

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-06-CR-W-FJG
)	
NARICCO T. SCOTT,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION FOR
“MORE DEFINITE STATEMENT BILL OF PARTICULARS”**

The Government, through its undersigned attorney, files this response in opposition to the Defendant’s Motion for a Bill of Particulars, for the following reasons and supporting suggestions.

A. Case History

Defendant Scott was arrested on May 9, 2010, and was charged by criminal complaint with one count of possession with intent to distribute crack cocaine, in an amount of fifty grams or more. A copy of the criminal complaint and supporting affidavit have been provided in discovery.

On May 26, 2010, Defendant Scott was charged, by indictment, with : (1) Count One - conspiracy to distribute cocaine, in an amount of five kilograms or more, and crack cocaine, in an amount of five grams or more, in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), and 846; (2) Counts Four and Five - distribution of some amount of crack cocaine in violation of Title 21, United States Code, §§ 841(a)(1) and (b)(1)(C); (3) Count 11 - possession with intent to distribute crack cocaine, in an amount of fifty grams or more, in violation of Title 21, United States Code, §§ 841(a)(1) and (b)(1)(A); and Count 12 - possession of a firearm in

furtherance of a drug trafficking crime in violation of Title 18, United States Code, § 924(c)(1)(A).

B. The Indictment Is Sufficient and Adequate, and a Bill of Particulars is Unnecessary

Defendant Scott, *pro se*, contends that he is entitled to a Bill of Particulars in this case with respect to the Indictment. Defendant's claim is based on an allegation of "defects....within the charging instrument." (Doc. 354, p. 1) However, any defect is unspecified, its meaning left only to speculation.

In addition to the conspiracy count of the Indictment, substantive charges within the time-frame of the conspiracy are also alleged. The Indictment is adequate on its face, in that it puts the defendant on notice of the parameters of the conspiracy and as such operates as a bar to double jeopardy for subsequent prosecutions. No more is required, for when an indictment facially states an offense, the notice of proof concerns raised by defendant are not properly included in an inquiry into the indictment's sufficiency. *United States v. Miller*, 471 U.S. 130, 134-135 (1985); *accord*, *United States v. Peterson*, 867 F.2d 1110, 1114 (8th Cir. 1989).

The Indictment and the discovery to date are more than sufficient to make clear to Defendant Scott the nature of the charges against him so that he may understand the nature of the charges, prepare his defense, and be able to protect himself against double jeopardy. An attempt by the defendant to reach any detail of the evidence supporting the indictment at this stage is also improper, in that an indictment which is valid on its face is not subject to challenge on a basis of either the reliability or the competence of evidence presented to the Grand Jury. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 261, 108 S. Ct. 2369 (1988); *citing*, *Costello v. United States*, 350 U.S. 359, 363 (1956); *accord*, *United States v. Calandra*, 414 U.S. 338, 345 (1974).

Furthermore, the discovery in this case is more than sufficient to allow for the adequate preparation of a defense by Defendant. The discovery is over 11,000 pages contained in 30 volumes that include; (1) investigative reports of law enforcement agencies; (2) transcripts from the wiretaps, including a volume that contains all of the Defendant's intercepted calls; (3) statements of cooperating witnesses and defendants; and (4) transcripts from the grand jury proceedings. Compact discs containing all intercepted calls, search warrant videos, video and photograph surveillance, and police dash-cam videos, including the video from the Defendant's arrest, have also been provided. All of the reports relating to the substantive counts and the conspiracy - even reports that do not mention the Defendant specifically - have been provided to Defendant. The extent of the discovery in this case obviates the need for a bill of particulars. *United States v. Stephenson*, 924 F.2d 753, 761-62 (8th Cir.), *cert. denied*, 112 S. Ct. 63 (1991).

CONCLUSION

Defendant has failed to provide a valid basis for his request, and the United States has in good faith supplied more than is required as an alternative to a Bill of Particulars. The defense motion should be denied.

Respectfully submitted,

Beth Phillips
United States Attorney

By **/s/ Brent Venneman**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 10, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery and a hard copy mailed to:

Naricco Scott
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100 Highway Terrace
Leavenworth, Kansas 66048

/s/ Brent Venneman

Brent Venneman
Assistant United States Attorney