MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lucretia Joyce,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 5, 2021

Court of Appeals Case No. 20A-CR-1586

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Tornatta, Judge

The Honorable Jill R. Marcrum, Magistrate

Trial Court Cause No. 82D061909CM6075

Altice, Judge.

Case Summary

[1] Following a bench trial, Lucretia Joyce was convicted of Class C misdemeanor reckless driving. On appeal, she alleges that her conviction is void and should be vacated because the State initiated the criminal case against her by filing a citation rather than an information or indictment. In the alternative, she claims that it was fundamental error to proceed with trial in the absence of an information or indictment.

[2] We affirm.

Facts & Procedural History

[3] In July 2019, a section of Pollack Avenue in Vanderburgh County was under construction while a pipeline was being installed. The road was closed to through traffic, allowing local traffic only. The section at issue was a two-lane roadway, with one lane open for traffic, and was marked with signs in both directions that warned drivers of the road closure and "Workers Ahead." *Transcript* at 10.

[4] On July 12, Gabriel Cartwright, a foreman with Miller Pipeline, and his crew were working on the project. Cartwright was standing at the rear of a work van when he heard a loud engine. He stepped out to the side to check on the source of the sound and observed a pick-up truck "barreling" past at a speed exceeding the posted thirty-five miles per hour limit. *Id.* at 11. Cartwright had to step

back behind the van to avoid being hit by the truck's side mirror. He held up his hands to indicate to the driver to slow down, but the driver, later identified as Joyce, yelled obscenities out of her window and "sped up and went even faster." *Id.*

[5] Vanderburgh County Sheriff's Deputy Joshua Wargel was off duty but working as security for Miller Pipeline at the work site that day, when he observed the pick-up truck speed past. He activated his emergency lights and followed it, keeping it in sight until he initiated a traffic stop about a quarter mile from the construction site. As Deputy Wargel approached the truck, Joyce was confrontational, "yelling" and asking "what she had done" and "what gave [him] the authority to stop her." *Id.* at 18. Deputy Wargel issued a citation to her.

[6] On September 3, 2019, the State charged Joyce with reckless driving by filing an Indiana Citation Report (the Citation) in Vanderburgh Superior Court. The Citation indicated that the offense occurred on July 12, 2019 at 10:57 a.m. and the charges were "Traffic - reckless Driving." *Appendix* at 17, 18 (capitalization in original). Next to that typed description was handwritten "9-21-8-52 [CM]", referring to the applicable Indiana Code statute. *Id.* In addition to filing the Citation, the State filed, on green paper, an "Incident/Investigation Report" and attachments, including the BMV's driver record for Joyce.[1] *Id.* at 4. The

[1] The CCS labeled this filing as a "Probable Cause Affidavit." *Appendix* at 4.

State also filed a "Notice of Exclusion of Confidential Information" (Notice), stating that the "Information" tendered on green paper was excluded from public access. *Id*. at 16.

[7] The Incident Report included Deputy Wargel's Narrative, which outlined the circumstances of the occurrence giving rise to the charge. Deputy Wargel described that, on July 12 at 10:57 a.m., he was in his fully-marked SUV, facing east in the westbound lane, when he observed the pick-up truck traveling "at an extremely high rate of speed" eastbound on Pollack Avenue and past the construction area. *Id*. at 36. Deputy Wargel reported that "[t]he vehicle never slowed" and required one worker to quickly move out of the way. *Id*. Deputy Wargel "had to accelerate rapidly" to follow it and estimated it was traveling at over sixty miles per hour. *Id*.

[8] The court held an initial hearing on September 10, where the court appointed counsel to represent Joyce. Thereafter, a review hearing was held on October 15 and a pretrial conference on December 20, with Joyce appearing in person and with counsel at both hearings. A bench trial was held on January 28, 2020. Cartwright, Deputy Wargel, and Joyce each testified.[2] At trial, Joyce's theory

[2] We note that, in beginning its examination of Deputy Wargel, the State directed, "I want to take you back to on or about July 19th, 2019" and asked Deputy Wargel to describe how the events unfolded. *Transcript* at 15. Referring to that testimony, both parties cite to July 19 in their briefs as the date of the incident. However, this date appears to be in error, as the Citation, Incident Report/Narrative, and the court's sentencing statement, each reflect that the date of the incident was July 12, 2019.

of defense was that it was not her that sped through the construction zone and was, instead, a different green pick-up truck that was ahead of her.

