

Circuit Court for Wicomico County
Case No. C-22-CR-19-000406

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 509

September Term, 2021

KELSEY PAIGE HULL

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 30, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by a jury in the Circuit Court for Wicomico County of theft of over \$100,000 and embezzlement, Kelsey Paige Hull, appellant, presents for our review a single question: whether the court erred in permitting the State to amend the criminal information following Ms. Hull's motion for judgment of acquittal at the close of the evidence. For the reasons that follow, we shall affirm the judgments of the circuit court.

In the criminal information, the State contended that Ms. Hull "did steal property of Canada Dry Potomac Corporation having a value of \$100,000 or more," and "did being a fiduciary, fraudulently and willfully appropriate money, that said fiduciary [held] in fiduciary capacity, contrary to the requirements of her trust responsibility." At trial, the prosecutor, in her opening statement, stated in pertinent part: "For ten years Kelsey Hull was employed by Canada Dry in Salisbury . . . until August of 2018. For the last three years of her employment there, she was the warehouse and operations manager. In the last nine months of her employment, until August of 2018, she embezzled a minimum of \$150,000." Defense counsel subsequently recognized during his own opening statement that Ms. Hull "started working at Canada Dry at . . . 18 years of age," and that she had worked at "the Canada Dry location . . . in Salisbury." Defense counsel further indicated that Ms. Hull's defense would be that her employer's "accounts" were "commingled" and "mixed up," and that "this corporation [was] using this young lady as their scapegoat to cover up for their greater sins." During trial, the State elicited testimony from witnesses who identified Ms. Hull's employer as "Canada Dry of Salisbury," "Canada Dry, Delaware Valley," "Canada Dry," and "Canada Dry Delaware Valley and Potomac." The State also

offered into evidence documents that identified the employer as “Canada Dry Distributing Co. of Wilmington” and “Canada Dry Salisbury.”

Following the close of the evidence, Ms. Hull moved for judgment of acquittal on the ground that “[n]one of the witnesses . . . ever spelled out what the corporate entity name is that’s required,” and “on the embezzlement [count], nowhere in the [c]riminal [i]nformation . . . does it state any corporation at all.” The State subsequently moved pursuant to Rule 4-204¹ to amend the theft count of the criminal information to identify the victim as “Canada Dry Delaware Valley [and] Potomac.” Ms. Hull objected on the ground that “[n]o one . . . testified whether that is one entity, two entities, also trading as, also known as, so [as] to protect [Ms. Hull] from double jeopardy.” The court subsequently granted the State’s motion on the grounds that “there’s been evidence concerning the fact that [Ms. Hull] was employed by the Canada Dry Corporation,” and “there’s been multiple different references to the . . . exact corporate identity.” The court further stated that “identity of the victim of a theft is not essential and material to the offense of theft, and the State may amend the charging document without consent of the [d]efendant.” Ms. Hull was subsequently convicted of the offenses.

Ms. Hull contends that, for the following reasons, the court erred in granting the State’s motion:

There was absolutely no evidence about the corporate structure of “Canada Dry” – even assuming it was a corporation – or whether there were multiple

¹Rule 4-204 states: “On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required.”

independent businesses incorporating the brand name “Canada Dry” as opposed to a single entity with multiple subsidiaries or a single company with multiple locations. The amendment adding “Delaware Valley” to the name of the company was a matter of substance inasmuch as it denoted an entity different from – and in a different location than – [the other entities named at trial]. Moreover, the various companies referred to throughout the trial spanned Pennsylvania, Delaware, New Jersey, and Maryland. There was no assurance that [Ms. Hull] would not face future charges by other companies, in any of these other jurisdictions, or by the “owner” of “Canad[a] Dry,” who resided in Pennsylvania.

We disagree. The Court of Appeals has long held that when the “changing [of] the name of the owner of . . . property constituting the subject matter of [a] crime charged” does not change any “of the essential elements of the offense,” the change constitutes “a change in form and not substance,” and “result[s] in no prejudice to the rights of the accused.” *Corbin v. State*, 237 Md. 486, 490 (1965) (citation omitted). Also, Ms. Hull does not cite any authority that requires the State, when alleging in a criminal information that property was owned by a corporation, to prove that the corporation exists, or to give a defendant assurance that no other state will charge the defendant with offenses relating to the property. Finally, the Court of Appeals stated in *Corbin* that “a criminal charge must so characterize the crime and describe the particular offense so as to give the accused notice of what he is called upon to defend[.]” *Id.* Here, it is clear from defense counsel’s opening statement that at the time that trial commenced, Ms. Hull was aware that she was called upon to defend the theft and embezzlement of money from her employer. Hence, the court did not err in granting the State’s motion to amend the criminal information.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**