

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**KHALIL FULKS,
Defendant**

:
:
:
:
:
:
:

**No. CR-105-2013; 106-2013
CRIMINAL DIVISION**

OPINION AND ORDER

On February 26, 2013, the Defendant filed a Request For a Bill of Particulars. The Defendant requested the following information: 1) the exact time, date, and location at which the alleged crimes occurred; 2) the conduct specifically and personally committed by the Defendant for each charge; 3) the specific conduct and acts that were allegedly committed by Defendant and the specific enterprise that he was associated with, and the pattern of racketeering activity for which the Commonwealth will allege and argue at trial; 4) the dates and times that constituted an illegal act committed by the Defendant for each charge; 5) the specific co-conspirators and actions which constitutes an allegation of conspiracy for each conspiracy charge; 6) the specific acts by the Defendant of a Controlled Substance, Possession with Intent to Deliver, Criminal Use of Communication Facility, Conspiracy, and Endangering the Welfare of a Children; and 7) the specific time and place that the Commonwealth alleges that the Defendant allegedly delivered a controlled substance, committed the act of criminal use of communication facility, conspiracy, and endangering the welfare of children. Defense counsel asserts the need for the Bill of Particulars to “prepar[e] the Defendant’s defense at trial and to clarify the criminal information and for determining what evidence and theories of the case will be offered at trial.”

The Commonwealth responded by directing the Defendant to the testimony presented either at the preliminary hearing or the information contained in the Affidavit of Probable Cause;

the Commonwealth also stated that “no answer is required.” In addition, the Commonwealth alleged that if no specific transaction was observed they are without information, knowledge or belief concerning the exact time and location of where the actual transaction occurred. As a result of the response provided by the Commonwealth, the Defendant filed a Motion to Compel Bill of Particulars arguing that they are unable to prepare a defense as the Commonwealth did not provide sufficient facts in support of the charges filed.

Discussion

The Defendant requests that this Court compel the Commonwealth to answer the Bill of Particulars more completely or in a manner that will not deprive him of a fair trial and adequate representation. “A bill of particulars is intended to give notice to the accused of the offenses charged in the indictment so that he may prepared a defense, avoid surprise, or intelligently raise pleas of double jeopardy and the statute of limitations.” Commonwealth v. Dreibelbis, 426 A.2d 1111, 1114 (Pa. 1981). The Pennsylvania Rules of Criminal Procedure states that a request for a bill of particulars “shall set forth the specific particulars sought by the defendant, and the reasons why the particulars are requested.” Pa.R.Crim.P. 572(B). In addition, “[w]hen a motion for relief is made, the court may make such order as it deems necessary in the interests of justice.” Pa.R.Crim.P. 572(D).

Issues that arise out of bill of particulars are generally either about whether the Commonwealth provided adequate information to the Defendant or whether the Defendant properly requested a bill of particulars. In Gee, a defendant alleged that his counsel was ineffective for not requesting a bill of particulars when he was charged with receiving “assorted jewelry.” Commonwealth v. Gee, 458 A.2d 263 (Pa. Super. 1983). The Superior Court rejected the defendant’s argument and noted that the criminal complaint had specific information about

the jewelry. In addition, the search warrant and an inventory receipt of items recovered had adequate information for the defendant to prepare a defense. See also Dreibelbis, 426 A.2d at 1114 (“A bill of particulars is not a substitute for discovery and the Commonwealth’s evidence is not a proper subject to which a petition for a bill may be directed.”).

Further, in Judd, a defendant requested a bill of particulars for the specific dates of his offenses. Commonwealth v. Judd, 897 A.2d 1224 (Pa. Super. 2006). The defendant argued that not having the specific dates denied him a chance to prepare a proper defense. The Superior Court of Pennsylvania, however, applied Pa.R.Crim.P. 572(B) and found that the defendant did not explain how the lack of information hampered his defense and found that the issue was without merit.

Here, the Court has extensively reviewed the testimony from the preliminary hearing and the Affidavit of Probable Cause, during which the Commonwealth directed the Defendant to review for many of the requests for information. While the Information alone may lack the specifics requested by the Defendant, the additional sources outline in detail the specific information that the Commonwealth has against the Defendant and answer many of the particulars requested. For example, the preliminary hearing transcript provides the actual testimony from witnesses to be called at trial about the specific acts the Defendant is alleged to have engaged in for his charges of Delivery of a Controlled Substance, Possession with Intent to Deliver, Criminal Use of Communication Facility, Conspiracy, and Endangering the Welfare of Children. Most of the testimony about the charges filed was presented by exact date on which the crimes were alleged to have been committed and with an approximate time those offenses were alleged to have occurred.

In addition, due to the circumstances of the charges against the Defendant and the use of

a wire intercept, the Commonwealth is without some of the information requested by the Defendant. A good portion of the charges filed are based on the phone conversations the Defendant engaged in with other individuals. Due to the sheer number of transactions in which the Defendant engaged, the Commonwealth was unable to observe every single transaction and therefore cannot know the exact location of every offense or even the identity of all the co-conspirators. The Defendant has received all the phone conversations that these charges are based on through discovery.

The Court is at a loss to believe the Defendant is unable to prepare a defense at trial based on the information provided in these documents. While there are many charges and a lot of information in this case, the Commonwealth has sufficiently complied with Pa.R.Crim.P. 572.

ORDER

AND NOW, this _____ day of September, 2013, after a conference on the Defendant's Motion to Compel Bill of Particulars and a review of the Information, preliminary hearing transcript, and Affidavit of Probable Cause, the Court finds that the Commonwealth has provided sufficient information to the Defendant to prepare a defense. Therefore, the Defendant's Motion to Compel is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.
Jeana Longo, Esq.