

No. 1-15-1064

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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, Illinois.
)	
v.)	No. 09 CR 14344
)	
TERRENCE NICKS,)	Honorable
)	Joan M. O'Brien,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Lavin and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in denying defendant Terrence Nicks’s motion to dismiss indictment where charges were not sufficiently specific.

¶ 2 The defendant in this case, Terrence Nicks, was involved in the now notorious crimes that occurred at Burr Oak Cemetery in Alsip, Illinois between 2003 and 2009. He, along with other cemetery employees, dug up, desecrated, and discarded human remains in a “dump area” to resell gravesites for profit. In August 2009, after nearly one month of digging and sifting

through the dump area using specialized equipment, authorities uncovered over 1,500 bones from two crime scenes that DNA testing later revealed were from at least 29 people. The bones included a nearly intact skull, part of a jaw, sections of human arms, parts of spines, ribs, and pieces of a foot. Many others buried at the cemetery had their gravestones removed or damaged. These ghastly crimes caused untold pain to the decedents' families and loved ones.

¶ 3 It is against this backdrop that we examine Terrence's 2015 convictions for removal of ten or more gravestones, desecration of human remains, and removal of remains of a deceased human from a burial ground. For his crimes, Terrence was sentenced to three years' imprisonment on each count, to run concurrently. Terrence raises several challenges to his conviction, including the sufficiency of the indictment, the sufficiency of the evidence to convict, failure to give necessary jury instructions, and violations of his due process rights and sixth amendment right to confrontation. Finding the indictment insufficient, we reverse Terrence's conviction.

¶ 4 **BACKGROUND**

¶ 5 The incidents giving rise to this prosecution occurred during Terrence's employment as foreman of Burr Oak Cemetery. In the spring and summer of 2009, after authorities became aware of disinterred human remains present at the cemetery, Terrence was charged with crimes including removal of gravestones and desecration and removal of human remains. Others charged included Carolyn Towns, director of cemetery operations, and cemetery employees Maurice Dailey and Keith Nicks (Terrence's brother).

¶ 6 Before trial, Terrence and his codefendants filed numerous motions to dismiss, including a motion to dismiss based on the insufficiency and vagueness of the indictment. The trial court denied this motion but acknowledged the lack of specificity in the indictment. Later, Terrence

moved for answers to a bill of particulars, which the State provided. Beginning in January 2015, Keith and Terrence were tried simultaneously before separate juries.

¶ 7 At trial, cemetery employees Willie Esper, Jr. and Fredrick Stanbeck testified at length about their observations of the practices at Burr Oak. Esper was responsible for general maintenance, setting up graves, and preparing for burials, while Stanbeck was a groundsman. As part of Esper's responsibilities, he was present during the digging of graves. Generally, Dailey operated the backhoe to dig a grave while Terrence acted as a spotter. Approximately 10 to 20 times between January 2009 and June 2009, Esper saw Dailey encounter a concrete liner (in which the coffins were placed) during his digging. On those occasions, Terrence told Dailey to stop digging, and both men informed Keith that the grave was occupied, to which Keith replied “[t]ake that [sh#t] from out of there and take it to the back with the rest of the garbage.” Dailey recommenced digging, and on at least one occasion, Esper saw Terrence driving a dump truck with human bones and the remains of a casket among the dirt.

¶ 8 Stanbeck observed similar activity on approximately 15 occasions. Specifically, he testified that Keith supervised Dailey and Terrence digging up graves with human remains and said “[f#ck] it, Miss Towns done sold this grave; we got to get it done.”

¶ 9 Esper and Stanbeck also testified about the practice of double stacking, which occurred when the cemetery sold an occupied gravesite. To create a double-stacked grave, Dailey dug with his backhoe until he hit the concrete liner encasing the coffin while Terrence spotted and Keith supervised. Keith and Terrence removed the liner, covered it with a tarp, and set it aside. Dailey then dug deeper, and the liner containing the coffin was reinterred and covered with dirt. The grave thus appeared unoccupied for the next burial. While such operations were underway,

Keith ordered Esper and Stanbeck to surround the area with dump trucks and backhoes so as to block the view of passers-by.

