

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

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 03-20433-BV
	)	
GEORGE KINDNESS and AMSCOT	)	
MEDICAL LABS, INC.,	)	
	)	
Defendant.	)	

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ORDER DENYING DEFENDANTS' MOTION FOR BILL OF PARTICULARS

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Before the court is the motion of the defendants, George Kindness and Amscot Medical Labs, Inc. ("Amscot"), for a bill of particulars, filed March 11, 2004, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure. The motion was referred to the United States Magistrate Judge for determination. The government filed a timely response in opposition to the motion. For the reasons stated below, the motion is denied.

On November 19, 2003, Kindness and Amscot were charged in a twenty-one count indictment with violating the criminal provisions of the Food, Drug, and Cosmetic Act. Specifically, Count 1 of the indictment charged the defendants with conspiracy to introduce and deliver misbranded and adulterated drugs into interstate commerce with the intent to defraud and mislead the Food and Drug Administration ("FDA") in violation of 18 U.S.C. § 371. (Indictment, *United States v. Kindness*, Crim. Case No. 03-20433 at 3 (W.D. Tenn. Nov. 19, 2003).) Counts 2 through 11 of the

indictment charged the defendants with introducing and delivering for introduction into interstate commerce, a drug that was misbranded within the meaning of 21 U.S.C. § 352(f)(1), in that its labeling did not bear adequate directions for use. (*Id.* at 15.) Counts 12 through 21 of the indictment charged the defendants with introducing and delivering for introduction into interstate commerce, and causing to be delivered for introduction into interstate commerce, with the intent to defraud and mislead, a drug that was adulterated within the meaning of 21 U.S.C. § 351(a)(2)(b), in that the methods used in, and the facilities and controls used for, its manufacturing, processing, packing and holding did not conform to and were not operated and administered in conformity with then current good manufacturing practices to assure that such drug met the requirements of the Food, Drug, and Cosmetic Act as to safety and had the strength and met the quality and purity characteristics, which it was purported and represented to possess in violation of 21 U.S.C. §§ 331(a) and 333(a)(2). (*Id.* at 16-17.)

In the present motion, Kindness and Amcot request a bill of particulars "specifying the nature of the offenses charged and the nature of Defendants' conduct which is alleged to constitute the offenses." Courts are authorized by Rule 7(f) to direct the filing of a bill of particulars. FED. R. CIV. P 7(f). The purposes of a bill of particulars are "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). The decision to order a bill of particulars is within the sound discretion of the trial court. *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993).

Unquestionably, a bill of particulars 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 at 1375 (citations omitted). Nonetheless, while this limitation is valid, it is not an absolute bar to particulars where justifications for disclosure exist; thus, much of the regulation of the disclosure of factual detail to an accused before trial is a matter of degree. See 1 Charles Alan Wright, *Federal Practice and Procedure: Criminal* § 129 (2d ed. 1982). In other words, the paramount inquiry in any given case is whether adequate notice of the charge has been given to defendant. *Id.* 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).

In this case, Kindness and Amscot have failed to demonstrate their need for a bill of particulars because they have not indicated any reason why the information contained in the indictment is insufficient. The defendants have not asserted that they will be unable to prepare for trial or that there is a need to avoid or minimize the danger of surprise at trial. Furthermore,

they have not asserted that the indictment is so "vague and indefinite" as to prevent them from pleading double jeopardy. Accordingly, the defendants' motion is not well taken.

Although Kindness and Amscot have failed to specify what information they seek from the government and why they need it, that failure alone is not the crux upon which the court renders its decision. After a careful review of the record, it is apparent that the counts in the indictment are entirely straightforward and sufficiently detailed to provide adequate notice to Kindness and Amscot regarding the charges brought against them. As noted in the government's response to the present motion, the indictment in this case is "highly detailed and specific" and "identifies all the particulars of the charged crimes, i.e., dates, the manner and methods used to commit the violations, the drugs involved in the violations, the statutory citations for the violations and the defendants involved in the commission of the violations." (Resp. of the United States to Def.'s Mot. for Bill of Particulars at 5.) As such, a bill of particulars is unwarranted and the motion is denied.

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

IT IS SO ORDERED this 29th day of March, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE