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

IN THE DISTRICT COURT OF WASHINGTON COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,
Plaintiff,

v.

FLYNN ROBERT MARTIN,
Defendant.

Case No. CM-2024-00301

DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION TO DISMISS
(Brought Pursuant to 22 O.S. § 504(4): Facial Demurrer to the Information)
(Defendant Appearing Pro Se)

Procedural Recap

Defendant was arrested on July 5, 2024, and initially charged with possession of a Schedule II controlled dangerous substance under 63 O.S. § 2-402. On September 5, 2024, the Oklahoma State Bureau of Investigation (OSBI) issued a Criminalistics Examination Report. On December 31, 2024, the State filed a First Amended Information, again citing 63 O.S. § 2-402, but this time alleging possession of a fictitious Schedule II substance: "tetrahydrocannabinolis"—a term not recognized under any Oklahoma statute or schedule.

Defendant's former counsel filed a Motion to Dismiss on January 10, 2025. The State filed its Response on February 26, 2025. A hearing on the motion, originally scheduled for March 4, 2025, was postponed due to defense counsel's illness and inability to proceed. Defendant has since been granted leave by the Court to represent himself pro se.

I. Correction and Clarification of Prior Motion

A. Formal Recantation & Procedural Clarification

Defendant formally recants and explicitly withdraws all arguments previously advanced by former counsel that went beyond the facial content of the Information. Specifically, Defendant now withdraws any prior reliance upon arguments related to chemical analysis or distinctions between cannabinoids (THCA vs. THC), administrative definitions under the

Defendant now withdraws any prior reliance upon arguments related to chemical analysis or distinctions between cannabinoids (THCA vs. THC), administrative definitions under the Oklahoma Medical Marijuana Authority (OMMA), federal agricultural statutes, and constitutional claims. These extraneous issues are immaterial to the instant jurisdictional challenge.

Defendant explicitly recants and withdraws former counsel's erroneous reference to "tetrahydrocannabinols" and the incorrect citation to Schedule III substances in the previously filed Motion to Dismiss, as these inaccuracies are immaterial, misleading, and irrelevant to the instant jurisdictional challenge.

Instead, Defendant explicitly asserts a facial demurrer to the Information pursuant to 22 O.S. § 504(4), on grounds that the Information, on its face, fails to allege facts constituting a public offense recognized under Oklahoma law. This defect is jurisdictional and subject to a demurrer as a pure question of law, requiring no evidentiary consideration.[1]

Defendant further confirms that this demurrer is now explicitly stated in writing and distinctly specifies its statutory grounds, fully complying with the procedural requirements mandated by 22 O.S. § 505. Thus, any prior ambiguity or omission of specificity from former counsel's motion is now cured, properly teeing up this facial, jurisdictional challenge for the Court's consideration.[2]

Footnotes – Section I.A
[1] State v. Hudson, 2022 OK CR 28, ¶5, 520 P.3d 388, 390 (holding that a facially defective Information presents a jurisdictional defect properly challenged by demurrer under 22 O.S. § 504(4)).
[2] 22 O.S. § 505 (explicitly requiring a demurrer to be in writing and distinctly specify grounds of objection).

B. Accurate Identification of Statutory Charge

Defendant explicitly clarifies that the First Amended Information alleges possession of a controlled substance described as "tetrahydrocannabinolis," a term wholly absent from Oklahoma's Uniform Controlled Dangerous Substances Act and not appearing in any statutory schedule. Oklahoma law requires an Information to clearly and distinctly articulate the alleged offense using language understandable by ordinary individuals and precisely matched to statutory definitions (22 O.S. §§ 401–409).[1]
Here, the Information plainly fails these statutory requirements, charging Defendant with a nonexistent substance. Oklahoma criminal statutes must be strictly construed, and defendants cannot lawfully be prosecuted based on fictitious or imaginary substances or terms invented by prosecutorial error.[2] Such statutory ambiguity renders the Information facially deficient as a matter of law, compelling immediate dismissal under the controlling precedent.[3]

Footnotes – Section I.B
[1] 22 O.S. §§ 401–409 (explicitly mandating clarity, specificity, and statutory conformity in charging language).
[2] Fenimore v. State, 2003 OK CR 20, ¶5, 78 P.3d 549, 551 (criminal statutes must be strictly construed and cannot be expanded beyond clear statutory language).
[3] State v. Tran, 2007 OK CR 39, ¶8, 172 P.3d 199, 202–03 (charging instruments may not rely on statutory splicing or invented language to allege crimes).

