

Circuit Court for Baltimore City
Case No. 124058007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1603

September Term, 2024

DESMOND LARK

v.

STATE OF MARYLAND

Nazarian,
Shaw,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 17, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from Appellant Desmond Lark’s convictions in the Circuit Court for Baltimore City for first-degree assault, use of a firearm in the commission of a crime and discharging a firearm. Appellant timely noted this appeal and presents eleven issues for our review, which we have rephrased and consolidated¹:

1. Did the court err in convicting and sentencing Appellant for discharging a firearm in the City of Baltimore without proper charges?
2. Whether the court deprived Appellant of his constitutional right to notice under the U.S. Constitution and the Maryland Declaration of Rights?
3. Whether trial counsel rendered constitutionally ineffective assistance by failing to object to the added charge?
4. Whether the jury verdict was legally inconsistent?

For reasons that follow, we affirm the judgments of the circuit court.

¹Appellant’s brief originally presented the following questions:

1. Violation of “Due Process” Convicting Appellant of uncharged, unindicted crime, of Fire and Discharge.
2. Violation of constitutional right to be informed.
3. Violation of Appellant’s Fourteenth Amendment right to the United States Constitution.
4. Defective charging document.
5. Violation of the Maryland declaration of rights article 21.
6. Court lacked jurisdiction.
7. Prejudice.
8. Violation of my Sixth Amendment, the right to counsel.
9. Illegal Conviction and Sentence. Appellant was convicted, sentenced, and imprisoned for an uncharged, unindicted crime of “fire and discharge.”
10. Violation of Rule 4-202.
11. Inconsistent verdict.

BACKGROUND

Appellant was arrested and charged in the District Court of Maryland for Baltimore City in connection with a shooting incident that occurred on June 1, 2023. His statement of charges listed the following offenses: (1) attempted first-degree murder; (2) attempted second-degree murder; (3) first-degree assault; (4) use of a firearm in the commission of a felony and crime of violence; (5) second-degree assault; and (6) transporting a handgun on or about his person; (7) knowingly transporting a loaded handgun in vehicle; (8) transporting a loaded handgun on or about their person; and (9) knowingly transporting a handgun in a vehicle. Appellant was subsequently indicted in the Circuit Court for Baltimore City on seven counts: (1) attempted first-degree murder; (2) attempted second-degree murder; (3) first-degree assault; (4) use of a firearm in the commission of a crime of violence; (5) transporting a loaded handgun on person; (6) knowingly transporting a loaded handgun in a vehicle; and (7) firing and discharging a firearm in the City of Baltimore. Appellant elected to be tried by a jury and the jury found him guilty of first-degree assault, use of a firearm in the commission of a crime, and discharging a firearm. He was sentenced to incarceration for an aggregate term of forty-five years.

During the proceedings that followed, Appellant expressed that he had been convicted of discharging a firearm, but that he had not been charged with the offense. The court explained, each time, that while the district court charging document did not include the discharging offense, it was included in the circuit court indictment, and therefore, he was properly convicted. Appellant also expressed dissatisfaction with his counsel.

STANDARD OF REVIEW

A “claim that an indictment fails to charge or characterize a crime is jurisdictional and may be raised at any time.” *State v. Chaney*, 304 Md. 21, 25 (1985) (citing *William v. State*, 302 Md. 787 (1985)). Likewise, a claim that a defendant was never charged, and the court lacked the power to render a verdict or impose a sentence may be raised at any time. *See* Maryland Rule 4-345(a). Whether a sentence “is or is not inherently illegal . . . is quintessentially a question of law, calling for *de novo* appellate review.” *State v. Bratt*, 241 Md. App. 183, 190 (2019) (citation omitted).

DISCUSSION

I. Appellant was properly charged with the crime of discharging a firearm.

Appellant contends that the charging document and indictment returned by the grand jury do not reflect a charge for discharging a firearm in Baltimore City. He argues that, because he was not indicted on the discharging count, the circuit court lacked jurisdiction to convict him, and thus, his conviction and sentence for the crime are illegal. The State argues that the discharging count was not included in Appellant’s initial statement of charges; however, the grand jury indicted him on that count. The State argues that Appellant’s convictions and sentence are legal.

Maryland Rule 4-201(a) provides that “an offense shall be tried only on a charging document.” In the District Court, the offense may be tried on a criminal information, statement of charges, or a citation. Maryland Rule 4-201(b). Offenses charged that are beyond the jurisdiction of the District Court are tried in the Circuit Court. Md. Code Ann.,

Cts. & Jud. Proc. § 4-302 (2)(ii). Generally, such offenses may be tried on an indictment or criminal information. Maryland Rule 4-201(c). An indictment may include charges brought in the District Court but may also include additional charges voted on by the grand jury. *See Huggins v. State*, 479 Md. 433, 436 (2022)

In the present case, the grand jury returned a seven-count indictment on February 27, 2024, that included:

SEVENTH COUNT

The Jurors of the State of Maryland for the body of the City of Baltimore, do on their oath present that aforesaid DEFENDANT(S), late of said City, heretofore on or about June 1, 2023, at 53000 Block of Frankford Avenue, Baltimore, MD, did fire and discharge any gun, pistol, and firearm, to wit: Unknown within the City of Baltimore, in violation of Article 19, Section 59-2 of the Baltimore City Code; against the peace, government, and dignity of the State.

Based on the indictment, we hold that the circuit court was vested with jurisdiction to proceed on the criminal charges listed, which included the crime of discharging a firearm. Appellant was properly charged.

II. Appellant was not deprived of his constitutional right to notice under the U.S. Constitution and the Maryland Declaration of Rights.

The Due Process Clause of the Fourteenth Amendment, guarantees “due process of law,” *Cole v. Arkansas*, 333 U.S. 196, 200 (1948), and incorporates the Sixth Amendment requirement that an accused “be informed of the nature and cause of the accusation.” *Jones v. State*, 303 Md. 323, 344 n.6 (1985). Article 21 of the Maryland Declaration of Rights guarantees, “that in all criminal prosecutions, every man hath a right to be informed of the

accusation against him” and “to have a copy of the Indictment, charge, in due time to prepare for his defense.”

Under Maryland Rule 4-202(a), 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”, and “it shall contain a concise and definite statement of the essential facts of the offense”, including, “the time and place where the offense occurred.” Maryland Rule 4-202(c)(3) also states that an indictment shall conclude with the words, “against the peace, government, and dignity of the state.”

Maryland Rule 4-213 requires that the circuit court conduct an initial appearance hearing, where a defendant is informed “of each offense with which the defendant is charged.” Such initial appearance occurs when the defendant “appears in person or by written notice of counsel.” Maryland Rule 4-213(c). There is a presumption that counsel explains the nature of the charges to his or her client. *State v. Daughtry*, 419 Md. 35, 56 (2011).

In the present case, the court scheduled an initial appearance for March 25, 2024, which was cancelled when Appellant’s counsel entered her appearance on his behalf on March 19, 2024. Appellant’s counsel was thereafter provided with the indictment and the State’s Discovery, which included various reports, photographs, and evidence. We hold that Appellant was provided, through his counsel, with notice of the charges.

Appellant also claims that the charging document and indictment failed to include the phrase “against the peace, government, and dignity of the state” as required by

Maryland Rule 4-202(c)(3). This argument is meritless as the statement of charges and the indictment complied with this formality.

III. Trial counsel did not render constitutionally ineffective assistance by failing to object to an added charge.

“The right to effective assistance of trial counsel is grounded in the Sixth Amendment, made applicable to the States through the Fourteenth Amendment.” *State v. Thaniel*, 238 Md. App. 343, 360 (2018). A claim of ineffective assistance of trial counsel comprises two elements: (1) that counsel’s performance was objectively unreasonable “under prevailing professional norms,” *Strickland v. Washington*, 466 U.S. 668, 688 (1984); and (2) that there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. Both prongs must be met to show “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.* at 686. “[T]he failure to preserve or raise an issue that is without merit does not constitute ineffective assistance of counsel.” *Gross v. State*, 371 Md. 334, 350 (2002).

Appellant claims that his trial counsel rendered ineffective assistance by failing to object to an amendment to the charging document that added a count for discharging a firearm. He asserts that he did not consent to the amendment and thus, the change was violative of his rights. The State argues that Appellant’s claim is meritless but, if considered, the preferred forum to resolve claims of ineffective assistance is the Uniform Postconviction Procedure Act, Md. Code Ann., Crim Proc. § 7-101.

We agree that Appellant’s claim is baseless. The record in this case clearly shows that the indictment returned by the grand jury included the charge of discharging a firearm. The indictment was not, thereafter, amended, nor were there any additional charges filed. Appellant’s claim that his counsel was ineffective for failing to object to the added charge is without merit because there was no added charge.

IV. The Jury’s Verdict Was Not Legally Inconsistent.

In Maryland, legally inconsistent verdicts are defined as those “where a defendant is convicted of an offense but acquitted of another offense that has the same elements as the offense of which the defendant was convicted,” or in other words, “where a defendant is acquitted of a ‘lesser included’ crime embraced within a conviction for a greater offense.” *Williams v. State*, 478 Md. 99, 105 (2002) (citing and quoting *McNeal v. State*, 426 Md. 455, 458, 458 n.1 (2012)). To preserve a claim of verdict inconsistency, counsel must object immediately before the discharge of the jury. *Givens v. State*, 449 Md. 433, 472-73 (2016).

Appellant argues that the jury returned a legally inconsistent verdict because his charging document omitted the discharge of a firearm count. As previously discussed, the indictment did contain the firearms count and thus, Appellant’s argument is without merit. We note further that the record does not reflect a legally inconsistent verdict. Appellant was acquitted of attempted murder, attempted voluntary manslaughter, and transporting a firearm in a vehicle. None of those acquittals are lesser included offenses of his convictions for first degree assault, use of a firearm in a violent crime, or discharging a firearm. Further,

assuming arguendo, there was an inconsistent verdict, Appellant failed to object prior to the verdict becoming final and prior to the jury being discharged.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**