

1 Assault and Battery in violation of 6 CMC § 1203(a). The first count appears as follows:

2 **COUNT I: ASSAULT WITH A DANGEROUS WEAPON**

3 On or about April 13, 2008, on Tinian, Commonwealth of the Northern Mariana
4 Islands, the Defendant, LUIS P. CRUZ, did unlawfully threaten to cause, attempt to
5 cause, and/or purposely cause bodily injury to Mr. Jingzhu Cui with a dangerous
6 weapon, to wit: a helmet, in violation of 6 CMC §1204(a), punishable by 6 CMC §§
7 1204(b), 4101(a), and 4102(a).

8 The second count appears as follows:

9 **COUNT II: AGGRAVATED ASSAULT AND BATTERY**

10 On or about April 13, 2008, on Tinian, Commonwealth of the Northern Mariana
11 Islands, the Defendant, LUIS P. CRUZ, did purposely, knowingly, or recklessly
12 cause serious bodily injury to Mr. Jingzhu Cui, to wit: severe head trauma, in
13 violation of 6 CMC §1203(a), made punishable by 6 CMC §§ 1203(b) and 4101(b).

14 On May 9, 2008, Defendant was arraigned and entered a not guilty plea as to each of the
15 counts of the information. On December 1, 2008, Defendant filed three motions. The first is a
16 motion seeking an order of the Court compelling the Commonwealth to provide Defendant with a
17 written bill of particulars elaborating the factual basis of each count in the information. In addition,
18 Defendant filed a motion seeking disclosure of information pertaining to any witness or informant.
19 Lastly, Defendant filed a motion which seeks disclosure of prosecutor's intent to introduce other act
20 evidence.

21 As to the motion for a bill of particulars, the information adequately puts Defendant on
22 notice as to what allegedly occurred and sufficiently states facts which constitute a crime. Any
23 further information that Defendant seeks will be sufficiently revealed through discovery. Therefore,
24 for the reasons stated below, the motion for a bill of particulars is hereby DENIED.

25 **III. DISCUSSION**

26 **1. Motion for Bill of Particulars**

27 Defendant argues that the information does not provide enough specificity as to the date or
28 time of the alleged incident, that there are no specific facts as to what Defendant allegedly did that
constitute a crime, and that no facts are pled to give Defendant sufficient notice as to what he has
allegedly done.

1 The decision on whether to direct the filing of a Bill of Particulars is within the trial court's
2 discretion. *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir. 1984). The main purpose of the
3 Information is to provide a defendant notice of the charges that have been filed against him, as well
4 as listing the acts committed that provided the basis for such charges. *Id.* A bill of particulars is not
5 needed if the Information itself provides sufficient details of the charges and the Government
6 provides full discovery to the defense. *Id.*

7 Rule 7(f) of the Commonwealth Rules of Criminal Procedure allows the Court to direct the
8 Commonwealth to file a bill of particulars to supplement the factual basis for an Information:

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

13 Com. R. Crim. P. 7(f).

14 Rule 7(c)(1) of the Commonwealth Rules outlines the requirements incumbent upon the
15 Commonwealth when filing an information:

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

25 Com. R. Crim. P. 7(c)(1).

26 The Commonwealth Rules of Criminal Procedure closely parallel their federal counterparts
27 and therefore interpretations of the federal rules are instructive. *Commonwealth v. Ramangmau*, 4
28 N.M.I. 227, 233 (1995). The Ninth Circuit has found the purpose of a bill of particulars to be
threefold: (1) to reduce surprise; (2) to enable adequate trial preparation; and (c) to protect the
defendant against being placed in double jeopardy. *United States v. Long*, 706 F.2d 1044, 1054 (9th
Cir. 1983) (citation omitted); *United States v. Giese*, 597 F.2d 1170, 1180-81 (9th Cir.) (defendant
not entitled to “the ‘when, where, and how’ of every act in furtherance of a conspiracy charge”)
(citation omitted), *cert. denied*, 444 U.S. 979 (1979). Moreover, full discovery of the case will

1 “obviate the need for a bill of particulars.” *Giese* 597 F.2d at 1180.

2 On its face, Rule 7(c)(1) requires little more than a “plain statement... of essential facts
3 constituting the offense.” According to the Commonwealth Supreme Court, a “bill of particulars is
4 only necessary when an information is deficient or otherwise insufficient. *Commonwealth v.*
5 *Castro*, 2008 MP 18 ¶ 12, App. No. 04-0029 (N.M.I. Sup. Ct. August 22, 2008) ([Unpublished]
6 Opinion). If the information contains “the official citation of the statute under which the defendant
7 is charged and the evidence constitutes precise proof of the charges. . . denial of a motion for a bill
8 of particulars is not an abuse of discretion”. *Id.* at ¶ 14.

9 Thus, the Commonwealth need only to provide Defendant with those facts that satisfy the
10 essential elements of the underlying offense. Here, by statute, a person is guilty of assault with a
11 dangerous weapon if he threatens to cause, attempts to cause, or purposely causes bodily injury to
12 another with a dangerous weapon. 6 CMC § 1204(a). The information in this case has provided
13 those required essential facts in its description which specifically lists who was allegedly injured,
14 when and where the assault allegedly took place, and the type of alleged dangerous weapon used in
15 commission of the assault – “a helmet”.

16 Count two of the information charges Defendant with aggravated assault and battery. By
17 statute, a person is guilty of aggravated assault and battery if he causes serious bodily injury,
18 purposely, knowingly or recklessly. 6 CMC §1203(a). Again, the information has provided those
19 required essential facts in its description which specifically lists who was allegedly injured, when
20 and where the assault took place, and the alleged serious bodily injury which was caused by the
21 assault – “severe head injury”.

22 The government has satisfied its burden in the Information because the Information
23 contained language of the statutes allegedly violated, the date of the action, and the specific action
24 which constituted the crime. The Commonwealth, by Rule, need not bare their entire theory of the
25 case for the defense at the outset of trial. Further, discovery exchanges will help to ameliorate any
26 problems arising from the factual gaps in the Information.

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1 **III. CONCLUSION**

2 In conclusion, the Commonwealth has provided Defendants with a sufficient notice of the
3 charges to prepare an adequate defense and discovery will likely obviate any need for a Bill of
4 Particulars. For the foregoing reasons, Defendant’s Motion for a Bill of Particulars is DENIED.

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7 So ORDERED this 11th day of December 2008.

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9 /S/
10 David A. Wiseman, Associate Judge