

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CRIMINAL NO. 3:08-cr-00107**

**FRANK E. MELTON  
MICHAEL RECIO  
MARCUS WRIGHT**

**GOVERNMENT’S OPPOSITION TO DEFENDANT RECIO’S  
MOTION FOR A BILL OF PARTICULARS**

The United States, by its undersigned counsel, respectfully requests that this Court deny Defendant Recio’s Motion for a Bill of Particulars because the defendant has adequate notice of the charges against him and has sufficient information to prepare his defense. In support of its opposition, the government states the following:

**I. Background**

On July 9, 2008, a Grand Jury for the Southern District of Mississippi returned a three-count Indictment against the defendants charging each of them with violating 18 U.S.C. §§ 241, 242, and 924(c) for conduct on August 26, 2006, which led to the unlawful demolition of a private home at 1305 Ridgeway Street in Jackson, Mississippi (hereafter, “the home”). The defendants are charged with conspiring to violate, and with actually violating, the rights of the home’s owner and tenant to be free from unreasonable searches and seizures by those acting under color of law, and with violating a federal firearm statute.

Defendant Recio filed a Motion for a Bill of Particulars that contained three requests. The first two requests were for the government to identify fully the victims of the crimes alleged in the indictment. In the hearing held on October 3, 2008, the Honorable Judge Linda Anderson declared moot the defendant's requests contained in paragraphs 1 and 2, based on the government's representation that the information sought concerning "E.W." was contained in discovery previously provided to the defendant and based on the government's representation that "J.S." would be identified by the government to defense counsel after the status hearing. In paragraph 3 of his motion, Defendant Recio requested that the government identify "how" Defendant Recio aided and abetted Defendants Frank Melton and Marcus Wright, as alleged in the Indictment.

## **II. Legal Argument**

Although Defendant Recio's motion is styled as a request for a bill of particulars, it is clear from the plain language of the motion that the defendant is actually requesting information about the government's theory of the case and specific evidence supporting the charges in the Indictment. The government is not required to set forth its legal theories or offer its factual proof before trial. The indictment is only required to provide sufficient notice to Defendant Recio and is not required to reveal "how" the government intends to prove its case. For these reasons, Defendant Recio's request should be denied.

A defendant does not possess any "right" to a bill of particulars from the government. U.S. v. Burgin, 621 F.2d 1352, 1358-59 (5th Cir. 1980). In addition, a defendant is not entitled to an explanation of the theory of the government's case, or to detailed information of the government's evidence. Id., see also, United States v. Hajecate, 683 F.2d 894, 898 (5th Cir. 1982); United States v. Sheriff, 546 F.2d 604, 606 (5th Cir. 1977); United States v. Davis, 582

F.2d 947, 951 (5th Cir. 1978)(“[i]t is well established that generalized discovery is not a permissible goal of a bill of particulars”). Rather, the purpose of a bill of particulars is simply to “minimize surprise by giving sufficient notice of a charge for its defense.” United States v. Nixon, 816 F.2d 1022, 1031 (5th Cir. 1987); see also, United States v. Murray, 527 F.2d 401, 411 (5th Cir. 1976)(“[t]here is no general requirement that the government disclose in a bill of particulars all the overt acts it will prove in establishing a conspiracy charge”); Davis, 582 F.2d at 951 (trial court did not abuse its discretion in denying the defendants’ motion for a bill of particulars in a case involving three defendants charged with a drug conspiracy where, as here, the “factual makeup” of the conspiracy in the case was simple). An indictment is sufficient when it alleges that the defendant committed each of the essential elements of the crime charged and provides the defendant with sufficient information to prepare his defense and to invoke the double jeopardy clause in any subsequent prosecution. United States v. Gonzales, 436 F.3d 560, 569 (5th Cir. 2006); see also, United States v. Crippen, 579 F.2d 340, 342 (5th Cir. 1978)(“It is not necessary for an indictment to go further and to allege in detail the factual proof that will be relied upon to support the charges.”)

In this case, the Indictment sufficiently places Defendant Recio on notice of the charges against him, provides him with sufficient information to prepare his defense, and avoids any risk that he might be subject to double jeopardy from a subsequent charge. The Indictment identifies the exact date and place of the crimes alleged. The Indictment identifies the co-conspirators who joined with the defendant in committing the crime and identifies the victims whose rights were violated by the defendants. The exact right, the right to be free from unreasonable searches and seizures, and the source of that right, the Fourth Amendment, are also identified. Moreover, Count One, a civil rights conspiracy charge that requires no proof of an overt act, nevertheless

specifies ten overt acts committed in furtherance of the commission of the civil rights conspiracy alleged. Counts Two and Three are substantive violations associated with the detailed factual description of the conspiracy in Count One.

In this case, Defendant Recio does not assert that he is unable to discern the charges from the Indictment or that the charges lack specificity sufficiently to expose him to a possible subsequent prosecution in violation of double jeopardy principles. He does not, and could not, raise a challenge to the sufficiency of the Indictment, as the Indictment clearly alleges three crimes. Rather, Defendant Recio seeks a bill of particulars to explain “how” the defendants aided and abetted one another in the commission of the charged offenses. This request is simply a request for the government’s theory of its case and a request for an explanation, to which the defendant is not entitled, of what evidence the government intends to rely on most heavily at trial. Thus, Defendant Recio’s Motion for a Bill of Particulars should be denied.

WHEREFORE, the United States respectfully requests that this Court deny Defendant Recio’s Motion for a Bill of Particulars.

Respectfully submitted,

GRACE CHUNG BECKER  
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**CERTIFICATE OF SERVICE**

I, the undersigned counsel for the United States, hereby certify that on the 10th day of October, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

John Reeves, Attorney for Frank E. Melton

John M. Colette and Matt Baldrige, Attorneys for Defendant Marcus Wright; and

Cynthia Stewart, Attorney for Michael Recio.

/s/ Mark Blumberg