

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Bray and Fitzpatrick  
Argued at Richmond, Virginia

ALFONSO LAWRENCE RUSH, III

v. Record No. 2060-94-2  
COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JOHANNA L. FITZPATRICK  
APRIL 2, 1996

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY  
Paul M. Peatross, Jr., Judge

Norman Lamson for appellant.

H. Elizabeth Shaffer, Assistant Attorney  
General (James S. Gilmore, III, Attorney  
General, on brief), for appellee.

Alfonso Lawrence Rush, III (appellant) was convicted in a jury trial of possession of cocaine in violation of Code § 18.2-250(a). On appeal, he argues that the trial court erred in finding the indictment sufficient to inform appellant of the nature and cause of the charge against him and in failing to order a bill of particulars. Finding no error, we affirm.

On September 7, 1993, Officer Dana Slater (Slater) of the Albemarle County Police Department went to appellant's house to execute a capias for his arrest. Slater found a pipe with cocaine ashes and a wallet containing a single-edged razor blade with white powder residue. Slater arrested appellant, who was later indicted for possession of cocaine in December 1993. The indictment cited Code § 18.2-250(a) and read as follows:

---

\*Pursuant to Code § 17.116.010 this opinion is not designated for publication.

On or about September 7, 1993, in the County of Albemarle, ALFONSO LAWRENCE RUSH, III did unlawfully, feloniously and knowingly possess cocaine, a Schedule II controlled substance.

Appellant moved to dismiss the indictment on the grounds that it failed to state the nature and cause of the charge against him and did not identify the quantity, nature, and ownership of the cocaine. Appellant did not request a bill of particulars and contended that a bill of particulars would not cure the defects in the indictment. The trial court denied appellant's motion.

Code § 19.2-220 provides as follows:

The indictment or information shall be a plain, concise and definite written statement, (1) naming the accused, (2) describing the offense charged, (3) identifying the county, city or town in which the accused committed the offense, and (4) reciting that the accused committed the offense on or about a certain date. In describing the offense, the indictment or information may use the name given to the offense by the common law, or the indictment or information may state so much of the common law or statutory definition of the offense as is sufficient to advise what offense is charged.

The indictment should also "cite the statute or ordinance that defines the offense or, if there is no defining statute or ordinance, prescribes the punishment for the offense." Rule 3A:6(a). "Both the United States and Virginia Constitutions recognize that a criminal defendant enjoys the right to be advised of the cause and nature of the accusation lodged against

him. The important concerns evident in these provisions are fully honored by Virginia Code §§ 19.2-220, -221." Simpson v. Commonwealth, 221 Va. 109, 114, 267 S.E.2d 134, 138 (1980) (footnote omitted). See U.S. Const. amend. VI; Va. Const. art. I, § 8. "[I]t is no longer necessary to include in the indictment an allegation of every fact in the chain of circumstances comprising the offense charged." Howard v. Commonwealth, 221 Va. 904, 906, 275 S.E.2d 602, 603 (1981).

In the instant case, the trial court did not err in refusing to dismiss the indictment. "As the indictment named the accused, described the offense charged and cited the applicable statutes, identified the city in which the offense was committed, and recited that [appellant] committed the offense on or about a certain date, it met the requirements of Code § 19.2-220 and Rule [3A:6(a)]." Id. Appellant's argument that the Commonwealth was required to allege every fact that supported the charge against him is without merit. If appellant desired more information about which facts the Commonwealth intended to rely upon, he had the right to ask for a bill of particulars.

Additionally, the trial court did not err in failing to order a bill of particulars. "[A] defendant is not entitled to a bill of particulars as a matter of right. Whether the Commonwealth is required to file a bill of particulars rests within the discretion of the trial court." Quesinberry v. Commonwealth, 241 Va. 364, 372, 402 S.E.2d 218, 223, cert.

denied, 502 U.S. 834 (1991). "[A] bill of particulars is not required if the indictment gives an accused notice of the nature and character of the offense charged." Breard v. Commonwealth, 248 Va. 68, 76, 445 S.E.2d 670, 675, cert. denied, 115 S. Ct. 442 (1994). The trial court was not required to sua sponte order a bill of particulars. Appellant never requested one and, in fact, argued that a bill of particulars would not cure the indictment's defects. The indictment met the requirements of Code § 19.2-220 and thus adequately notified appellant of the nature and character of the charge against him.

Accordingly, the judgment of the trial court is affirmed.

Affirmed.