II. Dispositive Threshold Argument: Facial Failure to Allege a Public Offense

A. Requirements for a Valid Information under Oklahoma Law

Oklahoma law imposes strict requirements for the content of a valid criminal Information. Under 22 O.S. §§ 401–409, an Information must allege a public offense in ordinary and concise language, using statutorily defined terms, and in such a manner that enables a person of common understanding to know what is intended.[1] The charging document must also be sufficiently clear to allow the court to pronounce judgment if a conviction results.[2]

The First Amended Information fails these requirements. It alleges possession of "tetrahydrocannabinolis," a term not defined by statute, not listed in any controlled substance schedule, and not recognized under Oklahoma law. Its use renders the charge facially unintelligible, both to Defendant and to the Court.

Oklahoma courts require strict construction of criminal statutes and charging instruments. As the Court held in Fenimore v. State, courts may not expand the meaning of statutory terms or invent crimes not clearly defined by law.[3] Similarly, in State v. Tran, the Court explicitly prohibited the State from creating criminal liability through the manipulation or splicing of unrelated statutory language.[4]

Because the First Amended Information lacks any reference to a real, scheduled substance, and uses fictitious terminology not found in law, it fails to state a public offense and is facially defective. Dismissal is required as a matter of law.

Footnotes – Section II.A
[1] 22 O.S. § 401; see also §§ 402–409 (collectively requiring clarity, certainty, and statutory grounding in all charging instruments).
[2] 22 O.S. § 409 (Information must be sufficient to support a lawful judgment of conviction).
[3] Fenimore v. State, 2003 OK CR 20, ¶ 5, 78 P.3d 549, 551 (criminal statutes strictly construed; no enlargement by implication).
[4] State v. Tran, 2007 OK CR 39, ¶ 8, 172 P.3d 199, 203 (criminal charges must derive from clearly stated legislative enactments; statutory splicing is impermissible).

B. Jurisdictional Consequences of Alleging a Nonexistent Offense

An Information alleging a nonexistent statutory offense fails, on its face, to confer subject-matter jurisdiction upon the Court. Oklahoma law clearly mandates that the State must charge a legally cognizable offense as a prerequisite to jurisdiction; where no valid public offense is alleged, the defect is jurisdictional, irreparable, and mandates immediate dismissal.[1]

As explicitly held by the Oklahoma Court of Criminal Appeals in State v. Hudson, a facially defective Information that does not charge a statutory offense constitutes a jurisdictional flaw depriving the Court of authority to proceed.[2] Such a defect cannot be cured by amendment or supplemented by inference or implication. The jurisdictional deficiency, therefore, compels the Court to sustain Defendant's demurrer under 22 O.S. § 504(4) and immediately dismiss the prosecution with prejudice.

C. Material Prejudice from the State's Amendment of the Information

Defendant has suffered material prejudice resulting directly from the State's filing of the First Amended Information on December 31, 2024, nearly six months after Defendant's initial arrest (07/05/2024) and over three months after issuance of the OSBI Criminalistics Examination Report (09/05/2024). Critically, this amendment was filed only after significant procedural events had occurred, including a status conference (10/09/2024), a jury trial sounding docket (12/19/2024)—wherein the Court explicitly set a trial date of January 27, 2025, and a motion cutoff date of January 10, 2025—just ten days after the filing of the amended Information.

This late amendment, introducing the fictitious and legally unrecognized controlled substance "tetrahydrocannabinolis," directly undermined Defendant's ability to adequately prepare a defense within the already limited timeframe provided by the Court's scheduling order. Defendant was further prejudiced by required subsequent appearances at a January 10, 2025 cutoff hearing and January 22, 2025 status hearing, both conducted without clarity regarding the amended charge. The State compounded the ambiguity by explicitly defending its flawed position in its February 26, 2025 Response Brief and reasserting it at the subsequent hearing on March 4, 2025, further prolonging the prejudicial confusion and uncertainty.

