

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY R. SOLOMON,

Defendant.

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CRIMINAL NO. 08-00026-01-CR-W-FIG

MOTION FOR BILL OF PARTICULARS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TROY R. SOLOMON, Defendant in the above-entitled and numbered cause, and moves this Court for an order directing the United States to furnish this Defendant with a Bill of Particulars addressing the matters listed below pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. In support hereof, Defendant TROY SOLOMON would respectfully show the following:

I.

INTRODUCTION

Mr. Troy R. Solomon is charged by Indictment with one (1) count of violating Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), and 846 for allegedly conspiring to distribute controlled substances, with one (1) count of violating Title 18, United States Code, Sections 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), and 1956(h) and Title 21, United States Code, Section 846 for allegedly conspiring to commit, promote and/or conceal money laundering, and with some ten (10) counts of violating Title 18, United States Code, Section 2, Title 21, United States

Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), for alleged illegal distribution of controlled substances all stemming from transactions involving the sale of prescription medication.

II.

PROCEDURAL BACKGROUND

On February 29, 2008, Mr. Solomon was arrested in Houston, Texas on charges stemming from the foregoing indictment issued on February 6, 2008, in the Western District of Missouri, Central Division under Cause No. 08-00026-01-CR-W-FIG. On March 3, 2008, Mr. Solomon made his initial appearance before the United States District Court for the Southern District of Texas, Houston Division. Mr. Solomon appeared for arraignment in the Western District of Missouri, Central Division on April 2, 2008.

Trial of this matter is set for September 29, 2008.

III.

BILL OF PARTICULARS

Mr. Solomon adopts by reference the requests, arguments, authorities, and evidence submitted in Defendant Christopher L. Elder's Motion for Bill of Particulars and Notice of Alibi Defense with Suggestions in Support already on file with this Court.

In addition, Mr. Solomon makes the following limited, but essential, requests for particularized information:

Count One

1. Identify the specific names of the "other person known" and "unindicted co-conspirator" with whom Mr. Solomon is alleged to have conspired to distribute controlled substances.

2. Identify with particularity the alleged connection between Mr. Solomon and Ascensia Nutritional Pharmacy.
3. Identify the specific dates, times, locations, and persons present or involved during the specific instances that Mr. Solomon is alleged to have conspired to distribute controlled substances.
4. Identify the specific Schedule III, IV, and V controlled substances allegedly distributed by Mr. Solomon for reasons other than a legitimate medical purpose together with the identity of each person to whom such controlled substances were distributed and the date, time, and location of said distribution.
5. Identify with particularity how Mr. Solomon did “knowingly” and “intentionally” distribute Schedule III, IV, and V controlled substances for reasons other than a legitimate medical purpose as alleged in the indictment.
6. State with particularity which specific prescriptions allegedly distributed by Mr. Solomon were unlawful or invalid together with the identity of each person to whom such controlled substances were distributed and the date, time, and location of said distribution.
7. State with particularity which unlawful or invalid prescriptions and refill orders were sent by facsimile from Mr. Solomon to Defendant Rostie as alleged in Count One, Manner and Means §b of the indictment together with the basis for alleging such prescriptions or refill orders were unlawful or invalid.
8. State with particularity the basis for alleging in Count One, Manner and Means §b, of the indictment that facsimile communications allegedly sent between Mr. Solomon and Defendant Rostie amounted to criminal conspiracy together with the content of each such facsimile transmission and the date and time each such facsimile transmission was sent. Further, identify with particularity the person who actually sent the facsimile transmissions and the person who actually received them.
9. State with particularity why shipping controlled substances between licensed pharmacies, as alleged in Count One, Manner and Means §e, of the Indictment amounts to criminal conspiracy together with the identity of each person to and by whom such controlled substances were shipped, the contents of each such shipment, and the date, time, and location of said shipments.
10. Identify “Dr. B” who is described in Count One, Manner and Means §e, of the Indictment as a medical doctor licensed in Texas together with all the prescription orders that bore his signature and/or DEA number which form the basis of any charges in the Indictment.

11. Identify with particularity the dates and times when Mr. Solomon allegedly received shipments of controlled substances from Defendant Rostie, as alleged in Count One, Manner and Means §b of the Indictment together with the alleged contents of each such shipment and the place where the shipment was received.
12. State with particularity which communications (date and time) between Mr. Solomon and Defendant Rostie as alleged in Count One, Manner and Means §h, of the Indictment were to arrange illegal delivery of, or payment for, controlled substances, together with the nature and content of all such alleged communications.
13. Identify all packages sent via United Parcel Service from Houston, Texas to Defendant Martin which form the basis for any alleged illegal activity together with the contents of each such package and the dates and times each such package was sent. *See* Count One, Manner and Means §f, of the Indictment.
14. State with particularity why the alleged introduction of Mr. Solomon to Defendant Rostie, as alleged in Count One, Overt Acts §a, of the Indictment amounts to criminal conspiracy.
15. Identify with particularity the time, date, and location of the alleged introduction of Mr. Solomon to Defendant Rostie as alleged in Count One, Overt Acts §a, of the Indictment together with the nature of any allegedly criminal conduct involved in such introduction.
16. Identify with particularity the nature of the alleged conspiratorial content of the introduction between Mr. Solomon and Defendant Rostie as alleged in Count One, Overt Acts §a, of the Indictment.
17. Identify with particularity any controlled substances, prescriptions, or refill orders discussed during the alleged introduction of Mr. Solomon to Defendant Rostie, which form the basis of conspiratorial conduct alleged in Count One, Overt Acts §a, of the Indictment.
18. Identify with particularity the nature of the alleged agency between Mr. Solomon and Defendant Elder as well as the basis for such allegation.
19. Identify with particularity the prescriptions of promethazine allegedly ordered, filled, and/or shipped as alleged in Count One, Overt Acts §g, of the Indictment and why the ordering, filling, and/or shipping amounts to criminal conspiracy.
20. Identify with particularity the specific dates and times that Mr. Solomon allegedly ordered, filled, and/or shipped promethazine, as alleged in Count One, Overt Acts §h of the Indictment together with the manner and means by which any such shipments were made.

Count Two

1. Identify the specific names of the “others known and unknown” with whom Mr. Solomon is alleged to have conspired to conceal and disguise the nature and source of any proceeds made the basis of Count Two of the Indictment, together with the specific unlawful activity from which the proceeds were derived.
2. Identify with particularity the proceeds and/or financial gains allegedly received by Mr. Solomon in conspiracy to commit money laundering as alleged in Count Two of the Indictment.
3. Identify with particularity, by nature, date, and time, each specific instance of unlawful activity that Mr. Solomon allegedly engaged in that amounts to conspiracy to commit money laundering as well as all persons associated with each such instance as alleged in Count Two fo the Indictment.
4. Identify with particularity each allegedly illegal transaction affecting interstate commerce conducted by Mr. Solomon together with the date, time, location, and persons or entities involved with each such transaction forming the basis of Count Two fo the Indictment.
5. Identify with particularity any and all property involved in financial transaction which represented the proceeds of alleged unlawful activity together with the alleged unlawful activity associated with each such property as alleged in Count Two of the Indictment.
6. State with particularity the illegal act associated with Defendant Delmon Johnson allegedly residing at a property allegedly owned by Mr. Solomon, as alleged in Count Two §a of the Indictment.
7. Identify with particularity the specific content of each and every of the seventy (70) packages identified in Count Two, §a of the Indictment together with Mr. Solomon’s connection thereto, the specific dates each such package was shipped, and the person who sent and received each such package.
8. Identify with particularity each allegedly illegal act associated with using the address of 5833 Sunforest Drive, Houston, Texas, for invoicing packages shipped via United Parcel Service as alleged in Count Two §a of the Indictment, together with the date, time, and persons associated with each such act.
9. Identify with particularity any information indicating that packages shipped via United Parcel Service from Houston, Texas were received by Defendant Martin in Belton, Missouri as alleged in County Two, §a of the Indictment.

10. Identify with particularity each and every specific criminal act associated with shipping packages via United Parcel Service as alleged in Count Two, §a of the Indictment.
11. Identify with particularity each and every specific criminal act associated with shipping prescriptions via Federal Express as alleged in Count Two, §f of the Indictment, together with a description of the date and contents of each such shipment, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
12. Identify with particularity any information indicating that prescriptions shipped via Federal Express were received by Mr. Solomon or Mr. Johnson as alleged in Count Two, §f of the Indictment, together with the date and a description of the contents of each such prescription, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
13. Identify with particularity the location and amount of proceeds allegedly generated in Texas by Mr. Solomon, as alleged in Count Two §b of the Indictment together with the prescription filled, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription..
14. Identify with particularity each and every criminal act allegedly performed by Mr. Solomon, as alleged in Count Two §b of the Indictment, that amounts to conspiracy to commit money laundering together with the identity of each and every person associated with each such act.
15. Identify with particularity the specific “filled prescriptions” allegedly mailed to Mr. Solomon, as described in Count Two §f of the Indictment, together with the date and a description of the contents of each such prescription, the person for whom each such prescription was intended, and the identity of each and every person who allegedly received such prescription.
16. Identify with particularity the specific dates on which “filled prescriptions” were allegedly mailed to Mr. Solomon, as alleged in Count Two §f of the Indictment

