

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 07-10234-MLB
)	
STEPHEN J. SCHNEIDER,)	
and)	
LINDA K. SCHNEIDER, a/k/a)	
LINDA K. ATTERBURY,)	
d/b/a SCHNEIDER MEDICAL CLINIC,)	
)	
Defendants.)	
_____)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANTS’
JOINT MOTION FOR A BILL OF PARTICULARS**

The United States of America, by and through Assistant United States Attorney Tanya J. Treadway, hereby submits its Response in Opposition to Defendants’ Joint Motion for a Bill of Particulars (Doc. 103).

Because the Indictment and the available discovery provide more than sufficient notice of the crimes charged, the defendants can prepare their defenses, avoid surprise, and avoid being placed in jeopardy twice. The Court should deny defendants’ motion for these reasons and because it seeks discovery, which is an improper purpose of a motion for a Bill of Particulars. Moreover, the Court should deny defendants’ motion, which is nothing more than an attempt to make the government correlate and synthesize for them all of the evidence available in discovery.¹

¹ The government has made discovery available to the defendants, but counsel has not taken the opportunity to review discovery. A Bill of Particulars is not a substitute for defense counsels’ due diligence and discovery obligations.

DISCUSSION

The defendants' Motion for a Bill of Particulars, which reads like a set of civil interrogatories, flouts well-settled law that Bills of Particulars are not discovery devices.² Defendants make 60+ broadly-worded requests for the government to identify the evidence supporting allegations in the Indictment. Defendants' motion should be denied on the mere fact that it seeks discovery. Additionally, the defendants make no attempt to show prejudice, a necessary prerequisite to the granting of a Bill of Particulars. The Court should deny defendants' motion on this failure alone. Nevertheless, the government briefly responds.

A. A Bill of Particulars is not a discovery device.

The grant or denial of defendants' motion for a Bill of Particulars rests within the Court's sound discretion.³ As the Court is well aware, the purpose of a Bill of Particulars is not to obtain discovery, evidentiary detail of the government's case, or information regarding the government's legal theories.⁴ Rather, the purpose of a Bill of Particulars is to supplement the allegations in the indictment when necessary to (1)

² See, e.g., United States v. Gabriel, 715 F.2d 1447, 1449 (10th Cir. 1983).

³ See United States v. Wright, 826 F.2d 938, 942 (10th Cir. 1987); Gabriel, 715 F.2d at 1449; United States v. Baca, 494 F.2d 424, 426 (10th Cir. 1974); United States v. Burger, 773 F. Supp. 1419, 1423 (D. Kan. 1991).

⁴ Gabriel, 715 F.2d at 1449; see also, United States v. Matlock, 675 F.2d 981, 986 (8th Cir. 1982); United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.1978); United States v. Bearden, 423 F.2d 805, 809 (5th Cir.1970); United States v. Guebara, 80 F. Supp. 2d 1226, 1229 (D. Kan. 1999); United States v. Anderson, 31 F. Supp. 2d 933, 938 (D. Kan. 1998); United States v. Nguyen, 928 F. Supp. 1525, 1551-52 (D. Kan. 1996) (denying Bill of Particulars in death penalty case); United States v. Shoher, 555 F. Supp. 346, 349-50 (S.D.N.Y. 1983).

enable the defendant to prepare his defense, (2) avoid unfair surprise to the defendant at trial, and (3) preclude a second prosecution for the same offense.⁵ A Bill of Particulars is unnecessary if the indictment sets forth the elements of the offense charged,⁶ as it does in this case.

To prevail on a motion for a Bill of Particulars, a defendant must show that without the Bill, his case would be prejudiced,⁷ and must identify the specific prejudice flowing from the lack of particulars.⁸ "A generalized and conclusory statement of prejudice in support of a motion for a bill of particulars is, in itself, a basis for denying the motion."⁹

B. The defendants' motion ignores settled law and fails to establish the requisite prejudice.

The defendants' motion ignores the above-discussed, well-settled law. Even a cursory review of the defendants' motion reveals that the defendants seek a script of the government's case and theory, and the type of discovery normally pursued in civil litigation.¹⁰ Indeed, the defendants' 60+ broadly-worded requests read like a set of civil

⁵ See, e.g., United States v. Ivy, 83 F.3d 1266, 1281 (10th Cir. 1996); Gabriel, 715 F.2d at 1449.

⁶ See Ivy, 83 F.3d at 1281 (quoting United States v. Levine, 983 F.2d 165, 166-67 (10th Cir. 1992)).

⁷ Wright, 826 F.2d at 942.

⁸ United States v. Swiatek, 632 F. Supp. 985, 987 (N.D. Ill. 1986).

