

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA     )  
  )  
                          Plaintiff,     )  
  )  
                  v.                     ) No. 08-00026-04-CR-W-FJG  
  )  
CHRISTOPHER L. ELDER,         )  
  )  
                          Defendant.    )

**DEFENDANT’S MOTION FOR A BILL OF  
PARTICULARS AND NOTICE OF ALIBI DEFENSE WITH  
SUGGESTIONS IN SUPPORT**

Defendants hereby move the Court to order the government to provide defendant with a bill of particulars answering and addressing the below listed issues. In United States v. Kunzman, 54 F.2d 1522 (10<sup>th</sup> Cir. 1995) the Court noted:

"The purpose of a bill of particulars is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense...." United States v. Levine, 983 F.2d 165, 166-67 (10th Cir. 1992). The denial of a motion for a bill of particulars "will not be disturbed unless the defendant shows that he was actually surprised at trial and thereby incurred prejudice to his substantial rights." Id. at 166 (citations omitted).

Defendant is charged with participating in a scheme in which it is alleged that he wrote prescriptions which were fax'd from Texas to Missouri. It is further alleged that the script was then filled at a pharmacy in Belton, Missouri and shipped back to Houston to one or more locations. Money was then alleged to have been sent in cash from Texas to Missouri to another named defendant and then turned over to yet another defendant here in Missouri who deposited it in the bank.

Defendant Elder worked part time at a clinic in Houston, Texas where one or more prescriptions were shipped to. Defendant believes that the government may contend that defendant Elder signed for one or more of these filled prescriptions on various occasions.

Defendant may wish to assert a defense of alibi to rebut direct or circumstantial evidence that he signed for any such prescriptions on particular dates in question. To do so and properly fully comply with alibi notice requirements it is necessary for the government to disclose to the defendant the following which will then allow defendant to check his records to determine where he might have been on the date and time at issue given the fact that the conspiracy is alleged to have covered many weeks:

1. Identify by date, time, and document any receipt or receipts from any

- shipping, postal, or delivery clerk who is alleged to have obtained a receipt, invoice, or other document that was signed by Doctor Elder.
2. Identify the name and address of the receipting agent and employer of the person and the business address.
  3. State whether or not any such delivery person was shown a photographic lineup of Doctor Elder and whether or not Doctor Elder was known to or recognized by the delivering agent.
  4. State the name, occupation, and address of any such persons participating in any such photographic lineup.

Rule 12.1, Federal Rules of Criminal Procedure covers alibi. The rule seems to contemplate a situation in which the government alleges a particular criminal act on a particular date e.g., a bank robbery, to which a defendant might then claim he was elsewhere at the specific time. Under such circumstances the defendant can easily state where he was and who he was with and who and what his supporting evidence consists of. The government is then required to provide the information which defendant now seeks by way of this motion. See 12.1(b).

Once defendant is in possession of the requested information he will be able to provide more precise notice as to where he was on numerous particular dates and times. At this point all defendant can provide by way of alibi is notice that he

only worked part time at one of the locations where most of the drugs were mailed to. Since he did not sign for any of them he presumes he will be able to mount an effective alibi at least with respect to evidentiary point of receipt of the drugs. It is unreasonable to expect defendant to state his precise location during the entire period charged in the indictment and the names of potential witnesses and the nature of documentary evidence that will support his absence from the scene at the time the drugs were delivered to Texas.

If defendant is not provided the requested information until shortly before trial it is doubtful that he will have time to marshal his defense. And certainly, the government will not have time to interview potential alibi witnesses. In balance it would therefore seem fair and reasonable to grant this motion and in essence order early compliance with Rule 12.1 provisions.

WHEREFORE, defendant hereby moves the Court to enter an order directing the government to provide defendant with the requested specific information establishing that defendant might have signed for delivery of drugs on specific dates and at specific times.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on Assistant United States Attorney Rudy Rhodes for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on Sunday, June 08, 2008.

/s/

JOHN R. OSGOOD