

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
)
 HARRI ANNE H. SMITH)

**UNITED STATES' OPPOSITION TO DEFENDANT SMITH'S
MOTIONS FOR A BILL OF PARTICULARS**

The United States of America, through undersigned counsel, hereby opposes defendant Smith's motion for a bill of particulars as to the honest services fraud and extortion charges alleged in the Indictment. Dkt. Nos. 417, 418,¹ 494. Defendant Smith's motion concerning the honest services charges is virtually identical to the motion filed by defendant McGregor, Dkt. No. 359, which the Court denied on February 3, 2011, Dkt. No. 429, a day before defendant Smith filed her motion. Other than replacing defendant McGregor's name with her own, defendant Smith presents no novel argument concerning her ability to defend against the honest services charges in Counts 23 to 33. As such, the government relies on the arguments it made with respect to defendant McGregor's motion. Dkt. No. 386.

The remainder of the instant response addresses defendant Smith's claimed need for a bill of particulars with respect to the extortion charge (Count 21). Because she has more than sufficient notice to defend her 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

¹ Docket entries 417 and 418 are duplicates of the same document.

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 Smith has been provided with more than ample detail to prepare her defense to the extortion charge in the Indictment. Not only do the allegations contained in Count 21 track the statutory language of the Hobbs Act, see Indict. ¶ 230, they also specify a discreet period of the offense (December 2009 through March 2010) and notify her of the alleged contours of her extortionate conduct. Id. (“SMITH, while serving as a member of the Alabama Senate, engaged in

a course of conduct, whereby SMITH solicited and, directly and through others, pressured GILLEY, under the color of official right, to consent to provide at least \$400,000 in campaign contributions for the benefit of SMITH, which money was not due to SMITH.”).

The grand jury went even further, however, incorporating in Count 21 178 specific and detailed allegations regarding defendant Smith’s conduct (as well as that of her co-defendants). Although paragraphs 1 through 26 of the Indictment are general background allegations, the allegations contained in paragraphs 29 through 190 provide precise factual descriptions. 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, many pertain directly to defendant Smith’s conduct. These allegations reveal, among other things, that in March 2010, defendant Smith solicited \$400,000 in campaign contributions from defendant Gilley and discussed concealing Gilley as the source of the funds, who agreed to run the payments through PACs that would be difficult to trace. At the same time, defendants Smith and Gilley discussed official action Smith would take to ensure she and other legislators voted in favor of SB380. See, e.g., Indict. ¶¶ 142-148, 153.

In light of the detailed allegations contained in the Indictment (as well as the significant material provided in discovery, including PAC bank records), defendant Smith 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 Smith, who cribs her argument once again from defendant McGregor’s bill of particulars motion, provides no justification for any additional detail regarding the extortion charge, and the Court should deny her motion.

Respectfully submitted,

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Acting Under Authority of 28 U.S.C. § 515

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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 12th day of February, 2011.

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