IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
RONALD E. GILLEY	)	

UNITED STATES' OPPOSITION TO DEFENDANT GILLEY'S MOTION FOR A BILL OF PARTICULARS

The United States of America, through undersigned counsel, hereby opposes defendant Gilley's motion for a bill of particulars as to various allegations in the Indictment. Dkt. No. 502. Defendant Gilley asserts that a bill of particulars is necessary for him to adequately prepare his defense. In his motion, he makes forty-two individual demands for information he deems essential to his preparation. Indeed, he claims that without such information he is left in the dark regarding the charges contained in the Indictment. His position is absurd. Paying mere lip service to the Court's Order, Dkt. No. 429, denying defendant McGregor's motion for a bill of particulars with respect to the honest services charges, Mot. at 1, he attempts to distinguish his situation as somehow unique. It is not. The Indictment provides copious details of the various criminal charges defendant Gilley now faces, and he inappropriately seeks to abuse the limited purpose of a bill of particulars in his desire to answer what amount to civil interrogatories. Because he has more than sufficient notice to defend his conduct at trial, the motion should be denied.

ARGUMENT

"An indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead

an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Woodruff, 296 F.3d 1041, 1046 (11th Cir. 2002). If an indictment does not meet these minimal criteria, a defendant may seek a bill of particulars pursuant to Federal Rule of Criminal Procedure 7(f).

As a general matter, however, "[a] defendant possesses no right to a bill of particulars . . . ." United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980). The purpose of a bill of particulars is merely to cure any deficiencies in an indictment by

> informing a defendant of the nature of the charges against him so that he will have sufficient detail to prepare for this defense, to avoid or minimize the danger of surprise at trial, and to enable him to plead double jeopardy in the event of a subsequent prosecution for the same offense.

United States v. Murray, 527 F.2d 401, 411 (5th Cir. 1976) (internal quotation marks omitted). It is not designed "to provide detailed disclosure before trial of the Government's evidence." United States v. Sheriff, 546 F.2d 604, 606 (5th Cir. 1977); see also United States v. Colson, 662 F.2d 1389, 1391 (11th Cir. 1981) ("[G]eneralized discovery is not a proper purpose in seeking a bill of particulars."); United States v. Davis, 582 F.2d 947, 951 (5th Cir. 1978); United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978).

Defendant Gilley, like defendant McGregor, as determined by the Court, has been provided with more than ample detail to prepare his defense to the charges in the Indictment. Not only do the allegations contained in each count in which he is a defendant track the statutory language of the relevant statutes, see Indict. ¶ 21 (conspiracy under 18 U.S.C. § 371), ¶¶ 192, 196, 198, 204, 208 & 214 (federal program bribery under 18 U.S.C. § 666(a)(2)), ¶¶ 234-236 (honest services mail and wire fraud under 18 U.S.C. §§ 1341, 1343, and 1346), ¶¶ 238 (money laundering), they also specify

the relevant periods of time for each charge[1] and notify defendant Gilley (and his co-defendants) of the nature of the conduct forming the basis of each charge.

The grand jury went even further, however, delineating in Count 1, the conspiracy count, the purposes of the conspiracy, the manner and means in which it was executed, and the acts that occurred in furtherance of the scheme. Each of the substantive charges against defendant Gilley incorporates at least 178 specific and detailed allegations regarding how the conspiracy and scheme were carried out, and by whom. Id. ¶¶ 211, 213, 221, 223 & 233. Although paragraphs 1 through 26 of the Indictment are general background allegations, the allegations contained in paragraphs 29[2] through 190 provide precise descriptions of defendant Gilley's conduct, as well as that of his co-defendants, establishing the bribery conspiracy charge alleged in Count 1. This sort of express incorporation is permitted by Rule 7's very language: "A count may incorporate by reference an allegation made in another count." Fed. R. Crim. P 7(c)(1).

Of the incorporated overt acts, dozens pertain directly to defendant Gilley and his efforts to corrupt the legislative process in Alabama. For example, these allegations make clear the following:

- In March 2009, defendant Gilley, along with defendant Smith and Jarrod Massey, offered to provide campaign support to Legislator 1 in exchange for Legislator 1's support of specific pro-gambling legislation. See, e.g., Indict. ¶¶ 41, 43.

