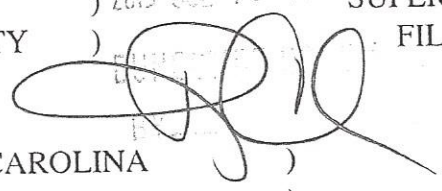


FILED

NORTH CAROLINA)
BUNCOMBE COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS: 15CRS000432-433

2015 JUL 10 PM 1:14



STATE OF NORTH CAROLINA)

vs.)

MOTION FOR BILL OF PARTICULARS

MICHAEL MAYO MACKE,)
Defendant)

NOW COMES the Defendant, by and through his undersigned counsel, pursuant to N.C.Gen.Stat. § 15A-925 and § 15A-952(b)(6)(c), and respectfully moves the Court to enter an Order requiring the State to file a Bill of Particulars regarding the issues presented below and states to the Court as follows:

1. That on or about May 11, 2015, the Defendant was charged in a bill of indictment in 15 CRS 432, alleging that the Defendant conspired to commit a Class G felony and that the Defendant engaged in a continuing criminal enterprise. In addition, the Defendant was further charged with Felony Operating Five or More Video Gaming Machines and Misdemeanor Operating a Lottery in 15 CRS 433.
2. That Defendant is alleged to have conspired to commit a felony by:

Conspiring with "Allister "Lenny" Lennox in an ongoing and open-ended conspiracy to operate five or more video gaming machines in violation of NCGS 14-306.1A and NCGS 14-309(b)."
3. That this Defendant seeks a Bill of Particulars to inquire as to what evidence the State intends to present regarding each and every act, statement, and/or event that the State contends constitutes the existence of a conspiracy, including, but not limited to, exactly when and where the alleged conspiracy began.
4. That this Defendant seeks the evidence the State intends to present regarding the exact nature of the terms, goals and/or objectives of the alleged conspiracy.
5. That this Defendant seeks the evidence the State intends to present regarding exactly when and where, if at all, the alleged conspiracy ended or when the conspiracy was otherwise completed or abandoned.

6. That this Defendant seeks the evidence the State intends to present regarding the persons who were involved in the alleged conspiracy, and for each person involved, the nature of their involvement and the exact time period each individual participated in the conspiracy.
7. That this Defendant seeks the evidence the State intends to present regarding a detailed description of the overt acts, if any, that were committed during the existence of the conspiracy; and if any crimes were committed, who committed the crime and when such crime was committed.
8. That this Defendant seeks any other evidence the State intends to present regarding the scope, extent, terms, or any other indication of the nature of the conspiracy, including any information in the prosecution's files that would establish or tend to establish the existence of any element of the conspiracy charge.
9. That Defendant is also alleged to have engaged in:

“...a continuing criminal enterprise by violating the felony provisions of N.C.G.S. 14-306.1A and N.C.G.S. 14-309(b). This enterprise was a continuing series of violations of the aforesaid felony provisions, and was undertaken in concert with five or more other persons to whom the defendant occupied a position as organizer, supervisor, and manager, and from which the defendant obtained substantial income or resources.”
10. That this Defendant seeks a Bill of Particulars to inquire as to what evidence the State intends to present regarding the name of each person who was allegedly involved in the continuing criminal enterprise; and for each person involved, the exact nature of the relationship between that person and the Defendant and the times that each person was involved in the continuing criminal enterprise.
11. That this Defendant seeks the evidence the State intends to present regarding the continuing series of violations alleged in the indictment, including a detailed description of each violation.
12. That this Defendant seeks the evidence the State intends to present regarding the number of gaming machines involved in the continuing criminal enterprise, the exact location of each gaming machine, and a description of the exact type of gaming machine at issue.
13. That this Defendant seeks the evidence the State intends to present regarding a specific description of the resources or income the Defendant obtained directly from the alleged continuing criminal enterprise.

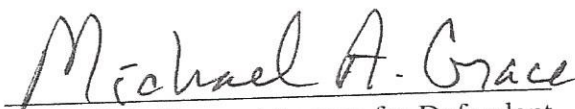
14. That Defendant is also alleged in Count 1 of 15 CRS 433 to:
“Knowingly operate, allow to be operated, placed into operation, or kept in his possession for the purpose of operation, five or more video gaming machines.”
15. That in Count 2 of 15 CRS 433 Defendant is also alleged to:
“Knowingly did operate, open, set on foot, carry on, promote, make or draw a lottery.”
16. That the charging documents fail to properly allege the elements of the crime with enough degree of particularity to appraise the Defendant of the State’s allegations against him. See *State v. Randolph*, 312 N.C. 198, 321 S.E.2d 864 (1984).
17. That the Defendant seeks a Bill of Particulars to inquire as to what evidence the State intends to present regarding what acts he allegedly committed to knowingly operate five or more “video gaming machines” and knowingly operate a “lottery.”
18. That the Defendant inquires as to what evidence the State intends to present regarding how Defendant operated or placed into operation video gaming machines.
19. That in order to properly prepare an adequate defense to these charges, the State must specify what machines are at issue and what features renders these machines to be video gaming machines as defined in N.C.G.S. § 14-306.1A.
20. That in order to properly prepare an adequate defense to these charges, the State must specify which what evidence they intend to offer regarding how the Defendant operated a lottery including, but not limited to how the State is defining the term “lottery”.
21. That this Defendant seeks the names, addresses, telephone numbers and current occupations of each witness the State expects to call to establish each of the elements of each circumstance listed in the answers contained in the paragraphs above, along with a statement of the expected testimony of each witness.
22. That the boilerplate language of the indictments is insufficient to apprise this Defendant of the State’s allegations pertaining to his participation in a conspiracy to commit a felony or his participation in a continuing criminal enterprise and he therefore requests that this Honorable Court exercise its discretion to order the State to inform the Defendant of the nature of the evidence which the State proposed to offer in its case-in-chief. See, e.g. *State v. Hickey*, 317 N.C. 457, 346 S.E.2d 646 (1986); *State v. Cameron*, 283 N.C. 191, 195 S.E.2d 481 (1973). It is a well-established rule of law that a defendant may request a Bill of Particulars to obtain

information to supplement the facts contained in the indictment and this is particularly true when the indictment is not instructive and is merely boilerplate allegations. State v. Randolph, 312 N.C. 198, 321 S.E.2d 864 (1984).

23. The Defendant strongly maintains that the indictment itself is insufficient information for the Defendant to prepare an adequate defense as defense counsel can find no precedent in North Carolina for the charges leveled at Defendant. State v. Easterling, 300 N.C. 594, 268 S.E.2d 800 (1980).
24. The granting of a Bill of Particulars is reserved to the sound discretion of the trial court in any case.

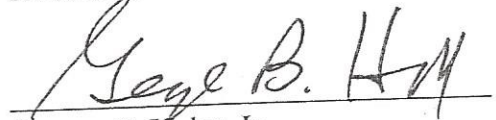
WHEREFORE, Defendant, through counsel, requests that the Court exercise its discretion in this matter and Order that the State provide the Defendant's counsel with the entirety of the State's theory of prosecution and its intended means of implementing the same at trial.

Respectfully submitted, this the 10th day of July, 2015.



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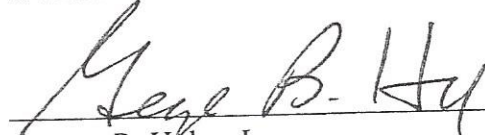
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has on this date served a copy of the foregoing **MOTION FOR BILL OF PARTICULARS** on counsel for the State of North Carolina by hand delivery to the office of:

Alex Bass
Assistant District Attorney
28th Prosecutorial District
60 Court Plaza
Asheville, NC 28801
(828) 259-3411 - fax

THIS the 10th day of July, 2015.

HYLER & LOPEZ, P.A.


George B. Hyler, Jr.