

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
:
vs. : NO. CP-22-CR-0005165-2011
:
TIMOTHY MARK CURLEY : CHARGE(S): Perjury; Penalties for Failure
: to Report or to Refer

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GARY CHARLES SCHULTZ : CHARGE(S): Perjury; Penalties for Failure
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MEMORANDUM OPINION AND ORDER
ON DEFENDANTS' PRE-TRIAL MOTIONS

These matters come before the court on the respective Pre-Trial Motions, as identified herein, of Timothy Mark Curley, (hereinafter, "Defendant Curley") and Gary Charles Schultz, (hereinafter, "Defendant Schultz"). For the reasons set forth, the Pre-Trial Motions are **DENIED**.

PROCEDURAL HISTORY

The Defendants were each charged by Criminal Complaint before Magisterial District Judge William C. Wenner alleging at Count 1, Perjury, in violation of Title 18 Pa.C.S.A. § 4902(a)(1), a felony of the third degree, and at Count 2, Persons Required to Report Suspected Child Abuse, in violation of Title 23 Pa.C.S.A. § 6319, a summary offense.

Magisterial District Judge William C. Wenner conducted a preliminary hearing on December 16, 2011. At the preliminary hearing, the Commonwealth presented evidence on the perjury charge. During that proceeding, the Commonwealth and the Defense, with the court's concurrence, stipulated to the reading of the Grand Jury testimony of Joseph Paterno, for purposes of the preliminary hearing only.¹ The parties and the court stipulated to the use of Mr. Paterno's Grand Jury testimony solely for the preliminary hearing. Magisterial District Judge Wenner found that the Commonwealth established a *prima facie* case as to both Defendants on the charges of perjury, and bound the charges over to the Court of Common Pleas.

The Commonwealth filed a Criminal Information against each Defendant on January 19, 2012, charging Perjury at Count 1, and Failure to Report at Count 2.

Pursuant the Court's Pre-Trial Scheduling Order, the Defendants filed the Pre-Trial Motions now before the court.²

DISCUSSION

Pre-Trial Motions of Defendant Curley

Petition for Writ of Habeas Corpus as to Count 1

In his Petition for Writ of Habeas Corpus, Defendant Curley seeks dismissal of the perjury charge based upon the unavailability of Mr. Paterno's testimony as corroboration evidence, upon which the Commonwealth relied at the preliminary hearing to establish its *prima facie* case of perjury. The Commonwealth responds that the evidence produced at the

¹ Mr. Paterno was unavailable to testify on December 16, 2011.

² We will address the Motion to Quash Count 2 of the Criminal Information by separate Order.

preliminary hearing satisfied a *prima facie* case, such that the unavailability of Mr. Paterno's testimony does not create a basis for dismissal. The Commonwealth further responds that corroboration is not an element of the offense of perjury, but rather, a matter of proof at trial.

We have reviewed the preliminary hearing transcript and find that Magisterial District Judge Wenner properly concluded that the Commonwealth's evidence established a *prima facie* case of perjury. The unavailability of Mr. Paterno now, or asserted inadmissibility of his statements at the time of trial, do not negate the finding of a *prima facie* case based upon the evidence presented at the preliminary hearing.

We also find that the dismissal is not warranted based upon the alleged unavailability of corroboration evidence. The Commonwealth responds that its corroboration evidence is not limited to Mr. Paterno's testimony. We deem Defendant's challenge to the existence or availability of corroboration evidence to be more appropriately asserted at the time of trial.

Accordingly, Defendant Curley's Petition for Writ of Habeas Corpus as to Count 1 is **DENIED.**

Request for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(A) and Motion for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(c):

In his Request for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(A) and Motion for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(c), Defendant Curley requests that the Commonwealth identify with specificity the alleged perjurious statements to fully apprise him of the statements he is required to defend.

