FIRST DIVISION
September 12, 2016

No. 1-15-3176

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. 145005356
	)	
SARA HADWIGER,	)	Honorable
	)	Stephen J. Connolly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the misdemeanor complaint charging defendant with reckless driving merely recited the statutory language (625 ILCS 5/11-503 (West 2014)) without stating the specific acts which constitute wanton disregard for the safety of others, the trial court's finding of guilt cannot stand pursuant to *People v. Griffin*, 36 Ill. 2d 430 (1967).

¶ 2 Following a bench trial, defendant Sara Hadwiger was found guilty of reckless driving (625 ILCS 5/11-503 (West 2014)) and speeding (625 ILCS 5/11-601 (West 2014)). The trial court sentenced defendant to one year of court supervision and 10 days of the Sheriff's Work Alternative Program (SWAP) for the reckless driving charge and fined defendant $250 for

speeding. On appeal, defendant challenges only the reckless driving judgment contending (1) that the complaint did not sufficiently set forth the nature and elements of the offense as required by *People v. Griffin*, 36 Ill. 2d 430 (1967) and *People v. Green*, 368 Ill. 242 (1938); and (2) she was not proven guilty beyond a reasonable doubt. Defendant does not challenge her speeding conviction.

¶ 3 Because we ultimately vacate the finding of guilt for reckless driving based on inadequacies in the complaint, we find that only a summary description of the evidence is required. The charges in this case arose from defendant's operation of her vehicle southbound on interstate 294 (I-294) on October 14, 2014. She was stopped and arrested for various traffic violations including reckless driving and speeding. The misdemeanor complaint for reckless driving alleged, in pertinent part:

> "she drove her vehicle an orange Toyota Scion, with a willful and wanton disregard for the safety of persons or vehicles."

¶ 4 Before trial, defendant moved to dismiss the complaint arguing that "the complaint fails to fully set forth the nature and elements of the offense." The trial court heard argument on defendant's motion. Defendant argued that the complaint failed to adequately allege reckless driving and "after reviewing the discovery and playing the video, I am not able to really have any understanding of where [the State] is coming from." The State responded asking if defendant was seeking a bill of particulars, and alternatively offered to amend the complaint. The trial court denied the motion, stating: "If a complaint is worded in the language of the statute, the complaint is sufficient on its face." The State did not amend the complaint.

¶ 5 At trial, Illinois State Police trooper Eduardo Reyes testified that on October 14, 2014, he was driving a "fully marked" car southbound on I-294. The speed limit where he was driving was 55 miles per hour, there was a heavy rain, the traffic was moderate, and "everybody was keeping a good slow pace approximately 55, *** due to the rain." He observed defendant's car approaching him from behind at a high rate of speed and making "quick" lane changes. Reyes' car was equipped with a camera, and he activated the recording device. He further testified he did not activate the device immediately when he saw defendant, because he was following defendant as she made "erratic lane changes," and it was not safe to take his hand off the wheel. Reyes began to "pace" defendant's car. He set his speed to 80 miles per hour and was keeping up with her, so he reduced his speed to 78 miles per hour and noticed her breaking away from his vehicle. Reyes concluded that defendant was driving "78-plus miles per hour, possibly 79." Reyes subsequently activated his emergency lights, defendant stopped, and he arrested her for reckless driving and other offenses. The trial court viewed the video taken by the camera in Reyes' vehicle.

¶ 6 On cross-examination, Reyes testified that defendant used her turn signal when she changed lanes, did not "run" any red lights, and did not drive on the shoulder. Reyes admitted that he did not see any vehicles taking evasive action except for one truck that changed lanes in a manner that "could have been" evasive. Reyes did not hear anyone use their horns or give any audible signal because of the way defendant was driving.

¶ 7 The State rested, and defendant moved for a directed finding. The trial court denied the motion.

¶ 8 Defendant testified that she noticed a car following her closely, but did not recognize it as a state trooper. She changed lanes and the car followed her. Defendant got "spooked" and changed lanes hoping that the driver would pass her. Defendant did not realize the driver was a state trooper until after she slowed down to 50 miles per hour and the car "came around the back of a semi-truck." The trooper drove next to defendant, then got behind her and activated his emergency lights. Defendant testified that she never drove with "willful and wanton disregard" for the safety of the other drivers.

¶ 9 Following argument, the trial court found defendant guilty of reckless driving and speeding. The trial court stated:

> "There's no question in my mind that when I look at my diagram, the thing that comes to my mind is a downhill ski race in which this [d]efendant was basically racing down this hill, couldn't get wherever she was going fast enough.
>
> I think she put every single person that was driving on this roadway at risk."

The trial court found defendant not guilty on three remaining counts, and continued the matter for posttrial motions.