Thus, from the belated amendment filed on December 31, 2024, continuously through the present (04/09/2025), Defendant has been materially prejudiced by procedural ambiguity and insufficient notice, impairing effective defense preparation. Under Oklahoma law, amendments causing procedural confusion or materially hindering defense preparation, particularly when filed shortly before trial and cutoff dates, constitute impermissible prejudice that mandates immediate dismissal.[1] The State's amendment in this case precisely meets the standard for impermissible prejudice articulated in Shiever v. State and related Oklahoma authorities.[2]

Footnotes – Section II.C
[1] Shiever v. State, 1951 OK CR 100, 234 P.2d 921, 94 Okl. Cr. 279 (amendments permissible only absent material prejudice).
[2] See also Arms v. State, 49 Okla. Cr. 34, 292 P. 76 (1927); Ward v. State, 34 Okla. Cr. 296, 246 P. 664 (1926); Hammons v. State, 47 Okla. Cr. 297, 287 P. 1076 (1930); Little v. State, 21 Okla. Cr. 1, 204 P. 305 (1922); Knopp v. State, 59 Okla. Cr. 143, 56 P.2d 1193 (1936) (amendments impermissible when they cause confusion or prejudice defendant's ability to adequately respond, especially when timing impacts trial preparation).

III. Preservation of the Record – Concise Rebuttal to State's Four Arguments

A. Misapplication of Civil Procedure & Improper Burden-Shifting

The State improperly invokes civil procedural standards under 12 O.S. § 577, erroneously treating Defendant's demurrer as if it were a civil demurrer to evidence. Defendant's motion is correctly raised under criminal procedure, specifically a facial demurrer pursuant to 22 O.S. § 504(4). This statute explicitly governs criminal proceedings and places no evidentiary burden whatsoever upon Defendant at this stage. Rather, it mandates a purely legal determination based solely upon the face of the Information itself.[1] The State's reliance

on civil statutes to shift an improper evidentiary burden onto Defendant is misplaced and legally incorrect.

Footnotes – Section III.A
[1] State v. Hudson, 2022 OK CR 28, ¶5, 520 P.3d 388, 390 (holding a facial demurrer under 22 O.S. § 504(4) presents a purely legal issue with no evidentiary burden on Defendant).

B. Incorrect Statutory Citation & Reliance on Fictitious Terminology

The State improperly attempts to rehabilitate its defective charge by substituting the fictitious term "tetrahydrocannibols" into statutory language explicitly reserved for anabolic steroids under 63 O.S. § 2-208(D)(2). The actual wording of this statute specifically enumerates "hormonal substances or steroids, including their salts, isomers, esters..." but contains no reference whatsoever to tetrahydrocannibols or any similarly named substance.

Moreover, the First Amended Information explicitly labels the charged substance ("tetrahydrocannabinolis") as a Schedule II controlled dangerous substance, despite the fact that the State's arguments rely upon language from a separate Schedule III provision (63 O.S. § 2-208). Criminal statutes must be narrowly construed; prosecutors may not invent offenses or expand statutory language beyond explicit legislative authorization.[1] [2]

Therefore, the State's attempt to salvage its facially defective charge by invoking unrelated statutory references only further underscores the fatal ambiguity and statutory invalidity of the amended Information.

Footnotes – Section III.B
[1] State v. Tran, 2007 OK CR 39, ¶8, 172 P.3d 199, 202–03 (charging instruments must derive from clear statutory enactments and cannot rely on language lifted from unrelated provisions).
[2] Fenimore v. State, 2003 OK CR 20, ¶5, 78 P.3d 549, 551 (criminal statutes strictly construed; no authority to expand or rewrite statutory language).

C. Defective Substance Terminology
The State's third argument relies on fictitious and legally undefined terminology, including the terms "tetrahydrocannibols" and "tetrahydrocannibolic acid." Neither of these terms appears in any Oklahoma statute, regulatory definition, or controlled substance schedule. Their use not only compounds the ambiguity created by the First Amended Information's reference to "tetrahydrocannabinolis," but further demonstrates the State's inability to identify any actual scheduled substance prohibited under Oklahoma law.

Oklahoma courts have made clear that criminal statutes must be strictly construed, and that no person may be prosecuted for conduct not clearly proscribed by statute.[1] The charging instrument must use statutorily defined terms or their equivalent.[2] The State's reliance on fabricated or hybridized terminology violates this principle and reinforces the conclusion that the Information, on its face, fails to allege a cognizable offense.

Footnotes – Section III.C
[1] Fenimore v. State, 2003 OK CR 20, ¶5, 78 P.3d 549, 551 (criminal statutes must be strictly construed against the State and cannot be expanded to include conduct not expressly prohibited).

[2] State v. Tran, 2007 OK CR 39, ¶8, 172 P.3d 199, 203 (rejecting efforts to create new offenses by inference or misapplication of statutory language).

D. Incorrect Requirement of Evidentiary Development

The State incorrectly asserts that Defendant's challenge cannot be resolved without the development of an evidentiary record. This misstates the nature of a facial demurrer under 22 O.S. § 504(4). A demurrer of this kind presents a pure question of law and is evaluated solely on the face of the Information, without consideration of any underlying facts or evidence.

As reaffirmed by the Oklahoma Court of Criminal Appeals in State v. Hudson, a demurrer alleging that the Information fails to state a public offense does not require evidentiary development or factual resolution.[1] The Court must determine only whether, assuming the allegations to be true, the Information charges a legally cognizable offense under Oklahoma law. Because the First Amended Information alleges a fictitious substance not found in any statutory schedule, it fails this test as a matter of law.

Footnotes – Section III.D
[1] State v. Hudson, 2022 OK CR 28, ¶5, 520 P.3d 388, 390 (facial demurrer under § 504(4) raises a legal question resolved solely on the charging instrument's face; evidentiary record not required).

IV. Court's Mandatory Statutory Duty to Dismiss with Prejudice

Because the First Amended Information fails, on its face, to allege a public offense, the Court is statutorily required to sustain Defendant's demurrer and dismiss the prosecution with prejudice. Under 22 O.S. § 504(4), a demurrer must be sustained where the facts stated do not constitute a public offense. Once sustained, dismissal is mandatory under 22 O.S. § 508, unless the Court expressly finds that the defect may be cured by filing a valid new Information.

Here, no such cure is possible. The charged substance—"tetrahydrocannabinolis"—is fictitious and legally nonexistent. Substituting or amending the Information to allege a new, different substance at this stage would constitute the initiation of a separate prosecution, not a curable defect. Finality is required where the defect is fundamental and jurisdictional, as it is here.

Oklahoma law strictly limits prosecutorial discretion in these circumstances. As the Court explained in State v. Young, once a demurrer is sustained and the trial court does not direct refiling, dismissal operates as a final bar to further prosecution.[1] This is reinforced by 22 O.S. § 849, which mandates that if no offense is stated, the defendant must be discharged.[2]

Accordingly, the Court's duty is clear. The First Amended Information fails to state a public offense, the defect is incurable, and dismissal with prejudice is required as a matter of law.

Footnotes – Section IV
[1] State v. Young, 1994 OK CR 25, ¶6, 874 P.2d 57, 59 (dismissal following a sustained demurrer is final unless the court expressly authorizes refiling under 22 O.S. § 508).
[2] State v. Hudson, 2022 OK CR 28, ¶5, 520 P.3d 388, 390 (courts lack jurisdiction to proceed where no public offense is stated; dismissal required under §§ 504(4), 849).

Prayer for Relief

WHEREFORE, for the reasons set forth above, Defendant respectfully prays that this Court:

1. Sustain the demurrer pursuant to 22 O.S. § 504(4) on the ground that the First Amended Information fails, on its face, to allege a public offense under Oklahoma law;

2. Enter an order dismissing the Information with prejudice in accordance with 22 O.S. §§ 504(4), 505, 508, and 849, as the defect is jurisdictional and incurable;

3. Declare the First Amended Information void as a matter of law and of no further legal effect;

4. Bar further prosecution under the defective charging instrument, and decline to authorize the filing of any amended or substitute Information alleging a new offense; and

5. Grant such other and further relief as the Court deems just and proper under the laws of the State of Oklahoma.

Respectfully submitted,
Flynn Robert Martin
Defendant, Pro Se
Dated: April 9, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2025, a true and correct copy of the foregoing Defendant's Reply to State's Response to Motion to Dismiss was delivered to:

Washington County District Attorney's Office

Flynn Robert Martin
Defendant, Pro Se