

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

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

ORDER DENYING DEFENDANT'S
MOTION FOR BILL OF PARTICULARS

Before the court is defendant's motion for a bill of particulars. For the following reasons, defendant's motion will be denied.

I. BACKGROUND

On May 9, 2010, defendant was charged in a criminal complaint with possession with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). An indictment was returned on May 26, 2010, charging defendant with conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. § 846; two counts of distribution of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), one count of possession with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A); and one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A).

On June 1, 2011, defendant filed a motion for bill of particulars on the ground that "a more definite statement will provide details of all elemental discovery sworn and testified to before the grand jury May 13, 2010, providing him with an

opportunity to better defend himself." Defendant does not state what he wants in the bill of particulars, however.

On June 10, 2011, the government filed a response in opposition to defendant's motion, arguing that the indictment is adequate on its face, and the government has provided over 11,000 pages of discovery.

II. BILL OF PARTICULARS

The primary purpose of a bill of particulars is 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. Wessels, 12 F.3d 746, 750 (8th Cir. 1993), cert. denied, 513 U.S. 831 (1994); United States v. Maull, 806 F.2d 1340, 1345 (8th Cir. 1986), cert. denied, 480 U.S. 907 (1987).

It is well established that an indictment is sufficient if it (1) contains the elements of the offense charged and fairly informs the defendant of the charge against which he must defend, and (2) enables the defendant to plead an acquittal or conviction in bar of future prosecutions. Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Just, 74 F.3d 902, 903 (8th Cir. 1996). The sufficiency of the indictment is to be judged by practical, and not by technical considerations. Rood v. United States, 340 F.2d 506, 509 (8th Cir.), cert. denied, 381 U.S. 906 (1965). An indictment ordinarily is held sufficient unless it is so defective that by no reasonable construction can it be said to charge the offense for which the defendant was convicted. United States v. Nabors, 45 F.3d 238, 239 (8th Cir. 1995).

An indictment is sufficient when it tracks the language of the statute, advises the defendant of the elements of the offense, apprises him of the charges, and allows him to plead a conviction or acquittal as an impediment to subsequent prosecutions. United States v. Nabors, 45 F.3d at 239. It is generally sufficient that the indictment sets forth the offense in the words of the statute itself, so long as those words fully, directly, and expressly, without uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. Hamling v. United States, 418 U.S. at 117; United States v. Nabors, 45 F.3d at 239. However, the indictment does not have to follow the exact wording of the statute. United States v. Haley, 581 F.2d 723, 726 (8th Cir.), cert. denied, 439 U.S. 1005 (1978).

Defendant is charged in count one with conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. § 846. Count one of the indictment reads as follows:

That between July 1, 2009, and the date of this Indictment, said dates being approximate, in the Western District of Missouri and elsewhere, ALFONSO VELO, RICARDO NEVAREZ, SHAWN HAMPTON, a/k/a "SMOKE", BRICE C. HALE, DELBERT ROBERSON, a/k/a "Del", NARICCO T. SCOTT, a/k/a "Rico", CALAH D. JOHNSON, a/k/a "Green Eyes", JOHN L. HOOKER, a/k/a "Ace", RAY A. JOHNSON, JASON R. CARTER, a/k/a "J-Roc", JUSTIN J. CAMPBELL, a/k/a "Shaw", ANTAR H. ROBERTS, a/k/a "Saw", GREGORY P. YOUNG, a/k/a "Chan", RONNELL A. BROWN, MYLIN D. SMITH, a/k/a "G", THEODORE S. WIGGINS, a/k/a "Theo", ANDREYA JONES, a/k/a "Pig", STERLING BYNDOM, MARCUS L. GAY, KEIYATIE R. WHITE, DOROTHEA L. CAIN, a/k/a "Dea", ADRIAN U. BARRETT, and ALEJANDRO HOLGUIN-BONILLA, a/k/a "Alex", defendants herein, did knowingly and intentionally combine, conspire, confederate, and agree with each other and others, both known and unknown to the Grand Jury, to distribute: 1) a mixture or substance containing cocaine, a Schedule II controlled substance, in an amount of five (5)

kilograms or more; and, 2) a mixture or substance containing cocaine base ("crack" cocaine), a Schedule II controlled substance, in an amount of fifty (50) grams or more, in violation of Title 21, United States Code, Sections 841 (a)(1), (b)(1)(A) and Title 21, United States Code, Section 846.

