

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
)
JUN-MING HE,)
)
Defendant.)
_____)

Criminal Case No. 99-0557

ORDER

I. PROCEDURAL BACKGROUND

This matter came before the court on June 28, 2000, in Courtroom 223A at 10:00 a.m. on Defendant's motion for a bill of particulars. Assistant Public Defender Jeffrey A. Moots, Esq., appeared on behalf of the Defendant, Jun-Ming He. Assistant Attorney General Nicole C. Forelli, Esq., appeared on behalf of the Commonwealth. The court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision.

II. FACTS

On November 19, 1999, the Commonwealth filed an information charging Defendant in Count II of the Information with Immigration Fraud, in violation of 4 CMC § 4363(a). Count II of the Information states:

On or about January 31, 1999, on Saipan, Commonwealth of the Northern Mariana Islands, the defendant, Ming Jun He, possessed without authorization and used a false, forged counterfeit altered or tampered-with official Commonwealth immigration or labor document or identification card, knowing or clearly should have known (sic) that the document was false, forged, counterfeit, altered or tampered-with, in violation of 4 CMC § 4363(a), and made punishable by 6 CMC §§ 4363(a) and (c). [p. 2]

On December 13, 1999, Defendant was arraigned and entered a not guilty plea as to each of the counts alleged in the Information.

FOR PUBLICATION

On May 23, 2000, Defendant filed a motion seeking an order of the court compelling the Commonwealth to provide counsel for the Defendant with a written bill of particulars concerning Count II of the Information.

III. ISSUES

1. Whether the court has the discretion to hear and consider Defendant's motion for a bill of particulars pursuant to Com. R. Crim. P. 7(f) where Defendant's motion was filed in excess of five months after Defendant's arraignment.

2. Whether the court shall grant Defendant's motion for bill of particulars on the ground that Count II of the Information does not present a clear, concise, and definite written statement of essential facts constituting the offense charged as required by Com. R. Crim. P. 7(c)(1).

IV. ANALYSIS

A. Timeliness.

The Commonwealth asserts that Defendant's motion for a bill of particulars is untimely, noting that pursuant to Com. R. Crim. P. 7(f), "[a] motion for a bill of particulars may be made before arraignment or within ten (10) days after arraignment or at such later time as the court may permit." Com. R. Crim. P. 7(f). Here, Defendant was arraigned on December 13, 1999. The motion for a bill of particulars, however, was not filed until May, 23, 2000, in excess of five months after the arraignment.

Com. R. Crim. P. 7(f) provides that a motion for a bill of particulars may be made "**at such later time as the court may permit**." Com. R. Crim. P. 7(f) (emphasis added). The court, therefore, has the discretion to hear and consider Defendant's present motion for a bill of particulars.

B. Bill of Particulars.

On November 19, 1999, the Commonwealth filed an information charging Defendant in Count II of the Information with Immigration Fraud, in violation of 4 CMC § 4363(a). Count II of the Information states:

On or about January 31, 1999, on Saipan, Commonwealth of the Northern Mariana Islands, the defendant, Ming Jun He, possessed without authorization and used a false, forged, counterfeit, altered or tampered-with official Commonwealth immigration or labor document or identification card, knowing or clearly should have known (sic) that the document was false, forged, counterfeit, altered or tampered-with, in violation of 4 CMC § 4363(a), and made punishable by 6 CMC §§ 4363(a) and (c).

Pursuant to Com. R. Crim. P. 7(c)(1):

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

Com. R. Crim. P. 7(c)(1) (emphases added).

Defendant claims that Count II of the Information fails to comply with Com. R. Crim. P. 7(c)(1) because it does not give plain, concise and definite written statement of essential facts constituting the offense charged. Specifically, Defendant asserts that Count II fails to state with particularity the kind of document that was allegedly false, forged, altered or tampered-with or which facts led the Commonwealth to the conclusion that such document was not genuine. In addition, Defendant argues that Count II of the Information must specify whether the Commonwealth is alleging that the document was “false,” “forged,” “altered,” or “tampered-with.” Defendant contends that such lack of specificity requires that the Commonwealth provide Defendant with a written bill of particulars concerning Count II pursuant to Com. R. Crim. P. 7(f). Defendant further asserts that to deny the request for a bill of particulars would deprive Defendant of effective assistance of counsel in preparing a defense. The Commonwealth, however, argues that Count II of the Information meets the requirements of Com. R. Crim. P. 7(c)(1) and therefore no bill of particulars is necessary. [p. 4]

The Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure, as such, interpretations of the federal rules are instructive. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233 (1995). The purpose of the information is to state the facts and elements of the alleged offense necessary to inform the accused of the charge so that he can prepare a defense and, if appropriate, plead double jeopardy. *Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct. 2887, 2907, 41 L.Ed.2d 590 (1974), *see also United States v. Russell*, 369 U.S. 749, 763, 82 S.Ct. 1038, 1046, 8 L.Ed.2d 240 (1962), *United States v. Debrow*, 346 U.S. 374, 74 S. Ct. 113, 98 L.Ed. 92 (1953). 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. *Debrow, supra*.

Likewise, the purpose of a bill of particulars is "to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense when the indictment itself is too vague, and indefinite for such purposes." *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979), *cert. denied*, 444 U.S. 979, 100 S.Ct. 480, 62 L.Ed.2d 405 (1979). "The granting or refusal to grant a bill of particulars is a matter within the discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion." *United States v. Dreitzler*, 577 F.2d 539, (9th Cir. 1978).

1. Failure to Identify Specific Document

Defendant asserts that Count II fails to state with particularity the kind of document that was allegedly false, forged, altered or tampered-with or which facts led the Commonwealth to the conclusion that such document was not genuine. Defendant, however, was provided with discovery materials which indicated that Defendant was apprehended while in the possession of two alien registration cards, one of which allegedly appeared "tampered-with." Full discovery obviates the need for a bill of particulars. *United States v. Giese, supra, citing United States v. Clay*, 476 F.2d

1211, 1215 (9th Cir. 1973). As such, the fact that Defendant [p. 5] has been informed that the specific documents referred to in Count II of the Information are alien registration cards obviates the need for a written bill of particulars providing that same information. As such, the Commonwealth's failure to specify that the documents in question were alien registration cards does not make Count II defective pursuant to Com. R. Crim. P. 7(c)(1) nor does it mandate that Defendant's motion for a bill of particulars be granted pursuant to Com. R. Crim. P. 7(f).

2. Failure to Allege Specific Problem with Document in Question.

Defendant argues that Count II of the Information must specify whether the Commonwealth is alleging that the document was "false," "forged," "altered," or "tampered-with" given that each word or phrase has a different meaning which requires the presentation of a different defense.

Com. R. Crim. P. 7(c)(1) states, in part, that "[i]t may be alleged in a single count that the means by which the defendant committed the offense are unknown or that [s]he committed it by one or more specified means." Com. R. Crim. P. 7(c)(1). Here, Count II of the Information alleges that Defendant "possessed without authorization and used a false, forged, counterfeit, altered or tampered-with official Commonwealth immigration or labor document or identification card." The Commonwealth, therefore, alleges that Defendant committed Immigration Fraud by possessing a document which was not genuine. The fact that the Commonwealth does not specify whether such document was "false," "forged," "altered," or "tampered-with" is permissible under Com. R. Crim. P. 7(c)(1) because the Commonwealth is alleging that Defendant committed Immigration Fraud by one or more specified means. Also, "[t]he government need only allege the 'essential facts necessary to apprise a defendant of the crime charged' and not its theory of the case." *United States v. Schmidt*, 947 F.2d 362, 369 (9th Cir. 1991), citing *United States v. Buckley*, 689 F.2d 893, 896 (9th

Cir. [p. 6] 1982), *cert. denied*, 460 U.S. 1086, 103 S.Ct. 1778, 76 L.Ed.2d 349 (1983). As such, the Commonwealth's failure to choose one of the means of violating the underlying statute does not make Count II defective pursuant to Com. R. Crim. P. 7(c)(1) nor does it mandate that Defendant's motion for a bill of particulars be granted pursuant to Com. R. Crim. P. 7(f).

V. CONCLUSION

For the foregoing reasons, the court finds that Count II of the Information presents a clear, concise, and definite written statement of essential facts constituting the offense charged and therefore is sufficiently written so as to inform Defendant of the charge so that Defendant can prepare a defense and plead double jeopardy in any subsequent proceeding. As such, Defendant's motion for a bill of particulars is hereby **DENIED**.

So ORDERED this 30 day of June, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge