Circuit Court for Wicomico County
Case Nos. C-22-CR-20-000106 (Church)
and C-22-CR-20-000066 (Foskey)

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1227 and 1140

September Term, 2020

STATE OF MARYLAND

v.

ALVIN ERIC CHURCH, JR.

STATE OF MARYLAND

v.

GARY FOSKEY

Fader, C.J.,
Nazarian,
Murphy, Joseph F., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 2, 2022

In separate incidents, Alvin Eric Church, Jr. and Gary Foskey were charged in the District Court of Maryland for Wicomico County with various traffic offenses. Mr. Foskey was charged with driving under the influence of a controlled dangerous substance, driving without a license, and related charges. Mr. Church was charged with driving on a suspended license, exceeding the posted speed limit, and related offenses. After separate appearances, both prayed jury trials and their cases were transferred to the Circuit Court for Wicomico County. Each moved to dismiss his case for lack of a charging document. The circuit court granted each of their motions and dismissed each case on the ground that the State had not filed the appropriate charging documents. The State appeals both dismissals and, for the same reasons, we reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

A. Mr. Foskey.

On October 2, 2019, Maryland State Trooper Lee Ramsay pulled Mr. Foskey over during a routine traffic stop and issued citations to him for driving under the influence of a controlled dangerous substance and driving without a license, among other charges. Trooper Ramsay used the Maryland Uniform Traffic Citation form ("MUTC" or "citation form") to issue the citations. The information was uploaded to the district court's traffic processing center ("DCTPC" or "processing center"), then used to create an "e-citation" available for viewing by the district court via the "Judge's Portal."

On January 28, 2020, Mr. Foskey appeared in district court and prayed a jury trial. On October 23, 2020, he filed a motion to dismiss. He argued that no citation or charging document had been filed in either the district court or circuit court because the data uploaded to the Judge's Portal did not qualify as a charging document under Maryland Rule 4-211, which provides that "[t]he original of a citation shall be filed in district court promptly after its issuance and service." Md. Rule 4-211(a). The State responded on November 2, 2020 that a charging document had been filed because the traffic citations were filed into the processing center as "e-citations," and that the e-citations should be considered filed for purposes of Rule 4-211(a) because the Chief Judge of the district court is granted discretion to establish record-keeping procedures. The State argued as well that under Transportation Article § 26-407, citation forms are not required to be filed "in" the district court, but only "with" the district court. The State conceded, though, that Mr. Foskey's citation form was not available in the "Judge's Portal" or in the District Court filing system.

The circuit court heard arguments on November 17, 2020. Defense counsel argued that the original citation form was not filed in the District Court and that because the docket sheet did not include any of the requirements under Transportation Article § 1-605, it did not qualify as a charging document for purposes of Rule 4-211:

> Your Honor, the argument is that, although we were provided it in discovery, that's not what was filed. What was filed is the docket sheet, what was filed does not meet the — no, in my motion I said simply that the original citation was not filed and it should be dismissed.

In the State's response, the State referred to several of the transportation, several portions of the Transportation Article to justify why filing the citation wasn't actually required.

However, in reviewing those sections it becomes clear that that doesn't justify the original citation, the fact that the original citation was not filed. Specifically, in the State's response it indicates that the Court's article, Section 1-605, says that the citation is sufficient if it is filed with the District Court.

But that's not all that that section says. It says, it also says that it must include the information required under the laws of this state.

Now, the Transportation Article goes in depth about what is required to make a citation. 26-201 says that a traffic citation issued to a person under this section shall contain. And it has a long list of what's required. That, you know, if it's a payable violation, which five of these, or let me just . . . five of these were payable citations. That the person can, within 30 days the person must pay the full amount of the fine, and the remainder of C and D, if it's a must-appear, that they have to appear to court, that it's a summons, it must include the violation charged, it must include — and ultimately they all have to be executed by a peace officer, or signed.

It also must indicate that you have the right to stand trial. You can request a trial or request a guilty with, it has a laundry list of notifications that need to be on there, and requirements.

