DISTRICT COURT WASHINGTON CO OK
JEAN DAVIS, COURT CLERK
FILED
JUL 31 2025
BY DEPUTY

IN THE DISTRICT COURT OF WASHINGTON COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v. Case No. CM-2024-301

FLYNN ROBERT MARTIN,

Defendant.

OBJECTION TO AMENDED INFORMATION

COMES NOW the Defendant, Flynn Robert Martin, appearing pro se, [1] and respectfully objects to the "INFORMATION (1st Amended as to correct name of Controlled Dangerous Substance)," filed December 31, 2024, on the ground that it was filed in violation of the mandatory post-plea requirements of 22 O.S. § 304, resulting in material prejudice to the rights of the Defendant and rendering the filing void ab initio.

[1] Defendant files this Objection subject to, and without waiving, the pending *Defendant's Motion to Disqualify the Honorable Judge Jared Sigler*, filed May 14, 2025. See *State v. Martin*, No. CM-2024-301 (Wash. Cnty. Dist. Ct. May 14, 2025) (Def.'s Mot. to Disqualify) (Doc. #1084975032). Defendant has previously stated on the record that no further court appearances will be made until that motion is sustained or stands overruled of record. See *id.* (Def.'s Obj. to Further Proceedings & Req. for Immediate Ruling on the Papers) (Doc. #1085057485) (filed May 23, 2025).

I. INTRODUCTION

This Objection challenges the procedural and legal validity of the "INFORMATION (1st Amended as to correct name of Controlled Dangerous Substance)" filed on December 31, 2024 (hereafter, **Amended Information**). By styling the pleading as a "correction," the State implicitly abandoned the original charge while substituting a materially different substance—an essential element of the offense under 63 O.S. § 2-402(A).

Under 22 O.S. § 304, a post-plea amendment may take effect only (1) on order of the court and (2) after the court finds the change can be made without material prejudice to the defendant. The State failed to satisfy either requirement. Because no order authorized the amendment and no non-prejudice finding was made, the Amended Information is void ab initio and cannot support further proceedings.

The pleading is doubly void because it charges possession of "tetrahydrocannabinolis *[sic]*", a term absent from every controlled-substance schedule in Oklahoma law. An Information that alleges a substance not defined by statute fails to state a public offense and confers no jurisdiction. [2]

Having abandoned the original theory and failed to perfect the substitute, the prosecution has left the record without a single operative Information. The resulting notice vacuum violates both Oklahoma's pleading code (22 O.S. §§ 402(3), 409(6)–(7)) and the due-process guarantee articulated in *Parker v. State*. [3] More than a year after arraignment, Defendant remains bound over for trial without a valid charge to answer—structural prejudice that requires the Amended Information be stricken and this prosecution brought into statutory compliance, if it is to proceed at all.

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[2] *Potts v. State*, 72 Okla. Crim. 91, 113 P.2d 839, 842–43 (1941).
[3] *Parker v. State*, 1996 OK CR 19, ¶¶ 18–19, 917 P.2d 980, 987–88 (Okla. Crim. App. 1996).

II. CHRONOLOGY OF RELEVANT EVENTS

On July 5, 2024, the State filed the original "INFORMATION," initiating this prosecution with a single-count misdemeanor charge under 63 O.S. § 2-402. That charging document (hereinafter, the **Original Information**) remained the operative pleading at the time of Defendant's arraignment on July 8, 2024, where he entered a plea of not guilty.

On December 31, 2024, the State filed the Amended Information. That post-plea filing has never been acknowledged by judicial order and forms the subject of the present Objection.

On January 10, 2025—the final day for trial readiness filings—then-defense counsel filed a Motion to Dismiss [4] referencing a substance and statutory schedule not clearly identified in either the Original or Amended Information. That same day, the court struck the previously scheduled jury trial. As of the date of this filing, more than six months later, no new jury setting has been entered.

III. STATUTORY FRAMEWORK

A. Mandatory Judicial Prerequisites for Post-Plea Amendments Under 22 O.S. § 304

Oklahoma law strictly limits the State's ability to amend an Information once the defendant has entered a plea. Title 22 O.S. § 304 provides:

> "An information may be amended in matter of substance or form at any time before the defendant pleads, without leave, and may be amended after plea on order of the court where the same can be done without material prejudice to the right of the defendant; no amendment shall cause any delay of the trial, unless for good cause shown by affidavit."

[4] *State v. Martin*, No. CM-2024-301 (Wash. Cnty. Dist. Ct. Jan. 10, 2025) (Def.'s Mot. to Dismiss) (Doc. #1083872865)

By its plain terms, § 304 distinguishes between pre-plea and post-plea amendments. Before plea, the State may amend without leave of court. But once a plea has been entered, the statute imposes two mandatory and jurisdictional prerequisites: (1) A court order authorizing the amendment; and (2) A judicial determination that the amendment will not materially prejudice the rights of the defendant. [5]

These two conditions operate in tandem. The court's order is the legal manifestation of its finding that the proposed change will not materially impair the defendant's ability to prepare or present a defense. Without both, the State is without power to alter its charging theory post-plea, and the district court lacks authority to proceed on the amended pleading.

