

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE, )
v. )
CHE' ANTHONY BERRY CANNON. )
SECOND DIVISION
Docket No. 304485

DEFENDANT CHE' ANTHONY CANNON'S MOTION NO. 1:
MOTION FOR A BILL OF PARTICULARS

COMES NOW defendant Che' Anthony B. Cannon, pursuant to Tenn. R. Crim. P. 7(c) and State v. Hammonds, 30 S.W.3d 294 (Tenn. 2000), and requests the State to furnish a Bill of Particulars with reference to the above-numbered Presentment, to include as to Mr. Cannon:

- 1. The exact nature and circumstances of his alleged racketeering pattern so that the defendant may have notice of the criminal act(s) to be proved beyond a reasonable doubt against him at trial. Specifically, notice must be given of any "incident of racketeering activity" ("Predicate Act") alleged to support the Presentment's claim of his involvement in a "pattern of racketeering activity." See TENN. CODE ANN. § 39-12-203(6).
2. The exact nature and circumstances of his alleged "criminal gang offense," TENN. CODE ANN. § 40-35-121(a)(3) constituting "racketeering activity" which Mr. Cannon is claimed to have committed, attempted to commit, conspired to commit, solicited, coerced or intimidated another to commit. TENN. CODE ANN. § 39-12-203(9).
3. The identity of any person present when any required Predicate Act(s) or criminal gang offense took place. See State v. Hicks, 666 S.W.2d 54, 56 (Tenn. 1984); see also TENN. CODE ANN. § 39-12-203(6) (pattern as involving same victims and/or accomplices).
4. The exact distinguishing and interrelated characteristic(s) of any Predicate Act, as expressly required in establishing a "pattern of racketeering activity" per the statute. TENN. CODE ANN. § 39-12-203(6) (requiring proof of same or similar intents, results, methods of commission or otherwise distinctive particularities).
5. The exact location(s) in Hamilton County where his Predicate Act(s) and/or criminal gang offense activity is alleged to have occurred.
6. The exact date(s) upon which his Predicate Act(s) and/or criminal gang offense activity is alleged to have occurred.
7. If his criminal gang offense activity and/or Predicate Act is one specifically alleged in Count Three through Thirteen of the Presentment, notice under the Bill of Particulars should state with specificity the above required information describing Mr. Cannon's direct or indirect involvement in such conduct.

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AS GROUNDS, Cannon is charged in Count One: *The Racketeering Enterprise* and Count Two: *The Racketeering Conspiracy* (“the substantive RICO counts”) of the instant Presentment. He is not charged in any remaining count. At present, the Presentment fails to charge a criminal offense as to Cannon. Further, it raises potential statute of limitations, *ex post facto*, double jeopardy, and other Rule 12 concerns.

The Court’s *Arraignment and Case Management Order* of 30 April 2018, requires *Tenn.R.Crim.P.* 16 discovery compliance by the State no later than October 31, 2018. This, however, is ninety (90) days after the date by which Cannon is required to file his dispositive motions. *Tenn.R.Crim.P.* 12(b)(2)(A)&(B). Mr. Cannon should not be required to wait for Rule 16 discovery, which may or may not, address the requisite elements to be proved at trial specifically as to him. Judicial economy, as well as constitutional considerations, dictate that the State address these *de minimis* threshold burdens now, not in six months.<sup>1</sup>

The “function of a bill of particulars is to provide defendant with information about the details of the charge against him if this is necessary for the preparation of his defense, and to avoid prejudicial surprise at the trial.” *See Hicks, supra* at 56, *quoting* 1 C. Wright Federal Practice and Procedure, Criminal, §131 (1982). Such a bill is not a discovery tool to ascertain theories and evidence, but if necessary to prepare the defense notice of the details “will be required even if the effect is disclosure of evidence or of theories.” *Id.* Without a Bill of Particulars in this case defendant remains hobbled in his ability to prepare a defense, file appropriate motions, challenge the excessiveness of bond, locate and interview witnesses, discover and assess counsel’s possible conflicts of interest vis-à-vis witnesses, examine venue

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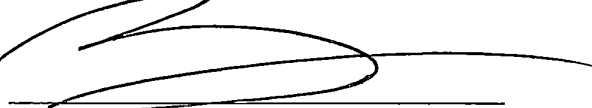
<sup>1</sup> Notably, this case –while novel and arguably complex – is not one that justifies a lengthy state discovery deadline. As opposed to a complaint arising from an arrest, the timing of charges here was entirely within the State’s unfettered discretion and control. Its ability to investigate, prepare, and organize has been unimpeded and all discovery material as to each respective co-defendant should have been ready at the time of arraignment. See defendant’s Motion No. 2: *Objection to Case Management Order*.

and jurisdiction, and engage in virtually every other component critical to an effective and ethically sound defense. Consequentially, the State cannot satisfy its burdens under Tenn. Const. art. I, § 9, Sixth Amendment, and *Tenn. R. Crim. P. 7(c)*, with the blanket, conclusory and non-individuated Presentment currently at issue. *See State v. Byrd*, 820 S.W.2d 739 (Tenn. 1991) (conviction must be reversed if trial establishes state possessed and withheld information helpful to pinpoint the time, nature, and place of offense); *see also Stanley v. State*, 104 S.W.2d 819, 821 (Tenn. 1937) (whether by indictment or presentment, the charging document must be sufficient in its statements and charges to advise the accused of the offense so as to enable him to mount a defense); *Hicks, supra* 57 (“[t]he issue before us is not whether the indictment in this case is legally sufficient to whether or not the defendants timely motion for bill of particulars respecting the time and place of the offenses charged just been granted under Rule 7(c).... We are of the opinion that the defendant’s motion should have been granted and that the trial court committed reversible error in denying that motion”).

WHEREFORE, notice of these particulars is necessary to protect defendant’s constitutional rights and to determine the necessity of timely challenging the Presentment or its institution prior to the October discovery deadline. Without this notice defendant will be deprived of a fair trial, effective assistance of counsel, and due process under the Fifth, Sixth and 14<sup>th</sup> Amendments to the United States Constitution and Tenn. Const., art. I, §§ 8 and 9.

Respectfully submitted,

SUMMERS, RUIFOLO & RODGERS, PC,



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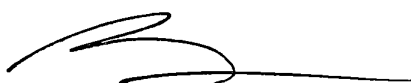
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing document has been duly served upon:

NEAL PINKSTON  
BARRY WILLIAMS  
Hamilton Co. District Attorney  
600 Market Street, Room 310  
Chattanooga, TN 37402

either by hand delivery or by placing a copy of same in the United States mail, properly addressed with sufficient postage affixed thereto to carry same to its destination.

This 10 day of May, 2018

  
Ben McGowan