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
	)	
QUINTON T. ROSS, JR.	)	

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

The United States of America, through undersigned counsel, hereby opposes defendant Ross's motion for a bill of particulars as to various allegations in the Indictment. Dkt. No. 506.

ARGUMENT

Defendant Ross asserts that a bill of particulars is necessary to adequately prepare his defense. In his motion, he identifies numerous categories (and subcategories) of information without which, in his view, he cannot adequately prepare his defense. Mot. at 2-9. Defendant Ross exhibits a basic misunderstanding of the purpose of a criminal indictment and a bill of particulars. Because he has more than sufficient notice to defend his conduct at trial, the motion should be denied.

"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 Ross 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), ¶¶ 210 & 212 (federal program bribery under 18 U.S.C. § 666(a)(1)(B)), ¶¶ 222 & 224 (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 Ross (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 Ross

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[1] through 190 provide precise descriptions of defendant Ross'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, fifteen pertain directly to defendant Ross. These allegations make clear that in the months and days leading up to a vote on SB380 defendant Ross actively solicited campaign contributions in connection with such legislation, and they identify the particular conversations in which the requests occurred. Specifically, in late December 2009 or early January 2010, defendant Ross demanded campaign contributions from defendant Gilley and Jarrod Masey, through Jennifer Pouncy, claiming that he was not "feeling the love" after sponsoring pro-gambling legislation during the 2009 legislative session. Indict. ¶¶ 20, 119. Later, as the legislative session progressed, defendant Ross introduced competing pro-gambling legislation on March 9, 2010, id. ¶ 124, before demanding additional campaign contributions in the amount of $25,000 from Massey, id. ¶ 125, who backed SB380.

Nor were defendant Ross's solicitations confined to defendant Gilley, Massey, and Pouncy. Indeed, defendant Ross also sought campaign contributions from one of defendant McGregor's principal lobbyists, defendant Coker, id. ¶¶ 126-127, and ultimately from defendant McGregor

[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.

personally. To that end, the Indictment alleges with precision the direct connection between defendant Ross's demands for campaign contributions and the pending vote on the pro-gambling legislation. In a conversation the day before the vote on SB380, defendant Ross allegedly asked defendant McGregor,"You feel like you got the twenty-one [votes] in the Senate?" id. ¶ 128. Defendant McGregor responded that he was "cautiously optimistic." Later in the very same conversation, defendant Ross repeatedly solicited campaign contributions. Id.

And if the connection between defendant Ross's demand for contributions and the vote on SB380 were not sufficiently clear, in a conversation the next day—the day of the actual vote, March 30, 2010—defendant Ross again solicited contributions, stating "we're just getting down to the wire." Putting a fine point on this understanding, defendant Ross told defendant McGregor that "we know the window is closing on us fast and so I'm just trying to do everything I can to, uh, make sure I can raise [funds] . . . ." Id. ¶ 129. In response, defendant McGregor promised to help however he could. Id.[2]

As such, the Indictment provides ample notice to defendant Ross 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 Ross 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

[2] Defendant Ross seeks the value of "unspecified amounts," as alleged in the Indictment, Mot. at 6. The government can confirm that, where the Indictment does not allege a specific amount, such amounts were indeed "unspecified," with the details to be worked out later.

sufficient notice of the conduct charged.

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").[3]

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. Defendant Ross and his co-defendants are therefore well aware of the focus of the government's case as it pertains to the crimes with which they have been charged, and, as a result, they cannot plausibly claim an inability to prepare their defense.

Sidestepping both the high level of specificity contained in the Indictment and the discovery

[3] To that end, the government has provided to defendant Ross PAC records reflecting reported campaign contributions that he received, which, in any event, are available publicly. Despite his demand that the government do his work for him, Mot. at 7, he is fully capable of reviewing these records in preparation of his defense.

provided to him, defendant Ross seeks information that is either already available to him or otherwise not appropriate in the context of a bill of particulars. Contrary to his claim that the Indictment does not sufficiently allege a quid pro quo, Mot. at 2-3, as noted above, the charging document more than sufficiently apprises defendant Ross of his conduct—alleging a direct connection between his solicitations of campaign contributions and vote on SB380. While the Indictment does not include the Latin phrase quid pro quo, it clearly conveys the critical charge of an exchange of things of value for a specific official. That is all the law requires. See United States v. Seminerio, 2010 WL 3341887, at *6 (S.D.N.Y. Aug. 20, 2010) ("[T]he Indictment need not utter the 'magic words' 'quid pro quo' or even 'bribe' or 'bribe receiving' or 'kickbacks'—so long as a jury could find that Seminerio understood what was expected as a result of the payments to exercise particular kinds of influence as opportunities arose."). 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).[4]

[4] By the same authority, at this stage of the proceedings, defendant Ross is not entitled to a preview of how the government intends to prove its theory of aiding and abetting liability. Mot. at 7, 8-9. Nor is the government obliged to reveal to defendant Ross the names of unindicted co-conspirators and the names of those who aided and abetted him. His citation to United States v. Anderson, 799 F.2d 1438, 1439 (11th Cir. 1986), and United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985), Mot. at 7-8, is misplaced. Neither case addresses whether such disclosure is required; rather, each simply noted that the district court had ordered such disclosure. As noted, the charges involving defendant Ross provide sufficient notice of what he did, when he did it, and with whom. Indeed, the charges actually specify individuals involved in the offenses—e.g., defendants McGregor, Gilley, Coker, as well as Massey and Pouncy. Defendant Ross cannot plausibly claim surprise. Moreover, per the Court's scheduling order, the government will provide its witness list on March 14, 2011, three weeks prior to trial, blunting defendant Ross's claimed need to know the identity of government witnesses through a bill of particulars. Colson, 662 F.2d at 1391 ("[G]eneralized discovery is not a proper purpose in seeking a bill of particulars.").

Similarly, the allegations contained in the Indictment plainly establish the ways in which defendant Ross sought to "reward," "enrich," and "benefit" himself, and his claim to the contrary, by which he seeks a granular explanation of an exceedingly detailed and organized charging document, Mot. at 3-4, is both misguided and unsupported by the law. Sheriff, 546 F.2d at 606.[5] Defendant Ross's demand for what amounts to a detailed description of the government's legal theory is therefore premature and improperly couched in his request for a bill of particulars to which he is not entitled.

A number of defendant Ross's demands in his motion also exhibit a flawed understanding of co-schemer and co-conspirator liability. For example, he seeks information regarding any alleged attempt on his part to conceal a corrupt transaction or illicit payment, Mot. at 5, as well as information regarding his involvement in the mailings and wirings charged in Counts 23 to 33, Mot. at 8. 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 Ross'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.

Similarly, defendant Ross is no less liable for the conduct of his alleged co-schemers in the honest services charges, Counts 22 to 33, including mail and wire transmissions to which they were

[5] Defendant Ross's demand that the government identify the official act performed by him displays a particularly myopic view of the Indictment, Mot. at 6, which clearly alleges the connection between a single official action—his vote on pro-gambling legislation, SB380—and his solicitations of campaign contributions.

parties. In United States v. Ward, 486 F.3d 1212 (11th Cir. 2007), the Eleventh Circuit recently reiterated in the mail fraud[6] 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 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 Ross 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 Ross 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.

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[6] 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).

In light of the detailed allegations contained in the Indictment and the significant discovery provided to him, defendant Ross 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 Ross 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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