UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1281

September Term, 2015

MAURICE IGNACIO RAMOS

v.

STATE OF MARYLAND

Berger,
Arthur,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: May 27, 2016

Appellant, Maurice Ignacio Ramos, was tried and convicted of assault in the second degree by a jury in the Circuit Court for Prince George's County (Wallace, J.). He was ultimately sentenced to a term of ten years in prison with all but two years suspended. The trial court ordered appellant to complete a term of two years on probation upon release. The instant appeal was filed on July 21, 2015 and appellant raises the following question for our review, which we quote:

> Did the court below err by denying appellant's pre-trial motion to dismiss the charge of assault in the second degree?

FACTS AND LEGAL PROCEEDINGS

On January 3, 2014, appellant and his girlfriend, Pherrin Fields, were involved in a physical altercation at the Days Inn Hotel in Prince George's County, Maryland. According to Fields, while a passenger in a vehicle driven by appellant, she told him that she wanted to end their relationship, whereupon he stopped the vehicle in an isolated area, dragged Fields from the car and began punching and kicking her. Fields stated that she was able to escape, first re-entering the car and then fleeing to the Days Inn.

Appellant was originally arrested and charged, on January 3, 2014, in the District Court of Maryland, with disturbing the peace, false statement, resisting arrest (common law) and failure to obey. On February 6, 2014, the State filed a document in the district court entitled "Charging Document Information - Addendum," adding Count Five, assault in the second degree, to the charges to be tried. The document contained a certificate of service stating that it was mailed to appellant, who was out on bail.

On March 20, 2014, appellant requested a jury trial; consequently, on March 26, 2014, his case was transferred to the Circuit Court for Prince George's County. The State filed a "Motion for Appropriate Relief" on August 20, 2014 asking the court to address the absence of Count Five, the charge of second degree assault, from the listed charges scheduled to be tried in the circuit court. On appellant's trial date, December 15, 2014, the circuit court determined that appellant had not been served with the Addendum adding Count Five. The trial, however, proceeded on the other four charges that resulted in a mistrial.

On January 20, 2015, appellant was served with the Addendum. On March 23, 2015, appellant's counsel filed a motion to dismiss the charge of assault in the second degree based on a violation of the statute of limitations. Appellant's pretrial motion was denied at trial on May 11, 2015, wherein the circuit court rendered the following decision:

> In the district court, a defense may be tried one, on an information; two, on a statement of charges; or three, on a citation. The charging document in this case was an information. It says 'charging' in its title. Charging document, information-addendum. At the bottom of the very first page again, Criminal Information.
>
> And it bears that same title (inaudible) on the next page which includes a certificate of service for February 6, 2014 . . . .
>
> * * *
>
> Additionally, we have, in the circuit court file, a copy of the district court case history which shows that, on February 6, 2014, it's listed as 14-02-06, year-month-day, but it shows February 6, 2014 a copy of Criminal Info filed by SAO . . . .

> So what's required is that it be filed. And there are requirements of the Rules as to it being served by summons or warrant. But, the Statute of Limitations only requires that it be filed and subsequent service of that charge is not an issue with regard to limitations.
>
> And I find that, having been filed on February 6, 2014, which is 33 days after the alleged incident, it has been charged. It is within the Statute of Limitations.

At the conclusion of the trial, the court granted appellant's motion for judgment of acquittal on the four previously filed charges and the jury returned a verdict of guilty on the fifth count, assault in the second degree. Appellant seeks review of this ruling.

DISCUSSION

Appellant contends that he was not actually served with the Addendum that added Count Five, the second degree assault charge, until January 20, 2015. Consequently, maintains appellant, the State failed to comply with Maryland Rules 4–211 and 4–212, resulting in the untimely service of the charge of assault in the second degree and, hence, violation of the one-year statute of limitations. Appellant cites a lack of "facts established on the record" to illustrate that the Addendum was properly filed in the district court. In denying his motion to dismiss the charge of assault in the second degree, appellant argues that the trial court erred.

