Circuit Court for Washington County
Case No. 21-K-17-053268

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 611

September Term, 2017

D'ANTHONY HAIRSTON

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: February 12, 2018

Appellant, D'Anthony Hairston, was convicted of possession of a shotgun by the Circuit Court for Washington County (Long, Jr. J.), pursuant to his conditional guilty plea. Appellant was sentenced to three years' imprisonment, the sentence to be suspended in favor of two years of supervised probation. Appellant filed the instant appeal in which he raises the following question for our review:

> Did the circuit court err in denying Appellant's motion to dismiss the charges where the State acted with the purpose of circumventing the District Court's ruling that there was not good cause for a postponement?

FACTS AND LEGAL PROCEEDINGS

Appellant appeals the denial of his Motion to Dismiss charges that were obtained pursuant to an indictment in the Circuit Court for Washington County, notwithstanding that the charges had been dismissed or *nol prossed* in the District Court for Washington County.

On May 16, 2017, Appellant entered a conditional guilty plea to the charge of possession of a shotgun in violation of Public Safety Article § 5–205. The plea agreement provided that Appellant would be permitted to challenge, on appeal, the denial of his motion to dismiss. After accepting the plea, the court imposed a sentence of three years, which the court suspended in favor of two years' supervised probation.

On April 8, 2016, Appellant was charged by warrant in the District Court for Washington County, with possession of a shotgun in violation of Public Safety Article § 5–206, possession of a shotgun in violation of Public Safety Article § 5–205, possession

of ammunition in violation of Public Safety Article § 5–133.1 and possession of a firearm in violation of Criminal Law Article § 5–622.

At a preliminary hearing on September 8, 2016, Hagerstown City Police Officer Mitchell Filges testified that, on March 31, 2016, officers responded to the area of 4C Berner Avenue in response to a call for "shots fired." Based on information received at the scene, the police conducted a traffic stop of a dark-colored SUV. During the traffic stop, Officer Filges observed a man, later identified as Appellant, who appeared to have suffered from gunshot wounds. Based on their interview of witnesses and the fact that two different types of shell casings were recovered, officers believed that Appellant and others at the Berner Avenue residence confronted individuals wearing ski masks and that there was an exchange of gunfire between the two groups. A criminal history check revealed that Appellant had a prior conviction for distribution of a controlled dangerous substance.

Officer Filges next testified that, on April 7, 2016, the police searched 4C Berner Avenue, finding a loaded shotgun and shotgun shells. The shotgun was underneath a couch in the living room and the shells were under a pile of clothing on the kitchen table. Although Appellant was present, a man named Adam Banner was lying on the couch when the police entered and several other individuals were also in the residence.

Following Officer Filges' testimony, defense counsel argued that there was insufficient evidence to connect Appellant to the shotgun and ammunition. The court (Myers, J.) agreed and dismissed the two felony charges pursuant to Maryland Rule 4–221, finding no probable cause.

On November 17, 2016, the parties appeared before the district court for trial on the misdemeanor charges. At that time, the prosecutor requested a postponement, stating "I honestly have no reason to ask for a continuance other than I don't have full reports in this case, and I talked with the officer today and there are witnesses that need to be subpoenaed." According to the prosecutor, "The ball was dropped unfortunately." Defense counsel objected, pointing out that Appellant was being held in custody as a result of this case and had a violation of probation warrant filed in the circuit court as a result of the charges in this case. In addition, defense counsel proffered that there were two witnesses present who would testify for the defense. Noting that "it's been over three months" and that the State had "plenty of time to get [its] witnesses," the court denied the State's request. The State then *nol prossed* the charges and Appellant immediately asserted his right to a speedy trial.

On January 23, 2017, the State obtained an indictment in the Circuit Court for Washington County charging Appellant with the original four charges, including the two felony charges that had been previously dismissed by the district court. On February 2, 2017, defense counsel entered her appearance and, on March 16, 2017, Appellant filed a Motion to Dismiss the charges, arguing that the State sought to circumvent the ruling of the district court. On March 29, 2017, the State filed a written opposition to the motion, arguing that dismissal was not an available sanction as the State did not act to circumvent Maryland Rule 4-27l(a), *i.e.*, the 180-day requirement for trials to commence in circuit court.

A hearing on the Motion to Dismiss was held on April 18, 2017. Defense counsel repeated arguments that the State acted to circumvent the district court's authority by *nol prossing* the remaining misdemeanor charges and then obtaining indictments on the original four charges in circuit court. The prosecutor accepted defense counsel's factual averments and relied on the written opposition as the response to defense counsel's legal argument. Following the hearing, the court (Boyer, J.), denied the Motion to Suppress by written order.

On May 16, 2017, appearing before the Honorable Judge Kenneth Long, Appellant entered a guilty plea to unlawful possession of a shotgun in violation of Public Safety Article § 5–205, *i.e*. possession of a shotgun after having been convicted of a disqualifying crime, conditioned on the preservation of the right to challenge the denial of his Motion to Dismiss the charges upon appellate review.

Appellant was sentenced to three years' incarceration, with all suspended in favor of two years' supervised probation. The instant appeal followed.

DISCUSSION

Appellant's sole contention on appeal is that "[t]he circuit court erred in denying his Motion to Dismiss the charges where the State acted with the purpose of circumventing the district court's ruling that there was not good cause for a postponement." According to Appellant, "The State requested a postponement because it failed to subpoena witnesses," and the district court "rightly deemed the inaction of the prosecution inexcusable and, finding no good cause for the postponement, denied the State's request." Appellant

maintains that, when the State refiled the original charges by indictment in the circuit court two months later, Md. Rule 4–271(b) "was implicated." Applying *State v. Price*, 385 Md. 261 (2005), Appellant contends "that dismissal is the appropriate sanction where the State requests a postponement of trial, the trial court does not find good cause for the request and denies it, and the State acts to circumvent that ruling by dismissing the charges and obtaining a new charging document." Appellant urges this Court to hold that the circuit court erred in denying his Motion to Dismiss.

The State responds that the circuit court properly exercised its discretion by denying Appellant's Motion to Dismiss the charges. The State asserts that the charges were re-filed in the circuit court and the district court has "no authority" over circuit court matters. Therefore, the State maintains, it "could not have had the purpose of circumventing the authority" of the district court. The State also argues that *Price*, *supra*, is inapplicable because, as Appellant concedes, the 180-day requirement of Rule 4–271(a) was not violated. Finally, the State responds that, unlike *Price*, the instant appeal is not "opening the door to widespread evasion" and, therefore, the circuit court's ruling should be affirmed.

"The Sixth Amendment to the United States Constitution provides that, '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial.' Similarly, Article 21 of the Maryland Declaration of Rights provides: '[t]hat, in all criminal prosecutions, every man hath a right . . . to a speedy trial.'" *State v. Brown*, 355 Md. 89, 109, n.5 (1999).

Md. Code Ann., Crim. Proc. § 6–103(a)(1) governs trial dates in the circuit court and requires that "the date for a criminal matter . . . shall be set within 30 days after the earlier of: the appearance of counsel; or the first appearance of the defendant . . . ." Pursuant to subpart (a)(2), a trial date may not be later than 180 days after the aforementioned events.

Md. Rule 4–271(a) discusses rules applicable to trial dates in circuit court. Rule 4–271(b) discusses rules governing trial dates in the district court. "[B]ased on the plain language of Rule 4–271, only proceedings in the circuit court—not the district court—trigger the 180-day clock." *White v. State*, 223 Md. App. 353, 374 (2015).

"Decisions about whether to dismiss charges and whether to re-file charges are uniquely within the State's broad prosecutorial authority." *State v. Ferguson*, 218 Md. App. 670, 680 (2014). Pursuant to Md. Rule 4–247(a), "'the State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a *nolle prosequi* on the record in open court.' Entry of a *nol pros* 'is generally within the sole discretion of the prosecuting attorney, free from judicial control and not dependent upon the defendant's consent.'" *Ferguson*, 218 Md. App. at 680 (citing *Ward v. State*, 290 Md. 76, 83 (1981)).

"Ordinarily, where criminal charges are *nol prossed* and identical charges are refiled, the 180-day time period for commencing trial, as mandated by § 6–103(a) and Rule 4–271(a)(1), begins to run anew after the refiling." *State v. Huntley*, 411 Md. 288, 293 (2009) (citations omitted). "[T]he new charges have a life of their own. *** The *nol-prossing* of initial charges, therefore, is not an occasion for skepticism or suspicion. *** [I]t is a legitimate and accepted way of doing prosecutorial business." *Baker v. State*, 130

Md. App. 281, 288 (2000).

However, there was a two-pronged exception articulated in *Curley v. State*, 299 Md. 449 (1984), which provides that, "[i]f . . . it is shown that the *nol pros* had the purpose or the effect of circumventing the requirements of [the Maryland speedy trial statute and rule], the 180-day period will commence to run with the arraignment or first appearance of counsel under the *first prosecution*." *Baker*, 130 Md. App. at 289 (quoting *Curley*, 299 Md. at 462). Accordingly, a *nol pros* of charges must not have the purpose or the necessary effect of circumventing the requirements of the speedy trial rule under Maryland law.

In the instant case, we have a scenario where charges brought in the district court are later dismissed and *nol prossed* after the State's request for a continuance was denied for lack of good cause. The charges were then refiled in the circuit court. There are several distinctions in the instant appeal that should be addressed in light of Appellant's arguments. First, Appellant articulates a speedy trial analysis, citing *State v. Hicks*, 285 Md. 310 (1979), and the 180-day rule; however, the 180-day rule is inapplicable to district court proceedings. Therefore, any "clock" that would be of concern would begin ticking with the appearance of counsel or the first appearance of the defendant in *circuit court*, whichever is earlier. *White, supra.* Appellant does not contend that there is a speedy trial issue with the State's filings in circuit court alone. Therefore, we hold that there are no speedy trial issues pursuant to Maryland statutes or rules and it is unnecessary to engage in a *Curley* analysis, as discussed, *supra*. Consequently, we also hold that Appellant's contention as to "opening the door to widespread evasion" is also inapplicable as the instant case does not

concern speedy trial issues.

Furthermore, Appellant's contention that Rule 4–271(b) is implicated because there was no "good cause" for the State's *nol pros* of the charges in district court and that the State's refiling of all original charges in circuit court was a method for circumvention of the district court's authority is misguided. Rule 4–271(b) concerns trial dates in the district court only. Although Appellant's charges were initially brought in district court, Appellant contests the refiling of the charges by the State in the circuit court, which is not governed by Rule 4–271(b). Therefore, we hold that subpart (b) of Rule 4–271 is inapplicable to the instant case.

Accordingly, we hold that the circuit court properly denied Appellant's Motion to Dismiss.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.