

STATE OF MARYLAND

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IN THE CIRCUIT COURT

v.

\*

OF MARYLAND

\*

FOR

HELEN L. HOLTON

\*

BALTIMORE CITY

Defendant

\*

Case No.: 109209024

\* \* \* \* \*

**DEFENDANT HOLTON'S MOTION TO DISMISS  
FOR LACK OF JURISDICTION**

Helen L. Holton, Defendant, by her attorneys, Joshua R. Treem, Nicholas J. Vitek, Richard C.B. Wood and Schulman, Treem, Kaminkow & Gilden, P.A., pursuant to Maryland 4-252(d), moves this Honorable Court to dismiss the indictment against Ms. Holton as the district court, not the circuit court, has exclusive original jurisdiction over the charges alleged.

**ARGUMENT**

**I. Because The Charges In The Two Count Indictment Carry A Maximum Penalty Of Only One Year, The District Court Has Exclusive Original Jurisdiction.**

The government alleges in a two-count indictment that Ms. Holton committed two misdemeanors. See Indictment. Neither of these charges carries a maximum sentence greater than a year. Id. Consequently, the District Court has exclusive original jurisdiction. Maryland Courts and Judicial Proceedings § 4-301 (2009). A trial court acts without jurisdiction when it acts without authority granted by either the statute or common law. State of Maryland v. Rodriguez, 125 Md.App. 428, 442, 725 A.2d 635, 642 (1999). A circuit court, a court of general jurisdiction, has jurisdiction over an issue

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if it has the power to render a judgment over the class of cases within which a particular case falls. First Federated Commodity Trust Corp. v. Commissioner of Securities for Maryland, 272 Md. 329, 334, 322 A.2d 539, 543 (1974). In the criminal context, “[t]he term ‘jurisdiction’ ... means the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceedings.” Urciolo v. State of Maryland, 272 Md. 607, 617, 325 A.2d 878, 886 (1974).

Circuit courts are courts of general jurisdiction and have full common law jurisdiction in all criminal cases alleged to have occurred in Maryland, unless limited by law. McBurney v. State of Maryland, 280 Md. 21, 32, 371 A.2d 129, 135 (1977). This power is created by the legislature in Maryland Courts and Judicial Proceeding Law § 1-501. That section states that, “[t]he circuit courts ... [have] jurisdiction in all civil and criminal cases within its county, and all the additional powers and jurisdiction conferred by the Constitution and by law, **except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.**” Courts and Judicial Proceeding Law § 1-501 (emphasis added). Consequently, unless the law of jurisdiction has been limited or conferred exclusively to another court, the circuit court is the proper jurisdiction for all criminal matters. Id.

The legislature has conferred exclusive original jurisdiction for misdemeanors to Maryland district courts. See e.g., Md. Courts and Judicial Proceeding Law § 4-301(b)(1) (the district court has *exclusive* jurisdiction over the “[c]ommission of a common-law or statutory misdemeanor regardless of the amount of money or value of the property involved.”) Here, Ms. Holton is charged in a two-count indictment with misdemeanors which carry maximum penalties of no greater than one year of

incarceration. See Indictment. The first count charges Ms. Holton with a violation of common law conspiracy. Conspiracy is “a common law offense and is a misdemeanor.” Johnson v. State of Maryland, 362 Md. 525, 527, 766 A.2d 93, 94 (2001). The punishment for conspiracy “may not exceed the maximum...for the crime that the person conspired to commit.” Md. Criminal Law § 1-202. The indictment alleges that Ms. Holton conspired to “violate the campaign finance laws of the State of Maryland by conducting campaign finance activity for an election other than through a campaign finance entity, by exceeding the campaign contribution and by requesting payment of money to another person other than a campaign finance entity...” If convicted, the maximum penalty is imprisonment not to exceed one year or a fine of \$25,000. Md. Election Law § 13-603. The second count of the indictment charges Ms Holton with a violation of Maryland Election Law § 13-202(a). There, the maximum penalty is imprisonment not to exceed one year or a fine of \$25,000. Md. Election Law § 13-603. As such, neither count charges Ms. Holton with a felony and as a result, the district court has exclusive original jurisdiction.

The fact that the district court has exclusive original jurisdiction is evident from § 4-301 of the Maryland Courts and Judicial Proceeding Law. There, the legislature has granted the district court **exclusive original jurisdiction** where the allegations involve a “[c]ommission of a common-law or statutory misdemeanor...” Md. Courts and Judicial Proceeding Law § 4-301(b)(1). Here, the government alleges that Ms. Holton committed a common law misdemeanor as well as a statutory misdemeanor. See Indictment. Because the indictment does not involve any crime that would divest the district court of exclusive original jurisdiction, the circuit court does not have jurisdiction to hear the

matter.

Moreover, it is clear from the statutory framework that the allegations levied against Ms. Holton are exactly the type of matters in which the legislature intended to grant exclusive original jurisdiction to the district court. Although the granting of exclusive original jurisdiction over allegations involving the “[c]ommission of a common-law or statutory misdemeanor...” is expansive enough to give the district court broad exclusive jurisdiction, the legislature went further in detailing what type of cases are within the exclusive jurisdiction of the district court. For example, the legislature has determined that if the allegations involve a violation of a State, county or municipal rule or regulation, and such a violation is not determined to be a felony, then the district court shall have exclusive original jurisdiction. Md. Courts and Judicial Proceeding Law § 4-301(b)(4). Here, the government alleges that Ms. Holton violated state campaign finance regulations and such violations are not felonies. Consequently, these allegations are exactly the type of matters intended to be brought before the district court. The legislature even intended the failure to act, such as that alleged against Ms. Holton, is intended for the exclusive original jurisdiction of the district court. Courts and Judicial Proceeding Law § 4-301(b)(5) (“Doing or omitting to do any act made punishable by a fine [or] imprisonment...”).

There are, of course, limits to the exclusive original jurisdiction of the district court. The legislature has delineated these exceptions in § 4-302. For example, the district court does not have jurisdiction over felonies or where the juvenile court has exclusive jurisdiction. Md. Courts and Judicial Proceeding §§ 4-302(a) and (b). The statute does grant concurrent jurisdiction where “the penalty may be confinement for

three years or more or a fine of \$2,500 or more.” Md. Courts and Judicial Proceedings § 4-302(d)(1). The use of the subjunctive raises a potential argument that there is concurrent jurisdiction wherever the penalty is three years or more, or where the penalty is \$2,500 or more. However, such a reading goes against the statutory construction which seeks to grant the district court exclusive original jurisdiction in a wide variety of non-felony cases. For example, such a view would grant concurrent jurisdiction in many misdemeanors with sentences less than three years but with a fine greater than \$2,500 as well a wide variety of traffic cases that carry no term of imprisonment but a fine of more than \$2,500. See e.g., penalties for violation of Md. Transportation Code § 22-409 (transportation of hazardous material); § 24-11.1(b) (overweight vehicles).

A more reasonable view is that the term “or” simply tracks how the legislature has drafted the penalty clauses of criminal statutes. See e.g., Md. Criminal Law § 2-207(a)(2) (“...not exceeding 2 years or a fine not exceeding \$500...” (emphasis added) (manslaughter); § 3-204(b) (“...not exceeding 5 years or a fine not exceeding \$5,000...” (emphasis added) (reckless endangerment); § 5-619(2)(ii) (...not exceeding 2 years or a fine not exceeding \$2,000...” (emphasis added) (drug paraphernalia); § 6-402(b) (...not exceeding 90 days or a fine not exceeding \$500...” (emphasis added) (trespass). Consequently, the clause “three years or more or a fine of \$2,500 or more” refers to the penalty clause of the crime, and does not grant two independent avenues for concurrent jurisdiction. For each crime that carries a prison term and possible fine, the clause is followed by the term “or both.” Id. The inclusion of the term “or both” following the prison term and fine for criminal statutes emphasizes that the legislature intended the “or” to refer to the sentence available and not to jurisdiction.

Perhaps the greatest evidence that the legislature drafted § 4-302(d) to require the penalty clause to state “three years or more or a fine of \$2,500 or more” before there is concurrent jurisdiction is evidenced by the drafting of the statute. There, the statute grants concurrent jurisdiction in two situations. First, is where the penalty clause is “three years or more or \$2,500 or more.” Md. Courts and Judicial Proceeding §4-302(d)(1)(i). The second lists 19 felony statutes that can be brought in district court. *Id.* § 4-302(d)(1)(ii). Obviously, concurrent jurisdiction is not only when a charging document lists all 19 felonies. Rather, the drafting of the clause for concurrent felonies is offset by a comma after listing each felony. Commas are used to “separate two distinct events.” *State v. Purcell*, 342 Md. 214, 223, 674 A.2d 936,941 (1996); *see also* Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, Legislative Composition § 21.15 Punctuation (West 2009) (stating that a “comma should always separate each member of a class.”) Thus, each felony is a “distinct event” which permits concurrent jurisdiction. However, there is no comma with respect to the penalty clause. Rather, the only punctuation is a semi-colon “;” after a description of the penalty clause and before offering subsection (ii). The absence of a comma between the sentence and fine means that they are **not** “two distinct events.” *See e.g., Purcell*, 342 Md. at 223, 674 A.2d at 941.

Clearly, the legislature is competent to draft a statute that provides multiple avenues for concurrent jurisdiction. In fact, the legislature already has in § 4-302. There, the legislature has provided two avenues for concurrent jurisdiction. Each avenue, however, is provided its own subsection. *Id.* In subsection (ii), providing 19 felonies that have concurrent jurisdiction with the district court each is set off by a comma. Here, if

the legislature truly intended for there to be concurrent jurisdiction whenever the fine was greater than \$2,500, the statute would have created a separate subclause or at the very least included a comma defining each as a distinct event. For example, § 4-302(d) would read “the jurisdiction of the District Court is concurrent with that of the circuit court in a criminal case (i) in which the penalty may be confinement for three years or more; or (ii) the fine is \$2,500 or more; or (iii) which is a felony as provided....” At the very least, it would read “three years or more, or a fine of \$2,500 or more; or.” The fact that the legislature did not do so, confirms that the intent of the legislature is that for there to be concurrent jurisdiction the entire penalty clause must be “three years or more or a fine of \$2,500 or more.”

