

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS  
THIRD DIVISION**

**STATE OF ARKANSAS**

**VS.**

**CR 12-1044**

**JACK W. GILLEAN**

FILED  
PLAINTIFF  
2013 AUG 30 PM 3 19  
RHONDA WILSON, CLERK  
BY     *BP*     DC  
DEFENDANT

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

Comes now the State of Arkansas, by and through Troy B. Braswell, Jr., Deputy Prosecuting Attorney, and for its Response, states as follows:

1. The State filed its original felony information on October 5, 2012.
2. The State filed its amended felony information on May 9, 2013. The State amended the information to more specifically identify the buildings on the UCA campus which were illegally entered and the criminal act to be committed therein.
3. Furthermore, after the Court's Order, the State supplemented the information to include the specific buildings for each count. Moreover, the State specifically noted that tests were the items which were stolen.
4. As such, the State has filed a felony information which mirrors what is required by A.C.A. § 16-85-403. Specifically, (c) provides:

"The indictment must be direct and certain as regards:

- (1) The party charged;
- (2) The offense or offenses charged;
- (3) The county in which the offense or offenses were committed; and
- (4) The particular circumstances of the offense or offenses charged where they are necessary to constitute a complete offense or offenses."

5. “The true function of the bill of particulars is to require the state to set forth the criminal act in detail and with sufficient certainty to apprise the defendant of the crime and enable him to prepare his defense.” *Edens v. State*, 235 Ark. 996, 363 S.W.2d 923 (1963); A.C.A. § 16-85-301(a)(1987).

6. Where the information is definite in specifying the offense being charged, as in this case, the charge itself constitutes a bill of particulars. *Harmon*, 277 Ark. 265, 641 S.W.2d 21.

7. “Further, even where no bill of particulars is filed, there is **no prejudice to the accused on that account when the state complies with its discovery obligation.** *Limber v. State*, 264 Ark. 479, 572 S.W.2d 402 (1978).” *Nance v. State*, 232 Ark. 583 at 604, 918 S.W.2d 114 (1996).  
Emphasis Added.

8. At a previous hearing, the Court ordered the State to supplement any additional or more specific information as it became available.

9. The Defendant asserts that he has to rely on assumptions in preparation for trial. This is blatantly false and overly dramatic. The State has provided sufficient detail for the Defense to prepare its case. A lay person can read the affidavit and the discovery provided, listen to the witness statements and clearly understand the allegations in this case.

10. Even more specifically, the State has provided statements from several witnesses who identify the first “break in” occurring sometime in February or March 2011 (Noted in the information as the Spring Semester, 2011). To further supplement that information, the State provided a transcript, syllabus, a copy of exams, and statements from the professors and witnesses.

11. The State is only aware of one instance in which the Defendant actually entered a school building with the purpose to facilitate a theft of exams. Prior to the Defendant’s filing, the State was not able to identify the exact dates. However, pursuant to the Court’s ruling, the State further reviewed UCA documentation, made contact with witnesses and reviewed the

discovery to provide the most specific information it could obtain. Based on that review, the State contends this occurred on or about February 10, 2011. The building is Lewis Science Center.

12. Moreover, in regards to other counts, because the Defendant's scan card was used, the State was able to provide a list of the dates and times it is alleged that Laney Hall was broken into with the intent to steal exams. Please see the affidavit and print out of access dates and times which were both previously provided in discovery.

13. Based on these previously provided documents, the State alleges that the Defendant, or an accomplice, entered Laney Hall with the purpose to facilitate a theft of exams. These dates have been previously listed as February 14, March 16, March 31, May 2, May 3, 2011.

14. Finally, the State alleges that the Defendant, or an accomplice, entered into Irby Hall with the purpose to facilitate a theft of exams. The exam dates are listed on the syllabus. However, the State is unable to provide more specific detail as to the dates the building was actually entered.

15. The Defendant contends he has been prejudiced because he cannot prepare an alibi defense. However, the defendant's presence in the building, city, state, or country for that matter do not alleviate his responsibility under accomplice liability. The State has never contended that the Defendant illegally entered a building other than that listed on Count 1. Again, the Defendant has had this information for several months. No prejudice has resulted. Even if the Court determined prejudice existed, that prejudice has been remedied by the State's most recent filing.

16. Based on the information provided above, the State has prepared its Second Amended Felony Information to ensure it has fully satisfied the Court's previous rulings. The Second Amended Felony Information is attached hereto as Exhibit "1" and is incorporated herein by reference.

17. As always, should the State discover additional information, it will supplement such information to the Defendant in a manner consistent with the Court's ruling and the Arkansas

Rules of Criminal Procedure.

WHEREFORE, the State prays that the Defendant's Motion to Dismiss be denied.

RESPECTFULLY SUBMITTED,  
CODY HILAND

By:



Troy B. Braswell, Jr.  
Deputy Prosecuting Attorney  
609 Locust St.  
Conway, AR 72034  
(501) 450-4927

CERTIFICATE OF SERVICE

This is to certify that I have this 30<sup>th</sup> day of August, 2013, served counsel for the defendant in the foregoing matter a copy of this pleading via US Mail, postage prepaid.



Deputy Prosecuting Attorney

IN THE FAULKNER CIRCUIT COURT

FILED

STATE OF ARKANSAS

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V.


NO. CR 2012-1044 - Div. 3

RHONDA WHARTON, CLERK

JACK W. GILLEAN

415 Ramble Street  
Hot Springs, AR 71901

DOB 11/4/1956  
RACE W  
SEX Male

BY  DEFENDANT  
DC

SECOND AMENDED  
FELONY INFORMATION

Cody Hiland, Prosecuting Attorney of the Twentieth Judicial District of Arkansas, in the name and by the authority, and on behalf of the State of Arkansas charges Jack W. Gillean with the crime(s) of Burglary - Commercial, FRAUDULENT INSURANCE ACTS and ISSUING FALSE FINANCIAL STATEMENT as follows:

**COUNT 1: Burglary - Commercial ARK. CODE ANN. § 5-39-201.** The said defendant, or an accomplice, in FAULKNER COUNTY, did unlawfully and feloniously on or about February 10, 2011, Enter or remain unlawfully in a commercial occupiable structure of another person, to wit: Lewis Science Center, with the purpose of committing therein any offense punishable by imprisonment, to wit: Theft of Property, exam,

Thereby committing the offense of Burglary - Commercial, said offense being a CLASS C FELONY against the peace and dignity of the State of Arkansas.

**COUNT 2: Burglary - Commercial ARK. CODE ANN. § 5-39-201.** The said defendant, or an accomplice, in FAULKNER COUNTY, did unlawfully and feloniously on or about February 14, 2011, Enter or remain unlawfully in a commercial occupiable structure of another person, to wit: Laney Hall, with the purpose of committing therein any offense punishable by imprisonment, to wit: Theft of Property, exam,

Thereby committing the offense of Burglary - Commercial, said offense being a CLASS C FELONY against the peace and dignity of the State of Arkansas.

**COUNT 3: Burglary - Commercial ARK. CODE ANN. § 5-39-201.** The said defendant, or an accomplice, in FAULKNER COUNTY, did unlawfully and feloniously on or about March 16, 2011, Enter or remain unlawfully in a commercial occupiable structure of another person, to wit: Laney Hall, with the purpose of committing therein any offense punishable by imprisonment, to wit: Theft of Property, exam,

Thereby committing the offense of Burglary - Commercial, said offense being a CLASS C FELONY against the peace and dignity of the State of Arkansas.

**COUNT 4: Burglary - Commercial ARK. CODE ANN. § 5-39-201.** The said defendant, or an accomplice, in FAULKNER COUNTY, did unlawfully and feloniously on or about March 31, 2011, Enter or remain unlawfully in a commercial occupiable structure of another person, to wit: Laney Hall, with the purpose of committing therein any offense punishable by imprisonment, to wit: Theft of Property, exam,

Thereby committing the offense of Burglary - Commercial, said offense being a CLASS C FELONY against the peace and dignity of the State of Arkansas.

**COUNT 5: Burglary - Commercial ARK. CODE ANN. § 5-39-201.** The said defendant, or an accomplice, in FAULKNER COUNTY, did unlawfully and feloniously on or about May 2-3, 2011, Enter or remain unlawfully in a commercial occupiable structure of another person, to wit: Laney Hall, with the purpose of committing therein any offense punishable by imprisonment, to wit: Theft of Property, exam,

Thereby committing the offense of Burglary - Commercial, said offense being a CLASS C FELONY against the peace and dignity of the State of Arkansas.

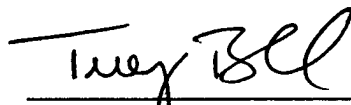
**COUNT 6: FRAUDULENT INSURANCE ACTS ARK. CODE ANN. § 23-66-502.** The said defendant in FAULKNER COUNTY, did unlawfully and feloniously on or about April, 2011, commit a fraudulent insurance act,

Thereby committing the offense of FRAUDULENT INSURANCE ACTS, said offense being a CLASS D FELONY against the peace and dignity of the State of Arkansas.



**COUNT 7: ISSUING FALSE FINANCIAL STATEMENT ARK. CODE ANN. § 5-37-205.** The said defendant in FAULKNER COUNTY, did unlawfully and feloniously on or about February 17, 2011, with purpose to defraud or injure, he represented in writing that a written instrument that described a person's financial condition or ability to pay was accurate with respect to that person's financial condition or ability to pay, knowing the instrument was inaccurate in some material respect, to-wit:

Thereby committing the offense of ISSUING FALSE FINANCIAL STATEMENT, said offense being a CLASS A MISDEMEANOR against the peace and dignity of the State of Arkansas.



Cody Hiland  
Prosecuting Attorney  
Twentieth Judicial District

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the above and foregoing instrument was tendered to defendant in discovery.

