

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 07-CR-00462-JLK

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**CORY VOORHIS,**

Defendant.

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**GOVERNMENT'S RESPONSE TO THE DEFENDANT'S MOTION FOR A  
BILL OF PARTICULARS**

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**COMES NOW**, the United States, by and through its attorney, James C. Anderson, the assigned Special Prosecutor in this matter, and respectfully submits the following as the United States' response to the Defendant's Motion For A Bill of Particulars:

The Defendant, Cory Voorhis, has filed a motion for bill of particulars. The Defendant specifically demands that the court require the Government to provide: 1) the specific database or databases maintained in NCIC that the Defendant allegedly accessed; 2) the names of the individuals whose information the Defendant allegedly retrieved; and 3) the information Defendant is alleged to have retrieved during the unauthorized access.

Rule 7(c)(1) of the Federal Rules of Criminal Procedure requires an information be written statement in plain, concise, and definite language stating the essential facts constituting the offense charged. The information filed in this case meet these criteria; it contains the elements of the

offense charged and sufficiently apprises the Defendant of the allegations he must be prepared to meet.

In the instant case each of the counts in the information read almost the same. Each count, using the language of the statute, alleges the essential elements of the crime defined by 18 U.S.C. § 1030(a). Each of the three counts in the information goes on to allege:

“ . . . the Defendant, while acting outside his official capacity as an ICE agent, used an ICE computer to access a database maintained in the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI), an agency of the United State Department of Justice, through which he retrieved the criminal histories of various individuals . . . ”

In an attempt to overly complicate a criminal case which is relatively simple, the Defendant alleges that this language poses “surprise and uncertainty” which “unnecessarily and indefensibly burden[s] his exercise of his right to a jury trial.” *Defendant’s Motion for Bill of Particulars*, at 5. Not surprisingly, the Government disagrees with this hyperbole.

Motions for a bill of particulars are left to the discretion of the trial court. *United States v. Dunn*, 841 F.2d 1026, 1030 (10th Cir. 1988); *United States v. Wright*, 826 F.2d 938, 942 (10th Cir. 1987); *United States v. Rogers*, 617 F.Supp. 1024, 1026 (D.C. Colo. 1985); *United States v. Gabriel*, 715 F.2d 1447, 1449 (10th Cir. 1983), and *Wong Tai v. United States*, 273 U.S. 77, 82 (1927). Denial of a motion for a bill of particulars will not be disturbed on appeal unless it is shown that the court abused its discretion. *Dunn*, 841 F.2d at 1209; *Rogers*, 617 F.Supp. at 1026; and *United States v. Barbieri*, 614 F.2d 715, 719 (10th Cir. 1980).

The factors to be considered in granting or denying a motion for bill of particulars are the complexity of the offense charged, the clarity of the information, and the degree of discovery available to the defendant without the bill. *United States v. Shoher*, 555 F.Supp. 346, 349 (S.D. N.W. 1983); *United States v. Lavin*, 504 F.Supp. 1356, 1361 (N.D. Ill. 1981). This case is not particularly complicated, the information is clear, and the discovery afforded to the Defendants is very extensive.

The Defendant has been provided well over 5000 pages of discovery, several CD-Roms containing discovery material, and copies of the hard drives from his work computers. The nature of the information provided includes investigative reports, policies and procedures pertaining to the use of the CCIC/NCIC system, training materials provided to the Defendant regarding use of the CCIC/NCIC system, complete copies of the hard drives of the computers the defendant used during his work, copies of his personnel file including disciplinary files, copies of the query-query searches conducted by CBI on the CCIC/NCIC system relating to the unauthorized searches conducted by the Defendant, data from the ICE - CIS files relating to the individuals whose files he improperly accessed phone records, and other related documents. Also, upon receipt the United States intends to provide to the Defendant the ICE A-Files of the individuals whose files on CCIC/NCIC were improperly accessed. Additionally, the undersigned and case agents met with Defense counsel and provided him with a detailed overview of the case and explained the Government's theory of the case several months prior to the filing of the information in this matter. *United States v. Levine*, 983

F.2d 165 (10th Cir. 1992) (a defendant is not entitled to know all of the government's evidence it intends to produce, but only the theory of the government's case).

