

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA ) Criminal No. 3-95CR-294-R  
 )  
 v. ) Filed: 12/4/95  
 )  
 MRS. BAIRD'S BAKERIES, INC. )  
 and ) Violation: 15 U.S.C. § 1  
 FLOYD CARROLL BAIRD, )  
 )  
 Defendants. )

GOVERNMENT'S RESPONSE TO JOINT MOTION AND BRIEF OF MRS. BAIRD'S  
BAKERIES, INC. AND FLOYD CARROLL BAIRD FOR BILL OF PARTICULARS

The United States of America, by its undersigned attorneys, hereby responds to the Joint Motion and Brief of Mrs. Baird's Bakeries, Inc. and Floyd Carroll Baird for Bill of Particulars. Despite the fact that Defendants have received an enormous amount of information concerning the charges in this case as a result of the government's previous disclosures under Rule 16, Fed. R. Crim. P., and despite receiving a detailed voluntary bill of particulars from the government, the Defendants now submit an additional request for information in the form of a bill of particulars. The large amount of discovery already made available to the Defendants is more than sufficient to fully appraise them of the charges pending against them and to enable them to prepare for trial. Accordingly, there is no need for a formal bill of particulars and the Defendant's motion should be denied.

I.

PURPOSE OF A BILL OF PARTICULARS

Fed. R. Crim. P. 7(f) provides, in part, that "[t]he court may direct the filing of a bill of particulars." The decision whether to grant or deny a bill of particulars is committed to the sound discretion of the trial court. Wong Tai v. United States, 273 U.S. 77, 82 (1927); United States v. Burgin, 621 F.2d 1352, 1358 (5th Cir.), cert. denied, 449 U.S. 1015 (1980). The general purposes of a bill of particulars are to inform the defendant of the charges against him with sufficient precision to: (1) enable him to prepare his defense, (2) obviate surprise at trial, and (3) enable him to plead his acquittal or conviction in the case as a bar to subsequent prosecution for the same offense. United States v. Davis, 582 F.2d 947, 951 (5th Cir. 1978), cert. denied, 441 U.S. 962 (1979).

A bill of particulars is not a legitimate discovery device. Davis, 582 F.2d at 951; U.S. v. Campbell, 710 F. Supp. 641, 642 (N.D. Tex 1989). Similarly, a bill is not intended as a device to force the government to disgorge all the details of the evidence that it plans to introduce at trial. See, e.g., United States v. Hajecate, 683 F.2d 894, 898 (5th Cir. 1982), cert. denied, 461 U.S. 927 (1983); Burgin, 621 F.2d at 1359. Nor is the defendant entitled to discover through a bill of particulars the government's legal theory of the case. See, e.g., Hajecate, 683 F.2d at 898; Burgin, 621 F.2d at 1359. Where the indictment itself and the bill of particulars supplied by the government

provide the defendant with adequate information with which to conduct his defense, additional requests for particulars should be denied. Harlow v. United States, 301 F.2d 361, 367-68 (5th Cir.), cert. denied, 371 U.S. 814 (1962).

In analyzing requests for a bill of particulars, courts have not confined themselves to the indictment or to the government's voluntary bill, if provided. Rather, courts have taken into account other sources of information provided by the government, including discovery materials. See, e.g. Campbell, 710 F. Supp. at 642 (court denied motion for a bill of particulars because "there is very little if anything in the motion that the defendant has not or will not obtain through legitimate disclosure devices."); United States v. Feola, 651 F. Supp. 1068, 1133 (S.D.N.Y. 1987) (court considered whether the information requested had been provided elsewhere, including through discovery); United States v. Long, 706 F.2d 1044, 1054 (9th Cir. 1983) (broad discovery can serve as a substitute for the "trial preparation" function of a bill of particulars).

In this case, the government has provided the Defendants with extensive pre-trial discovery, including:

- (1) All statements of the Defendant that arguably qualify for disclosure under Rule 16(a)(1)(A).
- (2) Any information regarding the Defendant's prior criminal record, pursuant to Rule 16(a)(1)(B).
- (3) All documents produced by Mrs. Baird's Bakeries, Inc., as well as documents produced by various co-conspirators

and third parties, that relate to the charged conspiracies, thus exceeding the requirements of Rule 16 (a) (1) (C).

(4) All information required to be disclosed under Brady v. Maryland, 373 U.S. 83 (1963).

(5) Finally, the government has voluntarily provided the Defendant with additional details regarding the identities of co-conspirators in both Counts, the governmental entities which were affected by the rigged bids alleged as part of the conspiracy charged in Count 2 and has defined the terms East Texas, West Texas, bread products and customers.

In addition, all relevant statements, including grand jury testimony, of the witnesses the government intends to call at trial will be produced on the day prior to their testimony, in accordance with the Court's Pretrial Order, thus exceeding its obligations to provide (on motion) such statements after the witness "has testified on direct examination in the trial of the case." The government will also produce copies of its trial exhibits, by January 5, 1996, in accordance with the Court's Pretrial Order.

The clearly and concisely worded indictment, along with the extensive discovery already available to the Defendants are more than sufficient to apprise them of the charges against them and to enable them to adequately prepare for trial.

## II.

### THE GOVERNMENT'S RESPONSES

#### Requests 1 and 2

In their first two requests, Defendants asked for the beginning and ending dates of the participation of each of the various unindicted corporations and individuals alleged to have participated in the conspiracy charged in Count 1 and Count 2, respectively.

The government objects to these requests on the grounds that they improperly solicit evidentiary detail in the form of a bill of particulars. Specifically, a defendant is not entitled to particulars regarding the formation of a conspiracy, the details concerning how and when the conspiracy was formed or when each participant entered the conspiracy. United States v. Upton, 856 F. Supp. 727, 753 (E.D.N.Y. 1994); Feola, 651 F. Supp. at 1132.

#### Requests 3, 4 and 5

In these requests, the Defendants asked for the identity of all contracts which were the subject of alleged illegal bidding practices in Count 2 of the Indictment, specifically those contracts or contracting entities which were the subject of illegal bidding practices after April 1, 1990; and for the identity of any price lists or customers which were the subject of any alleged illegal price-fixing activities after April 1, 1990.

Much of the information requested in these requests has already been provided to the Defendants. The government has previously identified those contracting entities which were the subject of illegal bidding practices alleged in Count 2 and has provided the grand jury testimony of Johnny Greenwood, a participant in the collusive activity on behalf of Mrs. Baird's Bakeries, Inc. To disclose additional information concerning the antitrust conspiracy charged in Count 2 of the Indictment would require the government to reveal Jencks Act material far in advance of the time required and would require the government to reveal its legal theory. The Defendants are not entitled to discover statements covered by the Jencks Act or the government's legal theory through the use of a bill of particulars. Hajecate, 683 F.2d at 898 (a bill of particulars cannot be required to compel revelation of the full theory of the case or all the evidentiary facts.)

#### **Additional Requests**

On page 5 of their motion, Defendants additionally request that the government identify the overt acts which occurred after April 1, 1990, that allow the government to prosecute Defendants for their alleged participation in the "West Texas" conspiracy.

To the extent that this request has not already been answered in response to requests 3, 4 and 5, the government objects. Simply put, the government is not required to disclose in a bill of particulars all of the overt acts it tends to prove

at trial. United States v. Kilrain, 566 F. 2d 979, 985 (5th Cir.) cert. denied, 439 U.S. 819 (1978).

**III.**

**CONCLUSION**

The Defendants have, or will have prior to trial, access to extensive information in this case through (1) the detailed and precisely worded Indictment; (2) voluminous discovery under Rule 16, Brady and Jencks; and (3) the evidentiary details contained in the government's voluntary bill of particulars. This information is more than sufficient to fully apprise Defendants of the charges against them and to enable them to prepare for trial. To the extent that they seek evidentiary details in excess of these, the requests exceed the proper scope of a bill of particulars. Accordingly, the motion should be denied.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Government's Response to Joint Motion and Brief of Mrs. Baird's Bakeries, Inc. and Floyd Carroll Baird for Bill of Particulars and Order were mailed via Federal Express on the \_\_\_\_\_ day of December 1995, to

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\_\_\_\_\_/s/\_\_\_\_\_  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA	)	Criminal No. 3-
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	)	
MRS. BAIRD'S BAKERIES, INC. and	)	Violation: 15
	)	U.S.C. § 1
FLOYD CARROLL BAIRD,	)	
	)	
Defendants.	)	

ORDER

The Court, having considered the Defendants' Joint Motion and Brief of Mrs. Baird's Bakeries, Inc. and Floyd Carroll Baird for Bill of Particulars and the Government's Response hereby finds that the motion should be denied.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
JERRY BUCHMEYER,  
CHIEF JUDGE UNITED STATES DISTRICT COURT