2016 IL App (1st) 152268-U

No. 1-15-2268

Fourth Division
March 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. RYNE SANHAMEL, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 13 CR 13550 Honorable William Hooks, Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court erred when it granted defendant's motion to dismiss the charge of reckless homicide.

¶ 2 Defendant Ryne Sanhamel was charged with reckless homicide pursuant to section 9-3(a) of the Criminal Code of 2012 (720 ILCS 5/9-3(a) (West 2012)). Subsequently, he filed a motion to dismiss the charge. Following a hearing, the trial court granted the motion. On appeal, the State contends that the trial court erred when it granted defendant's motion to dismiss. For the following reasons, we reverse the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On May 29, 2013, defendant was involved in an automobile accident at 1311 North Clybourn in Chicago, Illinois. He was charged with six counts of aggravated driving under the influence of alcohol pursuant to sections 11-501(a)(1) and 11-501(a)(2) of the Vehicle Code (625 ILCS 5/11-501(a)(1),(a)(2)(West 2012)) and one count of reckless homicide pursuant to section 9-3(a) of the Criminal Code of 2012 (720 ILCS 5/9-3(a) (West 2012)). The reckless homicide count, which is the subject of the instant appeal, provided:

> "On or about May 29, 2013 at and within the County of Cook [defendant] committed the offense of Reckless Homicide in that he, unintentionally, without lawful justification, while driving a motor vehicle, recklessly performed acts in such a manner as were likely to cause death or great bodily harm to some individual and such acts caused the death of Robert Cann, in violation of Chapter 720 Act 5 Section 9-3(a) of the Illinois Complied Statues 1992 as amended."

¶ 5 Defendant filed a motion to dismiss the reckless homicide count of the indictment, arguing that the State failed to sufficiently set forth the nature of the offense. During a hearing on the motion, defense counsel argued:

> "What does that charge him with doing? How does a person when charged in this manner know what those reckless acts were? You have to be told, your Honor, in the charging document not only what they claim law you violate [*sic*] but what you did. And when couched in the language of the statute, you have to give more than just what the statute says.
>
> What is the reckless act here? I beg the State to come up here and tell your Honor. What do they claim? Was he speeding when this occurred? Was he playing with his cell phone? Was he texting? Was he playing with the radio? Was he driving too fast for

conditions? How does a defendant – how does Ryne Sanhamel prepare a defense to that?"

¶ 6 Defendant further argued that filing a motion for a bill of particulars, requesting that the State specify the particulars of the offense necessary to enable him to prepare his defense, would not cure the defective indictment because the charge was void and "a bill of particulars cannot be used to cure a void charge."

¶ 7 In response, the State argued that the charge was proper because it referenced a reckless state of mind. Relying on the reasoning in *People v. Camp*, 128 Ill. App. 3d 223 (1984), the State argued that it was not required to detail the specific driving act that constituted recklessness. Rather, the charge need only allege that defendant caused a death while driving a motor vehicle recklessly and that he drove the motor vehicle in a manner that would likely cause death or great bodily harm to someone. The State also noted that the central concern of particularized indictments is to safeguard defendant's right against double jeopardy, and because the victim could only die once, there was no need for particularized acts of recklessness.

¶ 8 The court interjected and asked the State, "[w]hat was the downside of putting down the particular acts that cause – the particular reckless acts that the State is actually going to put evidence on?" The State responded that "the downside is that the person that is actually trying the case may have a different theory of recklessness than the original." The State noted that "if [defendant] wants more particulars," he could file a bill of particulars, and it would respond; however, this was a different issue than what was before the court. That State concluded that "we're doing it according to what the state of the law is at the time. And the state of the law is, you don't have to put the reckless acts."

¶ 9 In rebuttal, defense counsel responded that defendant "has a constitutional right to be told ahead of time what he's facing so we can defend it," and it is unconstitutional to only inform him

that he was charged with doing something wrong without telling defendant what it was that he did wrong until the start of the jury trial. Moreover, he noted that if the State were allowed to change their theory of prosecution on the reckless homicide charge at trial, it would amount to a trial by ambush. The court asked defense counsel why a bill of particulars was not a viable remedy, and defense counsel responded that a "bill of particulars can never cure a void charge." Defense counsel further explained that because the grand jury was never presented with information about what reckless act defendant committed, it was never presented with probable cause to charge defendant with reckless homicide.

¶ 10 Before ruling, the following exchange occurred between the parties:

THE COURT: And State, are you willing to stand on the matter as pled, or are you interested in a Bill of Particulars? Mr. Adam's position is that they won't change anything with the Bill of Particulars. I don't –

ASSISTANT STATE'S ATTORNEY: Judge, I'm interested in standing the way the pleading is done. I know it's correct. It gives the defendant notice. It does everything the indictment is supposed to do in the State of Illinois.

THE COURT: So you don't want him to be able to – you want him to guess as to what the recklessness is because of the first case law that we have?

ASSISTANT STATE'S ATTORNEY: Well, Judge, the discovery – most of the discovery has been tendered. We're waiting on an expert's report.

THE COURT: That doesn't answer the issue. So you want him to basically look at discovery, and you want him to decide what the recklessness is?

ASSISTANT STATE'S ATTORNEY: Yes. Not him to decide. Him to see based on the discovery what the recklessness is.

¶ 11 The court dismissed the reckless homicide count of the indictment without prejudice. The State subsequently appealed.

¶ 12 ANALYSIS

¶ 13 The State's sole contention on appeal is that the trial court erred in granting defendant's motion to dismiss because it was not required to allege the specific acts of recklessness in its charge for reckless homicide. Defendant contends that the trial court's decision was proper where the charge did not allege that defendant committed a specific act of recklessness, and therefore, prevented him from preparing a proper defense.

¶ 14 Our review of a challenge to the sufficiency of a charging instrument is *de novo. People v. Smith*, 259 Ill. App. 3d 492, 495 (1994). Under both the Federal Constitution (U.S. Const., amend. VI) and the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 8), a defendant has a fundamental right to be informed of the "nature and cause" of criminal accusations made against him. *People v. Meyers*, 158 Ill. 2d 46, 51 (1994). "The 'nature and cause' of a criminal accusation refers to the crime committed, not the manner in which it was committed." *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). In Illinois, this fundamental right is given substance by statute and incorporated into section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (West 2012)). When, as here, the sufficiency of a charging instrument is attacked in a pretrial motion, the inquiry upon review is whether the instrument complies with the stated requirements of section 111-3. *People v. Swartwout*, 311 Ill. App. 3d 250, 256 (2000).

¶ 15 Under section 111-3(a), an indictment will be found sufficient if it states the name of the offense and the relevant statutory provision, the nature and elements of the offense, the date and county where the offense occurred, and the name of the accused. 725 ILCS 5/111-3(a) (West 2012); *Meyers*, 158 Ill. 2d at 51. Section 111-3 is "designed to inform the accused of the nature of the offense with which he is charged so that he may prepare a defense and to assure that the

charged offense may serve as a bar to subsequent prosecution arising out of the same conduct." *Meyers*, 158 Ill. 2d at 51 (citing *People v. Simmons*, 93 Ill. 2d 94, 99-100 (1982)). "Ordinarily, the requirements of section 111-3 are met when the counts of a complaint follow the statutory language in setting out the nature and elements of an offense." *Swartwout*, 311 Ill. App. 3d at 256 (citing *People v. Davis*, 281 Ill. App. 3d 984, 987 (1996)).

¶ 16 In this case, defendant was charged with reckless homicide pursuant to section 9-3(a) of the Code, which states in relevant part:

> "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle *** in which case the person commits reckless homicide." 720 ILCS 5/9-3(a) (West 2012).

¶ 17 Accordingly, the elements of reckless homicide are: (1) that the individual was operating a motor vehicle; (2) that the individual unintentionally caused a death while operating the vehicle; and (3) that the acts which caused the death were performed recklessly so as to create a likelihood of death or great bodily harm to some person. *People v. Wilson*, 143 Ill. 2d 236, 245 (1991).

¶ 18 Here, we find that the indictment alleged that defendant committed the offense of reckless homicide in conformity with the requirements of section 111-3. Specifically, the indictment stated that defendant was charged with the offense of reckless homicide, noted the relevant statutory provisions, and the date and county in which the offense occurred. As to the nature and elements of the offense, the language of the indictment tracked the substance of the reckless homicide statute, specifically stating that defendant committed the offense of reckless

homicide in that he "unintentionally, without lawful justification, while driving a motor vehicle, recklessly performed acts in such a manner as were likely to cause death or great bodily harm to some individual and such acts caused the death of Robert Cann." This language, which clearly specifies the type of conduct being alleged, is sufficient for purposes of section 111-3. See *People v. Wisslead*, 108 Ill. 2d 389, 394 (1985) (holding that "the language of the statute can serve to apprise the defendant of *both* the nature and the elements of the offense, so long as the statutory language specifies, with reasonable certainty, the type of conduct being alleged"); see also *Swartwout*, 311 Ill. App. 3d at 256. Thus, we hold that the indictment was sufficient to apprise defendant of the nature and cause of the criminal accusation made against him to allow him to prepare a defense.

¶ 19 In regard to defendant's argument that the State was required to allege specific acts of recklessness upon which the charge was based, we disagree. This court has held that a charging instrument is a preliminary pleading, and it need not contain more than a cursory statement of the facts. *Smith*, 259 Ill. App. 3d at 497. Additionally, although the indictment in this case could have alleged the reckless acts with greater particularity, "the relevant inquiry is not whether a charging instrument could have described an offense with more particularity, but whether there is sufficient particularity to allow the defendant to prepare a defense." *Meyers*, 158 Ill. 2d at 54. We believe that the test in *Meyers* is satisfied here where defendant was sufficiently informed of the nature and cause of the accusations made against him. See *DiLorenzo*, 169 Ill. 2d at 321. Moreover, to the extent that defendant found the indictment inadequate, an appropriate remedy would have been to seek information through discovery or by moving for a bill of particulars. See *Smith*, 259 Ill. App. 3d at 498 (holding that "[i]f a defendant claims that a charging instrument that meets these minimal threshold requirements does not suffice (when combined with any discovery the State furnishes) to inform [the defendant] of the charge and allow [the

defendant] to prepare [a] defense, then [the defendant] can—and should—seek a bill of particulars under either section 111-6 or 114-2 of the Procedural Code [citations]. However, [the defendant's] available remedies do not include dismissal of the charge)."

