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Edward M. Manning, Jr.
DISTRICT ATTORNEY

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

COMMONWEALTH OF PENNSYLVANIA,

v.

No. CP-22-CR-5165-2011

TIMOTHY MARK CURLEY,

Defendant.

**MOTION FOR A BILL OF PARTICULARS PURSUANT TO
PENNSYLVANIA RULE OF CRIMINAL PROCEDURE 572(C)**

AND NOW, comes the defendant, Timothy Mark Curley, by and through his attorney, Caroline M. Roberto, Esquire, and respectfully submits the following Motion and Memorandum of Law for a Bill of Particulars Pursuant to Pennsylvania Rule of Criminal Procedure 572(C):

1. Mr. Timothy Mark Curley is charged in a two count criminal information with, at Count 1, Perjury in violation of 18 Pa.C.S.A. §4902(a) a felony of the third degree and at Count 2, Persons Required to Report Suspected Child Abuse in violation of 23 Pa.C.S.A. §6319, a summary offense.

2. On January 25, 2012, pursuant to Pa. R. Crim. P. Rule 572(A), Mr. Curley served upon the Attorney General a request for a bill of particulars with regard to Count 1.

3. As of the date of this filing, the Attorney General has not yet furnished a bill of particulars. Thus, Mr. Curley makes the present motion for relief pursuant to

Pa.R.Crim.P. 572(C), and requests this Honorable Court to order the Attorney General to provide a bill of particulars stating with greater clarity and specificity, the allegations of perjury against Mr. Curley.

4. More specifically, Mr. Curley requests the provision of the exact statement or statements alleged to be perjurious which give rise to the above captioned matter and the alleged proof of falsity.

5. Mr. Curley requires a bill of particulars because there is no detailed explanation of the perjury accusation presented. The criminal information does not provide defendant the information necessary to prepare his defense. The requisite case law is set forth in defendant's accompanying Memorandum of Law, which defendant relies on in support of this Motion.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR A BILL OF PARTICULARS**

Provision of a bill of particulars is required in this matter because the criminal information does not provide Mr. Curley with the appropriate information necessary to prepare his defense.

According to Pa.R.Crim.P. Rule 572:

- (A) A request for a bill of particulars shall be served in writing by the defendant upon the attorney for the Commonwealth within 7 days following arraignment. The request shall promptly be filed and served as provided in Rule 576.
- (B) The request shall set forth the specific particulars sought by the defendant, and the reasons why the particulars are requested.

On January 25, 2012 shortly after receiving the criminal information in compliance with Rule 572, Mr. Curley promptly served the Attorney General with a request for a bill of particulars. Mr. Curley's request set forth the specific information sought. He requested "the exact statement or statements that are alleged to be perjurious and which give rise to the above captioned matter." Para. 1(a). The Attorney General has not responded to this request.

Pursuant to the second portion of Pa.R.Crim.P. Rule 572:

- (C) Upon failure or refusal of the attorney for the Commonwealth to furnish a bill of particulars after service of a request, the defendant may make written motion for relief to the court within 7 days after such failure or refusal. If further particulars are desired after an original bill of particulars has been furnished, a motion therefor may be made to the court within 5 days after the original bill is furnished.
- (D) When a motion for relief is made, the court may make such order as it deems necessary in the interests of justice.

Because the Attorney General has failed to furnish a bill of particulars, Mr. Curley makes the present written motion for relief. As provided in Rule 572(D), this Honorable Court may make such an order when it is "necessary in the interests of justice."

The interests of justice require greater specificity than provided in the criminal information. According to the Pennsylvania Supreme Court, "the function of a bill of particulars is to enable the accused to prepare for trial and to prevent surprise." *Commonwealth v. Simione*, 291 A.2d 764, 766 (Pa. 1972). The criminal information in the present case merely identified the crime with which defendant was charged, and the date of his alleged offense. Defendant is entitled to more information to prepare his defense and trial strategy.

The Deputy Attorney General boldly asserted at the Preliminary Hearing, "I counted six different occasions in Mr. Curley's testimony when he indicated clearly and unequivocally that he was never told by anybody that this was anything other than horsing around or just fooling around in the shower." Notes of Testimony from the Preliminary Hearing of December 15, 2011, p. 247. However, the criminal information referenced no such statement. Based on the Deputy Attorney General's assertion, defendant is left with the challenge of first identifying those six occasions and second, preparing a defense for each of them, not knowing which is the basis for the present charges against him. The law does not require the defense to undergo such an unreasonable task.

Instead, the Attorney General must identify the exact statement(s) alleged to be perjurious. This is necessary "to give notice to the accused of the offenses charged in order to permit him to prepare a defense, avoid surprise, and be placed on notice as to any restrictions on the Commonwealth's proof." *Commonwealth v. March*, 551 A.2d 232, 235-36 (Pa. Super. 1988) (holding trial counsel ineffective for failing to request a bill of particulars which would have restricted the Commonwealth's proof at trial); *see also, Commonwealth v. Chambers*, 599 A.2d 630 (Pa. 1991). A bill of particulars is also necessary to allow the accused to make intelligent pleas of double jeopardy, should similar charges be brought in the future. *Commonwealth v. Dreibelbis*, 426 A.2d 1111, 1114 (Pa. 1981). These particulars are crucial to the creation of a defense against the perjury charge and are required by the general "interests of justice" of Rule 572 and also under the Pennsylvania and United States Constitution. According to the Pennsylvania Supreme Court, Due Process requires that the Information be sufficiently specific so as to allow the defendant

to prepare any available defenses. *Commonwealth v. Sims*, 919 A.2d 931, 939 (Pa. 2007).

In the case of *Commonwealth v. Davenport*, 386 A.2d 543 (Pa. Super. 1978), the Superior Court was asked whether an indictment was sufficient to sustain a conviction for making inconsistent statements under oath under 18 Pa.C.S.A. § 4902(e) when the indictment described the substance of the alleged inconsistencies, but did not give the exact wording of defendant's inconsistent statements. The defendant did not raise the issue of the sufficiency of the bill of particulars and that question was not before the Court. However, in considering the sufficiency of the indictment, the Court noted that the defendant had been supplied significant information through the bill of particulars. 386 A.2d at 545-546. The Commonwealth had furnished the substantive allegation of falsity in the indictment. It described that the defendant was charged with making inconsistent statements and provided a detailed description of "Statement No. 1" and "Statement No. 2". Moreover, the Commonwealth supplemented that information "by a bill of particulars with specific passages of the transcripts marked to show the testimony in question." 386 A.2d at 546. The defendant in *Davenport* was much better situated to prepare his defense than Mr. Curley. Unlike the attorney for the Commonwealth in *Davenport*, the Attorney General has not furnished the substantive allegation of falsity nor marked transcripts indicating his allegedly false statements which give rise to the present action. Instead, the Attorney General presented only a bare criminal information. And unlike the defendant in *Davenport*, Mr. Curley is not seeking dismissal of the information. He merely requests these particulars to enable him to prepare his defense.

It is well-established Pennsylvania law that, upon request by the defendant, the Commonwealth will be required to provide a bill of particulars giving notice of the proof of falsity of a defendant's testimony that the Commonwealth intends to use at trial. "Proof of falsity" is an essential element of perjury. As the Superior Court explained, the Commonwealth must "prove the falsity of a defendant's testimony by two witnesses or by one witness and corroborating circumstances." *Commonwealth v. Gore*, 90 A.2d 405, 408 (Pa. Super. 1952). The *Gore* Court, and other Pennsylvania Appellate courts have held that when the specific perjury alleged, and the proof of falsity (i.e., the 2 witnesses or 1 witness and corroboration) are not alleged in the indictment, the defendant should move for a bill of particulars.

The Supreme Court held, in 1879, that the Commonwealth need not allege the proof of falsity (i.e., the 2 witnesses or 1 witness and corroboration) in the indictment. However, the Court explained, such information would be required of the Commonwealth, should the defendant motion for bill of particulars. *Williams v. Commonwealth*, 91 Pa. 493 (Pa. 1879). The defendant in that case had been charged in a three count indictment, the first two counts with perjury for having falsely stated:

I have not paid or contributed, either directly or indirectly, any money or other valuable thing, to procure my elections, except for necessary and proper expenses expressly authorized by law. I have not knowingly violated any election law of this Commonwealth or procured it to be done by others in my behalf.

