

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

Criminal No. 1:08cr 132-1-WJG-JMR

v.

**GREGORY BRENT WARR and
LAURA JEAN WARR**

**GOVERNMENT'S RESPONSE AND SUGGESTIONS
IN OPPOSITION TO DEFENDANT'S MOTION
FOR A BILL OF PARTICULARS**

The United States of America, (hereinafter the "Government") respectfully submits this response and suggestions in opposition to Defendant Gregory Brent Warr's Motion for a Bill of Particulars.

DISCUSSION

The defendants are charged in Counts 13 through 16 with four counts of mail fraud in violation of Title 18 United States Code Section 1341. Defendant Gregory Brent Warr now seeks, pursuant to Rule 7(f), Fed. R. Crim. P., a bill of particulars regarding those charges. In his request, he generally seeks discovery of the government's entire case-in-chief under the guise of a request for greater specificity. See Deft's Motion at ¶¶ 2. As the subsequent case law makes clear, the overall thrust

of defendant's motion is contrary to the established purposes of a bill of particulars and it should therefore be denied.

The granting of a bill of particulars is wholly within the discretion of the trial court. United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980). The purposes of a bill of particulars are (1) to apprise the defendant of the crime charged with sufficient particularity to enable him to prepare a proper defense; (2) avoid prejudicial surprise at trial, and (3) to enable him to plead his acquittal or conviction as a bar to a later prosecution for the same offense, where the indictment itself is too vague and indefinite for such purposes. Wong Tai v. United States, 273 U.S. 77, 82 (1927); United States v. Cantu, 557 F.2d 1173, 11178 (5th Cir. 1977); see also United States v. Bearden, 423 F.2d 805, 809 (5th Cir. 1970). As the Sixth Circuit has stated:

The purpose 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 his prosecution for the same offense when the indictment itself is too vague, and indefinite for such purposes.

United States v. Birmley, 529 F.2d 103 at 108 (6th Cir. 1976).

A bill of particulars is not a discovery tool. United States v. Hester, 74 F.3d 49, 53 (4th Cir. 1996); United States v. Hill, 589 F.2d 1344, 1352 (8th Cir. 1979); United States v. Austin, 99 F.R.D. 292 (W.D. Mich. 1983); United States v. Barberi, 614 F.2d 715, 719 (10th Cir. 1980). It should not be granted where it is intended to provide the defendant with details of the government's case against him in advance of trial. United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978). Johnson v. United States, 207 F.2d

314, 320 (5th Cir. 1953). A bill of particulars is a supplemental pleading and is not equivalent to interrogatories under the Federal Rules of Civil Procedure.

Notwithstanding the demands of defendant in of his motion, it never properly becomes an account of who, when, why, where, how, and most importantly, with what the government proposes to prove the charges in the indictment. The purpose of a bill of particulars is not to provide detailed disclosure before trial of the Government's evidence. United States v. Sherriff, 546 F.2d 604, 606 (5th Cir. 1977).

The First Circuit, in Mullony v. United States, 79 F.2d 566 (1st Cir. 1935), compared the principle of avoiding surprise to the principle of non-disclosure of the government's evidence when it stated:

The purpose of a bill of particulars is to better apprise the defendant of the crime charged to enable him properly to prepare his defense. It is not to furnish him in advance with the government's evidence and, if the indictment properly sets forth a crime, a motion of this character which would unduly limit the evidence of the government should not be granted.

79 F.2d at 572.

A bill of particulars is not necessary where the indictment sets forth the elements of the offense charged, the time and place of defendant's illegal conduct, and a citation to the relevant statute. United States v. Montemayor, 703 F.2d 109, 117 (5th Cir. 1983). It is not a device to obtain disclosure of evidentiary details of the government's legal theories. United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980). Indeed, a bill of particulars is only necessary where the defendant lacks the particulars needed to avoid prejudicial surprise and to prepare his defense. United States v. Bin Laden, 92

F.Supp.2d 225, 233 (S.D.N.Y. 2000) Wright, Federal Practice and Procedure, ¶ 129 at 436 (2d. Ed. 1982). Notably, a defendant's need for information must be evident and "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, the defendant is not faced with such a need. The defendant's request that the government provide the exact manner in which the defendant made misrepresentations is inconsistent with the purposes of a bill of particulars. As one district court noted, the proper test to apply in deciding whether to require a bill of particulars is "whether the bill of particulars is necessary for the defense, not whether it would aid the defendant in his preparation." United States v. Guerrerio, 670 F.Supp. 1215, 1224 (S.D.N.Y. 1987).

The indictment sufficiently informs the defendant of the elements of the crime charged. The allegations in the four counts tracks the statute in clearly understood language. It sets forth the dates, the item, the sender and the general nature of the schemes. Thus, the charging document is clearly more than sufficient to enable the defendant to prepare a defense, avoid prejudicial surprise, and bar subsequent prosecutions. Downing v. United States, 348 F.2d 594, 599 (5th Cir. 1965). In short, where, as here, the indictment sufficiently apprises the defendant of the necessary elements, a bill of particulars is not properly granted. United States v. Bearden, 423 F.2d 805, 809 (5th Cir. 1970).

The indictment alone in this case is sufficient to protect the defendant against the danger of prejudicial surprise. It cannot be seriously argued that the indictment leaves any doubt as to the dates of the offenses, the scheme involved, or the item mailed. The details provided therein, as well as in the anticipated statutory discovery materials will reveal the government's case in such a manner as to enable the defendant to proceed free from the risk of unfair surprise. Likewise, it is clear that the specificity of the indictment and the government's anticipated Rule 16 disclosures give the defendant sufficient information about the charges to enable him to prepare a defense. Weighing against the defendant's motion is the significant detriment to the government caused by a bill of particulars in that it would strictly limit the government's proofs at trial. United States v. Haskins, 345 F.2d 111, 114 (6th Cir. 1965). Such a restriction is unnecessary in this case since defendant has not demonstrated a need for a bill of particulars. More importantly, however, defendant's request essentially seeks to use a bill of particulars for the purpose all cited authority agrees it should not; discovery.

CONCLUSION

Accordingly, for the foregoing reasons and authorities, defendant's motion for bill of particulars should be denied.

Respectfully submitted this 13th day of February, 2009.

Respectfully submitted,
STAN B. HARRIS
Acting United States Attorney

By: s/Annette Williams
ANNETTE WILLIAMS

Assistant U.S. Attorney
1575 20th Avenue
Gulfport, Mississippi 39501
Telephone No.: 228/563-1560
Facsimile No.: 228/563-1571
Miss. Bar No.: 9641
E-mail Address: Annette.Williams2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2009, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Joe Sam Owen, Attorney for Defendant Gregory Brent Warr

Frank Trapp, Attorney for Defendant Laura Jean Warr

s/Annette Williams
Assistant U.S. Attorney