

STATE OF MARYLAND

\*

IN THE CIRCUIT COURT

\*

OF MARYLAND

v.

\*

FOR

HELEN L. HOLTON

\*

BALTIMORE CITY

Defendant

\*

Case No.: 109209024

\* \* \* \* \*

**DEFENDANT HOLTON'S MOTION TO STAY**

Helen L. Holton, Defendant, by her attorneys, Joshua R. Treem, Kate M. Bell, Nicholas J. Vitek, Richard C.B. Woods, and Schulman, Treem, Kaminkow & Gilden, P.A., pursuant to Maryland Rules 8-425(b) and 2-632(e), moves this Honorable Court to stay this action pending the outcome of an appeal of the Court's October 8<sup>th</sup>, 2009, ruling that the circuit court has jurisdiction over the misdemeanor indictment against Ms. Holton. A stay is necessary because Ms. Holton's constitutional protection against double jeopardy may effectively be violated, and because a stay will conserve judicial resources. Ms. Holton will waive her rights under Maryland Rule 4-271 and *State v. Hicks*, 285 Md. 310 (1979), and there will be no prejudice to the State by granting a stay.

**BACKGROUND**

On August 28, 2009, Ms. Holton filed a Motion to Dismiss for Lack of Jurisdiction arguing that the circuit court did not have jurisdiction because Md. Code, Courts and Judicial Proceedings Article ("CJP") § 4-302(d)(1), does not provide concurrent jurisdiction unless the substantive offense is a misdemeanor with a penalty clause of three-plus years imprisonment *and* a fine of at least \$2,500. The misdemeanor charges described in the indictment did not meet both prongs of the rule. On October 8, 2009, this Court held that it does have jurisdiction,

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because “any offense that has a potential of \$2,500.00 or more as a fine falls within the class of cases where there is concurrent jurisdiction.” The Court’s October 8<sup>th</sup> Order is immediately appealable because it determines that the court has fundamental jurisdiction. *See Salvagno v. Frew*, 388 Md. 605, 616 n.4 (2005); *First Federated Commodity Trust Corp. v. Commissioner of Securities for Maryland*, 272 Md. 329, 334 (1974)). As such, Maryland Rules 8-425(b) and 2-632(e) give this Court the authority to stay the case pending the outcome of Ms. Holton’s appeal.

Ms. Holton has noted an appeal of that ruling. *See* Exhibit I (attached). The jurisdictional issue directly impacts Ms. Holton’s constitutional rights, is one of first impression, deserves a conclusive ruling before Ms. Holton is tried, would potentially waste judicial resources and raises no substantial burden upon the State. As such, Ms. Holton seeks a stay of this action pending the outcome of the appeal because it merits a conclusive ruling before Ms. Holton is tried.

### ARGUMENT

**I. Ms. Holton Must Immediately Appeal The Jurisdictional Issue As A Failure To Immediately Appeal Will Effectively Waive Her Double Jeopardy Protection.**

This Court should grant an immediate stay because the issue of concurrent jurisdiction directly impacts Ms. Holton’s constitutional rights. Ms. Holton has a constitutional protection against double jeopardy. The “...Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to trial for the same offense.” *Abney v. United States*, 431 U.S. 651, 660-61 (1977).

However, by waiting until the completion of her trial to appeal the jurisdictional issue, Ms. Holton may be “twice put to trial for the same offense.” *Id.* This is because if she prevails on the jurisdictional issue on appeal, no jeopardy will have attached to these proceedings, even if

she has already been tried and convicted. *Grafton v. United States*, 206 U.S. 333, 345 (1907); *Parks v. State*, 287 Md. 11, 18 (1980); *First Federated*, 272 Md. at 333-34. A successful appeal will result in the complete termination of the prior case and thus no jeopardy would have attached despite the fact that she would have been “subject[ed] to the hazards of trial, embarrassment, expense, and anxiety,” and gone through the appellate process. *Parks*, 410 Md. at 14. The State could then choose to file the same charges and subject her to a second trial. As such, Ms. Holton cannot wait until the completion of trial to interpose an appeal on the jurisdictional issue raised in the October 8<sup>th</sup>, 2009 ruling by the Court, because to wait until the end of trial will result in a waiver of her double jeopardy protections. Only by appealing immediately, receiving a definitive ruling on the issue from an appellate court, and a continuation of her trial, will her Constitutional protection to not be “twice put to trial for the same offense” be protected. *Abney*, 431 U.S. at 660-61.

In a similar case, the Court of Appeals stated that trial courts should be particularly cautious when stays are sought when double jeopardy issues are involved. *Pulley v. State*, 287 Md. 406, 418-19 (1980). In *Pulley*, the defendant immediately appealed the trial court’s denial of his motion to dismiss the indictment based on double jeopardy claims. *Id.* at 409. The defendant also requested a stay from the trial court, which was denied. *Id.* The Court of Appeals held that the decision to grant a stay during an interlocutory appeal was discretionary, but “...hasten[ed] to add, however, that merely because a trial may continue when an appeal is taken from an interlocutory order does not mean that a trial judge should normally do so.” *Id.* at 418. In fact, the Court “especially urged caution” when the issue raised centered on double jeopardy claims. *Id.* The Court advised a trial court to “only conduct the trial pending that appeal if the

claim, in its view, is utterly without merit and the defense was interposed merely to accomplish unwarranted delay.” *Id.* That is obviously not the case here.