In fact, there are two distinct classes of crimes with a penalty of three years or a fine. One class has a fine not to exceed \$1000. See e.g., Md. Criminal Law § 11-107(same) (indecent exposure); § 8-603 (same) (possessing counterfeit title to motor vehicle (same)); § 9-412 (same) (contraband); § 9-415 (same) (alcoholic beverage); § 4-102 (same) (weapons on school property); § 8-606 (same) (making false entries in public records). The other class has a fine that is not to exceed \$5,000. See e.g., § 9-205 (“...subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000...” (acceptance of bribe by person participating in or connected with athletic contest); § 2-504(c) (“... subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000...” (homicide by motor vehicle or vessel while impaired by alcohol); § 11-205 (same) (obscene matter); § 9-408 (same) (resisting arrest); § 10-306 (same) (hate crime penalty); § 9-405 (same) (escape in the second degree). By choosing \$2,500 as the limit for offenses of three years, the legislature delineated between the types of offenses that

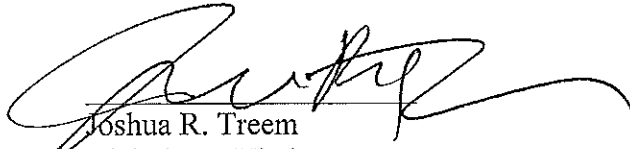
were to have exclusive original jurisdiction within the district court (such as indecent exposure, weapons on school property and making false entries into the public record) with more serious three year penalties that share jurisdiction with the circuit court (such as hate crimes, homicide by motor vehicle while impaired by alcohol and escape in the second degree). Consequently, before the circuit court has concurrent jurisdiction in this case the penalty clause of Ms. Holton's alleged offenses must state that she is "...subject to imprisonment not exceeding 3 years or a fine not exceeding \$2,500..." Here, she is subject to incarceration of only a year and thus the district court has exclusive original jurisdiction.

### CONCLUSION

The government charges Ms. Holton with two misdemeanor violations. Because neither violation carries a penalty greater than three years with a fine greater than \$2,500, the circuit court does not have jurisdiction. Cases in district court cannot be brought through indictment. Maryland Rule 4-201(b). Moreover, there is no corollary to the civil rule which permits a circuit court to transfer a case to district court. See Maryland Rule 2-327. As such, the circuit court must dismiss the indictment as being brought in the wrong jurisdiction. Moreover, there is no requirement that the State Prosecutor bring cases before the circuit court. Rather, he must bring the case in the court with jurisdiction. Maryland State Government § 9-1207 (...trial of all cases prosecuted by the State Prosecutor in accordance with § 9-1205 of this subtitle shall take place **before the court having jurisdiction** ... in accordance with the Maryland Rules.") (emphasis added).

WHEREFORE, for the foregoing reasons, the Defendant, Helen L. Holton, prays  
this Honorable Court dismiss the indictment against her.

Respectfully Submitted,

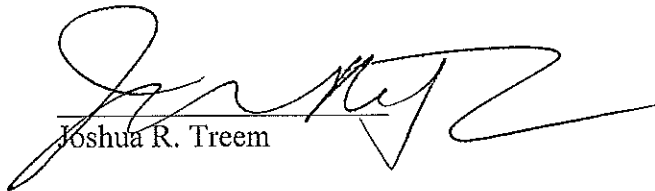


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of August, 2009, a copy of the foregoing  
*Motion to Dismiss* was sent via first class mail, postage paid to:

Robert Rohrbaugh, State Prosecutor  
Thomas M. McDonough, Deputy State Prosecutor  
Hampton Plaza, Suite 410,  
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Joshua R. Treem

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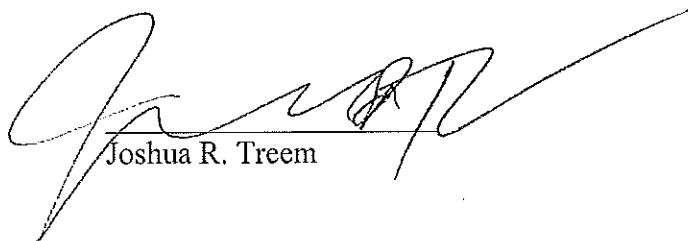
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**REQUEST FOR HEARING**

Defendant hereby requests a pretrial hearing on this Motion, pursuant to Maryland Rule 4-251.

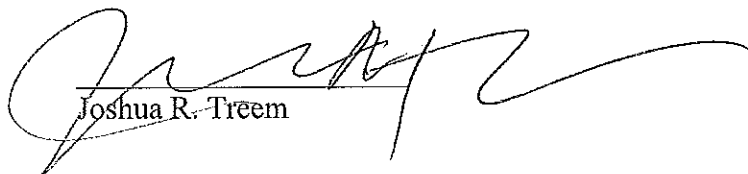
Respectfully submitted,

  
Joshua R. Treem

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28 day of August, 2009, a copy of the foregoing *Request for Hearing* was sent via first class mail, postage paid to:

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