IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	Cr. ID No. 1011012922
	)	
MORGAN A. CONNER,	)	
	)	
Defendant.	)	

Decided: May 24, 2011

MEMORANDUM OPINION AND ORDER

Periann Doko, Esquire, Department of Justice, 820 North French Street, 7th Floor, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

Gerald J. Hager, Esquire, Margolis Edelstein, 750 Shipyard Drive, Suite 102, Wilmington, Delaware, 19801. Attorney for the Defendant Morgan A. Conner.

DAVIS, J.

Defendant Morgan A. Conner was issued a Uniform Traffic Complaint and Summons for Driving at an Unreasonable Speed ("Unreasonable Speed") on October 29, 2010. Prior to trial in the Court of Common Pleas, Mr. Conner's Counsel made a Motion to Dismiss (the "Motion") because the allegations in the information did not contain all essential elements of the charge. For the reasons stated in this Opinion, the Defendant's Motion is Granted.

FACTS AND PROCEDURAL HISTORY

On October 29, 2010, Mr. Conner was issued a traffic citation for driving at an unreasonable speed in violation of 21 *Del. C.* 4168(a). The case was originally filed in Justice of the Peace Court 20. Mr. Conner pled not guilty and requested that the case be transferred to this

Court. The State filed its information with this Court on March 8, 2011. Count One of the information reads:

> UNREASONABLE SPEED- in violation of Title 21, Section 4168 (a) of the Delaware Code of 1974, as amended.
>
> MORGAN A. CONNER, on or about the 29th day of October, 2010, in the County of New Castle, State of Delaware, did drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing.

The Court scheduled the matter for arraignment on March 29, 2011. Mr. Conner appeared, represented by Counsel, and informed the State that this case would require a trial.[1] Prior to trial, Mr. Conner's Counsel addressed the Court and moved to dismiss the case – i.e., the Motion. In support of the Motion, Mr. Conner's Counsel argued that the charge of Unreasonable Speed requires particular allegations of the conditions, in the information, which gave rise to the alleged violation of Driving at an Unreasonable Speed. Mr. Connor's counsel noted that the information does not contain any particular factual statement about the conditions on October 29, 2010 – it simply follows the language of 21 *Del. C.* § 4168 (a) and alleges that a violation occurred. Mr. Conner's Counsel also provided the Court with case law that supported the arguments made in the Motion.[2]

The Court reviewed the cases provided by Mr. Conner's counsel and asked the State for its position on the Motion. After reviewing the same cases, the Deputy Attorney General representing the State argued that the cases provided are old and she did not believe the State

[1] The Court of Common Pleas schedules certain motor vehicle violations for an arraignment calendar on Tuesday mornings. Cases from the Tuesday morning calendar that are not resolved by plea are scheduled for trial on that Tuesday afternoon. Consistent with this practice, Mr. Conner appeared on Tuesday morning, March 29, 2011 and informed the State that this case would proceed to trial. The Court scheduled the case for the afternoon trial calendar.

[2] *State v. Allen*, 112 A.2d 40 (Del. Super. 1955) (information for charge of Unreasonable Speed requires statement setting forth the conditions and actual or potential hazards existing at the time of the violation); *State v. Ealey*, 2001 WL 34075423 (Del. Com. Pl. Oct. 10, 2001) (information for Unreasonable Speed must contain particular conditions and actual or potential hazards existing at the time of the alleged offense).

would not continue to file informations that failed to comply with current law. The State then requested the opportunity to brief the Motion "to address it more appropriately." The Court agreed with the State and requested that each party submit a brief on the Motion.

On April 7, 2011, the State filed its Answer to Defendant's Motion to Dismiss (the "Answer") with the Court. In the Answer, the State argued that the information was sufficient because it complied with Court of Common Pleas Criminal Rule 7 ("Rule 7").[3] The State cites Rule 7 and asserts that its purpose is to plainly and fully inform the defendant of the nature and cause of the accusations against him. Furthermore, the State suggested that the appropriate procedure for a defendant to raise the issue of a flaw in the information is to request that the State file a bill of particulars more than 10 days prior to arraignment. This, the State argues, would give it sufficient time to amend the information if necessary. The State does not address any of the cases cited as authority and relied upon by Mr. Conner in the Motion.

On April 14, 2011, Mr. Connor's counsel filed Defendant Morgan Conner's Reply to the State's Response to Defendant's Motion to Dismiss (the "Reply"). The Reply contends that the State's argument raised in the Answer has been rejected by the Delaware Courts on at least three prior occasions.[4] In the Reply, Mr. Conner also argues that the State bears the burden of proving its case, and the defendant is not under any duty to file a bill of particulars. Finally, Mr. Conner argues that the remedy in this case, if the information is deemed insufficient, should be dismissal because the Defendant has suffered prejudice as a result of the State's negligence.

