

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:09CR002

BOBBY B. DELAUGHTER

GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION FOR BILL OF PARTICULARS

Comes now the United States of America, by and through the United States Attorney for the Northern District of Mississippi, in response to the defendant's motion for bill of particulars.

The United States submits that the motion should be denied. It is beyond the recognized scope of a Bill of Particulars. An initial package of Rule 16 information has already been disclosed and made available to the defendant in the discovery process. However, discovery is continuing and will continue to be supplemented for the foreseeable future. Therefore, defendant's motion is also untimely.

The function of a bill of particulars is to provide the defendant with that information about the pending charges that is necessary to the preparation of his defense and to avoid prejudicial surprise at trial and to avoid double jeopardy. *United States v. Burgin*, 621 F.2d 1352, 1359 (5th Cir.), *cert. denied*, 449 U.S. 1015 (1980); *United States v. Cantu*, 557 F.2d 1173, 1178 (5th Cir. 1977), *cert. denied*, 434 U.S. 1063 (1978). Generalized discovery is not the function of a bill of particulars. *United States v. Davis*, 582 F.2d 947 (5th Cir. 1978), *cert. denied*, 441 U.S. 962 (1979). It is clear in this Circuit that a bill of particulars is not designed to compel the Government to give a "detailed exposition of its evidence or to explain the legal theories upon which it intends to rely at trial." *Burgin*, 621 F.2d 1359.

A bill of particulars “may not be used for the purpose of obtaining a detailed disclosure of the Government’s evidence in advance of trial.” *Downing v. United States*, 348 F.2d 594, 599 (5th Cir.), *cert. denied*, 382 U.S. 901 (1965). Similarly, it is not the purpose of a bill of particulars merely to make preparation of the defense less difficult. *United States v. Bearden*, 423 F.2d 805, 809 (5th Cir. 1970), *cert. denied*, 400 U.S. 836 (1970). The motion seeks the evidentiary details of the Government’s case, the government’s trial strategy and other matters outside the proper office for the bill of particulars. The defendant is not entitled to the particulars sought and has shown no cause for invoking the Court’s intervention.

The denial of a bill of particulars is within the sound discretion of the trial Court. *United States v. Montemayor*, 703 F.2d 109, 117 (5th Cir. 1983), *cert. denied*, 464 U.S. 822 (1983); *United States v. Hawkins*, 661 F.2d 436, 451-52 (5th Cir. 1981), *cert. denied*, 456 U.S. 991, 457 U.S. 1137 (1982). The defendant bears the burden of showing prejudice or a clear abuse of discretion by the Court in denying a motion for bill of particulars. *See United States v. Burgin*, *supra*, at 1359. In the case sub judice, the indictment and discovery provided by the government are more than sufficient to allow the defendant to prepare his defense and avoid any unfair surprises.

Defendant is charged with participation in a conspiracy to be corruptly influenced in the matter of *Wilson v. Scruggs*. Defendant is also charged with participation in a scheme to deprive the citizens of the state of his honest services in the same matter. Both charges contain detailed descriptions of the overt acts of the named conspirators. In addition, the United States has provided and made available to the defendant those materials to which he is entitled under Rule 16, Federal Rules of Criminal Procedure.

The Indictment and discovery materials sufficiently describe the things of value Delaughter and others received, the identities of known co-conspirators and the nature of the

agency. In addition, defendant has been provided a spread sheet of all federal funding for Hinds County, Mississippi, during the time frame alleged in the Indictment.

The United States is not required to reveal trial strategies explaining which portions of defendant's orders are "not based upon sound legal principles or otherwise erroneous." The government is also not required to preview its position on the provisions of Mississippi law or judicial ethics. Each, however, are adequately described in the Indictment.

Finally, defendant requests an explanation of the "substantive issues" in the *Wilson* matter he is alleged to have discussed with a co-conspirator. In effect he seeks pretrial production of that witness's testimony. Pursuant to Rule 16 FRCP, defendant has been provided the statements he made to agents of the FBI. Defendant is not entitled to further explanation at this time.

For the foregoing reasons, the defendant's Motion for a Bill of Particulars should be denied.

Submitted this the 9th day of April, 2009.

Respectfully submitted,

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By: */s/ William C. Lamar*
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CERTIFICATE OF SERVICE

I, William C. Lamar, certify that I electronically filed the foregoing **Government's Response To Defendant's Motion For Bill Of Particulars** with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: None.

This the 9th day of April, 2009.

/s/ William C. Lamar
WILLIAM C. LAMAR
Assistant United States Attorney