

fraud connected to “the delivery of or payment for” any of those things. *Bobo*, 344 F.3d at 1084. Second, the indictment did not specify what Dr. Bobo was defrauding the Medicaid program of (i.e., benefits, items, or services). *Id.* As the Eleventh Circuit put it, “the indictment [made] only a broad allegation of fraud in a health care benefit program without the required specificity.” *Id.* And, as the Supreme Court has held, when an indictment calls for speculation as to one of the fundamental elements of a charge, the indictment is invalid. *See Hamling v. United States*, 418 U.S. 87, 117 [] (1974).

Thirdly, and perhaps most importantly, the Eleventh Circuit explained that the indictment against Dr. Bobo was insufficiently specific because it failed to identify what unlawful thing Dr. Bobo did. *Bobo*, 344 F.3d at 1084. Specifically, the indictment cited no federal or state law that required service contracts to be bid competitively, or that prohibited individuals from offering money to others in hopes of inducing them not to bid on a contract. *Id.* at 1084-85. In essence, the Eleventh Circuit dismissed the indictment because, on its face, it failed to explain how the acts Dr. Bobo allegedly committed were unlawful under the cited statute.

United States v. Bobo, 2007 WL 962976, *3 (N.D. Ga. Feb. 16, 2007).

Thus, the problem in *Bobo* was not the incorporation of the facts from one section to another, but rather, that the indictment failed to set forth how the fraud was connected to the bribery, failed to specify how Medicare was being defrauded, and failed to identify the unlawful thing defendant allegedly did. In the present case, the indictment does set forth with detail the allegations against McGregor for each count.

Further, unlike *Bobo*, the issue before this court is whether McGregor is entitled to a Bill of Particulars. A defendant is not “entitled to a bill of particulars with respect to information which is already available through other sources such as the indictment or discovery and inspection.” *United States v. Rosenthal*, 793 F.2d 1214, 1227 (11th Cir. 1986); *see also United States v. Martell*, 906 F.2d 555, 558 (11th Cir. 1990). As the Government

notes in its Response, “the Indictment provides ample notice to defendant McGregor of the specific allegations upon which the grand jury based its decision to charge him (and his co-defendants) with committing honest services mail and wire fraud through bribery. *See* Indict. ¶¶ 29-31 (describing purposes of conspiracy and, by incorporation, honest services fraud scheme); *id.* ¶¶ 31-37 (manner and means of conspiracy and, by incorporation, honest services fraud scheme); *id.* ¶¶ 39-190 (overt acts in further of conspiracy and, by incorporation, honest services fraud scheme).” Response (Doc. #386) at 3. The court finds that the Indictment, along with the information provided to defendant during the discovery process, makes McGregor sufficiently aware of the charges and enables him to prepare a defense. Thus, a Bill of Particulars would be repetitive. *See United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986) (quoting *United States v. Cole*, 755 F.2d 748, 760 (11th Cir.1985)(“The purpose of a true bill of particulars is threefold: ‘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.’”).

The main argument made by McGregor in his Reply is that any vagueness in the indictment will lead to an unfair advantage for the Government at trial, in that it will be allowed to keep “its position fluid and unspecified for as long as possible.” Reply (Doc. #394) at 2. “However, a bill of particulars is not intended to give a preview of the case or unduly restrict the government’s presentation of its case or unduly restrict the government

in presenting its proof at trial.” *United States v. Young & Rubicam, Inc.*, 741 F. Supp. 334, 349 (D.Conn., 1990). “Nor is the government required to provide defendants with all overt acts that might be proven at trial.” *Rosenthal*, 793 F.2d at 1227.

The court finds that McGregor is sufficiently aware of the charges against him and has the opportunity to plan for his defense. *See Martell*, 906 F.2d at 558. Accordingly, it is

ORDERED that the Motion for Bill of Particulars (Doc. #359) is DENIED.

Done this 3rd day of February, 2011.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE