Typically, a district “court’s decision to grant or deny a mistrial will not be disturbed on appeal absent an abuse of discretion,” but because the newly assigned judge reviewing the motion to dismiss “was in no better position than this court to determine the necessity of a mistrial, we review [the] denial of defendant’s motion to dismiss” for correctness. *West Valley City v. Patten*, 1999 UT App 149, ¶ 7, 981 P.2d 420.

ANALYSIS

¶7 As stated above, the supreme court remanded this case for us to reevaluate whether the legal necessity exception to Utah’s constitutional prohibition against double jeopardy applies in this case. *See State v. Mitton*, 2026 UT 11, ¶ 20, 589 P.3d 724. But on appeal, Mitton has raised two bases for his argument that the prohibition against double jeopardy prohibits his prosecution: Utah’s constitution and Utah’s single criminal episode statute. Our prior opinion did not address Mitton’s statutory argument because we concluded that his prosecution was barred by Utah’s constitution. *State v. Mitton*, 2024 UT App 44, ¶ 16 n.6, 548 P.3d 908, *rev’d*, 2026 UT 11, 589 P.3d 908. Considering Mitton’s statutory argument for the first time in this opinion, we conclude that Utah’s single criminal episode statute prohibits his prosecution. Thus, we need not conduct a new constitutional legal necessity analysis.

¶8 Mitton asserts that his prosecution is barred by Utah’s single criminal episode statute, Utah Code section 76-1-403. This statute states, in relevant part,

If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if . . . the former prosecution . . . was improperly terminated

Utah Code § 76-1-403(1). A “single criminal episode” is defined as “all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.” *Id.* § 76-1-401. An “improper termination” occurs “if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn.” *Id.* § 76-1-403(4).

¶9 Here, Mitton’s original charges arose from his altercation with his brother-in-law. Although the State charged him with different offenses following the declaration of a mistrial, the basis for the new charges remained Mitton’s altercation with his brother-in-law. This clearly meets the statutory definition of a “single criminal episode.” *See id.* § 76-4-401. And Mitton’s original trial qualifies as improperly terminated because the jury had been “impaneled and sworn” and the “termination [took] place before the verdict . . . for reasons not amounting to an acquittal.” *Id.* § 76-1-403(4).

¶10 However, such termination is not improper under the statute if one of the following exceptions exists:

- (a) the defendant consents to the termination;
- (b) the defendant waives [the] right to object to the termination; or
- (c) the court finds and states for the record that the termination is necessary because:
 - (i) it is physically impossible to proceed with the trial in conformity with the law;
 - (ii) there is a legal defect in the proceeding not attributable to the [S]tate that would make any

judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or out of the courtroom not attributable to the [S]tate makes it impossible to proceed with the trial without injustice to the defendant or the [S]tate;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

Id. § 76-1-403(4)(a)–(c).

¶11 The only one of these exceptions the State argues applies is the “physical impossibility” exception.³ *See id.* § 76-1-403(4)(c)(i). The State contends that the fact that Judge Walsh had a full schedule meets the statutory exception for impossibility because it would have been weeks before he could have held a scheduling

3. The State argues, in the alternative, that if the operative order was Judge Cannell’s initial three-sentence order, then the legal defect exception applies. *See Utah Code* § 76-1-403(4)(c)(ii). But we agree with the State that Judge Cannell had the discretion to amend his initial order. Under Utah’s law of the case doctrine, “[a]s long as the case has not been appealed and remanded, reconsideration of an issue before a final judgment is within the sound discretion of the district court.” *IHC Health Services Inc. v. D&K Mgmt., Inc.*, 2008 UT 73, ¶ 27, 196 P.3d 588; *see also* Utah R. Civ. P. 54(b) (“[A]ny order or other decision . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”). Accordingly, we need not address this argument.

hearing and months before he could have commenced a trial. We disagree.

¶12 Judge Walsh’s scheduling difficulties do not meet the physical impossibility exception to an improper termination for double jeopardy purposes. The statute specifically requires *physical* impossibility. *See id.* “Physical” refers to “material things” or “real, tangible objects.” *Physical*, Black’s Law Dictionary (12th ed. 2024). A physical impossibility necessarily involves a tangible impediment to proceeding with trial, such as an earthquake, fire, or other situation that renders the courthouse unusable. For example, earlier this year, the State of Utah suspended its court operations in Garfield and Piute counties due to the Cottonwood Fire. *See Utah Courts Temporarily Suspend Operations in Garfield and Piute Counties Due to Cottonwood Wildfire*, Utah Cts. (June 24, 2026), <https://legacy.utcourts.gov/utc/news/2026/06/24/utah-courts-temporarily-suspend-operations-in-garfield-and-piute-counties-due-to-cottonwood-wildfire/> [https://perma.cc/PM2L-EWHE]. The fire caused court facilities to lose power and internet access and led to “limited staffing and unreliable access to essential court systems.” *Id.* These difficulties left “the affected facilities . . . unable to support essential court functions.” *Id.* This situation—where a wildfire compromised services available at the courthouse and caused unreliable operation of its facilities—is the type of physical impossibility contemplated by the statute.

¶13 Although the State argues that Judge Walsh’s schedule made an earlier trial date impossible, it fails to explain how calendaring difficulties constitute *physical* impossibility. When tasked with statutory interpretation, “we presume that the legislature used each word advisedly.” *State v. Sanders*, 2019 UT 25, ¶ 17, 445 P.3d 453 (cleaned up). “Thus, we interpret statutes to give meaning to all parts, and avoid rendering portions of the statute superfluous.” *Id.* ¶ 18 (cleaned up). Here, a proper interpretation of the physical impossibility exception to the single criminal episode statute cannot ignore the word “physical.”

Consequently, the physical impossibility exception for improper termination does not apply here.

¶14 Because the offenses charged in the amended information relate to a single criminal episode and Mitton's trial on the original charges was improperly terminated, we conclude that section 76-1-403 of the Utah Code prevents his prosecution on the charges in the amended information. Therefore, the district court erred in denying Mitton's motion to dismiss on double jeopardy grounds.

CONCLUSION

¶15 We conclude that Utah's single criminal episode statute bars further prosecution of Mitton because the physical impossibility exception does not apply. Consequently, we remand this case to the district court to enter an order granting Mitton's motion to dismiss on double jeopardy grounds.
