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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of McHenry County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CF-645
	)	
ERIK NEBERGALL,	)	Honorable
	)	Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court properly denied defendant's motion to dismiss the indictment after the start of trial: the defect did not divest the court of jurisdiction or prejudice him; (2) the trial court did not abuse its discretion in refusing to allow defense counsel to question prospective jurors about their attitudes toward motorcycles: although defendant was riding a motorcycle when he allegedly drove under the influence, his choice of vehicle was not a central issue such that questioning was required.

¶ 2 Defendant, Erik Nebergall, was charged with aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(d)(1)(A) (West 2012)). Following a jury trial, defendant was found guilty. He appeals, contending that the trial court erred by (1) denying his motion to

dismiss the indictment; and (2) refusing to allow defense counsel to question prospective jurors about their attitudes toward motorcycles. We affirm.

¶ 3 Defendant was arrested for DUI while riding his Harley-Davidson motorcycle. An indictment subsequently charged him with aggravated DUI because he had “at least two (2) prior” similar offenses.

¶ 4 During *voir dire*, defense counsel attempted to ask the first panel of potential jurors several questions about their attitudes toward motorcycles. The trial court sustained the prosecutor’s objections to each question. Defense counsel thereafter did not ask similar questions of subsequent panels.

¶ 5 After the jurors were sworn, defendant moved to dismiss the indictment, arguing that it was fatally defective because it did not specifically identify his prior DUIs. The trial court denied the motion, and the jury ultimately found defendant guilty. The trial court denied defendant’s posttrial motions, and he timely appeals.

¶ 6 Defendant first argues that the court erred by denying his motion to dismiss the indictment. He contends that the failure to specify his prior DUIs rendered the indictment fatally defective, thus depriving the court of subject matter jurisdiction.

¶ 7 Defendant argues, correctly, that where the State charges a defendant with aggravated DUI based on his commission of prior similar offenses the State should list the prior offenses, although they are not elements of the present offense and may not be disclosed to the jury during trial unless relevant for some other purpose. See 725 ILCS 5/111-3(c) (West 2012). Here, the indictment did not specifically list defendant’s prior DUIs. However, defendant is incorrect in asserting that this flaw divested the trial court of jurisdiction.

¶ 8 Subject matter jurisdiction is conferred by the state constitution. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). There is no question that circuit courts have the power to hear criminal cases. Consistent with this principle, a valid charging instrument is not a jurisdictional prerequisite to a conviction. See *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). Rather, where, as here, a defendant challenges an indictment for the first time during trial, the indictment is sufficient if it apprises him of the charged offense with sufficient specificity to allow him to prepare his defense and to plead a resulting conviction as a bar to future prosecutions arising from the same conduct. *People v. Rowell*, 229 Ill. 2d 82, 93 (2008). In *People v. Vest*, 397 Ill. App. 3d 289 (2009), this court held that, if a defendant challenges an indictment “anytime after the trial’s start, the court should dismiss the relevant count only if the defect prejudices the defendant.” *Id.* at 291 (citing *People v. Cuadrado*, 214 Ill. 2d 79, 86-88 (2005)). We further held that, for purposes of a motion to dismiss the indictment, trial begins with the start of *voir dire*. *Id.* at 295.

¶ 9 Here, defendant’s motion, filed after the jury had been sworn, came after the trial had started. Thus, he was required to show prejudice. However, defendant does not even attempt to argue that he was prejudiced by the indictment’s failure to specify the dates of his two prior DUIs. The indictment alleged that defendant committed the present DUI on June 17, 2012, in McHenry County. This apprised defendant of the specific offense with which he was charged and would bar a subsequent conviction based on the same incident.

¶ 10 Defendant next contends that the trial court erred by refusing to allow him to question prospective jurors about their attitudes toward motorcycles. Noting that he was riding a motorcycle when he was pulled over, he contends that a sufficient number of people in society

have negative feelings about motorcycles and motorcycle riders that he was entitled to question prospective jurors to learn their feelings on the subject.

¶ 11 The State contends that the record on appeal is insufficient to resolve this issue. The transcripts provided with the record contain only portions of the *voir dire* of one juror. The appellant has the burden to present a sufficiently complete record of the proceedings to support a claim of error, and in the absence of such a record on appeal we will presume that the court's order conformed with the law and had a sufficient factual basis. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Defense counsel (who also represented defendant in the trial court) asserts that further transcripts would not shed light on the issue because, after the trial court sustained the State's objections to questions put to the first panel of jurors, he concluded that posing similar questions to other jurors would be futile. In any event, we find that the trial court did not abuse its discretion.

¶ 12 The purpose of *voir dire* is to ensure the selection of an impartial panel of jurors who are free from bias or prejudice. *People v. Williams*, 164 Ill. 2d 1, 16 (1994). The primary responsibility for conducting *voir dire* lies with the trial court, and the scope of the examination rests within its discretion. *People v. Terrell*, 185 Ill. 2d 467, 484 (1998). The trial court possesses great latitude in deciding what questions may be asked during *voir dire*. *People v. Gregg*, 315 Ill. App. 3d 59, 65 (2000). On review, an abuse of the court's discretion will be found only when the record reveals that the trial court's conduct thwarted the selection of a fair and impartial jury. *Terrell*, 185 Ill. 2d at 484. The standard for evaluating a court's exercise of discretion during *voir dire* is whether the questions posed and procedures employed created a reasonable assurance that prejudice would be discovered if present. *People v. Lanter*, 230 Ill.

App. 3d 72, 75 (1992). Reasonable limitations on *voir dire* do not deprive a litigant of his right to an unbiased jury. *Id.*

¶ 13 The supreme court has on occasion held that certain subjects are so controversial that trial courts are required to permit questioning prospective jurors about them if the issues in the case warrant. In *People v. Stack*, 112 Ill. 2d 301, 310-13 (1986), the court found reversible error where the trial court refused to allow the defense to question prospective jurors about their attitudes toward the insanity defense. In *People v. Strain*, 194 Ill. 2d 467, 477-79 (2000), the court held that the trial court should have allowed questioning about jurors' attitudes toward street gang members where gang evidence was an integral and pervasive part of the trial. Recently, however, the supreme court noted the limited reach of those opinions. It observed that there were very few areas about which trial courts were required to permit questioning potential jurors. *People v. Sanders*, 238 Ill. 2d 391, 408-09 (2010).

¶ 14 This case is more similar to *People v. Howard*, 147 Ill. 2d 103, 135-36 (1991). There, the court found no error in the trial court's refusal to permit questioning prospective jurors about handguns. Although the defendant had committed the murder in question with a handgun, his choice of a weapon was not a "central issue" in the case such that special questioning was required. *Id.* Here, too, the type of vehicle that defendant used was not a central issue in the case, and thus the trial court did not abuse its discretion by refusing to allow the defense to question prospective jurors about it.

¶ 15 The judgment of the circuit court of McHenry County is affirmed.

¶ 16 Affirmed.