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[1] Defendant Gilley complains that the substantive offenses provide insufficient detail concerning the charged conduct. Mot. at 4. He ignores the fact that each substantive charge specifies the relevant period of time, in some cases down to the day. Indeed, his claim that the indictment is too complex, id. at 6-8, also ignores the simple structure of the overt acts, which are separated by legislator (and defendant Crosby), and laid out chronologically.

[2] The purposes of the conspiracy and manner and means of its execution, Indict. ¶¶ 29-38, are incorporated only in Counts 22 to 33, the honest services charges.

- In February 2010, defendant Gilley, along with defendant McGregor, as well as Massey, offered Legislator 2 $1 million per year in connection with a public relations job in exchange for Legislator 2's vote in favor of pro-gambling legislation. See, e.g., id. ¶¶ 47, 50-51, 54, 59, 60, 62, 64.
- In March 2010, defendant Gilley, along with Massey and Pouncy, offered $100,000 in campaign contributions to defendant Means in exchange for his vote on SB380. See, e.g., id. ¶¶ 77-79.
- In March 2010, defendant Gilley, along with Massey, Pouncy, and defendants Coker and McGregor, offered various things of value to defendant Preuitt in exchange for his vote on SB380. See, e.g., id. ¶¶ 85-87, 90-94, 100-105, 106-108, 115.
- From late December 2009 through March 2010, defendant Gilley, through Massey and Pouncy, agreed to provide defendant Ross with campaign contributions in connection with his vote on pro-gambling legislation. See, e.g., id. ¶¶ 119, 125, 127.
- From December 2009 through March 2010, defendant Gilley, along with Massey, Walker, and Pouncy, provided hundreds of thousands of dollars in campaign contributions to defendant Smith in exchange for her vote on SB380 and efforts to seek additional support and votes from other legislators. See, e.g., id. ¶¶ 135, 137,140, 144-152.[3]

[3] The preceding recitation makes clear that the charges in the Indictment, and in particular the substantive bribery offenses, are not as complex as defendant Gilley attempts to make them out to be. The exchange of things of value for official action, which forms the basis of each charged offense, is nothing novel in the law, and defendant Gilley's attempts to claim ignorance as to what crimes he is alleged to have committed merely because he allegedly repeated his conduct multiple times are not credible.

As such, the Indictment provides ample notice to defendant Gilley of the specific allegations upon which the grand jury based its decision to charge him (and his co-defendants) with conspiracy, federal programs bribery, honest services mail and wire fraud, honest services mail and wire fraud through bribery. In light of this significant detail—amounting to thirty-three pages of particularized factual allegations—defendant Gilley can hardly claim that he has no idea what crimes he is alleged to have committed. With respect to these charges—and all charges—the Indictment provides far more detail than is required and easily meets the Supreme Court's dictate that an indictment provide sufficient notice of the conduct charged.

And yet this is not enough for defendant Gilley, who seems to argue that the Indictment is both too specific and not specific enough. Mot. at 2 ("Although the Indictment is lengthy and quotes directly recorded conversations involving Mr. Gilley and others, it nevertheless fails to allege some of the charges against Mr. Gilley with the meaningful particularity to which Mr. Gilley is entitled."); id. at 9 (claiming that the Indictment "lacks clarity"). Defendant Gilley's position is faulty for a number of reasons, not least of which is the fact that his demands seek information to which he is not entitled or is otherwise available.

As a general matter, a significant number of his "requests" appear to challenge nothing more than the use of statutory language in the Indictment and demand the evidence the government intends to use to prove each word. See, e.g., Mot. at 13 (Fourth Request) (seeking details of how defendant Gilley "corruptly gave" things of value), (Fifth Request) ("corruptly offered"), 14 (Sixth Request) ("agreed to give"), (Seventh Request) ("corruptly influence"), (Eighth Request) ("corruptly reward"), (Tenth Request) (seeking details of how legislators "corruptly solicited" things of value), (Eleventh Request) ("corruptly demanded"), 15 (Twelfth Request) ("corruptly accepted"), (Thirteenth Request)

("corruptly agreed to accept"), (Fourteenth Request) (seeking details of "any business, transaction, and series of transactions"), 17 (Twenty-First Request) ("agree to give"), 18 (Twenty-Fifth Request) ("intent to influence" and "intent to reward"), (Twenty-Sixth Request) ("business, transaction, and series of transactions"), 19 (Thirty-First Request) ("scheme and artifice to defraud").[4] Defendant Gilley provides no legal support for any of these demands, and the government is under no obligation to explain how particular words in particular paragraphs in a charging document apply to a criminal defendant's conduct. Indeed, a bill of particulars is an improper tool for seeking disclosure of the government's evidence at trial. Sheriff, 546 F.2d at 606.[5] Similarly, with respect to his demands concerning the scienter language in the Indictment, the government is under no obligation to allege in a charging document its theory of intent. United States v. Agostino, 132 F.3d 1183, 1190 (7th Cir. 1997).[6]

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[4] Defendant Gilley cannot legitimately claim that the scheme or artifice to defraud is not sufficiently pled in the honest services counts, which incorporate the entire conspiracy, including its purposes and the manner and means of its execution. The Court has already concluded that the honest services counts are sufficiently alleged for defendant McGregor to prepare his defense. The same is true for defendant Gilley and the remaining co-defendants.

[5] As such, defendant Gilley is also incorrect when he seeks information regarding the federal assistance Alabama receives, as well as the value of the business, transaction, or series of transactions under the federal program bribery statute. Mot. at 14 (Ninth Request), 17 (Twentieth Request), 22 (Fortieth Request). The Indictment sufficiently pleads these elements, and defendant Gilley is not entitled to know at this juncture exactly how the government will prove them at trial.

[6] For the same reason, there is no requirement that the government disclose its legal theory as to aiding and abetting liability or the interstate nexus requirement for money laundering. Mot. at 18 (Twenty-Fourth Request) (aiding and abetting), 19 (Twenty-Ninth Request) (same), 21 (Thirty-Fifth Request (same), (Thirty-Seventh Request) (interstate nexus). The purpose of a bill of particulars is not to compel the government "to explain the legal theories upon which it intends to rely at trial." Burgin, 621 F.2d at 1359; United States v. Gabriel, 715 F.2d 1447, 1449 (10th Cir. 1983); Kempe v. United States, 151 F.2d 680, 685 (8th Cir. 1945); Rose v. United States, 149 F.2d 755, 758 (9th Cir. 1945).

Further, "a defendant is not entitled to a bill of particulars 'with respect to information which is already available through other sources.'" United States v. Martell, 906 F.2d 555, 558 (11th Cir. 1990) (quoting United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir.), modified on other grounds, 801 F.2d 378 (11th Cir. 1986)). Notwithstanding the detailed factual roadmap contained in the Indictment, the United States has also provided the defendants with substantial and detailed discovery in this matter, comprising, among other things, business and bank records, e-mail communications, and audio recordings. Cf. United States v. Williams, 679 F.2d 504, 510 (5th Cir. 1982) (finding no error in government's failure to provide a bill of particulars where "the government did provide the defense with a raft of discovery documents").

In addition, on January 7, 2011, the government provided to all defendants a detailed breakdown of a subset of the documentary evidence from which the United States is likely to develop its case-in-chief. For each item and category of evidence the government provided, it also identified which defendant(s) those items and categories implicated. Previously, the United States also provided a list of the recordings that would form the core of its audio presentation at trial.

Still, defendant Gilley claims this is not enough and that the discovery in this case cannot cure the Indictment's purported deficiencies. Mot. at 10. He argues, for example, that the discovery does not contain the names of unindicted co-conspirators, and that he is entitled to know the name of every person involved in his alleged conduct. See, e.g., id. at 8, 10, 13 (Third Request), 18 (Twenty-Eighth Request), 19 (Thirtieth Request), 21 (Thirty-Sixth Request). Putting aside the fact that the Indictment identifies ten charged co-conspirators and Jennifer Pouncy (Lobbyist A), as an unindicted co-conspirator, defendant Gilley is more than capable of reviewing the discovery, consisting, in part, of recorded telephone conversations, to determine the other individuals who were

involved in his efforts to buy votes on pro-gambling legislation.[7] Moreover, pursuant to the Court's scheduling order, the United States will disclose to all defendants its witness list on March 14, three weeks in advance of trial. Cf. United States v. Briggs, 514 F.2d 794, 804 (5th Cir. 1975) ("[E]ven after the grand jury has completed receiving evidence, its evidence is unavailable to [the defendant]. . . . The evidence and the witnesses underlying the grand jury's action surface, if at all, at a criminal trial."). At that point, defendant Gilley will be fully apprised of the witnesses the government may call at trial, obviating his claim, Mot. at 8, that a bill of particulars is somehow necessary to identify all possible government witnesses. Colson, 662 F.2d at 1391 ("[G]eneralized discovery is not a proper purpose in seeking a bill of particulars.").

