

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

MUHAMMAD WAHAB,

APPELLATE CASE NO.: CJAP 06-03
LOWER CT. CASE NO.: 2005-MM-13465-O

Appellant,
vs.

STATE OF FLORIDA,

Appellee.
_____ /

Appeal from the County Court for Orange County, Florida,
W. Michael Miller, County Court Judge

Robert Wesley, Public Defender, and Eileen Forrester,
Chief Assistant Public Defender, for Appellant

Lawson Lamar, State Attorney, and Karen Clark,
Assistant State Attorney, for Appellee

Before O'KANE, KOMANSKI, and THORPE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant Wahab appeals the trial court's denial of his Motion for Statement of Particulars on February 1, 2006. We affirm.

On October 1, 2005, Orange County Sheriff's Officers arrested Appellant for Battery and Sexual Battery. The Charging Affidavit alleges that Appellant committed the crimes at approximately 7:00 pm on September 30, 2005. In November 2005, the State charged Appellant with Battery (Domestic Violence), alleging that Appellant committed the crime between September 25, 2005 and October 1, 2005 in Orange County.

On January 23, 2006, Appellant filed a Motion for Statement of Particulars, requesting that the State allege a specific date on which the battery allegedly occurred.

The court held an informal hearing regarding the statement of particulars on the first morning of the two-day trial and denied the motion. A jury convicted Appellant of battery on February 2, 2006. The court sentenced him to 126 days in jail with credit for 126 days served, followed by 239 days of supervised probation. This timely appeal follows.

Appellant argues that the trial court erred when it did not order the State to amend the information or provide a statement of particulars defining a specific time and place for the alleged crime. The State did not file an Answer Brief.

Florida Rule of Criminal Procedure 3.140(b) states, “The indictment or information on which the defendant is to be tried shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fl. R. Cr. P. 3.140(b) (2006). Florida Rule of Criminal Procedure 3.140(n) further explains the statement of particulars:

The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.

Fl. R. Cr. P. 3.140(n) (2006).

After a review of the file and motion, it is clear that Appellant was on notice of the offense with which he was charged and the likely date on which it occurred.

Therefore, the court did not abuse its discretion in denying Appellant’s Motion for Statement of Particulars regarding a specific date of the battery.

Lastly, Appellant failed to preserve for review the argument that the trial court erred when it did not order the State to amend the information or furnish a statement of particulars defining a specific location of the alleged crime. For an issue to be preserved, the “specific legal argument or ground to be argued on appeal must be part of that presentation.” *Perez v. State*, 919 So.2d 347, 359 (Fla. 2005). Appellant failed to argue the need for a statement of a specific location when he raised his motion (written and oral) at the trial level. The issue has not been preserved.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the trial court’s denial of Appellant’s Motion for Statement of Particulars is hereby **AFFIRMED**.

DONE AND ORDERED, in Chambers, at Orlando, Orange County, Florida, this __15th__ day of __February_____, 2007.

_____/S/_____
JULIE H. O’KANE
Circuit Court Judge

_____/S/_____
WALTER KOMANSKI
Circuit Court Judge

_____/S/_____
JANET C. THORPE
Circuit Court Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or hand delivery to **Eileen Forrester**, Chief Assistant Public Defender, 435 North Orange Avenue, Orlando, Florida 32801 and **Karen Clark**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801 this __15th__ day of __February_____, 2007.

_____/S/_____
Judicial Assistant