

THE FACTS¹

Discovery and oral argument on the defendant's motion to dismiss the indictment has given a basic factual outline of the state's claims in this case. Arthur W. Boedecker worked as an electric lineman for the FirstEnergy Corporation since at least the mid-2000s. He was a member of Local 270 of the Utility Workers Union of America. At some times relevant to this case he also served as an official of the union. Most recently, he was the local's vice president in parts of 2013 and 2014.

When union members and officials participate in union activities that cause them to miss work they are entitled to "lost time" payments from the union. The payments are made when a member submits to the local a voucher averring that wages were forgone because the member lost paid hours at work while engaged in union business. But the benefit is more accurately described in shorthand as "lost time and pay" because a union member is not entitled to the payment from the union if the employer compensated the member for the time. Over the period charged in the indictment's theft counts Boedecker submitted many vouchers claiming either lost time for instances where he had actually been paid by FirstEnergy or for hours that were not actually lost. The union then paid him the claimed amounts.

The union did not discover any of the false claims until 2014, when Boedecker claimed lost time for a union meeting convened at FirstEnergy's request. That claim raised suspicions because when FirstEnergy calls a meeting it pays its employees' wages and the union is not responsible for lost time payments. Ultimately the union, with the assistance of the United States

¹ There is no evidence of record but the parties seem to agree that the narrative of events given here is a more or less accurate summary of the facts the state believes it can prove in support of its case.

Department of Labor, determined that Boedecker applied for and collected from the union \$40,203.98 that he was not entitled to from February 2005 through May 2014.

The prosecutor's November 18, 2016 bill of particulars essentially parrots the indictment, except that for each count it adds the address where the thefts (for counts one and two) and the transactions (for counts three through nine) were alleged to have been committed, namely 1400 E. Schaaf Road in Brooklyn Heights, the headquarters of UWUA Local 270.

The defendant's motion for a more specific bill of particulars seeks to compel the state to identify, for counts one and two, the specific dates when he allegedly deprived the union of property and, for each of those dates, the corresponding value of the property stolen. For counts three through nine, the defendant asks the prosecutor to specify facts constituting the "corrupt activity" element of each money laundering charge and to "[s]tate the facts that distinguish unlawful activity from 'corrupt activity' as charged in the [i]ndictment."²

THE LAW

Bill of particulars

Rule 7(E) of the Ohio Rules of Criminal Procedure provides that, upon request, the "prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charged and of the conduct of the defendant alleged to constitute the offense." The purpose of a bill of particulars is to particularize the conduct of the accused alleged to constitute the charged offense. *State v. Waszily*, 105 Ohio App. 3d 510, 516 (8th Dist. 1995). It is intended to inform a defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to prevent surprise, or to plead his acquittal or

² Motion to compel, page 2.

conviction in bar of another prosecution for the same offense. *State v. Rivers*, 8th Dist. No. 83321, 2004-Ohio-2566, ¶15. But a bill of particulars is not meant as a substitute for discovery. *State v. Bell*, 112 Ohio App. 3d 473, 480 (3d Dist. 1996).

The theft counts

Counts one and two allege theft by deception under section 2913.02(A)(3) of the Ohio Revised Code. The only difference is the dates as described in the first paragraph of this opinion. But for each count those dates encompass a broad period: more than seven years for count one and over two years for count two. Moreover, discovery and the state's theory of the case set out in connection with the motion to dismiss have revealed that neither count describes a one-time event. Instead, the state has charged Boedecker under R.C. 2913.61(C)(1), which provides that when a series of thefts is committed by the same person in the same relationship to another then all of the offenses "shall be tried as a single offense." It is therefore clear that the prosecutor intends to try to prove that Boedecker engaged in the allegedly deceptive conduct more than once for each of the time periods in the indictment.

Yet for those same time periods it is conceivable that he presented vouchers for lost time payments that he was entitled to receive and which did not amount to theft by deception. Accordingly, under Criminal Rule 7(E), Boedecker is entitled to the information he has requested: the date and amount of each deceptive voucher. This will enable him to focus his defense on those dates only and not on other dates in the charged time periods when he might have submitted non-deceptive vouchers. It will also prevent the state from prosecuting him in the future for deceptive vouchers described in the more specific bill of particulars. Finally, by allowing for a calculation of the aggregated total amount of the vouchers listed on the more

specific bill of particulars, Boedecker will be prepared to defend against the claims for the felony amounts.

Accordingly, the defendant's motion is granted as to counts one and two. For those counts, the state is ordered to produce to Boedecker a more specific bill of particulars to include the date of each voucher alleged to be deceptive and based upon which the defendant was compensated by the union, and the amount of compensation paid to him because of the voucher.

The money laundering counts

For counts three through nine, Boedecker argues that without a bill of particulars describing the "corrupt activity" he allegedly had the purpose to carry on by the transactions he is "left to wonder just what it is"³ the prosecutor claims he intended to accomplish.

The defendant is charged with money laundering under R.C. 1315.55(A)(3), which says that "[n]o person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity." R.C. 1315.51 provides that, for purposes of R.C. 1315.55(A)(3), "corrupt activity" has the same meaning as in R.C. 2923. In turn, R.C. 2923.31(I) brings within the ambit of "corrupt activity" many different crimes under R.C. Chapter 29, including murder, kidnapping, arson and other offenses clearly not implicated here, but also including theft of more than \$1,000, money laundering, telecommunications fraud, unlawful use of a telecommunications device, perjury, tampering with evidence, obstructing justice and other crimes that, depending on the conduct the state intends to prove, might be implicated here. As a result, basic fairness requires the state to disclose to Boedecker the "corrupt activity" it expects

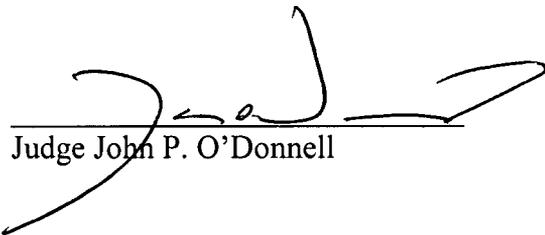
³ Mtn. co compel, p.10.

to prove he was furthering through the transactions set out in counts three through nine, and since discovery is not a substitute for a bill of particulars, that conduct ought to be disclosed in a more specific bill of particulars.

CONCLUSION

For the reasons given here, the defendant's December 22, 2016 motion to compel a more specific bill of particulars is granted and the state is ordered to furnish to the defendant a supplemental bill of particulars describing 1) the date and amount of each lost time payment voucher presented to UWUA Local 270 by the defendant and alleged to be deceptive and 2) the "corrupt activity" under R.C. 2932.31(I) that the state alleges the defendant intended to promote, manage, establish or carry on by the seven transactions alleged in counts three through nine .

IT IS SO ORDERED:



Judge John P. O'Donnell

March 21, 2017
Date

SERVICE

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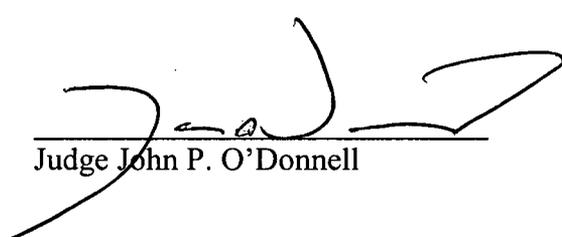
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Judge John P. O'Donnell