

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-292-2015**  
 v. :  
 :  
 :  
 **ROBERT GEORGE SAWYER JR.,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On August 27, 2015, the Commonwealth filed a Motion to Amend Information. On November 10, 2015, the parties agreed that the motion could be decided on briefs.

**I. Background**

The Defendant's blood was drawn after he was arrested for DUI. Tests revealed that the blood contained 5.8 ng/mL of Delta-9 Carboxy THC. Currently, the Information charges the Defendant with 75 Pa.C.S. § 3802(d)(3), driving under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive. The Information also charges the Defendant with 75 Pa.C.S. § 3802(a)(1), driving after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving. In addition, the Information charges the Defendant with 75 Pa.C.S. § 3802(b), driving after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven.

The Commonwealth asks to amend the Information to add 75 Pa.C.S. § 3802(d)(1)(iii), driving when there is in the individual's blood any amount of a metabolite of a Schedule I controlled substance. The Commonwealth argues it should be allowed to amend the Information because "[t]he amended charge involves the same basic elements and evolved out of the same

factual situation.” It also argues that the Defendant has “enough time to prepare to defend against the amended charge.” The Commonwealth asserts that it “will not present any new evidence beyond what is already outlined in the Affidavit of Probable Cause.”

The Defendant argues that the amendment should not be permitted because the elements of the proposed charge are different than the elements of the existing charges. He contends that the proposed charge imposes a “much less onerous burden” than the existing charges. The Defendant argues that the amendment would be extremely prejudicial to him because “it will obviously necessitate a change in defense strategy.” Last, he argues that “the time of the amendment is prejudicial as [he] has gone to great lengths to prepare his defense to the information which was originally filed.”

## **II. Discussion**

“According to Pa.R.Crim.P. 564, the court may permit amendment of an information ‘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.’” Commonwealth v. Mentzer, 18 A.3d 1200, 1202 (Pa. Super. 2011) (quoting Pa.R.Crim.P. 564). The Superior Court “‘look[s] more to substantial justice than to technicalities’ when reviewing the validity of an amended information.” Commonwealth v. Grekis, 601 A.2d 1284, 1289 (Pa. Super. 1992) (quoting Commonwealth v. Fuller, 579 A.2d 879, 885 (Pa. Super. 1990)). “Where the crimes specified in the original information involved the same basis elements and arose out of the same factual situation as the crime added by the amendment, the [defendant] is deemed to have been placed on notice regarding his alleged criminal conduct and no prejudice to defendant results.” Mentzer, 18 A.3d at 1202-03. The

factors which the trial court must consider in determining whether an amendment is prejudicial are:

(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 a 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.

Id. at 1203.

Before discussing the relevant factors, the Court notes that the proposed amendment does not change the Commonwealth's burden of proof. The following factors weigh in favor of permitting amendment. The amendment does not change the factual scenario supporting the charges. Because the criminal complaint noted that the Defendant's blood had 5.8 ng/mL of Delta-9 Carboxy THC, the amendment does not add new facts previously unknown to the Defendant. The timing of the Commonwealth's request allowed for ample notice and preparation. The Commonwealth made the request 22 days before a scheduled status conference; the case was not on the pretrial list. The following factors weigh in favor of disallowing amendment. The amendment would change the description of the charges. In addition, the amendment would necessitate a change in defense strategy.

After weighing the factors, the Court finds that the Defendant is not prejudiced by the amendment. While likely not to the same extent as the Defendant, the Court is frustrated that the Defendant is forced to pursue a different strategy after spending time and money. However, the noting of Delta-9 Carboxy THC in the criminal complaint placed the Defendant on notice regarding his alleged criminal conduct, and he has ample time to prepare a defense to the amended charge. Therefore, he does not suffer prejudice as defined in the above case law.

### **III. Conclusion**

After weighing the relevant factors, the Court finds that the Defendant is not prejudiced by the amendment.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of January, 2016, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Commonwealth's Motion to Amend Information is hereby GRANTED, and the Information may be amended to include 75 Pa.C.S. § 3802(d)(1)(iii).

By the Court,

Nancy L. Butts, President Judge