

IN ORLEANS PARISH CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

_____)	
)	
STATE OF LOUISIANA,)	
)	
Plaintiff,)	
)	
v.	)	No. 506-355
	)	Division F
JONATHAN CROMWELL,	)	Hon. Robin Pittman, Presiding
)	
Defendant.)	
)	
_____)	

FILED: _____

MOTION TO QUASH THE BILL OF INFORMATION AND MEMORANDUM IN SUPPORT

COMES NOW, JONATHAN CROMWELL, by counsel, and respectfully moves this Court pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 1, Sections 2, 3, 5, 13, 14, 16, 17, 20, 22, and 24 of the Louisiana Constitution of 1974, Articles 485, 531 and 532(A)(3) & (4) of the Louisiana Code of Criminal Procedure as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, and jurisprudential authority, to quash the bill of information and release Mr. Cromwell from his bail obligation.

In support of his motion, counsel states as follows:

I. Introduction

1. Mr. Cromwell was arrested for disturbing the peace on March 6, 2011.
2. On June 2, 2011, the State charged Mr. Cromwell by bill of information with disturbing the peace.
3. Mr. Cromwell was arraigned on this charge June 13, 2011.
4. On June 27, 2011 Mr. Cromwell filed a *Motion for Bill of Particulars* as well as a *Motion for Discovery*. On the same date, June 27, this Court ordered the State to respond to both motions by July 18, 2011.
5. The Bill of Particulars requested, *inter alia*, that the State inform the accused of the particular statute, including its subpart, upon which the prosecution is based. See p.4, ¶13-14,

Motion for Bill of Particulars, filed June 27, 2011 (citing State v. Johnson, 365 So.2d 1267 (La.1979)). See also State v. Clark, 288 So.2d 612, 616 (La.1974) (summarizing the information a defendant is entitled to in a bill of particulars with accompanying jurisprudence).

6. In the same motion, Mr. Cromwell also posed succinct requests for specific information “setting out more specifically and in detail the offense charged.” State v. Mann, 250 La. 1086, 202 So.2d 259, 262 (La. 1967); State v. Mason, 305 So.2d 523, 524-525 (La.1974). See also State v. Gardner, 02-1506 (La.App.3d Cir. 4/30/03), 844 So.2d 1097, 1100 (“[T]he accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged. And this is particularly true when the alleged crime may be committed in a number of different ways.”).

7. On July 18, 2011, the State filed *State’s Response to Defendant Cromwell, Morrison, Abarbanel, Reed, Rothberger, and Stiles & [sic] Tomasetti [sic] Motion for Bill of Particulars*. (“State’s Bill of Particulars”). In its pleading, the State answers that “all defendants violated La.R.S.14:103 under one or more of the following subprovisions [sic] of the statute...”¹ The answer goes on to list four subparts: La.R.S.14:103(A)(2) (directing offensive language to someone lawfully in a street or other public place); La.R.S.14:103(A)(3) (appearing in an intoxicated condition); La.R.S.14:103(A)(4) (engaging in any violent and tumultuous act with three or more people); La.R.S.14:103(A)(5) (holding an unlawful assembly).

8. The State failed to respond to Mr. Cromwell’s *Motion for Discovery* and this Court ordered the State to do so, in writing, by July 22, 2011.

9. In open court on July 18, 2011, undersigned counsel noticed the Court and the State that he would be filing a response to their Bill of Particulars. This Court ordered him to do so by July 22, 2011. This motion follows.

II. The Bill of Information

10. Mr. Cromwell is charged with disturbing the peace, La.R.S.14:103, by a bill of information which reads as follows:

One **JONATHAN R. CROMWELL** *** late of the Parish of Orleans on the 6th day of March in the year of our Lord, two thousand and eleven in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court of the Parish of Orleans, **DISTURBED THE PEACE BY TUMULTUOUS**

¹ It is unclear whether “all defendants” refers to the seven defendants listed in the title of the State’s motion or the six defendants mentioned in item one of the motion. Furthermore, Nari Tomasetti, mentioned in the title of the motion, is not charged with disturbing the peace, while Angelyse Fisher, one of the remaining seven people charged with disturbing the peace, is not mentioned at all in the State’s motion.

BEHAVIOR, *** contrary to the form of the State of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

11. The Bill of Information does not list the subpart of the statute upon which the prosecution is based. As such, Mr. Cromwell is not on notice as to the charges he faces at trial and therefore cannot adequately prepare a defense for trial. Moreover, given that disturbing the peace is a crime which may be committed in a number of different ways “the accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged.” State v. Gardner, 02-1506; 844 So.2d at 1100; State v. Miller, 319 So.2d 339, 342 (La. 1975).

III. The State’s Bill of Particulars

12. The State’s Bill of Particulars does not solve the problem created by the vague, bare-boned bill of information.

13. It alleges, simply, that “Defendants Cromwell, Morrison, Abarbanel, Reed, Rothberger and Stiles are charged with violating La.R.S.14:103, Disturbing the Peace. The State alleges that all defendants violated La.R.S.14:1-3 under one or more of the following subprovisions [sic] of the statute.” *State’s Bill of Particulars*, p.1 ¶1. The subparts referred to are §§ (2), (3), (4), & (5) of La.R.S.14:103. See ¶7 of this Motion, *supra*.

14. The second paragraph seems to say that the police report is sufficient to constitute notice of the “date and time of the alleged offense, the witnesses to that offense, any evidence seized, as well as the nature of the acts committed by each defendant that constitute a violation of the aforementioned subprovisions [sic] of La.R.S.14:103.” *State’s Bill of Particulars*, p.1 ¶2.

15. This would be a generous reading of the police reports produced by the State. To begin with, the gist, composed shortly after the arrest, does state enough particularity to amount to probable cause much less competent evidence to sustain a conviction or provide notice of the nature of the charges. The second report produced by the State, authored by an officer who did not witness any of the arrests in this case, intimates that the police were unclear of why they arrested Mr. Cromwell in the first place.

IV. ARGUMENT

A Bill of Particulars is Necessary When the Crime May Be Committed In “A Number of Different Ways”

16. A defendant is entitled to know the alleged method of the commission of an offense when several means of commission of an offense are specified by the statute. State v. Huizar, 414

So.2d 741 (La.1982). By alleging four distinct and different ways that he allegedly disturbed the peace, the State has fallen short of their obligation set forth by the Louisiana Supreme Court. Cf. State v. Mason, 305 So.2d 523, 525 (La.1974) (“Among the particulars the state refused to furnish, however, was that requested by interrogatory 15: ‘What was the alleged method or system used by the defendant to commit the alleged crime?’ Since as previously noted, the crime may be committed by either of two methods (‘by an explosive substance’ or ‘by setting fire to’), *the defendant was entitled to at least such information.*”) (emphasis added).

17. Louisiana Courts have explained that in a situation such as Mr. Cromwell’s the State must supply him with a bill of particulars that lays out the particular charges against him with more specificity:

It is now well settled that when the state elects to use the short form indictment or information permitted by LRS 15:235, the accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged. *And this is particularly true when the alleged crime may be committed in a number of different ways.*

State v. Gardner, 02-1506; 844 So.2d at 1100 (quoting State v. Mann, 250 La. 1086, 1094-95, 202 So.2d 259, 262 (La.1967)) (emphasis added). See also State v. Scott, 237 La. 71, 110 So.2d 530 (1959).

18. The Louisiana Second Circuit expanded on this reasoning when it explained:

If the crime is a single event, such as a murder, where there can be no mistake as to the particular act charged against the defendant, then he needs less information, and the scope of the bill of particulars will be less extensive, to put him on guard in the preparation of his defense. State v. Augusta, 199 La. 896, 7 So.2d 177 (1942). However, if the crime is the recurring type that may take place at different times *and in different manners*, it is apparent that in order to inform the defendant adequately of the nature and cause of the crime charged that *he be informed of the particular crime for which he is being prosecuted*. James A. Hobbs, *The Bill of Particulars in Criminal Trials—Judicial Discretion*, 12 La.L.Rev. 457 (1952).

State v. Warren, 29,630 (La.App. 2d Cir. 9/24/97), 700 So.2d 1297, 1299; State v. Miller, 319 So.2d 339, 342 (La. 1975).

