

Circuit Court for Prince George's County  
Case No. JA-21-0141

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 0831

September Term, 2022

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IN RE: J.T.

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Beachley,  
Tang,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Moylan, J.

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Filed: September 11, 2023

\*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.

In the Circuit Court for Prince George’s County sitting as a juvenile court, a delinquency petition was filed against J.T. At an adjudicatory proceeding held on April 26, 2022, J.T. was found to be involved in a robbery and in a second-degree assault. At a disposition hearing on June 2, 2022, J.T. was ordered to undergo individual counseling with a trauma component; to attend school; to participate in a mentoring program; and to carry out 100 hours of community service. He was given 12 months of probation. On this appeal, he raises the single contention:

### **Contention**

**That the juvenile court erroneously allowed the State to amend the juvenile petition to change the identity of the robbery victim without J.T.’s consent.**

### **Factual Background**

J.T. was one of two juvenile assailants who, on the late afternoon of May 12, 2021, perpetrated an unarmed robbery of two 14-year-old victims. The two young victims were Caleb and Hurson. The two young victims were companions. Between 5 and 6 P.M. that afternoon, the two boys had gone to a nearby elementary school to play basketball. Due to construction at the school, however, they could not play basketball and set out to walk back home. On that homeward journey, they were approached by a group of five juveniles, among whom were J.T. and the second ultimate assailant. What happened to Caleb and Hurson at the hands of the two assailants was virtually indistinguishable.

Caleb was the first to testify. J.T. confronted Caleb and tried “to fight” Caleb in order to take his phone, but Caleb pushed J.T. off. J.T. then hit Caleb three times and took his drawstring bag, along with deodorant and a hat that was inside the bag. Caleb testified

that while this was happening to him, “another individual was robbing Hurson.” That other individual was wearing a “black hoodie” and had on a face mask. J.T., by contrast, was not wearing a mask. After the encounter, Caleb went home and told his father what had happened. The father called the police. Before the encounter, Caleb had never seen J.T. before. On June 4, 2021, Caleb was shown a photo array but could not identify J.T.

The other 14-year-old victim, Hurson, also testified. When asked by the police to describe the two assailants, Hurson testified that “one of them, I remember one of them had like a white T-shirt and I think black jeans. But the other one, I can’t.” According to Hurson, the other assailant had no “distinctive features,” be it clothing or hair. Hurson also described the attack on Caleb. He testified that the other assailant started “pushing” Caleb and then “Caleb hit him.” Describing his own attack, Hurson said that the boy who approached him initially told him to hand over his own cellphone. Hurson did so. The assailant asked Hurson to unlock the phone and to log out of Apple ID. Hurson complied. Hurson had not seen either assailant since the encounter. On June 10, 2022, Hurson was shown a photo array containing J.T.’s photo but was unable to identify him.

Detective Robert Conto investigated the attack. Based on still photos taken from the school’s surveillance video, he learned that “the description of the suspect matched the description of a previous armed robbery,” which led him to an Instagram account that the detective learned belonged to J.T. Detective Conto obtained a search warrant for J.T.’s home. When the warrant was executed, J.T. was in his room. The shoes that one of the

assailants was wearing matched the shoes that were found in J.T.’s room. They were also the shoes that J.T. was pictured wearing on Instagram.

J.T. did not testify in his own defense. Neither did he put on any defense. He has not challenged the legal sufficiency of the evidence to support the finding of his involvement.

### **The Amendment**

At the outset of the trial, the State moved to amend the charge against the appellant by changing the name of the victim of the robbery from Hurson R. to Caleb H. The appellant objected. The objection was exclusively on the ground that changing the name of the robbery victim constituted a change in the substance of the crime charged. The objection was:

[DEFENSE COUNSEL]: Yes, Your Honor. We would object to all changes in this petition. The State did not previously make me aware of this and we were not on notice that Caleb R., sorry, not Caleb R., Caleb H., would be the named victim. And it changes, it changes the theory of the case. Of my case.

[THE COURT]: Ah.

[DEFENSE COUNSEL]: Because the charges are against a different victim.

(Emphasis supplied.) The appellant elaborated:

[THE COURT]: It says, with leave of court, a delinquency petition or citation may be amended at any time before the character, oh I’m sorry, before the conclusion of the adjudicatory hearing, except that, if the amendment changes the character of the offense charged, the consent of the respondent is required.

And you say, without explanation so far, you know, that it changes the character of the-

[DEFENSE COUNSEL]: Well, it changes the offense. Whether he is accused of assaulting one person versus assaulting another. That's a completely different person that he is now being accused of assaulting.

(Emphasis supplied.) Judge Peter K. Killough overruled the defense objection and granted the State's motion to amend:

Court finds that the amendments do not change the character of the case in any way shape or form. If it is only the form. Whoever owned the property, the amendment goes to conforming what the evidence is that whoever owned the property in question on those particular cases. So the Court will grant the motion.

(Emphasis supplied.)

