

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 130637-U

Order filed May 9, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal Nos. 3-13-0637, 3-13-0638, 3-13-0639 and 3-13-0679
STEPHEN P. GLYNN,	)	Circuit Nos. 09-CF-0525, 09-CF-2174, 11-CF-1337 and 13-CF-73
Defendant-Appellee.	)	Honorable Robert P. Livas, Judge, Presiding.

---

JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* The trial court improperly considered the sufficiency of the evidence, rather than the sufficiency of the language contained in the criminal indictment, before allowing defendant's motion to dismiss the charges after pleading guilty to the offenses as charged. The trial court's decision to dismiss the charges is reversed.

¶ 2 Between 2009 and 2013, defendant, Stephen P. Glynn, was indicted for four separate acts of driving while license suspended or revoked (DWLS) subject to the possibility of a mandatory enhanced sentence for a Class 4 felony, pursuant to section 6-303(d-3) of the Illinois Vehicle

Code. (625 ILCS 5/6-303(d-3) (West 2008)). The parties agreed, for purposes of the pending defense motions, defendant's privilege to operate a motor vehicle was first suspended in 2002 for an insurance violation and subsequently suspended for a statutory summary suspension related to a DUI in 2006. Based on these facts, the trial court granted defendant's motion to dismiss the indictments in all four cases due to the holding in *People v. Heritsch*, 2012 IL App (2d) 090719. The State appeals. We reverse and remand.

¶ 3

### FACTS

¶ 4

This is a consolidated appeal from four separate Will County cases where the State charged defendant with separate acts of a Class 4 felony offense of DWLS under section 6-303(d-3) of the Illinois Vehicle Code (625 ILCS 5/6-303(d-3) (West 2008)). Defendant pled guilty to the separate offenses of DWLS as charged in Will County case Nos. 09-CF-0525, 09-CF-2174, and 11-CF-1337, on November 9, 2012. Before defendant was sentenced for those offenses, the State charged defendant with another Class 4 felony offense of DWLS which allegedly occurred on November 25, 2012 in Will County case No. 13-CF-73. All four indictments notified defendant he was charged with, and could be sentenced for, a Class 4 felony, based on his prior driving record set out in each indictment.

¶ 5

On January 11, 2013, defendant filed a motion to reduce the felony charges in case Nos. 09-CF-0525, 09-CF-2174, and 11-CF-1337 to a misdemeanor offense. Thereafter, defendant filed a motion to withdraw his guilty pleas and dismiss the indictments in all four cases, case Nos. 09-CF-0525, 09-CF-2174, 11-CF-1337, and 13-CF-73, based on *People v Heritsch*, 2012 IL App (2d) 090719. The parties agreed, for the purpose of the pending motions, that defendant's driving privileges were first suspended in 2002 for an insurance violation, was subsequently

suspended in 2006 for a statutory summary suspension, and this original 2002 suspension remained in effect on the date of each charged felony offense.

¶ 6 The record also shows defendant was convicted of a DUI offense in Will County case No. 02-DT-01451 on December 1, 2006. In addition, defendant was subsequently convicted of two offenses for a misdemeanor offense of driving while license revoked in Will County case Nos. 04-TR-00819 and a felony offense of driving while license revoked in 06-CF-01859, also on December 1, 2006.

¶ 7 Based on the rationale of *People v. Heritsch*, 2012 IL App (2d) 090719, the trial court granted defendant's motion to dismiss all four indictments. The State filed a certificate of impairment and appealed under Illinois Supreme Court Rule 604(a) (eff. Jan. 1, 2013).

¶ 8 ANALYSIS

¶ 9 On appeal, the State contends the trial court improperly dismissed the four indictments because each indictment properly stated an offense, after relying on *People v. Heritsch*, 2012 IL App (2d) 090719. The defense contends the trial court properly dismissing all charges pursuant to the defendant's request.

¶ 10 First, we note defense counsel did not provide any statutory authority for the request to dismiss each indictment. Consequently, we construe defendant's respective motions to dismiss the indictments in case Nos. 09-CF-0525, 09-CF-2174, 11-CF-1337, and 13-CF-73, as separate motions to dismiss for failure to state an offense, pursuant to section 114-1(a)(8) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-1(a)(8) (West 2012)).

¶ 11 The case law provides, "The purpose of a motion to dismiss for failure to state an offense is to challenge the sufficiency of the allegations in the complaint, not the sufficiency of the evidence." *People v. Sheehan*, 168 Ill. 2d 298, 303 (1995). When evaluating the sufficiency of

an indictment that includes predicate offenses, the trial court need not consider whether “the State had adequately established the predicate offenses for these enhanced charges or the manner in which those offenses might be proved[.]” *Sheehan*, 168 Ill. 2d at 310. Further, the court should not consider the nature of the State’s evidence when ruling on a motion to dismiss under section 114-1(a)(8). *People v. Soliday*, 313 Ill. App. 3d 338 (2000).

¶ 12 We note the indictments in these cases on appeal charged defendant with violations of section 6-303(d-3) of the Illinois Vehicle Code, rather than a violation of 6-303(a), putting defendant on notice that, if convicted, his prior record would require the trial court to impose certain mandatory penalties and sentence defendant for a Class 4 felony, rather than a Class A misdemeanor applicable to first offenders suspended or revoked for a prior violation of section 11-501. These additional allegations, included by the State in each of the four separate indictments met the requirements of section 111-3 of the Code (725 ILCS 5/111-3 (West 2008)). Section 111-3(c) requires that “[w]hen the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence<sup>1</sup> and shall state such prior conviction so as to give notice to the defendant.” 725 ILCS 5/111-3(c) (West 2008).

¶ 13 We note the trial court was reluctant to apply the rationale in *Heritsch*, but felt compelled to follow the holding in that case based on the principles of *stare decisis*. However, the procedural posture presented to the trial court in *Heritsch* is significantly different from the instant case and for this reason, the holding in *Heritsch* is not controlling. In *Heritsch*, the issue related to the nature of the underlying suspension of Heritsch’s driving privileges arose with

---

<sup>1</sup> “[E]nhanced sentence’ means a sentence which is increased by a prior conviction from one classification of offense to another higher level classification of offense.” 725 ILCS 5/111-3(c) (West 2008).

respect to the sufficiency of the *evidence* presented during a stipulated bench trial. Thus, in *Heritsch*, sufficiency of the charging instrument was never questioned and the defense did not request the dismissal of the charges filed by the State as in the case at bar.

¶ 14 After reviewing the language of each indictment, we conclude the indictments in each case were sufficient to charge an offense of DWLS and to withstand a motion to dismiss under section 114-1(a)(8) of the Code (725 ILCS 5/114-(a)(8) (West 2008)). Whether the State could prove each offense as charged, or whether the trial court would be required to treat defendant as a non-first offender for purposes of mandatory sentencing provisions, should not have been considered by the trial court for the purpose of dismissing the indictments in the case at bar.

¶ 15 The court's decision dismissing the indictments in case Nos. 09-CF-0525, 09-CF-2174, 11-CF-1337, and 13-CF-73 is reversed, and the cause is remanded with direction for the indictments to be reinstated and for further proceedings in those cases.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is reversed. The cause is remanded for further proceedings.

¶ 18 Reversed and remanded.