



**By Order of the Court, Judge PERRY B. INOS**

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FOR PUBLICATION

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

<b>COMMONWEALTH OF THE</b>	)	<b>CRIMINAL CASE NO. 12-0111D</b>
<b>NORTHERN MARIANA ISLANDS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>ORDER DENYING DEFENDANT'S</b>
	)	<b>MOTION FOR BILL OF PARTICULARS</b>
<b>FRANCISCO Q. GUERRERO,</b>	)	
	)	
<b>Defendant.</b>	)	

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**I. INTRODUCTION**

THIS MATTER came for arraignment on July 9, 2012, at 9:00 a.m. Assistant Attorney General James McAllister represented the Commonwealth of the Northern Mariana Islands (“Commonwealth”). Brien Sers Nicholas, Esq., represented Francisco Guerrero (“Defendant”). Defendant entered a plea of not guilty and now moves the court for a bill of particulars.

After considering the oral and written arguments and relevant law, the Court denies Defendant’s motion.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On June 25, 2012, the Commonwealth filed an Information charging Defendant with fifteen  
3 (15) crimes: two (2) counts of Sexual Abuse of a Minor in the second degree<sup>1</sup>; one (1) count of  
4 Sexual Abuse of a Minor in the fourth degree<sup>2</sup>; three (3) counts of Assault and Battery<sup>3</sup>; two (2)  
5 counts of Indecent Exposure in the first degree<sup>4</sup>; two (2) counts of Indecent Exposure in second  
6 degree<sup>5</sup>; and five (5) counts of Disturbing the Peace<sup>6</sup>.

7 \_\_\_\_\_  
8 <sup>1</sup> COUNTS I and VII: Sexual Abuse of a Minor Child in the Second Degree

9 Sometime in September, 2010 [and February 2012], on Saipan, Commonwealth of the Northern Mariana Islands, the  
10 Defendant, FRANCISCO Q. GUERRERO, being 18 years of age or older, did unlawfully engage in sexual conduct,  
11 with a minor identified as A.B.C. (d.o.b. xx/xx/xx) (a household member of Defendant's as defined under 6 CMC §  
12 1461), who [was] 14 years of age, and the defendant occupied a position of authority in relation to A.B.C. in violation  
13 of 6 CMC § 1307(a)(5)(B), and made punishable by 6 CMC § 1307(b). (The initials and date of birth are  
14 changed/redacted to protect the identity of the minor child.)

11 <sup>2</sup> COUNT X: Sexual Abuse of a Minor in the Fourth Degree

12 Sometime in April, 2012 on Saipan, Commonwealth of the Northern Mariana Islands, the Defendant, FRANCISCO Q.  
13 GUERRERO, being 62 years of age, engaged in sexual conduct with a minor child identified as A.B.C.. (d.o.b.  
14 xx/xx/xxxx) (a household member of Defendant's as defined under 6 CMC § 1461), who was 16 years of age, and at  
15 least three years younger than the defendant, and the defendant occupied a position of authority in relation to A.B.C. in  
16 violation of 6 CMC § 1309(a)(2), and made punishable by 6 CMC § 1309(b).

13 <sup>3</sup> COUNTS II, VIII, and XII: Assault and Battery

14 Sometime in September, 2010 [and February, 2012; April, 2012], on Saipan, Commonwealth of the Northern Mariana  
15 Islands, the Defendant, FRANCISCO Q. GUERRERO, unlawfully struck, beat, wounded or otherwise caused bodily  
16 injury, or had sexual contact with a minor child identified as A.B.C. (d.o.b. xx/xx/xxxx) (a household member of  
17 Defendant's as defined under 6 CMC § 1461) without her consent, who was 14 years of age [and 16], in violation of 6  
18 CMC § 1202(a) and made punishable by 6 CMC §§ 1202(b) and 4101(c).

16 <sup>4</sup> COUNTS III and V: Indecent Exposure in the First Degree

17 Sometime in September, 2010 [and April, 2011], on Saipan, Commonwealth of the Northern Mariana Islands, the  
18 Defendant, FRANCISCO Q. GUERRERO, did unlawfully violate 6 CMC § 1316; while committing the act  
19 constituting the offense, the offender knowingly masturbates; and the offense occurs within the observation of a minor  
20 child identified as A.B.C. (d.o.b. xx/xx/xxxx) (a household member of Defendant's as defined under 6 CMC § 1461),  
21 who was under 16 years of age, in violation of 6 CMC § 1315(a)(1-3) and made punishable by 6 CMC § 1315(b).

19 <sup>5</sup> COUNTS XI and IVX: Indecent Exposure in the Second Degree

20 Sometime in April, 2012 [and on or about May 25, 2012], on Saipan, Commonwealth of the Northern Mariana Islands,  
21 the Defendant, FRANCISCO Q. GUERRERO, did unlawfully and knowingly expose his genitals in the presence of a  
22 minor child identified as A.B.C. (d.o.b. xx/xx/xxxx) (a household member of Defendant's as defined under 6 CMC §  
23 1461) with reckless disregard for the offensive, insulting or frightening effect the act may have, in violation of 6 CMC §  
24 1316(a), and made punishable by 6 CMC § 1316(b) by imprisonment for not more than 6 months, a fine not more than  
\$500, or both.

22 <sup>6</sup> COUNTS IV, VI, IX, XIII, XV: Disturbing the Peace

23 Sometime in September, 2010 [and April, 2011; February, 2012; April, 2012; May, 2012], on Saipan, Commonwealth  
24 of the Northern Mariana Islands, the Defendant, FRANCISCO Q. GUERRERO, did unlawfully and willfully commit  
an act which unreasonably annoyed or disturbed the peace of a minor child identified as A.B.C. (d.o.b. xx/xx/xxxx) (a  
household member of Defendant's as defined under 6 CMC § 1461), depriving her of her right to peace and quiet, or  
which provoked a breach of peace, in violation of 6 CMC § 3101(a), and made punishable by 6 CMC §§ 3101(b) and  
4101(d).

1 On July 9, 2012, the defendant entered a plea of “not guilty.” On June 28, 2012, Defendant  
2 filed a motion for a bill of particulars as to the particular acts and exact dates of several crimes  
3 specified in the Information.

### 4 **III. LEGAL STANDARD**

5 A bill of particulars is granted when an Information is either too vague or indefinite to  
6 prepare an adequate defense. *Commonwealth v. Castro*, 2008 MP 18 ¶ 13. Pursuant to Rule 7(c)(1)  
7 of the Commonwealth Rules of Criminal Procedure, an Information shall contain the following:

8 The information shall be a plain, concise and definite written statement of essential facts  
9 constituting the offense charged. It shall be signed by the attorney for the government. It  
10 need not contain a formal commencement, a formal conclusion, or any other matter not  
11 necessary to such statement. Allegations made in one count may be incorporated by  
12 reference into another account. It may be alleged in a single count that the means by which  
13 the defendant committed the offense are unknown or that he committed it by one or more  
14 specified means. The information shall state for each count the citation of the statute, rule,  
15 regulation or other provision of law which the defendant is alleged to have violated.

16 NMI R. Crim. P. 7(c)(1).

17 The decision to grant or deny a motion for a bill of particulars is within the sound discretion  
18 of the trial court. *Castro*, 2008 MP 18 ¶ 10; *Wong Tai v. United States*, 273 U.S. 77, 82 (1927).

19 The decision to grant a bill of particulars depends on “whether the bill of particulars is  
20 necessary for the defense, not whether it would aid the defendant in his preparation.” *Castro*, 2008  
21 MP ¶13. The test for granting a bill of particulars is whether the indictment is so vague that a bill of  
22 particulars is necessary. *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979) (holding that  
23 the defendant is not entitled to “know [the] when, where, and how” of every act of the indictment).  
24 The purpose of a bill of particulars is three fold: to inform the defendant of the nature of the charges  
against him, to enable adequate trial preparation, and to protect the defendant against double  
jeopardy. *Castro*, 2008 MP 18 ¶ 12 (citations omitted). More importantly, full discovery eliminates  
the need for a bill of particulars. *Giese*, 597 F.2d at 1180.

1 With these principles in mind we turn to the issue before the court.

2 **IV. DISCUSSION**

3 Defendant argues that the Information fails to allege with sufficient specificity the time of  
4 the act(s) supporting the criminal offenses in counts I through VIII.<sup>7</sup>

5 In cases involving sexual abuse of children, an Information need not allege time with  
6 specificity. See *Commonwealth v. Oden*, 3 NMI 186, 192 (1992) (holding that children are less  
7 likely to remember specific dates and times); *United States v. Austin*, 448 F.2d 399, 400 (9th Cir.  
8 1971) (holding “exact dates are not required so long as they are within the statute of limitations...”);  
9 *Arnold v. United States*, 336 F.2d 347, 353 (9th Cir. 1964) (holding “the time alleged in an  
10 indictment is not descriptive of the offense, and need not be precisely proven.”); *United States v.*  
11 *Agard*, 531 F.Supp.2d 1072, 1074 (D.N.D. 2008) (holding that the accused is not entitled to a bill of  
12 particulars which provides the exact date of the commission of the alleged crimes).

