UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1561

September Term, 2015

STATE OF MARYLAND

v.

LANCELOT WALKER

Woodward,
Leahy,
Wilner, Alan M.
(Retired, Specially Assigned),

Opinion by Wilner, J.

Filed: April 19, 2016

Appellee Lancelot Walker was charged, through a Statement of Charges filed in the District Court, with one count of intentionally resisting a lawful arrest, one count of second degree assault on a police officer while the officer was engaged in the performance of his official duties, and one count of "possess[ing] a controlled dangerous substance of Schedule I, to wit, heroin . . . in violation of MD. ANN. CODE ART CR SEC 5-601." Before any significant proceedings in the District Court, the case was transferred to the Circuit Court for Baltimore City, apparently on Walker's prayer for a jury trial.

At some point, Walker filed what he calls an "omnibus motion" which included a request to dismiss the possession of heroin charge on the ground that the charging document failed to allege that his possession of the heroin was a knowing one. The motion is not in the record before us, but the record does indicate (and the parties agree) that the Circuit Court granted it and dismissed that count. The State then nol prossed the other two counts and filed this appeal. The sole issue raised is whether the court erred in concluding that the omission of a specific allegation that the possession was a knowing one made that count jurisdictionally deficient, warranting its dismissal. We think that the court did err in that regard, and therefore shall reverse the judgment of dismissal and remand the case for further proceedings.

Article 21 of the Maryland Declaration of Rights (MDR) provides that, in all criminal prosecutions, the defendant has the right "to be informed of the accusation against him [or her]." That is the Maryland counterpart to the provision in the Sixth

Amendment to the U.S. Constitution that, in all criminal prosecutions, the accused has the right "to be informed of the nature and cause of the accusation." The Court of Appeals has recognized several purposes or functions of those provisions (which we shall take the liberty of gender-neutralizing):

> "(i) to put the accused on notice of what [the accused] is called upon to defend by characterizing and describing the crime and conduct; (ii) to protect the accused from a future prosecution for the same offense; (iii) to enable the defendant to prepare for his [or her] trial; (iv) to provide a basis for the court to consider the legal sufficiency of the charging document; and (v) to inform the court of the specific crime charged so that, if required, sentence may be pronounced in accordance with the right of the case. . . ."

Counts v. State, 444 Md. 52, 58-59 (2015), quoting from *Ayre v. State*, 291 Md. 155, 163 (1981).

In order to achieve those purposes, the Court has required that the charging document both characterize the crime and furnish the defendant "such a description of the particular act alleged to have been committed as to inform [the defendant] of the specific conduct with which he [or she] is charged." *Id.* With respect to characterizing the crime, the Court has noted that, where a statutory offense is alleged, the crime may be sufficiently characterized in the words of the statute, "at least where the terms of the statute include the elements of the criminal conduct." *Id.* These requirements, articulated in case law, are stated as well in Md. Rule 4-202(a), which directs that a charging document contain "a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred."

As noted, the charging document in this case was a Statement of Charges filed by a police officer in the District Court, which, as to the count at issue, alleged that Walker "did possess a controlled dangerous substance of Schedule I, to wit; heroin" and that such conduct was in violation of Md. Code, Criminal Law Article (CL) §5-601. That section, with exceptions not applicable here, makes it unlawful for a person to "possess or administer to another a controlled dangerous substance." Putting flesh on that proscription are CL §5-101(v), which defines "possess" as "to exercise actual or constructive dominion or control over a thing by one or more persons," CL §5-101(g), which defines "controlled dangerous substance" as including "a drug or substance listed in Schedule I through Schedule V," and CL §5-402(c)(1)(xv), which lists heroin as one of the substances included on Schedule I.

Walker's position, at trial and before us, is that, for purposes of MDR Article 21, possession means more than merely exercising dominion and control over the illicit substance, as the Code defines it, but must include as well an awareness by the defendant that the substance over which he or she is alleged to exercise dominion or control is illegal. What that means, according to him, is that the charging document must allege that (1) he knew that he was in possession of heroin, and (2) he knew that possession of heroin was illegal. The deficiency here, he avers, lies in the omission of the word "knowingly" in the charging document. For that proposition, he relies not on any wording in MDR Art. 21 or in the relevant statutes, for there is no such wording, but on case law that he claims incorporates that element by inference. In particular, he relies on

State v. Suddith, 379 Md. 425 (2004); *Moye v. State*, 369 Md. 2 (2002); *Dawkins v. State*, 313 Md. 638 (1988); *Bussie v. State*, 115 Md. App. 324 (1997); and *Handy v. State*, 175 Md. App. 538 (2007).

We find those cases inapposite. They establish no more than that, to warrant a conviction for unlawful possession of a controlled dangerous substance, the evidence must show that the defendant had knowledge of both the presence and illicit nature of the substance. None of them focused on the sufficiency of a charging document and, more important, none of them purported to hold, or even to suggest, that a charging document alleging the possession of a Schedule I controlled dangerous substance and actually naming the substance and alleging as well that such possession is in violation of an identified criminal statute, is Constitutionally deficient unless it also alleges specifically that the defendant knew that possession of the particular substance is unlawful. None of the cases mine that deep.[1]

[1] In *Suddith*, the defendant was one of four occupants of an SUV that had been stopped following a high-speed chase. The police found packages of heroin and cocaine, along with drug paraphernalia, scattered in the vehicle. All four occupants denied knowledge of the drugs. Suddith was convicted of possessing the drugs and paraphernalia, and the issue on appeal was whether the evidence sufficed to establish that he knew the drugs were in the vehicle. In *Moye*, the police entered a house to investigate a reported stabbing. Moye was present in the house but did not live there. The issue was whether the evidence was sufficient to establish his possession of drugs found in a basement apartment. In *Dawkins*, the defendant was arrested in a hotel room holding a bag that contained clothing and drug paraphernalia. He claimed that the bag belonged to his girlfriend and that he carried it to the room at her request. The Court held that he was entitled to an instruction that knowledge of the presence and general character or illicit nature of the substance was an element of the offense. In *Bussie*, the (continued…)

A case we find relevant is *Ross v. State*, 308 Md. 337 (1987), where the Court of Appeals sustained the Constitutionality of a statute, currently codified in Md. Code, Criminal Law Art., §2-208, providing a short-form indictment for murder or manslaughter. The Court noted that it "has looked with favor upon the general trend of relaxing the formal requirements of indictments to avoid the prolix and often overly technical rules of common law pleading in favor of the shorter and simpler forms." *Id.* at 346. To the extent that use of the statutory short form may leave the defendant without useful information of a more detailed nature, the Court observed that the courts had been "quite liberal" in granting particulars where short form indictments were used and that "in certain instances where the indictment fails to allege the specific manner in which the crime was committed, particulars may be required." *Id.* Although unstated in *Ross*, the Court certainly must have been aware that, only four years earlier, it had made clear in *State v. Morton*, 295 Md. 487, 492 (1983) that particulars form no part of the indictment and that a truly defective indictment is not made sufficient by a Bill of Particulars.

We do not construe *Counts* or *Ayre*, or any other Maryland case that has been cited to us, as requiring a charging document that alleges the possession of heroin, a Schedule I substance, and avers further that such possession is in violation of an identified criminal statute to redundantly allege further that the defendant knew that possession of the

defendant was charged with assault, illegal use of a handgun, and possession of cocaine and marijuana. The appeal concerned the denial of his motion to sever the drug charges.

substance is illegal.[2] We believe that the trial court erred in concluding otherwise. Requiring such an allegation (and requiring the dismissal of a charging document that omits it) would advance none of the five purposes attributed to MDR Article 21. All that said, it certainly would not hurt if the law enforcement community were advised to add the word "knowingly" when charging a violation of CL §5-601.

JUDGMENT REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS; APPELLEE TO PAY THE COSTS.

[2] As the *Ross* Court made reference to a Bill of Particulars (and, we would add, discovery) serving the function of supplying additional details that might prove useful at trial, we note that Md. Rule 4-202(c) requires that a Statement of Charges include or be accompanied by a Statement of Probable Cause or an application for a Statement of Charges signed under oath and sufficient to establish probable cause. Attached to the Statement of Charges filed against Walker was a Statement of Probable Cause that made abundantly clear that Walker was a street dealer who swallowed a clear gel cap containing a "white powder substance" when accosted by the police and actively resisted arrest, in part by biting the finger of one of the arresting officers.