¶ 20 Furthermore, we find the State's reliance on *Camp*, 128 Ill. App. 3d 223, and *Wilson*, 143 Ill. 2d 236 persuasive. In *Camp*, the defendant was charged by indictment with two counts of reckless homicide. Similar to the instant case, the defendant asserted that the indictments were fatally defective because they failed to particularize the specific acts upon which the counts were based. The first indictment read:

> "[O]n November 1st, 1981, at and within the County, Steven B. Camp committed the offense of reckless homicide in that he, without lawful justification, while driving a motor vehicle, to wit: an automobile, recklessly performed acts in such a manner as were likely to cause death or great bodily harm to some individual and such acts caused the death of Karen Musaus in violation of Chapter 38, Section 9-3(a) of the Illinois Revised Statutes 1979 as amended." *Camp*, 128 Ill. App. 3d at 227.

¶ 21 The second indictment was identical in all respects except for the name of the second victim, which was Victor Rubini. *Id.*

¶ 22 Our supreme court found that the language of the indictment sufficiently alleged the offense of reckless homicide, and held that "[i]f the indictment is otherwise sufficient, then, in reckless homicide cases, it is not necessary to allege the precise acts of recklessness or the particular acts upon which the prosecution will rely." *Id.* at 227. In support of its holding, the court noted that "[t]he central concern of particularized indictments is the safeguarding of the defendant's right against double jeopardy [and] in reckless homicide cases, naming the victim of the homicide in the indictment eliminates any vagueness in the charge, thereby securing the

defendant's rights." *Id.* at 227-28. The court further reasoned that because "the defendant could unquestionably have caused the death of [the victims] only once and both were named in the indictments *** it was not necessary therefore to allege specific acts of recklessness," as the language was sufficient to precluded subsequent prosecution arising out of the same conduct. *Id.* at 228.

¶ 23 In *Wilson*, the supreme court extended its holding in *Camp*. The *Wilson* defendant argued that the indictment charging him with reckless homicide was defective because it did not specify the particular reckless acts upon which the charge was based. *Wilson*, 143 Ill. 2d at 249. The indictment in that case alleged that "on January 10, 1986, defendant recklessly operated an automobile so as to cause the death of Aida Burke." *Id.* at 250. The court found that the language of the indictment was sufficient, and relying on its previous holding in *Camp*, held that "[a]n indictment charging reckless homicide which states that the defendant operated a motor vehicle in a reckless manner and caused the death of an individual named in the indictment is sufficient to give the defendant notice of the nature of the charge against him." *Id.* at 249-50 (citing *Camp*, 128 Ill. App. 3d at 227-28).

¶ 24 In the instant case, the language of the reckless homicide charge is almost identical to the language of the indictments in *Camp*, and also conforms to the holding in *Wilson*. Therefore, we decline defendant's invitation to find that the language of the indictment failed to sufficiently set forth the nature of the offense of reckless homicide as our supreme court has found such language sufficient to allege the offense.

¶ 25 Accordingly, because the indictment at issue strictly conforms to the language of section 111-3 and also sufficiently informs defendant of the charge against him to assist him in preparing a defense and to bar a future prosecution arising out of the same conduct, the State was not required to provide details regarding specific acts of recklessness. Finding otherwise would

require the State to allege far more evidentiary matters in the charging instrument than required. See *Smith*, 259 Ill. App. 3d at 497; see also *People v. Givens*, 135 Ill. App. 3d 810, 817 (1985) (holding that "[t]he State is not required to plead evidentiary details").

¶ 26 Finally, we reject defendant's argument that in the absence of specific facts being alleged in the indictment, it is possible that the jury verdict would not be unanimous, with the jury finding him guilty on different acts of recklessness. As the State points out, it is well settled that "the jury need only be unanimous with respect to the *ultimate question* of defendant's guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed." (Emphasis added.) *People v. Rand*, 291 Ill. App. 3d 431, 440 (1997) (quoting *People v. Travis*, 170 Ill. App. 3d 873, 890 (1988)). Additionally, in *Travis*, this court held that "[a]ll that is necessary is that the jury is unanimous that [the defendant] is guilty of the offense, regardless of their agreement on the underlying conduct." Accordingly, unanimity is not required in regard to the alternate ways in which an offense can be committed, and the jury need only be unanimous with respect to the ultimate question of defendant's guilt of the offense. Therefore, defendant's argument must fail.

¶ 27 CONCLUSION

¶ 28 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 29 Reversed and remanded for further proceedings.