

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**HYSON FREDERICK,
Defendant**

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CR-77-2016

OPINION AND ORDER

On June 30, 2016, Defendant's Counsel, filed an Application for Order of a Bill of Particulars Pursuant to Pennsylvania Rule of Criminal Procedure 572(a). The Commonwealth filed a response on August 25, 2016. The Court heard argument on application on August 26, 2016. Defendant was present at the hearing through video conference from SCI Forest.

Background

Hyson Frederick (Defendant) is charged with fifteen (15) counts of Delivery of a Controlled Substance¹; two counts of Persons not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms²; and two counts of Sale or Transfer of Firearms.³ The information charges that these events took place between 9/1/2011 and 1/31/2012. The charges arise out of statements testified to by Defendant and others during Defendant's nonjury criminal trial at CP-41-CR-0000355-2012 and CP-41-CR-00001445-2012 with cases joined for trial in October of 2013.

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa.C.S. § 6105(a)(1).

³ 18 Pa.C.S. § 6111(c).

Procedural Posture

Defense Counsel requests the exact time and date, the exact location, and the nature and the quantity of controlled substances giving rise to Counts 1-15.

Defense Counsel requests the exact time and date, the exact location, and the specific description of the firearm allegedly possessed giving rise to Count 16 and Count 17.

As to Counts 18 and 19, Defense Counsel requests the exact time and date at which the offenses giving rise to each Count occurred, the exact location of the offenses, and a specific description of the firearms allegedly transferred and the identity of the transferee.

Defense Counsel maintains it cannot properly and adequately prepare for trial without such particulars.

The Commonwealth responds that the information the Defense seeks is set forth in the trial testimony of October of 2013, and the affidavit of probable cause. Moreover, the Commonwealth argues that Defense Counsel has not set any assertion as to why more information is needed.

Discussion

The Defendant requests that the Court compel the Commonwealth to answer the Bill of Particulars in order to prepare a defense at trial. "A bill of particulars is intended to give notice to the accused of the offenses charged in the indictment so that he may prepare 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 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) (petition for allowance of appeal denied June 21, 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) (petition for allowance of appeal denied Dec. 5, 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.

Likewise, in the above captioned matter, Defense Counsel is able to find the information it seeks in the police criminal complaint and has not shown the Court how the information already provided is not adequate to suit his needs. The Police Criminal Complaint lists the dates and the other parties to whom controlled substances were delivered. The Affidavit of Probable Cause outlines the specific testimony from the October 2013, trial that gave rise to the police criminal complaint. The Criminal Information, filed January 29, 2016, meets the requirements of Pa.R.Crim.P. 560(3):

The date when the offense is alleged to have been committed if the precise date is known and the day of the week if it is an essential element of the offense charged, provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period of fixed by the statute of limitations shall be sufficient.

In Commonwealth v. Volk, 444 A.2d 1182 (Pa. Super. 1982) the Superior Court held that where the Commonwealth establishes that the crime charged was a continuing one, and where the dates fell within the applicable statute of limitations for the substantive crime, the dates in the criminal information were sufficiently certain despite their lack of specifying one particular date upon which the crimes occurred. The crime charged in Volk, theft by deception, is similar to the crimes charged here (delivery, possession, and transfer) in that none of the crimes is inherently of a continuing nature. However, when the facts of a particular case indicate an ongoing or continuing nature, as they did in Volk, as they do here, an information is sufficient if the dates stated are within the applicable statute of limitations. Commonwealth v. Dennis, 618 A.2d 972, 980 (Pa. Super 1992). Defendant's trial in October 2013 was regarding

an incident that occurred on December 11, 2011. During the course of trial, multiple witnesses testified concerning the use of heroin and heroin trafficking by Defendant. Defendant himself testified to the facts from which the gun charges arise. Affidavit of Probable Cause, 12/1/2015, at 7.

ORDER

AND NOW, this 30th day of November, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion for a Bill of Particulars is DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (KO)
Julian Allatt, Esq., Defendant's Counsel
Gary Weber, Esq., Lycoming Law Reporter
Work file (law clerk)