

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1562

September Term, 2015

STATE OF MARYLAND

v.

WAYNE ZEIGLER

Leahy,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: March 21, 2017

Appellant, the State of Maryland, appeals the Circuit Court for Baltimore City's dismissal of appellee Wayne Zeigler's possession of heroin charge.¹ The State presents one question for our review:

Did the circuit court err in granting Zeigler's motion to dismiss the charge of possession of heroin where the charging document set forth all the essential elements of the crime?

For the reasons that follow, we reverse the judgment of the circuit court.

Factual and Procedural Background

On April 16, 2015, Zeigler was charged with one count of possession of heroin. The charging document states: "It is formally charged that the defendant did possess a controlled dangerous substance of Schedule I, to wit: heroin. In violation of [Md. Code (2002, 2012 Repl. Vol.) § 5-601 of the Criminal Law Article ("CR § 5-601")." Attached to the statement of charges is a statement of probable cause stating that, when he was approached by police, Ziegler "advised Det. Benn that he [had] a pill of dope" and said "I'm getting arrested for one pill."

On July 8, 2015, Zeigler's defense counsel filed a motion under Maryland Rule 4-252² to dismiss the charging document for lack of jurisdiction asserting that it failed "to

¹ Maryland Code (1973, 2013 Repl. Vol.), § 12-302(c)(1) of the Courts and Judicial Proceedings Article ("CJP § 12-302(c)") provides, in relevant part, "(1) In a criminal case, the State may appeal as provided in this subsection. (2) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition."

² Maryland Rule 4-252 provides, in relevant part:

(a) Mandatory Motions. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise: (1) A defect in the institution of the prosecution; (2) A

allege an essential element of the . . . crime of possession.” Granting Zeigler’s motion on August 25, 2015, the circuit court explained:

I do not see a concise and definite statement of the essential facts, one of which is certainly knowledge. I think requiring that a defendant discern from a statement of probable cause that that may be the method of proof or that that may be evidence used against him to prove what is in the statement of charges, does not put the defendant on notice of the elements of the crime that he’s faced with having to defend himself against.

On August 27, 2015, the State filed its notice of appeal.

Discussion

The State’s claim that the circuit court erred in dismissing the statement of charges involves jurisdictional and constitutional notice concerns. These concerns overlap.

Contentions

On appeal, the State contends that the circuit court erred when it “concluded that Zeigler’s charging document failed to set forth the essential elements of the crime of possession of heroin” because the “charging language implies that Zeigler had knowledge of the presence [and illicit nature] of the heroin.” Zeigler responds that “the circuit court correctly dismissed the charge of possession of heroin because [the charging document] failed to allege the mens rea of the crime.” According to Zeigler, the charging document

defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

* * * *

(d) Other Motions. A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

was required to contain “an allegation that Mr. Zeigler knew that the substance was in his possession or that the substance was heroin” because such knowledge is an essential element of the crime charged and cannot be inferred from the statutory language.

Analysis

Zeigler’s argument has its roots in *Dawkins v. State*, 313 Md. 638 (1988). In *Dawkins*, the Court of Appeals was asked whether “‘knowledge’ is an element of the offenses of possession of a controlled dangerous substance and . . . controlled paraphernalia” *Id.* at 639–40. The State argued that it was not; the trial court agreed and denied Dawkins’ request for a jury instruction “that knowledge is an element” of possession of controlled dangerous substances. *Id.* at 641. In its survey of other jurisdictions with similar statutes, the *Dawkins* court noted that, like Maryland, fifteen other states and the District of Columbia “are silent as to the knowledge element,” *id.* at 646, but that “by judicial decision” all but two had held that the statute applies to the knowing possession. *Id.* at 646–48.

The court further explained that “possession” is defined under the statute as “the exercise of actual or constructive *dominion or control* over a thing by one or more persons,” and that “[k]nowledge of the presence of an object is ordinarily a prerequisite to exercising dominion and control.” *Id.* at 648–49 (emphasis in original). And, because a person “ordinarily would not be deemed to exercise ‘dominion or control’ over an object about which he is unaware,” the Court concluded that the Maryland “statutory

scheme *implies a 'knowing' possession on the part of the accused.*" *Id.* at 249 (emphasis added).

At the motions hearing, Zeigler argued that the failure to include expressly the "knowledge" element of the offense in the charging document rendered it "fatally" defective," and "deprive[d] the Court of jurisdiction of this offense by failing to sufficiently allege an offense and deprive[d his] client of proper notice of the elements of the charge which he's required to defend against."

A charging document is "a written accusation alleging that a defendant has committed a crime" and includes a statement of charges. Md. Code (2001, 2008 Repl. Vol.), § 1-101(b) of the Criminal Procedure Article ("CP § 1-101(b)"). Maryland Rule 4-202 sets forth the substantive requirements for charging documents:

(a) General Requirements. A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall 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.

* * * *

[(c) Specific Requirements.] (2) *Statement of Charges.* A Statement of Charges shall include or be accompanied by (A) a Statement of Probable Cause signed under oath, or (B) an Application for Statement of Charges signed under oath, which is sufficient to establish probable cause.

As in *Jones v. State*, 303 Md. 323, 338 (1985), the issue before us is not whether the charging document in this case could have charged the crime "with greater particularity." It perhaps could. That does not mean, however, that the charging document was "constitutionally deficient." *Id.* Although the essential elements of the charged crime

are ordinarily stated in the charging document, the charging document will satisfy jurisdictional and constitutional requirements when the elements can be implied from language in the charging document. *See id.* at 337 (“All essential elements of the crime need not, . . . be expressly averred in the charging document; elements may be implied from language used in the indictment or information.”); *State v. Chaney*, 304 Md. 21, 26 (1985) (concluding that when a charging document is “consistent with the notice requirements of Article 21 of the Maryland Declaration of Rights,”³ it is sufficient for jurisdictional purposes, even if it has not explicitly averred all of the essential elements of the offense); *and see Ross v. State*, 308 Md. 337, 346 (1987) (“This Court 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.”).

An essential function of a charging document is “to satisfy the constitutional [notice] requirement of Article 21 of the Declaration of Rights that each person charged

³ Article 21 of the Maryland Declaration of Rights states:

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

The Sixth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, contains the similar requirement that an accused “be informed of the nature and cause of the accusation.” *Jones*, 303 Md. at 331 n.6.

with a crime be informed of the accusation against him, first, by characterizing the crime and, second, by so describing it as to inform the accused of the specific conduct with which he is charged.”⁴ *Jones*, 303 Md. at 336. Regarding the characterization requirement, the Court of Appeals has stated that in the case of a statutory offense the words of the statute will suffice if “the terms of the statute include the elements of the criminal conduct.” *Counts v. State*, 444 Md. 52, 57 (2015) (quoting *Ayre v. State*, 291 Md. 155, 163 (1981)). The description of the crime will be deemed sufficient when it gives 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.” Md. Rule 4-202(a).

Zeigler was charged with the possession of “a controlled dangerous substance of schedule I, to wit: heroin. In violation of [CR § 5-601].” CR § 5-601 provides that “a person may not: (1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice.”⁵

⁴ Other functions recognized by the Court of Appeals in *Counts v. State*, 444 Md. 52, 57-58 (2015) (quoting *Ayre v. State*, 291 Md. 155, 163 (1981)) include:

(ii) to protect the accused from 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.

⁵ *And see* CR § 5-101(g)(1)(i) (stating that a controlled dangerous substance means “a drug or substance listed in Schedule I”); CR § 5-402(a) (listing heroin as a drug included

The *Dawkins* court concluded, the “statutory scheme implies a ‘knowing’ possession on the part of the accused.” *Dawkins*, 313 Md. at 649. In other words, “the State must prove, beyond a reasonable doubt, that the accused knew ‘of both the presence and the general character or illicit nature of the substance.’” *Handy v. State*, 175 Md. App. 538, 563 (2007) (quoting *Dawkins*, 313 Md. at 651). But, it does not mean that the charging document must expressly aver that which the Court of Appeals has stated is implied by the statutory scheme.⁶

Zeigler cites *State v. Suddith*, 379 Md. 425, 432 (2004) and *Moye v. State*, 369 Md. 2, 14 (2002) for the proposition that a charging document must specifically allege that defendant knew of the illicit nature of a substance to satisfy related jurisdictional and constitutional requirements. These cases, however, focus on the evidence necessary to secure and sustain a conviction for unlawful possession of a controlled dangerous substance, not the sufficiency of a charging document.

In short, we are not persuaded that a charging document for the crime of possession of a controlled dangerous substance must, in addition to referencing the statutory language, separately aver knowledge of the presence and illegality of a

in Schedule I). To possess means “to exercise actual or constructive dominion or control over a thing by one or more persons.” CR § 5-101(v).

⁶ Although the language in the statement of probable cause did not inform our opinion, Zeigler’s voluntary statement that he had “a pill of dope” (characterized in the statement of charges as the “street term for pill of heroin”) would indicate his knowledge of both the “presence” and the “general character or illicit nature” of what he was being arrested for.

substance to satisfy jurisdictional and constitutional notice requirements. *See* CR §§ 5-601, 5-101(v). That said, it would not be wrong to do so.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
CITY REVERSED; CASE
REMANDED TO THE
CIRCUIT COURT FOR
BALTIMORE CITY FOR
FURTHER PROCEEDINGS
CONSISTENT WITH THIS
OPINION; COSTS TO BE PAID
BY APPELLEES.**