*The State’s Bill of Particulars Indicates That
Mr. Cromwell Could Commit this Offense “In A Number of Different Ways”*

19. While the law enumerates eight separate acts that constitute a violation of this statute,² the State, in its Response, has alleged four separate and distinct ways this crime could be committed. As such, the same problem exists with the State’s Bill of Particulars as it did with

² Of course, one can “disturb the peace” in eight different ways; any one of which must be an act committed “in such manner as would foreseeably disturb or alarm the public.” La.R.S.14:103(A). If someone commits an act that fits it subpart A of the statute, yet does not do so in a way that would disturb or alarm the public, the conviction cannot stand. See State v. Woolverton, 474 So.2d 1003, 1005 (La.App. 5th Cir.1985).

the Bill of Information. Rather than eight different ways, the charged offense may now be committed in four different ways. This is impermissible under existing case law and is grounds for this Court to quash the bill of information. See La.C.Cr.P.art.532(A)(4). See also Gardner, supra at 1103 (“Properly used, a bill of particulars should inform the accused with particularity of all the essential facts relied upon to prove the crime charged *and remove any doubt as to the crime charged.*”) (emphasis added).

20. The State also has not answered the particular interrogatories submitted to the State. Hence, Mr. Cromwell does not know the scope of his alleged criminal activity so as to properly defend himself. State v. Schleve, 99-3019, p. 13 (La. App. 1st Cir. 12/20/00), 775 So.2d 1187, 1197, writs denied, 01-210, 01-113 (La.12/14/01), 803 So.2d 983, 804 So.2d 647.

21. This situation presented here is analogous to the facts presented in a malfeasance case. State v. Authement, 532 So.2d 869, 876 (La.App. 1st Cir.1988). Before a public officer or employee can be charged with malfeasance, see La.R.S. 14:134, there must be a statute or provision of law which delineates an affirmative duty upon the officer or employee expressly imposed by law. Authement, 532 So.2d at 873. To be convicted, the officer must fail to perform the duty or perform the duty in an unlawful manner. Id.

22. In Authement, the defendants, a Sheriff’s Deputy and the Chief of Detectives for the Sheriff’s Office, alleged that the State failed in their bill of particulars to specify exactly which duty was imposed on the defendants. On appeal, the First Circuit found the State’s answers insufficient and reversed the conviction. In doing so, it made the following observations which are pertinent to this case:

Because the crime of malfeasance as defined in LSA-R.S. 14:134[12] and as judicially interpreted may be committed in various ways, an identification of the particular duties lawfully required of defendants as public officers or public employees is necessary before defendants are aware of which acts or omissions may bear criminal responsibility. In the case sub judice, because the bill of information and the state's responses to defendants' motions for bills of particulars failed to include the essential facts disclosing some particular duties that were lawfully required of defendants, their constitutional right to be informed of the nature and cause of the accusations made against them was violated. Cf. State v. Rogers, supra; State v. Miller, 319 So.2d 339 (La.1975). For the reasons expressed herein, defendants' convictions and sentences are set aside; and the case is remanded for further proceedings consistent with the views expressed herein.

State v. Authement, 532 So.2d at 876.

23. With Mr. Cromwell, the State has filed an answer to his request for Bill of Particulars. Yet, the State’s answer fails to designate particular “essential facts” that support the charge of

disturbing the peace. Without such disclosure, Mr. Cromwell cannot properly defend himself at trial.

24. In addition, the State has not produced details, in the way of a particular section of the statute, by which he committed the crime charged. See e.g., State v. Johnson, 365 So.2d 1267, 1270 (La.1978) (“[T]he accused may procure details as to the alleged statutory method(s) by which he committed the crime charged through a bill of particulars.”). Cf. Schleve, 99-3019; 775 So.2d 1187 (holding the bill of particulars was sufficient when it informed defendant he was charged with simple burglary under circumstances in which he made an unauthorized entry into a structure with the intent to commit some, unspecified, sex offense).

25. To correct this irregularity, this Court should order the State to respond to the particular inquiries contained in the accused’s bill of particulars and to identify which of the subparts of the disturbing the peace statute it alleges was violated by Mr. Cromwell.

The Bill of Information and the Bill of Particulars are Vague and Duplicious in that They Charge Mr. Cromwell with Crimes in the Alternative

26. It is impermissible for a charging document to charge offenses in the alternative. State v. Defraites, 449 So. 2d 540, 546 (La.App. 4th Cir.1984). “[A] defendant in a criminal prosecution is entitled to know what accusation against him is relied upon by the prosecution...” City of Shreveport v. Bryson, 33 So. 2d 60, 61 (La. 1947). “An indictment or information must not charge a party disjunctively or alternatively, in such a manner as to leave it uncertain what is relied on as the accusation against him.” Bryson, 33 So.2d at 61 (citing State v. Sullivan, 51 So. 588, 589 (La. 1910)).

