

STATE OF MARYLAND

*

IN THE CIRCUIT COURT

*

OF MARYLAND

v.

*

FOR

HELEN L. HOLTON

*

BALTIMORE CITY

Defendant

*

Case No.: 109209024

* * * * *

RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

FILED
CLERK OF COURT
BALTIMORE, MARYLAND
JUL 11 2014

Helen L. Holton, Defendant, by her attorneys, Joshua R. Treem, Nicholas J. Vitek and Schulman, Treem, Kaminkow & Gilden, P.A., respectfully submits a response to the State's Opposition to Defendant's Motion to Dismiss For Lack of Jurisdiction.

ARGUMENT

The State argues that Ms. Holton's interpretation of Maryland Court and Judicial Proceedings § 4-302(d)(1)(i) is "forced and tortured" and that an "examination of the legislative history lends absolutely no support to defendant's argument" creating an "obviously untenable conclusion." See State's Response, Page 6-7. To support its position, the State cites to the definition of "or", claims that the defendant's interpretation of §4-302(d)(1)(i) would render the monetary fine element of the penalty clause meaningless, argues that the defendant's definition would deprive the circuit court of a host of misdemeanor offenses that do not include a fine, that case law directly contradicts the defendant's position, and that an examination of the legislative history provides no support that the penalty clause in § 4-302(d)(1)(i) is read as one entity and not as two separate bases for concurrent jurisdiction. See State's Response, Page 4-9. The State is incorrect.

First, Ms. Holton is simply addressing an issue of where this case should begin, not where it ultimately will end. The issue is not one of exclusive jurisdiction, but one of exclusive *original* jurisdiction. Stated simply, the issue is not whether the circuit court could eventually hear this case, but where the case must begin. Councilwoman Holton's analysis of the statute, case law and the State's response does not change her original position that because the State chose to charge her with two misdemeanors, neither having a penalty clause of "three years or more or a fine of \$2,500 or more," the case must begin in the district court.

The State begins its analysis with Webster's definition of "or." The State includes an expansive quote of over ten lines, including the quote "as, apples, (or) pears, (or) peaches *or* plums ...in poetry, sometimes substituted for *either* as the first correlative; as, "*or* in the heart *or* in the head" See State's Response, page 4 (emphasis in original). Although the State may take lightly its duty to properly charge a criminal case and to file those charges in the correct jurisdiction, Councilwoman Holton certainly does not. The issue presented is not whether Webster's definition of "or" is proper, but whether the State is correct in its interpretation that § 4-302(d)(1)(i) provides two separate bases for concurrent jurisdiction. The Court of Appeals is clear that commas are used to "separate two distinct events." State v. Purcell, 342 Md. 214, 223, 674 A.2d 936,941 (1996). In fact, the main treatise on statutory construction states the same. 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.") Given that every penalty clause created by the legislature uses the term "or" to connect the term of years and the fine, Councilwoman Holton believes that the more reasonable view is that the use of "or" in § 4-302(d)(1)(i) tracks how penalty clauses are written. Consequently, for there to be concurrent jurisdiction, the penalty clause in the

statute would have to have a penalty clause that had a term of years in excess of three and a fine of \$2,500. The charges in this case do not.

Interestingly, the State's own indictment of Ms. Holton uses "and" when the meaning of the language is "or." The State charges Ms. Holton with a conspiracy with three different objects of the conspiracy. Indictment Count I. There the State alleges that Ms. Holton engaged in a conspiracy to "...finance activity for an election other than through a campaign finance entity, by exceeding the campaign contribution limits and by requesting payment of money to another person..." Id. (emphasis added). The first object of the conspiracy is offset by a comma, and the second and third object is combined with an "and." However, the case law does not require that the State prove **each** of the three objects to secure a conviction for conspiracy. Rather, a conspiracy conviction could be sustained by proving *any* of the three objects alleged in the conspiracy. Consequently, when the State says "and" they really mean "or."