A number of defendant Gilley's demands in his motion also exhibit a flawed understanding of co-schemer and co-conspirator liability. For example, in connection with the conspiracy charge, he seeks information regarding payments he made that would conceal the nature of the source, Mot. at 16 (Sixteenth Request);[8] offers he made personally to political candidates to withdraw from races, id. (Seventeenth Request); and documents that he falsified, id. (Nineteenth Request). The law is clear that a defendant is liable for the actions of his co-conspirators within the scope of the conspiracy regardless of his participation in such acts. United States v. De La Cruz Suarez, 601 F.3d 1202, 1221 (11th Cir. 2010). As such, the government is under no obligation to either allege or prove defendant Gilley's involvement in every part of the conspiracy, so long as there is sufficient

[7] Similarly, the identities of other gambling operators, as well as fiscal estimates and the identity of those who prepare them for the Alabama legislature, Mot. at 22 (Forty-First and Forty-Second), are also available from "other sources," Rosenthal, 793 F.2d at 1227, including discovery in this matter.

[8] The Indictment specifically alleges defendant Gilley's involvement in concealing the source of campaign contributions to defendant Smith. Indict. ¶¶ 142, 147.

proof at trial of his membership in the agreement to corrupt the Alabama legislative process. Likewise, contrary to defendant Gilley's position, Mot. at 13 (First Request), the law of conspiracy does not require an agreement amongst all co-conspirators. United States v. Russell, 703 F.2d 1243, 1247 (11th Cir. 1983).

Defendant Gilley's efforts to challenge the government's proof with respect to the various mailings and wirings charged in Counts 23 to 28, Mot. at 20 (Thirty-Third and Thirty-Fourth Request), is both premature and misplaced. The law is clear that defendant Gilley is no less liable for the conduct of his alleged co-schemers in the honest services charges, including mail and wire transmissions to which they were parties. In United States v. Ward, 486 F.3d 1212 (11th Cir. 2007), the Eleventh Circuit recently reiterated in the mail fraud[9] context:

> For nearly as long as mail fraud has been a federal crime, it has been the law in this Circuit, and in the former Fifth Circuit, that a defendant may be convicted of mail fraud without personally committing each and every element of mail fraud, so long as the defendant knowingly and willfully joined the criminal scheme, and a co-schemer used the mails for the purpose of executing the scheme.

Id. at 1222 (footnote omitted); see also United States v. Munoz, 403 F.3d 1357, 1369 (11th Cir. 2006) ("[S]o long as one participant in a fraudulent scheme causes a use of the mails in execution of the fraud, all other knowing participants in the scheme are legally liable for the use of the mails."); Funt, 896 F.2d at 1294 (rejecting claim that defendant must have specific knowledge of mailing to sustain mail fraud conviction). Likewise, to establish wire fraud, "[i]t is sufficient for the purposes of the Section 1343 that the wire transmission be the foreseeable result of the fraudulent scheme." United States v. Hewes, 729 F.2d 1302, 1324 (11th Cir. 1984) (upholding conviction of wire fraud

[9] The mail and wire fraud statutes are "given a similar construction and are subject to the same substantive analysis." Belt v. United States, 868 F.2d 1208, 1211 (11th Cir. 1989).

despite "[t]he mere fact that [the defendant's] role in the scheme may have ended prior to the time the transmissions occurred").

At bottom, all of the mailings and wirings identified in Counts 23 through 33 occurred during the period of the alleged scheme to defraud, and all of them are incident to the overarching honest services bribery scheme that defendant Gilley and his co-defendants are accused of executing in connection with pro-gambling legislation pending before the Alabama legislature. The United States has provided defendant Gilley with the evidence supporting each mailing and wiring, and if he wishes to argue at trial that he is not liable for particular counts, he is more than capable of doing so.

In light of the detailed allegations contained in the Indictment and the significant discovery provided to him, defendant Gilley is "adequately informed of the charges against him and [is] accorded the opportunity to plan his defense accordingly." Martell, 906 F.2d at 558. Defendant Gilley seeks an unnecessary and unwarranted recitation of the government's evidence and theory of the case, despite having received everything to which he is entitled—and far more. The Court should deny his motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record through the Court's electronic filing system this 12 day of February, 2011.

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