27. This is just what the State has done in their bill of particulars. In it, they allege that “all defendants violated La.R.S.14:103 under one or more” of four subparts of the statute. Just what does this mean? The possibilities abound. Does this mean the State alleges Mr. Stiles violated subpart (A)(3), Ms. Arbarbanel violated subpart (A)(4) and Mr. Cromwell violated subpart (A)(2)? Or, does this mean, Mr. Rothberger and Mr. Stiles and Mr. Reed all violated subpart (A)(4) and that Mr. Cromwell violated subpart (A)(5)? Could it also mean that Mr. Cromwell violated subpart (A)(3), (A)(4) & (A)(5) while the others only violated (A)(2)? It is impossible to know given the disjointed nature of the State’s Response.

28. A motion to quash may be based on the fact that the indictment is duplicious. La.C.Cr.P.art. 532(A)(3). Accordingly, this Court should quash the bill of information.

CONCLUSION

WHEREFORE, Mr. Cromwell respectfully requests that this Court (1) quash the bill of information and release him from his bail obligation, or (2) order the State to furnish him with a Bill of Particulars within a period not to exceed three days. See La.C.Cr.P.art. 485.

Respectfully submitted,

Mr. John Adcock
La. Bar Roll No. 30372
P.O. Box 750621
New Orleans, LA 70175
(504) 233-3125
FAX (504) 322-3843

Counsel for Jonathan Cromwell

Certificate of Service

I hereby certify that a copy of the foregoing motion has been served upon the Office of the Orleans Parish District Attorney, 619 South White St., New Orleans, LA 70119, this the _____ day of July, 2011.

John Adcock, Esq.

IN ORLEANS PARISH CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

_____)	
)	
STATE OF LOUISIANA,)	
)	
Plaintiff,)	
)	
v.	)	No. 506-355
	)	Division F
JONATHAN CROMWELL,	)	Hon. Robin Pittman, Presiding
)	
Defendant.)	
)	
_____)	

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED that the Defendant’s *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

It is the Order of this Court that the Bill of Information charging Jonathan Cromwell with Disturbing the Peace is Quashed;

The Defendant, Jonathan Cromwell, is released from his bail obligation; and

The State is ordered to furnish Mr. Cromwell with a Bill of Particulars by the ____ day of _____, 2011.

SIGNED this ____ day of July, 2011. New Orleans, Louisiana.

JUDGE, SECTION F
ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

John Adcock
P.O. Box 750621
New Orleans, LA 70175

Orleans Parish District Attorney’s Office
619 South White St.
New Orleans, LA 70119

IN ORLEANS PARISH CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

STATE OF LOUISIANA,)	
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Plaintiff,)	
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v.)	No. 506-355
)	Division F
JONATHAN CROMWELL,)	Hon. Robin Pittman, Presiding
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Defendant.)	
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ORDER

IT IS HEREBY ORDERED that the Defendant's *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

It is the Order of this Court that the Bill of Information charging Jonathan Cromwell with Disturbing the Peace is Quashed; and

The Defendant, Jonathan Cromwell, is released from his bail obligation.

SIGNED this ___ day of July, 2011. New Orleans, Louisiana.

JUDGE, SECTION F
ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

John Adcock
P.O. Box 750621
New Orleans, LA 70175

Orleans Parish District Attorney's Office
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New Orleans, LA 70119

IN ORLEANS PARISH CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

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STATE OF LOUISIANA,)	
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Plaintiff,)	
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v.)	Division F
)	Hon. Robin Pittman, Presiding
JONATHAN CROMWELL,)	
)	
Defendant.)	
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_____)	

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED that the Defendant's *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

The State is ordered to furnish the accused, Jonathan Cromwell, with a Bill of Particulars by the ____ day of _____, 2011.

SIGNED this ____ day of July, 2011. New Orleans, Louisiana.

 JUDGE, SECTION F
 ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

John Adcock
P.O. Box 750621
New Orleans, LA 70175

Orleans Parish District Attorney's Office
619 South White St.
New Orleans, LA 70119

IN ORLEANS PARISH CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

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STATE OF LOUISIANA,)	
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Plaintiff,)	
)	No. 506-355
v.)	Division F
)	Hon. Robin Pittman, Presiding
RON MORRISON,)	
)	
Defendant.)	
_____)	

FILED: _____

MOTION TO QUASH THE BILL OF INFORMATION AND MEMORANDUM IN SUPPORT

COMES NOW, RONALD MORRISON, by counsel, and respectfully moves this Court pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 1, Sections 2, 3, 5, 13, 14, 16, 17, 20, 22, and 24 of the Louisiana Constitution of 1974, Articles 485, 531 and 532(A)(3) & (4) of the Louisiana Code of Criminal Procedure as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, and jurisprudential authority, to quash the bill of information and release Mr. Morrison from his bail obligation.

In support of his motion, counsel states as follows:

I. Introduction

1. Mr. Morrison was arrested for disturbing the peace on March 6, 2011.
2. On June 2, 2011, the State charged Mr. Morrison by bill of information with disturbing the peace.
3. Mr. Morrison was arraigned on this charge June 13, 2011.
4. On June 27, 2011 Mr. Morrison filed a *Motion for Bill of Particulars* as well as a *Motion for Discovery*. On the same date, June 27, this Court ordered the State to respond to both motions by July 18, 2011.
5. The Bill of Particulars requested, *inter alia*, that the State inform the accused of the particular statute, including its subpart, upon which the prosecution is based. See p.4, ¶13-14,

Motion for Bill of Particulars, filed June 27, 2011 (citing State v. Johnson, 365 So.2d 1267 (La.1979)). See also State v. Clark, 288 So.2d 612, 616 (La.1974) (summarizing the information a defendant is entitled to in a bill of particulars with accompanying jurisprudence).

6. In the same motion, Mr. Morrison also posed succinct requests for specific information “setting out more specifically and in detail the offense charged.” State v. Mann, 250 La. 1086, 202 So.2d 259, 262 (La. 1967); State v. Mason, 305 So.2d 523, 524-525 (La.1974). See also State v. Gardner, 02-1506 (La.App.3d Cir. 4/30/03), 844 So.2d 1097, 1100 (“[T]he accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged. And this is particularly true when the alleged crime may be committed in a number of different ways.”).

7. On July 18, 2011, the State filed *State’s Response to Defendant Cromwell, Morrison, Abarbanel, Reed, Rothberger, and Stiles & [sic] Tomasetti [sic] Motion for Bill of Particulars*. (“State’s Bill of Particulars”). In its pleading, the State answers that “all defendants violated La.R.S.14:103 under one or more of the following subprovisions [sic] of the statute...”¹ The answer goes on to list four subparts: La.R.S.14:103(A)(2) (directing offensive language to someone lawfully in a street or other public place); La.R.S.14:103(A)(3) (appearing in an intoxicated condition); La.R.S.14:103(A)(4) (engaging in any violent and tumultuous act with three or more people); La.R.S.14:103(A)(5) (holding an unlawful assembly).

8. The State failed to respond to Mr. Morrison’s *Motion for Discovery* and this Court ordered the State to do so, in writing, by July 22, 2011.

9. In open court on July 18, 2011, undersigned counsel noticed the Court and the State that he would be filing a response to their Bill of Particulars. This Court ordered him to do so by July 22, 2011. This motion follows.

II. The Bill of Information

10. Mr. Morrison is charged with disturbing the peace, La.R.S.14:103, by a bill of information which reads as follows:

One **RONALD L. MORRISON** *** late of the Parish of Orleans on the 6th day of March in the year of our Lord, two thousand and eleven in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court of the Parish of Orleans, **DISTURBED THE PEACE BY TUMULTUOUS**

¹ It is unclear whether “all defendants” refers to the seven defendants listed in the title of the State’s motion or the six defendants mentioned in item one of the motion. Furthermore, Nari Tomasetti, mentioned in the title of the motion, is not charged with disturbing the peace, while Angelyse Fisher, one of the remaining seven people charged with disturbing the peace, is not mentioned at all in the State’s motion.

BEHAVIOR, *** contrary to the form of the State of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

11. The Bill of Information does not list the subpart of the statute upon which the prosecution is based. As such, Mr. Morrison is not on notice as to the charges he faces at trial and therefore cannot adequately prepare a defense for trial. Moreover, given that disturbing the peace is a crime which may be committed in a number of different ways “the accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged.” State v. Gardner, 02-1506; 844 So.2d at 1100; State v. Miller, 319 So.2d 339, 342 (La. 1975).

III. The State’s Bill of Particulars

12. The State’s Bill of Particulars does not solve the problem created by the vague, bare-boned bill of information.

13. It alleges, simply, that “Defendants Cromwell, Morrison, Abarbanel, Reed, Rothberger and Stiles are charged with violating La.R.S.14:103, Disturbing the Peace. The State alleges that all defendants violated La.R.S.14:1-3 under one or more of the following subprovisions [sic] of the statute.” *State’s Bill of Particulars*, p.1 ¶1. The subparts referred to are §§ (2), (3), (4), & (5) of La.R.S.14:103. See ¶7 of this Motion, *supra*.

14. The second paragraph seems to say that the police report is sufficient to constitute notice of the “date and time of the alleged offense, the witnesses to that offense, any evidence seized, as well as the nature of the acts committed by each defendant that constitute a violation of the aforementioned subprovisions [sic] of La.R.S.14:103.” *State’s Bill of Particulars*, p.1 ¶2.

15. This would be a generous reading of the police reports produced by the State. To begin with, the gist, composed shortly after the arrest, does state enough particularity to amount to probable cause much less competent evidence to sustain a conviction or provide notice of the nature of the charges. The second report produced by the State, authored by an officer who did not witness any of the arrests in this case, intimates that the police were unclear of why they arrested Mr. Morrison in the first place.

IV. ARGUMENT

A Bill of Particulars is Necessary When the Crime May Be Committed In “A Number of Different Ways”

16. A defendant is entitled to know the alleged method of the commission of an offense when several means of commission of an offense are specified by the statute. State v. Huizar, 414

So.2d 741 (La.1982). By alleging four distinct and different ways that he allegedly disturbed the peace, the State has fallen short of their obligation set forth by the Louisiana Supreme Court. Cf. State v. Mason, 305 So.2d 523, 525 (La.1974) (“Among the particulars the state refused to furnish, however, was that requested by interrogatory 15: ‘What was the alleged method or system used by the defendant to commit the alleged crime?’ Since as previously noted, the crime may be committed by either of two methods (‘by an explosive substance’ or ‘by setting fire to’), *the defendant was entitled to at least such information.*”) (emphasis added).

17. Louisiana Courts have explained that in a situation such as Mr. Morrison’s, the State must supply him with a bill of particulars that lays out the particular charges against him with more specificity:

It is now well settled that when the state elects to use the short form indictment or information permitted by LRS 15:235, the accused is entitled to a bill of particulars setting out more specifically and in detail the offense charged. *And this is particularly true when the alleged crime may be committed in a number of different ways.*

State v. Gardner, 02-1506; 844 So.2d at 1100 (quoting State v. Mann, 250 La. 1086, 1094-95, 202 So.2d 259, 262 (La.1967)) (emphasis added). See also State v. Scott, 237 La. 71, 110 So.2d 530 (1959).

18. The Louisiana Second Circuit expanded on this reasoning when it explained:

If the crime is a single event, such as a murder, where there can be no mistake as to the particular act charged against the defendant, then he needs less information, and the scope of the bill of particulars will be less extensive, to put him on guard in the preparation of his defense. State v. Augusta, 199 La. 896, 7 So.2d 177 (1942). However, if the crime is the recurring type that may take place at different times *and in different manners*, it is apparent that in order to inform the defendant adequately of the nature and cause of the crime charged that *he be informed of the particular crime for which he is being prosecuted*. James A. Hobbs, *The Bill of Particulars in Criminal Trials—Judicial Discretion*, 12 La.L.Rev. 457 (1952).

State v. Warren, 29,630 (La.App. 2d Cir. 9/24/97), 700 So.2d 1297, 1299; State v. Miller, 319 So.2d 339, 342 (La. 1975).

