

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
)
JOSEPH R. CROSBY)

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

The United States of America, through undersigned counsel, hereby opposes defendant Crosby’s motion for a bill of particulars as to various allegations contained in the Indictment. Dkt. No. 455. Because defendant Crosby 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 Crosby 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), ¶ 220 (federal program bribery under 18 U.S.C. § 666(a)(1)(B)), ¶¶ 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 Crosby (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 Crosby incorporates at least 178 specific and detailed allegations regarding how the conspiracy and scheme were carried out, and by whom. id. ¶¶ 219 & 233. Although paragraphs 1 through 26 of the Indictment are general background allegations, the allegations contained in paragraphs 29¹ through

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.

190 provide precise descriptions of defendant Crosby'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, twenty-six deal specifically with defendant Crosby and his conduct. These allegations make clear that, while receiving monthly payments in the amount of \$3,000 from defendant McGregor, which he did not report on required financial disclosure forms, he took various official actions on behalf of McGregor. Indict. ¶¶ 156-181.

As such, the Indictment provides ample notice to defendant Crosby 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, and honest services fraud. In light of this significant detail—amounting to thirty-three pages of particularized factual allegations—defendant Crosby 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 Crosby claims that he cannot adequately prepare a defense unless the government discloses to him the specific state law he violated when he allegedly accepted bribe payments from defendant McGregor, as well as the basis for the prohibition on income supplementation. Mot. at 1-2. He makes no effort to establish that the federal offenses with which he is charged are insufficiently pled or that, as a result, he is not fairly informed of the conduct at issue, as required for a bill of particulars. Instead, he makes a blanket assertion that, in effect, he is

entitled to an explanation of any wording in the Indictment that he finds insufficiently clear. Because his conclusory justification is insufficient and the information he seeks is available from other sources, such as the public record and the significant discovery provided by the government, 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))), his motion fails.

Respectfully submitted,

LANNY A. BREUER
Assistant Attorney General, Criminal Division
Attorney for the United States
Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief
Public Integrity Section

By: /s/ Eric G. Olshan
Eric G. Olshan
Trial Attorney
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, DC 20005
(202) 514-1412

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.

/s/ Eric G. Olshan
Eric G. Olshan
Trial Attorney
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, DC 20005
(202) 514-1412