IN THE DISTRICT COURT OF WASHINGTON COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v. Case No. CM-2024-00301

FLYNN ROBERT MARTIN,

Defendant.

DEMURRER TO ORIGINAL INFORMATION

COMES NOW the Defendant, Flynn Robert Martin, appearing pro se, and pursuant to 22 O.S. § 504(4), demurs to the Original Information filed July 5, 2024 on the ground that the facts stated do not constitute a public offense. In the alternative, Defendant demurs under 22 O.S. § 504(3) because the single count charges more than one offense. Arraignment proceeded on this instrument on July 8, 2024. Defendant does not concede that any other charging paper is operative. Defendant respectfully asks the Court to sustain this demurrer, declare the Original Information invalid and non-operative, and enter the statutory relief, including dismissal under 22 O.S. § 508 and discharge/exoneration under 22 O.S. § 509.

I. INTRODUCTION

The Original Information filed to initiate the proceedings in this case does not invoke jurisdiction because it fails, on its face, to identify a single, statutorily recognized controlled substance. The instrument describes the substance three different ways—its caption parenthetical reads "(AMPHETAMINE/OPIODS)," its count title reads "(AMPHETAMINE)," and its narrative alleges "AMPHETAMINE and/or OPIODS, said drug … Schedule II." The narrative's use of "and/or" to alternate between different substances, followed by a singular reference to "said drug," leaves the identity element unfixed and prevents the charge from stating one public offense with the certainty Oklahoma law requires.

Independently, the term "OPIODS" is not a listed identity anywhere in the Uniform Controlled Dangerous Substances Act. The schedules enumerate specific substances and classes, but they do not recognize "opiods" as a controlled substance. Because the identity of the controlled dangerous substance is an essential element that must match a statutorily enumerated listing, the pleading fails to state a public offense and cannot invoke this Court's power to proceed. In the alternative, alleging "amphetamine and/or opiods" while referring to a single "said drug" charges more than one offense in a single count. The demurrer should be sustained and the statutory remedies entered.

II. LEGAL STANDARD

An Information must allege every essential element of a single public offense in ordinary and concise language sufficient to identify the offense and provide fair notice. If an essential element is not alleged with legal certainty, the Information fails to state a public offense and does not

invoke jurisdiction.[1] A demurrer is the statutorily prescribed vehicle to attack a facially defective Information. It is a challenge that goes to the subject matter jurisdiction of the Court, it is non-waivable; it may be raised after arraignment, at trial, or even in arrest of judgment.[2]

The identity of the controlled dangerous substance is a material element that must correspond to a substance enumerated in the statutory schedules.[3] Oklahoma's Uniform Controlled Dangerous Substances Act codifies those schedules as follows: Schedule I; Schedule II; Schedule III; Schedule IV; and Schedule V.[4] If the named substance is not listed under the schedule alleged, the Information omits an essential element on its face and is demurrable.

The defendant may demur on the ground that more than one offense is charged or that the facts stated do not constitute a public offense.[5] A demurrer must be written, signed, filed, and must distinctly specify its grounds.[6] Once filed, the objections must be heard promptly, and the court must enter an order sustaining or overruling the demurrer.[7] If sustained, the judgment is final upon the Information and bars reprosecution unless the court directs that a new Information be filed; if no further prosecution is directed, the defendant must be discharged and bail exonerated.[8]

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[1] 22 O.S. §§ 401–409 (form and sufficiency requirements for indictments and informations).
[2] 22 O.S. § 504(4) (demurrer proper where "the facts stated do not constitute a public offense");
22 O.S. § 512 (lack of subject-matter jurisdiction and § 504(4) defects may be raised after arraignment, at trial, or in arrest of judgment).
[3] OUJI-CR 6-6 (identity of [Name of Substance] is an element); See also 63 O.S. § 2-101(11) (defining "controlled dangerous substance" by reference to Schedules I–V).
[4] 63 O.S. §§ 2-203, 2-204 (Schedule I), §§ 2-205, 2-206 (Schedule II), §§ 2-207, 2-208 (Schedule III), §§ 2-209, 2-210 (Schedule IV), §§ 2-211, 2-212 (Schedule V).
[5] § 504(3) (demurrer proper where "more than one offense is charged"); § 504(4), supra note 2.
[6] 22 O.S. § 505 (demurrer must be in writing, signed, filed, and distinctly specify grounds).
[7] 22 O.S. §§ 506–507 (court must hear demurrer and enter judgment sustaining or overruling).
[8] 22 O.S. §§ 508–509 (effect of sustaining; discharge/exoneration if further prosecution not directed).

III. GROUNDS FOR DEMURRER

A. Primary Ground — 22 O.S. § 504(4)

The Original Information is facially inconsistent and fails to allege a single public offense. In the caption parenthetical it recites "(AMPHETAMINE/OPIODS)," in the count title it states "(AMPHETAMINE)," and in the narrative it alleges "AMPHETAMINE and/or OPIODS, said drug … Schedule II." [9] These contradictions leave the identity element unfixed. The narrative in particular purports to alternate between two different substances by the phrase "and/or," yet then refers to "said drug" in the singular, obscuring which offense is actually charged and preventing the instrument from identifying one statutorily defined substance as required.[10]

Separately—and dispositively—the term "OPIODS" is not a statutorily recognized controlled dangerous substance in Oklahoma law. The word "opiods" as it appears on the face of the Information is not found anywhere in the Uniform Controlled Dangerous Substances Act as a listed substance or schedule entry.[11] Because the identity of the controlled substance is an essential element, and because the pleading does not allege a single substance that is actually enumerated under the schedule it invokes, the information fails on its face to state a public offense within the meaning of § 504(4).[12] The defect is jurisdictional and may be raised at any time.[13]

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[9] *State v. Martin*, No. CM-2024-301 (Wash. Cnty. Dist. Ct.) (July 5, 2024) (Original Information)
[10] 22 O.S. §§ 401–409, supra note 1; OUJI-CR 6-6, supra note 4.
[11] 63 O.S. §§ 2-203–2-212, supra note 5 (statutory schedules enumerate specific substances; no listing for "opiods").
[12] § 504(4), supra note 2; OUJI-CR 6-6, supra note 4.
[13] § 512, supra note 3.

B. Alternative Ground — 22 O.S. § 504(3)

In the alternative, the single count purports to charge more than one offense in the disjunctive while pointing to one "said drug." A single count may not charge multiple offenses.[14] Here, the charging language alternates between "amphetamine" and "opiods"—terms that are not interchangeable in substance or meaning—yet the narrative then collapses those alternatives into a singular referent ("said drug").[15] If "amphetamine" is intended, it is a specifically enumerated substance under Schedule II.[16] If "opiods" is intended, that term does not appear anywhere in the Uniform Controlled Dangerous Substances Act as a listed identity.[17] Alleging two different controlled substances in the alternative within one count, while referring to a single "said drug," renders the accusation duplicitous and prevents the charge from identifying one offense with the certainty required for notice and adjudication.[18]

IV. CONCLUSION

The Original Information is facially inconsistent and fails to identify a single, statutorily recognized controlled substance. Its caption, title, and narrative conflict; the narrative alternates between two different substances while referring to one "said drug"; and the term "OPIODS" is not a listed identity anywhere in Oklahoma's Uniform Controlled Dangerous Substances Act. Because the identity element is not fixed to one enumerated substance, the Information fails on its face to state a public offense within the meaning of 22 O.S. § 504(4). In the alternative, the

[14] 22 O.S. § 504(3), supra note 5
[15] Original Information (07/05/24), supra note 10 (caption "(AMPHETAMINE/OPIODS)"; title "(AMPHETAMINE)"; narrative "AMPHETAMINE and/or OPIODS, said drug …").
[16] 63 O.S. § 2-206 (Schedule II list includes amphetamine).
[17] 63 O.S. §§ 2-203–2-212, supra note 5 (no listing for "opiods").
[18] 22 O.S. §§ 401–409, supra note 1 (charging instrument must state a single offense with certainty sufficient for notice, adjudication, and unanimity).

single count purports to charge more than one offense in the disjunctive. Jurisdiction never vested, and further proceedings may not lawfully continue on this charging paper.

V. PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully prays that the Court enter an order as follows:

1. Sustain this demurrer pursuant to 22 O.S. § 504(4), and in the alternative under 22 O.S. § 504(3);

2. Declare the Original Information (07/05/24) invalid and non-operative;

3. Dismiss this prosecution without leave to refile pursuant to 22 O.S. § 508; or, alternatively, dismiss without leave to amend in this cause and direct that any further prosecution, if any, be initiated only by a new information that complies with law;

4. If the Court does not direct further prosecution, order that Defendant be discharged (if in custody), any bond be exonerated, any cash deposit be refunded, and all derivative process—including any outstanding bench warrant and associated forfeiture—be vacated and recalled, pursuant to 22 O.S. § 509; and

5. Grant such other and further relief as justice requires.

Respectfully submitted,

Flynn Robert Martin
Defendant, Pro Se