These requirements are jurisdictional safeguards. They protect the defendant's settled reliance on the charging theory as it existed at the time of plea and guard against unfair tactical shifts by the prosecution. When the State files an amended Information after plea without first obtaining the required order and non-prejudice determination, the amendment is void ab initio, incapable of vesting jurisdiction or supporting adjudication. The statutory text admits no exceptions, implied compliance, or retroactive validation.

B. Change to the Named Substance Is a Substantive Amendment Within the Meaning of § 304

The State titled its December 31, 2024 filing as a "First Amended Information as to correct name of Controlled Dangerous Substance." By its own caption, the State concedes that the amendment altered the identity of the alleged substance forming the basis of prosecution.

[5] *Johnson v. State*, 97 Okla. Crim. 52, 257 P.2d 841, 843 (Okla. Crim. App. 1953) (post-plea amendment valid only if "on order of the court" and "without material prejudice").

Under Oklahoma law, this change is material. Title 63 O.S. § 2-402(A)(1) prohibits possession of a "controlled dangerous substance" as defined by statute. The identity of the specific substance is therefore essential to the completion of the offense. It defines not only the prohibited conduct, but also the applicable schedule and statutory classification.

This interpretation is confirmed by Oklahoma's uniform jury instructions, which require the State to prove beyond a reasonable doubt that the defendant knowingly possessed "the controlled dangerous substance of [Name of Substance]." [6] The bracketed instruction compels the State to specify the exact substance alleged and confirms that substance identity is a verdict-controlling element.

Accordingly, where the State amends its pleading for the stated purpose of correcting the name of the controlled substance, it is necessarily making a substantive post-plea change to the charging theory. That type of amendment triggers the mandatory procedural requirements of 22 O.S. § 304 and cannot take legal effect without judicial approval.

C. Statutory and Constitutional Baselines for Charging Clarity and Notice

Oklahoma law requires that a criminal Information clearly articulate the offense alleged so that a defendant may understand the charge and prepare a defense. This notice obligation arises under both the United States and Oklahoma Constitutions. [7]

To implement this constitutional guarantee, Oklahoma's pleading code imposes specific requirements for the sufficiency of an Information. The code requires that an information be "direct and certain as to the particular circumstances of the offense… necessary to constitute a

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[6] Instruction No. 6-6, OUJI-CR(2d) (DRUG OFFENSES: POSSESSION - ELEMENTS). The instruction's bracketed element obliges the State to name the specific substance as part of its prima facie case.

[7] U.S. Const. amends. VI, XIV; Okla. Const. art. II, §§ 7, 20; *Parker v. State*, 1996 OK CR 19, ¶¶ 18–19, 917 P.2d 980, 987–88 (Okla. Crim. App. 1996).

complete offense," and that the charge be pled with enough clarity "to enable a person of common understanding to know what is intended" and with "such a degree of certainty as to enable the court to pronounce judgment upon a conviction." [8]

These statutes are designed to ensure that the charging document both (1) identifies a public offense as defined by law and (2) does so with sufficient clarity to provide meaningful notice to the accused. Stability in the charging theory is an essential feature of that framework. Where conflicting Informations appear in the record—particularly where they allege distinct substances or statutory classifications—questions arise as to whether the defendant has received the type of singular, definite notice required by law.

In addition, the charging document must allege a substance or act that is actually prohibited by Oklahoma law. Where the named controlled dangerous substance does not correspond to any entry in the schedules defined by Title 63, the Information may fail to state a public offense under Oklahoma law.

IV. THE AMENDED INFORMATION IS VOID AB INITIO

A. Filed Without the Order and Non-Prejudice Finding Required by 22 O.S. § 304

The record contains no court order authorizing the State's December 31, 2024 amendment, nor any corresponding finding that the change could be made without material prejudice to the defendant. These omissions are jurisdictional failures.

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[8] Okla. Stat. tit. 22, § 402(3) (2024): "The indictment or information must be direct and certain as it regards… (3) The particular circumstances of the offense charged, when they are necessary to constitute a complete offense." Okla. Stat. tit. 22, § 409(6)–(7) (2024): "The indictment or information is sufficient if it can be understood therefrom: (6) That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended; (7) That the act or omission charged as the offense is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction according to the right of the case."

Once a plea has been entered, a charging amendment may take effect only after the court affirmatively determines that the change will not prejudice the defendant and memorializes that determination in an order. In the absence of either act, jurisdiction to proceed under the amended pleading never vests.

No such order appears in the docket, and no minute entry reflects any judicial determination regarding prejudice. The amendment was thus filed outside the statutory framework and never acquired legal force. Oklahoma law does not permit post-plea amendments to bypass § 304's gatekeeping function and operate by inference or silent acquiescence.

Accordingly, the Amended Information is void ab initio. It confers no jurisdiction, is not subject to nunc pro tunc validation, and cannot serve as the operative charging instrument in these proceedings.

B. Fails to State a Public Offense

The Amended Information alleges possession of "tetrahydrocannabinolis," labeling it a Schedule II substance. The term appears nowhere in Oklahoma's controlled-substance schedules, which are exhaustively set out in 63 O.S. §§ 2-204 – 2-212. Because the alleged substance is not listed or otherwise defined by statute, the pleading omits a material element of the offense described in 63 O.S. § 2-402—namely, that the item possessed be a "controlled dangerous substance."

An Information that fails to allege a statutorily defined crime does not confer subject-matter jurisdiction. [9] The defect is facial and incurable: a court cannot supply a missing statutory element by inference, and the State cannot prosecute conduct that the Legislature has not criminalized.

[9] *Potts v. State*, 72 Okla. Crim. 91, 113 P.2d 839, 842–43 (Okla. Crim. App. 1941); *Parker v. State*, 1996 OK CR 19, 19, 917 P.2d 980, 987 (Okla. Crim. App. 1996); *Kelley v. State*, 31 Okla. Crim. 51, 236 P. 915, 917–18 (Okla. Crim. App. 1925) (information omitting statutory element "fails to state a public offense" → dismissal).

Accordingly, the Amended Information is independently void ab initio for failure to state a public offense.

V. RESULTING MATERIAL PREJUDICE

A. Presumptive Prejudice When § 304 Safeguards Are Bypassed

Under 22 O.S. § 304, a post-plea amendment to the Information is prohibited absent a prior judicial determination that the change can be made "without material prejudice to the right of the defendant." The statute does not authorize post-plea amendment by default or waiver. It establishes a precondition: unless and until the court finds no material prejudice, no amendment may be made. This finding is a jurisdictional prerequisite to altering the charging theory after plea.

Where no such determination appears in the record—as is the case here—prejudice is presumed by operation of law. The defense, having already pleaded and begun trial preparation under the original charge, is legally entitled to rely on the stability of that charging theory. A silent, unilateral change introduced outside statutory procedure necessarily impairs those reliance interests and triggers the very prejudice § 304 is designed to prevent. The failure to obtain a judicial finding of non-prejudice renders the amendment legally defective, and the prejudice it occasioned is not subject to rebuttal or retroactive cure.

B. The State Abandoned the Original Information Without Lawfully Perfecting Its Substitute

By captioning the December 31, 2024 filing as an "Amended Information as to correct name of Controlled Dangerous Substance," the State effectively disclaimed the charging theory advanced

in the Original Information. That act of correction—on its face—abandoned the original substance allegation and announced the State's intent to proceed on a materially different factual and statutory bases.

However, because the Amended Information was filed unilaterally—without a court order predicated upon a judicial finding of non-prejudice—it never acquired legal force. The State did not comply with 22 O.S. § 304, nor did it seek or obtain any ruling recognizing the amended charge. No minute entry reflects that the court has acknowledged the amendment; no order has been entered adopting it as controlling. Yet the State has never attempted to reinstate or clarify the original theory, either.

As a result, the case now proceeds without a valid charging instrument. The Original Information has been functionally abandoned. The Amended Information is void ab initio. What remains is a procedural vacuum—no operative theory of prosecution, no clear statutory basis, and no authoritative notice of the crime alleged. This is a structural failure that prejudices the Defendant at every turn and deprives the Court of jurisdiction to proceed.

C. Failure to Rearraign After a Substantive Amendment Deprived Defendant of Notice and Judicial Probable-Cause Review

The December 31, 2024 "Amended Information as to correct name of Controlled Dangerous Substance" represents a facially substantive change in the State's charging theory. By its own caption, the amendment displaces the controlled substance alleged in the Original Information and introduces a materially different allegation. Under Oklahoma law, such a change is not ministerial—it is substantive, and it triggers renewed procedural safeguards.

Chief among these is rearraignment. When the State alters a material element of the offense after plea, it must obtain leave of court under 22 O.S. § 304 and present the amended charge for judicial acknowledgment. At that point, the defendant must be formally rearraigned pursuant to 22 O.S. §§ 451–453. This ensures two essential protections: (1) that the amended charge rests on a judicial finding of probable cause, and (2) that the defendant is given clear notice of the new accusation and an opportunity to respond. [10]

Neither safeguard occurred here. The State unilaterally filed the Amended Information without seeking leave of court and without a finding that the change would not result in material prejudice. Because the procedural prerequisites were bypassed, no rearraignment followed. Defendant was never informed in open court of the amended charge, never asked to plead, and never afforded a forum to challenge probable cause under the altered theory.

