

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1715-2012
 :
 TERENCE FORSHYTE, : Opinion and Order re Motion to Amend
 Defendant : Information

OPINION AND ORDER

This matter came before the court on the Commonwealth's motion to amend the Information. For purposes of this motion, the relevant facts follow.

On June 19, 2012 at approximately 11:13 a.m. three black males entered Noor Ford's hotel room, Room 214, at the Econo Lodge in Williamsport, Pennsylvania. Although the door was open because the air conditioner was not working, the individuals entered without Ford's permission or consent. Ford knew two of the individuals as Snoop and Dark. The third individual was "Tee-Pain," who Trooper Havens recognized in the surveillance video as Defendant Terrance Forshyte.

Snoop pointed a black semi-automatic pistol at Ford. Snoop said he was going to "pop" Ford and demanded money that Ford owed him for heroin. Ford told Snoop he didn't have the money. Snoop pistol whipped Ford, knocking him to the ground. Then he, Tee-Pain and Dark punched and kicked Ford in the head and upper body. At one point, Ford was knocked unconscious. One of the individuals rifled through Ford's pockets but they were empty. The three individuals then began rifling through the room. They took money, heroin, Ford's I-phone, his X-box, a backpack, and a gray duffle bag containing a video game and numerous music CDs.

After the individuals left, Ford called a friend to take him to the hospital. Ford was badly beaten. His face was bloodied and swollen. His right eye was swollen shut. His lip was cut, as if one of his teeth went into or through it. Ford had a severe headache and was in a lot of pain. Hospital personnel treated his injuries and called the police.

Trooper Tyson Haven responded to the hospital and investigated the matter. During the course of his investigation, he interviewed Ford three times, portions of which were recorded. Ford also signed a written statement.

Trooper Havens obtained the video surveillance tape from the Econo Lodge, which depicted the individuals walking out of the stairway from the second floor of the Econo Lodge, with Forshyte (“Tee-pain”) carrying Ford’s backpack and gray duffle bag.

Trooper Havens also obtained Instagram posts from “tee-pain215” and “snoop_rock”. The Instagram posts included photographs of Defendant Forshyte (a/k/a “tee-pain”) and co-defendant Kenneth Martin (a/k/a “Snoop”), as well as photographs of Ford after the assault with a comment posted by “tee-pain215” underneath one of the photographs which stated “that nigga look like Martin when he got fucked up damn elephant man.”

Trooper Havens charged Defendant Forshyte with one count of theft, one count of simple assault and six counts of criminal conspiracy with the objects of the conspiracies being burglary, robbery (felony 1), robbery (felony 2), aggravated assault, criminal trespass and receiving stolen property.

The Commonwealth filed a motion to amend the charges to add the following

substantive offenses: burglary, a felony of the first degree, 18 Pa.C.S.A. §3502(a); robbery, a felony of the first degree, 18 Pa.C.S.A. §3701(a)(1)(ii); robbery, a felony of the second degree, 18 Pa.C.S.A. §3701(a)(iv); criminal trespass, a felony of the third degree, 18 Pa.C.S.A. §3503(a)(1)(i); simple assault, a misdemeanor of the second degree, 18 Pa.C.S.A. §2701(a)(1); and receiving stolen property, a misdemeanor of the first degree, 18 Pa.C.S.A. §3925(a). The Commonwealth argued that the same evidence that supported the conspiracy charges also supported the substantive offenses; therefore, the defense was on notice of these charges and could defend against them.

Defendant opposed the amendment. He argued that he was hampered in his defense because the issue would now be his specific actions whereas the focus of the conspiracy charges was an agreement and his alleged co-defendant's actions in furtherance thereof.

Rule 564 of the Pennsylvania Rules of Criminal Procedure governs amendments to an Information. Rule 546 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).

The proposed amendment neither changes the factual scenario in this case nor adds new facts previously unknown to Defendant. The crimes evolved out of the same factual scenario as the crimes specified in the original Information. The proposed amendment also does not deprive Defendant of a fair opportunity to prepare a defense or render any of his defenses ineffective. The timing of the Commonwealth's request allows for

ample notice and preparation.

The court disagrees with defense counsel's assertion that Defendant's actions are the focus of the underlying charges. Pennsylvania case law holds that "[o]nce there is evidence of a conspiracy, all conspirators are equally criminally responsible for the acts of their co-conspirators committed in furtherance of the conspiracy regardless of their individual knowledge of such actions and regardless of which member of the conspiracy undertook the action." Commonwealth v. Figueroa, 859 A.2d 793, 798 (Pa. Super. 2004), citing Commonwealth v. Lambert, 795 A.2d 1010, 1017 (Pa. Super. 2002). In other words, if Forshyte entered into a conspiracy with Martin and Wills to enter Ford's hotel room with the intent to rob him, steal from him and assault him, once any of them does an act or acts to complete the burglary, robbery, theft, receiving stolen property, or assault all three are equally criminally responsible for the completed crime.

Accordingly, the court will grant the Commonwealth's motion to amend in this case, except the request to amend to add simple assault because Defendant Forshyte is already charged with simple assault.

ORDER

AND NOW, this ___ day of November 2014, the court DENIES the Commonwealth's motion to amend to add simple assault, as Defendant is already charged with simple assault in count 8. In all other respects, the court GRANTS the Commonwealth's motion to amend.

The Information is amended to add the following charges: Count 9- Burglary (Felony 1), 18 Pa.C.S. §3502(a); Count 10 – Robbery (Felony 1), 18 Pa.C.S. §3701(a)(1)(ii); Count 11 – Robbery (Felony 2), 18 Pa.C.S. §3701(a)(1)(iv); Count 12 – Criminal Trespass (Felony 3), 18 Pa.C.S. §3503(a)(1)(i); and Count 13 – Receiving Stolen Property (Misdemeanor 1), 18 Pa.C.S. §3925(a). The clerk of courts is directed to add these charges in CPCMS.

By The Court,

Marc F. Lovecchio, Judge

cc: MartinWade, Esquire (ADA)
Donald Martino, Esquire
Suzanne Fedele, Clerk of Courts
Gary Weber, Esquire (Lycoming Reporter)
Work file