

No. 1-13-3879

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 183
)	
JOSE SANCHEZ,)	Honorable
)	Rosemary Grant-Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the trial court allowed the State to amend a formal defect in the indictment, we affirm the judgment of the circuit court.

¶ 2 Following a bench trial Jose Sanchez, the defendant, was convicted of possession of a stolen motor vehicle and sentenced, as a Class X offender, to nine years' imprisonment. On appeal, defendant contends the trial court committed reversible error in allowing the State to make a substantive amendment to its indictment, *i.e.*, changing the vehicle identification number (VIN) of the stolen vehicle he allegedly possessed, after the commencement of trial. We affirm.

¶ 3 The indictment alleged that on or about April 11, 2011, defendant committed the offense of possession of a stolen motor vehicle "in that he, not being entitled to the possession of a motor vehicle, to wit: 2000 GMC Savannah VIN # 1GDFG13RXY1124247, property of Ahmad Bahari, possessed said vehicle knowing it to have been stolen or converted in violation of [625 ILCS 5/4-103(a)(1) (West 2010)]." The arrest report and the complaint for preliminary examination reflect the VIN listed in the indictment.

¶ 4 At the commencement of trial, the court asked the State if it had any changes to the charging instrument, to which the State responded negatively.

¶ 5 During the trial, William Hawkins, a car salesman at Always Wholesale, which was a used car sales lot owned by Ahmad Bahari, testified that on March 26, 2011, defendant was looking at a white GMC Savannah van and asked for the keys to inspect it. After Hawkins gave defendant the keys, he suddenly drove away. Hawkins reported the van as stolen to police later that day. Ahmad Bahari similarly testified that a white GMC van was stolen from his lot.

¶ 6 Detective Robert Rose testified that on April 11, 2011, he was part of a surveillance team that was conducting an investigation at the Metal Management scrap yard at South Blue Island Avenue and Paulina Street in Chicago. Rose saw defendant tow a white GMC van into the scrap yard, drop it off, and leave. A video depicting the events at the scrap yard was recorded by Rose and played during his testimony. The video was not included in the record. Rose also testified that defendant was subsequently arrested on November 30, 2011. Detective John Stewart testified similarly to Rose.

¶ 7 Sergeant Joe Petrenko testified that he went to Metal Management on April 16, 2011, and processed a 2000 white GMC Savannah van. In doing so, Petrenko took photographs of the van, including pictures of the VIN.

¶ 8 Aureliano Diaz, an employee of Metal Management, testified that the vehicle at issue was a 1995 white Ford Explorer "Eco van" with a VIN of "1GDFG15RXY1124247," which was one number different than the 17-digit VIN listed in the indictment. Diaz specifically noted that the VIN of the vehicle defendant sold to Metal Management included a "5," not a "3."

¶ 9 Following Diaz's testimony, the State requested to amend the indictment to reflect the correct VIN as testified to by Diaz. Defense counsel objected, and the State argued that the VIN listed in the indictment was a scrivener's error that did not alter or change the substance of the indictment itself, or result in surprise or prejudice to defendant. The State also maintained that the VIN was merely surplusage as it was not an essential element of the charge, and defendant received documents during discovery that reflected the correct VIN, such as the title of the vehicle, Chicago Police Department general progress reports, pictures, and records from Metal Management.

¶ 10 Defense counsel responded that the State's request to change the VIN was material, and that such a change would surprise and prejudice the defense, particularly where the State told the court prior to trial that it did not have any amendments to make to the indictment. Defense counsel also emphasized that the VIN listed in the indictment was not a scrivener's error where the original case report and a supplemental case report tendered to him during discovery showed the same number. However, when the trial court asked him if he would acknowledge that he received the correct VIN during discovery, defense counsel replied affirmatively.

¶ 11 The State replied that its burden was to prove defendant was in possession of a vehicle he knew was stolen, not to prove the VIN of the vehicle. Following argument, the court granted the State's request to amend the VIN listed in the indictment to 1GDFG15RXY1124247, finding defendant was on notice of the correct number, and the change did not affect the charges nor

defendant's ability to defend himself as it was only a "formal defect." The court further pointed out the VIN was surplusage as the indictment referenced that defendant was in possession of the 2000 GMC Savannah, which was reflected in the certified title with the VIN.

¶ 12 Following closing arguments, defendant was found guilty of possession of a stolen motor vehicle. Defendant filed a motion in arrest of judgment and a motion for a new trial. In both motions, defendant repeated his argument that the VIN listed in the indictment was not merely a scrivener's error, and the trial court's decision to allow the State to amend the VIN was improper where it changed the nature of the offense. The trial court denied the motions, again finding that the VIN was a formal defect, and that defendant was not prevented from preparing a defense where he was on notice of the correct VIN.

¶ 13 On appeal, defendant contends that the trial court committed reversible error in allowing the indictment to be amended to reflect a different VIN. Defendant specifically maintains that the amendment was a substantive change where the VIN was a central factual allegation of the indictment, and prejudiced him where the State provided discovery to the defense that contained the VIN described in the original indictment.

¶ 14 We initially note that, contrary to defendant's assertion, our review of the trial court's decision granting an amendment to the indictment is not *de novo*. Instead, a circuit court's decision to allow amendments to the charging instrument will not be disturbed by a reviewing court unless the court abused its discretion. See *People v. McCoy*, 295 Ill. App. 3d 988, 993 (1998) ("an abuse of discretion standard is used when reviewing the trial court's decision to allow or deny an amendment to the charging instrument").

