

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
 v.)
)
 THOMAS A. SHAY)
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)

CRIMINAL NO. 92-10396-Z

MOTION FOR A BILL OF PARTICULARS

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, defendant Thomas A. Shay ("Shay") moves this Court to order the government to provide him with certain particulars concerning the Indictment against him. As grounds for his motion, Shay states the following.

1. The purposes of a bill of particulars are to "provide the accused with detail of the charges against him where necessary to enable him to prepare his defense, to avoid surprise at trial, and to protect against double jeopardy." United States v. Paine, 892 F.2d 148, 154 (1st Cir. 1989). A bill of particulars is necessary in this case, as the Indictment "fails to set forth specific facts in support of requisite elements of the charged offense[s], and the information is essential to the defense." United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985) (citations omitted).

2. The Indictment charges in Counts II and III that defendants Shay and Trenkler received in interstate commerce explosives materials, including dynamite and detonators, with knowledge and intent that said explosive materials would be used to kill, injure and intimidate Thomas L. Shay, and cause damage and destruction to his real and personal property, including a 1986 Buick automobile, in violation of 18 U.S.C. §844(d).

3. The Indictment charges in Counts IV and V that the defendants Shay and Trenkler knowingly and maliciously attempted to damage and destroy, by means of fire and explosive, a 1986 Buick automobile which was owned by Thomas L. Shay and used in interstate commerce and in activities affecting interstate commerce, in violation of 18 U.S.C. §844(i).

4. The Indictment provides no facts which might establish the jurisdictional interstate commerce elements without which prosecutions under 18 U.S.C. §§ 844(d) and § 844(i) may not proceed. Russell v. United States, 471 U.S. 858 (1985).

5. Materials alleged to have been received or used must be shown to have been "explosives." U.S. v. Berberian, 851 F.2d 236 (9th Cir. 1988), cert. denied, 489 U.S. 1096 (1989). The only information included in the Indictment about what was allegedly received is that it "included" dynamite and detonators. The Indictment provides no information about what was allegedly used to attempt to destroy a 1986 Buick automobile.

6. Count I of the indictment charges that the defendants knowingly and willfully combined, conspired and agreed to commit

the offenses charged in Counts II, III, IV and V, in violation of 18 U.S.C. § 371.

7. Among the essential elements of the crime of conspiracy are agreement, intent to agree, intent to effectuate the object and an overt act in furtherance of that object. United States v. United States Gypsum Co., 438 U.S. 422, 443 n.20 (1978); United States v. Drougas, 748 F.2d 8 (1st Cir. 1984). The Indictment lists four possible objects. Given "the possibility inherent in a criminal conspiracy charge that its wide net may ensnare the innocent as well as the guilty," United States v. Porter, 591 F.2d 1048, 1057 (5th Cir. 1979), it is particularly appropriate for courts to order the government to respond to a request for a bill of particulars in a conspiracy case. See e.g., United States v. Campbell Hardware, Inc., 470 F.Supp. 430, 434 (D. Mass. 1979) (defendants in a conspiracy case moved for, and the government filed, a Bill of Particulars apprising the defendants of the details and specifics omitted from the Indictment).

COUNT I: Conspiracy

- (1) The precise object or objects of the conspiracy: to kill Thomas L. Shay, to injure Thomas L. Shay, to intimidate Thomas L. Shay, and/or to damage or destroy a 1986 Buick automobile.
- (2) Places and dates of discussion and agreement.
- (3) Description of electrical components allegedly purchased and acquired by Shay.

(4) The person(s) or place(s) of business from whom Shay allegedly acquired such electrical components.

(5) Precise manner in which the defendants assisted one another in acquiring explosive and other materials.

COUNTS II and III: Receipt of Explosives in Interstate Commerce

(1) Description of explosive materials allegedly received by defendants Shay and Trenkler.

(2) The person(s) or place(s) of business, including location(s), from whom Shay or Trenkler are alleged to have received the explosives.

(3) Place where receipt of explosives allegedly took place.

(4) Precise manner and means of receipt.

Counts III and IV: Attempted Malicious Destruction of Property by Means of an Explosive

(1) Precise description of how Thomas L. Shay's 1986 Buick automobile was used in interstate commerce.

(2) Precise description of the activities affecting interstate commerce in which Thomas L. Shay's 1986 Buick was used.

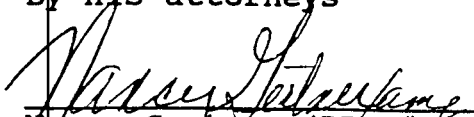
WHEREFORE, Shay requests that the court allow his Motion for a Bill of Particulars.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(c), Shay requests that the Court schedule a hearing on the Motion for a Bill of Particulars on the ground that oral argument will be of assistance to the court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party

by ~~mail~~ (by hand) on 3/2/93
