CRIMINAL DOCKET NUMBER 60600

THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

KORY YORK

60,600 (York)
FILED in Evidence
3rd Judicial District Court
JUN 23 2023
Deputy Clerk of Court
Union Parish, LA

FILED: _____ DY. CLK.

SUPPLEMENTAL OBJECTION TO STATE'S FAILURE TO RESPOND TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS and MOTION TO QUASH with INCORPORATED AUTHORITIES

TO THE HONORABLE, THE THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel, comes KORY YORK (hereafter Mr. York), and for the purpose of this pleading respectfully represents the following:

1.

Mr. York is charged by Amended Bill of Indictment with one count of negligent homicide in violation of La.R.S. 14:32 (Count One), and ten counts of malfeasance in office in violation of La.R.S. 14: 134A(1) or A(2) (Counts Two through Eleven).

2.

Article I, Section 13 of The Louisiana Constitution, implemented by Louisiana Code of Criminal Procedure Article 464, and the Sixth Amendment to the United States Constitution, guarantee the accused the right to be informed of the "nature and cause" of the criminal charge brought against him.

3.

Because the Amended Bill of Indictment fails to comply with these constitutional and statutory mandates, Mr. York filed a Motion for Bill of Particulars. On February 14, 2023, this Court Ordered the State to provide the particulars sought by March 14, 2023. A show cause hearing was scheduled for April 11, 2023.

DEFENDANT'S EXHIBIT 7

4.

Despite the law, this Court's Order, and D.A. Belton's apparent willingness to provide the constitutionally and statutorily required particulars, the State's initial response to the motion was to declare that it was not required to provide particulars because it had provided "open file discovery", which consisted of "a thumb drive containing massive amounts of data accrued as a result of years of investigations by federal, state, and local authorities. While the production of the thumb drive may have satisfied the State's obligation to provide Mr. York with discovery materials pursuant to Articles 716 *et.seq.* of the Code of Criminal Procedure, it certainly did not comply with this Court's Order to provide the requested bill of particulars. Accordingly, Mr. York filed a written Objection to the sufficiency of the State's response, which pleading is incorporated herein by reference.

5.

At the show cause hearing on the sufficiency of the State's responses held on April 11, 2023, the State was again Ordered, this time in open court, to furnish a bill of particulars. This Court then set a May 12 hearing date on the sufficiency of the State's response.

6.

The State has filed a pleading captioned "Response to Defendant's Request for Bill of Particulars with Incorporated Memorandum"[1], which, as to Counts Two through Eleven (inclusive) of the Amended Bill, again fails to provide Mr. York with the particulars statutorily and constitutionally required and Ordered by this Court. The defense objects to the sufficiency of State's response as to Counts 2-11 and further shows that insofar as the malfeasance charged in Count Eleven is based on an alleged act of criminal negligence, the charge is defective on its face.

7.

Mr. York now moves this Court to quash Counts Two through Eleven pursuant to Article 532 of the Louisiana Code of Criminal Procedure, the authorities previously cited, and the additional authorities contained in this pleading.

---

[1]Hereinafter referred to as "Response" or "State's Response"

8.

Counts Two through Eleven each charge Mr. York with malfeasance in office. Counts 2-10 recite, in identical language, that Mr. York in essence violated his duty and committed malfeasance in office by the commission of simple battery on Mr. Greene. Count Eleven alleges that malfeasance occurred when Mr. York "negligently injured Ronald Greene by criminal negligence by forcing and or allowing him to remain in prone restraint, and/or committed simple battery on Ronald Green".

9.

As pointed out in Mr. York's initial Objection, the Amended Bill of Indictment alleges an act and/or series of acts occurring on the same date and involving the same victim. Yet it provides no information which would allow Mr. York to identify, as to any of the ten counts of malfeasance, the specific acts of battery upon which (solely as to Counts 2 through 10 and as an alternative in Count 11) the malfeasance charges are based and upon which the State seeks to convict him.

10.

In its Response, the State provided a bare minimum of information with regard to Count One, and argued that Count Eleven is sufficient on its face. The State persisted in its failure to provide specific information pertaining to the simple batteries allegedly forming the predicates for the malfeasance charges in Counts Two through Ten, and as an alternative basis in Count Eleven. Instead, the State pointed out (in ¶ III of its Response) the "legal predicate" for the charges and (in ¶ IV) quoted case law as to the elements of the offense.

11.

It was not until ¶ V of its Response that the State even made a pass at supplying the alleged factual bases for the charges. With regard to Count Two, the State offered up that while "no representative of the State was present during the grand jury deliberations and as of this date there is no grand jury transcript available" the "recollections" of the "State's representative" (presumably an assistant district attorney) were that Count Two "resulted from testimony that York, with the assistance of co-defendant Harpin, applied OC Spray to Greene once Greene

had been subdued". The State suggested that Mr. York "see also" the expert report of Seth W. Stoughton.

12.

Mr. York cannot be forced to guess what he is charged with. He is constitutionally entitled to notice of the nature and cause of every accusation against him. The State has, in essence, admitted that it does not know the basis of the offense charged in Count Two, but that most likely, according to the memory of the "State's representative", it was the application of OC Spray. If the State is unsure of the facts supporting this Count, the charge simply should not have been brought, or, at the very least, the State should have figured it out by now and be in a position to supply the constitutionally required particulars.

13.

The State failed to cite any authority supporting its apparent position that the prosecutor's best guess as to the basis of the charge is constitutionally sufficient, and indeed, Mr. York suggests that no such authority exists. Referring the defense to the report of State's expert (which at this point has not even been ruled admissible) is not a substitute for an unequivocal statement by the prosecution and, in any event, a review of that report shows that the expert did not render a definitive opinion as to whether OC spray was even administered, much less by whom. Count Two should be quashed.

14.

Counts 3 through 10, inclusive, rely on simple battery as the basis for the alleged malfeasance. But even the prosecutors are apparently unable to find more than seven possible batteries to support these eight charges.[1] The State contended, in ¶ VI of its Response, that "York battered Greene at least 7 times once Greene had been subdued" and that the batteries were captured on video. This is about as far from the "plain, concise and definite written statement of the essential facts constituting the offense charged" required by La.C.Cr.P. Art. 464 as is possible to imagine.

---

[1] The State has represented that the simple battery in Count 2 was probably (based on employee recollection) related to application of pepper spray, and has declined to provide any information about the battery alleged in Count 11.

15.

With further reference to Counts 3-10, ¶ VI of the State's Response referred again to its expert's report ("See also Expert Report of Seth W. Stoughton") Apparently, it is the State's contention that by viewing the "various videos" and its expert's report, the defense can decide precisely which acts the State believes justified each Count, a position which frankly defies logic. Assuming *arguendo* that acts which meet the definition of "simple battery" are depicted on the body cam footage, how in world can Mr. York determine which acts the State contends support each of the multiple counts? If the State is unable to even locate a definite number of alleged batteries (instead claiming it found "at least 7") and is unwilling to identify even those supposed 7 alleged criminal acts, how can Mr. York possibly exercise his right to prepare a defense? The State's position is patently untenable. Counts 3-10 should be quashed.

16.

As to Count 11, the State in ¶ VII of its Response refused to provide any particulars, arguing instead that the Count "clearly states the factual basis upon which the indictment was issued, and thus no particulars need be provided by law." Insofar as Count 11 charges that malfeasance was committed "by criminal negligence by forcing and/or allowing [Greene] to remain in prone restraint", the indictment is fatally flawed on its face and should be quashed. "The object of the malfeasance statute is to punish a breach of duty committed with the required culpable state of mind... Thus, mere inadvertence or negligence, or even criminal negligence, will not support a violation of the malfeasance statute because the statute specifies the act or failure to act must be intentional." *State v. Petitto*, 2010-0581, (La. 3/15/11) 59 So.3d 1245, 1254; *See also State v. Morrow*, 2022-413, 354 So.3d 909, 917 (La. App. 3 Cir. 1/25/23). To the extent that Count 11 is based upon simple battery, there is no indication which of the seven batteries the State supposedly identified supports this charge, and in any event it is obvious that seven acts cannot support nine charges. Count Eleven should be quashed.

17.

