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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 12-CF-3251
)	
MICHAEL G. NEWSOME,)	Honorable
)	James K. Booras,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in dismissing as untimely two counts of an indictment: the limitations period was tolled while defendant was a public officer (as he was charged with the theft of public funds) and while other counts were pending, and thus the counts at issue were timely.

¶ 2 The State appeals the trial court's order dismissing on statute-of-limitations grounds two counts of an indictment against defendant, Michael G. Newsome. The court held that the State did not allege the last date on which a theft occurred and thus could not show that any of the thefts occurred within the limitations period. The State contends that it sufficiently alleged that defendant was a public official charged with stealing public funds and thus the limitations period

was tolled. Accordingly, although the theft encompassed a series of transactions occurring over several years, the State did not have to allege the date of the last transaction. We reverse and remand.

¶ 3 On January 23, 2013, an indictment charged defendant with two counts of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)), official misconduct (720 ILCS 5/33-3(b) (West 2012)), and misapplication of funds (720 ILCS 5/33E-16 (West 2012)). Count I alleged that, between May 1, 2007, and March 1, 2012, defendant, in a series of acts in furtherance of a single design, knowingly exerted unauthorized control over more than \$100,000 belonging to the City of North Chicago (the City). Count II alleged that between May 1, 2007, and June 9, 2010, defendant exerted unauthorized control over between \$10,000 and \$100,000 belonging to the City. Count III alleged that defendant, who was the North Chicago police chief, committed official misconduct by exerting unauthorized control over between \$500 and \$10,000 belonging to the City. Count IV alleged that defendant, a public officer, willfully misapplied funds belonging to the City.

¶ 4 Defendant moved for a bill of particulars. He argued that the indictment alleged a series of acts in furtherance of a single intention and design occurring during a five-year period but failed to allege “which specific acts defendant committed in violation of law” and failed to specifically allege the nature of the single intention and design.

¶ 5 In response, the State asserted that, between May 1, 2007, and March 1, 2012, defendant personally made cash withdrawals from the North Chicago Police Department Asset Forfeiture Seizure Fund. These withdrawals totaled \$276,537, of which only \$57,200 had been requested by the North Chicago Police Department’s drug unit. The rest was unaccounted for.

¶ 6 Attached to the bill of particulars were three spreadsheets prepared by a forensic accountant. The first listed all account activity concerning the North Chicago Police Department Asset Forfeiture Seizure Fund. The second showed all cash withdrawals from the fund by defendant. It also showed disbursements by defendant following cash deposits into his personal account. The third listed all of the recorded requests for funds by the North Chicago police department during the relevant period.

¶ 7 The State alleged that the listed cash withdrawals were part of an ongoing series of criminal acts. “The People are only alleging as criminal acts those cash withdrawals made by the defendant from the North Chicago Police Department Asset Forfeiture Seizure Fund which appear on the attached exhibits as well as any cash or other expenditures which can reasonably be tied through evidence or inference to those withdrawals.”

¶ 8 Defendant objected to the bill of particulars, arguing that it still failed to set forth in sufficient detail the “essential elements of the charged conduct.” The trial court declined to require the State to supplement the bill of particulars.

¶ 9 Defendant then moved to dismiss the indictment on the ground that it was not filed within the applicable limitations period. Defendant alleged that counts I and II alleged a series of acts spanning several years but not the exact date of any specific act.

¶ 10 The State responded that it did not have to allege that any specific act occurred within the limitations period, because the indictment alleged that defendant was a public officer charged with the theft of public funds. See 720 ILCS 5/3-7(b) (West 2012). The State alleged that defendant was a peace officer, which met the definition of “public officer.” Moreover, defendant was employed as a peace officer until February 24, 2012, and the charges were initially brought

on October 26, 2012, well within the three-year limitations period. See 720 ILCS 5/3-5(b) (West 2012).

¶ 11 Defendant filed an amended motion to dismiss, again claiming that counts I and II did not provide specific information about the last alleged transaction so as to bring it within the limitations period. Defendant also claimed that count III was defective for failing to allege the specific provision of law that defendant violated and that count IV was defective for failing to allege how defendant misapplied the funds.

