UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	
v.	Case No. 3:05cr58 (SRU)
ALEX LUNA, et al.	

RULING ON MOTION FOR RECONSIDERATION

Warren Hawkins, Arcadio Ramirez, and Jose Luis Rodriguez have each been charged with conspiracy to possess with intent to distribute and conspiracy to distribute cocaine and cocaine base. They are currently on trial for those charges.

On May 9, 2006, I granted the defendants' motions for a bill of particulars. *See* Ruling on Motions for Bill of Particulars (doc. # 568). Specifically, the "voluminous discovery" provided to the defendants notwithstanding, I ordered the government to provide to each defendant a bill of particulars, setting forth: (1) the names of co-conspirators, and (2) a list of drug transactions in which the defendant was allegedly involved, including the names of other persons involved, the locations and the approximate dates of the transactions, and the nature and amount of drugs. The government has filed a motion for reconsideration, arguing that "controlling authority . . . clearly instructs the district courts to deny motions for bills of particulars if the information sought has already been provided." Memo. Supp. Motion for Reconsideration at 7. The government appears to suggest that I abused my discretion in ordering the bill of particulars because it had provided the defendants with extensive discovery, sufficient to prepare a defense, prior to trial.[1]

[1] The government also argues that the bill of particulars should have been denied due to the untimeliness of Hawkins' motion. With respect to untimeliness, I note that in the weeks preceding trial Hawkins was expected to plead guilty to a Substitute Information, alleging use of a telephone to facilitate a narcotics transaction. Accordingly, his counsel did not participate in a pre-trial phone conference on May 1, 2006 during which I set May 2, 2006 as the deadline for

The government's disclosures to the defendants are commendable, and the government is correct that, generally, a bill of particulars is not necessary if the information sought by the defendant is provided in the indictment or in some other acceptable form. *See, e.g.*, *United States v. Bortnovsky*, 820 F.2d 572, 572 (2d Cir. 1987). That general rule, however, does not bar me from ordering a bill of particulars even if the government has provided extensive discovery. *See id.* at 574-75.[2] Moreover, a bill of particulars may be appropriate where, as here, an indictment names over twenty defendants in a "bare bones" narcotics conspiracy charge spanning seven years. *See United States v. Barnes*, 158 F.3d 662, 665-66 (2d Cir. 1998) (defendant, who was indicted with over thirty others in "bare bones" narcotics conspiracy charge spanning three years, "was entitled to be otherwise apprised of the conduct that he was alleged to have undertaken" in furtherance of the conspiracy).

Even though no bill of particulars may be necessary if the information sought by a defendant is provided to him in an acceptable form, the decision whether or not to grant a bill of particulars rests within the sound discretion of the district court. *Bortnovsky*, 820 F.2d at 574. *Cf. Barnes*, 158 F.3d at 665 ("A district court judge . . . has the discretion to deny a bill of particulars if the information sought by defendant is provided in the indictment or in some acceptable alternate form.") (internal quotations marks and citation omitted). In *Bortnovsky*, the

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pre-trial motions. *See* Conference Memorandum (doc. # 548). When Hawkins decided to proceed to trial, his counsel filed a motion for a bill of particulars. I elected to consider that motion, dated May 3, 2006, as timely filed.

[2] Under Rule 7(f) of the Federal Rules of Criminal Procedure, a defendant may seek a bill of particulars "in order to identify with sufficient particularity the nature of the charge pending against him, thereby enabling [the] defendant to prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he be prosecuted a second time for the same offense." *Bortnovsky*, 820 F.2d at 574.

Court of Appeals held that the district court abused its discretion in refusing to order a bill of particulars even though the government had provided over 4,000 documents to defense counsel during discovery. *Id.* "The Government did not fulfill its obligation merely by providing mountains of documents to defense counsel . . . " *Id.* at 575. To the extent the government contends that a district court is without authority to order a bill of particulars if the government provides voluminous discovery, *Bortnovsky* is controlling authority to the contrary.

In *Barnes*, the Court of Appeals did not reach the ultimate question whether the district court's denial of a bill of particulars was in error. *Barnes*, 158 F.3d at 666. On appeal, the defendant argued that the government's "massive disclosures never revealed the true thrust of the prosecution." *Id.* Although the Court of Appeals concluded that the defendant failed to establish any prejudice as a result of the denial of a bill of particulars, implicit in the court's discussion is the principle that "massive disclosures" do not preempt a district court judge from ordering a bill of particulars.

Voluminous discovery poses a problem different than the one faced by defendants who receive little or no discovery pre-trial. Nevertheless, overwhelming a defendant with discovery can obscure the particulars of a charge as fully as denying discovery. Thus, when faced with "mountains" of discovery or "massive disclosures," a defendant may still be unable to prepare for trial and prevent surprise. That is particularly true in a case such as this one, in which the government alleges a conspiracy spanning seven years and involving at least twenty-three co-conspirators, and in which the government's disclosures include thousands of recorded telephone calls in both English and Spanish.

Furthermore, *Bortnovsky* suggests that, when a defendant's newly retained counsel has "only four days" to prepare a defense, it may be appropriate to grant a bill of particulars. *Bortnovsky*, 820 F.2d at 575. Although there is no suggestion in the present case that the government has attempted to "waylay" defense counsel or that the government has engaged in any misconduct whatsoever, *cf. id.*, like the defense counsel in *Bortnovsky*, Ramirez's retained attorney entered the case less than one week before the start of evidence. I denied Ramirez's motion to postpone the trial, but did consider the late entrance of his counsel when ordering the bill of particulars.[3]

Finally, the government incorrectly asserts that "the only real effect of the bill of particulars . . . is to restrict unduly the government's ability to develop and prove its case." Memo. in Supp. Motion for Reconsid. at 4. The government's ability to develop and prove its case has not been unduly restricted. The government was not required to provide the bill of particulars until the trial was underway, and there has been no exclusion of evidence based on the representations in the bill of particulars. Moreover, the bill of particulars has assisted defense counsel, who, for example, have been able to identify at least one report of interview that was referenced in the bill of particulars, but which had not been provided to the defense. Defense

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[3] During oral arguments, the government suggested that the lateness of the bill of particulars is potentially problematic. The government anticipated that, after receiving the bill of particulars, the defendants would seek further time in order to prepare their defense, and expressed concern that the defendants would be able to argue on appeal that they were prejudiced by a belated bill of particulars. In other words, the government appears to argue that no bill of particulars is better than a bill of particulars provided shortly before or during trial. Those arguments are unavailing. A defendant is made no worse off by receiving a bill of particulars later than he would have liked rather than receiving none at all. Because I had discretion to deny the motions for a bill of particulars, I necessarily had discretion to order the bill of particulars late in the proceedings.

counsel have also been able to argue, based on information detailed in the bill of particulars, that certain conduct – specifically drug sales that took place in Brooklyn, New York – is outside the scope of the charged conspiracy and testimony about that conduct should not be admitted.

In short, controlling case law does not require district courts to deny motions for a bill of particulars when the government has provided extensive discovery materials to the defense. Under the circumstances of this case, a bill of particulars is necessary to bring focus to the massive amounts of discovery produced and the lengthy, open-ended conspiracy charged.

The government's motion for reconsideration is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 17th day of May 2006.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge