2012 IL App (2d) 110407-U
No. 2-11-0407
Order filed February 6, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-684
TIFFANY J. HERRERA,	)	Honorable Timothy Q. Sheldon,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's posttrial motion to dismiss her indictment for aggravated battery on the ground that it failed to allege that she acted with a requisite mental state: because the motion was posttrial, the indictment had to be only specific enough to allow her to prepare a defense and to avoid a future prosecution for the same conduct, and defendant did not and could not plausibly claim that the indictment failed to meet that standard.

¶ 1 Following a bench trial, defendant, Tiffany J. Herrera, was convicted of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)). Defendant filed a posttrial motion to dismiss the indictment

on the ground that it failed to allege that she acted either intentionally or knowingly. The trial court denied the motion and defendant appeals. We affirm.

¶ 2 An indictment alleged that defendant "without legal justification, made physical contact of an insulting or provoking nature with Officer Cisneros, in that she struck Officer Cisneros in the arm with her shoulder, knowing him to be a police officer engaged in the performance of his official duties as a police officer."

¶ 3 Defendant waived a jury and the matter proceeded to a bench trial, following which the court found defendant guilty of aggravated battery. The court granted defendant's motion for a directed finding on two additional counts of threatening a public official (720 ILCS 5/12-9 (West 2008)) and intimidation (720 ILCS 5/12-6 (West 2008)). Defendant further moved to dismiss the aggravated battery count on the ground that it did not allege that defendant acted either knowingly or intentionally, and, accordingly, the State failed to prove all the elements of the offense.

¶ 4 The trial court denied the motion, finding that the State proved that defendant's conduct was both knowing and intentional. Defendant timely appeals.

¶ 5 Defendant contends that, by omitting an allegation that defendant acted with a particular mental state, the indictment failed to charge an offense. Thus, defendant asserts, the trial court should have dismissed it.

¶ 6 Criminal indictments must comply with section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (West 2008)), which provides that an indictment must set forth the nature and elements of the charged offense. Defendant was charged with aggravated battery, which, as charged here, required the State to allege and prove that defendant, in committing a battery, knew the person harmed to be an officer or employee of a unit of local government. 720 ILCS 5/12-

4(b)(18) (West 2008). In turn, a battery is committed when a person "intentionally or knowingly without legal justification and by any means *** makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a)(2) (West 2008). Thus, a mental state of knowledge or intent is an element of aggravated battery. We agree that the indictment did not explicitly allege that defendant acted with one of the requisite mental states. It does not follow, however, that defendant is entitled to relief.

¶ 7 Whether an indictment must be dismissed for failing to comply with section 111-3 depends to a large extent on when a defendant challenges it. Where a defendant challenges an indictment before trial, it must strictly comply with section 111-3. *People v. Parsons*, 284 Ill. App. 3d 1049, 1055 (1996). By contrast, in *People v. Pujoue*, 61 Ill. 2d 335, 339 (1975), the supreme court held that when an indictment is attacked for the first time on appeal, a complaint is sufficient if it apprises defendant of the precise offense charged with sufficient specificity to prepare a defense and to allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. The question, then, is whether the *Pujoue* standard governs defendant's motion to dismiss, which was made in the trial court, but after the trial commenced.

¶ 8 *People v. Cuadrado*, 214 Ill. 2d 79 (2005), holds that it does. Although, incredibly, neither party cites it, *Cuadrado* holds that the key point is the "commencement of trial." *Id.* at 85-88; see also *People v. Vest*, 397 Ill. App. 3d 289 (2009). Thus, if a defendant challenges the indictment before trial begins, it must strictly comply with section 111-3. However, once the trial begins, the indictment need comply only with the *Pujoue* standard.

¶ 9 Here, defendant does not claim that the indictment was not sufficiently specific to allow her to prepare her defense or to plead the resulting conviction as a bar to a future prosecution for the

same conduct, nor could she plausibly do so. The indictment clearly described the conduct constituting the offense; it merely omitted the element that defendant acted either knowingly or intentionally. Therefore, the trial court did not err by refusing to dismiss the indictment. Moreover, the court specifically found that the State proved that defendant acted with the one of the requisite mental states, and defendant does not question that finding.

¶ 10 The judgment of the circuit court of Kane County is affirmed.

¶ 11 Affirmed.