¶ 12 The trial court dismissed counts I, II, and IV. The court allowed the State to amend count III to allege that defendant's official misconduct was theft. The court decided that counts I and II were insufficient because they did not allege the last transaction in the "series of acts" and, thus, did not sufficiently allege that the acts occurred within the limitations period.

¶ 13 On July 29, 2015, the State filed three additional counts. Count V alleged the theft of government property in excess of \$100,000 between May 1, 2007, and March 1, 2012; count VI alleged the theft of government property in excess of \$10,000 but not more than \$100,000 between May 1, 2007, and June 9, 2010; and count VII alleged misapplication of funds between May 1, 2007, and March 1, 2012.

¶ 14 Count V alleged specifically that between May 1, 2007, and March 1, 2012, defendant, the chief of the North Chicago police department, committed theft of government property in that, in a series of acts, in furtherance of a single intent and design, he knowingly exerted unauthorized control over more than \$100,000 belonging to the City, while intending to permanently deprive the City of the money. Count VI alleged specifically that, between May 1, 2007, and June 9, 2010, defendant, the chief of the North Chicago police department, committed theft of government property in that, in a series of acts, in furtherance of a single intent and

design, he knowingly exerted unauthorized control over between \$10,000 and \$100,000 belonging to the City, intending to permanently deprive the City of the money.

¶ 15 Both counts V and VI further alleged that the matter was commenced within the limitations period because defendant, as the North Chicago police chief, was a public officer and was alleged to have stolen public funds. Both counts also alleged that the period from October 29, 2012, to July 14, 2015, was excluded from the limitations period because a prosecution was pending against defendant for the same conduct.

¶ 16 Defendant moved to dismiss counts V, VI, and VII. He argued that counts V and VI did not allege the last act in the series of acts to demonstrate how the acts were excluded from the limitations period and that count VII did not specify how defendant misapplied the funds.

¶ 17 The State responded that it had alleged the offenses with as much specificity as possible and that it had provided defendant with a bill of particulars that the trial court had found sufficient to allow defendant to prepare his defense. The State further contended that it had alleged a series of transactions to allow it to aggregate the amount defendant stole, not to extend the limitations period. The limitations period was extended because defendant was a public officer during the relevant time period and was charged with the theft of public funds.

¶ 18 Following a hearing, the trial court dismissed counts V and VI. As the State notes, the precise basis for the court's ruling is unclear. At various points during the hearing, the court expressed concern that the State was attempting to shift the burden of proof to defendant by requiring him to account for the missing money; that the indictment, by alleging multiple transactions over a five-year period, was insufficiently specific; that the indictment did not allege how defendant "misappropriated" the funds, given that he was an authorized signatory on the

account; and that the indictment did not allege the date of the last transaction or specifically plead that the limitations period was extended (720 ILCS 5/3-8 (West 2012)).

¶ 19 The trial court denied the State's motion to reconsider, explaining that "when you don't know when the act was committed, the last act was committed, it's exceptionally vague and cannot withstand the motion to dismiss." The State filed a certificate of impairment and a timely notice of appeal.

¶ 20 The State contends that the trial court erred by dismissing counts V and VI. It argues that it did not need to allege when the last act in the series was committed, because it alleged a completely separate exception to the statute of limitations: that defendant was a public officer charged with stealing public funds.

¶ 21 The purposes of providing limitations periods for offenses are to minimize the danger of punishment for conduct that occurred in the distant past, to encourage the State to be diligent in its investigation, and to provide the trier of fact with evidence that is fresh and not distorted or diluted by the passage of time. *People v. Macon*, 396 Ill. App. 3d 451, 456 (2009). A limitations period can be extended in certain very specific situations. *Id.* at 458 (citing 720 ILCS 5/3-6 (West 2002)). The statute, however, is not self-executing and, thus, the State bears the burden of proving that a particular exception applies. The State must allege on the face of the indictment the specific exception that applies and the facts establishing that exception. *Id.* The dismissal of an indictment on statute-of-limitations grounds is usually a purely legal question that we review *de novo*. *People v. Mann*, 341 Ill. App. 3d 832, 836 (2003).