Despite the State's claim that the "plain language of the statute at issue here is remarkably clear, straightforward and unambiguous," the issue is far from clear. State's Response, page 4. For that, the Court need only read the State's response. The State claims that in a decision by the Court of Special Appeals, the "court held that, because 3 years or more of confinement could be imposed, the offense was within the concurrent jurisdiction of the District and Circuit, clearly assigning [the] word *or* in § 4-302(d)(1)(i) its ordinary meaning." See State's Response, page 7 (emphasis in original). However, the State misrepresents the holding. First, a search on Maryland Judicial Case Search clearly shows that the case of McCracken v. State, 150 Md. App. 330, 820 A.2d 593 (2003) began as a misdemeanor *in district court*. See Maryland Case Search Result For Case Number 3K00016915/07K0000482. The State also fails to direct the Court to the part of the decision which states that "[w]hen appellant initially

appeared before a district court judge, he did so pursuant to the district court's jurisdiction over the crime he was charged with, *and his case was only transferred to the circuit court based on his demand for a jury trial.*" McCracken, 150 Md. App. at 354, 820 A.2d at 608 (emphasis added). In addition, the State's response to Ms. Holton's motion to dismiss Count II of the indictment includes a docket sheet for similar charges levied against Ms. Holton. See State's Opposition to Defendant's Motion to Dismiss Count II of the Indictment, Appendix I. However, the State includes only the docket entries for the circuit court. Id. (the State states that it included only "the relevant portions of the case summaries...") A search on Maryland Case Search demonstrates, however, that the case began in district court and was transferred to circuit court only after the defendant prayed a jury trial. See Maryland Case Search Result For Case Number 2S00038103. Consequently, the State's *own* case law demonstrates that, in cases like Ms. Holton's, the case must begin in the district court.

This interpretation does not mean that the fine portion of the penalty clause is "rendered surplusage, superfluous, meaningless or nugatory." See State's Response, page 5. In fact, the opposite is true. Under Councilwoman Holton's analysis of the statute, both the term of years and the fine are essential to determining which court has exclusive original jurisdiction. In contrast, the State's analysis asks the Court to reject one part of the penalty clause in favor of the other. It is under their analysis that the term of years is irrelevant to concurrent jurisdiction. The State's argument is premised on the view that the legislature believes that those who face a fine of \$2,500 have equal right to the state's highest trial court with those who face the loss of liberty of three years or more. Yet, the legislature has already determined that a fine alone is insufficient to grant an individual a jury trial. See Maryland Annotated Code, Criminal Law CP §6-101(1). Under the State's analysis, the district court would have exclusive original

jurisdiction if a civil defendant was being sued by the state government for \$29,999, but the State could impanel a grand jury, return an indictment and file criminal charges in circuit court for an offense that carried no jail time but had a fine of \$2,501. See Md. Courts and Judicial Proceedings § 4-401(1) (stating that the district court has exclusive original jurisdiction in an “action in contract or tort, if the debt or damages claimed do not exceed \$30,000.”).

If the legislature intended for concurrent jurisdiction in cases only where the term of years was three years or more but also had a fine element of \$2,500 or more, thereby drawing a distinction between two classes of three year offenses, but used the term “and” to connect the two parts of the penalty clause, the interpretation of concurrent jurisdiction would exist in cases only where there was a mandatory fine of \$2,500 or more. However, there are virtually no crimes that carry a mandatory fine. Thus, if the legislature wrote the penalty clause in § 4-302(d)(1)(i) to read “three years or more *and* a fine of \$2,500 or more” the interpretation of that clause would permit concurrent jurisdiction in cases where the penalty clause included a term of years of three years or more *and* required a fine of \$2,500 or more. However, virtually all penalty clauses give the courts a choice between the term of years or a fine or both. Consequently, the legislature, reasonably, modeled the penalty clause after how all penalty clauses are drafted in the penal statute. The legislature made clear that this was not providing *separate* bases for concurrent jurisdiction because it did not list the two separately as it did for *all other separate bases* for concurrent jurisdiction.

The State also argues that if Councilwoman Holton’s analysis was correct, a host of misdemeanor offenses would have to begin in the district court before a defendant could pray a jury trial and have the case transferred to circuit court. The State argues that this is an “obviously untenable conclusion” and that “under these circumstances, no reasonable person

could conclude that such was the intent of the General Assembly.” See State’s Response, Page 6-7. Yet, the State does not offer even *one* citation where such misdemeanors began in the exclusive original jurisdiction in the circuit court without it being part of a larger indictment of offenses divesting the district court of exclusive jurisdiction. See e.g., Privette v. State, 320 Md. 738, 745, 580 A.2d 188, 191 (1990).