[3] The Court notes that the State relied on Rule 7 and it failed to address any of the cases provided by Mr. Conner's Counsel in support of the Motion.

[4] *State v. Kreuger*, 111 A. 614 (Del. Ct. O.&T. 1920) (indictment for Unreasonable Speed should show conditions existing at the time of the violation); *State v. Allen*, 112 A.2d 40 (Del. Super. 1955); *State v. Ealey*, 2001 WL 34075423 (Del. Com. Pl. Oct. 10, 2001).

I. ANALYSIS

The State is required to prove the following elements beyond a reasonable doubt before the Court can find a defendant guilty of the charge of Unreasonable Speed pursuant to 21 *Del. C.* §4168(a): (i) that the defendant drove a motor vehicle on a public highway; (ii) that the conditions and actual or potential hazards existing on the highway required a reasonable speed that was less than the posted speed limit; and (iii) that the defendant drove his or her motor vehicle at a speed in excess of the reasonable speed.[5] The charge of Unreasonable Speed is appropriate where the defendant is not alleged to have exceeded the maximum posted speed; however, the conditions at the time of the alleged offense (such as fog, icy road surfaces, and hazards due to road construction) caused the speed at which the defendant was traveling to be unreasonable. By comparison, a charge of speeding is appropriate under circumstances where the State contends that the defendant's motor vehicle exceeded the maximum posted speed limit. This distinction is the basis for requiring the State to prove the conditions at the time of the alleged violation in order to obtain a conviction for a charge of Unreasonable Speed.

A charging document, or information, is sufficient if it alleges adequate facts concerning the commission of the crime charged to put the accused on full notice of what he is charged with, and of what he will be called upon to defend.[6] An information must contain a plain, concise, and definite written statement of the essential facts constituting the offense charged.[7] The plain, concise, and definite statement of facts is designed to fulfill two purposes: to ensure that the defendant is adequately informed of the charges against him and that his double jeopardy rights are protected.[8]

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[5] *See* 21 *Del. C.* § 4168(a); *Ealey*, 2001 WL 34075423.
[6] *Holland v. State*, 194 A.2d 698 (Del. 1963).
[7] Ct. Com. Pl. Crim. R. 7(c).
[8] *State v. Di Maio*, 185 A.2d 269 (Del. Super. 1962).

An information must delineate with specificity all the essential elements of the offense.[9] An information is generally held to be sufficient if the offense is charged substantially in the words of the statute, or in equivalent language.[10] "This rule has no application, however, where the words of the statute do not in themselves fully and expressly, without uncertainty or ambiguity set forth all the elements necessary to constitute the offense intended to be punished."[11] The statement contained in an information for a charge of Unreasonable Speed pursuant to 21 *Del. C.* §4168 (a) must set forth, as an essential element of the charge, "the conditions and actual or potential hazards existing at the time" of the alleged violation.[12] Failure to include the essential elements of an offense in the information is negligence.[13]

An information lacking an essential element of the offense charged must be dismissed.[14] The defendant is under no duty to request a bill of particulars where an information lacks an essential element of the offense charged.[15] It is not a function of a bill of particulars to remedy a defective information.[16] A prosecution cannot proceed on a bill of particulars and the contents of a bill of particulars cannot alter, change, amend or affect the information.[17] "A bill of particulars is not a part of the pleadings and neither strengthens nor weakens an information to which it is attached."[18]

The information charging Mr. Conner with Unreasonable Speed lacks an essential element of the charge. Prior cases make it clear that the remedy for this flaw is dismissal. The State has failed to convince this Court that another remedy would be more appropriate under the

[9] *State v. Deedon*, 189 A.2d 660 (Del. 1963).
[10] *Allen*, 112 A.2d at 42.
[11] *Id*.
[12] *Ealey*, 2001 WL 34075423 (*quoting State v. Allen*, 112 A.2d 40, 42 (Del. Super. 1995)).
[13] *Malloy v. State*, 462 A.2d 1088 (Del. 1983).
[14] *See Deedon*, 189 A.2d at 663.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.

circumstances presented in this case. As Mr. Conner points out in the Reply, the State has still not attempted to provide notice of the conditions at the time of the alleged violation.

II. CONCLUSION

For the reasons stated above, the conditions and actual or potential hazards existing at the time of an alleged violation of 21 *Del. C.* § 4168 (a) constitute an essential element of the charge. Based on well settled law, an information lacking an essential element of the charge is insufficient to fully inform the Defendant of the nature and cause of the accusation against him. Therefore, the information is **DISMISSED**.

IT IS SO ORDERED.

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Eric M. Davis
Judge