UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
ASHLAND

CRIMINAL ACTION NO. 0:26-CR-00033-DLB-EBA

UNITED STATES OF AMERICA PLAINTIFF

V. **DEFENDANT'S REPLY IN SUPPORT OF HIS MOTION FOR A BILL OF PARTICULARS**

TIMMY G. ROBINSON, JR. DEFENDANT

* * * * * * *

Comes now the Defendant, Timmy G. Robinson, Jr., by and through counsel, and for his Reply in Support of his Motion for A Bill of Particulars (DE 25), states as follows:

I. PRELIMINARY STATEMENT

The Government's Response advances two contradictory positions that cannot each be correct. Specifically, it argues that the Indictment already supplies every fact requested, while at the same time arguing that furnishing a bill of particulars would "unfairly handicap" the Government at trial by confining its proof to the particulars stated. (DE 27 at 4.) If the requested facts are already alleged, a bill of particulars would restate what the grand jury charged and would limit nothing. The Government's objection is valid only if it intends to introduce facts at trial that the Indictment does not allege. That is the very type of surprise Rule 7(f) exists to prevent.

Defendant does not seek the Government's evidence, its witness list, or its trial theories. He simply seeks the identification of facts that the Response itself tacitly acknowledges are not

stated in the Indictment, and facts that Defendant submits to this Court are omitted from the Indictment.

II. ARGUMENT

A. THE RESPONSE ACKNOWLEDGES THAT MATERIAL FACTS ARE NOT ALLEGED IN THE INDICTMENT.

The Response asserts that every fact sought as to the money laundering counts is "alleged in the Indictment already." (DE 27 at 8.) However, the accompanying footnote states otherwise. There, the Government explains that the wires charged in Counts 2 and 3 originated from the ARC account at Community Trust Bank ending in *7593, "as is *implicit* in the Indictment and obvious from the provided discovery," and adds that "[t]he Indictment identifies recipient institutions or accounts." (DE 27 at 8 n.4 (emphasis added)). A fact that is implicit, and that must be confirmed against discovery, is, by definition, a fact the Indictment does not state. The disjunctive phrase "institutions or accounts" concedes that Count 3 identifies a payee law firm and nothing more. (DE 1 at ¶ 22). Importantly, neither a financial institution nor an account is stated for that transaction.

Additionally, the Response hedges elsewhere in other regards. In footnote 1, the Government states that Buyer 2, "and arguably" Buyer 1, are "properly considered victims of the offense." (DE 27 at 2 n.1). Whether Buyer 1 is a victim of the charged scheme or a party to a separate commercial dispute is not a matter of proof detail. It defines the scope of the scheme, and the Government has declined to commit to a position.

A bill of particulars is the ordinary remedy for this specific issue. The purpose of a bill of particulars is to inform the defendant of the nature of the charge with sufficient precision to enable him to prepare for trial and to avoid surprise. Such a bill is appropriate "when the indictment itself is too vague and indefinite for such purposes." *United States v. Birmley*, 529

F.2d 103, 108 (6th Cir. 1976) (citing *United States v. Haskins*, 345 F.2d 111, 114 (6th Cir. 1965)). The Sixth Circuit's holdings have cemented those purposes, describing a bill of particulars as a tool "to minimize surprise and assist defendant in obtaining the information needed to prepare a defense." *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993); *accord United States v. Crayton*, 357 F.3d 560, 568 (6th Cir. 2004). The Government relies on both *Haskins* and *Salisbury*, cases that provide similar support for the relief Defendant seeks in the present motion.

B. COUNT 1 OF THE INDICTMENT DOES NOT ALLEGE THAT ANY REPRESENTATION WAS MADE TO BUYER 2.

Each misrepresentation alleged in the underlying Indictment describes communications directed to Broker 1. Specifically, Paragraph 14 alleges a false representation to Broker 1; Paragraph 15 alleges continued false representations during a due diligence process conducted by Broker 1; and Paragraphs 16 and 17 allege that the executed sale agreements containing the false representations were transmitted by interstate wire to Broker 1. (DE 1 at ¶¶ 14-17). The Indictment does not allege a single communication from Defendant to Buyer 2 or to any identified agent of Buyer 2.

The Government nonetheless identifies Buyer 2 as a victim of the charged offenses. (DE 27 at 2 n.1). The link between the party to whom the representations were made and the party allegedly defrauded is not a detail of proof. It is the necessary connective basis of the wire fraud theory, and the Indictment leaves it unstated. Defendant is entitled to know whether the Government contends that Broker 1 acted as Buyer 2's agent, such that representations to Broker 1 are attributable to Buyer 2, or whether it contends instead that some communication not described in the Indictment reached Buyer 2 directly.

