

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FLOYD SCOWDEN,)
)
 Defendant.)

No. 02-20030-DV

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION FOR BILL OF PARTICULARS

Before the court is defendant Floyd Scowden's Motion for Bill of Particulars, filed March 26, 2002, pursuant to Fed. R. Crim. P. 7(f). This motion was referred by United States District Judge Bernice B. Donald to the United States Magistrate Judge for a report and recommendation. The government filed a response in opposition to the motion. For the reasons below, this court recommends denial of the motion.

PROPOSED FINDINGS OF FACT

On February 5, 2002, a multiple-count indictment was returned against Scowden, charging him with conspiracy to manufacture methamphetamine and with controlling a house and making it available for the purpose of manufacturing of methamphetamine. Count 1 charges that beginning sometime before May 13, 2001, and through that date, Scowden conspired and worked together with

Teresa Gill, David Hyatt and other unnamed individuals to manufacture a mixture containing methamphetamine in violation of 21 U.S.C. § 846. Count 2 charges that on May 13, 2001, Scowden and Gill, as lessees of a house at 2399 Morning Vista in Memphis, aided and abetted each other in allowing the house to be used as a location to manufacture methamphetamine in violation of 21 U.S.C. § 856 and 18 U.S.C. § 2. Count 3 does not charge Scowden, but rather charges David Hyatt, Jennifer Murphy and other unnamed individuals with conspiracy to manufacture a mixture containing methamphetamine. Count 4 similarly charges Scowden, Gill, Hyatt, Barry Alan Fletcher and other unnamed individuals with conspiracy beginning before December 20, 2001, and continuing up to that date, to manufacture a mixture containing methamphetamine also in violation of 21 U.S.C. § 846.

Pursuant to the Federal Rule of Criminal Procedure, Scowden made his Rule 16 discovery request on February 26, 2002. The government responded to Scowden's request in a letter on the same day, in which it listed the evidence it had accumulated against Scowden. The evidence consisted of statements made by Scowden at his May 13, 2001 arrest, evidence seized during the execution of a search warrant at 2399 Morning Vista, DEA incident reports, search consent forms and property receipts, stemming from three separate searches and arrests. (See Govt.'s Resp. to Def.'s Mot. for Bill

of Part., Feb. 26, 2002.) In the letter, the government stated that Scowden could examine the physical evidence at a mutually agreeable time and attached Scowden's written statement from his arrest.¹

The particulars now sought by Scowden in this motion for a bill of particulars are as follows:

With respect to Counts 1, 3² and 4 of the indictment:

- (a) A list of all persons with whom Scowden communicated during the commission of the alleged crime and all persons present for any pertinent conversation and transactions.
- (b) A statement specifying the role Scowden played in the commission of the crimes charged.
- (c) A statement specifying the exact dates and times during which Scowden engaged in the crimes alleged in the indictment.
- (d) A statement describing in detail the location in the Western District of Tennessee where the criminal acts allegedly occurred.
- (e) A list of all of Scowden's alleged co-conspirators that are unnamed in the indictment, and those "known to the grand jury."

¹ The statement and other discovery is not attached to the government's letter in Scowden's file with the Clerk of Court.

² Although Scowden is not charge in Count 3 of the indictment, he seeks particulars as to that count.

(Def.'s Mot. for Bill of Part., pp.1-2, March 26, 2002.)

PROPOSED FINDINGS OF LAW

In general, Scowden argues that the indictment does not provide him with enough information about the drug conspiracy charges against him and that without the particulars demanded, he would be unable to properly prepare a defense to those charges.

Courts are authorized by Rule 7(f) to direct the filing of a bill of particulars. 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).

In this case, the government contends that Scowden has already received and continues to receive ample Rule 16 discovery and that he is not entitled to use a bill of particulars as a device to gain additional evidence. 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.* 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).

The information Scowden seeks relates to the government's view of the role that he and his alleged co-conspirators played in the charged drug crimes, in addition to locations and unnamed individuals with information pertaining to the alleged crimes.

Scowden made no attempt in his 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. As explained in detail below, this court submits that these requests do not seek proper evidence of a bill of particulars and should not be granted.

Request (a)

Scowden seeks a list of all persons with whom he spoke or who were present when he committed the crimes listed in the indictment. He provides no specific reason for seeking this information. Requests seeking the names of government witnesses or co-conspirators, including those who are unindicted, shall not be granted. *United States v. Largent*, 545 F.2d 1039, 1043-44 (6th Cir. 1976) (government witnesses); *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir. 1991) (co-conspirators, including those unindicted). The request is overbroad and improper in scope for the purpose of a bill of particulars. It simply requests additional discovery and Scowden offers no argument or justification to grant his request. A court may properly refuse to compel the government to disclose the information sought based on the caselaw above. As such, the request should be denied.

Request (b)

Next, Scowden seeks information from the government regarding

his actions that were allegedly criminal in nature. This request is tantamount to requesting that the government cite each overt act of Scowden that led to the indictment against him. A defendant has no right to learn of all overt acts that the government alleges he committed and which can be raised at trial. *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993) (citing *United States v. Kilrain*, 566 F.2d 979, 985 (5th Cir. 1978)). The indictment sets forth a number of details regarding Scowden's involvement, including the names of some, if not all, of his co-conspirators, the mixture they allegedly conspired to create and where many of these events took place. (See Govt.'s Resp. to Def.'s R.16 Requests, Feb. 26, 2002.) Accordingly, Scowden is not entitled to any further information from the government and his Request (b) should be denied.

Request (c)

Third, Scowden seeks a statement from the government which sets forth all times and dates when he allegedly committed the crimes charged against him in the indictment. Requests for specific dates and times exceed the scope of a bill of particulars and should be denied. *United States v. Nyhuis*, No. G89-178CR, 1990 U.S. Dist. LEXIS 2984, *11 (W.D. Mich. March 14, 1990) (citing *United States v. Diecidue*, 603 F.2d 535, 563 (5th Cir. 1979)). In *Diecidue*, the defendant sought the dates and times on which he

allegedly murdered someone and when he hired his co-defendant to murder another person. *Diecidue*, 603 F.2d at 562. These requests were denied, as they sought information beyond the scope of a bill of particulars. A similar request was denied in *Nyhuis*, cited above, for the same reason. In addition, the indictment in this case sets forth specific dates for each count charged. Hence, Scowden's Request (c) for specific dates and times of his alleged criminal activity should also be denied.

Request (d)

In Request (d), Scowden requests a statement of the locations at which the government alleges that the crimes in the indictment took place. In its Rule 16 disclosures, the government provided Scowden with two addresses, namely 2399 Morning Vista and 1202 S. Perkins, both in Memphis, Tennessee. These locations are purported to be methamphetamine laboratories where the government retrieved much of the physical evidence in this case. Scowden is not entitled to any further information regarding the locations beyond what the government has provided thus far, as addresses, like times and dates, are overly broad requests. *Nyhuis*, 1990 U.S. Dist. LEXIS 2984 at *11.

Request (e)

Scowden's final request, asking for the names of all co-conspirators, falls under the same law and argument as his Request

(a), above. The government need not provide Scowden with the names of any other co-conspirators or possible government witnesses. *Largent*, 545 F.2d at 1043-44; *Rey*, 923 F.2d at 1222. This request exceeds the scope of a bill of particulars and should be denied.

For the reasons set forth above, this court recommends that Scowden's motion for a bill of particulars should be denied in its entirety.

Respectfully submitted this 24th day of April, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE