

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1454-2014
 :
 JOSEPH JENNINGS, : Commonwealth's Motion
 Defendant : to Amend Information

OPINION AND ORDER

On September 19, 2014, Defendant was charged with one count of failure to comply with registration requirements, one count of habitual offenders, one count of driving without a license and one count of driving while operating privileges suspended or revoked. The Information charges “that on or about Sunday, the 27th day of July 2014” Defendant committed the aforesaid crimes.

On April 22, 2016, the Commonwealth filed a Motion to Amend the Information. Specifically, with respect to Count 1, Failure to Comply and amended Count 5, Failure to Comply, the Commonwealth requests that the date of the offense be amended to “as of July 31, 2014.”

Defense counsel opposes the Motion to Amend the Information. At the argument held in this matter on May 16, 2016, defense counsel lodged numerous objections including the following: “This is the second amendment to the Information”, “this is legal maneuvering to gain a tactical advantage”, this causes “added delay”, it “usurps the role of the preliminary hearing and the prima facie standard”, “it doesn’t ensure proper formality”, and that the amendment constitutes continuing Commonwealth “gamesmanship.” Despite said objections, defense counsel admitted that the pertinent facts have been known to

Defendant since the filing of the charges and that the amendment “doesn’t change” any aspect of the defense.

Unfortunately, and while the Court appreciates zealous advocacy, the fact that this motion requires court resources and time, begs logic. Defense counsel is well aware of the standard for granting such a motion and none of defense counsel’s arguments constitutes a sufficient reason to deny the Commonwealth’s request.

The amendment of an Information is governed by Rule 564 of the Pennsylvania Rules of Criminal Procedure and case law. Rule 564 states:

The court may allow an Information to be amended when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

PA. R. CRIM. P. 564.

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/or
- (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).

The proposed amendment by the Commonwealth does not at all change the factual scenario supporting the charges. It does not add new facts previously unknown to Defendant. The entire factual scenario was developed during the preliminary hearing. Defendant concedes that there is no change in defense strategy. The description of the charges has not changed. Defense still has ample notice and opportunity to prepare. The Commonwealth has always asserted that Defendant was operating the silver Jeep on July 27, 2014 and failed to register that vehicle in a timely manner in accordance with the requirements of the Sexual Offender Registration and Notification Act (SORNA).

Furthermore, Rule 560 of the Pennsylvania Rules of Criminal Procedure specifically notes that if an offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient. PA. R. CRIM. P. 560 (B) (3). Defendant was allegedly required to register his vehicle three days after he was operating it. Each day that he failed to register constitutes either a continuing violation or set of violations. Accordingly, even without the amendment the "on or about" date would be sufficient.

ORDER

AND NOW, this 27th day of May 2016, following a hearing and argument,

the Commonwealth's Motion to Amend Information is **GRANTED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Lori Rexroth, Esquire
Edward J. Rymysz, Esquire
Gary Weber, Esquire, Lycoming Reporter
Work file