
TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee

v.

RAPHAEL DABUCHIREN, Defendant-Appellant

Criminal Appeal No. 53

Appellate Division of the High Court

Yap District

June 16, 1982

Appeal from conviction for embezzlement. The Appellate Division of the High Court, Gianotti, Associate Justice, held that where prosecutor, in responding to a Bill of Particulars, denied any knowledge of what was done

with the embezzled money, but at trial called two witnesses to testify to that issue, prosecutor's conduct was sufficient to constitute prejudice against the defendant, and defendant's conviction was reversed.

1. Criminal Law—Bill of Particulars—Fundamental Right

The process of discovery and especially a Bill of Particulars in a criminal case should be a fundamental right and benefit available to all defendants in the Trust Territory.

2. Criminal Law—Bill of Particulars—Denial

A prosecutor should not be allowed to deny or avoid a Bill of Particulars by merely stating that it is an unfair procedure.

3. Criminal Law—Bill of Particulars—Function

The principle function of a Bill of Particulars is to apprise a defendant of essential facts of the crime for which he has been indicted, especially in instances where the indictment itself does little more than track the language of the statute allegedly violated.

4. Criminal Law—Bill of Particulars—Effect

When a Bill of Particulars has been furnished to the defendant, the Government is strictly limited to particulars which it has specified.

5. Criminal Law—Bill of Particulars—Response

Where any request for particulars is granted, Government need not respond with detail envisioned by the motion, and a general disclosure of information sought will suffice, but if the Government cannot safely respond in precise terms because of uncertainty as to facts, it should respond in approximate terms.

6. Criminal Law—Bill of Particulars—Particular Cases

Where defendant was charged with embezzlement, and sought a Bill of Particulars, asking what was done with the embezzled money, and the prosecutor answered by stating it was unknown, and yet at trial prosecutor introduced two witnesses who testified as to the use of the money, the prosecutor's conduct was prejudicial to the defendant and was sufficient to set aside defendant's conviction.

Counsel for Appellant:

WILLIAM M. FITZGERALD, ARRIOLA
& CUSHNIE

Counsel for Appellee:

JOHN K. RECHUCHER, *District Attorney*

Before BURNETT, *Chief Justice*, GIANOTTI, *Associate Justice*, and LAURETA, *Temporary Justice by Appointment of the Secretary of Interior*

GIANOTTI, *Associate Justice*

Appellant was initially charged under High Court file, Yap District, 176-73, on or about August 16, 1973, charging him with various counts of obtaining money by false pretenses and embezzlement. Subsequently, on or about January 10, 1974, appellant was charged in High Court files 1-74 and 15-74 with subsequent counts of obtaining money by false pretenses and embezzlement. Appellant pleaded not guilty to all charges, the cases were joined for trial, and trial was held in July 1975. As a result thereof, appellant was convicted of twelve counts of embezzlement.

Appellant, in his appeal, raised various issues, and both appellant and appellee, in their briefs, appear to be primarily concerned with lack of speedy trial. However, this Court will concern itself with another matter at this time, a point raised by the appellant and a point of which the Court has a great deal of concern as the same issue has been raised in other High Court cases. Appellant, in all three cases, sought a Bill of Particulars. Appellant seems to have been interested, in all three cases, to discover the following information:

In any count alleging embezzlement,

1. Where was the money taken from?
2. What was done with the money?
3. Was the money in cash or other form?
4. When did defendant convert the money to his own use?

A Bill of Particulars was specifically ordered and the information sought by appellant was specifically ordered by the Court. Appellee, in answering the specific questions, answered as follows:

As to the embezzlement counts, the checks show where the money was taken from and when it was taken and converted to the defendant's own use. What was done with the money after defendant obtained it *is unknown*. The money was not cashed until the bank or other party cashing the checks paid cash. (Emphasis added.)

At the time of trial, appellee introduced two witnesses, DeLeon and Kluver. In each instance, appellee attempted to show what was done with the money, and appellant raised appropriate objection to these instances.

[1, 2] The process of discovery and especially a Bill of Particulars in a criminal case should be a fundamental right and benefit available to all defendants in the Trust Territory. No prosecutor, if he has a valid criminal charge and sufficient evidence to convict, need resort to subterfuge or deceit. If the prosecutor does not have sufficient evidence, then the charge should never be filed, or the defendant should be acquitted. A prosecutor should not be allowed to deny or avoid a Bill of Particulars because, as stated in the transcript of this appeal, "It's an unfair procedure."*

[3] In any event, it would seem the appellee was not completely open and aboveboard by denying to appellant knowledge as to appellant's supposed use of cash and then calling witnesses to, in fact, show the use of cash. Appellant complained of surprise, rightfully so.

Principle function of a Bill of Particulars is to apprise Defendant of essential facts of the crime for which he has been indicted. Especially in instances where the indictment itself does little more than track the language of the statute allegedly violated. *United States v. Salazer*, 485 F.2d 1272.

The purpose and function of a Bill of Particulars is to supply additional details of the Government's case, clearly sufficient to enable Defendant to prepare his defense. *Trett v. United States*, 421 F.2d 928.

The function of a Bill of Particulars is to avoid surprise and prejudice to an accused. *United States v. Willoz*, 449 F.2d 1321, 1323.

[4] By denying any knowledge of the use of the cash by the appellant, without revealing to the appellant appellee's intention to call DeLeon to show the use of that cash,

* Transcript, page 189.

did not allow the appellant sufficient details to prepare his defense, and the appellee, by his use of evidence not revealed to appellant, must be limited only to proving what the appellee set forth in the Bill of Particulars.

The function of a Bill of Particulars is to enable the accused to prepare for trial and to prevent surprise, and to this end, the Government is strictly limited to proving what it has set forth. *United States v. Glaze*, 313 F.2d 757.

When a Bill of Particulars has been furnished to the defendant, the Government is strictly limited to particulars which it has specified. *United States v. Haskins*, 345 F.2d 111. *United States v. Armco*, 255 F. Supp. 841.

[5] In order to have properly used the testimony of the witnesses introduced as to the use of the cash, defendant was required to respond to the Bill of Particulars.

Where any request for particulars is granted, Government need not respond with detail envisioned by the motion, and a general disclosure of information sought will suffice, but if the Government cannot safely respond in precise terms because of uncertainty as to facts, it should respond in approximate terms. *United States v. Smith*, 65 F.R.D. 464.

[6] Appellee's counsel's conduct was sufficient to constitute prejudice and certainly should be enough to set aside appellant's conviction.

Appellant has also raised additional issues, namely denial of a speedy trial. However, this Court does not deem it necessary to go into these additional matters, as there is sufficient grounds to overturn the conviction by appellee's failure to disclose.

The decision of the trial court is hereby reversed.