Defendant's Request and Motion for Bill of Particulars are appropriate means by which to require the Commonwealth to specify the alleged perjurious statements. "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. Champney*, 832 A.2d 403, 413 (PA. 2003)(internal citations omitted)

We find that the Commonwealth has responded to the Motion for Bill of Particulars with sufficient specificity to satisfy these notice obligations. In its filing on March 30, 2012, to which it attached Exhibits A and B, the Commonwealth provided a list of statements which it alleges constitute perjury. We find that the identification of these statements fairly places Defendant Curley on notice as to what the Commonwealth will seek to prove at trial. Having provided a bill of particulars, the Commonwealth is limited to the particulars which it has supplied. *Commonwealth v. Cannady*, 404 Pa. Super. 215, 220, 590 A.2d 356, 359 (1991) citing, *Commonwealth v. Bartman*, 240 Pa. Super. 495, 506, 367 A.2d 1121, 1127 (1976).

Having satisfied the request to specify the statements it will seek to prove as perjurious, we find that the Commonwealth need not identify the manner in which it intends to prove the alleged falsity of each statement. While the Commonwealth is limited by the bill of particulars, the bill of particulars “is not an appropriate vehicle by which to obtain discovery of the Commonwealth’s evidence.” *Commonwealth v. Champney*, 574 Pa. 435, 451, 832 A.2d 403, 412 (2003). Further, a variance between the proof and the bill of particulars does not constitute a basis for reversal unless the defendant has been prejudiced by the variance. *Cannaday*, supra, citing *Commonwealth v. Shirey*, 333 Pa. Super. 85, 149, 481 A.2d 1314, 1348 (1984) and *Commonwealth v. Layman*, 290 Pa. Super. 244, 252, 434 A.2d 735, 738 (1981).

Accordingly, Defendant Curley's Request for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(A) and Motion for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(c) are **DENIED** as having been provided by the Commonwealth's filing of March 30, 2012.

PRE-TRIAL MOTIONS OF DEFENDANT SHULTZ

Joinder of Defendant Shultz in Petition for Writ of Habeas Corpus as to Count 1 of the Information and Request for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(A) and Motion for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(c) filed Defendant Curley

We incorporate by reference the discussions set forth above, as equally applicable to the issues raised on behalf of Defendant Shultz. For all of those reasons,

Defendant Shultz's Petition for Writ of Habeas Corpus as to Count 1 is **DENIED**.

Defendant Shultz's Request for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(A) and Motion for Bill of Particulars Pursuant to Pa.R.Crim.P. 572(c) are **DENIED** as having been provided by way of the Commonwealth's filing of March 30, 2012.

Motion to Quash Count 1

On May 4, 2102, following the Commonwealth's filing on March 30, 2012, in response to the Motion for Bill of Particulars, Defendant Shultz filed a Motion to Quash Count 1. In his Motion, Defendant Shultz asserts that the Criminal Information alleging perjury is defective on its face.

We find that the Information sufficiently apprises Defendant Shultz of the charge to prevent surprise and allow for preparation of a defense. *See, Commonwealth v. Buford*, 179 Pa.Super. 312, 315, 116 A.2d 759,760 (1955) (The language must be sufficient to inform defendant of the charge he is called upon to answer and protect against double jeopardy.) *See also*,

Commonwealth v. Buford, 116 A.2d at 763 citing, *Commonwealth v. Batch*, 120 Pa. Super. 592, 183 A. 108 (1936)(Specifications of the evidence to be adduced at trial need not be shown.) The Criminal Information properly cites the elements of the charge of perjury, as well as the date of the alleged offense.

In addition to sufficiently pleading the statutory elements of the offense, by its response to the Motion for Bill of Particulars, the Commonwealth articulated the statements it allege constitute misrepresentations. Defendant is therefore fully apprised of the conduct he is called upon to defend.

Accordingly, Defendant Shultz's Motion to Quash Count 1 is **DENIED**.

BY THE COURT:


TODD A. HOOVER
PRESIDENT JUDGE

September 26th, 2012

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