

RICHLAND COUNTY
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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

STATE OF OHIO
Plaintiff

CASE NO. 2024 CR 0426 R

DEMAND FOR DISCOVERY

DEMAND FOR A MEANINGFUL BILL
OF PARTICULARS

-vs-

REQUEST FOR NOTICE OF
PROSECUTOR'S INTENTION TO USE
EVIDENCE

RECIPROCAL DISCOVERY

BRYCE A WITCHEY
Defendant

This counsel entered a Notice of Appearance and Substitution of Counsel for Attorney Rolf Whitney on December 16, 2024.

Prior to that date Attorney Whitney on June 25, 2024 filed a request for discovery which was preceding the indictment which was filed on August 20, 2024. On September 13, 2024 the government responded to this via electronic service.

Counsel has obtained the discovery served upon Attorney Whitney.

This counsel now makes the following demands.

DEMAND FOR DISCOVERY

Pursuant to Rule 16 of the Ohio Rules of Criminal Procedure, the defendant through attorney, Bernard R. Davis, hereby demands discovery as provided by that rule.

DEMAND FOR A MEANINGFUL BILL OF PARTICULARS

Counsel is in possession of the filing labeled as a "Bill of Particulars" served upon prior counsel.

A comparison of the indictment with the filing labeled as a "Bill of Particulars" reveals that the two are one and the same except that in place of alleging that the thirty-one counts occurred in the county of Richland, the government magnanimously inserted 52 Greenwood Avenue, Mansfield, Ohio 44902 in the filing labeled as a "Bill of Particulars".

Criminal Rule 7(E) clearly mandates that the bill of particulars furnished to defendant shall specifically set up the nature of the offense charged and the conduct of the defendant alleged to constitute the offense. (emphasis added)

In other words the government has to divulge to the defendant specifically:

1. the offense(s) with which he/she is charged
2. the acts that the government alleges the defendant did to constitute the offense(s)

The filing labeled as a "Bill of Particulars" simply does not do that.

The Court's attention is directed to the case of State v. Haynes, (2022) 171 Ohio St. 3d 508, 2022-Ohio-4473 decided by the Ohio Supreme Court on December 15, 2022.

The defendant in that case was indicted on several counts of abduction of his grandchildren. The defendant requested a bill of particulars pursuant to Criminal Rule 7(E). The government failed to respond and two months later counsel moved the court for an order to compel. This was disregarded and no order was issued and about two months later counsel again moved the government to be compelled to provide the necessary bill of particulars.

In this motion Hayes' counsel indicated the government responded to his previous motion by simply reciting the statute setting for the offense which Haynes was charged with and referred to discovery provided to him. Haynes. Supra at paragraph 8. This is the exact situation the defendant in this case is faced with.

The trial court refused to compel the government to comply any further with Criminal Rule 7(E).

Haynes went to trial and was convicted.

Haynes appealed his conviction alleging he was entitled to a bill of particulars so that he could adequately prepare his defense. The Ohio Supreme Court agreed and reversed Haynes' conviction.

In doing so the court provided necessary guidelines pertaining to bill of particulars.

At paragraph 18, supra the court noted that:

"The Ohio Constitution provides that a defendant has the right to know the nature of the accusation being made by the state".

The Court went on to say that:

"Historically, this right was satisfied by detailed indictments. But with the advent of short form indictments, bills of particulars became necessary in some cases to give the accused specifics as to what conduct the state was alleging constituted the offense, so that the accused could mount a defense.

Defendant's thirty-one count indictment is indicative of a short form indictment. It gives this defendant no specifics as to what his conduct was to allegedly constitute the offense.

As the Haynes decision at paragraph 21 said:

"The charges against Haynes were exceedingly vague" where the indictment read;

Haynes did without privilege to do so, knowingly, by force or threat remove [his grandchild] from the place where [his grandchild] was found.

The Court found that this boilerplate language coupled with discovery provided by the government was not sufficient.

At paragraph 22 the court said:

A defendant is not entitled to a prosecutor's work product, such as his trial strategy and estimation of the success of the case, but Haynes had a right to know when the offenses were supposed to have occurred and specifically what conduct he allegedly engaged in that the state was alleging constituted the offenses, Ohio Constitution, Article I, Section 10. Not only did Haynes have a constitutional right to know, but the state had an obligation, based on a criminal rule, a statute, and multiple unequivocal decisions of this court, to produce a bill of particulars telling him what he had a right to know.

The government argued that there is no duty to provide a bill of particulars when full discovery is provided.

The Court rejected that argument stating:

A bill of particulars has a limited purpose to elucidate or particularize the conduct of the accused alleged to constitute the charged offense.

