

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

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

**GOVERNMENT'S RESPONSE TO DEFENDANT ELDER'S
MOTION FOR A BILL OF PARTICULARS (Doc. 55)**

The United States of America, by and through its undersigned counsel, hereby responds to Defendant Christopher L. Elder's ("Elder") Motion for a Bill of Particulars (Doc. 55).

In his motion for a bill of particulars, Defendant Elder requests information which has already been furnished to him, or to which he is not entitled. Therefore, Defendant Elder's motion for a bill of particulars should be denied.

I. FACTUAL BACKGROUND

On February 6, 2008, an Indictment was returned charging Defendant Elder with one count of conspiracy to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), 841(b)(2), 841(b)(3) and 846; and eight counts of distribution of controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), and 841(b)(2). That Indictment also charges his four co-defendants with conspiracy to distribute controlled substances.

II. LEGAL ARGUMENT

A. Defendant Elder's Motion for Bill of Particulars Should Be Denied – Defendant Seeks Items of Information That Are Available in Some Other Form

Defendant Elder contends that he is entitled to a Bill of Particulars in this case, arguing that he “may wish to assert a defense of alibi to rebut direct or circumstantial evidence that he signed for” one or more filled prescriptions shipped to the place where had worked. Elder’s Motion for Bill of Particulars, at 2. Specifically, he seeks the following items of information: (1) documentation of the dates and times of any shipment that was signed by him; (2) the identity of “the receipting agent and employer of the person and the business address;” (3) his identification in any photographic lineups shown to any delivery person; and (4) the name, occupation, and address of any such persons participating in any such photographic lineup. Defendant Elder’s Motion for Bill of Particulars, at 2-3.

A defendant is not entitled to a bill of particulars as a matter of right. *Wong Tai v. United States*, 273 U.S. 77, 82 (1927). “The primary purposes of a bill of particulars are to inform the defendant of the nature of the charges against him and to prevent or minimize the element of surprise at trial.” *United States v. Garrett*, 797 F.2d 656, 665 (8th Cir. 1986). An indictment is sufficient if it alleges the essential elements of the crime with which the defendant is charged in a manner that enables the defendant to prepare a defense and plead double jeopardy in any future prosecution for the same offense. *Hamling v. United States*, 418 U.S. 87, 117 (1974); *United States v. Miller*, 774 F.2d 883, 885 (8th Cir. 1985).

In the present case, the Indictment is sufficiently detailed in giving notice to Defendant Elder of the charges filed against him so as to allow him to prepare his defense. Indeed, allegations of fact are included in the Indictment. The Indictment specifies that Defendant Elder worked part-time at South Texas Wellness Center in Houston, Texas, from approximately August 2004 to January 2005. See Indictment at 4. He wrote unlawful and invalid prescriptions.

(See Indictment at 6.) His co-defendant, Mary Lynn Rostie, had packages shipped to him at the South Texas Wellness Center. (See Indictment, at 6-7.) In addition to the allegations of fact, the Indictment tracks the language of the statute that he is charged with violating. Thus, the Indictment sufficiently apprises him of the charge against him.

A motion for a bill of particulars is not to be used for discovery purposes. *See United States v. Hester*, 917 F.2d 1083, 1084 (8th Cir. 1990). Nor is the function of a bill of particulars to require the government to explain its legal theories of the case. *See United States v. Gabriel*, 715 F.2d 1447, 1449 (10th Cir. 1983); *United States v. Burgin*, 621 F.2d 1352, 1359 (5th Cir.) (bill of particulars “is not designed to compel the government to detailed exposition of its evidence or to explain the legal theories upon which it intends to rely at trial”), *cert. denied*, 449 U.S. 1015 (1980). Likewise, a motion for a bill of particulars should not be used to acquire evidentiary details. *Hemphill v. United States*, 392 F.2d 45, 49 (8th Cir.), *cert. denied*, 393 U.S. 877 (1968).

Furthermore, the extensive discovery in this case obviates the need for a bill of particulars. *See United States v. Canino*, 949 F.2d 928, 949 (7th Cir. 1991) (“The nature and operations of the ‘open file’ policy is an adequate ‘satisfactory form’ of information retrieval, making the bill of particulars unnecessary”), *cert. denied*, 504 U.S. 910 (1992); *United States v. Valentine*, 984 F.2d 906, 908 (8th Cir.) (“The district court denied the Bill of Particulars as moot because the Government indicated it had opened its file to [the defendant]”), *cert. denied*, 510 U.S. 828 (1993). In the present case, the Government has provided Defendant Elder with extensive discovery in electronic form, including a master compact disk (“CD”) containing word

searchable PDF images of the documents. In fact, more than 17,000 total pages of discovery were copied on the CD.

Defendant Elder claims that the requested information is needed to establish an alibi defense. Elder's Motion for Bill of Particulars, at 2-3. However, "acquisition of evidentiary detail in the form of exact times of the acts alleged in the indictment for purposes of establishing an alibi is not the function of a bill of particulars." *United States v. George*, 2008 WL 558209, at *2 (D.S.D. Feb. 29, 2008) (citing *United States v. Long*, 449 F.2d 288, 294-95 (8th Cir. 1971)). In his motion for a bill of particulars, he seeks specific dates and times of the acts he allegedly committed in furtherance of the conspiracy and the identity of the persons who observed him commit the acts. *See id.* "The whens, wheres, and with whoms of acts and participation in the charged conspiracy is not properly the function of a bill of particulars." *Id.* (internal quotation marks and citation omitted). Defendant Elder requests information that is already included in the discovery provided to him. Therefore, Defendant Elder cannot complain of lack of information, or surprise, as the discovery outlines the substance of his involvement, and the time, place, and date of the events described.

Accordingly, in view of the detailed indictment and comprehensive discovery, Defendant Elder's motion for a bill of particulars is not warranted.

II. CONCLUSION

For the reasons stated above, Defendant Elder's motion for a bill of particulars should be denied.

Respectfully submitted,

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By */s/ Rudolph R. Rhodes, IV*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on July 7, 2008, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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