

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
) I.D. No. 0102023367
)
 v.) Cr.A. No. IN-01-03-0569
)
)
 BRENT D. BITTENBENDER,)
)
 Defendant.)

Date Submitted: June 6, 2001

Date Decided: June 25, 2001

**Diane Coffey Walsh, Esquire, Deputy Attorney, Department of Justice,
Wilmington, DE.**

**Kathleen M. Jennings, Esquire, Oberly & Jennings, P.A., Wilmington,
DE.**

O R D E R

Upon Defendant's Motion for a Bill of Particulars – DENIED

DEL PESCO, Judge

This 25th day of June 2001, it appears to the Court that:

- 1) Defendant, Brent D. Bittenbender (“Bittenbender”), was charged by indictment with one count of Rape in the Fourth Degree, in violation**

of 11 *Del. C.* § 770. The offense was alleged to have taken place during the month of January 2001.¹

2) Defendant has now filed the instant motion for a bill of particulars pursuant to Superior Court Criminal Rule 7(f). Defendant argues that the allegations set forth in the indictment lack specificity, thus prejudicing him and impeding his preparation for trial. Specifically, Bittenbender seeks the following: (1) the date of the commission of the alleged offense; (2) if the date is unknown, whether there was any event or other identifying factor which might help establish the date; (3) the precise time of day of the commission of the alleged offense or, if not known, the approximate time of day; and (4) the specific location of the commission of the alleged offense.

3) The State contends that Defendant's motion should be denied on the grounds that the information requested is beyond the scope of a proper bill of particulars and, thus, is not subject to Rule 7. The State also notes that the Defendant is already aware of the location of the incident

¹ The indictment reads as follows: The Grand Jury charges BRENT D. BITTENBENDER with the following offense, a felony:

RAPE FOURTH DEGREE, in violation of Title 11, Section 770 of the Delaware Code of 1974, as amended.

BRENT D. BITTENBENDER, on or during the Month of January, 2001, in the County of New Castle, State of Delaware, did intentionally engage in sexual intercourse with Ashley C. Kellum,

because he was provided with a copy of the arresting document, including the Affidavit of Probable Cause, which indicates that the offense was committed at the Defendant's residence. Therefore, the State argues that the Defendant is not entitled to a bill of particulars for information of which he is already aware.

4) The Delaware Supreme Court has held that an indictment serves a two-fold purpose: (1) it must put the defendant on notice of what he or she is to defend against; and (2) it must provide a shield against subsequent prosecution for the same offense. An indictment is deemed sufficient if it is drawn with sufficient particularity as to permit the defendant to reasonably know the elements or essential facts of the charges against him, and so that he may have reasonable opportunity to prepare a defense. A bill of particulars provides supplemental information and serves to protect the defendant against unfair surprise at trial. It also serves to prevent subsequent prosecutions for an inadequately described offense. Basically, it fills in any informational

and the victim had not yet reached her sixteenth birthday.

² *State v. General Chemical Corp.*, Del. Supr., 559 A.2d 292 (1988) (citing *Malloy v. State*, Del. Supr., 452 A.2d 1088, 1092 (1983)).

³ Super. Ct. Crim. R. 7(c). See also *Owens v. State*, Del. Supr., 449 A.2d 200 (1982); *State v. Colasuonno*, Del. Supr., 432 A.2d 334 (1981) ("essential facts are those that will clearly inform the defendant of the precise offense charged.").

⁴ *Lovett v. State*, Del. Supr., 516 A.2d 455 (1986).

⁵ *Lovett v. State*, 516 A.2d at 467 (citing *United States v. Cantu*, 5th Cir., 557 F.2d 1173, 1178 (1977); cert. denied, 434 U.S. 1063 (1978)).

gaps missing in the indictment, which then allows the accused to develop a defense. A bill of particulars is designed to clarify the allegations; however, it is not meant to compel the State to disclose its theory of the case or evidentiary information. “A bill of particulars may not serve as a discovery device and defendants may not use a bill of particulars to circumvent the rules governing discovery.”

