

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>Criminal No. 08-54-P-S</b>
	)	
<b>RICHARD W. SZPYT, et al.,</b>	)	
<b>Defendants</b>	)	

**ORDER ON MOTIONS FOR BILLS OF PARTICULARS**

Prior to the filing of the Superseding Indictment in this case on October 22, 2008, defendants James E. Weston, Kelley Monahan, Sherwood K. Jordan, Cynthia A. Moore, Charles Green, and Daniel A. Guarino filed, and Chief Judge Singal referred to me, motions for bills of particulars. *See* Motion for Bill of Particulars (“Weston Motion”) (Docket No. 348); Defendant Kelley Monahan’s Motion for Bill of Particulars (“Monahan Motion”) (Docket No. 351); Motion for Bill of Particulars (“Jordan Motion”) (Docket No. 355); Motion for a Bill of Particulars (“Moore Motion”) (Docket No. 362); Defendant Charles Green’s Motion for Bill of Particulars Adopting Arguments made by Defendant Weston in Document No. 348 (“Green Motion”) (Docket No. 363); Motion for a Bill of Particulars (“Guarino Motion”) (Docket No. 367).

In addition, defendants Richard W. Szpyt, Guarino, Michael A. Martin, and Andre T. Charron filed motions to join in the Weston Motion. *See* Defendant Szpyt’s Motion To Join Co-Defendant Weston’s Motion for Bill of Particulars (“Szpyt Joinder Motion”) (Docket No. 359); Motion To Join in and Adopt the Motion To Suppress and Motion for Bill of Particulars . . . of Co-Defendant James E. Weston (“Guarino Joinder Motion”) (Docket No. 369); Defendant Michael A. Martin’s Motion for Leave To Join in and Adopt . . . Motions Filed on Behalf of Co-Defendant James Weston[] (“Martin Joinder Motion”) (Docket No. 381); Motion To Join Defendant Weston’s Motions (“Charron Joinder Motion”) (Docket No. 388). The court granted

Szpyt's and Guarino's motions to join, *see* Docket Nos. 373, 382, and in a recommended decision on the defendants' pending motions to suppress also filed today, I have granted Martin's and Charron's motions to join.

By order dated October 31, 2008, Chief Judge Singal noted that the court took no action on the defendants' pending motions for bills of particulars, as well as their pending motions to suppress, in light of its previous referral of those motions to me, but that I was "free to order any or all of these motions renewed or amended to the extent the Superseding Indictment, including the addition of a new defendant, may have changed the relevant landscape." Order on Defendants' Pending Motions (Docket No. 495) at 4.

As Chief Judge Singal recognized, *see id.*, the filing of a superseding indictment does not in itself affect defendants' pending pre-trial motions, *see, e.g., United States v. Bazuaye*, No. 03 CR. 12(KTD), 2004 WL 784835, at \*5 (S.D.N.Y. Apr. 12, 2004), *aff'd*, No. 05-5389-CR, 2008 WL 1813244 (2d Cir. 2008) ("The filing of a superseding indictment does not have an effect on the pretrial motions filed on the original indictment unless the district court has ruled that the superseding indictment moots the pending motions.") (citation and internal quotation marks omitted).

The defendants' motions for bills of particulars all target Count One of the original Indictment. *See* Weston Motion; Monahan Motion; Jordan Motion; Moore Motion; Green Motion; Guarino Motion. In addition, Monahan seeks more clarity with respect to Counts 14 and 17 of the original Indictment, and Jordan seeks more clarity with respect to Counts 21, 24, 28, 31, and 39 of that Indictment. *See* Monahan Motion at 2; Jordan Motion at 3-4.<sup>1</sup> Save for the removal of two of the original 19 defendants and the addition of one defendant, Count One of

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<sup>1</sup> In his motion papers, Jordan inadvertently omitted mention of Count 39. *See* Defendant Sherwood Jordan's Motion To Correct Clerical Error (Docket No. 391), *granted by* Docket No. 394.

the Superseding Indictment is substantively identical to Count One of the original Indictment. *Compare* Indictment (Docket No. 3) at 1-2 *with* Superseding Indictment (Docket No. 456) at 1-2. The charge, in both instances, is that beginning on a date unknown, but not later than 2004, and continuing until a date unknown, but no earlier than October 2007, in the District of Maine and elsewhere, the defendants knowingly and intentionally conspired with one another and with others known and unknown to the Grand Jury to distribute, and possess with intent to distribute, controlled substances, including five kilograms or more of cocaine, and marijuana, and did aid and abet such conduct, in violation of 21 U.S.C. §§ 846 and 841(a)(1), and 18 U.S.C. § 2. *Compare* Indictment at 1-2 *with* Superseding Indictment at 1-2. The motions for bills of particulars thus remain relevant to the conduct charged in Count One of the Superseding Indictment.

