

FACTUAL BASIS

1. Count Ten of the Indictment charges Coker, along with Gilley, Massey, McGregor and Lobbyist A of bribing Senator Ross with “promises of \$25,000 and other unspecified amounts”.

2. Reading the indictment as a whole, this clause could be interpreted to imply that the “\$25,000” is related to Gilley, Massey and Lobbyist A and the unspecified amounts relates to McGregor and Coker. Specifically, Count 18 charges Ross with extorting \$25,000 from Gilley, Massey and Lobbyist A. While Count 12 charges Ross with accepting “an unspecified amount of campaign contributions from McGregor and Coker”.

¶212. Requiring Coker to defend against allegations of “unspecified amounts” is violative of his constitutional rights.¹

3. If the foregoing assumption is incorrect, then Coker is required to search elsewhere to learn of the charges against him. Other portions of the indictment² make wildly divergent allegations of varying amounts of campaign contributions, leaving Coker to guess whether the “unspecified amounts” are: specified elsewhere or not; actual payments or merely promises; payments from co-defendants or completely unrelated

¹ “To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of the grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. *Russell*, 369 U.S. at 770, 82 S.Ct. at 1050.” *U.S. v. McDonnell*, 696 F.Supp. 356, 360 (N.D.Ill.,1988).

² Count 10 claims to incorporate paragraphs 1 through 26 and 39 through 190. See ¶ 207.

sources; or before the vote and after the vote on SB 380. Without more information, it is impossible for Coker to defend against this charge.

4. The portion of the indictment containing factual allegations related to Senator Ross are located in ¶¶118 through 132. Within those paragraphs the following allegations are made with relation to Coker and contributions to Senator Ross:

a). McGregor deposited nearly \$2 million into dozens of PACs which was distributed by himself, Coker, Geddie and others to legislators including Ross.

¶121.

b). Lobbyist A claimed Coker gave Ross \$15,000 in campaign contributions.

¶126.

c). Massey claimed Coker gave Ross \$25,000 in campaign contributions. ¶127.

d). It is also alleged that Coker told McGregor that we was going to get Ross campaign contributions from the “medical association and ... soft drink folks.”³

¶131

5). What exactly is Coker charged with offering Ross? In order to defend against this count, does Coker need to focus on the PAC funds by McGregor, the allegations of Lobbyist A, the allegations of Massey, the future funds promised after the vote? Is it the \$25,000 in Count 18 that Ross is alleged to have extorted from Gilley, Massey and

³ ¶131 alleges that these statements by Coker of procuring future contributions for Ross occurred “after the successful vote on SB380” and therefore could be provide for different defenses than events occurring before the vote.

Lobbyist A or could it be the \$20,000 in Count 11 that Ross is alleged to have accepted from them? Or is this some other “unspecified amount” which is not mentioned elsewhere in the indictment and subject to the whim of the prosecutor at trial?

MEMORANDUM OF LAW

Rule 7(f) of the *Federal Rules of Criminal Procedure* authorizes a Court to direct the filing of a bill of particulars. The purpose of the Rule, as amended in 1966, is “to encourage a more liberal attitude by the courts toward bills of particular.” Note of Advisory Committee, *Fed.R.Crim.P.* 7. The purpose of a bill of particulars, as set out by the Eleventh Circuit, “is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense.” *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985). “The test in passing on a motion for bill of particulars should be whether it is necessary that defendant have the particulars sought in order to prepare his defense and in order that prejudicial surprise be avoided.” C. Wright, *Federal Practice and Procedure: Criminal* § 129 (1969). “A bill of particulars is available to any defendant who desires more information.” *Reid v. United States*, 233 F.Supp 314, 316 (S.D.Ala. 1964).

Although the granting or refusal of a motion for a bill of particulars rests within the sound discretion of the trial court, there is “no discretion to disregard the requirements

of the Sixth Amendment that the accused shall be informed of the nature and cause of the accusations against him fully enough to enable him to prepare his defense and definite and certain enough that he may be protected by a plea of former jeopardy against another prosecution for the same offense.” *Williams v. United States*, 164 F.2d 302, 304 (5th Circuit 1947).⁴ Clearly, under the laws of our nation, a defendant has a constitutional right to “be informed of the nature and cause of the accusations.” *Sutton v. United States*, 157 F.2d 661, 663 (5th Cir. 1946); *United States v. Jaswal*, 47 F.3d 539, 543 (2nd Cir. 1995) (quoting *United States Constitution*, Amendment VI).

While it is not a cure for a deficient indictment, the courts have made clear that the basic principle governing a request for a bill of particulars is to identify with sufficient particularity the nature of the charge pending against him to prepare a defense and to prevent surprise at trial. See *United States v. Gordon*, 780 F.2d 1165, 1172 (5th Cir. 1986); *Russell v. United States*, 369 U.S. 749 (1962) (invalid indictment cannot be cured by bill of particulars). A defendant’s need to know the evidentiary details establishing the facts of his alleged offense is remedied by a bill of particulars. *United States v. Panzavecchia*, 421 F.2d 440, 442 (5th Cir. 1970).

⁴ The Eleventh Circuit held, in *Bonner v. City of Prichard*, that decisions of the Fifth Circuit handed down prior to September 30, 1981, are binding as precedent in the Eleventh Circuit. 661 F.2d 1206, 1207 (11th Cir. 1981).

CONCLUSION

Based on the foregoing argument and authorities, Coker respectfully prays that this Court enter an Order pursuant to *Fed.R.Crim.P.* 7(f) directing the Government to provide him with a Bill of Particulars responding to Defendant's single request identified above, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ David McKnight
Of Counsel