

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

LOHRASB "JEFF" JAFARI

Criminal Action No.

1:19-CR-00078-SCJ-LTW

**UNITED STATES' RESPONSE TO DEFENDANT'S MOTION
FOR A BILL OF PARTICULARS**

The United States of America, by Byung J. Pak, United States Attorney, and Jill E. Steinberg, Jeffrey W. Davis, and Nathan P. Kitchens, Assistant United States Attorneys for the Northern District of Georgia, file this Response to Defendant's Motion for a Bill of Particulars. (Doc. 40).

BACKGROUND

On February 26, 2019, a federal grand jury returned a 51-count indictment against the Defendant. (Doc. 1). The Defendant is charged with conspiring to commit bribery (Count One), bribery (Counts Two through Seven), tampering with a witness (Count Eight), tax evasion (Counts Nine through Eleven), money laundering (Counts Twelve through Thirty-Six), and structuring (Counts Thirty-Seven through Fifty-One). (*Id.*). The bribery counts relate to the Defendant paying bribes to two individuals: Adam Smith, the chief procurement officer for the City of Atlanta (Counts One through Five) and a separate official and agent of the DeKalb County government. (Counts Six and Seven). (*Id.*)

On July 22, 2019, the Defendant filed a motion for a bill of particulars seeking a variety of information from the government, including but not limited to information about other supposed money that either Smith or the DeKalb County official “corruptly received” from other individuals. (Doc. 40). On July 24, 2019, during the pretrial conference, the Defendant explained at length his grounds for the motion, stating that it’s “not illegal to get a gift, goodwill, friendship, a thing of value unless it’s for a dishonest purpose” (Transcript of Pretrial Conference, Doc. 45 at 8) and that, in the hundreds of thousands of pages of discovery,¹ he hasn’t been able to determine “what it is that Adam Smith actually was able to do to influence - to influence or be influenced or to be rewarded.” (Id. at 9). Although the Defendant creatively attempts to justify his requests in light of the governing law, the reality is that he is asking the government to explain its theory of the case and identify specific documents for him in support of its theory. For this reason and others explained below, the Defendant’s motion should be denied.

ARGUMENT

The Defendant is charged in Count One of the indictment with conspiring with Smith, the former chief procurement officer of the City of Atlanta, to corruptly give, offer, and agree to give a thing of value to Smith with the intent to influence or reward Smith in connection with certain business of the City of

¹ At the pretrial conference, the Defendant noted that the government “has furnished the defense with tens of thousands of pages of discovery, probably in excess of 100,000 pages, which I guess I should say thank you, because I’m getting extensive discovery.” (Id. at 9).

Atlanta. (Doc. 1 at 1). The indictment offers details as to what the Defendant expected and Smith did in exchange:

7. After most of the meetings, JAFARI paid Smith approximately \$1,000 in cash. In return for these bribe payments, JAFARI expected Smith to use his position and power as City of Atlanta's Chief Procurement Officer to assist JAFARI with contracting/procurement with the City of Atlanta and furnish him with future benefits and favors when needed.
8. Furthermore, in exchange for those cash payments:
 - a. Smith met with JAFARI on a regular basis;
 - b. Smith provided JAFARI with information and counsel regarding the City of Atlanta's procurement processes (among other information);
 - c. When PRAD Group or a joint venture in which PRAD Group was a partner became the successful bidder on a City of Atlanta contract or Request for Proposal, Smith approved and submitted the award of such procurement projects or bids to the City of Atlanta's mayor and city council for final authorization;
 - d. When PRAD Group or a joint venture in which PRAD Group was a partner received additional work on an existing City of Atlanta contract, Smith approved task and/or purchase orders for those projects; and
 - e. Neither Smith nor JAFARI disclosed their ongoing financial relationship.

(Id. at 3). The indictment details eight examples of cash payments that the Defendant made to Smith in restaurant bathrooms. (Id. at 4-5). In Counts Two

through Five, the Defendant is charged with substantive bribery counts relating to the payments made by the Defendant to Smith. (Id. at 5-7). The suggestion that the Defendant is somehow ignorant about the role and influence of Smith and the Defendant's expectations of him has no basis.² Similarly, the Defendant has no grounds to plead ignorance as to what he sought to gain from the DeKalb County official – the government produced two audio and video-recorded meetings in which the Defendant gives that official cash and discusses DeKalb County business that he hopes the official will influence in his favor.³

Counts Twelve through Thirty-Six of the indictment detail specific financial transactions that form the basis for the money laundering charges against the Defendant; that is, financial transactions derived from funds that the Defendant obtained through bribery from the City of Atlanta. (Id. at 13-16). In addition to the detailed indictment, the government has produced thousands of pages of bank statements that reflect each and every payment made to the Defendant and his various companies from the City of Atlanta, along with every document produced by the City of Atlanta in response to the government's subpoena for records regarding the work of the Defendant and his firm. The

² Since the pretrial conference, the government produced to the Defendant the audio recording of the FBI's initial interview with Smith and the FBI report from Smith's first proffer session with the United States Attorney's Office in which Smith discusses the payments that the Defendant made to him and what he did, or was expected to do, in return for those payments.

