

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

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 03-20104-BV
	)	
OMAR ABDI JAMAL,	)	
	)	
Defendant.	)	

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ORDER GRANTING PLAINTIFF'S MOTION TO RECONSIDER AND DENYING  
DEFENDANTS' MOTION FOR BILL OF PARTICULARS

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Defendant Omar Jamal has been charged in a six count indictment with allegedly making false statements in connection with his application for asylum in violation of 18 U.S.C. § 1546, 18 U.S.C. § 1001, and 18 U.S.C § 2. On January 23, 2004, Jamal, by and through his attorney, filed a motion for a bill of particulars with respect to Counts 4, 5, and 6 of his indictment. In the absence of any response by the government, the court assumed the government did not oppose Jamal's motion and granted it on February 12, 2004, pursuant to Local Criminal Rule 12.1. The government has now filed a motion in response to Jamal's Motion for a Bill of Particulars with Respect to Counts 4, 5, and 6 and requests that the court reconsider the order granting the defendant's motion.<sup>1</sup>

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<sup>1</sup> The government has only responded to and asked the court to reconsider its February 12, 2004 order relating to Jamal's motion for bill of particulars with respect to Counts 4, 5, and 6 of the indictment. (See Resp. to the Bill of Particulars and Mot. to Reconsider Order on Def.'s Mot. for Bill of Particulars at 1-2.) However, Jamal also filed a motion seeking a bill of

The motion was referred to the United States Magistrate Judge for determination. For the reasons stated below, the government's motion to reconsider is granted and the defendant's motion for a bill of particulars with respect to Counts 4, 5, and 6 of the indictment is denied.

In 1998, the defendant, Omar Jamal, sought asylum in the United States as a refugee from Somalia. On March 25, 2003, a grand jury returned a six count indictment against him based on false statements he allegedly made in connection with his application for asylum. Counts 4 and 5 of his indictment allege that on approximately June 11, 1998, Jamal violated 18 U.S.C. § 1001 by "knowingly and willfully" making a false statement with respect to a material fact when he filed an Application for Asylum and for Withholding of Deportation and stated that he had never held permanent residence, or other permanent status or citizenship, in any other country other than Somalia and that he had never filed for, been processed for, or been granted or denied refugee status or asylum by any other country. (Indictment, *United States v. Jamal*, Crim. Case No. 03-20104-BV at 3-4 (W.D. Tenn. Mar. 25, 2003).) Count 6 of the indictment alleges that on June 11, 1998, Jamal "knowingly and willfully" made a false statement in violation of 18 U.S.C. 1001 when he claimed in his application for asylum in

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particulars as to Counts 1, 2, and 3 of the indictment on February 9, 2004. After receiving no response from the government, the court granted that motion as to Counts 1, 2, and 3 on February 27, 2004. The government did not appeal this court's order, and the time do so has lapsed. Furthermore, the government has not filed a motion with the court to reconsider the court's February 27, 2004 order.

the United States that neither he nor his spouse or children had traveled through another country after leaving the country from which he was then claiming asylum. (*Id.* at 5-6.)

In the present motion, Jamal contends that Counts 4 through 6 of the indictment do not provide him with enough information about the false statements allegedly made in his Application for Asylum and for Withholding of Deportation to enable his counsel to properly and adequately prepare for trial and mount a meaningful defense. Specifically, Jamal first argues that "it is not clear from the [i]ndictment the exact statements the government considers false, or upon which the [i]ndictment is based." (Def.'s Mem at 2.) Second, Jamal argues that he needs to know the specific questions asked of him on June 11, 1998 and his specific answers in response to those questions that the government contends were false because there is no evidence that any Immigration Naturalization Services officer reviewed the contents of Jamal's written asylum application with him. (*Id.*) Finally, Jamal asserts that he needs to know the precise words spoken in Somali by the interpreter and Jamal's response spoken in Somali. (*Id.* at 2-3.) He claims that this information is necessary because the indictment is not specific regarding which answers were deemed false, which prohibits Jamal's counsel from determining whether there may have been a lack of understanding on the part of either Jamal or his Somali translator as to the meaning of certain questions and answers. (*Id.* at 3.)

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 (7th 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).

In this case, the government contends that Jamal's motion for a bill of particulars in essence seeks "a detailed disclosure of the government's theory of the case" and the "specific manner and method the defendant is alleged to have committed the crime." (Resp. to the Bill of Particulars and Mot. to Reconsider Order on Def.'s Mot. for Bill of Particulars at 2.) Furthermore, the government indicates that Jamal is not entitled to the questions asked by the interpreter and answered by Jamal as spoken in Somali because the interpreter, Bashir Jama, was not employed or solicited by the government. (*Id.*) In fact, the government represents to the court that the interpreter was a friend of Jamal's and that Jamal voluntarily brought his friend to the immigration interview to translate for him. (*Id.*)

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). Additionally, "[t]he

defendant is not entitled to know all the evidence the government intends to produce at trial, but only the theory of the government's case." *Kendall*, 665 F.2d at 135. 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).

Although Jamal has expressed a specific need for particulars, this court is not satisfied that he has not received all that he is entitled to receive under the law - that is, adequate notice of the charges against him to prevent unfair surprise at trial and to provide a basis for a plea of double jeopardy in any subsequent prosecution. To begin, the indictment in this case identifies all the particulars of the charged crimes, i.e., dates, the elements of the offense charged, the manner and methods used to commit the violations, the specific interview in which Jamal allegedly gave false information, the subject matter of the alleged false statement, and the statutory citations for the violations. This information, coupled with the discovery in this case, is such that the defendant can adequately prepare for trial. See *Birmley*, 529

F.2d at 108. Furthermore, the detail in the indictment is specific enough that the defendant will be able to plead double jeopardy at a later time if he is charged again with any of the false statements set forth in the indictment. Lastly, based on the representations made by the government to this court, Jamal is in the best position to obtain the questions asked by the interpreter and his own answers as spoken in Somali because Jamal secured the services of his friend as the interpreter. As stated by the Seventh Circuit in approval of a decision coming from the Fifth Circuit, "[t]he defendant's constitutional right is to know the offense with which he is charged, not to know the details of how it will be proved." *Kendall*, 665 F.2d at 135 (citing *United States v. Freeman*, 619 F.2d 1112, 1118 (5th Cir. 1980)). Accordingly, Jamal's motion for a bill of particulars as to Counts 4, 5, and 6 is not well taken and is denied as such.

For the reasons set forth above, the government's motion to reconsider is granted, and the defendants' Motion for Bill of Particulars is denied as to Counts 4 through 6.

IT IS SO ORDERED this 31st day of March, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE