

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. :

CP-14-CR-2421-2011  
CP-14-CR-2422-2011

GERALD A. SANDUSKY :

**MEMORANDUM AND ORDER**

**Defendant's Motion – Bill of Particulars**

John M. Cleland, Senior Judge

February 13, 2012

DEBRA C. IMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

2012 FEB 13 A 9:30

FILED FOR RECORD

The Defendant filed a request for a bill of particulars pursuant to Pennsylvania Rule of Criminal Procedure 572. The Commonwealth agreed to provide some of the information the Defendant has requested, but objects to providing other information. The Defendant has filed a timely motion for relief requesting the Commonwealth be ordered to provide the additional information. Because I conclude under Pennsylvania law the Defendant is entitled to an answer to his bill regarding some of the specific particulars, but not all, the Commonwealth will be directed to answer the Defendant's bill in part.

The Defendant has directed to the Commonwealth a request for a bill of particulars pursuant to Pa.R.Crim.P. 572. The rule requires that the Defendant "set forth the specific particulars sought ..., and the reasons why the particulars are requested." As the Comment to the rule explains "The traditional function of

a bill of particulars is to clarify the pleadings and to limit the evidence which can be offered to support the information." "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. Simone, 447 Pa. 473, 291 A.2d 764 (1972). 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. Commonwealth v. Davis, 470 Pa. 193, 368 A.2d 260 (1977)." Com. v. Dreibelbis, 426 A.2d 1111, 1114 (Pa. 1981).

The Commonwealth has agreed to provide the name of the alleged victims, as requested by the Defendant.

The Commonwealth has refused, however, to provide in its answer to the bill additional information the Defendant has requested regarding each count, specifically: the time, date and location of the offense; the exact age of the alleged victim at the time of the offense; the particular acts giving rise to the offense; and the names, addresses and dates of birth of all witnesses to the alleged offenses.

Rule of Criminal Procedure 572 regarding a bill of particulars and Rule 573 regarding pretrial discovery and inspection serve two distinct purposes. As the Commonwealth correctly points out in its brief by relying on Com. v. Chambers, 599 A.2d 630 (Pa. 1991), a request for a bill of particulars is not a substitute for information which would routinely be provided in the course of discovery as part of the investigatory information the Commonwealth is required

to turn over to the Defendant. The distinction between information provided in a bill of particulars and information provided in discovery should not be muddled because "the function of a bill of particulars is to enable the accused to prepare for trial and to prevent surprise. Thus it has long been the law in Pennsylvania that the Commonwealth is restricted to proving what it has set forth in the bill." Com. v. Simone, 291 A.2d 764, 766 (Pa. 1972).

On the other hand, because the information provided by the Commonwealth protects a defendant from being surprised at trial or affords an opportunity for a defendant to raise an appropriate legal defenses, a defendant is entitled to certain basic information in response to its bill even though that same information might be available as part of discovery.

I conclude, therefore, that certain information the Defendant has requested is clearly within the "specific particulars" Rule 572 and applicable case law envision. The Defendant's motion will be granted in part and the Commonwealth will be directed to tell the Defendant the time, date, and location of any offense giving rise to the counts as alleged in the Information; and the age of the alleged victim at the time the offense occurred. If the Commonwealth is unable to provide such information then the Commonwealth shall provide to the Defendant an explanation for its inability to do so.

I also conclude the Commonwealth properly refused to answer the Defendant's request to state the particular act giving rise to each of the charges in the Information beyond what is already specified in the Information, and the request for the names, addresses and ages of all witnesses to any alleged

offenses are beyond the scope of the particulars and are item subject to pretrial discovery and inspection which are more properly requested under Pa.R.Crim.P.

572. See: Com. v. McNulty, 397 A.2d 1227 (Pa. Super. 1979); Com. v. Bederka, 331 A.2d. 181 (Pa. 1975).

Therefore, I enter the following:

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**ORDER**

AND NOW, February 13, 2012, upon consideration of the Defendant's motion for relief seeking further particulars and the Commonwealth's response, and in consideration of the foregoing memorandum, it is ordered as follows:

1. That on or before February 20, 2012, the Commonwealth shall answer the Defendant's request for bill of particulars by stating:
  - a. The exact time, date, and location of any offense giving rise to the particular offenses as alleged in the Information.
  - b. The exact age of the alleged victim on the date of the offense.
  - c. If the Commonwealth is unable to provide such information, then the Commonwealth shall explain to the Defendant why it is unable to do so.
2. That the Defendant's motion requesting the Commonwealth to specify the particular acts giving rise to the charges alleged in the Information is denied.

3. That the Defendant's motion requesting the Commonwealth to identify the names, addresses and dates of birth of all witnesses to the offenses alleged in the Information is denied.

By the Court:

  
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John M. Cleland, S.J.  
Specially Presiding