*The State’s Bill of Particulars Indicates That
Mr. Morrison Could Commit this Offense “In A Number of Different Ways”*

19. While the law enumerates eight separate acts that constitute a violation of this statute,² the State, in its Response, has alleged four separate and distinct ways this crime could be committed. As such, the same problem exists with the State’s Bill of Particulars as it did with

² Of course, one can “disturb the peace” in eight different ways; any one of which must be an act committed “in such manner as would foreseeably disturb or alarm the public.” La.R.S.14:103(A). If someone commits an act that fits it subpart A of the statute, yet does not do so in a way that would disturb or alarm the public, the conviction cannot stand. See State v. Woolverton, 474 So.2d 1003, 1005 (La.App. 5th Cir.1985).

the Bill of Information. Rather than eight different ways, the charged offense may now be committed in four different ways. This is impermissible under existing case law and is grounds for this Court to quash the bill of information. See La.C.Cr.P.art.532(A)(4). See also Gardner, supra at 1103 (“Properly used, a bill of particulars should inform the accused with particularity of all the essential facts relied upon to prove the crime charged *and remove any doubt as to the crime charged.*”) (emphasis added).

20. The State also has not answered the particular interrogatories submitted to the State. Hence, Mr. Morrison does not know the scope of his alleged criminal activity so as to properly defend himself. State v. Schleve, 99-3019, p. 13 (La. App. 1st Cir. 12/20/00), 775 So.2d 1187, 1197, writs denied, 01-210, 01-113 (La.12/14/01), 803 So.2d 983, 804 So.2d 647.

21. This situation presented here is analogous to the facts presented in a malfeasance case. State v. Authement, 532 So.2d 869, 876 (La.App. 1st Cir.1988). Before a public officer or employee can be charged with malfeasance, see La.R.S. 14:134, there must be a statute or provision of law which delineates an affirmative duty upon the officer or employee expressly imposed by law. Authement, 532 So.2d at 873. To be convicted, the officer must fail to perform the duty or perform the duty in an unlawful manner. Id.

22. In Authement, the defendants, a Sheriff’s Deputy and the Chief of Detectives for the Sheriff’s Office, alleged that the State failed in their bill of particulars to specify exactly which duty was imposed on the defendants. On appeal, the First Circuit found the State’s answers insufficient and reversed the conviction. In doing so, it made the following observations which are pertinent to this case:

Because the crime of malfeasance as defined in LSA-R.S. 14:134[12] and as judicially interpreted may be committed in various ways, an identification of the particular duties lawfully required of defendants as public officers or public employees is necessary before defendants are aware of which acts or omissions may bear criminal responsibility. In the case sub judice, because the bill of information and the state's responses to defendants' motions for bills of particulars failed to include the essential facts disclosing some particular duties that were lawfully required of defendants, their constitutional right to be informed of the nature and cause of the accusations made against them was violated. Cf. State v. Rogers, supra; State v. Miller, 319 So.2d 339 (La.1975). For the reasons expressed herein, defendants' convictions and sentences are set aside; and the case is remanded for further proceedings consistent with the views expressed herein.

State v. Authement, 532 So.2d at 876.

23. With Mr. Morrison, the State has filed an answer to his request for Bill of Particulars. Yet, the State’s answer fails to designate particular “essential facts” that support the charge of

disturbing the peace. Without such disclosure, Mr. Morrison cannot properly defend himself at trial.

24. In addition, the State has not produced details, in the way of a particular section of the statute, by which he committed the crime charged. See e.g., State v. Johnson, 365 So.2d 1267, 1270 (La.1978) (“[T]he accused may procure details as to the alleged statutory method(s) by which he committed the crime charged through a bill of particulars.”). Cf. Schleve, 99-3019; 775 So.2d 1187 (holding the bill of particulars was sufficient when it informed defendant he was charged with simple burglary under circumstances in which he made an unauthorized entry into a structure with the intent to commit some, unspecified, sex offense).

25. To correct this irregularity, this Court should order the State to respond to the particular inquiries contained in the accused’s bill of particulars and to identify which of the subparts of the disturbing the peace statute it alleges was violated by Mr. Morrison.

The Bill of Information and the Bill of Particulars are Vague and Duplicious in that They Charge Mr. Morrison with Crimes in the Alternative

26. It is impermissible for a charging document to charge offenses in the alternative. State v. Defraites, 449 So. 2d 540, 546 (La.App. 4th Cir.1984). “[A] defendant in a criminal prosecution is entitled to know what accusation against him is relied upon by the prosecution...” City of Shreveport v. Bryson, 33 So. 2d 60, 61 (La. 1947). “An indictment or information must not charge a party disjunctively or alternatively, in such a manner as to leave it uncertain what is relied on as the accusation against him.” Bryson, 33 So.2d at 61 (citing State v. Sullivan, 51 So. 588, 589 (La. 1910)).