This principle is not a novel one, as definitions of offenses that include generic terms are not enough for the charging instrument to speak in those same generic terms, because it "must descend to particulars." *Russell v. United States*, 369 U.S. 749, 765 (1962) (internal quotation marks omitted). The charge must "sufficiently apprise the defendant of what he must be prepared to meet." *Id.* at 763-764 (internal quotation marks omitted). The Supreme Court's concern in *Russell* was that a charge pleaded in generic terms leaves the defendant to "go to trial with the chief issue undefined" and gives the prosecution a free hand to fill the gaps by surmise. *Id.* at 766. Defendant does not seek draconian relief from the Court, such as dismissal of the Indictment. He simply asks that the Government state which representation it contends was false and to whom it contends it was made, which is the lesser remedy Rule 7(f) supplies.

The Sixth Circuit has applied this requirement to fraud charges, asking whether a charging instrument conveys "some substantial indication of the nature or character" of the scheme alleged. *United States v. Azad*, 809 F.2d 291, 295 (6th Cir. 1986). In *Azad*, the indictment supplied that indication in part by describing how the scheme operated upon the victims it identified. *Id.* In this case, the Indictment describes conduct directed at Broker 1 and separately identifies Buyer 2 as the victim. However, it does not sufficiently allege the connection between the two.

Here, Defendant primarily seeks answers to two questions. First, does the Government rely on any false representation other than those described in Paragraphs 14 through 17 of the Indictment? Second, does the Government contend that any of those representations reached Buyer 2? The Government can answer in a manner that does not reveal any of its evidence. The cases cited in the Government's Response involved far broader demands. (DE 27 at 6-7). In those cases, the defendants sought for the Government to catalog every false statement it

attributed to them and explain why each statement was false. Defendant's requests are limited in scope and are not nearly as far-reaching. He does not ask the Government to explain why any statement was false, to identify its witnesses, or to preview its proof. Defendant simply asks whether the Government's theory rests on the representations already described at Paragraphs 14 through 17 of the Indictment, and whether it contends any of them reached Buyer 2.

In *United States v. McQuarrie*, 817 F. App'x 63 (6th Cir. 2020), three defendants charged with wire and mail fraud moved for a bill of particulars after the second superseding indictment was returned. The district court granted the motion in part, but required the Government to identify the specific dates of the transactions underlying the fraud counts. *Id*. at 78. The Government complied, ultimately filing a second amended bill of particulars that added the mailing dates for the two documents at the center of those counts. *Id*. at 80. Nothing in *McQuarrie* suggests that furnishing those particulars burdened the prosecution in any way. The Government stated, transaction by transaction, what it already knew from law enforcement's investigation.

On appeal, the Sixth Circuit's treatment of the bill in *McQuarrie* is equally instructive. In reviewing a claim that the proof at trial varied from the charges, the court measured the Government's evidence against the bill of particulars it had furnished, describing it as the document by which the Government "was strictly limited." *Id*. at 79-80 (the Government is "strictly limited by a bill of particulars to the particulars 'which it has specified'" (quoting *Haskins*, 345 F.2d at 114)). Thus, the bill did the work that Rule 7(f) contemplates by fixing the scope of the Government's proof in advance, such that the Defendant can properly prepare a defense and is not ambushed at trial with undisclosed facts.

C. AS TO COUNTS 2 AND 3, THE INDICTMENT DOES NOT IDENTIFY THE CRIMINALLY DERIVED PROPERTY.

The chronology of the underlying Indictment demonstrates why the omission identified herein matters. Paragraph 19 of the Indictment alleges that ARC did not receive the Q1 ERC and Q2 ERC funds from the IRS until December 2, 2025. (DE 1 at ¶ 19). The transactions charged in Counts 2 and 3 allegedly occurred on November 17 and November 22, 2025, approximately two weeks earlier. (DE 1 at ¶ 22). Therefore, the ERC funds themselves cannot reasonably be the criminally derived property involved in either of the charged transactions.

On the face of the Indictment, the only remaining transaction is the initial purchase payment of $4,739,843.18 wired by Buyer 2 on November 12, 2025 into the Community Trust Bank account ending in *7593. (DE 1 at ¶ 18). This account, which Defendant understands from the produced discovery, also received the July 22, 2025 payment of $2,721,761 from Buyer 1, and ARC paid "other operational costs and debt obligations" from its funds. (DE 1 at ¶¶ 10, 19). 18 U.S.C. § 1957 requires that the property involved in the charged transaction be criminally derived property of a value greater than $10,000 that was derived from specified unlawful activity. *See* 18 U.S.C. § 1957(a). When the Government bases charges on outgoing wires from a commingled operating account, a defendant's request for particularity as to which property it means is not a request for evidence or a theory of prosecution. It simply asks the Government to identify facts supporting an element of the offense. Defendant cannot trace the funds transferred on November 17 and November 22, or properly build a defense around that tracing, until the Government clarifies which deposits supplied the criminally derived property.

Finally, Count 2 of the Indictment ambiguously describes that transaction as a "[w]ire payment to ARC Account x0157 at Truist Bank." (DE 1 at ¶ 22). When read together with footnote 4 of the Response, Count 2 charges a transfer from one ARC account to another ARC account. Thus, the description does not disclose whether the Government contends the charged

transaction is the outgoing wire from Community Trust Bank, the receipt of funds at Truist, or both. A bill of particulars would allow Defendant to understand the allegation clearly.

D. THE VOLUME OF DISCOVERY DOES NOT SUPPLY WHAT THE INDICTMENT OMITS.

Defendant does not dispute that the Government has produced substantial and voluminous discovery in this matter. However, the Sixth Circuit authorities on which the Response relies hold that discovery reduces or eliminates the need for a bill of particulars where the discovery itself conveys the details of the charges. *See United States v. Musick*, 291 F. App'x 706, 724 (6th Cir. 2008); *United States v. Page*, 575 F. App'x 641, 643 (6th Cir. 2014) (bill of particulars unwarranted where the defendant received ample discovery from which he could have discerned the identities of his co-conspirators).

The Government does not contend that its production identifies which deposits supplied the criminally derived property for Counts 2 and 3, or that it discloses whether the Government contends Broker 1 acted as Buyer 2's agent. Instead, it states that the answer to one of these questions is "implicit" in the Indictment and "obvious" from the records. (DE 27 at 8 n. 4). The governing test is "whether providing such details is necessary to the preparation of the defense and avoidance of prejudicial surprise." *Musick*, 291 F. App'x at 724. To require a defendant to infer the Government's essential factual allegations from "10,627 pages" does not satisfy that test. A discovery index that catalogs records by category and source only identifies where documents are and where they were collected. It does not identify which facts the Government will contend those documents establish, and it is that identification, not the documents, that *Page* describes as the "key factual information not contained in the indictment." *See Page*, 575 F. App'x at 643.

E. THE GOVERNMENT DID NOT RESPOND TO THE REQUEST FOR THE LOSS AMOUNT, WHICH BEARS ON A JURY QUESTION.

In Defendant's Motion, particular 7 requests the aggregate loss amount the Government contends resulted from the scheme and the method used to calculate it. (DE 25 at 4). The Response does not address that request and offers no argument or authority in opposition to it. The Indictment invokes the alternative fine provision, exposing Defendant on Count 1 to a fine of twice the gross gain or loss. (DE 1 at 8); *see* 18 U.S.C. § 3571(d). In *Southern Union Co. v. United States*, 567 U.S. 343, 360 (2012), the U.S. Supreme Court applied *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to the imposition of criminal fines, so any fact that increases the maximum fine beyond what the jury's verdict alone would authorize must be found by the jury beyond a reasonable doubt. The gross gain or loss figure is therefore a fact for the jury, not a matter reserved for the presentence process. Defendant cannot prepare to contest at trial a figure the Government refuses to state.

F. THE LIMITING EFFECT OF A BILL OF PARTICULARS FAVORS GRANTING THE MOTION.

The Government cites *Haskins*, 345 F.2d at 114 in arguing that a bill of particulars, if granted, would confine its proof at trial, and further cites that such would run afoul of the balancing directed by *United States v. Martin*, 822 F.2d 1089 (6th Cir. 1987) (table), 1987 WL 38036, at *2. (DE 27 at 4). The Sixth Circuit applied that limiting principle in *McQuarrie*. In reviewing a variance challenge, the court measured the Government's trial evidence against the bill of particulars it had furnished, stating the bill is the document by which the Government "was strictly limited." *McQuarrie*, 817 F. App'x at 80.

Here, the particulars requested would reasonably confine the Government only as to matters the Response represents are already fixed, including the operative wire, the identity of the allegedly false representations, and the source and character of the funds charged in Counts 2 and 3. If the Government's position on each is truly what the Response states, the resulting

limitation would cost nothing, as a bill would merely restate allegations already contained in the Indictment. The concern espoused in *Haskins* arises only where the Government intends to prove facts beyond those alleged. If the Government is unwilling to commit to the positions its Response attributes to the Indictment, that unwillingness does not defeat the need for the particulars, but instead confirms it.

Finally, Defendant feels compelled to note separately that if the Government possesses information indicating that any agent of Buyer 2 or Broker 1 knew of the prior transfer to Buyer 1 before the November 12, 2025 closing, such information is exculpatory and subject to disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963), regardless of how the Court disposes of the present Motion.

WHEREFORE, for the foregoing reasons, and for the reasons stated in Defendant's Motion for a Bill of Particulars, Defendant respectfully urges this Court to grant the relief requested in his Motion, and that a bill of particulars be filed within a time certain and sufficiently in advance of trial to permit the preparation of a defense.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2026, 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 all counsel of record.

/s/ Michael B. Fox
Counsel for Defendant