The indictment tracks the language of the statute, includes all of the essential elements of the offense, names each of the individuals along with their aliases, identifies the illegal drugs and their quantities, and gives the dates of the alleged conspiracy.

Counts nine and ten of the indictment charge distribution of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

COUNT NINE

On or about November 12, 2009, in Kansas City, Missouri, within the Western District of Missouri, NARICCO SCOTT, a/k/a "Rico", defendant herein, did knowingly and intentionally distribute some quantity of a mixture or substance containing cocaine base ("crack" cocaine), a Schedule II controlled substance, in violation of Title 21 , United States Code, Sections 841(a)(1) and (b)(1)(C).

COUNT TEN

On or about November 19, 2009, in Kansas City, Missouri, within the Western District of Missouri, NARICCO SCOTT, a/k/a "Rico", defendant herein, did knowingly and intentionally distribute some quantity of a mixture or substance containing cocaine base ("crack" cocaine), a Schedule II controlled substance, in violation of Title 21 , United States Code, Sections 841(a)(1) and (b)(1)(C).

The indictment tracks the language of the statute, includes all of the essential elements of the offense, identifies the illegal drugs and their quantities,¹ gives the date of each

¹The reference to § 841(b)(1)(C) indicates that the amount was less than 28 grams.

alleged drug sale, gives the place of each alleged drug sale, and refers to both the prohibition and the penalty statutes.

Count 16 of the indictment charges possession with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). The indictment reads as follows:

On or about May 9, 2010, in Kansas City, Missouri, within the Western District of Missouri, NARICCO T. SCOTT, a/k/a "Rico", defendant herein, did knowingly and intentionally possess with the intent to distribute a mixture or substance containing cocaine base ("crack" cocaine), a Schedule II Controlled Substance, in an amount of fifty grams or more, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A).

The indictment tracks the language of the statute, contains all of the essential elements, provides the date and place of the offense, identifies the illegal drug, identifies the quantity, and identifies the prohibition and penalty statutes.

Count 17 of the indictment charges a illegal possession of a firearm, in violation of 18 U.S.C. § 924(c). The indictment reads as follows:

That on or about May 9, 2010, in Kansas City, Missouri, within the Western District of Missouri, NARICCO T. SCOTT, a/k/a "Rico", defendant herein, in furtherance of the drug trafficking crimes alleged in Count One and Count Sixteen, did knowingly and intentionally possess a firearm, in violation of Title 18, United States Code, Section 924(c)(1)(A).

The indictment tracks the language of the statute, contains all of the essential elements, identifies the date and place of the offense, identifies the crimes in furtherance of which the firearm is alleged to have been possessed, and refers to the statute prohibiting such conduct.

The indictment is sufficient on its face, and defendant has not identified any way in which he believes the indictment is insufficient so as to require a bill of particulars. 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); Spinelli v. United States, 382 F.2d 871 (8th Cir. 1967), rev'd on other grounds, 393 U.S. 410 (1969); United States v. Gabriel, 715 F.2d 1447, 1449 (10th Cir. 1983); United States v. Burgin, 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). Except in extraordinary situations, open-file discovery by the government obviates the need for a bill of particulars. United States v. Valentine, 984 F.2d 906, 908 (8th Cir.), cert. denied, 510 U.S. 828 (1993); United States v. Sepulveda, 15 F.3d 1161, 1192-93 (1st Cir. 1993); United States v. Vasquez, 867 F.2d 872, 874 (5th Cir. 1989). Since defendant has not identified any information he wants, and because the government has provided defendant with more material than it is required by law to provide, ordering a bill of particulars would do nothing more than require the government to organize the material into an order of proof for the defendant.

III. CONCLUSION

Based on all of the above, I find that

(1) The indictment on its face is sufficient as it (a) contains the elements of the offenses charged and fairly informs the defendant of the charges against which he must defend, and (b) enables the defendant to plead an acquittal or conviction in bar of future prosecutions.

(2) The government is providing defendant with voluminous discovery and more discovery than it is legally required to provide.

(3) Defendant has identified no infirmity with the indictment; has not stated what particulars he desires; and has not explained how the government's discovery, coupled with the indictment, is insufficient to inform defendant of the nature of the charges against him and to prevent or minimize the element of surprise at trial.

Therefore, 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
June 13, 2011