

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.) No. 02-20428-BV
)
DEBRA SETTLES,)
)
 Defendant.)

ORDER DENYING DEFENDANT SETTLES' MOTION FOR BILL OF PARTICULARS

Before the court is the motion of defendant Debra Settles for a bill of particulars, filed July 24, 2003, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. This motion was referred to the United States Magistrate Judge for determination. For the reasons below, Settles' motion is denied.

Settles is charged in three counts of a twelve-count indictment with the offense of fraudulently obtaining money. Settles now seeks a bill of particulars as to Counts 6, 11, and 12 of the indictment. Counts 6, 11, and 12 read in pertinent part as follows:

COUNT 6

Beginning on or about June 26, 2002 and continuing up to on or about August 16, 2002, the defendants, MICHELLE THOMAS EGGLESTON, DEBRA SETTLES, AND JOHN THOMAS, did knowingly execute and attempt to execute a scheme and artifice to defraud, and to obtain monies, funds, assets, and other property under the custody and control of Union

Planters Bank, a financial institution, by means of false and fraudulent pretenses and representations

It was further a part of the scheme and artifice that defendants MICHELLE THOMAS EGGLESTON, DEBRA SETTLES, and person known and unknown to the Grand Jury stole credit card convenience checks from residential mailboxes.

It was further a part of the scheme and artifice that defendants MICHELLE THOMAS EGGLESTON, DEBRA SETTLES, and person known and unknown to the Grand Jury completed the stolen checks and made them payable to defendant JOHN THOMAS

It was further a part of the scheme and artifice that defendants MICHELLE THOMAS EGGLESTON, DEBRA SETTLES, and person known and unknown to the Grand Jury withdrew the fraudulently deposited funds from the bank account.

COUNT 11

On or about August 26, 2002, in the Western District of Tennessee, the defendants, JOHN THOMAS, AND DEBRA SETTLES, did knowingly . . . [deposit] Discover convenience check number 0306 drawn on the credit account of Jayna Shah in the amount of \$1500 into the bank account of defendant JOHN THOMAS, in violation of Title 18, United States Code, Sections 1344 and 2.

COUNT 12

On or about August 26, 2002, in the Western District of Tennessee, the defendants, Debra Settles, and John Thomas, being aided, abetted, counseled and induced by persons known and unknown to the Grand Jury, did receive, conceal, and unlawfully have in their possession a Discover Convenience Check which had been stolen, taken, and embezzled from a mail route and mail carrier

(Indictment, *United States v. Eggleston*, Crim. Case No. 02-20428 (W.D. Tenn. Nov. 12, 2002).)

____Settles contends that the bill of particulars is needed to

enable counsel to prepare for trial, to provide sufficient notice as to what conduct or action by Settles allegedly violated the law, and to protect Settles' double jeopardy rights. She argues that much, if not all, of the discovery material received on June 2, 2002, pertains to the co-defendants. However, this position does not support a challenge to a bill of particulars.

_____ Courts are authorized by Rule 7(f) to direct the filing of a bill of particulars. The purpose of a bill of particulars is "to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable him to plead [double jeopardy] when the indictment itself is too vague and indefinite for such a purpose." *United States v. Birmley*, 529 F.2d 103, 108 (6th Cir. 1976); accord *United States v. Kendall*, 665 F.2d 126, 134 (6th Cir. 1981).

It is not meant as "a tool for the defense to obtain detailed disclosure of all evidence held by the government before trial." *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993) (citations omitted). The paramount inquiry in any given case is whether adequate notice of the charge has been given to the defendant. See 1 CHARLES ALAN WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 129 (2d ed. 1982). Therefore, courts have recognized that when particulars are found to be necessary, they will be required of the

government even if the effect is disclosure of evidence or of the government's theories. *United States v. Thevis*, 474 F. Supp. 117, 123 (N.D. Ga. 1979); *United States v. Smith*, 16 F.R.D. 372, 375 (W.D. Mo. 1954). A defendant's need for the information, however, must be clear: "[It] should be established by a demonstration that the need is real; a bare statement that the need exists is not enough." *United States v. Dolan*, 113 F. Supp. 757, 760 (D. Conn. 1953). Finally, the decision to order a bill of particulars is within the sound discretion of the trial court. *Salisbury*, 983 F.2d at 1375.

_____ Settles made no attempt in her motion to explain the necessity for the information aside from citing to the general language from Rule 7(f) regarding the prevention of surprise at trial and to prepare an adequate defense. Settles states in her motion that she believes the discovery material received from the government may not be relevant to her defense, but she has not specified how the particulars would be of any use or value. Not only has Settles failed to specify what information she seeks from the government, but the counts in the indictment are straightforward and sufficiently detailed to provide adequate notice to Settles regarding the charges brought against her. If Settles seeks information about the *manner* in which her alleged violations occurred, an order for a bill of particulars that provides this

type of information would impermissibly demand evidentiary detail and unduly intrude upon the government's theories. See *United States v. Andrews*, 381 F.2d 377, 378 (2d Cir. 1967); *United States v. Kelly*, 120 F.R.D. 103, 107-108 (E.D. Wis. 1988).

For the reasons set forth above, Settles' Motion for Bill of Particulars is denied.

It is so ordered this 11th day of August, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE