

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **No. CR-257-2013**
 : **CRIMINAL DIVISION**
 WILLIAM HELLENTHAL, :
 Defendant :

OPINION AND ORDER

On February 22, 2013, the Commonwealth filed an Information against William Hellenthal (Defendant) alleging that he committed the crimes of Attempted Murder,¹ Aggravated Assault,² Burglary,³ Criminal Trespass,⁴ Terroristic Threats,⁵ Simple Assault,⁶ and Person Not to Possess Firearms.⁷ On February 25, 2013, the Defendant filed a Request For a Bill of Particulars. The Defendant requested the following information:

1. The state of mind the Commonwealth intends to prove Mr. Hellenthal had at the time he attempted to murder David Barto.
2. If it is the Commonwealth's intent to prove an intentional attempted murder, in what manner, time and place, is it alleged that Mr. Hellenthal formed the specific intent to attempt to murder David Barto.
3. If it is the Commonwealth's intent to prove an intentional attempt to murder Mr. Barto, in what manner, time and place is Mr. Hellenthal alleged to have premeditated the attempted murder.
4. If it is the Commonwealth's intent to prove Mr. Hellenthal intended to knowingly, recklessly or negligently attempt to murder Mr. Barto, in what manner, time and place, is it alleged that Mr. Hellenthal knowingly, recklessly or negligently attempted to murder Mr. Barto.
5. If it is the Commonwealth's intent to prove that Mr. Hellenthal did attempt to

¹ 18 Pa.C.S. § 901(a).

² 18 Pa.C.S. § 2702(A)(4), (A)(1).

³ 18 Pa.C.S. § 3502(a).

⁴ 18 Pa.C.S. § 3503(a)(1)(i).

⁵ 18 Pa.C.S. § 2706(A).

⁶ 18 Pa.C.S. § 2701(a)(1), (a)(3)

⁷ 18 Pa.C.S. § 6105(A)(1).

cause bodily injury to David Barto with a deadly weapon, please specify the specific actions of Mr. Hellenthal that support this allegation.

6. If it is the Commonwealth's intent to prove that Mr. Hellenthal intentionally or knowingly caused bodily injury to David Barto with a deadly weapon, please specify the injuries Mr. Barto suffered plus the specific conduct in which Mr. Hellenthal engaged that support this allegation.
7. If it is the Commonwealth's intent to prove that Mr. Hellenthal did attempt to cause serious bodily injury to David Barto under circumstances manifesting an extreme indifference to the value of human life please specify the actions of Mr. Hellenthal that support this allegation plus the injuries suffered by Mr. Barto.
8. If it is the Commonwealth's intent to prove that Mr. Hellenthal intentionally, knowingly or recklessly caused serious bodily injury to David Barto under circumstances manifesting extreme indifference to the value of human life please specify the actions of Mr. Hellenthal that support this allegation plus the injuries suffered by Mr. Barto.
9. If it is the Commonwealth's intent to prove that Mr. Hellenthal did attempt to cause serious bodily injury to Jean Hellenthal under circumstances manifesting an extreme indifference to the value of human life please specify the actions of Mr. Hellenthal that support this allegation plus the injuries suffered by Ms. Hellenthal.
10. If it is the Commonwealth's intent to prove that Mr. Hellenthal intentionally, knowingly or recklessly caused serious bodily injury to Jean Hellenthal under circumstances manifesting extreme indifference to the value of human life please specify the actions of Mr. Hellenthal that support this allegation plus the injuries suffered by Ms. Hellenthal.

Defense counsel asserts that the Bill of Particulars is needed to “prepare for a defense at trial, avoid surprises, and protect himself against a violation of his double jeopardy rights” The Commonwealth filed an Answer to Defendant's Request for Bill of Particulars, which stated that the Defendant did not comply with Pa.R.Crim.P. 572(B) and that the information had already been provided through discovery. The Commonwealth acknowledges that they did not properly answer each particular and instead gave five general reasons why the entire request did not warrant an answer. Consequently, on July 24, 2013, the Defendant filed a motion to compel the Commonwealth to answer the Bill of Particulars.

