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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

PAUL SCHIRO,)

Defendant.)

02 CR 1050—6

Judge James B. Zagel

Second Superseding Indictment

FILED
J.N.
SEP 23 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DEFENDANT SCHIRO'S
MOTION FOR BILL OF PARTICULARS

Defendant PAUL SCHIRO, through his attorney, PAUL A. WAGNER, respectfully moves this Honorable Court, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, for a Bill of Particulars in answer to the requests below:

THE INDICTMENT

A. Specific Charges:

Mr. Schiro is indicted in one count of a nine-count indictment. Schiro and nine co-defendants are charged in a RICO conspiracy with violating 18 U. S. C. § 1962(d) and § 1963 by conducting the affairs of the "Chicago Outfit" through a pattern of racketeering activity.

In count two of the indictment, co-defendants James Marcello, Michael Marcello, Thomas Johnson, Joseph Venezia and Dennis Johnson are charged with running an illegal gambling business, in violation of 18 U. S. C. §§ 1955 and 2.

Mr. Schiro is neither charged nor referred to in this count.

In count three of the indictment, co-defendants James Marcello and Michael Marcello are accused of obstructing justice, in violation of 18 U. S. C. §§ 1510 and 2. Mr. Schiro is neither charged nor referred to in this count.

Count four of the indictment alleges that co-defendants Frank Calabrese, Sr. and Nicholas Ferriola committed extortion by collecting "street tax" from a business, in violation of 18 U. S. C. §§ 1951 and 2. Mr. Schiro is neither charged nor referred to in this count.

In count five, co-defendants Frank Calabrese, Sr. and Nicholas Ferriola are charged with conducting an illegal sports bookmaking business, in violation of 18 U. S. C. §§ 1955 and 2. Mr. Schiro is neither charged nor referred to in this count.

In count six co-defendant Frank Schweihs is alleged to have committed extortion in the attempt to obtain "street tax" from an adult entertainment club, in violation of 18 U. S. C. §§ 1951 and 2. Mr. Schiro is neither charged nor referred to in this count.

In count seven of the indictment Mr. Schweihs is alleged to have knowingly participated in the use of extortionate means by threatening the use of violence in attempting to collect a sum of money, in violation of 18 U. S. C. §§ 894 and 2. Mr. Schiro is neither charged nor referred to in this count.

In count eight of the indictment, co-defendant Michael Ricci allegedly made false statements to the FBI, in violation of 18 U. S. C. § 1001(a)(2). Mr. Schiro is neither charged nor referred to in this count.

In count nine, co-defendants James Marcello, Michael Marcello, Joseph Venezia and Thomas Johnson conspired to defraud the United States by impeding the Internal Revenue Service in the collection of income taxes, in

violation of 18 U. S. C. § 371. Mr. Schiro is neither charged nor referred to in this count.

B. Enterprise Allegations:

Paragraphs one through five of the indictment provide the government's view of the structure and activities of the Chicago Outfit. These paragraphs make no mention of the specific activities of any individual.

This sociological description is followed in paragraphs six through nineteen with brief discussions of the roles of the named defendants and others in the alleged conspiracy. Certain criminal activities, such as murder and the collection of street tax, are attributed to various defendants, but in large part these paragraphs refer to the defendants more generally engaging in "criminal activities" for the Outfit.

Paragraph fifteen of count one, referring to Paul Schiro, is illustrative of this section of the indictment:

Defendant PAUL SCHIRO, also known as "the Indian," was a criminal associate of defendant SCHWEIS, "made" member Anthony Spilotro, and Outfit associate Joseph Hanson, who committed murder and other criminal activities on behalf of the Chicago Outfit.

C. The Racketeering Conspiracy

Paragraphs twenty through forty-seven of count one assert the nature of the racketeering conspiracy to conduct the affairs of the Chicago Outfit through a pattern of racketeering activity and the collection of unlawful debt.

In paragraph 21 it is alleged that "each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise."

In paragraph twenty-two it is alleged that “the defendants . . . each agreed to conduct and to participate in the conduct of the Chicago Outfit’s affairs through the collection of unlawful debt.”

In these two paragraphs and all the remaining paragraphs through paragraph forty-seven, with the exception of paragraph twenty-three, there is no reference to a specific individual engaging in a specific act alleged to have been a part of the conspiracy. Each paragraph starts with “It was further part of the conspiracy that the conspirators . . .,” and then goes on to state the alleged illegal conduct, such as using violence (§ 27), conducting a gambling business (§ 28), obstructing justice (§ 32), conducting surveillance of law enforcement while committing illegal activities (§ 39), etc. No defendant is named as having committed a specific act covered by these general categories.