Counts Three through Six

1. Identify with particularity specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule III and IV controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Three through Six of the Indictment.

2. Identify with particularity the specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Three through Six of the Indictment, that amounts to illegal distribution of controlled substances.
3. Identify with particularity specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Three through Six of the Indictment together with a description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.
4. Identify the specific names of the “others” both “known and unknown” as alleged in Counts Three through Six of the Indictment.
5. Identify with particularity information indicating that Mr. Solomon was present when the controlled substances described in Counts Three through Six of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.

Counts Seven through Ten

1. Identify with particularity specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule III, IV, and V controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Seven through Ten of the Indictment.
2. Identify with particularity the specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Seven through Ten of the Indictment, that amounts to illegal distribution of controlled substances.
3. Identify with particularity specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Seven through Ten of the Indictment together with a description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.

4. Identify with particularity the “others” both “known and unknown” as alleged in Counts Seven through Ten of the Indictment.
5. Identify with particularity information indicating that Mr. Solomon was present when the controlled substances described in Counts Seven through Ten of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.
6. Identify with particularity the full name of patient “H.H.” as alleged in Count Seven.
7. Identify with particularity the full name of patient “M.P.” as alleged in Count Eight.
8. Identify with particularity the full name of patient “H.H.” as alleged in Count Nine.
9. Identify with particularity the full name of patient “M.P.” as alleged in Count Ten.
10. Identify with particularity the date on which the prescription was allegedly written for patient “H.H.” as alleged in Count Seven.
11. Identify with particularity the date on which the prescription was allegedly written for patient “M.P.” as alleged in Count Eight.
12. Identify with particularity the date on which the prescription was allegedly written for patient “H.H.” as alleged in Count Nine.
13. Identify with particularity the date on which the prescription was allegedly written for patient “M.P.” as alleged in Count Ten.

Counts Eleven and Twelve

1. Identify with particularity specific information indicating that Mr. Solomon allegedly distributed and/or dispensed Schedule V controlled substances for other than legitimate medical purposes or in the usual course of professional practice together with the dates such controlled substances were dispensed, the persons to whom such controlled substances were dispensed, and any financial gain attributed to such distribution as alleged in Counts Eleven and Twelve of the Indictment.
2. Identify with particularity the specific illegal conduct or illegal activity allegedly committed by Mr. Solomon, as alleged in Counts Eleven and Twelve of the Indictment, that amounts to illegal distribution of controlled substances.

3. Identify with particularity specific information indicating that Mr. Solomon “knowingly” and “intentionally” distributed and dispensed Schedule III and IV controlled substances for illegal purposes as alleged in Counts Eleven and Twelve of the Indictment together with a description of the contents of each such controlled substance, the date such substance was distributed or dispensed, the person for whom each such controlled substance was intended, and the identity of each and every person who allegedly received such controlled substance.
4. Identify with particularity the “others” both “known and unknown” as alleged in Counts Eleven and Twelve of the Indictment.
5. Identify with particularity information indicating that Mr. Solomon was present when the controlled substances described in Counts Eleven and Twelve of the Indictment were allegedly distributed, or when the prescriptions were written, or when the prescriptions were filled, and the physical location where each such distribution occurred.
6. Identify with particularity the date on which the prescription identified in Count Eleven of the Indictment was allegedly written, the date and location of any distribution of a controlled substance for this patient, and Mr. Solomon’s alleged connection thereto.
7. Identify with particularity the date on which the prescription identified in Count Twelve of the Indictment was allegedly written, the date and location of any distribution of a controlled substance for this patient, and Mr. Solomon’s alleged connection thereto.

Without this information, Mr. Solomon will not be sufficiently advised of the conduct whereby the United States government alleges he violated Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3), Title 18, United States Code, Section 2, and Title 18, United States Code, Section 1956(h), and cannot adequately prepare his defense and avoid prejudicial surprise during trial.