Discussion

The Defendant requests that this Court compel the Commonwealth to answer the Bill of Particulars in order to prepare a defense at trial, avoid surprises, and protect himself against a violation of double jeopardy rights. “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. Importantly, the Superior Court reviewed the request of bill of particulars based on the information of numerous documents given to the Defendant and not just the Information filed in the case. 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 Commonwealth alleges that the Defendant improperly filed the Bill of Particulars and the Defendant also argues that the Commonwealth improperly answered the request. The Court recognizes that there are procedural issues with both the Bill of Particulars and the Answer, however, this Court will still address the main issue of whether the Commonwealth must answer the Bill of Particulars. Specifically, whether the Defendant in fact requires the information to prepare a defense at trial, avoid surprises, and protect himself against a violation of his double jeopardy rights.

The Court is unaware of the discovery given by the Commonwealth to the Defendant, but the preliminary hearing transcript and the Information filed by the Commonwealth appear to adequately allow the Defendant to prepare a defense and to avoid surprise. This Court previously reviewed the testimony from the preliminary hearing for the Defendant's Petition for Habeas Corpus. The Commonwealth introduced the testimony of Jean Hellenthal (Hellenthal) and David Barto (Barto), the victims and the only two witnesses of the alleged crimes besides the Defendant. Hellenthal and Barto testified to injuries inflicted by the Defendant and the actions that caused those injuries. The Commonwealth also introduced evidence that the Defendant had money and his passport in his vehicle.

Further, the Defendant's Request for a Bill of Particulars seeks information on the

Commonwealth's trial strategy and to severely limit the proof that can be raised at trial. See Commonwealth v. Delbridge, 771 A.2d 1, 4 (Pa. Super. 2001) ("where the bill of particulars specifically limits proof to be adduced at trial to specific acts, the Commonwealth is not permitted to obtain a conviction on the offense charged by proof of acts other than those specified in the bill). The Defendant wants the Commonwealth to list what evidence is going to be used to support the elements of Attempted Homicide and the Aggravated Assault charges. While this information would help prepare a defense and avoid surprise, the Court finds that this information is beyond the scope of a bill of particulars and even discovery. The Commonwealth need not specify at pre-trial what pieces of evidence will specifically support the elements of the charges. Such a practice well before trial would surely result in omissions and the unfair limit on what evidence can be used at trial by the prosecution. If the Commonwealth continues to gather evidence following the Information being filed against a defendant, such a ruling could limit its admissibility.

In the interest of justice, the Court would like to give the Defendant the opportunity to further plead why the information requested is needed. While the Court finds that the Commonwealth has complied with the spirit of Pa.R.Crim.P. 572 and has given the Defendant adequate information to form a defense at trial and avoid surprises, the Court will allow the Defendant ten (10) days to re-file a request for a bill of particulars. The Defendant, however, must set forth more specific reasons why each particular item requested is required to form a defense, avoid surprises, and to protect against double jeopardy.

ORDER

AND NOW, this _____ day of October, 2013, after a conference on the Defendant's

Motion to Compel Bill of Particulars and a review of the Information and preliminary hearing transcript, the Court finds that the Commonwealth has provided sufficient information to the Defendant to prepare a defense and avoid surprise. Therefore, the Defendant's Motion to Compel is DENIED.

Further, it is ORDERED and DIRECTED that the Defendant may re-file a Request for a Bill of Particulars within ten (10) days from the date of this Order and that it must specify in detail why the information is needed to prepare a defense for trial, avoid surprises, and to protect against a violation of double jeopardy rights. The Court also notes that current counsel has been granted leave to withdraw. Once new counsel has entered an appearance, they would have ten (10) days from that date to request a new Bill of Particulars.

By the Court,

Nancy

L. Butts, President Judge

xc: DA
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