The criminal defendant should be provided with enough information about the offense charged to adequately prepare for trial. *Rogers, supra*, 617 F.Supp. at 1027. To be sure, the Defendant has been provided extensive discovery and *Jencks* type material which is enough information to adequately prepare for trial. And, the three counts contained in the information set forth the elements of the offense charged and sufficiently apprise the Defendant of the actual charges he faces. *Dunn, supra*, 841 F.2d at 1030. The test is whether it is necessary that the defendant have the particulars sought in order to prepare his defense and in order that prejudicial surprise will be avoided. *Rogers*, 617 F.Supp. at 1027. The information must be sufficiently complete and precise to enable the defendant to avoid prejudicial surprise and to avoid the risk of double jeopardy. *United States v. McClure*, 734 F.2d 484, 493 (10th Cir. 1984); *see also United States v. Staggs*, 881 F.2d 1527, 1530 (10th Cir. 1989), *cert. denied*, 493 U.S. 1020l; *United States v. Poole*, 929 F.2d 1476 (10th Cir. 1991). The information in this case certainly exceeds these requirements.

If there is no *prima-facia* case for disclosure by a bill of particulars, the defendant must show by brief, affidavit, or otherwise, that non-disclosure would lead to prejudicial surprise or the obviation of opportunities for meaningful defense preparation. *United States v. Rubino*, 320 F.Supp. 613 (N.D. Pa. 1970); *Rogers*, 617 F. Supp. at 1027. Given the nature of the charge, the fact that the Government's theory of the case is set forth in the charging document, and the extensive discovery

provided in this matter, the Defendant has not and cannot meet his burden of showing that a bill of particulars is necessary for preparation of his defense.

A bill of particulars may not be used to compel the government to disclose evidentiary details or to explain legal theories which it intends to use at trial. *Gabriel, supra*, 715 F.2d at 1488; *Rogers, supra*, 617 F. Supp. at 1027. The law does not impose upon the government an obligation to preview its case or expose its legal theory. *United States v. Leonelli*, 428 F. Supp. 880, 882 (S.D. N.Y. 1977). The government is under no duty to disclose the precise manner in which the crimes alleged in the information were committed. *Leonelli*, at 882; *United States v. Andrews*, 381 F.2d 377 (2d Cir. 1967), *cert. denied*, 390 U.S. 960 (1968).

The information filed herein, coupled with the extensive discovery provided to the Defendant, is more than adequate to apprise the Defendant of the charges he must be prepared to defend against at trial. In regards to the specific requests contained in the Defendant's motion, the Government would first note that the information alleges the Defendant improperly exceeded his authorized access to the NCIC system thereby placing the Defendant on notice of what specific federal database is involved in this case. Secondly, the Defendant has been supplied with the ICE-CIS information relating to the individuals whose names he queried on NCIC. Further, the defense will be provided the ICE - A files for these individuals. Finally, the Government would note that the Defendant has been provided the actual data he obtained from his improper access of the CCIC/NCIC in the form of screen captures and print outs.

This case, while having generated a significant amount of discovery, is relatively simple. In another filing responding to a motion to dismiss the Government detailed the facts and circumstances surrounding the Defendant's unauthorized access to the CCIC/NCIC data base. See *Response of the United States to the Defendant's Motion to Dismiss Based Upon Selective Prosecution*, at 1 -11. By way of summary, the Defendant, a federal law enforcement agent, accessed the CCIC/NCIC database and reviewed identifying and criminal history information on a number of individuals whose names had been provided to him by an individual serving as a campaign manager for a gubernatorial candidate. Criminal history information relating to one of the names the Defendant queried was subsequently used in a political advertisement. Because the Defendant's access and subsequent retrieval of criminal history and identifying information was not for a valid law enforcement purpose he has been charged with violating 18 U.S.C. § 1030(a)(2)(B). As required by Rule 7, F.R.Cr.P., the information on file tracks the language of the charged statute and sets forth the essential facts giving rise to the charge in plain, concise, and definite language. The Defendant has been provided very extensive discovery. The Tenth Circuit has held that given such circumstances a motion for bill of particulars is properly denied. *Wright, supra*, 826 F.2d at 944.

For the reasons stated above, the Defendant's motion for a Bill of Particulars should be denied.

**DATED** this 4th day of January, 2008.

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