Compounding this deprivation is the unexplained timing of the amendment itself. After nearly six months of pretrial proceedings based on the Original Information—including multiple court appearances and the setting of a jury trial—the State abruptly altered the substance of the charge without explanation. The record contains no motion, no affidavit, and no statement from the prosecution identifying the basis for the change or the factual predicate supporting it.

As a result, Defendant remains bound over for trial more than six months after the amendment was filed, yet he has never been called to answer to the new charge or advised of the State's underlying theory. The failure to re-arraign is a structural failure of notice, rooted in the State's decision to abandon its original theory without lawfully perfecting the substitute. This omission further confirms that the Amended Information is void and that no valid charge presently exists before the Court.

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[10] *Shiever v. State*, 94 Okla. Crim. 279, 234 P.2d 921, 923 (Okla. Crim. App. 1951); *Trent v. State*, 66 Okla. Crim. 302, 91 P.2d 790 (Okla. Crim. App. 1939); *Parker v. State*, 1954 OK CR 78, 11, 273 P.2d 778, 780 (Okla. Crim. App. 1954) (substantive post-plea amendment requires rearraignment and time to plead).

D. State's Written Response Adds a New Substance and Cites an Inapplicable Schedule

On February 26, 2025, the State filed a written brief. [11] In that filing, the State repeatedly referred to a substance identified as "tetrahydrocannibols"—a term not alleged in either the Original or Amended Information and not listed in any schedule of controlled substances under Oklahoma law.

To support this newly asserted term, the State cited and quoted 63 O.S. § 2-208, which enumerates Schedule III substances. This contradicts both the Original Information and the Amended Information, each of which alleges possession of a substance identified as Schedule II on its face.

The State has now advanced at least three separate substance names across the course of these proceedings, invoking two legally distinct schedules, without reconciling or explaining the discrepancies. No amended Information has been filed to align the charging instrument with the arguments presented in the State's brief, and no court order has ever clarified which version of the charge controls.

This inconsistency confirms that the statutory basis for the prosecution remains undefined. The introduction of an additional unscheduled substance with a contradictory legal framework cited in support thereof, further undermines charging clarity and reinforces that Defendant has been given no stable notice of the offense alleged.

[11] *State v. Martin*, No. CM-2024-301 (Wash. Cnty. Dist. Ct. Feb. 26, 2025) (State's Resp. to Mot. to Dismiss) (Doc. #1084269717)

E. Prejudice Is Structural and Irremediable

The defects identified above collapse the very framework necessary for any criminal prosecution to validly proceed. Without an operative Information—given the abandoned original, the unperfected and unauthorized amendment, and a subsequent brief introducing yet another inconsistent substance—the Defendant has remained bound by conditions of release, repeatedly compelled to appear before the Court, and threatened with sanctions, all while lacking the single, constitutionally mandated element of due process: a clear, lawful, and stable charge to answer.

No curative measure at this juncture can restore the time, resources, and strategic preparation irretrievably lost due to the shifting and invalid allegations advanced by the State. The prejudice suffered is structural, permeating the entire proceeding and fundamentally undermining the fairness and integrity of the process itself. The prosecution, by disregarding the mandatory safeguards of 22 O.S. § 304, has forfeited its jurisdictional foundation. To now overlook such fundamental failures would irreparably compromise the constitutional rights afforded to the Defendant and damage the integrity of the criminal justice system itself. The prejudice inflicted is not merely substantial—it is irreparable. The only appropriate and proportionate remedy under these exceptional circumstances is dismissal.

VI. PRAYER FOR RELIEF

WHEREFORE, Defendant Flynn Robert Martin respectfully requests that this Court enter an Order:

1. Declaring the "INFORMATION (1st Amended as to correct name of Controlled Dangerous Substance)," filed December 31, 2024, void ab initio for failure to comply with the mandatory requirements of 22 O.S. § 304 and for failing on its face to state a public offense;

2. Striking the void Amended Information from the record in its entirety;

3. Dismissing this prosecution, due to the structural and irremediable prejudice caused by the State's procedural and jurisdictional failures, or, in the alternative, strictly limiting any further prosecution to the Original Information filed on July 5, 2024, unless and until the State fully and properly complies with the statutory requirements of 22 O.S. § 304; and

4. Granting such other and further relief as the Court deems just, equitable, and necessary under the circumstances.

Respectfully submitted,

Flynn Robert Martin

Defendant, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2025, a true and correct copy of the foregoing **Objection to First Amended Information** was mailed to the Washington County Court Clerk with a request that, upon filing, a copy be placed in the mailbox of the Washington County District Attorney at the courthouse.

Flynn Robert Martin