#### **Rule 11-414(a) And Rule 4-204**

An amendment to the charging document in the Juvenile Court is controlled by Maryland Rule 11-414(a), which reads in pertinent part:

**(a) Delinquency Petitions and Citations.** With leave of court, a delinquency petition or citation may be amended at any time before the conclusion of the adjudicatory hearing, except that, if the amendment changes the character of the offense charged, the consent of the respondent is required.

(Emphasis supplied.)

Rule 11-414 is the Juvenile Court counterpart of Maryland Rule 4-204 which controls the amending process for an indictment or other charging document in the criminal court:

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. If amendment of a charging document reasonably so

requires, the court shall grant the defendant an extension of time or continuance.

(Emphasis supplied.)

### **The Caselaw**

The masterful opinion by Chief Judge Orth for this Court in Gyant v. State, 21 Md. App. 674, 321 A.2d 815 (1974) is the absolute bible for the amending of an indictment under Maryland law. What is now Rule 4-204 was taken without substantive change from Rule 714, which was the version of the rule then before the Court in Gyant.

Judge Orth pointed out that Maryland Rule 714 “had its genesis in the common law,” 21 Md. App. at 675, as he analyzed at length the history of the rule through Blackstone’s Commentaries on the Laws of England through statutory amendments in Maryland in 1852 and in 1906. The Gyant opinion, id. at 679, pointed to Hawthorn v. State, 56 Md. 530, 535 (1881), in which the Court of Appeals held out that although matters of substance in an indictment may not be changed without the approval of the defendant, amendments are not forbidden “in matters of form which are not matters of substance.” Hawthorn went on, 56 Md. at 535, “In matters of form, however, which are not matters of substance, an amendment may be made by the Court, or under its direction, at any time before the commencement of the trial.” *See also* Dennis v. State, 213 Md. 115, 131 A.2d 285 (1957); Gray v. State, 216 Md. 410, 140 A.2d 643 (1958).

In the Gyant case itself, the defendant was found guilty of an armed robbery at Jeter’s Diner and Carryout in Baltimore City. Inside the diner at the time were two sisters, Barbara Pittman and Teresa Rodd, both employees of the diner. Barbara Pittman was at the

cash register. When she opened the cash register to give the defendant change, he pulled out a handgun and demanded the money in the register. Barbara Pittman turned over the money. Teresa Rodd in the meantime had been cleaning the grill.

When the case came up for trial, the indictment was amended, over defense objection, by substituting as the name of the robbery victim from Teresa Rodd to that of Barbara Pittman. The defendant claimed that the amendment amounted to a change of substance and should not have been permitted without his approval. Chief Judge Orth's opinion, 21 Md. App. at 685, made it clear that changing the named victim of the robbery from one person to another was only a change of form and not one of substance:

The real question, however, is whether the amendment changed the character of the offense charged. We think it clear that it did not. The count in question charged robbery with a deadly weapon both before and after the amendment. The amendment simply changed the victim of the robbery. Both the person named as the victim originally and the person named as the victim by the amendment were present at the time of the commission of the crime. Under the rationale of Gray v. State and Dennis v. State, the amendment clearly was permissible.

(Emphasis supplied.)

Gyant also pointed out that “[w]hat we meant by ‘form’ and ‘substance’ under which (a) of Rule 714 may be gleaned from Corbin v. State, 237 Md. 486, 206 A.2d 809 (1965).” The Corbin case involved the grand larceny of an automobile. At the outset of the trial, the State moved to amend the indictment by changing the ownership of the stolen automobile from Morris M. Silverberg to Merit Music Service, Inc. Corbin contended that:

[T]he amendment of the indictment by the State constituted a change of the person and not merely a correction of the name of the person.

237 Md. at 489. In rejecting the contention, the Supreme Court of Maryland then explained:

Under the circumstances as presented here, changing the name of the owner of the property constituting the subject matter of the crime charged was a change in form and not substance, since none of the essential elements of the offense was changed, and therefore the amendment was properly allowed and resulted in no prejudice to the rights of the accused.

237 Md. at 490. (Emphasis supplied.) The Supreme Court further explained:

As to what constitutes substance and what is merely formal in an indictment, it may be said that all facts which must be proved to make that act complained of a crime are matters of substance, and that all else – including the order of arrangement and precise words, unless they alone will convey the proper meaning – is formal.

237 Md. at 489-90. (Emphasis supplied.) *See also* Shannon v. State, 468 Md. 322, 326-29, 227 A.3d 220 (2020); Tapscott v. State, 106 Md. App. 109, 133-36, 664 A.2d 42 (1995); Thompson v. State, 181 Md. App. 74, 97-102, 955 A.2d 802 (2008) (An amendment to an indictment charging sexual abuse from a date “sometime between May and August” to November and changing the site of the abuse from the grandparent’s home to the defendant’s apartment was only a change of form and not one of substance.).

We see no error in the decision of the trial court to permit the amendment of the charging document in this case.

**JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.**