¶ 10 Defendant filed a motion in arrest of judgment pursuant to section 116-2 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-2 (West 2014)) that argued, *inter alia*, that the complaint failed to set for the nature and elements of the offense in light of the supreme court's holdings in *Green* and *Griffin*. Following argument, the trial court denied defendant's motion and sentenced defendant to one year of court supervision on the reckless driving charge subject to 10 days of SWAP. The trial court also entered a conviction on the speeding charge and fined defendant $250. Defendant appeals.

¶ 11 On appeal, defendant first contends that the complaint charging her with reckless driving did not sufficiently set forth the nature and elements of the charge. It has long been the law in Illinois that a complaint alleging reckless driving, unlike other traffic violations, is insufficient if it merely recites the statutory language. See *Green*, 368 Ill. at 255. The *Green* court observed:

> "The information in the present case did not allege a single fact and there was nothing in it from which the defendant could tell definitely, or even guess, what acts he may have been charged with. It might have been driving while intoxicated, or running through a stop-light, or driving at an excessive speed or without brakes, lights, or horn; he may have been driving on the wrong side of the road or on the sidewalk, or without keeping proper lookout for children, or any one of dozens of things which might constitute willful and wanton disregard for the safety of persons or property." *Id.* at 254-55.

The court concluded that such an information[1] was insufficient to allow a defendant to prepare a defense or to be of any value as a bar to subsequent prosecution. *Id.* at 255.

¶ 12 In *Griffin*, our supreme court revisited the issues raised in *Green* and held that although a bill of particulars could cure problems with the place and time of an offense it was still essential that a complaint allege the nature and elements of the offense. *Griffin*, 36 Ill. 2d at 433. The *Griffin* court concluded:

> "*People v. Green* avoided these uncertainties in all instances by requiring that the charge of reckless driving state the ‘nature and elements' of the offense, in the sense of

[1] The minimum requirements for a charging instrument are now codified in section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3) (West 2014)).

> the particular acts relied upon. The requirement is not burdensome, for the prosecution must know the specific acts it proposes to prove, and an otherwise serious double jeopardy question is avoided. We therefore adhere to our decision in *People v. Green*." *Id.* at 434-35.

¶ 13 Subsequent appellate court opinions have continued to adhere to the ruling of *Griffin*. See *People v. Podhrasky*, 197 Ill. App. 3d 349, 353 (1990); *People v. Roberts*, 113 Ill. App. 3d 1046, 1050 (1983) (holding that a complaint that merely follows the statutory language fails to comply with section 111-3 of the Code of Criminal Procedure (Ill. Rev. Stat 1981, ch. 38, par 111-3 recodified as 725 ILCS 5/111-3 (West 2014)). Like our supreme court, the *Roberts* court observed that the burden imposed by *Green* is small. *Roberts*, 113 Ill. App. 3d at 1046. ("We agree that the purpose of the Uniform Traffic Ticket and Complaint is to expedite the handling of traffic cases, quasi-criminal cases and misdemeanors. However, we do not believe that the judicial system will be overburdened by requiring an officer to describe on the ticket the particular act that constitutes the offense of reckless driving.")

¶ 14 Here, the complaint charges the offense of reckless driving using only the statutory language. See 625 ILCS 5/11-503(a)(1) (West 2014) ("drives any vehicle with a willful or wanton disregard for the safety of persons or property"). This creates a deficiency identical to the errors identified in *Griffin* and *Green*. The continued validity of the rule requiring additional specificity has been recognized by the appellate court (see, *e.g.*, *Podhrasky*, 197 Ill. App. 3d at 353) and the burden of compliance is small (see *Roberts*, 113 Ill. App. 3d at 1046). Defendant objected to the error before trial and preserved the issue in her motion in arrest of judgment.

Accordingly, we must vacate the judgment of the circuit court finding defendant guilty of reckless driving and sentencing her to court supervision.

¶ 15 The State, however, urges us to look to reckless homicide cases and "maintain[s] that a specific act was not required." See *People v. Camp*, 128 Ill. App. 3d 223, 227 (1984). The State's citation to reckless homicide cases is unpersuasive. Even the case the State cites recognized: "The Illinois courts have repeatedly distinguished simple recklessness cases from reckless homicide cases in terms of the necessity for particularized indictments." *Id.* The State also argues that defendant could have sought, or accepted, the State's offer to provide a bill of particulars. However, a bill of particulars cannot be used to cure an inadequate charge (see *People v. Guerrero*, 356 Ill. App. 3d 22, 27 (2005)), and *Green* clearly holds that a charge which only recites the statutory language is inadequate (*Green*, 368 Ill. at 255). Therefore, we reject the State's counterarguments.

¶ 16 For the foregoing reasons we reverse the order of the circuit court denying defendant's motion in arrest of judgment and vacate the order finding defendant guilty of reckless driving and imposing court supervision. Because defendant raises no challenge to her conviction for speeding we affirm that result.

¶ 17 Affirmed in part and reversed in part; order vacated.