5) The grant of a motion for a bill of particulars is within the Court’s sound discretion. Accordingly, the trial judge is allowed broad discretion in weighing the competing interests of the defendant and the State.

5) In the case *sub judice*, the Court finds that the indictment sufficiently informs the Defendant of the charges against him. The indictment plainly states that there is one distinct charge against the Defendant, and the charge concerns sexual intercourse with a person, also identified in the indictment, who was under the age of sixteen at the time of the alleged incident. The indictment further alleges that the crime occurred “on or during” the month of January 2001. It has been

⁶ *State v. Traenker*, Del. Super., 314 A.2d 202, 208 (1973).

⁷ *State v. Goldsborough*, Del. Super., I.D. Nos. 9908014943 and 9908017378, 2000 WL 706790, Vaughn, J. (Feb. 10, 2000) (citing to *United States v. Hajecate*, 683 F.2d 897 (1982)).

⁸ *State v. Banther*, Del. Super., No. IK97-05-0094, 1998 WL 283476, Ridgley P.J. (Apr. 2, 1998)(ORDER), quoting *State v. Gardner*, Del. Super., Cr. A. No. IN93-01-0854, Toliver, J. (Aug. 24, 1993)(Op. and Order).

⁹ Super. Ct. Crim. R. 7(f); *State v. Banther*, Del. Super., No. 9705000270, 1998 WL 283476, *1, Ridgely, P.J. (Apr. 2, 1998)(ORDER).

held that where the date is not an essential element of the crime, the date alleged in an indictment is immaterial if it is proven to the satisfaction of the trier of fact that the offense was committed within the period of limitation prior to the filing of the indictment. Therefore, the State's failure to include the specific date of the alleged offense is not fatal to the indictment and has neither prejudiced or impeded the Defendant's preparation for trial. Defendant's request for a bill of particulars requiring the State to furnish the approximate date and time of the offense is DENIED.

7) With regard to Defendant's request for a bill of particulars specifying the location of the commission of the alleged offense, the Court is persuaded by the State's argument that the information presented in the arresting document, particularly the Affidavit of Probable Cause, and the information presented at the preliminary hearing provides sufficient detail. Nothing has been suggested to the Court which would indicate that the Defendant's ability to prepare his

¹⁰ *Id.* (quoting *United States v. Rosa*, 3d. Cir., 891 F.2d 1063, 1066 (1989)).

¹¹ *State v. Moore*, Del. Super., I.D. 9707004740, Cooch, R.J. (Jan. 14, 1992)(ORDER), citing to *Phipps v. State*, Del. Supr., No. 105, 1995, Hartnett, J. (Feb. 16, 1996)(ORDER)(holding that the state provided the defendant with sufficient notice by alleging a reasonable time frame within which the offense occurred); *Monastakes v. State*, Del. Supr., 127 A. 153, 154 (1924); *State v. Blendt*, Del. Super., 120 A.2d 321 (1956). In *Monastakes*, the Delaware Supreme Court held that "in a criminal prosecution the State is not bound to prove [a precise date], it being sufficient if the evidence shows the alleged offense to have been committed at any time within the period mentioned by the applicable statute of limitations." *Monastakes*, 127 A. at 154. See also *State v. Gardner*, Del. Super., Cr. A. No. IN93-01-0854, Toliver, J. (Aug. 24, 1993)(Mem. Op.)(holding that because the indictment alleges that the offense occurred on any date within the statute of limitations, the indictment is

defense would be prejudiced or impeded by lack of better information concerning the location of the alleged offense. This second request of the Defendant's is also DENIED.

For the foregoing reasons, Defendant's Motion for a Bill of Particulars is DENIED.

Susan C. Del Pesco

Original to Prothonotary

**xc: Diane Coffey Walsh, Esquire
Kathleen M. Jennings, Esquire**

sufficient and a bill of particulars is not warranted).