And the docket sheet does not meet those requirements. And so for that reason, it does not, the form of the traffic citations provided in 1-605 is insufficient because it does not contain the information required under the laws of the State.

It doesn't have a space for a signature on the docket sheet. And it doesn't also give us the opportunity basically to challenge, it seems to be as if basically they, you know, the functional equivalent of e-mailing someone with, you know, this is what the charges are and this is the named person, the person's name.

And so it's insufficient for that reason.

The State responded that filing a citation through the electronic system was sufficient because the e-citation, rather than the citation form, is the original citation for purposes of Rule 4-211(a). The court rejected this argument:

> So the State's contention is not that the serious traffic docket or traffic dockets are the citation, rather the State is contending that the e-citations are citations under Maryland law.
>
> And I have previously ruled that the e-citation is not the original charging document in this case because the original charging document is the Maryland Uniform Traffic Citation which was received as Defendant's 1. The e-citations are not available public[]ly. The Uniform Traffic Citation is not even available to the judges. It's not filed with the District Court. It's not accessible to the Court in District Court. It's not accessible to the parties. It's not accessible to the public. It is none of, it does not meet with a definition of being filed with the Court. Or any common sense interpretation of what it is to be filed with the Court.

At the conclusion of the hearing, the circuit court granted the motion to dismiss and found the "e-citation" did not comply with the guidelines for a proper citation and did not comply with Rule 4-211(a):

> An e-citation is not a charging document under the Maryland law. Which is why the officer issues a uniform traffic citation. And that is the only charging document that was issued in this case. And it has never been filed. And while I understand that it's, I am not in a position to be able to justify with any further data or information how an e-citation meets the definition of a charging document, as far as I can see no charging document is filed in this case.

On November 25, 2020, the court issued an opinion and order expanding its reasoning. The opinion recognized that the citation form is retained solely by law enforcement officers and is not available to the parties unless requested**:**

> The State concedes that a copy of the MUTC is not transmitted to any system controlled by the District Court under the current practice. Instead, a copy of the MUTC is retained solely by law enforcement agencies. Data from that MUTC is transmitted to the District Court pursuant to the E-Tix system. MUTCs are available only through a law enforcement agency upon request of a party.

The court then noted that the State had not provided a copy of the MUTC issued to Mr. Foskey at the time of the traffic stop and that no copy of the MUTC was in the State's file.

B. Mr. Church

On August 31, 2019, Wicomico County Sheriff's Deputy Dylan Miller issued Mr. Church traffic citations for driving with a suspended license and exceeding the posted speed limit, among other charges, after pulling him over for speeding during a routine traffic stop. Deputy Miller used the same MUTC forms to issue Mr. Church's citations, which were then uploaded to the processing center as "e-citations," available for viewing by the district court via the "Judge's Portal."

On February 11, 2020, Mr. Church appeared in District Court and prayed a jury trial. On September 4, 2020, he filed a motion to dismiss, outlining the same arguments as Mr. Foskey. The State responded on November 17, 2020 and the circuit court heard arguments on December 22, 2020. The State asked for a stay on the motion to dismiss because the Attorney General's Office had appealed another case (likely Mr. Foskey's but never said) on the same issue and, in the interim, the State was working with the Rules Committee to amend Rule 4-211(a) to resolve the problem. Mr. Church responded that an amendment to Rule 4-211(a) likely would not apply retroactively and that staying the motion would cause a speedy trial issue. The court denied the motion to stay, reasoning

"that the appropriate posture is to allow the State to appeal and then to delay, potentially, the trial based upon the outcome of the appeal."

