## IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
v.	)	Case No. 1205013599
MATTHEW CADAN	)	
MATTHEW CABAN,	)	
Defendant.	)	

Submitted: January 9, 2013 Decided: January 22, 2013

Nicholas R. Wynn, Esquire Deputy Attorney General Department of Justice 820 North French Street Wilmington, DE 19801 Attorney for the State of Delaware Eugene J. Maurer, Jr., Esquire 1201-A King Street Wilmington, DE 19801 Attorney for Defendant

## **ORDER**

## ON DEFENDANT'S MOTION FOR BILL OF PARTICULARS

On May 21, 2012, Defendant was arrested and charged with Criminal Mischief in excess of \$1,000 by recklessly damaging property in violation of 11 *Del* . *C.* §811(a)(1). The State filed an information on June 21, 2012, which reads as follows:

MATTHEW R. CABAN, on or about the 23<sup>rd</sup> day of April, 2012, in the County of New Castle, State of Delaware, did intentionally cause damage valued in excess of \$1000.00 to tangible property consisting of a vehicle belonging to SARAH MCMILLAN or another person.

On October 26, 2012, Defendant filed the instant Motion for Bill of Particulars pursuant to CCP Criminal Rule 7(f). In the motion, Defendant requests that the State provide the information related to conversations overheard by two witnesses. Specifically,

Defendant requests the State provide: (a) the date on which each specific conversation was overheard; (b) the location at which the witnesses and the defendant were located enabling the witnesses to overhear the conversations; (c) the name of the individual to whom the defendant was speaking when the inculpatory statements were allegedly made; and (d) the specific time of day at which these conversations were taking place and the date on which the statements were made.

The State responded to the motion on December 17, 2012. The State contends that Defendant's motion should be denied because the State has no duty to disclose the identity of the witnesses and not disclosing the requested information will not impede the Defendant's ability to prepare a defense. The State asserts that the Defendant is able to assess the validity of the statements at trial since the conversations in question were made by the Defendant himself within a limited time frame and geographic area. The State proposes that cross examination is the appropriate opportunity for Defendant to challenge the validity of the witness' testimony. Finally, the State notes that the nature of the crime gives cause for concern regarding the protection of the witnesses.

It is within the Court's discretion to grant a motion for a bill of particulars.<sup>1</sup> The Court has broad discretion to evaluate and balance "the competing interests of the defendant who seeks additional information for purposes of preparing a defense versus the State's interests in protecting witnesses or not 'commit[ting] itself to a specific version of facts before it is in a position to do so."<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> State v. Bittenbender, 2001 WL 789663, \*1 (Del. Super. June 25, 2001).

<sup>&</sup>lt;sup>2</sup> State v. Phillips, 2004 WL 909557, \*3 (Del. Super. April 21, 2004) (quoting State v. Goldsborough, 2000 WL 706790, \*2 (Del. Super. Feb. 10, 2000)).

A bill of particulars serves as a supplement to the indictment to clarify the allegations contained therein; it "fill[s] any gap between facts disclosed by the indictment and that 'set of facts' which will permit defendant opportunity of preparation of a defense." However, a bill of particulars is not a means to compel the State to disclose evidentiary information. Had 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. However, in this instance the nature of the case is such that the statements and environment in which they are alleged to have been made is the basis on which the case turns. The defendant must be able to prepare an adequate defense to meet the allegation which he stands charged.

Defendant proposes that the narrowed scope of the timing of the alleged statements is necessary to develop evidence of a viable alibi. In this instance, I conclude that the information involving the date on which the specific conversations were overheard, the location at which the statements were made and the specific time of the day at which these conversations were to have taken place, should be provided. In balancing the competing interest, I do not find that such disclosure exposes the State's witnesses nor compromises the State's case. The request for all other information is denied.

THEREFORE, Defendant's Motion for Bill of Particulars is hereby **GRANTED** in part and **DENIED** in part.

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<sup>&</sup>lt;sup>3</sup> State v. Traenkner, 314 A.2d 202, 208 (Del. Super. 1973).

<sup>&</sup>lt;sup>4</sup> Bittenbender, 2001 WL 78966, at \*1.

<sup>&</sup>lt;sup>5</sup> Id. (quoting State v. Banther, 1998 WL 283476, \*1 (Del. Super. April 2, 1998)).

## IT IS SO ORDERED this $28^{th}$ day of January, 2013.

The Honorable Alex J. Smalls	
Chief Judge	

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