In *State v. Warren*, 29, 630, 700 So.2d 1297, 1300 (La. App. 2. Cir. 9/24/97), the bill of information filed by the State failed to provide any details of the offense. The trial court granted the defendants' motion for bill of particulars, but despite the orders of the trial court, the State failed to provide the particulars, responding instead that its tender of discovery materials sufficed. The Second Circuit stated, in no uncertain terms, that the provision of the discovery materials was not an adequate substitute for the bill of particulars ordered by the trial court: "no bill of particulars, which would add to the description of the charges in the bill of information, has ever been filed by the state in the matter. The state's written response to the defendants' motion added nothing. The large assortment of documents and reports ... did not serve the function of a bill of particulars, despite the production of the documents by the state and their incorporation by reference into the bill of particulars. There was no particularity in the referenced mass of discovery documents which would inform the defendants regarding what the state intends to prove or allow the court to regulate the evidence at trial... 'defendants are not required to ferret out of this 70-odd page transcript the simple answer to their questions.'" (Internal citation omitted).

18.

The masses of data provided via thumb drive in this case "did not serve the function of a bill of particulars" despite the State's contention to the contrary. "There was no particularity in the referenced mass of discovery documents which would inform the defendants regarding what the state intends to prove or allow the court to regulate the evidence at trial". Accordingly, Mr. York filed a written Objection to the sufficiency of the State's response, and this Court again Ordered the State to file the requested particulars. But, in the words of the Second Circuit, "The state's written response to the defendants' motion added nothing." *Warren, supra.* The gist of the State's Response to Mr. York's Objection was simply to refer Mr. York to the discovery materials. But Mr. York cannot be required to "ferret out", from

the reams of data provided, the simple answers to his questions.[3]

19.

The requirement that the accused be provided with sufficient information so that he can properly defend himself recognized in *State v. Warren* was reiterated by the Supreme Court in a 2021 case: "The state is required, upon the defendant's motion, to provide a criminal defendant with enough information so that he can identify the criminal transaction... when the crime involves not a single occurrence but a series of occurrences, the state must supply enough information so that the accused can identify each criminal transaction." *State v. Robinson*, 312 So.3d 255, 256, 2020-01389 (La. 3/9/21) (emphasis added).

20.

La.C.Cr.P. Art. 464 is the statutory implementation of the Louisiana Constitution's guarantee that the accused be informed of the "nature and cause" of the accusation against him. It provides: "The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Articles 462 and 463 both note that the State "may" include in the indictment or information "the particulars of the offense...with a view to avoiding the necessity for a bill of particulars." Having failed to provide any particulars in the Amended Bill of Indictment, the State could have, but has not (despite being twice ordered to do so), cured the defect by providing a bill of particulars.

21.

La.C.Cr.P. Art. 484 vests this Court with the authority to "require the district attorney to furnish a bill of particulars setting forth more specifically the nature and cause of the charge against the defendant." This the Court did when it ordered the State to provide the particulars sought. Article 485 provides, in pertinent part, that if it appears from the bill of particulars [or in this case, from the lack of a sufficient bill of particulars] "that there is a ground for quashing the indictment, the court may on its own motion, or on motion of the defendant shall, order the indictment be quashed unless the defect is cured" within the time

---

[3] The State's contention that "at least 7" acts of battery occurred only highlights the impossibility of the task.

fixed by the court, not to exceed three days." This Court has, of course, already allowed the State time to file the necessary particulars, but the Response filed by the State "added nothing".

22.

La.C.Cr.P. Article 532 (2) provides, "A motion to quash may be based on one or more of the following grounds: ... (2) The indictment fails to conform to the requirements of Chapters 1 and 2 of Title XIII." In such case the court may permit the district attorney to amend the indictment to correct the defect." The Amended Bill of Indictment filed in this case clearly fails to comply with those requirements, and the Legislature's use of the word "may" in Article 532(2) makes it clear that this Court has discretion as to whether to allow the State time to cure that defect, or simply to quash the Bill at this time.[2]

23.

La.C.Cr.P. Art. 532 (4) provides: A motion to quash may be granted [if] ...(4) The district attorney failed to furnish a sufficient bill of particulars when ordered to do so by the court. In such case the court may overrule the motion if a sufficient bill of particulars is furnished with the delay fixed by the court." Provided last month with an additional thirty days within which to furnish a sufficient bill of particulars, the State again failed to do so. As to all of the malfeasance counts based in whole or in part on the allegation of simple battery, the State's Response merely referred the defense back to the discovery materials, and as to Count 11, the State refused to answer at all.

24.

La.C.Cr.P. Art. 532 (5) authorizes the Court to quash the indictment when a bill of particulars has shown grounds under Article 485. In this case, the State's Response established that it intends to rely on criminal negligence as a basis for Count 11, despite the fact that it is well established that criminal negligence cannot form the basis of a malfeasance prosecution. *State v. Petitto, supra.* Thus, grounds to quash Counts 2-11 have been established.

---

[1]Articles 462, 463, and 464, cited above, are located in Chapter 1 of Title XII of the Louisiana Code of Criminal Procedure.

[2]La.C.Cr.P. Art 5: "The word 'shall' is mandatory, and the word 'may' is permissive.

25.

In *Warren*, the trial court, on its own motion, quashed the bill of information. The Second Circuit upheld the ruling, holding: "In summary, with the complexity of this case...this bill of information lacks a clear definition of the crime and the particulars of the defendants' actions identifying what the state intends to prove. In fairness, the defendants are entitled to more information to properly attempt to defend themselves, and the trial court was within its discretion to so rule." 700 So.2d at 1301. The Court noted that, "When Code of Criminal Procedure Articles 485 and 532(4) are read together, the power of the court to quash the indictment was clearly available...when the state chose to continue resting on its mistaken view of the sufficiency of the original bill." *Id.*

26.

In conclusion, this Court Ordered the State to respond to Mr. York's Bill of Particulars. The State failed to provide the required particulars, relying instead on its having tendered discovery materials to the defense. After the Court Ordered the State to respond for a second time, the State filed a pleading which did nothing to particularize the charges, but merely referred the defense back to the reams of material previously provided. The alleged simple batteries have never been identified, and the alternate theory set forth by the State in Count 11 of criminal negligence cannot form the basis for a malfeasance prosecution. The State is not entitled to another bite at the apple. This Court has the authority to grant the Motion to Quash and it should be granted. Counts Two through Eleven of the Amended Bill of Indictment should be dismissed with prejudice.

WHEREFORE, Mr. York prays that this Supplemental Objection to State's Failure to Respond to Defendant's Motion for Bill of Particulars and Motion to Quash with Incorporated Authorities be allowed and filed and that, after due consideration, this Court grant the Motion to Quash and order Counts Two through Eleven of the Amended Bill of Indictment dismissed with prejudice, and for all other relief to which he is entitled.

Respectfully submitted,

LAW OFFICES OF J. MICHAEL SMALL

BY: _____

J. MICHAEL SMALL
STATE BAR ROLL # 8810
KATHRINE S. WILLIAMSON
STATE BAR ROLL # 08554
POST OFFICE BOX 12720
ALEXANDRIA, LOUISIANA 71315
TELEPHONE: (318) 487-8963
EMAIL: jmikesmall@aol.com

BY: _____

T. TAYLOR TOWNSEND
POST OFFICE BOX 784
NATCHITOCHES, LA 71458
TELEPHONE: (318) 238-3612
STATE BAR ROLL # 20021

CERTIFICATE

I hereby certify that a copy of the above Supplemental Objection to State's Failure to Respond to Defendant's Motion for Bill of Particulars and Motion to Quash with Incorporated Authorities has been served on Assistant District Attorney Hugo Holland via hand delivery.

Alexandria, Louisiana, this 12 day of May, 2023.

_____

J. MICHAEL SMALL

CRIMINAL DOCKET NUMBER 60600

THIRD JUDICIAL DISTRICT COURT, PARISH OF UNION

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

KORY YORK

FILED: _____ DY. CLK.

ORDER

The foregoing Supplemental Objection to State's Failure to Respond to Defendant's Motion for Bill of Particulars and Motion to Quash filed by the defendant Kory York having been considered.

IT IS HEREBY ORDERED that the motion is:

Granted _____

Denied _____

Granted to the following extent _____

THUS DONE AND SIGNED, this _____ day of _____, 2023.

HONORABLE THOMAS W. ROGERS
JUDGE, THIRD JUDICIAL DISTRICT COURT