

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD J. McLAUGHLAN,	§	
	§	No. 396, 2012
	§	
Defendant-Below,	§	Court Below: Superior Court of
Appellant,	§	the State of Delaware, in and for
	§	New Castle County
v.	§	
	§	Cr. I.D. No. 1104021773
STATE OF DELAWARE,	§	
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: December 12, 2012

Decided: December 19, 2012

Before **HOLLAND, BERGER, and JACOBS**, Justices.

ORDER

This 19th day of December 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Edward McLaughlan, the defendant-below (“McLaughlan”), appeals from his conviction of four counts of Rape Second Degree after a Superior Court jury trial. On appeal, McLaughlan argues that, by dismissing three of the eight identically-worded Rape Second Degree counts in his indictment, the Superior Court violated his right under the Delaware Constitution to be indicted by a grand

jury.¹ He also claims that the dismissal improperly allowed the petit jury to decide which evidence related to which of the remaining five counts of the indictment. Lastly, he argues that, by allowing the State to decide which counts to dismiss, the Superior Court made an impermissible substantive change to the indictment. We find no merit to McLaughlan's claims and affirm.

2. In May 2011, a grand jury indicted McLaughlan on five counts of Rape Second Degree, after which a trial resulted in a hung jury. The grand jury then reindicted McLaughlan on eight, identically-worded counts of Rape Second Degree. Five counts corresponded to five separate alleged incidents that occurred at 1214 Melontree Court, and three counts corresponded to three separate alleged incidents that occurred at McLaughlan's trailer. The new indictment did not link any specific incident to any specific count.

3. McLaughlan moved to dismiss the new indictment, claiming a lack of specificity and an appearance of prosecutorial vindictiveness. The Superior Court dismissed three of the counts and permitted the State to identify which alleged incidents corresponded to which of the remaining five counts. The five counts of Rape Second Degree were then tried before a jury.

4. Before trial, McLaughlan's counsel acknowledged that the five remaining counts corresponded to the five alleged incidents that occurred at 1214

¹ DEL. CONST. art. I, § 8.

Melontree Court. During the State's closing argument, the prosecutor also specifically tied each alleged incident to a specific count. The jury found McLaughlan guilty of four of the five counts of Rape Second Degree. This appeal followed.

5. The issue presented is whether the dismissal of three of the eight counts of Rape Second Degree infringed on McLaughlan's constitutional right to be indicted by a grand jury under *Mott v. State*.² We review a claim of an infringement of constitutional rights *de novo*.³ On appeal, McLaughlan first claims that, by dismissing three counts in the new indictment, the Superior Court impermissibly allowed the petit jury to invade the role of the grand jury by deciding which evidence related to which count. McLaughlan also argues that, by permitting the State to decide which counts would be dismissed, the Superior Court made improper substantive changes to the new indictment.

6. McLaughlan's first argument lacks merit. Before trial, McLaughlan's counsel knew that the trial would proceed on the five counts associated with the five alleged incidents at 1214 Melontree Court. During the State's closing statement, the prosecutor also specifically tied each alleged incident to a specific count. The jury, in finding McLaughlan guilty on only four of the five counts, also

² 9 A.3d 464, 465 (Del. 2010).

³ *Pierce v. State*, 911 A.2d 793, 796 (Del. 2006).

demonstrated its ability to confine its consideration of specific facts to each of the respective alleged incidents to which they related.

7. Nor is there merit to McLaughlan's second claim. The Superior Court dismissed three counts to eliminate any possible appearance of vindictive prosecution. By doing that, the court did not substantively change the new indictment.⁴ It was irrelevant which specific counts in the new indictment were dismissed, so long as the total number of Rape Second Degree counts was reduced to the number of counts in the original indictment. McLaughlan was therefore properly indicted by a grand jury for all counts for which he was prosecuted.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ *Cf. Johnson v. State*, 711 A.2d 18, 26 (Del. 1998) ("The Delaware Bill of Rights permits grand jury indictments to be amended as to form, but not as to substance.") (internal citation omitted).