Counts 21, 24, 28, and 39 of the original Indictment are identical in substance to Counts 20, 23, 27, and 35 of the Superseding Indictment. *Compare* Indictment at 7-8 *with* Superseding Indictment at 6-8. Counts 14, 17, and 31 of the original Indictment clearly correspond to Counts 13, 16, and 29 of the Superseding Indictment, but are not identical. *Compare* Indictment at 6-8 *with* Superseding Indictment at 6-7. Whereas Counts 14 and 17 of the original Indictment charged Monahan with using a communication facility, a telephone, on August 1, 2007, at 8:46 and on August 3, 2007, at 15:51, to commit the offenses of distribution of cocaine and aiding and abetting in the distribution of cocaine, and Count 31 of the original Indictment charged Jordan with using a telephone, on August 17, 2007, at 11:36, to commit the offenses of distribution of cocaine and aiding and abetting in the distribution of cocaine, Counts 13, 16, and 29 of the Superseding Indictment charge Monahan and Jordan with using a telephone on those dates and times to commit the offenses of distribution of marijuana and aiding and abetting in the

distribution of marijuana. *Compare* Indictment at 6-8 *with* Superseding Indictment at 6-7.

Nonetheless, Monahan's and Jordan's motions can be construed to apply equally to Counts 13, 16, and 29 of the Superseding Indictment. Monahan and Jordan complained that Counts 14, 17, and 31 of the original Indictment lacked detail as to the manner in which they were alleged to have committed the cocaine-distribution-related offenses. *See* Monahan Motion at 2; Jordan Motion at 3-4. Counts 13, 16, and 29 of the Superseding Indictment contain no greater detail on the manner in which they are alleged to have committed the marijuana-distribution-related offenses. *Compare* Indictment at 6-8 *with* Superseding Indictment at 6-7. For these reasons, I construe Monahan's request for more particulars as to Counts 14 and 17 of the Indictment to apply to Counts 13 and 16 of the Superseding Indictment, and Jordan's request for more particulars as to Counts 21, 24, 28, 31, and 39 of the Indictment to apply to Counts 20, 23, 27, 29, and 35 of the Superseding Indictment.

That said, I do conclude that the filing of the Superseding Indictment did moot one pending motion for a bill of particulars, that of Charles Green, who pled guilty prior to issuance of the Superseding Indictment and therefore is not named therein, *see* Minute Entry [for Change of Plea Hearing] (Docket No. 444); Superseding Indictment. Apart from that, I perceive no material change in the relevant landscape as it bears on the pending motions for bills of particulars and no need to direct that any of those motions be re-filed. (The newly named defendant, Ramon Dellosantos, of course remains free to file pretrial motions on such schedule as the court shall allow.)

With that clarification, I proceed to deny the motions for bills of particulars of Weston, Monahan, Jordan, Moore, and Guarino.

These defendants, and those who join in Weston's motion, seek a bill of particulars as to

Count One on grounds that, in view of the sheer number of individuals charged, the possibility suggested by discovery that there may have been two separate conspiracies, one involving cocaine and the other marijuana, rather than one unified conspiracy as charged, and the possibility suggested by discovery that some defendants may have been purchasing drugs for personal use rather than engaging in a conspiratorial agreement, the defendants are “flying blind” and are handicapped in their defense without a roadmap from the government laying out the contours of the alleged conspiracy and the alleged relationships among co-conspirators. *See* Weston Motion at 2-4; Monahan Motion at 1-2; Jordan Motion at 1-3; Moore Motion at 1-2; Guarino Motion at 1-2.

To remedy this alleged shortcoming, Weston requests that the government file a bill of particulars explaining each defendant’s alleged role in the conspiracy and how the overall conspiracy is a single conspiracy, rather than multiple conspiracies. *See* Weston Motion at 4.