13 Here, the defendant stands accused of multiple criminal acts against a minor child. “[T]he  
14 fact that the victim cannot set a date for the crime should not be fatal to the State’s case” because  
15 minors are “less likely to distinguish dates and times with specificity.” *Oden*, 3 NMI 186, 192  
16 (1992). The Information indicates that each alleged crime occurred within a given month over a  
17 two-year period. It is thus understandable if the victim cannot recall exact dates of the alleged  
18 crimes because they took place over a twenty-four month period.

19 Therefore, the court finds the Commonwealth satisfied its burden in the Information  
20 regarding the time of the offenses because the victim is a child, the alleged crimes took place over a  
21 twenty-four month period, the statute of limitations has not run, and time is not a material element  
22 to the crimes.

23 \_\_\_\_\_  
24 <sup>7</sup> Counts I through VIII allege the defendant committed the act(s) sometime within a given month. For example, counts  
1 through IV allegedly occurred “sometime in September, 2010.”

1 The defendant next contends that the Information fails to allege with specificity the  
2 particular acts supporting the Counts I, II, IV, VI, VII, VIII, IX, X, XII, and XIII.<sup>8</sup> As stated above,  
3 the decision to grant a bill of particulars is a matter of necessity. *Castro*, 2008 MP ¶13; *Giese*, 597  
4 F.2d at 1180. According to the Commonwealth Supreme Court, when an “information contains the  
5 official citation of the statute under which defendant is charged and the evidence constitutes precise  
6 proof of the charges in the Information, denial of a motion for a bill of particulars is not an abuse of  
7 discretion.” *Castro*, 2008 MP 18, ¶ 14; *see Giese*, 597 F.2d at 1180 (holding the defendant is not  
8 entitled to “know [the] when, where, and how” of every act of the indictment). It is sufficient when  
9 the defendant is informed of the “[t]heory of the government’s case.” *Giese*, 597 F.2d at 1181.

10 Thus, the Commonwealth satisfies its burden when the Information contains those facts  
11 indicating the elements of the offenses charged. Here, the Court finds that the Commonwealth has  
12 done so.

13 By statute, a person is guilty of sexual abuse of a minor in the second degree when the  
14 offender, being over the age of 18 and occupying a position of authority in relation to the victim,  
15 engages in sexual contact with a person under the age of 16. 6 CMC § 1307(5)(B); *see* 6 CMC §  
16 1309 (a)(2)<sup>9</sup>. Here, in Counts I, VII, and X, the Information properly identified the victim,  
17 indicated the approximate time and location of the crimes, and described the type of conduct  
18 engaged in. Thus, the defendant has been informed “of the nature of the charges brought against  
19 him.” *Castro*, 2008 MP ¶12.

20 Likewise, by statute, a person is guilty of assault and battery if “the person unlawfully  
21 strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another  
22 without the person’s consent.” 6 CMC § 1202 (a). Here, in Counts II, VIII, and VII, the

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23 <sup>8</sup> Counts I, VII, and X refer to sexual abuse of a minor; Counts II, VIII, and XII refer to assault and battery; Counts IV,  
24 VI, IX, and XIII refer to disturbing the peace of a minor child.

<sup>9</sup> Sexual Abuse of a Minor in the Fourth Degree is substantially similar to Sexual Abuse in the Second Degree.

1 Information properly identified the victim, indicated the approximate time and location of the event,  
2 described the type of conduct engaged in, and cited the provision of law allegedly violated. Again,  
3 the defendant is sufficiently informed to “adequately prepare his defense...” *Castro*, 2008 MP ¶12.

4 For the aforementioned reasons, further analysis of the remaining charges in the Information  
5 would be cumulative. Each count in the Information properly identified the victim, indicated the  
6 approximate time and location of the crimes, described the conduct engaged in, and “cited the  
7 provision of law for which the defendant is alleged to have violated.” NMI R. Crim. P. 7(c)(1).  
8 This amount of information obviates the need for a bill of particulars because the necessary  
9 information is present.

10 Therefore, the court concludes that a bill of particulars is unnecessary. The Commonwealth  
11 satisfied its burden in the Information because the Information identified the victim, contained the  
12 statutes allegedly violated, the approximate time and location of the incidents, and the actions  
13 constituting the crimes. Furthermore, full discovery will ameliorate any problems arising from  
14 factual gaps contained in the Information. *See Giese*, 597 F.2d at 1180 (holding discovery obviates  
15 the need for a bill of particulars).

16 **V. CONCLUSION**

17 Based on the foregoing, Defendants’ Motion for a Bill of Particulars is DENIED.

18 SO ORDERED this 2<sup>nd</sup> day of August, 2012.

21 /s/ \_\_\_\_\_  
22 PERRY B. INOS  
23 Associate Judge