¶ 10 Terrence's statement to then-assistant state's attorney John Mahoney following his arrest confirmed some of Esper and Stanbeck's testimony. In the statement, Terrence stated that he began working as a seasonal employee at Burr Oak in 2005 and was hired as a full time employee in 2006. Initially, he was responsible for groundskeeping and setting up graves, but eventually became the dump truck operator. Terrence stated that when digging graves in a particular section of Burr Oak known as Edgewood, they would routinely unearth bones, which Terrence would push back into the grave. On other occasions, Terrence confirmed that he would use the dump truck to dump and transport unearthed bones. He also admitted to being present during double stacks.

¶ 11 At trial, Terrence denied making these admissions to ASA Mahoney, and further denied that he removed or dumped headstones.

¶ 12 At least 13 witnesses who had buried relatives at Burr Oak testified that they noticed their loved ones' headstones were missing in the summer and fall of 2009. Several of these same witnesses also testified that it appeared their long-buried relatives' graves had been freshly dug, as the grass had been removed and only dirt lay atop the gravesite.

¶ 13 The jury found Terrence guilty of removal of 10 or more gravestones or markers, desecration of human remains, and removal of remains of a deceased human being from a burial ground, and the court sentenced him to three years of imprisonment on each count, to run concurrently. Terrence timely appealed, but served his sentence before his appeal reached this court.

¶ 14 ANALYSIS

¶ 15 Terrence raises a number of issues on appeal, among them the sufficiency of the indictment, which we find dispositive. A defendant has a constitutional right to be informed of the nature of the charges against him. See U.S. Const. amnds. VI, XIV; Ill. Const. 1970 art. 1, §8; see also *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). This right is codified in section 111-3(a) of the Code of Criminal Procedure, which provides, in relevant part, that the charge “shall be in writing and allege the commission of an offense by: (1) [s]tating the name of the offense; (2) [c]iting the statutory provision alleged to have been violated; (3) setting forth the nature and elements of the offense charged; (4) stating the date and county of the offense as definitely as can be done; and (5) stating the name of the accused ***.” 725 ILCS 5/111-3(a) (West 2014).

¶ 16 Where, as here, a defendant challenges his indictment in a pretrial motion, the court considers whether the indictment *strictly* complies with the requirements of section 111-3 of the Act. *People v. Albarran*, 2018 IL App (1st) 151508, ¶ 20. Significantly, the issue is not whether the offense could have been described with greater specificity, but “whether there is sufficient particularity to enable the accused to prepare a proper defense.” *People v. Meyers*, 158 Ill. 2d 46, 54 (1994). We review a trial court’s decision regarding the sufficiency of a charging instrument *de novo*. *People v. Espinoza*, 2015 IL 118218, ¶ 15.

¶ 17 In this case, Terrence does not dispute that the indictment tracks the language of the statute. However, he correctly notes that where the statute defines the offense only in general terms, the indictment must specifically set forth the facts of the crime. See, e.g., *People v. Davis*, 281 Ill. App. 3d 984, 988 (1996). It is this specificity that he contends is missing. We agree.

¶ 18 It is necessary to begin by quoting at length from the indictments. The three counts at issue each alleged conduct occurring over a nearly six-year period commencing “on or about

September[] 2003 and continuing through on or about July 8, 2009.” Count 4 of the indictment alleged that Terrence “committed the offense of REMOVAL OF A GRAVESTONE OR MARKER in that [he], while acting without proper legal authority, willfully and knowingly defaced, vandalized, injured and removed more than ten gravestones and other memorials, monuments and markers commemorating a deceased person and group of persons in Burr Oak Cemetery ***.” Count 5 alleges the commission of the offense of desecration of human remains, in that Terrence, “while acting without proper legal authority, willfully and knowingly destroyed and damaged the remains of deceased human beings, the identities unknown to the Grand Jurors, and desecrated said human remains ***.” Finally, Count 6 alleges the commission of removal of remains of a deceased human being from a burial ground, specifically alleging that Terrence “while acting without proper legal authority, willfully and knowingly removed portions of the remains of deceased human beings, the identities unknown to the Grand Jurors, from their graves, vaults or other repository of human remains, in Burr Oak Cemetery, a burial ground where skeletal remains are buried. ***.”

¶ 19 The testimony at trial revealed that Burr Oaks is over 100 acres, with approximately 1000 to 1200 gravestones per acre, as per the industry standard. However, the indictment does not specify the human remains that were desecrated or removed, the headstones that were removed, or approximately where in the 100-acre cemetery these remains and headstones were removed. The absence of these details left Terrence unable to mount a defense to the charges against him. This is particularly true given the length of time – almost six years – that the indictment spanned.