¶ 22 Generally, a prosecution for a felony must be commenced within three years after the offense is committed. 720 ILCS 5/3-5(b) (West 2012). Section 3-8 of the Criminal Code of 2012 (the Code) provides, "When an offense is based on a series of acts performed at different

times, the period of limitation prescribed by this Article starts at the time when the last such act is committed.” 720 ILCS 5/3-8 (West 2012). Certain periods can be excluded from the limitations period, however. The Code provides that the period within which a prosecution must be commenced does not include any period in which “the defendant is a public officer and the offense charged is theft of public funds while in public office.” 720 ILCS 5/3-7(b) (West 2012) (now 720 ILCS 5/3-7(a)(2) (West Supp. 2015)). “Public officer” is defined as “a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions.” 720 ILCS 5/2-18 (West 2012). Moreover, any time during which the case is being prosecuted suspends the limitations period. 720 ILCS 5/3-7(c) (West 2012).

¶ 23 The State contends that counts V and VI contained the necessary allegations to invoke section 3-7(b). We agree. Those counts alleged that defendant, as the North Chicago police chief, was a public officer and that he stole money belonging to the City, *e.g.*, public funds. Moreover, the indictment specifically cited section 3-7(b). Thus, the period through February 24, 2012, is excluded from the limitations period. The indictment was initially filed on October 26, 2012, which was within three years of February 24, 2012.

¶ 24 The trial court appears to have been of the opinion that, because the indictment alleged a series of acts, the State was required to comply with section 3-8 by alleging the date of the last act. Section 3-8 provides that, where an offense is based on a series of acts and some of the acts occurred beyond the limitations period, the State must allege the date of the last act that triggers the limitations period. Here, however, the State alleged a series of acts in order to aggregate the amount of money stolen, not to extend the limitations period. As defendant was a public officer

during the entire time and the offense alleged was the theft of public funds, the entire time was excluded from the limitations period. It was not necessary for the State to allege the specific dates of any particular acts in order to invoke the section 3-7(b) exception.

¶ 25 Defendant argues that the trial court correctly held that the State had to allege the last date on which an act was committed. He cites *People v. Thingvold*, 145 Ill. 2d 441 (1991) and *People v. Toolen*, 116 Ill. App. 3d 632 (1983), in support. However, in neither case was time excluded from the limitations period because the defendant was a public officer charged with the theft of public funds. In each case, the only possible basis to extend the limitations period was that the offense comprised a series of acts. Thus, in each case, the State was required to allege the date of the last act in order to bring the offense within the limitations period but failed to do so. *Thingvold*, 145 Ill. 2d at 447-48; *Toolen*, 116 Ill. App. 3d at 652-53. Those cases do not control here. Defendant fails to cite any case holding that *any* indictment alleging a series of acts must comply with section 3-8, even if the time has been excluded from the limitations period on some other basis.

¶ 26 Defendant next contends that the State failed to allege that the limitations period was tolled by the pendency of a prosecution for the same conduct. After counts I, II, and IV were dismissed, the State filed counts V, VI, and VII. These counts were filed July 29, 2015. This was more than three years after defendant ceased to be the chief of police of North Chicago.

¶ 27 We fail to understand defendant's complaint. The additional counts were filed under the same case number and involved the same defendant and alleged conduct violating the same statutes during the same period as the previously dismissed counts. Moreover, the State specifically cited section 3-7(c). Defendant fails to specify what more the State should have done to invoke this exception.

¶ 28 Defendant next appears to contend that the indictment was insufficient to allow him to prepare a defense. A charging document alleging a criminal offense must include five elements: (1) the name of the offense; (2) the statutory provision allegedly violated; (3) the nature and elements of the offense; (4) the date and county of the offense; and (5) the name of the accused. 725 ILCS 5/111-3(a) (West 2012). The State is not required to plead evidentiary details. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 87; *People v. Meras*, 284 Ill. App. 3d 157, 164 (1996). “So long as the statutory language used describes *specific conduct* then there is no need for the charge to specify the exact means by which the conduct was carried out.” (Emphasis added.) *People v. Wisslead*, 108 Ill. 2d 389, 397 (1985). Moreover, the specific date of the offense is not an element of that offense that must be alleged in order to make the indictment sufficient. See *People v. Lee*, 57 Ill. App. 3d 927, 932 (1978).

¶ 29 The counts at issue here contained the required information. If a defendant requires more specificity, he or she may seek a bill of particulars. As the supreme court observed, “ ‘[t]he office of a bill of particulars is to provide more specificity of detail to supplement a sufficient indictment so as to enable an accused better to understand the nature of the charge against him or better to prepare his defense.’ ” *People v. Powell*, 72 Ill. 2d 50, 64 (1978) (quoting *People v. Patrick*, 38 Ill. 2d 255, 260 (1967)). Here, defendant requested and received a bill of particulars documenting each withdrawal from the drug-asset forfeiture fund, cross-referenced against requests for disbursements from the fund and cash deposits to defendant’s personal account. A defendant is not entitled to a general disclosure of evidence that the prosecution will present at trial. *People v. Decker*, 19 Ill. App. 3d 86, 93 (1974). Defendant does not specify what additional information he needs to prepare his defense.

¶ 30 In fact, defendant's real complaint appears to be that the State provided too much information rather than not enough. He complains that the "State is apparently alleging dozens, if not hundreds, of transactions constituting a series of thefts." It is not the State's fault that this case involves a large number of transactions covering a period of approximately seven years. Rather, it is a function of the breadth of the alleged scheme. Nothing in the record indicates that the State has attempted to needlessly complicate the issues.

¶ 31 Defendant next complains that the bill of particulars stated that all of the disputed transactions were listed in the spreadsheet "among other transactions" and that "defendant personally kept a portion of many or all of these transactions for his personal use." The inclusion of this boilerplate language in the bill of particulars clearly did not render the indictment insufficient. See *People v. Steele*, 124 Ill. App. 3d 761, 766 (1984) (indictment can be neither helped nor hurt by the bill of particulars). The trial court found the bill of particulars sufficient when it denied defendant's motion to strike it. Defendant did not appeal that ruling, nor does he suggest a jurisdictional basis for doing so. The only issue in this appeal is whether the indictment was properly dismissed.

¶ 32 Defendant and the trial court are rightly concerned that the State not be able to shift the burden to defendant to account for the missing money. However, this case has not yet reached the trial stage. The indictment and bill of particulars informed defendant in great detail of what the State is alleging. Whether the State can prove these allegations by competent evidence is an issue we cannot decide at this time.

¶ 33 Defendant next contends that counts I and II, which were dismissed earlier, were void because they did not specifically cite section 3-8, and thus did not toll the limitations period. As

discussed above, the State was not relying on section 3-8 and did not have to cite it. In any event, the failure to cite the proper tolling provision does not render an indictment void.

¶ 34 Defendant cites *Macon*, *Toolen*, and *Thingvold* for the proposition that failing to cite the proper tolling language voids an indictment. However, those cases support the opposite conclusion: that an indictment can be amended even after the limitations period has run to include the proper tolling language. *Thingvold* specifically stated that the State could elect to recharge the defendant, noting that the defective indictment nevertheless was a pending prosecution that tolled the limitations period. *Thingvold*, 145 Ill. 2d at 450; see also *Macon*, 396 Ill. App. 3d at 458 (“State can repair the indictment by asserting facts that would suspend or extend the statute of limitations”). Assuming, *arguendo*, that counts I and II were insufficient, they were not void and, accordingly, the existence of the pending prosecution tolled the limitations period. Moreover, count III remained pending at all times.

¶ 35 The judgment of the circuit court of Lake County is reversed and the cause is remanded.

¶ 36 Reversed and remanded.