

**IN THE
COURT OF SPECIAL APPEALS OF MARYLAND**

SEPTEMBER TERM, 2005

No. 02736

KEVIN TREMAINE STODDARD

vs.

STATE OF MARYLAND

**ON APPEAL FROM
THE CIRCUIT COURT FOR BALTIMORE COUNTY**

BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant was charged in Baltimore County under a 17-count indictment with crimes related to a series of break-ins that took place at two apartment houses. Although there was only one indictment, it listed in its counts nine separate burglaries that took place at eight different apartments on six different days, over a period of time beginning September 4, 2004, through November 12, 2004.

Appellant pled guilty to one count of the indictment (count 13), a charge of first degree burglary, and the State entered *nolle prosequi* as to all the remaining counts.

On or about October 24, 2005, the Appellant filed a petition to expunge all the counts to which the State had entered *nolle prosequi*. The State filed an answer opposing expungement of *any* of the counts on the ground that since the defendant had pled guilty to one count of the indictment, that none of the other counts of the indictment could be expunged. A hearing was held on the petition on January 19, 2006, at which the Appellant conceded that the counts arising from the same incident as the count to which Mr. Stoddard pled guilty could not be expunged (i.e., counts 14 and 15), but that the remainder of the counts should be expunged. (TR 3). The Honorable Patrick Cavanaugh denied the petition without giving an explanation, but apparently based his decision upon the State's position that all the counts of the indictment amounted to one act (i.e., criminal unit). It is from that adjudication that appeal is brought.

QUESTION PRESENTED

Did the Court err by denying the petition for expungement on the ground that all counts of the indictment were one criminal unit, although the crimes alleged took place at different times and in different places, and involved different victims?

STATEMENT OF THE FACTS

Mr. Stoddard was charged with seven counts of first degree burglary, two counts of fourth degree burglary, seven counts of theft under \$500, and one count of possession of drug paraphernalia, all under one indictment. All charges stemmed from a series of burglaries of various

apartments in two buildings. Mr. Stoddard pled guilty to count 13 of the indictment in exchange for the State entering *nolle prosequi* as to the remaining 16 counts. Counts 13, 14 and 15 all arose from the same incident, which was a burglary at Apartment 2101, 402 Campus View Drive, Baltimore County on or about November 12, 2004. The burglaries alleged in the remaining counts all took place on different days than did that alleged in count 13, and at different apartments.

A summary of the counts of the indictment is helpful:

Counts 1 and 2: 402 Campus Drive, Apartment 2104, on October 9, 2004 (first degree burglary and theft under \$500);

Counts 3 and 4: 402 Campus Drive, Apartment 2310, on October 18 and 24, 2004 (first degree burglary and theft under \$500);

Counts 5 and 6: 402 Campus Drive, Apartment 2106, on October 18 and 24, 2004 (first degree burglary and theft under \$500);

Counts 7 and 8: 412 Campus Drive, Apartment 6102, on October 25, 2004 (first degree burglary and theft under \$500);

Counts 9 and 10: 402 Campus Drive, Apartment 2211, on October 25, 2004 (first degree burglary and theft under \$500);

Counts 11 and 12: 402 Campus Drive, Apartment 3308, on October 25, 2004 (first degree burglary and theft under \$500);

Counts 13 - 15: 402 Campus Drive, Apartment 2101, on November 12, 2004 (first degree burglary, theft under \$500, and possession of paraphernalia);

Count 16: 402 Campus Drive, Apartment 2204, on November 4, 2004 (fourth degree burglary);

Count 17: 402 Campus Drive, Apartment 2204, on September 4, 2004 (fourth degree burglary);

Mr. Stoddard's guilty plea as to count 13 was accepted by the Honorable Vicki Ballou-Watts, and he was subsequently sentenced to 90 days in the Baltimore County Detention Center.

Mr. Stoddard then petitioned to have all the nol prossed counts expunged pursuant to Maryland Rule 4-504, and Section 10-105 of the criminal Procedure Article. The State answered by opposing the petition on the ground that “[t]he Criminal Procedure Article, Section 10-105 of the Annotated Code of Maryland does not allow for the expungement of records if a judgment of guilty is entered *as to any count*.” [sic] (Emphasis added).

At the hearing on the petition, however, the State argued that the series of burglaries was one act, and that’s why they were all listed in the same indictment. (TR 5). Upon hearing that argument, the Court denied the petition without further clarification or statement, or any further argument.

ARGUMENT

I.

THE COURT WAS CLEARLY ERRONEOUS BY DENYING THE PETITION FOR EXPUNGEMENT ON THE GROUND THAT ALL COUNTS OF THE INDICTMENT WERE ONE CRIMINAL UNIT, ALTHOUGH THE CRIMES ALLEGED TOOK PLACE AT DIFFERENT TIMES AND IN DIFFERENT PLACES, AND INVOLVED DIFFERENT VICTIMS.

A person charged with a crime is, with certain exceptions, entitled to an expungement for any charge for which a *nolle prosequi* is entered. WEST’S ANN. MD. CODE, CRIM. PROC. § 10-105 (2002 & Supp.). If a person is not entitled to expungement of one charge of a unit, the person is not entitled to expungement of any other charge in the unit. WEST’S ANN. MD. CODE., CRIM. PROC. § 10-107(b) (2002 & Supp.). A unit is defined as “two or more charges, other than one for a minor

traffic violation, aris[ing] from the same incident, transaction, or set of facts.” WEST’S ANN. MD. CODE, CRIM. PROC. § 10-107(a) (2002 & Supp.). If the defendant meets the requirements of the statute, then he or she is entitled to an expungement. *Jackson v. State*, 124 Md. App. 59, 720 A.2d 1210 (1998). If the defendant is entitled to an expungement, then the court shall grant the expungement. WEST’S ANN. MD. CODE, CRIM. PROC. § 10-105(e)(2) (2002 & Supp.).

