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For Publication

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,**

Criminal Case No. 04-0152E

Plaintiff,

v.

**JOSEPH CRUZ ALDAN,
JESSE TORRES FLORES, and
JOAQUINA P. REYES,**

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION FOR BILL OF
PARTICULARS**

Defendants.

I. INTRODUCTION / PROCEDURAL HISTORY

THIS MATTER came before the Court for a hearing on June 2, 2004, at 9:00 a.m. in courtroom 220A, to consider Defendant Jesse Torres Flores’ Second Amended Motion for Bill of Particulars. Defendant Flores requests that the Court require the Commonwealth to submit a bill of particulars in response to twenty-seven separate requests for information regarding various allegations made by the Commonwealth in its FIRST AMENDED INFORMATION. In its OPPOSITION to the Motion, the Commonwealth argues that the INFORMATION filed is sufficiently specific and that Flores has been provided full discovery. The Court, having reviewed the pleadings and the memorandum filed, and having heard the arguments of counsel, now renders its written decision.

II. ANALYSIS

In his motion, Flores requests that the Court order the Commonwealth to provide him additional information via a bill of particulars regarding the allegations made in the Information. Rule 7(f) of the Commonwealth Rules of Criminal Procedure allows the Court to direct the Commonwealth to file a bill of particulars to supplement an Information, stating:

1 The court may direct the filing of a bill of particulars. A motion for a bill of
2 particulars may be made before the arraignment or within ten (10) days after
3 arraignment or at such later time as the court may permit. A bill of particulars may
4 be amended at any time subject to such conditions as justice requires.

5 Com. R. Crim. P. 7(f). Although Rule 7(f) allows for the filing of a bill of particulars, it does not
6 articulate the circumstances under which a motion for a bill of particulars should be granted.
7 Commonwealth Rule of Criminal Procedure 7(f) is similar to the federal equivalent, and resorting
8 to the interpretation of the federal rule is proper. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233
9 n.3 (1995).

10 The Ninth Circuit Court of Appeals has stated that the purpose of a bill of particulars is:

11 *to inform the defendant of the nature of the charge against him with sufficient*
12 *precision to enable him to prepare for trial, to avoid or minimize the danger of*
13 *surprise at the time of trial, and to enable him to plead his acquittal or conviction in*
14 *bar of another prosecution for the same offense when the indictment itself is too*
15 *vague, and indefinite for such purposes.*

16 *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979) (emphasis added). Within the same
17 Rule 7 that addresses the use of an Information, subsection (c)(1) provides that:

18 *The information shall be a plain, concise, and definite written statement of essential*
19 *facts constituting the offense charged. It shall be signed by the attorney for the*
20 *government. It need not contain a formal commencement, a formal conclusion, or*
21 *any other matter not necessary to such statement. Allegations made in one count*
22 *may be incorporated by reference in another count. It may be alleged in a single*
23 *count that the means by which the defendant committed the offense are unknown or*
24 *that he committed it by one or more specified means. The information shall state for*
25 *each count the citation of the statute, rule, regulation or other provision of law which*
26 *the defendant is alleged to have violated.*

27 Com. R. Crim. P. 7(c)(1) (emphasis added). The purpose of the Information is to state the facts and
28 elements of the offenses alleged to the extent necessary to inform the accused of the charges against
him or her, so that he or she can prepare a defense and, if necessary, plead double jeopardy.
Commonwealth v. Jun-Ming He, Crim. No. 99-0557 (N.M.I. Super. Ct. June 30, 2000) (Order at 4)
(citing *Hamling v. United States*, 418 U.S. 87, 117, 94 S. Ct. 2887, 2907, 41 L. Ed. 2d 590, 620
(1974)) (other citations omitted). Thus, the sufficiency of the Information is not a question of
whether it could have been more definite and certain, but *whether it contains the elements of the*
offense intended to be charged. Id. (citing *United States v. Debrow*, 346 U.S. 374, 74 S. Ct. 113,
98 L. Ed. 92 (1953)).

1 In the instant case, Defendant Flores has requested a range of information to be submitted
2 via a bill of particulars regarding Counts IV (“trafficking of a controlled substance”), VIII
3 (“possession of a controlled substance”), and IX (“accessory after the fact to trafficking a controlled
4 substance”). Among other things, Defendant Flores has requested information as to the identity of
5 the Commonwealth’s “cooperative sources” or “CS3”, the specific quantity of methamphetamine
6 hydrochloride, or “ice”, that he is accused of having possessed, and the specific place where the
7 “ice” was seized.