Monahan and Jordan request that the government (i) set forth the specific locations in which Monahan and Jordan allegedly participated in the conspiracy, (ii) set forth the names of all others known to the Grand Jury with whom these defendants allegedly conspired, (iii) state whether, since the filing of the Indictment, the government has learned the names of any previously unknown co-conspirators and, if so, disclose their identities, (iv) set forth the manner in which Monahan and Jordan are alleged to have engaged in the conspiracy, (v) set forth the manner in which they are alleged to have distributed, and possessed with intent to distribute, cocaine and/or marijuana, (vi) set forth the exact amount of cocaine and/or marijuana they are alleged to have distributed, or possessed with intent to distribute, and (vii) state whether they are alleged to have been members of the conspiracy from its inception to its termination and, if not, set forth the dates of their alleged participation. *See* Monahan Motion at 1-2; Jordan Motion at 3.

For their part, Moore and Guarino seek clarity as to what conduct with which they are being charged constitutes an agreement with any other individual charged with conspiracy in Count One, and what conduct with which they are being charged constitutes an agreement to a single conspiracy to distribute, or possess with intent to distribute, both cocaine and marijuana. See Moore Motion at 2; Guarino Motion at 2

With respect to Counts 13, 16, 20, 23, 27, 29, and 35 of the Superseding Indictment, Monahan and Jordan ask that the government set forth the manner in which they are alleged to have committed the underlying cocaine or marijuana distribution offenses. See Monahan Motion at 2; Jordan Motion at 3-4.

The government opposes the motions on grounds that (i) to the extent the defendants seek greater clarity on the time frames of the alleged conspiracy, the indictment is adequate to put each defendant on notice of the charges against him/her, (ii) to the extent the defendants request specific detailed information regarding the drug conspiracy, they are using their motions for bills of particulars to obtain from the government more information than it is required to disclose pursuant to the Federal Rules of Criminal Procedure and its *Brady/Giglio* disclosure obligations, and (iii) the government is not obliged to explain by way of a bill of particulars why it alleges that certain criminal conduct constitutes a single conspiracy rather than multiple conspiracies. See Government's Response to Defendants' Motion[s] for a Bill of Particulars ("Response") (Docket No. 409) at 3-4.<sup>2</sup> The government contends that the charges in the indictment, together with extensive discovery provided to each defendant to date, including the three affidavits submitted in conjunction with its wiretap applications and line sheets and recordings of all

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<sup>2</sup> Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), the government is obliged to produce to a criminal defendant "evidence favorable to an accused where the evidence is material either to the guilt or to punishment, including evidence affecting credibility[.]" *United States v. Kinsella*, 380 F. Supp.2d 7, 10 (D. Me. 2005) (citations and internal punctuation omitted).

intercepted calls, provide sufficient detail to enable the defendants to prepare a defense. *See id.* at 2, 4. I agree.

Motions for bills of particulars, which “are seldom employed in modern federal practice[,] . . . need be granted only if the accused, in the absence of a more detailed specification, will be disabled from preparing a defense, caught by unfair surprise at trial, or hampered in seeking the shelter of the Double Jeopardy Clause.” *United States v. Sepulveda*, 15 F.3d 1161, 1192-93 (1st Cir. 1993). If, by way of discovery, a defendant has gained adequate specification, a motion for a bill of particulars appropriately may be denied. *See id.* at 1193.

That is the case here. The defendants, who the government represents have been provided with extensive discovery, are not entitled by way of bills of particulars to obtain details revealing the precise manner in which the government alleges that they committed the crimes charged, the manner in which it will attempt to prove the charges, or lists of all known co-conspirators. *See, e.g., United States v. Nelson-Rodriguez*, 319 F.3d 12, 30-31 (1st Cir. 2003) (defendant did not lack a fair opportunity to present a defense, absent a bill of particulars, when the indictment stated that the conspiracy involved attempts to import large amounts of controlled substances into the District of Puerto Rico, detailed the dates of the conspiracy and the names of the co-conspirators, and the defendant had access during discovery to recordings of conversations between himself and other conspirators discussing the importation of cocaine); *United States v. Rittweger*, 259 F. Supp.2d 275, 291 (S.D.N.Y. 2003) (“The Government may not be compelled to provide a bill of particulars disclosing the manner in which it will attempt to prove the charges, the precise manner in which the defendants committed the crimes charged, or a preview of the Government's evidence or legal theories. . . . There is no need to provide a list of all unindicted co-conspirators.”).

For the foregoing reasons, the Green Motion is dismissed as **MOOT**, and the Weston Motion, Monahan Motion, Jordan Motion, Moore Motion, and Guarino Motion are **DENIED**.

So ordered.

Dated this 9th day of November, 2008.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge

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