

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

UNITED STATES OF AMERICA)
)
) CR. NO. 2:10cr186-MHT
)
LARRY P. MEANS)

**UNITED STATES’ OPPOSITION TO DEFENDANT MEANS’S
MOTION FOR A BILL OF PARTICULARS**

The United States of America, through undersigned counsel, hereby opposes defendant Means’s motion for a bill of particulars as to various allegations contained in the Indictment. Dkt. No. 475. Because defendant Means 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 Means has been provided with more than ample detail to prepare his defense to the crimes with which he is charged. 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), ¶¶ 200 & 202 (federal program bribery under 18 U.S.C. § 666(a)(1)(B)), ¶¶ 226 & 228 (extortion under color of official right under 18 U.S.C. § 1951(a)), ¶¶ 234-236 (honest services mail and wire fraud under 18 U.S.C. §§ 1341, 1343, and 1346), they also specify the relevant periods of time for each charge and notify defendant Means (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 Means incorporates at least 178 specific and detailed allegations regarding how the conspiracy and scheme were carried out, and by whom. id. ¶¶ 199, 201, 225, 227 & 233. Although paragraphs 1 through

26 of the Indictment are general background allegations, the allegations contained in paragraphs 29¹ through 190 provide precise descriptions of defendant Means'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, nine deal specifically with defendant Means and his conduct. These allegations make clear that, after having abstained from an earlier vote on SB380, he voted in favor of the final bill on March 30, 2010, but not until after he had secured promises of payments in the form of campaign contributions from defendants McGregor, Gilley, and Coker, as well as Jarrod Massey and Jennifer Pouncy (Lobbyist A). Indict. ¶¶ 74-82.

As such, the Indictment provides ample notice to defendant Means of the specific allegations upon which the grand jury based its decision to charge him (and his co-defendants) with committing the crimes of conspiracy, federal program bribery, extortion under color of official right, and honest services fraud. In light of this significant detail—amounting to thirty-three pages of particularized factual allegations—defendant Means 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.

For his part, defendant Means bases his argument on conclusory statements regarding his purported entitlement to various pieces of information. Mot. at 1-4. His claims are insufficient to

¹ 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.

meet the standard for a bill of particulars. For example, defendant Means argues that he is entitled to know the name of all “other persons” referenced in the Indictment and known to the grand jury. Mot. at 1. As a general matter, a criminal defendant is not entitled to know all the evidence presented to the grand jury. 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]. He may not demand a statement of reasons supporting the body’s conclusion. The evidence and the witnesses underlying the grand jury’s action surface, if at all, at a criminal trial.”). Defendant Means provides no justification for his request, and it lacks merit. The government has provided for his review significant discovery, including documentary evidence and audio recordings. He is fully capable of reviewing this discovery to determine the identities of any other individuals involved in his alleged crimes. See United States v. Martell, 906 F.2d 555, 558 (11th Cir. 1990) (“[A] defendant is not entitled to a bill of particulars ‘with respect to information which is already available through other sources.’” (quoting United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir.), modified on other grounds, 801 F.2d 378 (11th Cir. 1986))). 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. At that point, defendant Means will be fully apprised of the witnesses the government may call at trial, obviating his claim, Mot. at 4, 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.”).²

² Likewise, provision of the government’s witness list blunts defendant Means’s claim that he is entitled to the identities of the individuals to whom he made a promise not to vote for the bill absent a local provision covering Etowah County. Mot. at 2-3. Should the government decide to call any such individuals in its case-in-chief, defendant Means will have sufficient advance notice.

Several of defendant Means's other requests involve the manner and means section of the conspiracy count. Mot. at 2. Defendant Means seeks greater specificity as to the payments offered to both him and other legislators, and he demands information concerning the government's proof that he concealed illicit transactions. Id. Defendant Means's reference to these paragraphs wholly ignores the 152 specific and detailed overt acts that follow and provide factual support for the alleged manner and means of the conspiracy. He also fundamentally misunderstands the nature of co-conspirator liability. 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 Means's involvement in every part of the conspiracy, so long as there is sufficient proof at trial of his membership in the agreement to corrupt the Alabama legislative process.

Finally, defendant Means asserts that he is entitled to know how the government will prove extortion under color of official right predicated on promises of campaign contributions. Again, what he seeks is not available through a bill of particulars. The purpose of a bill of particulars is to put the defendant on notice of the charges against him so that he can prepare a defense—it is not a means 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). Nor is it a vehicle to learn how the government intends to establish criminal intent.

United States v. Agostino, 132 F.3d 1183, 1190 (7th Cir. 1997).³

In light of the detailed allegations contained in the Indictment and the significant discovery provided to him, defendant Means 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 Means 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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Acting Under Authority of 28 U.S.C. § 515

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³ To the extent defendant Means is unclear “what ‘honest services’ are allegedly involved,” in Counts 23 to 33, Mot. at 3, such honest services are those that members of the Alabama legislature owe the citizens of Alabama, performed in the best interest of the public and free of graft or bribery. See Eleventh Cir. Pattern Jury Instructions 50.2.

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 12th day of February, 2011.

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