¶ 15 An indictment may be amended on motion by either the State's Attorney or defendant at any time because of formal defects, including "[a]ny miswriting, misspelling or grammatical

error" or "[t]he presence of any unnecessary allegation." 725 ILCS 5/111-5(a),(d) (West 2010). A formal amendment is warranted where there is no resulting surprise or prejudice to the defendant, or where the record clearly shows that he was otherwise aware of the charge against him. *People v. Ross*, 395 Ill. App. 3d 660, 667 (2009). Formal defects are distinguished from substantive changes that alter the nature and elements of the offense charged. *People v. Wells*, 2012 IL App (1st) 083660, ¶ 32.

¶ 16 Pursuant to section 4-103(a)(1) of the Illinois Vehicle Code (625 ILCS 5/4-103(a)(1) (West 2010)), a person is not entitled to the possession of a vehicle knowing it to have been stolen or converted. Here, defendant was charged with possession of a stolen vehicle in that he possessed a 2000 GMC Savannah VIN 1GDFG13RXY1124247, which was the property of Ahmad Bahari, knowing it to have been stolen or converted. The amended charge was all but identical, with the exception of changing one number of the VIN, *i.e.*, 1GDFG15RXY1124247.

¶ 17 We find *People v. Adams*, 404 Ill. App. 3d 405 (2010), instructive in resolving whether the amendment in the case at bar was a formal or substantive change to the indictment. In *Adams*, the defendant was charged with being an armed habitual criminal. The charging document identified the correct indictment number of the prior conviction, but misnamed the offense as aggravated discharge of a firearm. *Adams*, 404 Ill. App. 3d at 407. The State amended the indictment to show that defendant had been previously convicted of armed robbery rather than aggravated discharge of a firearm. *Id.* On appeal, the defendant claimed the correction of the predicate offense in the indictment was a substantive change. We rejected that argument, determining the error was a "miswriting" where the case number was correct but the prior conviction was misnamed. *Adams*, 404 Ill. App. 3d at 415. Furthermore, the *Adams* court held

that when a defendant's prior convictions fall within those categories of certain enumerated offenses, the actual offense was essentially surplusage. *Adams*, 404 Ill. App. 3d at 415.

¶ 18 Like *Adams* where the original indictment listed a correct case number but misnamed the prior conviction, here the indictment had the correct make and model of the vehicle, but incorrect VIN. Therefore, we likewise find the amendment to the indictment in the case at bar, *i.e.*, changing one number of the VIN, was merely a correction of a miswriting or scrivener's error. See also *Ross*, 395 Ill. App. 3d at 670-73 (amendments to indictment alleging criminal sexual assault changing the manner in which the defendant committed the offense are formal and not substantive); *People v. Flores*, 250 Ill. App. 3d 399, 402-03 (1993) (amendment to indictment to change the type of controlled substance delivered from heroin to cocaine was formal where the grand jury intended to charge the defendant with delivery of cocaine and after the amendment, the nature of the offense remained a Class X felony with the same penalty); *People v. Miszkiewicz*, 236 Ill. App. 3d 411, 426 (1992) (amendment to indictment changing the date of the crime was formal). Moreover, it is significant to note that, as correctly found by the trial court, the VIN contained in the indictment was merely surplusage where it was not an element of the crime of possession of a stolen motor vehicle. Therefore, we find that the trial court did not abuse its discretion in allowing the State to formally amend the indictment.

¶ 19 In so finding, we reject defendant's contention that the amendment to the indictment materially changed a central factual allegation. Defendant emphasizes that the amendment was a surprise and prejudiced him because the State provided discovery containing the VIN described in the original indictment. Although we acknowledge that defendant received a complaint and an arrest report with the wrong VIN, defense counsel admitted during trial that he also received discovery containing the correct VIN. Defendant was thus on notice of the correct VIN, and

could not have been surprised by the amendment. Defendant also makes much of the fact that Diaz testified that the stolen vehicle defendant possessed was a 1995 white Ford van, and not a white 2000 GMC Savannah. However, defendant fails to show how this testimony impacted the amendment to the indictment where he was never charged with possessing a 1995 Ford. It is also significant to note that Hawkins and Detectives Rose and Stewart testified to observing defendant in possession of the GMC van.

¶ 20 We also find the cases, *People v. Patterson*, 267 Ill. App. 3d 933 (1994), and *People v. Betts*, 78 Ill. App. 3d 200 (1979), relied upon by defendant, distinguishable from the case at bar. In both cases, the amendments to the indictments were substantive because they changed the penalties for the charged offenses. See *Patterson*, 267 Ill. App. 3d at 939 (holding that amending the indictment to reflect a larger quantity of a controlled substance was substantive where it was an essential element of the crime and defined both the crime and punishment); *Betts*, 78 Ill. App. 3d at 203-04 (holding that amending the indictment from delivery of a narcotic to delivery of a non-narcotic was substantive where the offense was changed from a Class 2 to Class 3 felony). Defendant argues that, similar to *Patterson* and *Betts*, the amendment at issue changed a "central factual allegation of the indictment." We disagree. Unlike *Patterson* and *Betts* where the amendments played a significant role in defining the crime and setting the punishment, the amendment here did not define the crime or change the punishment. The mere substitution of one number in the VIN did not change the basic element of the possession of a stolen motor vehicle charge or set a new sentencing range.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.