

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:07-CR-342-T-23MAP

AHMED ABDELLATIF SHERIF MOHAMED

GOVERNMENT'S RESPONSE AND  
MEMORANDUM OF LAW IN  
OPPOSITION TO DEFENDANT MOHAMED'S  
MOTION FOR A BILL OF PARTICULARS

COMES NOW the United States of America, by and through its representative, the undersigned Assistant United States Attorney, and responds to defendant Mohamed's Motion for a Bill of Particulars as follows:

1. On August 29, 2007, the grand jury returned an indictment in the instant case, charging both defendants with one count of violating 18 U.S.C. §§ 842(a)(3)(A) and defendant Mohamed alone with one count of violating 18 U.S.C. § 842(p)(2)(A). The charges arose from two separate incidents. Count One arose from defendant Mohamed's manufacture of a recording in which he gave instruction on the manufacture and use of a radio remote controlled ignition system for explosives and destructive devices. Count Two arose from the transportation by the defendants of explosive materials from the Middle District of Florida to the District of South Carolina which took place on or about August 4, 2007.

2. The United States commenced the process of providing discovery to the defendants in the instant case on October 17, 2007. In the course of discovery, it has provided the defendants with large volumes of information and data, as well as the post-arrest statements of the defendants and the physical evidence in the case. Included within that category of evidence was a recording of videotape statements by defendant Mohamed in a recording which he made in which he provided instruction on the manufacture of a radio remote controlled ignition system for explosives and/or destructive devices.

3. On March 10, 2008, defendant Mohamed filed the instant Motion for Bill of Particulars. In it, he seeks a bill of particulars as to certain aspects of the proof related exclusively to Count One of the instant indictment.

4. The defendant now seeks to know through a bill of particulars such items as the identities of the objects of his instruction, the intended victims of this aid and instruction, and the legal objects of 18 U.S.C. § 2339A towards which he gave that aid and instruction.

5. For the reasons set forth in the incorporated Memorandum of Law, the United States respectfully urges this Court to deny the defendant's Motion for a Bill of Particulars in its entirety.

#### MEMORANDUM OF LAW

Defendant Mohamed now seeks a bill of particulars from the United States with respect to the identities of the objects of his aid and the victims he sought to harm through his conduct. He also appears to request specific identification of the component parts of 18 U.S.C. § 2339A which his aid and instruction helped to violate.

An indictment must be a “plain, concise, and definite written statement of the essential facts constituting the offense charged”. Fed. R. Crim. P. 7(c)(1). It need only follow or track the language of the relevant criminal statute in order to be sufficient to provide the requisite notice to the defendant and the court of its allegations. United States v. Davis, 592 F.2d 1325, 1328 (5th Cir.), cert. denied, 442 U.S. 946 (1979).

The purpose of a bill of particulars is three-fold. A proper bill of particulars should: inform the defendant of the charges against him with “ ‘sufficient precision to allow him to prepare his defense’ ”; minimize surprises at trial; and enable him to plead a double jeopardy defense in the event of a later prosecution for the same offense. United States v. Anderson, 799 F.2d 1438, 1441 (11th Cir. 1986), cert. denied, 488 U.S. 931 (1987) (quoting United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985)).

Although a bill of particulars might serve a useful purpose if it fulfills one of those three objects, it is not meant to be a supplement to the ordinary rules of discovery. “Generalized discovery is not the proper function of a bill of particulars. “ United States v. Warren, 772 F.2d 827, 837 (11th Cir. 1985), cert. denied, 475 U.S. 1022 (1986). A bill of particulars should serve only to supply information “necessary for trial preparation.” United States v. Anderson, 799 F.2d at 1441 (emphasis in original). As such, a bill of particulars is not required to provide information such as the nature of all overt acts in a conspiracy case or information which is already available to a defendant through other sources such as the indictment or the discovery process. United States v. Roberts, 174 Fed. Appx. 475, 477 (11th Cir. 2006). It is also not a vehicle to compel

the United States to make a “detailed exposition” of its evidence or to compel it to explain the legal theories upon which it intends to rely at trial. United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir.), cert. denied, 449 U.S. 1015 (1980).

