

IN THE SUPERIOR COURT THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-14-CR-187
	)	
v.	)	
	)	
ENRIQUE SALDANA,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

FACTS

Through an Information filed on June 10, 2014, Defendant was charged with murder in the first degree, murder in the second degree, assault in the first degree, assault in the second degree, and three counts of assault in the third degree, all crimes of domestic violence, regarding the death of his wife, Jeanette Magras Saldana. Each of the offenses is alleged in the Information to have occurred “on or about May 2, 2014”.

Defendant filed a Motion for a Bill of Particulars on October 31, 2016, asserting merely that, “the language of Counts One, Two, and Three uses the conjunctive-disjunctive phrase ‘and/or’ creating ambiguity in the charging document.” Defendant asks the Court to issue a bill of particulars with regard to each of the first three counts requiring the People to specify “(a) The exact time of each alleged act constituting any portion of the charged crime, (b) The exact acts/conduct alleged to constitute the charged crime; (c) The exact place/location which [sic] any acts were allegedly committed in furtherance of the charged crime; (d) A factual statement of the manner, mode, means or method by which defendant is alleged to have engaged in the charged crime as well as the name of any witnesses to the alleged act; [and] (e) A short factual statement identifying any act or omission the People contends supports premeditation or deliberation for the

First Degree Murder charge.” In a February 8, 2017, Opposition, the People argue that the motion is “untimely, moot, and/or unnecessary”.

STANDARDS

To sufficiently charge a criminal offense, an Information must (1) contain the elements of the offense intended to be charged; (2) sufficiently apprise the defendant of what he must be prepared to meet, and (3) allow the defendant to show with accuracy to what extent he may plead a former acquittal in the event of a subsequent prosecution.¹

“The purpose of the bill of particulars is to inform the defendant of the nature of the charges brought against him to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense.”² The decision of whether and when to order a Bill of Particulars under Rule 7(f) of the Federal Rules of Civil Procedure, made applicable to the Superior Court through Rule 7 of the Rules of the Superior Court, lies within the discretion of the Court.³ Rule 7(f) provides that a bill of particulars should be made within 14 days of arraignment or at a later time if the court permits.⁴ Bills of particulars may not be used merely as a discovery device, but are designed to protect the accused from double jeopardy, to enable adequate preparation of a defense, and to avoid surprise at trial.⁵

ANALYSIS

I. The motion is untimely.

Because the Information was filed on June 10, 2014, Defendant’s October 31, 2016, request comes almost than two and one-half years after the deadline established by Rule 7(f), and

¹ *United States v. Vitillo*, 490 F.3d 314, 321 (3d Cir. 2007).

² *United States v. Addonizio*, 451 F.2d 49, 63-64 (3d Cir. 1971).

³ *Will v. United States*, 389 U.S. 90 (1967).

⁴ *People of the Virgin Islands v. Willis*,

⁵ See, for example, *Rodella v. United States*, 286 F.2d 306 (9th Cir. 1960), *cert. den.*, 365 U.S. 889 (1961).

Defendant has not posited any reason for the delay in seeking a bill of particulars. While Rule 7(f) permits the accused to move for a bill of particulars “at a later time”, Defendant has not explained why the Court should permit the late filing nor offered any explanation why the motion could not have been filed within the normal time frame contemplated by Rule 7(f). Nor did Defendant seek leave of Court to file the motion at this late date.

Until the People filed a Motion to Amend Information simultaneous with the Response, the Information has remained unaltered since the inception of this case. Further, the February 8, 2017, Motion to Amend Information seeks only to make a minor change in the language of Count Seven, such that the counts of which Defendant complains here would not be affected in any respect. As a result, the Court could deny Defendant’s Motion on the basis of untimeliness alone.

II. The Information, Affidavit, and discovery render a bill of particulars unnecessary.

Notably, Defendant does not allege that the Information lacks sufficient specificity to permit Defendant to prepare his defense, that the Information does not allow him to avoid surprise, or that the Information does not permit him to intelligently plead a defense of double jeopardy if similar charges are brought in the future. Regarding Defendant’s assertion that “the language of Counts One, Two, and Three uses the conjunctive-disjunctive phrase ‘and/or’ creating ambiguity in the charging document”, as the People correctly point out, each of the counts of the Information, when read with the accompanying Affidavit, provides factual detail concerning the alleged conduct of the Defendant. Each of the counts alleges that Defendant committed the offense “by beating and/or poisoning Jeanette Saldana”, but each also contains elements that the others do not. Count One requires proof that the Defendant killed Jeanette Saldana and acted willfully, deliberately, with premeditation, and with malice aforethought; Count Two requires evidence that the Defendant killed Jeanette Saldana with malice aforethought, and Count Three necessitates a demonstration that Defendant committed an assault upon Jeanette Saldana with the intent to commit murder.

While the factual assertions regarding the method of accomplishing the offenses is the same in each instance, each count puts Defendant on notice of the conduct against which he must defend. The mere fact that Counts One, Two, and Three employ a “conjunctive-disjunctive” term in describing the conduct constituting the offenses is not fatal, especially in light of the other information provided to Defendant.

The detailed Affidavit of Detective Jose Allen indicates that Defendant, without identifying himself, called 911 at about 7:43 a.m., on May 2, 2014, from the Food Center in Frydenhoj indicating his “girlfriend” was unconscious and he was transporting her to the hospital. Upon Defendant’s arrival at the hospital, Corporal Bernard Burke observed Defendant telling the unresponsive Jeanette Saldana to “get up” in a way that was unconvincing to Burke. After emergency room personnel placed Jeanette Saldana in a wheel chair, Burke attempted unsuccessfully to find a pulse and noted what appeared to be bruising on her neck and the side of her face. While hospital staff attempted to revive Jeanette, Burke asked a forensic unit to travel to the hospital, only to be told shortly thereafter that Jeanette was dead and that there was evidence of rough sexual activity. Medical staff observed what appeared to be bruises on Jeanette’s forehead, chin, throat, upper arms, right jawline, right breast, and torso, with blood in her nose and the back of her throat. While Defendant indicated that Jeanette had been conscious just prior to being transported, it was later determined she had been dead for at least two hours at the time of her arrival at the hospital and that rigor mortis had begun. Defendant was later Mirandized and questioned, indicating that Jeanette had been in his presence since 9:00 p.m. the evening before, exclusively in his presence since midnight, and recounting his observations, including a fall in the hallway after sexual activity at their home, a trip to Vessup Beach where they supposedly had sex again between 5:00 and 6:00 a.m., a fall as Jeanette exited the water after the sexual activity, and an apparent loss of consciousness at the beach that promoted Defendant to drive to Food Center after

CPR was unsuccessful. Inconsistencies in Saldana's statement were uncovered by subsequent investigation, and a search of the home did not reveal physical evidence consistent with Saldana's version of events. At the autopsy, the Medical Examiner noted extensive bruising over Jeanette's body consistent with a significant beating, fluid in her lungs, and foam in her trachea, indicative of drowning or drug overdose. Laboratory analysis revealed a blood alcohol level of .09 percent by weight and an extremely high level of diphenhydramine in her blood. Another search of the home uncovered a 400 count bottle of 25mg diphenhydramine, from which 222 pills were missing, in the area where Defendant had been mixing drinks earlier in the evening. Jeanette's daughter informed the police that her mother did not take diphenhydramine, but that Defendant did. Defendant's cell phone located atop a tall piece of furniture as if hidden contained a revealing photograph of Jeanette with blood on her vagina and thighs, with no evidence of bruising on her neck, taken roughly six and one-half hours before her arrival at the hospital, as well as text messages from the day before reflecting an argument between Defendant and Jeanette. Taken together with the Affidavit, the Information reveals sufficient factual detail to permit Defendant to adequately prepare his defense and avoid surprise.

The Court is not aware of the exact level of detail contained in the discovery materials provided by the People, but the record reveals that voluminous discovery was provided upon at least two occasions and that discovery has been supplemented at least half a dozen times. Moreover, the Court is aware that the Criminal Division of the Department of Justice maintains an "open file" policy that permits defense counsel to examine the entirety of the discoverable materials in the possession of the People.⁶ Notwithstanding a lack of direct knowledge of their specific contents, the voluminous nature of the discovery materials, when added to the factual recitations

⁶ See *United States v. Canino*, 949 F.2d 928, 949 (7th Cir. 1991), *cert. den.* 504 U.S. 910 (1992) ("Open file" policy of discovery makes bill of particulars unnecessary).

contained in each of the counts of the Information and the detailed Affidavit, adequately inform the Defendant of the conduct of which he is accused.

Defendant first seeks “the exact time of each alleged act constituting any portion of the charged crime”, specificity to which he is not entitled.⁷ Clearly, Defendant is on notice that the conduct in question occurred between the hours of roughly 9:00 p.m. on May 1, 2014, and his arrival at the hospital at approximately 8:00 a.m. on May 2, a span of eleven hours during the entirety of which he claims to have been with the deceased. “[A] defendant has sufficient notice to guard against a future prosecution in violation of the protection against double jeopardy if an [information] specifies the time frame for the criminal conduct.”⁸ The charging document need not allege the exact date and time of the commission of the alleged offense⁹; it is sufficient if the Information indicates that the offenses occurred on or about a certain date or time period. The People are not required to provide Defendant with a timeline of every one of his activities that constitute a portion of any of the offenses.

As indicated, the first three counts of the Information describe the conduct at issue as well as the requisite mental state constituting an element of each offense. The People are not required to describe in detail the every ‘exact act...alleged to constitute the charged crime[s]’. Nor are the People required to disclose the “exact place/location...[where] any acts were allegedly committed in furtherance of the charged crime”.¹⁰ The Affidavit gives a detailed description of the locations that Defendant himself recounted visiting with the deceased during the relevant time period.

⁷ *United States v. Long*, 449 F.2d 288 (8th Cir. 1971), cert. den., 405 U.S. 974 (1972).

⁸ *People v. Whyte*, Case No. SX-13-CR-026, 2015 V.I. LEXIS 3, *4-5 (Super.Ct. January 22, 2015) (denying a motion for a bill of particulars and approving an information that indicated the offense occurred “between November 12, 2012, and January 15, 2013”).

⁹ *United States v. Gaytan*, 74 F.3d 545 (5th Cir. 1996), cert. den. 519 U.S. 821 (1996); *United States v. Antonelli*, 439 F.2d 1068, 1070 (1st Cir. 1971); *Russell v. United States*, 429 F.2d 237, 238 (5th Cir. 1970).

¹⁰ *United States v. Jones*, 678 F.Supp. 1302, 1304 (S.D. Ohio 1988).

Although Defendant also asks for a “factual statement of the manner, mode, means or method by which defendant is alleged to have engaged in the charged crime as well as the name of any witnesses to the alleged act”, a bill of particulars is not a discovery vehicle through which Defendant can require the People to provide him with a detailed roadmap to its case nor details concerning the prosecution’s witnesses.¹¹ Similarly, the People do not need to include in the Information a “short factual statement identifying any act or omission the People contends supports premeditation or deliberation for the First Degree Murder charge.” A bill of particulars is not a method for delving into the People’s trial strategy.¹²

The Information satisfies Rule 7(c) of the Federal Rules of Criminal Procedure as “a plain, concise and definite written statement of essential facts constituting the offense charged.” Under the circumstances presented here, the Court concludes that the details provided to Defendant are adequate to avoid double jeopardy, permit the preparation of a defense, and avoid surprise. Nor does the Court find that Defendant suffers substantial or undue prejudice in the absence of the specification of particulars beyond those already provided. As a result, the Motion for Bill of Particulars shall be denied. An Order consistent with the Memorandum Opinion shall issue.

Dated: February 10, 2017.

ATTEST: Estrella H. George
Acting Clerk of the Court ____/____/____

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 2/14/17


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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02-14-17
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY 
COURT CLERK II

¹¹ *United States v. Lipari*, 1992 WL 165799, at 15 (S.D.N.J. 1987).

¹² *United States v. Catillo-Rodriguez*, 1999 WL 528565, at *7 (N.D.N.Y. 1999).

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DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

ENRIQUE SALDANA,

Defendant.

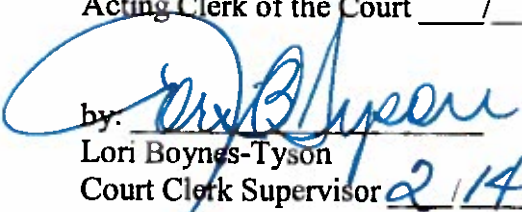
CASE NO. ST-14-CR-187

ORDER

The Court having issued a Memorandum Opinion on this date, consistent therewith it is ORDERED that Defendant's Motion for Bill of Particulars is DENIED; and it is ORDERED that copies of this Order and the accompanying Memorandum Opinion shall be directed to Defendant, counsel of record, and the IT Division of the Superior Court.

Dated: February 10, 2017.

ATTEST: Estrella H. George
Acting Clerk of the Court ____/____/____

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 2/14/17


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CASE NO. ST-14-CR-187
	)	
v.	)	
	)	
ENRIQUE SALDANA,	)	
	)	
Defendant.	)	
_____		)

ORDER

This matter comes before the Court on Defendant's October 31, 2016, Motion to Dismiss Count Six and Seven for Multiplicity, which the People opposed on February 8, 2017. Defendant asserts that Counts Six and Seven must be dismissed because "the People cannot charge Mr. Saldana with two different provisions under V.I. Code Ann. Tit. 14 § 297, when the act of 'poisoning' is the conduct constituting the offense for each provision." The People assert that, while both counts"

point to the act of poisoning as the means by which Defendant inflicted harm, they are distinct in that the poisoning resulted in different levels of injury and they were separate acts of assault leading up to the victim's death. Specifically, a jury could determine whether the Defendant inflicted "*great bodily injury*" by poisoning her with premeditated design pursuant to V.I. Code Ann. Tit. 14 § 297(3); or whether he inflicted "*serious bodily injury*" by poisoning her, resulting in her death. Additionally, even if the act of poisoning is the same means by which injury resulted on both counts, the *mens rea* required is distinct in each count.

The Court notes that the People have also filed a Motion to Amend Information, seeking to clearly delineate the asserted different levels of injury.

A multiplicitous Information "charges the same offense in two or more counts and may lead to multiple sentences for a single violation, a result prohibited by the Double Jeopardy Clause."¹

¹ *United States v. Pollen*, 978 F.2d 78, 83 (3d Cir. 1992).

When deciding whether a charging document is multiplicitous, the Court looks to whether “separate and distinct prohibited acts” have been committed.² Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not.”³ The Court is mindful, however, that prosecutors enjoy a great deal of discretion in charging a defendant.⁴

Counts Six and Seven both charge Defendant with assault in the third degree, a crime of domestic violence. Count Six asserts that Defendant assaulted Jeanette Saldana with premeditated design and by use of means calculated to inflict great bodily injury, by poisoning her, in violation of 14 V.I.C. 297(3), while Count Seven alleges he assaulted Jeanette Saldana, by poisoning her, and inflicted serious bodily injury, resulting in her death, in violation of 14 V.I.C. 297(4). The elements the People will have to prove to obtain a conviction on Count Six are:

1. On or about May 2, 2014, on St. Thomas, Virgin Islands
2. Defendant
3. assaulted Jeanette Saldana,
4. with whom he had an intimate relationship,
5. with intent to injure Jeanette Saldana
6. with premeditated design and
7. by use of a means calculated to inflict great bodily injury, poisoning her.

In order to prove Count Seven, the People must prove that:

1. On or about May 2, 2014, on St. Thomas, Virgin Islands
2. Defendant
3. assaulted Jeanette Saldana,
4. with whom he had an intimate relationship
5. with intent to injure Jeanette Saldana
6. and Defendant inflicted serious bodily injury on Jeanette Saldana, by poisoning her, resulting in her death.

² *United States v. Planck*, 493 F.3d 501, 503 (5th Cir. 2007).

³ *Blockburger v. United States*, 284 U.S. 299, 304 (1932). See also *United States v. Hodge*, 211 F.3d 74, 78 (3d Cir. 2000) (using *Blockburger* test to determine whether certain offenses grew from the same occurrence); *United States v. Liotard*, 817 F.2d 1074, 1077-78 (3d Cir. 1987) (using the “same evidence test”³ to determine whether “two offenses charged are in law and fact the same offense”).

⁴ *United States v. Pungitore*, 910 F.2d 1084, 1112 (3d Cir. 1990).

Clearly, the sixth element (and seventh in the case of Count Six) of each of these counts is different. For Count Six, the People are required to prove the assault was inflicted with premeditated design and by use of a means calculated to inflict great bodily harm (regardless of the extent of injury she actually suffered). For Count Seven, the People must establish that Jeanette Saldana actually suffered serious bodily injury (regardless of the means by which the injury was inflicted and regardless of whether Defendant engaged in a premeditated design). The focus of Count Six is the means used to commit the offense and the presence of premeditated design, while the significant concern in Count Seven is the extent of the injury. Certainly, a reasonable jury could conclude that Ms Saldana was assaulted by poisoning (a calculated means engaged in by premeditated design), but that her injuries suffered from the poisoning were not serious and that her death resulted from some other cause. Alternatively, a reasonable jury could decide that Ms. Saldana's injuries were serious, but that the People had failed to prove the Defendant engaged in a premeditated design or employed a method calculated to cause serious bodily injury. Consequently, each provision requires proof of a fact which the other does not, and the counts are not multiplicitous. The elements of these offenses are clearly distinct.

The Court does not dispute that Defendant expresses a legitimate concern when suggesting that he may face multiple penalties for the same assault in violation of his protection against double jeopardy. Those concerns, however, should be assuaged by the doctrine of merger, which this Court routinely employs at sentencing, through which one (usually lesser included) offense is absorbed into another such that separate penalties are not imposed. Until that stage is reached, however, the People have the discretion to charge assault in the third degree under alternative theories and through alternative means. To hold otherwise would ignore the plain meaning of the language of the statutes which form the basis for these charges.

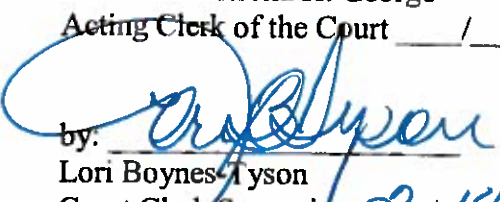
The determination of whether the People have presented sufficient evidence to prove the offenses under each of those theories is to be determined preliminarily by the Court under Rule 29, but ultimately by the trier of fact, the jury. Once that decision has been made, the Court is in a position to ensure that Defendant is not punished in contravention of the Double Jeopardy Clause at sentencing. The Court being advised in the premises, it is

ORDERED that Defendant's Motion to Dismiss is DENIED; and it is

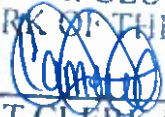
ORDERED that a copy of this Order shall be served on Defendant and copies shall be directed to counsel of record.

Dated: February 10, 2017.

ATTEST: Estrella H. George
Acting Clerk of the Court ____/____/____

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 2/14/17


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
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A CERTIFIED TRUE COPY
DATE 02-14-17
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