9 While it is true that “[f]ull discovery obviates the need for a bill of particulars,”¹ counsel
10 for the Commonwealth agreed that only the gross quantity of methamphetamine hydrochloride
11 allegedly possessed by Defendant Flores has been disclosed; the net quantity remains to be identified
12 pending the submission of the entire package(s) to an off-island laboratory. The actual quantity of
13 the drug possessed, i.e. the net weight which is exclusive of the weight of the container, bears
14 directly upon a defendant’s sentence under 6 CMC § 2142(d), upon conviction for drug possession.
15 Therefore, the details as to the quantity allegedly possessed by Defendant Flores is vital to his
16 preparation for his defense, and this quantity must be provided to him. Accordingly, the Court
17 grants this part of the motion and orders the Commonwealth to provide Defendant Flores the net
18 weight of the “ice” seized, upon obtaining that information from the off-island laboratory. The
19 Commonwealth shall report on the status of the efforts taken to obtain such information at the next
20 status conference presently scheduled for July 14, 2004.

23 Defendant Flores’ remaining requests seek disclosure of the name of a “cooperating source”,
24 and more specific times and dates of events underlying the charges filed by the Commonwealth.
25 With respect to all of the other requests, the Court finds that the Information adequately states the
26 facts and elements of the offenses alleged to the extent necessary to inform Defendant Flores of the
27 charges against him, and the full discovery provided by the Commonwealth thus far obviates the

28 ¹ *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979).

1 need for any further bill of particulars. A bill of particulars is not a discovery device; it is only used
2 for the limited purpose of putting a defendant on adequate notice of the nature of the charges against
3 him. Com. R. Crim. P. 7(f). A bill of particulars cannot be used for the purpose of obtaining
4 evidentiary details, such as the exact times of alleged acts described in the Information. *United*
5 *States v. Long*, 449 F.2d 288, 294-95 (8th Cir. 1971). Furthermore, just as neither Defendant nor
6 Commonwealth has a right to obtain statements made by prospective witnesses through discovery
7 under Commonwealth Rule of Criminal Procedure 16, neither Defendant nor the Commonwealth
8 can obtain a list of prospective witnesses simply by couching that request in the form of a motion
9 for a “bill of particulars.” *United States v. Anderson*, 799 F.2d 1438, 1442 (11th Cir. 1986) (*citing*
10 *United States v. Pena*, 542 F.2d 292, 294 (5th Cir. 1976)). Likewise, a bill of particulars ordinarily
11 cannot be used to compel the Commonwealth to divulge the identities of confidential informants.
12 *See United States v. Perkins*, 994 F.2d 1184, 1190 (6th Cir. 1993); *see also Roviario v. United States*,
13 353 U.S. 53, 62, 77 S. Ct. 623, 628, 1 L. Ed. 2d 639, 646 (1957) (the question of disclosure [of
14 confidential informants’ identities] must be made on a case by case basis). In this case, the identity
15 Flores seeks is the identity of a “cooperative source”, “CS3”, which the Commonwealth concedes
16 it has not divulged to the Defendant. This Court finds that in this case, the “cooperative source” is
17 actually a confidential informant, and thus, is entitled to the same protection as all informants in this
18 stage of the proceedings, consistent with the long standing principal of preventing the disclosure of
19 the identity of a confidential informant who is involved in ongoing law enforcement activities,
20 particularly during the preliminary stages of the case. Accordingly, this motion is denied without
21 prejudice to the Defendant and may be raised as a regular motion no later than at the pre-trial
22 conference hearing date that will be set in this case. *Commonwealth v. Zhang Wei*, Crim. No. 03-
23 0312 (N.M.I. Super. Ct. Feb. 17, 2004) (Order Regarding Confidential Informant at 2-4).
24 Accordingly, these requests are denied.

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III. CONCLUSION

For the foregoing reasons, Defendant Flores' Motion for Bill of Particulars is GRANTED as to requests 4, 9, and 11, which requests the net weight of the methamphetamine hydrochloride alleged to have been possessed and trafficked by Defendant Flores. With regard to all other requests in the Motion, the Motion is DENIED.

SO ORDERED this 14th of June 2004.

/s/
RAMONA V. MANGLONA, Associate Judge