¶ 20 In arguing to the contrary, the State relies heavily on the additional detail it provided in the bill of particulars. But a bill of particulars cannot cure an insufficient indictment: it can only supplement a sufficient indictment with additional information to enable a defendant to better

understand the charges against him or to better prepare a defense to those charges. *Meyers*, 158 Ill. 2d at 53. Thus, when evaluating the sufficiency of the indictment, we cannot consider the additional details provided by the bill of particulars. *Id.*

¶ 21 Nor are we persuaded by the State’s argument that Terrence and his codefendants’ destruction of the evidence “precluded the State from providing any specifics.” The State’s own response to the bill of particulars belies this contention. There, the State identified over 20 witnesses who would testify to specific headstones being removed or destroyed and gave the name – Virginia Foster – of a decedent who was disinterred and “double stacked” in her grave. These were details that properly belonged in the indictment (see, *e.g.*, *People v. Cline*, 298 Ill. App. 3d 489, 491 (1998) (complaint charging removal of gravestone named specific gravestone that had been removed), and the State’s failure to include them leads us to conclude that the indictment was insufficient. For this reason, we reverse Terrence’s conviction.

¶ 22 Due to the significant delays in briefing this appeal, Terrence has fully served his sentence; nevertheless, the State may elect to reindict him. Accordingly, we must consider Terrence’s challenge to the sufficiency of the evidence to convict him of the offense of removal or destruction of more than 10 gravestones in order to determine whether a reindictment and retrial are precluded on double jeopardy grounds.¹ See *People v. Curoe*, 97 Ill. App. 3d 258, 272 (1981).

¹ Terrence does not challenge the sufficiency of the evidence on the counts of desecration of human remains or removal of human remains from a burial ground. Our supreme court has issued conflicting opinions on whether a reviewing court must consider whether double jeopardy precludes a retrial if a defendant has not raised a challenge to the sufficiency of the evidence. Compare *People v. Lopez*, 229 Ill. 2d at 322, 366-67 (2008) (holding that court was “required” to consider sufficiency of the evidence against defendant notwithstanding his failure to contest it where court was remanding for a new trial) with *People v. Patrick*, 233 Ill. 2d 62, 76 (2009) (holding that because the defendant had not argued insufficiency of the evidence, there was no double jeopardy impediment to a new trial). In any event, the evidence overwhelmingly supports Terrence’s convictions on those counts. There was un rebutted testimony that Terrence

¶ 23 A challenge to the sufficiency of the evidence requires us to view the evidence in the light most favorable to the State and consider whether any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958. Here, Terrence acknowledges that the evidence established the removal of nine gravestones from Burr Oak Cemetery, but disputes the State’s assertion that it proved the removal of an additional four gravestones. Among the four gravestones whose removal is disputed are those of Qyuing Holmes’s two sons – Jerry and Javoski.

¶ 24 At trial, Holmes testified that the last time she saw her sons’ headstones in Burr Oak Cemetery in 2007, both headstones had a “few scratches” and Jerry’s headstone was “cracked a little bit” while Javoski’s headstone “had an opening.” When she returned to the cemetery in 2009, the headstones were missing.

¶ 25 According to Terrence, because the Cemetery Protection Act permits the removal of anything in the cemetery that has become “wrecked, unsightly, or dilapidated,” (765 ILCS 835/1(c)) (West 2014)), there was legal authority for the removal of Holmes’s sons’ gravestones. But the trier of fact was not required to accept the inference that the gravestones were removed due to their deteriorating condition, particularly given the other evidence summarized here. There is nothing in Holmes’s testimony to suggest that the headstones were removed for repairs. Indeed, she testified that no one informed her that the headstones were undergoing repair and further testified that the headstones were in “good condition” overall. We cannot conclude that no reasonable trier of fact could have found that Jerry and Javoski’s gravestones were illegally removed, which brings the number of gravestones proved to have been removed over 10. Thus, we hold that double jeopardy does not preclude a retrial in this case.

transported and dumped unearthened human bones from the cemetery and that he assisted in double-stacking graves.

¶ 26

CONCLUSION

¶ 27

For these reasons, the judgment of the trial court is reversed.

¶ 28

Reversed.