IV.

LEGAL STANDARD

The Sixth Amendment to the United States Constitution requires that a citizen “be informed

of the nature and cause of the accusation against him.” It is a well-established principle of law that an accused has the right to know what law or duty he is alleged to have violated. *United States v. Cruikshank*, 92 U.S. 542, 558 (1876); *Sheppard v. Rees*, 909 F.2d 1234 (9th Cir. 1989). The purpose of a bill of particulars is to “fairly apprise the defendant of the charges against him so that he may adequately prepare a defense and avoid surprise at trial...” *United States v. Fletcher*, 74 F.3d 49, 53 (4th Cir. 1996); *United States v. Levine*, 983 F.2d 165, 166-67 (10th Cir. 1992). A bill of particulars amplifies the indictment by providing missing or additional information necessary for effective preparation for trial. *Id.* Under Rule 7(f) of the Federal Rules of Criminal Procedure, it is in the Court’s sound discretion to order the provision of a bill of particulars.

Although an indictment may contain general allegations necessary to plead the charged counts, a bill of particulars is appropriate where the indictment does not provide details as to the specific charges levied against the defendant. *See United States v. Loayza*, 107 F.3d 257, 261 (4th Cir. 1997)(a bill of particulars “is available to add specifics beyond those required for the indictment to pass constitutional muster.”) In such cases, the provision of detailed information must be made by the government, especially when that information is crucial to the creation of a defense against the charges. *Id.*

V.

ARGUMENT

A bill of particulars is necessary in this case because the indictment fails to provide Mr. Solomon with the information necessary to prepare his defense in a number of crucial respects. Many of the allegations against Mr. Solomon are vague, ambiguous, and uninformative. As discussed above, Counts One (1) through Twelve (12) of the Indictment fail to specify with any real

particularity the illegal acts alleged against Mr. Solomon, or the times and circumstances surrounding the allegedly illegal acts.

The information requested, if it exists, is within the particular knowledge of the United States Attorney, and all such information is essential and necessary to enable Mr. Solomon to adequately prepare for trial and to avoid prejudicial surprise at trial. The failure to grant a bill of particulars will deprive Mr. Solomon of his defenses to charges contained in the indictment, will arbitrarily compel him to stand trial, and may arbitrarily compel him to testify against himself in court.

Moreover, failure to grant a bill of particulars would deprive Mr. Solomon of a fair trial without due process of law, in violation of the rights guaranteed him by the Fifth and Sixth Amendments to the United States Constitution.

The information requested is narrow and necessary for Mr. Solomon to prepare his defense. Mr. Solomon is not improperly using this request for a bill of particulars as a discovery device in that he is not seeking evidentiary detail, identification of specific proof that the government seeks to admit at trial, or requiring the government to disclose its trial strategy. Mr. Solomon merely seeks to know, with particularity, the acts for which the United States seeks to hold him criminally liable.

VI.

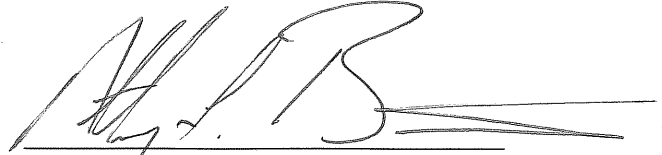
CONCLUSION

WHEREFORE, TROY R. SOLOMON requests that this Honorable Court order the United States Attorney to provide Mr. Solomon with a bill of particulars setting forth the information requested herein. Troy Solomon prays for such other and further relief to which he is justly entitled.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By:

A handwritten signature in black ink, appearing to read 'A. L. Bannwart', written over a horizontal line.

ANTHONY L. BANNWART

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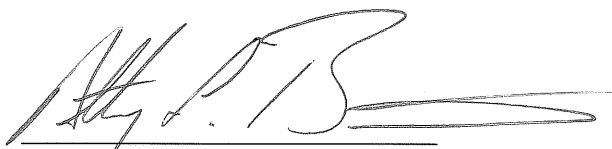
ATTORNEYS FOR DEFENDANT
TROY R. SOLOMON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Motion for Bill of Particulars has this day been caused to be served on Assistant United States Attorney Rudy Rhodes for the Western District of Missouri, and other ECF listed counsel through use of the Electronic Court Document Filing System.

SIGNED this 16th day of June, 2008.

BANNWART & ASSOCIATES, P.C.

By: 
ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANT
TROY R. SOLOMON