The first fourteen counts of defendant's indictment are illegal use of minor in nudity-oriented material or performance under O.R.C. section 2907.323(A)(1).

This section has several subparts none of which are answered by the filing labeled as a "Bill of Particulars". Did defendant create material or performance that shows a minor in a state of nudity? Did defendant direct material or performance? Did defendant produce material or performance? Did defendant transfer material or performance? Etc., etc., etc.

In addition, both "material" and "performance" are defined by O.R.C. section 2907.01(I) and (K).

There are numerous subsections to each, none of which are identified in the filing labeled "Bill of Particulars".

The first fourteen counts of defendant's indictment like the Haynes indictment are exceedingly vague. The government in its so called Bill of Particulars does not spell out one iota of the specific conduct in claims by which the defendant violated the statute charged.

Counsel is not asking the government for how it intends proving these charges. Counsel is demanding to know what the government claims his conduct was in relation to these vague charges.

Without certainty counsel believes the government has some images that it alleges in some way show defendant's culpability. Counsel now demands that the government specifically identify where each image (if same exists) from every count in the indictment was extracted from, including the name of the device or hardware as well as any programs or software that were necessary to access and extract the images.

Counsel is mindful of the case of State v. Anderson, (2024) 2024-Ohio-3181 decided by our illustrious Fifth District Court of Appeals. This is a Richland County case out of Judge Robinson's court. There despite a timely request the government failed to furnish the defendant with a bill of particulars. Upon appeal the court ruled that this failure must be reviewed under a harmless error standard with the government demonstrating that the error was harmless beyond a reasonable doubt. Certainly if defendant is convicted in this case this issue will come up on appeal.

Counsel has highlighted the first fourteen counts of the indictment for illustration purposes but maintains the same principles and arguments for all thirty-one counts.

The Haynes court in its conclusion held:

Upon written request by a defendant, the prosecuting attorney must furnish the defendant with a bill of particulars setting forth specifically the nature of the offense charged and of the conduct of the defendant alleged to constitute the offense. A criminal defendant has the right to request the nature and cause of the accusation against him, and if the defendant does make this request, the state must fulfill its obligation to the defendant. (emphasis added)

The government in this case is attempting trial by ambush. This can be seen by the last portion of two paragraphs of the government filing labeled as “Bill of Particulars”:

See Response to Request for Discovery for further information.

The Assistant Prosecuting Attorney says further that under the laws governing Indictments and Bills of Particulars, the Assistant Prosecuting Attorney is not required to disclose through a Bill of Particulars, the other evidentiary matters requested in the Defendant’s Motion for a Bill of Particulars.

Succinctly put there ain’t no particulars in this so called “Bill of Particulars”. Merely labeling something as a “Bill of Particulars” does not make it so.

Counsel now demands the government provide a meaningful bill of particulars consistent with the contents of this filing and the laws of Ohio.

REQUEST FOR NOTICE
OF PROSECUTOR’S INTENTION
TO USE EVIDENCE

Further, the defendant request the Prosecutor, pursuant to Rule 12(D)(2) of the Ohio Rules of Criminal Procedure, to give adequate notice of his intention to use evidence in chief so that the defendant may be properly prepared to raise pre-trial objections pursuant to Rule 12(B)(3). The evidence in chief sought by this Request includes the following:

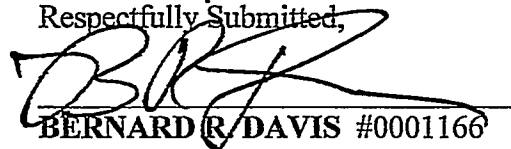
1. Relevant written or recorded statements by the defendant, co-defendant, or unindicted co-conspirators, or copies thereof.

2. Written summaries of any oral statement, or copies thereof, made by the defendant, co-defendant, or unindicted co-conspirators to the Prosecutor, an Assistant Prosecutor, any law enforcement officer, or any special investigator working under the auspices of the Prosecutor.

RECIPROCAL DISCOVERY

The defendant does not possess Reciprocal Discovery at this time but shall provide same to the State of Ohio in the event such discovery becomes known to defendant's counsel.

Respectfully Submitted,



BERNARD R. DAVIS #0001166

Attorney for Defendant

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PROOF OF SERVICE

I hereby certify that a true and accurate copy of the foregoing instrument was hand delivered this 2nd day of January, 2024 to the office of the Richland County Prosecutor, 38 South Park Street, Mansfield, Ohio 44902 via court mailbox.



BERNARD R. DAVIS #0001166

Attorney for Defendant