27. This is just what the State has done in their bill of particulars. In it, they allege that “all defendants violated La.R.S.14:103 under one or more” of four subparts of the statute. Just what does this mean? The possibilities abound. Does this mean the State alleges Mr. Stiles violated subpart (A)(3), Ms. Arbarbanel violated subpart (A)(4) and Mr. Morrison violated subpart (A)(2)? Or, does this mean, Mr. Rothberger and Mr. Stiles and Mr. Reed all violated subpart (A)(4) and that Mr. Morrison violated subpart (A)(5)? Could it also mean that Mr. Morrison violated subpart (A)(3), (A)(4) & (A)(5) while the others only violated (A)(2)? It is impossible to know given the disjointed nature of the State’s Response.

28. A motion to quash may be based on the fact that the indictment is duplicious. La.C.Cr.P.art. 532(A)(3). Accordingly, this Court should quash the bill of information.

CONCLUSION

WHEREFORE, Mr. Morrison respectfully requests that this Court (1) quash the bill of information and release him from his bail obligation, or (2) order the State to furnish him with a Bill of Particulars within a period not to exceed three days. See La.C.Cr.P.art. 485.

Respectfully submitted,

Mr. John Adcock
La. Bar Roll No. 30372
P.O. Box 750621
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(504) 233-3125
FAX (504) 322-3843

Counsel for Ron Morrison

Certificate of Service

I hereby certify that a copy of the foregoing motion has been served upon the Office of the Orleans Parish District Attorney, 619 South White St., New Orleans, LA 70119, this the _____ day of July, 2011.

John Adcock, Esq.

IN ORLEANS PARISH CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

_____)	
)	
STATE OF LOUISIANA,)	
)	
Plaintiff,)	
	)	No. 506-355
v.	)	Division F
	)	Hon. Robin Pittman, Presiding
RON MORRISON,)	
)	
Defendant.)	
)	
_____)	

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED that the Defendant’s *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

It is the Order of this Court that the Bill of Information charging Ronald Morrison with Disturbing the Peace is Quashed;

The Defendant, Ronald Morrison, is released from his bail obligation; and

The State is ordered to furnish Mr. Morrison with a Bill of Particulars by the ____ day of _____, 2011.

SIGNED this ____ day of July, 2011. New Orleans, Louisiana.

JUDGE, SECTION F
ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

John Adcock
P.O. Box 750621
New Orleans, LA 70175

Orleans Parish District Attorney’s Office
619 South White St.
New Orleans, LA 70119

IN ORLEANS PARISH CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

STATE OF LOUISIANA,)	
)	
Plaintiff,)	
)	
v.	)	No. 506-355
	)	Division F
RON MORRISON,	)	Hon. Robin Pittman, Presiding
)	
Defendant.)	
)	

ORDER

IT IS HEREBY ORDERED that the Defendant’s *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

It is the Order of this Court that the Bill of Information charging Ronald Morrison with Disturbing the Peace is Quashed; and

The Defendant, Ronald Morrison, is released from his bail obligation.

SIGNED this ___ day of July, 2011. New Orleans, Louisiana.

JUDGE, SECTION F
ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

John Adcock
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New Orleans, LA 70175

Orleans Parish District Attorney’s Office
619 South White St.,
New Orleans, LA 70119

IN ORLEANS PARISH CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

STATE OF LOUISIANA,)	
)	
Plaintiff,)	
)	
v.	)	No. 506-355
	)	Division F
RON MORRISON,	)	Hon. Robin Pittman, Presiding
)	
Defendant.)	
)	
)	

ORDER TO SHOW CAUSE

IT IS HEREBY ORDERED that the Defendant's *Motion to Quash the Bill of Information and Memorandum in Support* is GRANTED.

The State is ordered to furnish the accused, Ronald Morrison, with a Bill of Particulars by the ____ day of _____, 2011.

SIGNED this ____ day of July, 2011. New Orleans, Louisiana.

JUDGE, SECTION F
ORLEANS PARISH CRIMINAL DISTRICT COURT

Copies to:

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New Orleans, LA 70175

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