Furthermore, the State argues that an “examination of the legislative history lends absolutely no support to defendant’s argument.” See State’s Response, Page 7. To support its position, the State notes that a provision was introduced to “eliminate the concurrent jurisdiction of Circuit Court Cases in all misdemeanor drug cases [which have a penalty] of 4 years or a fine not exceeding \$25,000 or both.” The provision was not adopted. This analysis appears to support Councilwoman Holton’s position more than it does the State’s. The legislature sought to eliminate concurrent jurisdiction for drug offenses that contained a penalty clause which had a term of years greater than three years, as well as a fine amount greater than \$2,500. Here, those penalties were 4 years or a fine of up to \$25,000. In such cases, there was, prior to amendment of the statute, concurrent jurisdiction. However, there was concurrent jurisdiction because *both* parts of the penalty clause were satisfied.

In fact, the Bill Analysis attached to the State’s Response perfectly demonstrates Councilwoman Holton’s position. To paraphrase the point of contention between the State and the defense, the State argues that the penalty clause in § 4-302(d)(1) grants two *separate* avenues of concurrent jurisdiction, Councilwoman Holton argues that § 4-302(d)(1) is read as a complete penalty clause and that for there to be concurrent jurisdiction the penalty of the alleged offense must satisfy both components of the penalty clause. In the Bill Analysis submitted by the State,

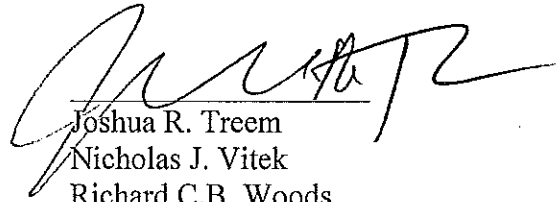
the legislature provides background on the current basis for exclusive original jurisdiction.¹ See State's Response, Attachment 1. The analysis offsets each *separate* basis for exclusive jurisdiction with a number. Thus, if the State's analysis is correct, then the Bill Analysis would treat three years as a separate basis from a fine of \$2,500 and each would get their own number since *each* would be a basis for exclusive jurisdiction. However, the Bill Analysis does not. It states that the district court has exclusive original jurisdiction over "(1) motor vehicle code ...;(2) landlord-tenant actions; (3) replevin actions; (4) misdemeanors and certain felonies involving a penalty of less than 3 years imprisonment or a fine of \$2,500 or less; and (5) civil actions involving \$2,500 or less." The legislature does *not* create two separate basis by stating "(4) involving a penalty of less than 3 years imprisonment; (5) a fine of \$2,500 or less (6) civil actions involving \$2,500 or less."

In short, the State's response simply confirms Councilwoman Holton's position that § 4-302(d)(1)(i) should be read together as a penalty clause. Such a view is consistent with how the legislature drafts penalty clauses, fulfils a legitimate legislative goal by delineating between different classes of offenses with three year penalties with fines of \$1000 or \$5000, and is consistent with how the legislature drafted subclause (i) and (ii) with the clear use of subsections and commas to offset distinct events. Moreover, the case offered by the State, McCraken v. State, clearly demonstrates that in a case charging misdemeanors, such as those charged against Councilwoman Holton, the case begins within the exclusive original jurisdiction of the district court and is advanced to circuit court only after the defendant pray's a jury trial. The State's use of the Bill Analysis demonstrates that Councilwoman Holton is correct in that the analysis clearly does not treat the penalty clause "three years or less or a fine of \$2,500 or less" as two

¹ The Bill Analysis uses the term "exclusive initial jurisdiction." The use of the term "initial jurisdiction" is perhaps a more accurate reflection of how cases begin in district court and then are advanced to circuit court by a defendant's demand for a jury trial.

separate bases for concurrent jurisdiction.

Respectfully submitted,

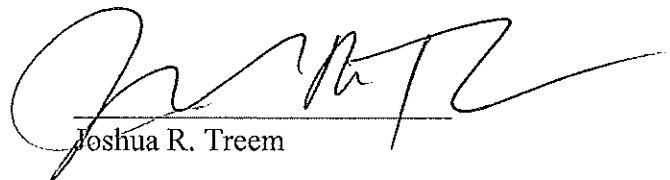


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2009, a copy of the foregoing *Response to State's Opposition to Defendant's Motion to Dismiss For Lack of Jurisdiction* was sent via first class mail, postage paid to:

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