³ These recordings were produced at arraignment. Since that time, the government produced an FBI report that summarizes an interview with the DeKalb County official about the bribes he received from the Defendant.

government has also produced all correspondence provided by the City of Atlanta to the government. Considering the detailed indictment and the significant discovery provided to the Defendant, the Defendant's motion can be viewed for what it truly is: an effort to compel the government lay out its evidence for the Defendant before the case goes to trial.

A. The Defendant's Motion Should Be Denied Because It Seeks An Explanation Of The Government's Evidence, Not The Charged Offenses

"A bill of particulars, properly viewed, supplements an indictment by providing the defendant with information necessary for trial preparation." United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986) (emphasis in original). The purpose of a bill of particulars under Federal Rule of Criminal Procedure 7(f) 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." Id. (citation omitted).

"The defendant's constitutional right is to know the offense with which he is charged, not to know the details of how it will be proved." United States v. Kendall, 665 F.2d 126, 135 (7th Cir. 1981) (citing United States v. Freeman, 619 F.2d 1112, 1118 (5th Cir. 1980)⁴). See also United States v. Scruschy, No. CR-03-BE-530-S, 2004 WL 483264, at *9 n.5 (N.D. Ala. Mar. 3, 2004) ("there is a difference between being surprised by the charge and being surprised by the evidence

⁴ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down before October 1, 1981.

supporting a charge. The function of the bill of particulars is to reduce surprise at the charge Rule 7 does not give a defendant the right to insist that he be made aware of all of the evidence the Government may use against him so that he literally is not ‘surprised’ by anything at trial.”) (emphasis in original).

The Defendant generally requests three categories of information: (1) how much money the Defendant and others paid Smith and the DeKalb County official (Doc. 40, Requests 1-3, 6); (2) a description of the acts Smith and the DeKalb County official agreed to undertake and what they actually did for the Defendant’s bribe payments (Id., Requests 4-5, 7-8); and (3) the identity of a transaction or specific transactions referenced in the indictment. (Id., Requests 9-11). In sum, these requests do not seek information necessary to understand the charges, but instead seek an explanation of the evidence and/or the government’s theory of the case. Some of the requests, like information regarding other individuals who may have paid bribes to these public officials, seek information that is irrelevant to the charged conduct.

The Defendant’s motion to itemize in advance of trial how much the Defendant paid in bribes to Smith and the DeKalb County official should be rejected. The exact bribe amount is not necessary for the Defendant to understand the charges against him or prepare his defense. It is clear from the indictment that he is alleged to have paid bribes to Smith and the DeKalb County official during the time period stated in the indictment to influence or reward them. See United States v. Pinnix, 2007 WL 9734895, at * 1 (N.D. Ga. Feb. 26, 2007)(writing that a bill of particulars is not required where the information

sought is provided by other sources and should not be used to compel the government to detail its evidence or explain its legal theories, citing United States v. Martell, 906 F.2d 555, 558 (11th Cir. 1990), United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir. 1986), and United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980)). In addition, and addressed in greater detail below, the government has provided extensive discovery from which the Defendant can ascertain generally the amount of money that was paid to each official.

His request for information about monies that others may have paid these officials should be denied as irrelevant to the charges against him. At best, this is a request for generalized discovery, which “is not an appropriate function of a bill of particulars and is not a proper purpose in seeking the bill.” Anderson, 799 F.2d at 1441. Although the Defendant attempted to explain his request for discovery of this information in the context of a Brady motion at the pretrial conference, he did not – and cannot – justify his requests for information about other alleged criminal activity as properly within the scope of a motion for a bill of particulars. Finally, even if these officials took bribes from others, that evidence would not be exculpatory to the Defendant. See United States v. Vujovic, 635 F. App’x 265, 267 (6th Cir. Dec. 23, 2015) (holding in the context of a discovery dispute that evidence of wrongdoing by others is not evidence the defendant is innocent).

The Defendant’s request for an explanation of what he expected from Smith and the DeKalb County official and what he actually received from them should similarly be rejected. A bill of particulars is not a proper tool to seek

details about the government's evidence and theory of the case, which is precisely what the Defendant is seeking here. United States v. Detling, 2019 WL 3006623, at * 9 (N.D. Ga. Apr. 30, 2019) (citing to United States v. Warren, 772 F.2d 827, 837 (11th Cir. 1985)). See United States v. Victor Teicher & Co., L.P., 726 F. Supp. 1424, 1445 (S.D.N.Y. 1989)(denying motion for bill of particulars seeking information about communications between co-conspirators and the nature of the inside information that was the subject of the indictment). In any event, the discovery in the case addresses this very issue, along with information detailed in Count One of the indictment.⁵

Finally, the Defendant's request for a list of specific transactions that underlie certain charges in the indictment should be denied. The indictment alleges that the Defendant attempted to influence and/or reward Smith and the DeKalb County official in connection with work that he hoped to obtain or did obtain from the City of Atlanta and DeKalb County. The money laundering counts list particular transactions that were conducted with proceeds from the Defendant's illegal activity and resulted from the Defendant's work for the City of Atlanta. The government has produced extensive discovery about the Defendant's meetings with Smith, how much money the Defendant paid Smith, and the contracts and payments that the Defendant received from the City of Atlanta. To the extent he seeks even more information, he is effectively asking

⁵ What Smith and the DeKalb County official actually did for the Defendant in exchange for the bribe payments is not relevant. The offense charged is that the Defendant paid these officials with an expectation that he would influence or reward them for certain conduct, not that his actions were in fact successful.

the government to put the facts and evidence together for him, outlining its theory of the case.⁶ See United States v. Green, 2017 WL 10403354, at * 1-2 (N.D. Ga. Oct. 5, 2017)(denying motion for a bill of particulars in RICO case seeking information on how much money the defendant received from the illegal activity and how much he paid a fellow gang member); Victor Teicher & Co., 726 F. Supp. at 1446 (denying motion for a bill of particulars seeking the amounts by which the defendant was enriched by the alleged conspiracy).

B. The Information Sought By The Defendant Has Already Been Provided by Means of the Indictment and Discovery

As noted above, the government has provided the Defendant with extensive discovery materials, which further rebuts his alleged need for a bill of particulars. United States v. Roberts, 174 F. App'x 475, 477 (11th Cir. 2006). See also United States v. Lorenzana, 2006 WL 8440219, at * 1 (N.D. Ga. Mar. 15, 2006)(rejecting motion for a bill of particulars in part because extensive discovery was provided to the defendants); United States v. Society of Independent Gasoline Marketers, 624 F.2d 461, 466 (4th Cir. 1979) (no bill of particulars required where *inter alia* extensive disclosure of documents occurred).

⁶ The bribes made to the DeKalb County official were audio and video recorded. As a result, the Defendant's exact words about what he hoped to exact from that official were captured; these recordings were long ago produced to the Defendant. The government has also produced the FBI report reflecting a summary of that official's interview discussing the nature and purpose of those payments.

The materials provided to the Defendant include, but are not limited to: (1) all documents provided by the City of Atlanta in response to subpoenas seeking information about the Defendant or Smith, including Requests for Proposals (RFPs), contracts, notices to proceed, purchase orders, and invoices, among other materials; (2) financial records reflecting payments from the Defendant to Smith; (3) surveillance reports and photographs of meetings between the Defendant and Smith; (4) an audio recorded statement of the Defendant attempting to convince Smith to lie to the FBI; (5) FBI reports summarizing interviews with Smith and the audio recording of its first interview with Smith; (6) audio and video recordings of the charged meetings between the Defendant and the DeKalb County official; (7) FBI reports summarizing an interview with the DeKalb County official about the bribe payments the Defendant made to him; and (8) all bank records and other financial information in the government's possession relating to the Defendant, PRAD Group, and any related entities. The government has made available for review and inspection virtually every other case-related record in its possession (with the exception of limited *Jencks* Act materials). Because the discovery materials are so detailed and extensive, the Defendant is not entitled to a bill of particulars.

Finally, the Grand Jury returned a comprehensive 51-count indictment that tracked the relevant statutory language and provided the essential elements of each of the charged offenses. The indictment presents the conspiracy between the Defendant and Smith in detail, including the numerous meetings between Smith and the Defendant, what the Defendant expected from Smith in exchange for the

bribe payments, the allegation that the Defendant paid more than \$40,000 to Smith between 2014 and January 2017, and a list of eight meetings between Smith and the Defendant at which the Defendant paid Smith in a restaurant bathroom. (Doc. 1). The indictment is sufficient as a matter of law because it informed the Defendant “of the charge[s] 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.” Anderson, 799 F.2d at 1441. The indictment and discovery materials provide the Defendant with notice of the charges such that he has a full and fair opportunity to prepare for and avoid surprise at trial and to be able to plead double jeopardy in any future prosecution. For this reason also his motion should be denied.

CONCLUSION

The United States respectfully requests that the Court deny the Defendant's Motion for a Bill of Particulars. (Doc. 40).

Respectfully submitted,

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August 12, 2019

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