⁹ Id. (citing United States v. Wells, 387 F.2d 807, 808 (7th Cir. 1967)).

¹⁰ See United States v. Deerfield Specialty Papers, Inc., 501 F. Supp. 796, 810 (E.D. Pa. 1980). Notably, even in civil litigation, the defendants would be limited to 25 interrogatories. See Fed. R. Civ. P. 33.

interrogatories or requests for production. These requests can be generally categorized as ones for evidentiary detail concerning the crimes charged, and the defendants' motion plainly states that they are seeking the evidentiary bases for, and explanations of, various allegations.¹¹

The Indictment is a comprehensive and detailed charging document. Contrary to defendants' claims, the Indictment specifically informs them what crimes they committed, when they committed those crimes, how they committed their crimes, and the identities of their victims. In addition to very specific charges, the defendants have been given liberal access to discovery. Indeed, the defendants have been given the opportunity to review discovery materials beyond that required by the federal rules and the law. Thus, a Bill of Particulars is not warranted.¹²

Although the defendants have a constitutional right to be apprised of the offenses with which they are charged, they have no right to know how the government will prove those crimes at trial.¹³ Moreover, defendants have not made a showing of specific prejudice, but have simply echoed the litany of a Bill's purpose and made conclusory representations of their need for the information. A "mere recitation" that the

¹¹ See Doc. 103 at pp. 3-7. The defendants' motion reads more like a motion for judgment of acquittal based on insufficient evidence, making claims that the government has not provided sufficient facts for the charges.

¹² See United States v. Urban, 404 F.3d 754, 772 (3d Cir. 2005); Ivy, 83 F.3d at 1281-82; Guebara, 80 F. Supp. 2d at 1229.

¹³ See Anderson, 31 F. Supp. 2d at 938; Swiatek, 632 F. Supp. at 988.

defendants will suffer prejudice is insufficient to warrant the Court's ordering the government to provide a Bill of Particulars.¹⁴

Essentially, the defendants' motion is a straightforward request "to compel the government to synthesize and correlate the information in a comprehensible format."¹⁵ The defendants plainly claim that the government can devote sufficient resources to "describe the information it has collected."¹⁶ But, the government is not required to provide through a Bill of Particulars the when, where, and how of the acts underlying the charges.¹⁷ Essentially, defendants seek disclosure of the fruits of the government's investigation, even though they have been provided sufficient information to enable them to begin their own investigation, which precludes the need for a Bill of Particulars.¹⁸

To require responses to the defendants' interrogatories would create an enormous, if not impossible, task for the government. Hence, defendants' assertion that the government would not be prejudiced if it is required to provide the requested Bill of Particulars is obviously incorrect.

In view of the Indictment's having provided the defendants with considerable specificity and detail, and the government's having provided the defendants the

¹⁴ See Wright, 826 F.2d at 944.

¹⁵ Deerfield Specialty, 501 F. Supp. at 810.

¹⁶ Doc. 103 at p. 12.

¹⁷ See United States v. Gonzalez-Rivera, 1992 WL 212413 *1 (E.D. Pa. 1992).

¹⁸ See United States v. Smith, 776 F.2d 1104, 1111 (3d Cir. 1985).

opportunity to review documents and information in its possession which are not its own work product, the motion for a Bill of Particulars "borders on the frivolous."¹⁹ Indeed, the defendants need only review the documents available to find that which they seek. If, as they claim, they cannot do so in the time allotted prior to trial, their relief is through a motion for continuance of the trial setting, not a motion for a Bill of Particulars.

It is abundantly clear that the defendants do not need any additional information to prepare their defenses, to avoid unfair surprise at trial, or to plead double jeopardy. Additionally, the defendants identify no prejudice flowing from the fact that the government is providing them information through discovery, rather than through a Bill of Particulars. Consequently, the defendants' motion must fail. While the defendants are entitled to the information, they are not entitled to it in a particular form, and they cannot require the government to do their work for them.

CONCLUSION

The Court should deny defendants' request for a Bill of Particulars because they have not made the necessary showing of prejudice to warrant a Bill of Particulars and their motion merely seeks discovery. The Indictment and the available discovery provide more than sufficient notice of the crimes charged such that the defendants can prepare their defenses, avoid surprise, and avoid double jeopardy. The defendants can obtain the evidentiary detail they seek through reviewing available discovery.

¹⁹ Shoher, 555 F. Supp. at 349-50; see also, United States v. Sturmoski, 971 F.2d 452, 560 (10th Cir. 1992); Gabriel, 715 F.2d at 1449 (trial court correctly denied motion for Bill of Particulars when government had made disclosure of documentary evidence it intended to introduce at trial).

Respectfully submitted,

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s/ Tanya J. Treadway

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following individuals:

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