91 Pa. at 494. In that case, the defendant moved to quash the indictment, alleging that it did not sufficiently set-out the circumstances of the alleged perjury. The defendant argued that the Commonwealth failed to:

specify or name the person or persons to whom the alleged promises, contributions or payments were made, or the circumstances, nature or amount of such promises, contributions or payments, or the times and places thereof, or in what respect or how, and by what manner or means the defendant violated or caused to be violated the election laws of this Commonwealth.

91 Pa at 494-95. The Supreme Court agreed that this information was necessary for the defendant to prepare his defense, but explained that rather than move to quash the indictment, the defendant should have requested a bill of particulars:

the accused may apply to the court or judge for an order that a bill of particulars be filed, and on the trial the Commonwealth will be restricted to the proof of the items contained therein... **Doubtless, had the defendant made application, a bill of particulars would have been ordered.** In simplifying indictments, it was not the intendment to make their brief and comprehensive terms a cover for snares to be sprung on the accused.

Williams v. Commonwealth, 91 Pa. 493, 502 (Pa. 1879)(emphasis added).

More recently, in 1952, the Superior Court reaffirmed the principle that a bill of particulars is the proper method by which a defendant should procure more specifics as to perjury charges. *Gore, supra*. The proof of falsity offered in the trial was evidence of six transactions. As to that proof, the Superior Court stated: "They provided particularity that might have been obtained by a bill of particulars." 90 A.2d at 409.

In sum, *Gore* and *Williams* establish that the defendant is entitled to a bill of particulars stating with greater specificity the alleged perjurious statements as well as the "proof of falsity". Defendant must not be left guessing as to which statements he is defending against, nor as to the Attorney General's proof that such statements are false. Defendant does not intend this motion as an exploratory request for pre-trial discovery.

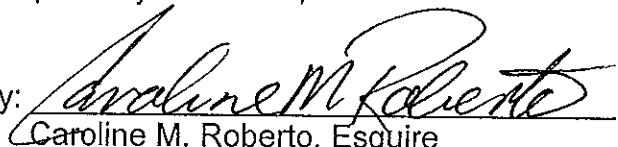
Instead, he seeks the specifics to which he is entitled pursuant to the "interests of justice" (Rule 572) and his Constitutionally guaranteed Due Process rights. As *Gore* and *Williams* make clear, a bill of particulars is the appropriate remedy for the lack of specificity in the criminal information in the present case.

The defendant therefore requests this Court to order the Attorney General to specify which of Mr. Curley's statements to the Grand Jury it intends to prove to were perjurious. As is clear from the information, Mr. Curley is charged with perjury relating to specific statements made to the grand jury. The content of those statements is not only essential to proving the criminal conduct; they are the criminal conduct itself.

WHEREFORE, the defendant respectfully requests that this Honorable Court order the provision of the exact statement or statements alleged to be perjurious which give rise to the above captioned matter and the alleged proof of falsity.

Respectfully submitted,

By:



Caroline M. Roberto, Esquire
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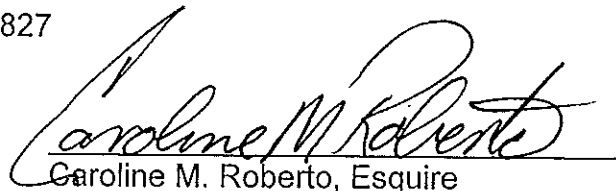
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for a Bill of Particulars Pursuant to Pennsylvania Rule of Criminal Procedure 572(C), was e-mailed and mailed, First Class Mail, postage pre-paid, this 13th day of February, 2012, to the following:

Bruce Beemer
Deputy Attorney General
Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120
(bbeemer@attorneygeneral.gov)

I also certify that a true and correct copy of the within Motion for a Bill of Particulars Pursuant to Pennsylvania Rule of Criminal Procedure 572(C), was mailed, First Class Mail, postage pre-paid, this 13th day of February, 2012, to the following:

Thomas J. Farrell, Esquire
Farrell & Reisinger, LLC
200 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1827



Caroline M. Roberto, Esquire
Attorney for Defendant, Timothy Mark Curley