

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF CARROLL

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)

v.)

Case No: 2025-CF-21

MATTHEW A. HERPSTREITH,)
Defendant.)

MOTION TO DISMISS INFORMATION

NOW COMES, the Defendant, **MATTHEW A. HERPSTREITH**, by his attorney, **JOSEPH E. NACK**, of **NACK, RICHARDSON & NACK, P.C.**, and for their **Motion to Dismiss** this matter pursuant to 725 ILCS 5/114–1(a) now states as follows:

1. On March 24, 2025 Defendant was charged by way of information with the following offense(s):
 - a. Count I - Reckless Homicide (Class 3 Felony)
 - b. Count II - Reckless Conduct (Class 4 Felony)
 - c. Count III - Obstructing Justice (Class 4 Felony)
 - d. Count IV - Attempt (Obstructing Justice) (Class A Misdemeanor)
 - e. Count V - Failure to Reduce Speed (Petty Offense)
2. Defendant moves for dismissal of COUNT I and COUNT II pursuant to 725 ILCS 5/114–1(a)(8) because the charges do not state an offense as required by 725 ILCS 5/111–3.

Per Illinois law, a charge shall be in writing and allege the commission of an offense by stating the name of the offense; citing the statutory provision alleged to have

been violated; setting forth the nature and elements of the offense charged; stating the date and county of the offense; and stating the name of the accused.” 725 ILCS 5/111-3.

Plaintiff filed an Information on March 24, 2025, and said Information failed to set forth the nature and elements of the offense charged. An information must do more than merely recite statutory language or legal conclusions. It must set forth specific facts apprising the Defendant of the particular acts alleged to constitute the offense charged and must sufficiently plead each essential element of the offense.

- a. The elements of reckless homicide are:
 - a) The defendant caused the death of an individual without lawful justification by driving a motor vehicle;
 - b) That the Defendant drove a motor vehicle recklessly; and
 - c) That the Defendant drove a motor vehicle in a manner likely to cause death or great bodily harm.
- b. The elements of reckless conduct are:
 - a) The Defendant performs any act which causes bodily harm to or endangers the bodily safety of another person;
 - b) In performing the act, the Defendant acts recklessly.
- c. The State alleges via 03/24/2025 Information that Defendant was reckless in that he:
 - a) Operated a vehicle shortly after 3 am and as driver was not keeping a proper lookout, was inattentive to the roadway on which he was traveling;
 - b) Had been consuming alcoholic beverages continually since late afternoon the prior day; and
 - c) Was otherwise distracted and tired.

A charging instrument must reach the level of specificity which allows the Defendant to prepare his defense and bar further prosecution. *People v. Green*, Ill. 242. Specifically, a defendant must be advised of the particular acts upon which the State relies to sustain a charge of reckless driving. *People v. Griffin* 36 Ill, 2d 430. The allegations contained in the Information do not sufficiently plead each essential element of the offense, but rather recite statutory language and legal conclusions, without providing specific facts apprising the Defendant of the particular acts alleged to constitute the offense charged.

Defendant moved for a Bill of Particulars identifying specific acts. This motion was denied, thereby limiting both Defendant's ability to prepare a defense and his protection against double jeopardy to the allegations complained per the Information.

The allegations contained in the Information, even if accepted as true for purposes of pleading, fail to establish the mental state of recklessness. "[A] person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation." 720 ILCS 5/4-6.

In their attempt to establish recklessness, Plaintiff largely relies on the allegation that Defendant consumed alcohol. Evidence of intoxication may be probative on the issue of recklessness, *People v. Miller*, 75 Ill. App. 3d 775. However, Plaintiff does not allege intoxication, but merely that the Defendant consumed alcohol. Evidence of consumption of does not establish recklessness, and its admission, without additional

evidence of intoxication, is prejudicial and so inflammatory as to constitute reversible error. *People v. Gosse*. 119 Ill. App. 3d 733.

The Information contains no allegation that Defendant was impaired, intoxicated, under the influence, or unable to safely operate a motor vehicle. Admitting evidence of consumption without further evidence of intoxication is so erroneous that it may render a decision reversible, so it follows that it is certainly an insufficient allegation upon which to rely in the establishment of recklessness.

Plaintiff will contend that consumption of alcohol, combined with the probative weight of the other allegations, including the time of day, fatigue, and attention of Defendant, constitutes the nature and elements of the offense charged with enough specificity as to meet the statutory requirements of the charging instrument. But the remainder of the allegations are merely speculations made without the supporting facts necessary to inform the Defendant of which of his actions precisely constitute recklessness.

Specifically, the Information alleges that the Defendant was operating a vehicle at 3:00 a.m., which is not unlawful and is not probative of recklessness. The remaining allegations—that Defendant was distracted, tired, inattentive, and failed to keep a proper lookout—are merely variations of the same conclusory assertion that Defendant was not paying attention while driving. Plaintiff provides not even one action of Defendant to support these assertions.

The Information fails to allege facts sufficient to establish the requisite mental state of recklessness. As a result, Plaintiff fails to state an offense in Counts I and II, and those charges must be dismissed.

WHEREFORE, the Defendant prays that the Court dismiss Count I and Count II.

BY: **MATTHEW A. HERPSTREITH**,
The Defendant

BY: NACK, RICHARDSON & NACK, P.C.
His Attorneys

BY:



Joseph E. Nack

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing **MOTION TO DISMISS** by emailing a copy of the same this 7th day of August, 2026, to:

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BY: 

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