

ROP v. Kasiano, 13 ROP 289 (Tr. Div. 2006)
REPUBLIC OF PALAU,
Plaintiff,

v.

OLIVER KASIANO,
Defendant.

CRIMINAL CASE NO. 06-022

Supreme Court, Trial Division
Republic of Palau

Decided: September 22, 2006

KATHLEEN M. SALII, Associate Justice:

Defendant filed a Motion for Bill of Particulars pursuant to ROP R. Crim. P. 7(f) and the Due Process Clause of the Constitution. The Court heard arguments on August 21, 2006, and for the reasons set forth in this order, the motion is DENIED.

ANALYSIS

Defendant was charged by Criminal Information on January 30, 2006, with one count each of trafficking in a controlled substance, possession of a firearm, possession of ammunition, and two counts each of possession of a controlled substance and misconduct in public office. In seeking a bill of particulars, Defendant claims that additional and specific information for six of the seven counts is needed in order for him to adequately prepare a defense against the charges, and that the Information merely tracks the language of the statute he is charged with violating without giving him exact dates, times, and locations of when and where the violations are alleged to have taken place.

Rule 7(c) of the Rules of Criminal Procedure provides that the “information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged” and Rule 7(f) provides that the court “may direct the filing of a bill of particulars” without further clarification. A bill of particulars is designed to inform the defendant of the charges so that he or she may prepare a defense, to avoid surprise during the trial, and to protect the defendant against a second prosecution for an poorly described offense. *See United States v. Urban*, 404 F.3d 754 (3d Cir. 2005); *United States v. Giese*, **L290** 597 F.2d 1170, 1180 (9th Cir. 1979).¹ Palau case law has held that a criminal information is sufficient if it contains all the

¹ ROP Rule of Criminal Procedure 7 is derived from the same American rule, and it is common for our courts to look to American interpretations of laws in situations in which the Palauan law was based off an American law. *See e.g., ROP v. Wong*, Crim. Case No. 03-355, slip op. at 3 (Tr. Div. Jan. 16, 2004) (quoting 2 B Norman J. Singer, *Sutherland Statutory Construction* § 52.02 at 282 (5th ed. 1992) (“When the legislature of a state adopts a statute which is identical or similar to one in effect in another state or country, the courts of the adopting state usually adopt the construction placed on the statute in the

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essential elements of the offense charged and fairly informs the accused of the charges against him which he must defend. *Franz v. ROP*, 8 ROP Intrm. 52, 55 (1999). Thus, if the charging document and supporting affidavit sufficiently inform Defendant of charges against him, a bill of particulars is not required.

With respect to the charges of Trafficking of a Controlled Substance (Count One), Possession of a Controlled Substance (Counts Two and Three), Possession of a Firearm and Ammunition (Counts Four and Five), and Misconduct While in Public Office (Count Seven), Defendant seeks exact dates, times, and places, as well as specific descriptions of the acts which are alleged to constitute the charged offenses. Specifically with respect to the possession charges, Defendant argues that the various marijuana seeds, leaves, and buds were alleged to have been cultivated in and were recovered from more than one location, and that the Republic's discovery provides different weights listed for different plants, in either grams or pounds, for the different substances, making it difficult for him to know which count of the Information relates to which of the seized items.

The Republic asserts that Count Two refers specifically to the 125 suspected marijuana plants seized from the pump station on December 27, 2005, while Count Three refers to the plants, seedlings, leaves, and paraphernalia recovered from Defendant's mother's house on January 6, 2006, and that a reading of the supporting affidavit clarifies the bases for the two different counts. In addition, according to the discovery provided by the Republic as stipulated by the parties, Defendant has received all discovery in the government's possession with the exception of the lab results for the suspected marijuana, which the Republic agreed to provide as soon as the results were received from the Guam Crime Lab.

The Court has never had occasion to rule specifically on the issue of whether a defendant is entitled to a bill of particulars when, notwithstanding the fact that the charging documents provide sufficient information of the charges against him, the defendant maintains that the additional information is necessary in order to be able to adequately prepare a defense for each count. In this case, however, the Court finds that a reading of the Information and Affidavit of Probable Cause, coupled with the full discovery provided, sufficiently informs Defendant of the dates and locations that the violations are alleged to have occurred.

A reading of the Information shows that all of the necessary elements of the offenses for which Defendant has been charged have been alleged by the prosecution. Each count specifies the specific time frame and element of the possession charge, and thus satisfies the specificity requirement to **§ 291** inform the accused of the charges against him which he must defend. See *ROP v. Kumangai*, 10 ROP 176, 177 (Tr. Div. 2001). The Information supports the Republic's claim that Count One includes conduct on the part of Defendant over a several month period and is not limited solely to the marijuana seized at the pump station, while Count Three refers to items seized from Defendant's house on January 6 pursuant to a search warrant. It has further been established at the hearing that the seeds, leaves, buds, paraphernalia, and residue were found in his mother's house—not in Defendant's house. Defendant therefore has obtained additional facts regarding the charges against him relating to the various plants recovered from

jurisdiction in which it originated.”)).

the different locations.

When the government provides full discovery, and where as in this case, the parties stipulated at the hearing that the government has provided Defendant with additional information regarding the charges against him, including ongoing discovery, it is difficult to find any undue surprise on the part of Defendant. The Court therefore agrees with the Republic that in this case, the defense requests relating to the trafficking and possession charges for exact dates, times, numbers of plants, height, weight, and location of each, are not necessary to enable Defendant to adequately prepare a defense against the charges. And while the point is now moot in light of the complete discovery, the Court nevertheless notes that it disagrees with the argument that the Defendant should not be forced to review the discovery in order to attempt to determine what item is the subject of each count. Where the charging documents and discovery provide specific and adequate information with respect to each item, nothing further is required from the government. While the government must certainly disclose its theory of prosecution, it cannot be forced to disclose all the evidence it intends to produce or to provide specific details of how each charge will be proved at trial. See *United States v. Grace*, 401 F. Supp.2d1103, 1106 (D. Mont. 2005).

CONCLUSION

Upon review of the motion and opposition thereto as well as after hearing the arguments presented, the Court finds that the Republic has the better argument. The criminal information, affidavit of probable cause in support thereof, as well as the continuing and ongoing disclosure of discovery, provide sufficient information of the charges against Defendant. Said information is sufficient to prevent any undue surprise on the part of Defendant to be able to adequately present a defense against the charges. Accordingly, the motion for a bill of particulars is DENIED.