

STATE OF MARYLAND

v.

HELEN L. HOLTON

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IN THE  
CIRCUIT COURT  
FOR BALTIMORE CITY  
Case No. 109209024

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**MEMORANDUM IN SUPPORT OF THE STATE'S ANSWER  
TO THE DEFENDANT'S DEMAND FOR A BILL OF PARTICULARS**

In her Demand for a Bill of Particulars, the Defendant has propounded a series of interrogatories which she claims need to be answered in order to "avoid surprise at trial". As is indicated in the State's Answer, under the guise of seeking facts, the demands actually seek the State's theories about how one piece of circumstantial evidence may relate to other pieces of circumstantial evidence and what inferences may be drawn from those relationships. As the State's Answer further reflects, extensive discovery has already been produced. Included in the discovery which the State has produced is the Grand Jury testimony of each State's witness, reports of the statements of the State's witnesses, telephone records, checks, corporate records, campaign records and a host of other documents which provide the Defendant with actual facts. Considering the extensive discovery that has been produced, it is difficult for the Defendant to argue, in good faith, that she will be surprised at the trial.

In reality, what the Defendant seeks in her Demand for a Bill of Particulars is to limit the State's theories and trial tactics. While this may be the goal of the Defendant, it is not the purpose of a Demand for a Bill of Particulars. Perhaps, the leading case in Maryland involving a bill of particulars is *Spector vs. State*, 289 Md. 407, 425 A.2d 197

(1981). In that case, the Court of Appeals discussed a demand for a bill of particulars in the context of a bribery case. Initially, the Court in *Spector* noted that particulars are not granted as a matter of right, but rest within the sound discretion of the trial court.

Especially where indictments have been drawn utilizing the short forms permitted by the Maryland statutes, particulars have been generally granted. In this case, however, the short form indictment was not utilized. To the contrary, the indictment is quite detailed and sets forth specific facts as a part of the charging document.

*Spector* reaffirmed that a Demand for a Bill of Particulars is not to be utilized in order to limit the State's theories of prosecution. Citing with approval *Hadder vs. State*, 238 Md. 341, 209 A.2d 70 (1965), the Court in *Spector* observed:

““But bills of particulars are intended to guard against the taking of an accused by surprised by limiting the scope of the proof...They have never, to our knowledge, been utilized for the purpose of requiring the State to elect a theory upon which it intends to proceed. As the Court succinctly stated in *Rose v. United States*, 149 F.2d 755 (C.A.9): ‘The purpose of a bill of particulars is to secure facts, not legal theories’ In *United States v. Fruehauf*, 196 F.Supp. 198 (U.S. D.C., S.D.N.Y.), the Court named five theories upon which the prosecution might proceed, but denied a motion for a bill of particulars which asked that the Government be required ‘to state which of the theories it is relying upon and to state, if its claim is based upon any other contention or premise, what such contention or premise is.’... We hold that, under the circumstances involved here, the appellant was not entitled to make the prosecution select and state its theory of the case...” *Spector*, 425 A.2d at 204. (Citations and other authorities omitted) (Emphasis supplied)

Subsequently *Ross vs. State*, 308 Md. 337, 519 A.2d 735 (1987) addressed the same issue relating to a demand for a bill of particulars. In that case, the Defendant was charged in a short form indictment with murder. The Court reaffirmed its position in *Spector vs. State, supra*, that a bill of particulars is appropriate only to furnish the

Defendant with additional facts and may not be employed to require the State to select or announce the theories upon which it will be proceeding. In *Ross* the Court stated,

“He [the Defendant] is not told whether the State will proceed upon one or another, or upon several theories concerning the particular malevolent state of mind alleged to have been present, but neither is he entitled to this information as a matter of constitutional due process. We have held that even where it is proper or desirable to require the State to furnish a Defendant with additional *facts* by means of a bill of particulars, that procedure may not be employed to require the State to select or announce the *theory* upon which it will proceed...It is appropriate in context of this case to point out that the courts of this State have been quite liberal in granting particulars where indictments have been drawn in the short forms permitted by statute...and that in certain instances where the indictment fails to allege the specific manner in which the crime was committed, particulars may be required.... The indictment in this case was sufficient to protect the accused from a future prosecution for the same offense” 519 A.2d at 739 (Citations omitted) (Emphasis original)

Likewise, in this case, the indictment returned against the Defendant has been particularized and is more than sufficient to protect the Defendant from any claim of double jeopardy in the future. What the Defendant is seeking under the guise of asking for “facts” is the State’s theories.

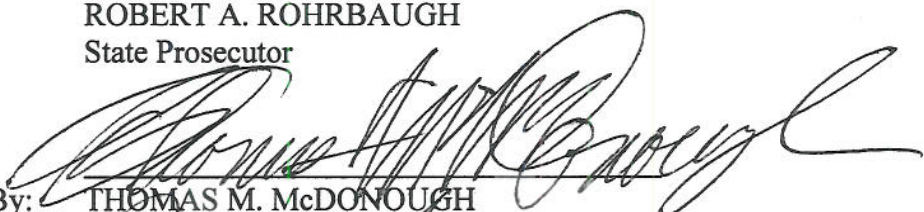
Although the Defendant has tried to carefully couch her demands for “exact dates”, or for “the precise words” used, as requests for facts, these requests are made, not to elicit the facts (which are laid out in great detail with all reasonable specificity in the indictment), but to require the State to outline for the defendant its theory as to how the evidence fits together to prove the crime. Indeed, it is respectfully suggested that the Defendant’s demands in this case are not really intended to elicit facts in order to avoid a claim against possible double jeopardy in the future or to avoid factual surprises at trial. The demands really seek to have the State announce before the opening trial statement

the State's trial tactics and theories. Such is not the purpose of a Demand for a Bill of Particulars.

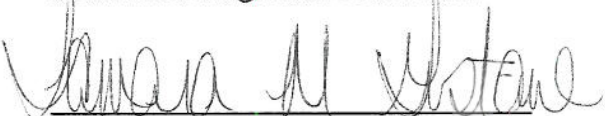
Accordingly, it is respectfully requested that the Demand for a Bill of Particulars be denied, especially considering the fact the indictment is already particularized and extensive discovery has already been produced.

Respectfully submitted,

ROBERT A. ROHRBAUGH  
State Prosecutor

  
By: THOMAS M. McDONOUGH  
Deputy State Prosecutor

  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 23rd day of September, 2009 a copy of the foregoing **MEMORANDUM IN SUPPORT OF THE STATE'S ANSWER TO DEFENDANT'S DEMAND FOR BILL OF PARTICULARS** was mailed, postage prepaid, to, Joshua R. Treem, Esp. and Richard C.B. Woods, Esq., Schulman, Treem, Kaminkow and Gilden, P.A., The World Trade Center, Suite 1800, 401 E. Pratt Street, Baltimore, Maryland 21202.

**I FURTHER CERTIFY** that I am more than eighteen (18) years of age.

A handwritten signature in black ink, appearing to read 'A. B. Boyd', written over a horizontal line.