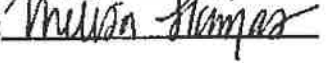


NOV 16 2021

Ruling on Demurer

People v. Benzeevi, Germany and Greene (VCF401053)
November 16, 2021

STEPHANIE CAMERON, CLERK

BY: 

At the hearing on the demurer, the court made rulings regarding the applicability of criminal rules of pleading (Penal Code § 948, *et. seq.*) contrasted with civil rules which do not apply here. The court also declined to take judicial notice of various matters as requested by the Defendants and found that the probable cause declaration originally filed in support of a so-called *Ramey* warrant was not incorporated into the complaint. The court denied the defense request to consider any extrinsic evidence on the demur and limited the current inquiry to “four corners” of the complaint. The court does not intend to revisit these issues in this ruling.

The court acknowledges as the parties have agreed, this case involves extremely complex allegations of white-collar crimes, in breach of public trust, among other claims. The events occurred over several years and the alleged crimes were apparently discovered somewhat later than they were allegedly committed. The investigation of the allegations produced many terabytes of documents which were seized by the prosecution over a period of years and the 28-page complaint alleges 46 separate counts, all of which are subject to the demurrer.

To simplify the ruling and refrain from unnecessary repetition, the court will follow an approach like the hearing on the demur, namely the Benzeevi and Greene arguments, to the extent that they mirror one another, will be addressed together when possible. Defendant Germany’s claims are slightly different and will be addressed separately, understanding that all defendants have joined in the Greene argument.

The Complaint alleges numerous counts of distinct crime types, and this ruling will address the demurrer as to each alleged law violation as a group, when possible. For example, counts 1-5, 8, 12-16, 19, 30, and 41 each allege violations of Penal Code § 424, embezzlement and falsification of accounts by public officer; counts 17 and 38 allege violations of Penal Code § 487, grand theft; count 40 alleges embezzlement, a violation of Penal Code § 514; counts 6, 7, 9, 10, 18, 20-29, 37, 42 allege conflicts of interest violations of Government Code § 1090; and counts 36 and 39 allege conspiracy, Penal Code § 182; counts 44-46 allege violations of Penal Code § 186.10(a), money laundering; count 43 alleges forgery, a violation of Penal Code § 115; counts 11, 31-35 allege misdemeanor violations of Government Code § 91000(a), using official position for personal gain. The demurrer as to each type of alleged crime will be addressed in turn.

Hoffman v. Superior Court (2017) 16 Cal. App. 5th 1086 is a leading case addressing the sufficiency and rationale of modern criminal rules of pleading.

Witkin provides a helpful historical context for these simplified pleading rules. “Early criminal pleading was lengthy, particular, detailed, and technical, and often led to reversal for variance despite convincing evidence of guilt at the trial. The justification for particularity and detail was fair notice to the defendant of the

circumstances of the crime where the charge was made after a secret session of the grand jury or an unreported preliminary examination before the committing magistrate." "Courts and legislatures eventually broke away from this traditional approach [citations], and California's statutory reform came in 1927. This gave the defendant the right to a transcript of the evidence taken before the grand jury or at the preliminary examination, thus eliminating the need for detailed specifications in the indictment or information. The Legislature also established the rule of simplified pleading for an indictment, information, or complaint, in one basic statute."

These simplified pleading rules are still subject to due process requirements. "Due process of law requires that an accused be advised of the charges against him in order that he may have a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial." (*In re Hess* (1955) 45 Cal.2d 171, 175. However, "an otherwise proper pleading may ... fail to afford due process notice" only "in unusual circumstances" (*People v. Lucas* (1997) 55 Cal.App.4th 721, 737.) As our high court explained in *People v. Jennings* (1991) 53 Cal.3d 334 "Under modern pleading procedures, notice of the particular circumstances of an alleged crime is provided by the evidence presented to the committing magistrate at the preliminary examination, not by a factually detailed information." (*Id.* at p. 358). (*Hoffman v. Superior Court* (2017) 16 Cal.App.5th 1086, 1091-1092.)

The *Hoffman* court goes on to observe that under modern pleading rules, the "information plays a limited but important role: it tells a defendant what *kinds* of offenses he is charged with (usually by reference to a statute violated, and it states the *number* of offenses (convictions) that can result from the prosecution. But the time, place and circumstances of the charged offenses are left to the preliminary hearing transcript." (*Id.*) (Emphasis added.)

As the parties have pointed out, the *Hoffman* pleadings were subject to several demurrers and amendments, even during the preliminary hearing and after. Ultimately, post-preliminary hearing, the prosecution filed an extremely detailed, amended information. Considering the above articulated pleading rules, the Court suggests that the amended pleading contained more information than is necessary to satisfy basic statutory pleading requirements. It would have been sufficient to state the charges simply in the language of the statute. The Court holds that "[d]ue process may require that the victim and type of fraud be identified.... And whether or not due process does so require we believe it to best practice where there are so many counts involved. But it was certainly unnecessary, under the statutory framework, to identify precise timeframes, patient files, or preliminary hearing exhibit numbers. That was the function of the preliminary hearing." (*Id.* @ 1092. Emphasis added.)

A. Penal Code §§ 424, 487, 514 (Embezzlement and Grand Theft)

The demurrer as to counts 1-5, 8, 12-16, 17, 19, 30, 38, 40 and 41 is denied. Each count is legally sufficient, complies with Penal Code §§ 950 and 952 and provides adequate due process notice under California and Federal Constitutional standards. The defendants' contention that more specific identification of the "transactions" or "moneys" involved in each count should be more particularly alleged to provide more specific notice, while potentially desirable prior to the preliminary hearing, is not legally required. Most counts, for example: Counts 1, 2, 3, 12-17, and 19 by virtue of the special allegations relating to the tolling of the statute of limitations give specific and adequate notice as to the alleged transactions at issue. While the notice in the First Amended Complaint is legally adequate under the Penal Code and case law, more information would be helpful to the defense in this complex, multi-count complaint.

It is not required, as the defense urges, for the complaint to allege "detrimental reliance" in count 38. The pleadings are legally adequate. (See *People v. Reed* (1952) 113 Cal. App. 2d 339.)

As previously indicated, each count survives demurer, however, counts 4-8, 30 and 41, for example, could benefit from greater specificity in the pleading even if not required by law. The People are urged, but not ordered to amend those less specific counts to provide greater specificity and notice to the defense.

B. Government Code § 1090 (Conflict of Interest)

The demurrers to counts 6, 7, 9, 10, 18, 20-29, 37 and 42 on the grounds that they fail to comply with Penal code §§ 950 and 952 are denied. More specifically, in Count 6, 20, 21 the special allegations tolling the statute of limitations sufficiently allege the circumstances to provide notice of the specific nature of the charges. The remaining counts alleging violations of §1090 sufficiently set out the charges without reference to the penalty section in §1097 since the counts provide the statutory language of the crime. *In re Jamil H.*, (1984) 158 Cal. App. 3d 556 is not on point. It is unnecessary to allege the penalty statute in the complaint so long as the substantive crime is sufficiently stated.

The defense claim that the terms "contract" and "financial interest" are vague or do not provide adequate notice because they do not define the "interest" or "contract" with specificity is rejected. These terms are not unconstitutionally vague.¹ However, given the time frames and complexity of this case and the number of financial interests or contracts that could be involved, the better practice would be for the People to provide specific notice of the interests and contracts involved, when the particular count or special allegation does not so specify. The People are urged, but not ordered to amend those less specific counts to provide greater specificity and notice to the defense.

¹ See, *People v. Watson* (1971) 15 Cal. App. 3d 28, 33. Prior statute required only an "interest," amendment added "financial" language for clarification of type of "interest." "Section 1090...is neither vague nor uncertain, nor indefinite, nor does a prosecution for violation of its terms deny an accused due process of law."

The demurrer regarding the statute of limitations-late discovery allegations in count 6 is denied. The "victim" for the purpose of notice is "a public employee occupying a supervisory position who has responsibility to oversee the fiscal affairs of the entity and thus has the legal duty to report a suspected offense to law enforcement agencies." *People v. Lopez* (1997) 52 Cal. App. 4th 233, 238. The *Lopez* court explains that "the statute starts to run 'when the crime is discovered by the victim or the responsible law enforcement authorities.'" (*Id.*, See also, *People v. Moore*² (2009) 176 Cal.App.4th 687.) In the present case, any issues with the statute of limitations do not appear on the face of the complaint in order to be challenged by way of demur.

The facts regarding the timing of discovery of crimes and the triggering of inquiry notice to determine if the statute of limitations has run or not may be subject to demur if the defect appears on the face of the complaint, otherwise, it may be challenged by the defense in a number of ways including at trial or by pre-trial motion. See the procedure discussed in *Lopez* (*Id.*)

C. Penal Code § 182 (Conspiracy)

The demur to counts 36 and 39 is denied. They are sufficiently plead in the complaint.

D. Penal Code § 186.10(a) (Money Laundering)

The demurrers to counts 44-46 were challenged primarily regarding the sufficiency of the "facts" from the statement of probable cause filed in conjunction with the request for the *Ramey* warrant. The court declined to consider the statement of probable cause or any extrinsic evidence on the demur. The other arguments including alleging the vagueness of the term "monetary interests" is rejected. The term is not unconstitutionally vague and the pleadings conform to criminal procedures. The court also specifically distinguishes those misdemeanor cases³ cited by the defense and rejects their holdings in this felony case. By their own terms, in a felony case, the preliminary hearing or grand jury indictment substitutes for greater specificity as urged by the defense.

However, these counts could also benefit from greater specificity in the pleading even if not required by law. The People are urged, but not ordered to amend those less specific counts to provide greater specificity and notice to the defense.

E. Penal Code §115 (Forgery)

The demur as to this count was based solely on the statement of probable cause. To the extent that claims relating to the sufficiency of the pleading under Penal Code §§ 950, 952 are raised herein, the demur is denied.

² "[T]he limitation period begins running on the date either the "victim" or responsible "law enforcement personnel" learn of facts which, if investigated with reasonable diligence, would make that person aware a crime had occurred." (*Id.* Emphasis in the original.)

³ *Lamadrid v. Municipal Court* (1981) 118 Cal. App. 786, *Sallas v. Municipal Court* (1978) 86 Cal. App. 3d 737

F. Government Code § 91000(a) (Official Position for Personal Gain)

The misdemeanor charges in counts 11, and 31-35 are properly plead. The demur to those counts is denied.

Conclusion

The court has not addressed every single claim raised in the demurrer in this written ruling. The parties are directed to the court's other rulings and comments from the hearing on the demur. Many, if not most of the cited cases in this area were either post-preliminary hearing or post-indictment, where there was already an evidentiary hearing. While the standard for demur is the same whether pre or post probable cause hearing, the evidence adduced at such a hearing informs and provides notice to the defense. In the court's view, many of the defense claims may be cured at the preliminary hearing, (notwithstanding the right to adequate preparation and notice prior to that hearing), at a 995 motion or demur on the information, if there is a holding order.

It is true that literal compliance with the pleading requirements of Penal Code § 952 may be insufficient where it fails to give adequate notice. *People v. Jordan* (1971) 19 Cal. App. 3d 362.

Does bare literal compliance with § 952 obviate a demurer under section 1004? We hold it does not, where such compliance fails to give the accused constitutionally adequate notice.... Here the problem [is] whether this indictment gives adequate notice against what defendants must defend and whether there is sufficient certainty to allow a future plea in bar. Compliance with § 952 does not necessarily overcome due process attack. California's system of criminal pleading under § 952 relies in part upon the transcript of the grand jury hearing or preliminary examination which must be provided to the defendant to inform him of the particular circumstances of his offense not shown by the accusatory pleading. (*Id.*)

Nevertheless, it is premature for the court to make this determination at this stage of the proceedings. It is possible that post-preliminary hearing, after consideration of that evidence, the information might not provide adequate notice to the defense to prepare for trial. If so, the court will revisit the issue and make appropriate orders as required.

While not constitutionally or statutorily required, there are clearly some areas where the district attorney could "clean up" the pleadings in the complaint to provide more detailed notice to the defendants where the pleadings might be ambiguous. Some of those have been identified in this ruling. In addition to those items, the People should amend each special allegation relating to Defendant, Benzeevi, to reflect the fact that he has returned to the United States and on what date.


Michael Sheltzer, Judge, Tulare County Superior Court