The exception is paragraph twenty-three wherein defendants Frank Calabrese, Joseph Lombardo, Frank Schweihs, James Marcello, Nicholas Calabrese and Paul Schiro are named as having committed various murders. The allegations are specific as to victim, time and place.

D. Pattern of Racketeering Activity

Paragraphs forty-eight and forty-nine provide alternative grounds of liability for the pattern of racketeering activity. Paragraph forty-eight asserts the pattern of racketeering activity to be the multiple violations of state and federal laws, including state murder statutes, while paragraph forty-nine refers to the collection of unlawful debt.

THE PARTICULARS REQUESTED

Given the charges alleged in the wide-ranging description of the activities of the Chicago Outfit as summarized above, it is requested that the government:

1. Specify the “other criminal activities on behalf of the Chicago Outfit” that Mr. Schiro engaged in, as stated in ¶ 15 of count one.

2. Specify by providing the time, location and parties present when Mr. Schiro participated in any of the activities generally alleged in count one, ¶ 15 and ¶ 24 through ¶ 47.

3. Specify by providing the time, location and parties present when Mr. Schiro agreed with anyone else that a racketeering act would be committed on behalf of the enterprise (the Chicago Outfit).

BRIEF MEMORANDUM IN SUPPORT

Rule 7(f) of the Federal Rules of Criminal Procedure provides that “The court may direct the government to file a bill of particulars.” This sentence eliminated the previous requirement of a showing of cause for the bill of particulars and was “designed to encourage a more liberal attitude by the courts towards bills of particulars without taking away the discretion which courts must have in dealing with such motions in individual cases.” Advisory Committee Notes, 1966 Amendments.

As an illustration of the “wise use of this discretion” the Committee Notes direct the reader to Justice Whittaker’s opinion as a district court judge in United States v. Smith, 16 F.R.D. 372, 374-75 (W.D. Mo. 1954). Therein Justice Whittaker stated:

Certainly the fact that an indictment or information conforms to the simple form suggested in the rules is no answer or defense to a motion for a bill of particulars under Rule 7(f). . . . Its proper office “is to furnish the defendant *further information* respecting the charge stated in the indictment when necessary to the preparation of his defense, and to avoid prejudicial surprise at the trial”, and when necessary for those purposes, is to be granted even

though it requires “the furnishing of information which in other circumstances would not be required because evidentiary in nature”, and an accused is entitled to this “as of right.” [Emphasis in original.] Quoting United States v. United States Gypsum Co., 37 F.Supp. 398, 402 (D.D.C. 1941).

As the Whittaker opinion notes, the purpose of a bill of particulars is to avoid prejudicial surprise at trial and to provide information necessary to the preparation of a defense. Wong Tai v. United States, 273 U.S. 77, 80 (1927); United States v. Kendall, 665 F.2d 126, 134-35 (7th Cir. 1981).

The present case alleges that the Chicago Outfit was engaged in an all-encompassing criminal “enterprise” involving all sorts of nefarious activities that are recounted in general terms in count one of the indictment. Insofar as the indictment alleges a racketeering conspiracy, it also asserts the existence of agreements among the named defendants and others known and unknown. Yet Mr. Schiro is confronted with only one specific allegation, namely his alleged participation in the June 7, 1986, murder of Emil Vaci in Phoenix, Arizona (count one, ¶ 23(m)). There is no additional specification of what agreements Mr. Schiro entered into and what other criminal acts he committed as a part of and in furtherance of this alleged RICO conspiracy.

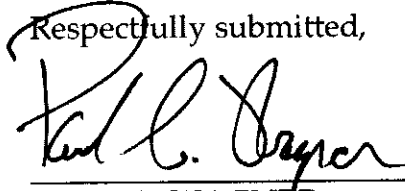
Thus, while purporting to provide a detailed overview of the nature and activities of the Chicago Outfit, the indictment offers only a generalized recitation of a textbook view of “the mob.” With the exception of count one ¶ 23(m), the factual allegations in the indictment are vague and ambiguous, and therefore insufficient for Mr. Schiro to prepare a defense to the yet unspecified charges.

Absent further specification of the charges as requested in this Motion, Mr. Schiro is severely restricted in preparing his defense. Without the

specification of all the alleged agreements to commit predicate racketeering acts on behalf of the enterprise and without the identification of the specific acts committed in furtherance of the alleged RICO conspiracy, Mr. Schiro is unable to prepare a defense, which is crucial to his receiving a fair trial.

CONCLUSION

WHEREFORE, defendant PAUL SCHIRO respectfully requests this Honorable Court to grant his Motion for a Bill of Particulars and order the government to provide the requested information.

Respectfully submitted,

PAUL A. WAGNER
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