Because the Court apparently denied the petition solely on the ground that all counts of the indictment amounted to the same unit (the same incident, transaction, or set of facts), then for the sake of this argument, we assume that the defendant otherwise was entitled to an expungement. The first question, then, is whether grouping the charges in one indictment, in and of itself, necessarily means that the crimes so charged amount to one unit (incident, transaction, or set of facts). The answer is no.

Maryland Rule 4-203(a) provides:

Multiple Offenses. Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

The provisions of this rule are disjunctive. All that is required for a group of charges to be in the same indictment is that they are similar in character. They may also be in the same indictment if they were from the same act or transaction, or part of a continuing scheme, but it is not the case that simply charging all counts in one indictment means that the State is charging the defendant with a scheme or continuing course of conduct, or that the charges all arose from the same act or transaction.

From the face of the charging document it is clear that the crimes charged were not all from the same act or transaction. Generally, the indictment in the case at bar groups the charges together by transaction. That is, burglary and theft as to each apartment. And although some of the crimes alleged took place on the same day in the same building, it is clear that each time the defendant burglarized a different apartment, he committed a separate criminal unit, as defined by CP § 10-107(a).

The next question, then, is whether “continuing scheme” has the same meaning as “same incident, transaction, or set of facts” (or “act,” as the State put it). Again, the answer is no.

Section 10-107 of the Criminal Procedure Article does not, however, preclude expungement if the counts to which *nolle prosequi* has been entered and the count upon which judgment is entered are part of a continuing criminal scheme. Rather, it refers only to “the same incident, transaction, or set of facts.” Nowhere are the two phrases equated.

Although distinct incidents, the burglaries and thefts were close in time and place, and could be construed, *arguendo*, as a continuing scheme (although not charged as such). Just as one criminal act may give rise to numerous criminal charges, more than one criminal act over time may constitute a criminal scheme, and such may certainly be charged as a separate count. For example, several acts over time may result in one charge of sexual child abuse. *See, Cooksey v. State*, 359 Md. 1, 752 A.2d 606 (1999).

Although in his denial of the petition, the Court did not shed much light on the bases for his denial, the only argument presented by the State was that all the charges in the indictment were all one act, and that’s why they were all on one indictment. (TR 5). The only reasonable inference, then, is that such was the basis of the denial; there were no allegations that there were any defects

in the petition, or that there were any other grounds for denial. There is, however, nothing in the indictment that would lead one to believe that the State considered the charges to be all one act. To the contrary, they are clearly not considered to be one act, but a series of separate acts.

Even if the counts are looked at as a continuing scheme because they were close in time and place, “continuing scheme” is not tantamount to “same act or transaction.” In the first instance, the legislature did not put the phrase “continuing scheme” in CP § 10-107; they used the phrase “act or transaction.” Secondly, the Maryland Court of Appeals distinguished between these two terms in Maryland Rule 4-203 with respect to the content of indictments when it used the phrase “the same act or transaction” and the phrase “transactions connected together or constituting parts of a common scheme or plan” disjunctively. There is clearly a material distinction between “continuing scheme” and “same act or transaction;” otherwise, part of Maryland Rule 4-203 would be surplusage.

The State’s position that all the charges in an indictment are one act, precluding expungement of any charges simply because it is the same indictment with other charges, would lead to the result that the State would have the power to abrogate and render nearly meaningless the provisions of CP §§ 10-101, *et seq.* This could be accomplished simply by putting as many charges in one indictment as they could under the rule.

CP §§ 10-101, *et seq.*, in conjunction with *Jackson*, stands for the proposition that if a defendant meets certain criteria, he or she is entitled to an expungement, and if so entitled, the court *shall* grant it. In the case at bar, it is undisputed that Mr. Stoddard met the conditions for an expungement as to all but three counts of the indictment, unless all such counts were part of the same unit as that to which he pled guilty. Although the on the face of the indictment the counts that Mr. Stoddard sought to have expunged were entirely separate incidents from the one to which he pled

guilty, the Court found, apparently, that they were all part of the same act, and that Mr. Stoddard was therefore not entitled to an expungement. Such a finding is contrary to the facts, to the content of the indictment, to the letter and spirit of the expungement statute, and to the rule governing content of an indictment. To make its finding, the Court would necessarily have had to determine that a group of crimes close enough in time and place such that they could amount to a continuing scheme, equated to the crimes being the same “incident, transaction, or set of facts.” There is not support for that in the law.

Similarly, a group of counts do not become the same “act,” simply by virtue of being in the same indictment. If that were the case, the State could affect whether a defendant would be entitled to an expungement simply by changing the grouping of counts, and charging under one indictment when it would be just as permissible to charge under more than one. This would abrogate the applicable statute and rule, and usurp the power of the legislature. It would also lead to varying and unfair results from jurisdiction to jurisdiction.

CONCLUSION

WHEREFORE, appellant, Kevin Tremaine Stoddard, respectfully request that this Court reverse the adjudication of the Circuit Court for Baltimore County denying his petition for expungement, and remand the case to the said court with instructions to grant the petition as to counts 1 through 12, and counts 16 and 17 of the indictment.

Respectfully submitted,

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