

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 369 – 2009
	:	
vs.	:	CRIMINAL DIVISION
	:	
BETH ELLEN CAMP,	:	
Defendant	:	Motion to Dismiss/Preclude Evidence

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss Case or Alternatively to Prohibit the Introduction of Evidence by the District Attorney, filed October 12, 2010. Argument on the motion was heard December 1, 2010.

Defendant has been charged with Possession with Intent to Deliver, Possession of a controlled substance and Possession of drug paraphernalia in connection with the discovery by police of marijuana located on the property in which she resided.¹ Trial is currently scheduled for December 10, 2010. In the instant motion, Defendant seeks dismissal of the case based on the Commonwealth's failure to respond to an Order entered by the Honorable Nancy L. Butts on April 9, 2010, which granted Defendant's request for a bill of particulars and motion for disclosure of 404(b) evidence, and directed the Commonwealth to provide the requested information within fourteen days of that date. In the alternative, Defendant seeks to preclude the Commonwealth from introducing any evidence relevant to the requested particulars and any 404(b) evidence.

In response to Defendant's Motion for a Bill of Particulars and Motion for Disclosure of Other Crimes, Wrongs or Acts Pursuant to Pa.R.E. 404(b), both contained in Defendant's Omnibus Pre-Trial Motion filed June 8, 2009, the Honorable Nancy L. Butts heard argument on July 31, 2009, and October 12, 2009,² and by Order dated April 9, 2010, granted the Motion for a Bill of Particulars as to subparagraphs (c), (d), (e), (f), (g), (h), (i) and (j) of the request,

¹ Two family members who also resided in the home were also charged with the same offenses; both eventually entered guilty pleas.

² The motions were heard in conjunction with various other motions filed by Defendant as well as those filed by the other two persons referenced in footnote 1, above.

and directed the Commonwealth to “provide the requested information within 14 days of this Order.” Judge Butts specifically found “the information requested is necessary to enlighten the accused as to the charges against them and to enable the accused to form their defense.” The Motion for Disclosure under Rule 404(b) was granted without explanation, and the Commonwealth was directed to also provide any 404(b) evidence within the same fourteen day period.

As of the date of the instant motion, the Commonwealth had not complied with Judge Butts’ order. After the instant motion was filed, however, specifically on October 14, 2010, the Commonwealth did file an “Answer to Request for Bill of Particulars”.³ Assistant District Attorney Kalas explained at argument that the answer had been prepared in June but had inadvertently not been filed at that time.⁴ While the Court finds the delay inexcusable, it finds even more egregious the Commonwealth’s flagrant disregard of Judge Butts’ directive to *provide the requested information*. In relevant part, the Commonwealth’s Answer reads as follows (the requests are included for ease of reference):

- c. (whether the alleged possession is alleged to be actual or constructive)
The possession is alleged to be constructive possession.
- d. (specifically how Mrs. Camp is alleged to have exercised dominion or control over the marijuana) The information requested is a matter of evidence and not a proper subject of a bill of particulars as it requests the Commonwealth to disclose its theory of the case.
- e. (whether Mrs. Camp is being charged as a principal, aider/abettor, accessory or accomplice) Mrs. Camp is charged as a principal, co-conspirator and accomplice.
- f. (if Mrs. Camp is alleged to be an accomplice, state in what way she allegedly solicited, requested, commanded, importuned, or intentionally aided another person in the commission of the alleged acts) The information requested is an evidentiary matter and not a proper subject

³ To this date, no 404(b) evidence has been provided to the defense.

⁴ She offered no explanation for the tardiness of even a June filing.

of a bill of particulars as it requests the Commonwealth to disclose its theory of the case.

- g. (whether the Commonwealth intends to offer at trial any testimony regarding any observation of Mrs. Camp, either at the time or place of the alleged commission of the offense, or upon some other occasion relevant to the case, to be given by a witness who has previously identified her as such. If so, specify the time, locations, and circumstances of such observations and/or identifications) The information requested is a matter of evidence and not a proper subject of a bill of particulars as it requests the Commonwealth to disclose its theory of the case and/or the identity of Commonwealth witnesses.
- h. (the exact material facts which allegedly constitute the offense in Count 1, i.e., how Mrs. Camp is alleged to have unlawfully and feloniously possessed with the intent to deliver marijuana) Mrs. Camp is alleged to have unlawfully possessed marijuana with the intent to distribute by her role as an accomplice to the actions of both Mr. Fisher and Randall Camp, and in her role of constructively possessing the marijuana, as stated at the preliminary hearing.
- i. (the names and addresses of those persons, if any, to whom Mrs. Camp allegedly intended to sell or deliver, marijuana as described in Count 1) The information sought is not within the purview of a bill of particulars, as the question merely seeks to ascertain the identity of Commonwealth witnesses.
- j. (whether it will be alleged at trial that Mrs. Camp distributed marijuana or possessed with the intent to distribute or both) It will be alleged at trial that Mrs. Camp possessed the marijuana, possessed it with intent to deliver, and possessed drug paraphernalia, as specified within the criminal Information.

The responses to subparagraphs (d), (f), (g) and (i) simply re-argue the issues raised before Judge Butts, and the response to subparagraph (h) goes “round red robin’s barn” and does not provide the requested information. While ADA Kalaus offered at argument that the insufficiency of the responses was the fault of ADA Kenneth Osokow, and that the tardiness of the filing was the fault of her secretary, even if such culpability does lie in Attorney Kalaus’ colleagues, such does not absolve her, as managing attorney, from responsibility in the handling of this matter, and, more importantly, it does not cure the rank defects of the Commonwealth’s Answer.

Since Judge Butts found that the requested information “is necessary to enlighten the accused as to the charges against them and to enable the accused to form their defense”, and since because of the woefully tardy filing containing woefully inadequate responses Defendant has not been sufficiently enlightened as to the charges and enabled to form her defense, the Court believes justice requires that that which was not provided as directed should be precluded. Accordingly, the Court will enter the following:

ORDER

AND NOW, this 1st day of December 2010, for the foregoing reasons, Defendant’s Alternative Motion to Prohibit the Introduction of Evidence by the District Attorney is hereby GRANTED. At trial, the Commonwealth shall be prohibited from introducing any evidence with respect to any matter contained in subparagraphs (c) through (j) of the Request for a Bill of Particulars, as well as any 404(b) evidence.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Edward J. Rymsza, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson