DOCKET NO. 60,600



60,600 (York)

STATE OF LOUISIANA

VERSUS

KORY YORK

3RD JUDICIAL DISTRICT

PARISH OF UNION

STATE OF LOUISIANA

MEMORANDUM IN OPPOSITION TO DEFENDANT'S SUPPLEMENTAL OBJECTION TO STATE'S FAILURE TO RESPOND TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS AND MOTION TO QUASH WITH INCORPORATED MEMORANDUM

MAY IT PLEASE THE COURT:

The State will not belabor the procedural history of the case as this Court was present for all proceedings and has reviewed all filings related thereto, and the State is quite sure that prior to the hearing on the defendant's objection, the court will review all the relevant filings.

The State does wish to highlight the following points before addressing the substance of the defendant's motion:

1. While a defendant has a *right* to discovery as the word "shall" appears in the discovery articles *requiring* the court to order the relief requested by the defendant, requiring the State to provide a Bill of Particulars, on the other hand, is not mandatory, the word "may" appearing in La.C.Cr.P. Art. 484. See also *State v. Barksdale,* 170 So.2d 374 (La. 1964); *State v. Straughan*, 87 So.2d 523 (La. 1956); *State v. Ezell,* 170 So. 64 (La. 1930).
2. The initial filings by the defendants requesting discovery and a Bill of Particulars were followed by orders from the court requiring the State to provide the information requested—meaning discovery and particulars—or show cause why the information should not be provided. Standing by decades-old jurisprudence, and prior to the show cause hearing, the State timely filed its response to the request for Bill of Particulars by citing the principal that providing open-file discovery satisfies the State's obligations in relation to providing particulars.[1]
3. After filing this objection to the request for particulars, the undersigned learned that the District Attorney himself had promised each defendant that a Bill of Particulars would be forthcoming. This miscommunication between the District Attorney and the undersigned is clearly the fault of the State, and pursuant to chambers conference on April 11th prior to

[1] While the reasons are not important for purposes of this Memorandum, the information required to be disclosed by the State to the defendant by the 2013 amendment to the discovery rules constitutes the "open file" discovery as envisioned by the pre-2013 cases holding that the provision of "open file" discovery by the State satisfies any request for a Bill of Particulars.

court, the State promised that it would abandon its earlier-filed objection to providing particulars and honor the District Attorney's affirmation that particulars would be provided. The court set a deadline for filing particulars, and the State filed a written Bill of Particulars prior to the deadline provided by the court.

4. It is these particulars to which the defendant now complains in relation to counts 2 through 11 against him.

Recall that the bill of particulars is not a means for the defendant to obtain the State's evidence, although it should inform him of the essential facts of the crime charged, *State v. Berry*, 221 So.3d 967, (La.App. 2 Cir. 5/17/17). As the court will see, apart from Count 11, the particulars provided defendant York adequately inform him of the nature and cause of the accusations against him in sufficient detail to allow him to prepare for trial, and thus the State has satisfied its obligations under La.C.Cr.P. Art. 484, *State v. Dowell*, 39 So.3d 754 (La.App. 4 Cir. 5/12/10). Nothing more is required of the State.

A motion to quash is appropriate when "the indictment fails to charge an offense which is punishable under a valid statute" La.C.Cr.P. Art. 532(1), or when "it appears from the bill of particulars.... together with any particulars appearing in the indictment, that the offense charged in the indictment was not committed, or that the defendant did not commit it, or that there is a ground for quashing the indictment." La.C.Cr.P. Art. 485.

"When considering a motion to quash filed under La.C.Cr.P. Art. 485, the court must accept as true the facts contained in the bill of information and the bill of particulars and decide whether or not a crime has been charged." *State v. Brown*, 2015-0855 (La.App. 4 Cir. 10/21/15), 176 So.3d 761, 764.

Turning now to the particulars provided to defendant York, the State wrote:

> As to the 10 counts of Malfeasance in Office against York (count 2-11 of the Indictment), the legal predicate for these charges stems from La.R.S. 14:18(1) and (2), 14:35 and La.C.Cr.P. Arts. 201 and 213. Although an officer may use reasonable force to effect a lawful arrest, an officer may not employ unnecessary and unreasonable brutality in making an arrest. The use of any such excessive force constitutes either intentionally refusing to perform a duty—i.e. an arrest—in a lawful manner or intentionally performing such duty in an unlawful manner.

The State further noted in its Bill of Particulars:

> Speaking directly to the issue of excessive use of force constituting malfeasance in office, the Third Circuit noted in *State v. Coker*, CR93-251, La.App. 3 Cir. 6/16/93, 625 So.2d 190:

> Under La.R.S. 14:134, the state was required to prove (1) that Chief Coker held an official public office, and (2) that Chief Coker violated a lawfully required duty by performing it in an unlawful manner.
>
> Defendant contends that the state failed to prove the essential elements of the crime of malfeasance in that the state failed to show that defendant was in violation of "a duty lawfully required of him" through: (1) the introduction of a statute or provision of law which delineates an affirmative duty upon the official and (2) the showing that the duty was expressly imposed by law upon the official.
>
> The record shows that Bennie Coker was Chief of Police for the Town of Glenmora. The record further shows that Chief Coker intentionally used excessive and unnecessary physical force in dealing with the two suspects, that Chief Coker's attacks on the two men were completely unprovoked and continued after the suspects were placed in the jail cell, and that only the intervention of Chief Coker's subordinates caused the chief to terminate his battery of the two suspects. Chief Coker's violent, abusive conduct towards the suspects clearly constitutes battery, in violation of state law.
>
> However, the defendant contends that a public official can never be convicted of malfeasance unless a specific criminal statute exists which defines the conduct as malfeasance. In the defendant's case, he asserts that he cannot be found guilty of malfeasance for maliciously battering helpless prisoners unless a statute exists which requires that "law enforcement officials shall ensure the safety, health and well being of all citizens or persons in their presence or custody, and ensure no batteries are committed upon the person who is in their custody or presence." Such a requirement would render the offense of malfeasance meaningless and unenforceable. Utilizing the defendant's reasoning, every conceivable function and duty of a public official would have to be specifically included in a prohibitory statute in order to successfully "notify" the official of his potential liability for malfeasance. This is clearly impossible in practice and was obviously not the intent of the legislature when enacting the malfeasance statute.
>
> In fact, only two offenses are specifically delineated in Louisiana as constituting malfeasance. See La.R.S. 14:134.1 and La.R.S. 14:134.2. In all other cases, the specific duties required to support conviction for malfeasance are derived from other sources.
>
> Specific criminal statutes and ordinances have been used to support malfeasance convictions. *State v. Perret*, 563 So.2d 459 (La.App. 1 Cir.1990); *State v. Brayton*, 458 So.2d 1017 (La.App. 3 Cir.1984). The state contended that Chief Coker battered the suspects, during the arrest process, while acting in his official capacity, in violation of La.R.S. 14:35.

Count 2

> See also *State v. Ballard*, 2017-KA-0835, La.App. 4th Cir. 3/21/18, 239 So.3d 400.

The defendant, therefore, has more than adequate notice of the legal basis for these charges.

As to count 2, the state wrote in its Bill of Particulars:

> While no representative of the State was present during grand jury deliberations, and as of the filing of this response there is no grand jury

> transcript available for review to assist in providing these particulars[2], the recollections of the representative of the State before the grand jury issuing this indictment recall that Count 2 of the indictment (charging York with Malfeasance in Office) resulted from testimony that York, with the assistance of co-defendant Harpin, applied OC Spray to Greene once Greene had been subdued. See also Expert Report of Seth W. Stoughton, whose report was provided to the defendant in discovery and who testified before the Grand Jury[3].

Thus, as to Count 2, the State has provided the defendant not only the complete legal basis upon which the charge of Malfeasance in Office is predicated, but also disclosed the specific act by the defendant—application of OC spray on the already-subdued defendant—which constitutes the simple battery resulting in Malfeasance. The State could hardly be more particular.

As to counts 3 through 10 of the indictment, the State wrote in its Bill of Particulars:

> Counts 3 through 10 of the indictment (charging York with Malfeasance in Office) resulted from testimony that York battered Greene at least 7 times once Greene had been subdued, each such battery captured on the various videos provided to the defense in discovery. See also Expert Report of Seth W. Stoughton, whose report was provided to the defendant in discovery and who testified before the Grand Jury[4].

Again, the State could hardly be more particular. The Grand Jury apparently watched the video of the alleged offense and counted 7 separate batteries committed by York on Greene once Greene was subdued. Defense counsel can watch the video just like the grand jury and count the batteries himself. Of course, it is a matter for the trier of fact—not this court when dealing with particulars—to determine whether (a) the batteries actually occurred and (b) if so, whether they constitute excessive force or not. This court must accept as true that the video depicts at least 7 separate batteries once Greene had been subdued; *Brown*, infra.

The reference to the expert report, which of course has been provided to the defendant in discovery, not only highlights portions of the video constituting what the State alleges are the batteries, but provides the factual basis upon which the State will rest in proving that the batteries were not justified. Again, the State could hardly be more particular.

The defendant's original request for particulars asked that the State provide him the exact time-stamp on the various videos when the alleged batteries occurred. This the State need not do. The defendant may not use a request for particulars to obtain the State's evidence—it is merely a

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[2] As of the writing and filing of this Memorandum the last week of May, 2023, the undersigned has yet to receive the grand jury transcript.

[3] Stoughton's report is replete with specific references to individual videos and time stamps.

[4] See Footnote 3.

mechanism by which to inform him of the essential facts of the crime charged, *State v. Berry*, 221 So.3d 967, (La.App. 2 Cir. 5/17/17).

Turning now to Count 11 of the indictment, the State provided the following particulars:

> Count 11 of the indictment (charging York with Malfeasance in Office) clearly states the factual basis upon which the indictment was issued, and thus no particulars need be provided pursuant to law.

Count 11 of the indictment charges as follows:

> Being a public officer or public employee, did commit malfeasance in office by intentionally refusing or failing to perform any duty lawfully required of him, as such officer or employee; and/or intentionally performing any such duty in an unlawful manner, in that he negligently injured Ronald Green by criminal negligence by forcing and/or allowing him to remain in prone restraint, and/or committed simple battery on Ronald Greene.

The State freely concedes that Count 11 of the indictment is inartfully drafted and, pursuant to the clear mandate of *State v. Petitto*, 2010-0581, (La.3/15/11), 59 So.3d 1245, 1254, is subject to the strictures of La.C.Cr.P. Art. 485 which states:

> If it appears from the bill of particulars furnished under Article 484, together with any particulars appearing in the indictment, that the offense charged in the indictment was not committed, or that the defendant did not commit it, or that there is a ground for quashing the indictment, the court may on its own motion, and on motion of the defendant shall, order that the indictment be quashed unless the defect is cured. The defect will be cured if the district attorney furnishes, within a period fixed by the court and not to exceed three days from the order, another bill of particulars which either by itself or together with any particulars appearing in the indictment so states the particulars as to make it appear that the offense charged was committed by the defendant, or that there is no ground for quashing the indictment, as the case may be.

The state knows of no method by which to properly amend Count 11 to both comply with the law and accurately represent the facts as they are known to it.

Respectfully submitted,

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District Attorney

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CERTIFICATE

I HEREBY CERTIFY that a copy of this MEMORANDUM IN OPPOSITION TO DEFENDANT'SSUPPLEMENTAL OBJECTION TO STATE'S FAILURE TO RESPOND TODEFENDANT'S MOTION FOR BILL OF PARTICULARS ANDMOTION TO QUASH WITH INCORPORATED MEMORANDUM has been delivered via US Mail, 1st class postage prepaid on this the 24th day of May, 2023 to Mike Small and Taylor Townsend at their respective office addresses.

Hugo Holland, Jr.

Hugo A. Holland, Jr.
Assistant District Attorney