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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 09—CM—6428
)	
BRADLEY WEISBOND,)	Honorable
)	Michael B. Betar,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court erred in dismissing an information charging a violation of an order of protection, as the information stated an offense; although the order of protection was vacated after the alleged violation, this did not prevent the State from prosecuting defendant for the violation, which allegedly occurred while the order was in effect.

An information charged defendant, Bradley Weisbond, with violating an order of protection (720 ILCS 5/12—30(a)(1) (West 2008)). Defendant moved to dismiss the information, contending that the order of protection had been vacated by agreement. The trial court granted the motion and the State appeals. The State contends that it can prosecute defendant for violating the order of protection while it was still in effect. We reverse and remand.

On September 14, 2009, the trial court entered an *ex parte* emergency order of protection, prohibiting defendant from contacting Susan Audo, a/k/a Susan Weisbond. On September 18, 2009, defendant allegedly contacted Audo through her Facebook page. The order of protection was vacated by agreement on October 5, 2009. However, on October 8, 2009, Audo reported defendant's contact on September 18.

Defendant moved to quash his arrest and suppress evidence and to dismiss the charge. In the latter motion, defendant contended that he could not be prosecuted, because the order of protection had been vacated. The trial court heard the latter motion first and granted it, holding that the information failed to charge an offense. The court never ruled on the motion to quash and suppress. The State timely appeals.

The State contends that the trial court should not have dismissed the information, because the order of protection was not vacated until after defendant violated it. The State contends that nothing in the record shows that the order of protection was vacated retroactively.

We note that defendant has not filed a brief. However, we will consider the merits of the appeal under the standard set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

The purpose of challenging a charging instrument for failing to allege an offense is to challenge the sufficiency of the allegations in the charging instrument, not the sufficiency of the evidence. A defendant may not challenge an indictment on the ground that it is not supported by adequate evidence. *People v. Myrieckes*, 315 Ill. App. 3d 478, 485 (2000). We review *de novo* the trial court's decision on the sufficiency of a charging instrument. *People v. Smith*, 259 Ill. App. 3d 492, 495 (1994).

Section 111—3(a) of the Code of Criminal Procedure of 1963 requires that a charge shall be in writing and shall state (1) the name of the offense; (2) the statutory provision alleged to have been violated; (3) the nature and elements of the offense charged; (4) the date and county of the offense; and (5) the name of the accused, if known. 725 ILCS 5/111—3(a) (West 2008). Defendant does not contend that the information lacks any of these elements. Rather, defendant relies on facts outside the four corners of the information to argue that it fails to state an offense. While the existence of a valid order of protection is obviously an element that the State would have to prove at trial, the vacation of the order does not mean that the information does not state an offense.

The trial court apparently held, however, that as a matter of law the information could not state an offense because the underlying order of protection had been vacated. The State points out that the violation allegedly occurred on September 18 and that the order of protection was not vacated until October 5. Thus, the State contends, the order of protection was still in effect when defendant allegedly violated it and that, because the vacation of the order operated only prospectively, the State may still prosecute defendant.

In *People v. Barwicki*, 365 Ill. App. 3d 398 (2006), which the State cites, the court in a dissolution-of-marriage proceeding issued an order of protection, but later vacated it “ ‘nunc pro tunc, to the date of *** entry.’ ” *Id.* at 399. However, the State charged the defendant with violating the order during the time it was in effect. The trial court dismissed the complaint and this court affirmed. We stated, “Because the trial judge who presided over the dissolution proceedings vacated the emergency order of protection retroactively, the emergency order of protection cannot form the basis for the criminal complaint.” *Id.* at 400.

It is clear that the defendant in *Barwicki* could not be prosecuted only because the order of protection was vacated retroactively. Here, there is neither evidence in the record that the trial court intended to vacate the order of protection retroactively nor that the order was void at the time of its alleged violation. Thus, *Barwicki* supports, albeit by negative inference, the State's position that criminal charges are not precluded where an order of protection is vacated prospectively. *Cf. State v. Andrasko*, 454 N.W.2d 648, 650 (Minn. App. 1990) (vacation of domestic-abuse protection order after husband violated it did not prevent his prosecution for the violation).

The judgment of the circuit court of Lake County is reversed, and the cause is remanded.

Reversed and remanded.