[9] At the conclusion of the evidence, the trial court found Joyce guilty as charged and entered judgment of conviction for Class C misdemeanor reckless driving. The court then sentenced her to sixty days in jail, all suspended on the condition that she complete twenty-four hours of community service. Joyce thereafter requested and received permission to file a belated appeal.

Discussion & Decision

[10] Joyce claims that the State's failure to file an information or indictment rendered the trial court's judgment void. While Joyce and the State frame the issue somewhat differently from each other, they agree that, where, as here, the facts are not in dispute, "a jurisdictional question involving the trial court's ability to render a valid judgment is reviewed de novo." *Appellant's Brief* at 7 (citing *Peele v. State*, 141 N.E.3d 838, 841 (Ind. Ct. App. 2020), *trans. denied*); *see also State v. D.B.*, 819 N.E.2d 904, 906 (Ind. Ct. App. 2004) (whether a lower court had jurisdiction is reviewed de novo when facts are not in dispute), *trans. denied*.

[11] Joyce argues that Indiana requires that all prosecutions of crimes be initiated by the filing of either an information or an indictment and that the failure to do so here rendered her conviction void. In support, she cites to Ind. Code § 35-34-1-1(b), which provides that "all prosecutions of crimes shall be instituted by the filing of an information or indictment by the prosecuting attorney, in a court

with jurisdiction over the crime charged." She maintains that this language reflects a clear determination by the legislature that a prosecution may be initiated "solely with the filing of a charging information or indictment, and in no other way." *Appellant's Brief* at 5.

[12] Taking her point one step further, she argues that a trial court does not have power to render judgment – i.e., does not have jurisdiction – in a case that has not been properly initiated. In this regard, she refers us to *Pease v. State*, 74 Ind. App. 572, 129 N.E. 337, 339 (1921), where this court stated:

> In this state it has been held consistently that a criminal action can be commenced only in the manner provided by law, and that is the filing of the accusation in lawful form that invokes the jurisdiction of the court in the particular cause. It is a universal principle as old as the law that the proceedings of a court without jurisdiction are a nullity and its judgment void. There can be no conviction or punishment for crime, except on accusation made in the manner prescribed by law.

(Internal citations omitted). Joyce claims that, in line with *Pease*, the State's failure to file an information or indictment renders her conviction void. We disagree.

[13] More recently, and more applicable to the matter before us, our Supreme Court has noted that "a uniform traffic ticket or citation is the functional equivalent of an information or indictment." *Butler v. State*, 658 N.E.2d 72, 75 n.8 (Ind. 1995) (citing to *Watt v. State*, 249 Ind. 674, 234 N.E.2d 471 (1968) (rejecting claim that only an indictment or affidavit may initiate a criminal action)).

Accordingly, we reject Joyce's claim that the filing of the Citation, rather than an information or indictment, was fatal to the State's prosecution of her.

[14] Alternatively, Joyce argues that, even if we were to find that the judgment was not void, the Citation in this case failed to comply with the statutory requirements for an information or indictment. Joyce acknowledges that, generally, the failure to challenge an information by motion to dismiss constitutes waiver. She urges, however, that waiver does not apply in the present case because "it is not that the charging information is insufficient. It is that the charging document does not exist in the first place." *Appellant's Brief* at 9. Having found that a charging document does exist, i.e., the Citation, we find that Joyce has waived her claim that the Citation was inadequate and therefore must show that fundamental error occurred. *Grimes v. State*, 84 N.E.3d 635, 640 (Ind. Ct. App. 2017) ("Failure to timely challenge an allegedly defective charging information results in waiver unless fundamental error has occurred."), *trans. denied*. Fundamental error is an extremely narrow exception to the waiver rule, and the defendant faces the heavy burden of showing that the alleged error is so prejudicial to the defendant's rights as to make a fair trial impossible. *Id.*

[15] We have recognized that "'[t]he purpose of the charging information is to provide a defendant with notice of the crime of which he is charged so that he is able to prepare a defense.'" *Gilliland v. State*, 979 N.E.2d 1049, 1060 (Ind. Ct. App. 2012) (quoting *State v. Laker*, 939 N.E.2d 1111, 1113 (Ind. Ct. App. 2010), *trans. denied*). I.C. § 35-34-1-2(a), addressing contents of an information or

indictment, provides in pertinent part that a charging information must be in writing and allege the commission of an offense by:

> (2) stating the name of the offense in the words of the statute or any other words conveying the same meaning;
>
> (3) citing the statutory provision alleged to have been violated, except that any failure to include such a citation or any error in such a citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against the defendant;
>
> (4) setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition;
>
> (5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense;
>
> (6) stating the time of the offense as definitely as can be done if time is of the essence of the offense; [and]
>
> (7) stating the place of the offense with sufficient particularity to show that the offense was committed within the jurisdiction of the court where the charge is to be filed[.]

"The State is not required to include detailed factual allegations in a charging information." *Laney v. State*, 868 N.E.2d 561, 567 (Ind. Ct. App. 2007), *trans. denied*. "[W]here a charging instrument may lack appropriate factual detail, additional materials such as the probable cause affidavit supporting the charging instrument may be taken into account in assessing whether a

defendant has been apprised of the charges against him." *Grimes*, 84 N.E.3d at 640 (quoting *Laker*, 939 N.E.2d at 1113).

[16] Joyce argues that the Citation "contains no written description whatsoever of the nature the offense" and "failed almost completely to apprise [her] of the allegations against her." *Appellant's Brief* at 8, 12. Given the record in its entirety, we cannot agree. The Citation identified the date, time, and location of the incident, stated that the offense was reckless driving, and identified the citation of the corresponding statute. Joyce observes that Ind. Code § 9-21-8-52 lists a number of ways in which a person may commit reckless driving, including driving at an unreasonably high rate of speed or an unreasonably slow rate of speed,[3] and she suggests that she did not know in what way she was being alleged to have committed reckless driving.

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[3] More fully, I.C. § 9-21-8-52(a) provides that a person commits Class C misdemeanor reckless driving if he or she recklessly:

> (1) drives at such an unreasonably high rate of speed or at such an unreasonably low rate of speed under the circumstances as to: (A) endanger the safety or the property of others; or (B) block the proper flow of traffic;
>
> (2) passes another vehicle from the rear while on a slope or on a curve where vision is obstructed for a distance of less than five hundred (500) feet ahead;
>
> (3) drives in and out of a line of traffic, except as otherwise permitted; or
>
> (4) speeds up or refuses to give one-half (½) of the roadway to a driver overtaking and desiring to pass[.]

[17] We are unpersuaded, however, because contemporaneously with the filing of the Citation, the State filed the Incident Report and it included Deputy Wargel's narrative of the incident. Deputy Wargel described that he was working as security and seated in his Sherriff's Department SUV at the construction site, when he observed the pick-up drive by at what he estimated to be sixty miles per hour, requiring Cartwright to quickly step out of the way. The Citation and Incident Report thus provided Joyce with notice of the nature and facts of the accusation. Indeed, the record reflects that she understood the nature of the charge against her and presented a defense to it, namely that the speeding pick-up that Deputy Wargel saw was not hers and, instead, was a vehicle that was ahead of her on Pollack Avenue.

[18] Joyce also notes that I.C. § 35-34-1-2(c) requires that "[a]n information shall be signed by the prosecuting attorney or the prosecuting attorney's deputy[,]" and that, here, the Citation was not so signed. The purpose of the signing requirement is to ensure the prosecution has been investigated and approved by the prosecutor's office. *Clark v. State*, 561 N.E.2d 759, 765 (Ind. Ct. App. 1990). Here, the State filed, along with the Citation, a Notice, advising that the "Prosecuting Attorney has filed confidential information[,]" and then identified the "confidential information" as being the "Information[.]" *Appendix* at 16. That Notice was signed by the prosecutor. Considering the full record, we are

confident that the prosecuting attorney had approved of the filing of the reckless driving charge.

[19] For all these reasons, we conclude that the judgment of conviction for reckless driving was not void and no fundamental error occurred.

[20] Judgment affirmed.

Mathias, J. and Weissman, J., concur.