

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEARCHED
SERIALIZED
INDEXED
FILED
JUL 23 2008
FBI - SAN JUAN
[Signature]

FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

(COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

Plaintiff,

v.

STACY N. BAUTISTA, ET. AL.

Defendants.

CRIMINAL CASE NO. 08-0095

ORDER DENYING DEFENDANT'S
MOTION FOR BILL OF PARTICULARS

THIS MATTER came on for hearing July 23, 2008 on the Defendant's Motion for a Bill of Particulars regarding one Count in the Information. Appearing on behalf of the defendant was Public Defender Douglas Hartig. Opposing the motion on behalf of the CNMI was Assistant Attorney General Katie Busenkell. After carefully considering the pleadings and the arguments made at the hearing, the Court denies the defendant's motion for a bill of particulars regarding Count IV of the Information charging the defendant with conspiracy to commit theft by deception.

BACKGROUND

Defendant Stacy N. Bautista was arrested on May 16, 2008 and appeared for preliminary hearing on May 19, 2008. On June 8, 2008, the Commonwealth filed an Information charging the defendant with four criminal offenses: conspiracy to commit theft by deception, theft by deception, entrepreneurship fraud, and document fraud in violation of various Commonwealth laws. Defendant was arraigned on June 9, 2008. On June 27, 2008, defendant filed a motion for a bill of particulars.

AKZ
MM
J. Hartig
Nedra

1 Defendant is alleged to have been involved in an immigration scheme wherein she and co-
2 defendants would accept money **from** persons seeking an entry permit by promising to sponsor them
3 for employment, but not requiring them to perform pursuant to the labor contract. Such a situation
4 allows an "employee" to **lawfully** remain in the CNMI because of their entry permit, but does not
5 require them to work which violates the CNMI immigration laws. Specifically defendant is alleged
6 to have accepted money from a prospective employee in order to process employment documents
7 (document fraud) on more than one occasion; established a commercial enterprise to evade labor and
8 immigration rules (entrepreneurship fraud); and conspired with a fellow defendant to commit theft
9 by deception by receiving money from a prospective employee for nonexistent employment
10 (conspiracy to commit **theft** by deception).

11 **DISCUSSION**

12 Defendant argues the need for a bill of particulars because they allege the information does
13 not give a description of the charges that have been filed.. Defendant claims that merely tracking the
14 language of the statute in the information fails to provide the defendant with any specificity as to the
15 charges he must defend against. Defendant **further** alleges that because **of this** insufficiency they will
16 be unable to effectively conduct pretrial investigation and interview witnesses. In contrast, the
17 Government argues that the Information is sufficient according to the Commonwealth Rules of
18 Criminal Procedure. The government also argues that the Court should not order a bill of particulars
19 (because discovery in the present case has not yet been completed).

20 The Court may direct the Commonwealth to file a bill of particulars to supplement the factual
21 basis for the Information pursuant to the Commonwealth Rules of Criminal Procedure 7(f).¹
22 Defendant argues the need for a bill of particulars for Count IV² of the Information on the following

23
24 ¹ "The court may direct the filing of a bill of particulars." Com. R, Crim. P. 7(f).

25 ² Count IV: Conspiracy to Commit Theft by Deception

26 "On or about March 24, 2008, on Saipan, Commonwealth of the Northern Mariana Islands, the Defendants,
27 Elenita E. Camacho and Stacy N. Bautista (a.k.a. Stacy Dela Cerna), with the intent to promote and facilitate
28 the commission of the crime of Theft by Deception (6 CMC § 1603 (a)), did unlawfully agree with each other
that they would engage in conduct or solicit the conduct which was calculated to become, if completed, the
offense of Theft by Deception (6 CMC § 1603 (a)), to wit: defendants conspired [sic] with each other to
defraud Ms. Raquel Tadifa regarding employment and received at least 4325.00, and that one or more of them

1 bases: the information supplies no fact as to what the defendant is alleged to have done; the bill of
2 information only states a legal conclusion; and defendant can not ascertain from the face of the
3 complaint the nature of the case against her because of lack of specificity.³ A defendant may ask for
4 a bill of particulars if the defendant is given insufficient notice of the charges that have been filed
5 against him.⁴ The main purpose behind a Bill of Information is to provide the defendant notice of the
6 charges that have been filed against him, as well as listing the acts committed that provided the basis
7 for such charges. If the Bill of Information does not tell the defendant what acts or crimes he
8 committed then he may ask for a Bill of Particulars, and if the trial court deems it necessary may grant
9 their issuance.⁵ However, a defendant has no unconditional right to obtain a bill of particulars.⁶

10 The Commonwealth Rules of Criminal Procedure spell out the requirements for the
11 Information:

12 The information shall be a plain, concise and definite written statement of essential facts
13 constituting the offense charged. It shall be signed by the attorney for the government. It
14 need not contain a formal commencement, a formal conclusion, or any other matter not
15 necessary to such statement. Allegations made in one count may be incorporated by reference
16 into another count. It may be alleged in a single count the means by which the defendant
17 committed the offense are unknown or that he committed it by one or more specified means.
18 The information shall state for each count the citation of the statute, rule, regulation or other
19 provision of law which the defendant is alleged to have violated.