The issue is similar to that addressed in *Rios v. State*, 186 Md. App. 354, 365 (2009), in which the Court of Special Appeals held that the circuit court’s decision that no plea agreement had been reached should be immediately appealable under the collateral order doctrine. The Court of Special Appeals stated that this is:

“...because the existence of a plea agreement is effectively unreviewable after proceeding to trial and verdict, given that an important purpose of making a plea agreement is to avoid the expense, inconvenience, and uncertainty of a trial. The defendant’s rights cannot be fully vindicated if he is compelled to wait for final judgment.” (Citations omitted).

Likewise, Ms. Holton’s rights cannot be fully vindicated by waiting for final judgment. As noted above, by waiting for final judgment, Ms. Holton will be forced to effectively waive her constitutional protection against double jeopardy. The appropriate remedy is for this Court to grant Ms. Holton’s motion for a stay.

## **II. The Jurisdiction Issue Is An Issue Of Statewide Importance, Is An Issue Of First Impression And A Stay Will Protect Judicial Resources.**

Ms. Holton does not raise this appeal to delay trial, but rather is appealing so that she does not waive her Constitutional rights. In addition, the issue raised by Ms. Holton is one of statewide importance and is an issue of first impression. As noted in Ms. Holton’s motion to dismiss as well as the State’s response in opposition, there is no appellate direction on the issue of the meaning in CJP § 4-302(d)(1). The State argues, and the Court has adopted, that the terms of the section should be given their ordinary meaning. However, Ms. Holton argues that the terms in § 4-302(d)(1) should be read as a penalty clause as it exists in virtually all Maryland criminal statutes. The absence of appellate authority does not diminish the importance of the issue. Simple due process commands that cases should be brought and tried in the appropriate

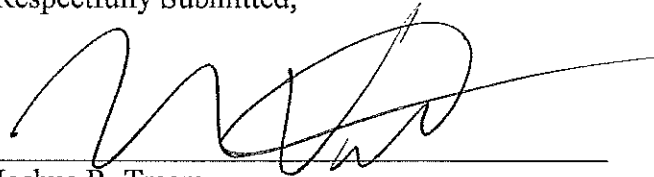
court. This is an issue that impacts defendants in many criminal case statewide. Thus, it is important that Ms. Holton raise her appeal immediately because if she is successful at trial, the issue of the meaning of § 4-302(d)(1) will not be resolved.

Ms. Holton recognizes that, by requesting this stay, she is effectively waiving her rights under *State v. Hicks*, 285 Md. 310 (1979), and that the delay occasioned by the appeal would be attributed to her for the purposes of a constitutional speedy trial claim. *See, e.g., State v. Bailey*, 319 Md. 392, 412 (1990). In fact, the need for this appeal now is the result of the State's charging decisions. If the State included these charges with its first indictment there would be no issue to appeal as Ms. Holton agrees that this Court would have jurisdiction. The State itself has created the procedural predicate for the appeal in this case by waiting until its first theory of prosecution was dismissed before raising the second theory offered in this case, and by filing by way of indictment in the circuit court rather than the district court. Additionally, the State has investigated this issue for several years, but chose to not file these charges until a mere three months ago. Under these circumstances, delay, although perhaps frustrating to all parties, is not prejudicial against the State and will permit the appellate courts to decide an issue that has procedural implications to cases in Maryland's trial courts every day.

Importantly, the grant of a stay is in the interest of judicial economy. If Ms. Holton is convicted, appeals, and prevails on the jurisdictional issue, the entire case would have to be retried a second time with many of the same issues being relitigated. That would be a substantial waste of judicial resources. As the court in *McNeil v. State*, 112 Md. App. 434, 460 (1996), concluded, "the potential waste of judicial resources will invariably be a factor for the trial court to consider in deciding whether to proceed with the trial."

Given the issue is an important and fundamental issue to this case with statewide procedural implications, a stay imposes no prejudice to the State, and is a judicial use of Court resources, Ms. Holton respectfully requests that this Court exercise its discretion to stay the trial until her appeal of the Court's order denying her motion to dismiss this indictment be resolved.

Respectfully Submitted,



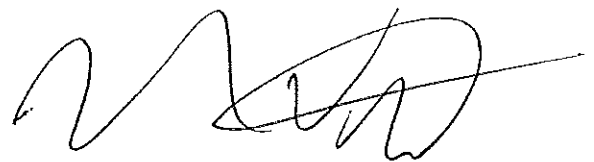
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of October, 2009, a copy of the foregoing

*Motion to Stay* was sent via first class mail, postage paid to:

Robert Rohrbaugh, State Prosecutor  
Thomas M. McDonough, Deputy State Prosecutor  
Hampton Plaza, Suite 410,  
300 East Joppa Road,  
Towson, Maryland 21286-3152



Nicholas J. Vitek

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**ORDER**

Having received Defendant Helen L. Holton's Motion to Stay, and any response thereto, it is the \_\_\_\_\_ day of \_\_\_\_\_:

ORDERED that these proceedings will be STAYED pending the outcome of Ms. Holton's appeal, noted on October 30, 2009, of the circuit court's jurisdiction over the case.

\_\_\_\_\_  
Judge Sweeney