

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1217-2013
: :
vs. : :
: :
SHAREAF WILLIAMS : Motion to Amend Information

OPINION AND ORDER

Defendant is charged by Information filed on August 23, 2015 with one count of possession with intent to deliver a controlled substance, one count of criminal use of a communication facility, and one count of possession of a controlled substance.

It is alleged in the criminal complaint filed on July 14, 2013 and the supporting affidavit of probable cause that on that date, a vehicle was stopped by the Williamsport Police. The driver identified himself and his passenger as the Defendant. The driver indicated that he arranged for and intended to purchase three bags of heroin from the Defendant for \$30.00. The driver further indicated that he previously spoke with the Defendant approximately 20 times and was sure that it was the Defendant on the phone.

The Defendant was subsequently taken into custody and searched. The search uncovered three small clear baggies each containing one blue waxen bag with heroin.

A jury was eventually selected and the trial commenced on November 16, 2015, but during the testimony of the first witness, upon motion of the Defendant, the Court granted a mistrial.

A few days later on November 18, 2015, the Commonwealth filed a Motion to Amend the Information to add a paraphernalia count. The argument on said count was held

before the Court on November 30, 2015.

Defendant argued that the Commonwealth was essentially “piling on” and that “this late in the game” the amendment should not be allowed. Defendant conceded however, that he was not specifically prejudiced by the proposed amendment and was aware of the alleged presence of the paraphernalia as early as when the criminal complaint and supporting affidavit were filed.

Rule 564 of the Pennsylvania Rules of Criminal Procedure governs amendments to an Information. Rule 546 provides the Court may allow the amendment of an Information where, among other things, there is a defect in the description of the 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; and (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 charge is not, of itself, prejudice.” *Sinclair*, supra. 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 paraphernalia crime evolved out of the same factual scenario as the crimes specified in the original criminal complaint, the affidavit in support of such and the original Information. The proposed amendment also does not deprive the Defendant of a fair opportunity to prepare a defense or render any of his defenses ineffective. The timing of the Commonwealth’s request albeit quite late in the process, still allows for Defendant to prepare his defense and as conceded by Defendant does not change his defense strategy one bit. Accordingly and considering all of the relevant factors, the Court will grant the Commonwealth ‘s Motion.

ORDER

AND NOW, this ____ day of December 2015, following a hearing and argument, the Court **GRANTS** the Commonwealth's Motion to Amend the Information. The Information is **AMENDED** to add count 4, possession of drug paraphernalia, an ungraded misdemeanor.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Gary Weber, Lycoming Reporter
Work File