20 Com. R. Crim. P. 7(c)(1). A bill of particulars is not needed if the Information itself provides
21 sufficient details of the charges and the Government provides full discovery to the defense.⁷

22 The Commonwealth Rules of Criminal Procedure closely parallel the Federal Rules of
23 Criminal Procedure and so the interpretation of federal rules are instructive.⁸ In the Ninth Circuit the

24 committed an overt act in pursuance of such conspiracy, in violation of 6 CMC §303(a), punishable by 6 CMC
25 §§304(b), 1601(b)(2), and 4101". See CNMI Information. Se

26 ³ See Defendant's Motion for a Bill of Particulars, Page 1-2.

27 ⁴ *Grey v. Raines*, 662 F.2d 569, 572 (9th Cir. 1981) stating the "right to notice of a charge is basic and the most
28 clearly established due process right of an accused in a criminal proceeding".

⁵ *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir. 1984).

⁶ *United States v. Bales*, 813 F.2d 1289, 1294 (4th Cir. 1987).

⁷ *Mitchell*, 744 F.2d at 705.

⁸ *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233 (1995).

1 courts have found that the purpose for a **bill** of particulars is threefold: to reduce surprise; to enable
2 **adequate** trial preparation; and to protect defendant against being placed in double **jeopardy**.⁹
3 **Additionally full** discovery in a case will **usually** "obviate the need for a bill of **particulars**".¹⁰ Count
4 IV of the Information in the instant case describes the actors, acts, time, date, statutes being violated,
5 and actions that were taken to engender criminal liability. The court finds that Count IV neither
6 **surprises** nor places the defendant in double jeopardy. The government has provided the defendant
7 **with** sufficient notice of the charges to prepare an adequate defense and discovery will solve any
8 lingering issues that could necessitate a **bill of particulars**. According to the Commonwealth Supreme
9 Court a "**bill of particulars** is only necessary when an information is deficient or otherwise
10 **insufficient**".¹¹ The Court finds that the information is sufficient to put the defendant on notice and
11 **allow** preparation of an adequate defense. Sufficiency of the information is measured by whether the
12 information contains the elements of the offense intended to be **charged**.¹² **If the** information contains
13 "**the** official citation of the statute under which the defendant is charged and the evidence constitutes
14 **precise** proof of the charges...denial of a motion for a bill of particulars is not an abuse of
15 discretion".¹³

16 In the instant case the government in the Information alleged that the defendant and co-
17 defendant with 1) intent to commit theft by deception 2) did **unlawfully** agree 3) **to** engage in or solicit
18 **conduct** calculated to become theft by deception 4) by receiving \$325.00 5) to defraud a party
19 **regarding** an employment 5) and by doing so committed an overt act in **furtherance** of a **conspiracy**.¹⁴

21 ⁹ *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983).

22 ¹⁰ *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979).

23 ¹¹ *CNMI v. Castro*, 2008 MP 18 712, App. No. 04-0029 (N.M. ISup. Ct. August 22, 2008) ([Unpublished]
24 Opinion).

25 ¹² *United States v. Debrow*, 346 U.S. 374, 376 (1953).

26 ¹³ *Castro*, 2008 MP 18 ¶14 (citing *United States v. Bales*, 813 F.2d 1289, 1294 (4th Cir. 1987)).

27 ^{14c} A person commits ~~theft~~ if he or she purposely obtains property of another by deception." 6 CMC §1603(a).
28 "A person commits the offense of conspiracy if, with intent to promote or facilitate the commission of an
offense:

(1) The person agrees with one or more other persons that they, or one or more of them, will engage in or

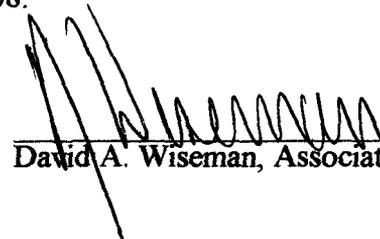
1 Thus following the reasoning in *Castro*, the Court finds the government has satisfied its burden in the
2 Information because the **Information** contained the language of the statutes allegedly violated, the
3 date of the action, and the specific action that created liability. In the instant case the government
4 provided the defendant with the offense charged as well as the **facts** supporting those charges.
5 Accordingly the Court denies the defendant's motion for a bill of particulars.

6 **CONCLUSION**

7 For the foregoing reasons, the Court hereby denies the Defendant's Motion for a Bill of
8 Particulars for Count IV of the Information.

9 A **Status Conference** is hereby set for **September 24, 2008** at **9:00 a.m.** in **Courtroom**
10 **223A.**

11
12 So **ORDERED** this 16 day of September, 2008.

13
14 
15 _____
16 David A. Wiseman, Associate Judge
17
18
19
20
21
22
23
24
25
26

27 solicit the conduct or will cause or solicit the result specified by the definition of the offense; and
28 (2) That person or another person with whom the **person** conspired commits an overt act in **pursuance** of the
conspiracy." 6 CMC §303 (a).