

forth this alleged complaint," and "any and all documents related to [this case.]"

II. BILL OF PARTICULARS

A bill of particulars has three functions: (1) to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, (2) to minimize the danger of surprise at trial, and (3) to enable him to plead his acquittal or conviction in bar of prosecution for the same offense when the indictment itself is too vague or indefinite for such purposes. United States v. Wessels, 12 F.3d 746, 750 (8th Cir. 1993), cert. denied, 513 U.S. 831 (1994); United States v. Garrett, 849 F.2d 1141 (8th Cir. 1988); United States v. Maull, 806 F.2d 1340, 1345 (8th Cir. 1986), cert. denied, 480 U.S. 907 (1987). A motion for a bill of particulars may not be used to require the government to disclose evidentiary detail which the government intends to present at trial or its legal theories of the case. United States v. Matlock, 675 F.2d 981, 986 (8th Cir. 1982); United States v. Burqin, 621 F.2d 1352, 1359 (5th Cir.), cert. denied, 449 U.S. 1015 (1980); United States v. Barket, 380 F. Supp. 1018, 1020 (W.D. Mo. 1974).

It is within a court's sound discretion to order the filing of a bill of particulars. United States v. Bowie, 618 F.3d 802, 817 (8th Cir. 2010), cert. denied, -- U.S. --, 131 S. Ct. 954 (2011). When exercising this discretion, a court must examine

the totality of the information available to the defendant, including the indictment and general pretrial discovery and determine whether, in light of the charges that the defendant is required to answer, the filing of a bill of particulars is warranted. United States v. Bin Laden, 92 F. Supp. 2d 225 233 (S.D.N.Y. 2000). See also United States v. Coffey, 361 F. Supp. 2d 102, 122 (E.D.N.Y. 2005). The denial of a motion for a bill of particulars does not constitute an abuse of discretion unless deprivation of the information sought will lead to an inability of the defendant adequately to prepare his case, or will lead to surprise at the trial resulting in prejudice to the defendant's substantial rights. United States v. Arenal, 768 F.2d 263 (8th Cir. 1985).

Defendant has failed to allege, much less establish, that the indictment is insufficient to inform him of the nature of the charges. He does not offer any explanation as to how the requested material is necessary to avoid prejudicial surprise at trial. He has not explained how the indictment is too vague or indefinite to allow him to plead his acquittal or conviction in bar of a future prosecution.

Count one of the indictment includes the dates, the place, the drugs, and the amounts defendant is alleged to have conspired to distribute. Count two includes the dates, the place, the unlawful activity from which the proceeds were derived, and how

the money was used to further the conspiracy. The indictment is not so vague as to require a bill of particulars.

Furthermore, defendant is not entitled to obtain a bill of particulars with respect to the specific information sought. His first request¹ is wholly unrelated to the charges against him and reads more like a request one would find in a civil case. His second request² is the indictment itself. Defendant was arraigned because he is entitled to see a copy of the indictment and have it read to him, and at the arraignment defendant formally enters his plea.

Defendant's third request³ is not an appropriate ground for a bill of particulars because a bill of particulars may not be used to obtain a list of the government's witnesses. Bohn v. United States, 260 F.2d 773, 778 (8th Cir.), cert. denied, 358 U.S. 931 (1959); United States v. Hanlin, 29 F.R.D. 481 (W.D. Mo. 1962).

¹Please identify each and every person involved in any way in the answering of these interrogatories.

²Please identify the reason or probable cause for arraignment.

³Please identify each and every person whom you expect to call as a witness at trial in this matter, and, for each person so identified, please state whether that witness will testify as a witness to the alleged complaint or as an expert or both.

Defendant's fourth and fifth request⁴s are dealt with in the Stipulations and Orders filed on February 17, 2011. In that document, the government indicated that it would likely call experts in the areas of drug trafficking, drug analysis, firearm analysis, and financial tracking and analysis. The government does not have expert witness reports. The government agreed to promptly disclose any expert reports if they become available and to provide the names, qualifications, and subject of the testimony of each witness at least ten days before trial. Defendant is not entitled to any other information with regard to experts.

Defendant's sixth request⁵ is covered in the indictment - there is no complaint. Defendant's final request⁶ is essentially a request for open-file discovery. The government has already

⁴For any experts you intend to call at trial please state (a) the name and address of each such expert witness, (b) the subject matter as to which each such expert witness is expected to testify, (c) the qualification of each such expert witness. Set forth a summary for the grounds for each opinion to which each expert is expected to testify including any text material on which the expert witness will rely. Identify all such texts or publications including the name, author, edition and page reference.

⁵Please identify each and every party and or persons bringing forth this alleged complaint, to include dates and times.

⁶Any and all documents related to case # 10-00320-16-CR-W-DGK.

agreed to more discovery than is required by law. The court cannot order the government to provide open-file discovery.

III. CONCLUSION

Because the government has either already produced or has agreed voluntarily to produce the information to which defendant is entitled, it is

ORDERED that defendant's motion for a bill of particulars is denied.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
May 27, 2011