

DEFENDANT'S DEMAND FOR
BILL OF PARTICULARS

The Defendant, by counsel, respectfully requests this Court to grant its motion for a bill of particulars. In support of his Demand, the Defendant states the following:

1. The Defendant has been charged by Information with three counts; [list charges].
2. The above-captioned cause is scheduled for trial by jury on[date].
3. Indiana Code 35-34-1-2(a) sets forth the Information requirements in Indiana. It reads as follows:

(a) The indictment or information shall be in writing and allege the commission of an offense by:

- (1) stating the title of the action and the name of the court in which the indictment or information is filed;
- (2) stating the name of the offense in the words of the statute or any other words conveying the same meaning;
- (3) citing the statutory provision alleged to have been violated, except that any failure to include such a citation or any error in such a citation does not constitute grounds for reversal of a conviction where the defendant was not otherwise misled as to the nature of the charges against the defendant;
- (4) setting forth the nature and elements of the offense charged in plain and concise language without unnecessary repetition;
- (5) stating the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense;
- (6) stating the time of the offense as definitely as can be done if time is of the essence of the offense;
- (7) stating the place of the offense with sufficient particularity to show that the offense was committed within the jurisdiction of the court where the charge is to be filed;
- (8) stating the place of the offense as definitely as can be done if the place is of the essence of the offense; and
- (9) stating the name of every defendant, if known, and if not known, by designating the defendant by any name or description by which he can be identified with reasonable certainty.

4. “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland v. Washington, 466 U.S. 668 (1984). This rule is necessary to enable counsel to make a reasonable strategic choice against pursuing a certain line of investigation, the attorney must obtain the facts needed to make the decision. (Citing Foster v. Lockhart, 9 F.3d 722, 726 (8th Cir.1993)). At no time is this responsibility more important than in a sexual assault case, when the attorney's duty to investigate all possible lines of defense is strictly observed.
5. Where a charging document is insufficient in its specifics and particularities, the accused is entitled to request a bill of particulars. Sherrick v. State, 167 Ind. 345 (Ind. 1906) (holding that although Indiana does not have a specific rule pertaining to a request for a bill of particulars, it is well known that a Motion for a bill of particulars can be granted at the court’s discretion).
6. The charging document in this case lacks the required specificity. It states no facts and it describes no conduct sufficient to allow counsel to conduct adequate investigation in this matter. Without more, counsel is unable to effectively investigate, or to prepare this matter for trial. Wiggins v. Smith, 539 U.S. 510 (2003); Strickland v. Washington, 466 U.S. 668 (1984).
7. Therefore, the Defendant respectfully requests that the State provide particulars as follows:

AS TO COUNT 1 (Rape)

- 1) Specify with particularity the precise manner in which the prosecution claims the alleged rape occurred;
- 2) Specify the conduct of the defendant which the prosecution believes comprises this offense.

- 3) State the identity of any persons who claim to have observed the Defendant engaging in the conduct alleged.
- 4) State with more particularity the precise time and exact place of this offense;

AS TO COUNT 2 (Felony Battery)

- 1) Specify with particularity the precise manner in which the prosecution claims the alleged battery occurred;
- 2) Specify the conduct of the defendant which the prosecution believes comprises this offense.
- 3) State the identity of any persons who claim to have observed the Defendant engaging in the conduct alleged.
- 4) State with particularity the “bodily injury” the defendant is alleged to have caused the complaining witness.
- 5) State with particularity the “touching” the defendant is alleged to have performed against the complaining witness.
- 5) State with more particularity the precise time and exact place of this offense;

AS TO COUNT 3 (Misdemeanor Battery)

- 1) Specify with particularity the precise manner in which the prosecution claims the alleged offense occurred
- 2) Specify the conduct of the defendant which the prosecution believes comprises this offense.
- 3) State the identify of any persons who claim to have observed the Defendant engaging in the conduct alleged.
- 4) State with particularity the “bodily injury” the defendant is alleged to have caused the complaining witness.
- 5) State with particularity the “touching” the defendant is alleged to have performed against the complaining witness.
- 6) State with more particularity the precise time and exact place of this offense;