In the instant case, the defendant seeks a bill of particulars so that he may learn the nature and identity of the “terrorists” which the defendant is alleged to have aided in Count One. The discovery process has already answered that inquiry. On October 31, 2007, the United States provided counsel for the defendant with the post-arrest statements of the defendant. In those statements, as well as in the actual videotape recording which he made, he identified those individuals whom he wished to aid in general terms. Although he did not cite specific persons by name, he acknowledged the purpose and intent of his instruction and the uses to which he hoped others would put it. In his August 29, 2007 statement, he was most clear and precise as to their identity: he meant to aid and assist those Muslim “brothers” in Arabic countries seeking to repel the invasion of their country by infidels. He further added that he included within that category the military forces of the United States who might be involved in military action in such countries.

The defendant further seeks information by means of a bill of particulars as to the intended victims of his aid and instruction. Again, the discovery process has answered that question as well and made the use of a bill of particulars in the instant case unnecessary. Once again, defendant Mohamed, in his statements on tape and after his arrest, made clear whom he sought to aid and what class of persons might suffer as a consequence of his aid and instruction. His post-arrest statement to the FBI on August 29 is most clear on this point.

Although the information which the United States has already provided to the defendant in discovery has answered this question as precisely as the evidence in the instant case allows, there is, in fact, no legal requirement that the United States need identify these victims for purposes of this indictment. With respect to the victims of Count One, in cases dealing with some of the most closely associated federal crimes of violence which constitute objects of a violation of 18 U.S.C. § 2339A, it is clear that the United States need not prove with any specificity that the defendant knew of the identity of the victims of his actions or of their locations. United States v. Sattar, 395 F. Supp.2d 79, 98 (S.D.N.Y. 2005) (construing 18 U.S.C. § 956 conspiracies); United States v. Sattar, 314 F. Supp.2d 279, 304 (S.D.N.Y. 2004) (United States need not allege in the indictment the identities of victims of a violation of 18 U.S.C. § 956 or their specific locations).

With respect to the specific category of material support which it intends to prove as to Count One of the instant indictment, the United States has clearly alleged in Count One that the defendant did teach and demonstrate certain knowledge as to the “making and use of an explosive and destructive device” and did distribute that information. Although not itself an allegation of the violation of 18 U.S.C. § 2339A, Count One makes clear by its explicit language the allegation that the defendant did provide both “material support”, “training”, and “expert advice and assistance” as a part of his actions in violation of 18 U.S.C. § 842(p)(2)(A). The definitions of those terms as set forth in 18 U.S.C. § 2339A(b)(1), (2), and (3) are relevant to the allegations in Count

One. No further bill of particulars is necessary in light of the extensive discovery made available already to counsel for the defendant as to the precise nature of the “material support”, “training”, and “expert advice” which the defendant rendered to others in this regard. Having tracked the language of 18 U.S.C. § 842(p)(2)(A), the allegations in Count One do not, therefore, require any additional supplementation through a bill of particulars.

Finally, the defendant seeks a precise statement of the specific object offenses as set forth in 18 U.S.C. § 2339A which the defendant aided by his actions. He has cited no authority to compel the disclosure of that type of definition of the legal theories of the United States. Indeed, it is clear that a bill of particulars is not the mechanism for such generalized discovery. United States v. Burgin, 621 F.2d at 1359.

The indictment plainly and clearly sets forth the allegations of a violation of 18 U.S.C. § 842(p)(2)(A) in Count One. That broad statutory language, in addition to the extensive discovery already made available to the defendant, negates the need for a bill of particulars such as the one which this defendant now requests. Moreover, the nature of the items which the defendant seeks are either known to him through that discovery or are not subject to discovery by a Bill of Particulars.

WHEREFORE, based upon the foregoing arguments and authorities, the United States respectfully requests that this Court deny defendant Mohamed's Motion for a Bill of Particulars in all respects.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 18, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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