

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-955-2013  
:   
vs. :   
:   
DONALD DANGLE, :   
Defendant : Motion to Amend Information

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion to Amend Information filed on August 8, 2013.

The Information, filed against the Defendant on July 5, 2013, charges him with Burglary, Criminal Trespass, Theft and Receiving Stolen Property.

Argument on the Commonwealth's Motion was held on August 21, 2013.

By virtue of the United States Supreme Court's decision in Alleyne v. United States, 133 S. Ct. 2151 (2013), if a fact increases the mandatory minimum to which a Defendant may be exposed, it must be submitted to the jury and proved beyond a reasonable doubt. Moreover, the Information must contain every fact which is legally essential to the punishment to be inflicted. Accordingly, and in consideration of Alleyne, the Commonwealth seeks to amend the Information with respect to the Burglary count to add that: "in which at the time of the offense a person was present: namely, Andrew Lyon." The parties do not dispute that pursuant to 42 Pa. C.S.A. § 9721 (204 Pa Code § 303.8 (d)) if at the time of the burglary any person was present, the Offense Gravity Score, pursuant to the sentencing guidelines, would increase from a 6 to a 7.

Defendant argues that the Commonwealth should not be permitted to amend the Information, alleging prejudice because said facts were not established at the preliminary hearing by the required prima facie standard, that he was unaware that the Commonwealth would be seeking the enhanced offense gravity score, and that under the circumstances as alleged, the enhanced offense gravity score would not be applicable as a matter of law. Rule 564 of the Pennsylvania Rules of Criminal Procedure governs amendments to Informations.

Rule 564 provides that a court may allow the amendment of an Information where, among other things, there is a defect in the description of the offense, provided the amendment does not charge an additional or different offense.

The purpose of Rule 564 is to “ensure that a defendant is fully apprised of the charges and to avoid prejudice by prohibiting the last minute addition of alleged criminal acts of which the defendant is uninformed.” Commonwealth v. Duda, 831 A.2d 728, 732 (Pa. Super. 2003), quoting Commonwealth v. J.F., 800 A.2d 942, 945 (Pa. Super. 2002).

In determining prejudice, the lower courts are directed to consider several factors including the following:

(1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during the preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; (6) whether the timing of the Commonwealth’s request for amendment allowed for ample notice and preparation.

Commonwealth v. Sinclair, 897 A.2d 1218, 1223 (Pa. Super. 2006), citing Commonwealth v. Grekis, 601 A.2d 1284, 1292 (Pa. Super. 1992).

Furthermore, since the purpose of an Information is to apprise a defendant of the charges against him so that he may have a fair opportunity to prepare a defense, relief is awarded only when the variance between the original and the new charges prejudices the Defendant by, for example, rendering defenses which might have been raised against the original charges ineffective with respect to the substituted charges. Sinclair, supra.; Commonwealth v. Brown, 727 A.2d 541, 543 (Pa. 1999). As well, “the mere possibility that the amendment of an Information may result in a more severe penalty due to the additional charges is not, of itself, prejudice.” Sinclair, 897 A.2d at 1224, citing Commonwealth v. Picchianti, 600 A.2d 597, 599 (1991), appeal denied, 530 Pa. 660, 609 A.2d 168 (1992).

Defendant’s allegations of prejudice do not constitute sufficient prejudice such as to prohibit the amendment. According to the Affidavit of Probable Cause, Andrew Lyon entered his parent’s house and apprehended the Defendant who was in the process of burglarizing said house. Defendant spoke with police and admitted that while burglarizing the house, he was confronted at gunpoint by Mr. Lyon who was in the house. Defendant waived his preliminary hearing on June 5, 2013. The discovery provided to the Defendant sets forth the applicable factual allegations in even greater details. Finally, the fact that Mr. Lyon entered the house while the Defendant was still

inside, if proven, is sufficient to establish the higher offense gravity score.

Commonwealth v. Stapp, 652 A.2d 922 (Pa. Super. 1995).

The proposed amendment does not deprive the Defendant of a fair opportunity to prepare a defense nor does it render any of his defenses ineffective. Under all of these circumstances, the Court will grant the Commonwealth's Motion to Amend Information.<sup>1</sup>

**ORDER**

**AND NOW**, this 28<sup>th</sup> day of August 2013, following a hearing and argument, the Commonwealth's Motion Amend Information is GRANTED. With respect to Count 1, the Information is amended to add the following language:

“in which at the time of the offense a person was present: namely, Andrew Lyon.”

By The Court,

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Marc F. Lovecchio, Judge

cc: DA (MW)  
PD (KB)  
Gary Weber, Lycoming Reporter  
Work File

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<sup>1</sup> This decision does not set forth any opinion on whether Alleyne applies to offense gravity score enhancements. It addresses only the Information amendment issue.