At the conclusion of the hearing, the circuit court granted the motion to dismiss and found that the "e-citation" did not comply with the guidelines for a proper citation or with Rule 4-211(a) and that granting the motion to dismiss would be consistent with his previous rulings:

> It appears to me consistent with my previous rulings that there is a significant deficiency in the current e-ticket system for -- under the requirements of the transportation article, the definition of a charging document in the Maryland Rules controlling citations, and it seems apparent that in this case there is no summons for the defendant to appear in the District Court or the Circuit Court that's filed with or in the court.
>
> There is no copy of the citation that was issued to the defendant containing the requirements of citation. The citation that presumably was issued to the defendant but which we couldn't ever demonstrate was issued to the defendant, nor is such a copy available to the Court, even though its accessed through the Judges' portal or the traffic dockets.
>
> The e-citations are not in any way -- or certainly don't comply with all of the requirements of a citation, in other requirements as well including the signature requirement. It should be the -- the citation should be that with which was issued to the defendant which is the language of the Rules and so forth. So I will grant the motion to dismiss and file a written report -- a written Opinion.

On January 7, 2021, the court issued an opinion and order expanding its reasoning and following the identical analysis it articulated in its order in Mr. Foskey's case.

The State filed a timely notice of appeal in both cases.

C. Rule 4-211(a) Is Amended.

On March 30, 2021, the Court of Appeals issued an order adopting amendments to Maryland Rule 4-211(a), effective July 1, 2021. These amendments clarified that data uploaded to the district court satisfy the citation requirement: "The original of a citation shall be filed in District Court promptly after its issuance and service. *Electronic data documenting the citation uploaded to the District Court by or on behalf of the peace officer who issued the citation shall be regarded as an original of the citation*." (Emphasis added). The Minutes from the Court of Appeals's Standing Committee on Rules of Practice and Procedure reveals that the amendment was grounded on concerns, raised by Chief Judge John Morrisey, about the implementation of Rule 4-211(a):

> The Chair[1] said that Chief Judge Morrissey raised a concern about Rule 4-211 (a) for the Committee to consider shortly before the meeting. Chief Judge Morrissey explained that there is an electronic citation system for traffic cases which transmits data to the District Court every night. He said that he was informed that a defendant noted an appeal of a traffic citation and argued that an electronic record of a citation transmitted to the District Court did not constitute an original under Rule 4-211 (a) (See Appendix C). He pointed out that electronic records will only become more common and requested that the Rule be amended to state that the original citation includes the electronic version.
>
> The Chair said that the specifics of the proposal can be worked out in the Style Subcommittee, but suggested section (a) be amended to add, "An electronic version of a citation issued by a law enforcement officer shall be regarded as an original." Chief Judge Morrissey confirmed that the Chair's suggestion would address the issue.

[1] "The Chair" in these minutes refers to the Chair of Rules Committee, the Honorable Alan Wilner.

The Committee's 206th Report, which transmitted the proposed amendment to Rule 4-211(a) (along with others) to the Court of Appeals for consideration, confirms that it was intended to resolve this precise question:

> Rule 4-211. Rule 4-211 (a) provides that an offense shall be tried only on a charging document which, in the District Court, includes a citation when authorized by statute. Rule 4-211 (a) requires that the original of a citation shall be filed in the District Court promptly after its issuance and service. Nearly all traffic citations are now issued in electronic form, and, although the driver receives a paper copy, it is the electronic data that is uploaded to the District Court. *A question has arisen as to whether that electronic data qualifies as a charging document*. *See State v. Cornish* (Circ. Ct. for Wicomico Co., Case No. C-22-CR-000033) attached as APPENDIX C. *The proposed amendment to Rule 4-211 (a), requested by the Chief Judge of the District Court, is intended to resolve that issue.*

(Emphasis added).

The Court of Appeals adopted the proposal and, in a Rules Order, ordered that the change "shall take effect and apply to all actions commenced on or after July 1, 2021 and, insofar as practicable, *to all actions then pending*[. . . .]" Court of Appeals Standing Committee on Rules of Practice and Procedure, Rules Order, 206th Report, at 3 (2020). (emphasis added).

We supply additional facts as necessary below.

II. DISCUSSION

Although these appeals have not been consolidated, both raise the identical core issue: the State contends that the circuit court's dismissals of Messrs. Church's and Foskey's charges should be reversed because these appeals were pending at the time the

amendment to Rule 4-211(a) took effect, and under that amended Rule the "e-citation" qualifies as a charging document.[2] Messrs. Church and Foskey both respond that the amendment to Rule 4-211(a) applies only to citations issued after July 1, 2021, and can't resurrect the dismissal of their charges. We agree with Messrs. Church and Foskey that the "e-citation" did not qualify as a charging document at the time the circuit court dismissed his charges. But we also agree with the State that because their cases were both pending in this Court at the time the amended Rule took effect, it applies to both cases and cures the defect.

When reviewing a motion to dismiss, the appropriate standard of review "'is whether the trial court was legally correct[,]'" so we review the circuit court's decision *de novo*. *D.L. v. Sheppard Pratt Health Sys. Inc.*, 465 Md. 339, 350 (2019) (*quoting Blackstone v. Sharma*, 461 Md. 87, 110 (2018)).

The amended Rule 4-211(a) clarifies that the electronic information uploaded by officers to the District Court will be regarded as, and serve as the functional equivalent of, an original citation, and thus satisfies the requirements for a proper charging document. According to the Court of Appeals's Rules Order, the amended Rule "shall take effect and apply to all actions commenced on or after July 1, 2021 and, insofar as practicable, *to all actions then pending*[. . . .]" Rules Order at 3. Messrs. Church's and Foskey's citations and

[2] The State and Messrs. Church and Foskey all phrase their Question Presented as: "Does the recent amendment to Rule 4-211 make clear that the electronic data uploaded to the District Court Traffic Processing Center is a charging document upon which a case can be tried in the District Court?"

dismissals predate the amended Rule's effective date, but the State filed its notices of appeal challenging the dismissals before July 1, 2021. The question, then, is whether this qualifies as "an action then pending," and we agree with the State that it does.

The question arises in an unusual posture in that the State doesn't commonly get to appeal adverse decisions in criminal cases. But it's not at all unusual for the law to change after a judgment of conviction and for the changed law to apply to cases pending on appeal. A recent example is *Kazadi v. State*, 467 Md. 1 (2020), which overruled *Twining v. State*, 234 Md. 97 (1964) in holding that trial courts must, on request, ask prospective jurors certain questions about their willingness or ability to comply with jury instructions on fundamental principles of the presumption of innocence, burdens of proof, and a defendant's right not to testify. The new rule announced in *Kazadi* applied to cases pending on appeal, even if judgment was entered before the *Kazadi* decision was announced, so long as the instructions had been requested at trial. *See, e.g.*, *State v. Ablonczy*, 474 Md. 149 (2021); *Hayes & Winston v. State*, 247 Md. App. 252 (2020). The same principles apply in civil cases too, across contexts, especially where the change in the law is procedural rather than substantive. *See, e.g.*, *Estate of Zimmerman v. Blatter*, 458 Md. 698, 706–07 (2018); *Rochkind v. Stevenson*, 471 Md. 1, 38–39 (2020) (*quoting Kazadi*, 467 Md. at 47) ("Since *Daubert* is a new interpretation of Rule 5-702, our decision today 'applies to this case and any other cases that are pending on direct appeal when this opinion is filed, where the relevant question has been preserved for appellate review.'"); *see also Turner v. Kight*, 406 Md. 167, 189 (2008) (definition of "pending" claims for purposes of federal

supplemental jurisdiction statute included claims pending on appeal). The change in this case is quintessentially procedural—all that changed is the form of transmission that the operative Rule recognizes. The elements of the offenses are the same, and the information contained in the e-citation is identical. What's less common about this case is that the change in the law benefits the State, which isn't commonly the appellant, and resurrects a set of charges that had been dismissed. But the Court of Appeals's order adopting the amendment to Rule 4-211(a) provided specifically that it was meant to apply "insofar as practicable, to all actions then pending" on July 1, 2021, the effective date, and Messrs. Church's and Foskey's cases were still pending on appeal on that date.

Accordingly, the amended Rule applies to Messrs. Church's and Foskey's citations, and we reverse the dismissals of their charges for a defective charging document and remand for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY IN CASE NO. C-22-CR-20-000106 REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY IN CASE NO. C-22-CR-20-000066 REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.