The State responds that the trial court properly denied the motion to dismiss because the record provides two instances of documentation that the Addendum was properly filed

in district court on February 6, 2014. Furthermore, the State, citing *Reed v. Sweeney*,[1] asserts that, "[u]nlike statutes of limitation in some other states, the Maryland statute does not link the commencement of an action to service of process upon the defendant." This distinction between commencement of action and service of process, the State argues, permits the properly filed action in the district court to comply with the statute of limitations, thereby rendering valid the trial court's dismissal of appellant's motion to dismiss.

"Maryland retains the common law meaning of assault." *Pryor v. State*, 195 Md. App. 311, 335 (2010) (citing MD. CODE ANN., CRIM. LAW § 3–201(b); *Christian v. State*, 405 Md. 306, 316–22 (2008)). Second degree assault is a misdemeanor[2] and generally governed by Md. Code Ann., Crim. Law § 3–203. Subsection (b) provides:

> Except as provided in subsection (c) of this section, a person who violates subsection (a) of this section is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $2,500 or both.

The statute of limitations for misdemeanors is generally one year, which we construe to require that the prosecution of such offenses must commence within one year from the date that the misdemeanor accrues. MD. CODE ANN., CTS. & JUD. PROC. ("CJ") § 5–106(a). However, "if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection . . . [t]he State may institute a

[1] 62 Md. App. 231, 237 (1985).

[2] Notwithstanding statutory exceptions that are inapplicable to the instant case.

prosecution for the misdemeanor at *any time* . . . ." CJ § 5–106(b)(1) (Emphasis supplied). *See Davis v. State*, 18 Md. App. 378, 383–84 (1973) (holding that a one-year statute of limitations did not apply to bar prosecution for the offense of obtaining money under false pretenses, for which confinement in the penitentiary could be imposed upon conviction.

In the case *sub judice*, the charge at issue, second degree assault, is an offense for which confinement in the penitentiary, *i.e.*, "imprisonment not exceeding 10 years" could be imposed. Accordingly, the State "may institute a prosecution for the misdemeanor at any time . . . ." CJ § 5–106(b)(1). Although neither appellant nor the State has cited this statutory provision, patently, the commencement of the prosecution for second degree assault is not constrained by the one-year statute of limitations. Therefore, the trial court did not err in denying the motion to dismiss the second degree assault charge for violation of the one-year statute of limitations.

Assuming, *arguendo*, that the one-year statute of limitations for commencement of prosecution for the offense of second degree is applicable, we find persuasive our holding in *State v. Mars*, 39 Md. App. 436 (1978), wherein this Court, in quoting AMERICAN JURISPRUDENCE, stated:

> The statute of limitations runs from the time the offense is committed until the prosecution is commenced, unless some intervening act occurs to interrupt it. If the finding of an indictment or the filing of an information is the first step in a criminal case, the prosecution is commenced by the finding and return of the indictment or the filing of the information, and the running of the statute is thereby stopped. But when, as is usually the case, there are preliminary proceedings, the prosecution is

> commenced and the statute is tolled at the time a complaint is laid before a magistrate and a warrant of arrest is issued. . . .

Id. at 439 (quoting 21 AM. JUR. 2D *Crim. Law* § 161 (1995)).

Although, in the case *sub judice*, there was no arrest warrant or indictment filed in connection with the case, at the latest, commencement of prosecution against appellant occurred at his first trial on December 15, 2014. Accordingly, even if commencement of the prosecution were required, by law, to occur within one year of January 3, 2014, we conclude that in the instant case, it did.

Appellant further argues that he was not properly served with the Addendum to the Charging Document until January 20, 2015. Service of a charge, however, is distinct from the filing of a charge. Although appellant is correct, in citing Md. Rule 4–212(c), that the law requires proper *service* of the charging document upon the accused, no such requirement is imposed with respect to the *filing* of the charges. Md. Rule 4–211 governs the filing of a charging document and subsection (c) permits to the State's Attorney to "file an information as permitted by Rule 4-201." As the trial court articulated in the May 11, 2015 transcript excerpt, *supra*, the State filed, as permitted by Md. Rule 4–211(c), an information addendum to the charging document. As the circuit court noted, the district court docket reflected that the State filed the Addendum on February 6, 2014.

For the foregoing reasons, we hold that the trial court did not err in denying appellant's motion to dismiss the charge of second degree assault.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.