

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez**

Criminal Case No. 15-cr-336-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

**7. RICHARD AVILA,**

Defendants.

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**ORDER DENYING DEFENDANT RICHARD AVILA'S  
MOTION FOR A BILL OF PARTICULARS**

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Now before the Court is Defendant Richard Avila's Motion For a Bill of Particulars. (ECF No. 245.) Defendant is charged in two Counts of the Superseding Indictment. (ECF No. 62 (the "Indictment").) In Count 1 he is charged with conspiring to distribute, and possess with the intent to distribute, 50 grams or more of methamphetamine (actual), in violation of 21 U.S.C. §§ 841(a)(1) , 841(b)(1)(A)(viii) & 846. In Count 8, he is charged with distributing, and possessing with the intent to distribute, 50 grams or more of methamphetamine (actual) on or about October 15, 2015, and with aiding or abetting, in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(A)(viii) and 18 U.S.C. § 2.

Federal Rule of Criminal Procedure 7(f) allows a criminal defendant to move for a bill of particulars, which is "a formal written statement by the prosecutor providing details of the charges against the defendant." 1 Charles A. Wright *et al.*, *Federal*

*Practice & Procedure* § 130 (4th ed., Jan. 2017 update).

The purpose of a bill of particulars is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense. A bill of particulars is not necessary if the indictment sets forth the elements of the offense charged and sufficiently apprised the defendant of the charges to enable him to prepare for trial. The defendant is not entitled to notice of all of the *evidence* the government intends to produce, but only the *theory* of the government's case.

*United States v. Ivy*, 83 F.3d 1266, 1281 (10th Cir. 1996) (emphasis in original)

(citations, quotations, and brackets omitted). The decision whether to require a bill of particulars is committed to the District Court's discretion. *United States v. Levine*, 983 F.2d 165, 166 (10th Cir. 1992).

As to the conspiracy charged in Count 1, Defendant contends that the Indictment fails to sufficiently inform him of the charge against him, and that "without more evidence and information, the defense will be unable to investigate and defend itself at trial." (ECF No. 245.) Defendant therefore requests: "[1] Any and all facts that demonstrate that an agreement was ever reached between Mr. Avila and any other co-defendant during the relevant time frame, and the specific nature of the terms of the purported agreement; [2] Precise dates, locations and manner in which any agreement began and concluded[;] and [3] Any facts related to any knowledge on behalf of Mr. Avila regarding the objectives of the conspiracy." (*Id.* at 6.)

The Court agrees with the Government that the Indictment adequately apprises Defendant of the charges against him and allows for him to prepare his defense. The nature of his Motion is, in effect, "an improper request for evidentiary detail," or a request to "disclose in detail the evidence upon which the Government will rely at trial."

See *United States v. Barbieri*, 614 F.2d 715, 719 (10th Cir. 1980). An indictment charging a drug conspiracy under 21 U.S.C. § 846 is sufficient if it includes “the dates of the illegal activity, the place, and the specific controlled substance.” *United States v. Dunn*, 841 F.2d 1026, 1029 (10th Cir. 1988); see also *United States v. Kunzman*, 54 F.3d 1522, 1526 (10th Cir. 1995) (affirming denial of motion for bill of particulars where the “indictment described the defendants’ scheme in detail and provided dates, places and the persons involved in various transactions” and where the defendant “was provided with full discovery of the government’s materials prior to trial”). Here, Count 1 of the Indictment names the alleged co-conspirators, identifies the dates of the alleged conspiracy, and identifies the quantity and type of controlled substance involved. (See ECF No. 62 at 2.) This is sufficient to inform Defendant of the charge against him and allow him to prepare his defense. See *Ivy*, 83 F.3d at 1281; *Dunn*, 841 F.2d at 1029.

In addition, the Court finds that the discovery disclosed by the Government further confirms that Defendant is not entitled to a bill of particulars. See *Ivy*, 83 F.3d at 1282 (“By providing complete discovery containing sufficient information to allow them to prepare their defense, the government gave [the defendants] the tools necessary to anticipate and forestall any surprise that might have resulted from the indictment.”). Defendant argues that the discovery produced in this case reflects that he did not know some of the co-defendants, includes “only one reference to one conversation” referencing Defendant’s participation in the conspiracy,” includes “no wiretaps or text messages implicating [him] in a conspiracy, and shows that he “was merely present on

the occasion where he is charged under Count Eight.” (ECF No. 245 at 2–3.)

However, the Government contends that the disclosed discovery includes phone records establishing Defendant’s communications with his co-defendants, text messages between Defendant and the co-defendants, surveillance photos of Defendant and the co-defendants, and video and audio recordings of Defendant’s involvement in the distribution of four ounces of methamphetamine on October 15, 2015, that is, the alleged conduct underlying Count 8. (ECF No. 255 at 2–3, 5–6.) Given this disclosure, the Court concludes that Defendant is neither facing improper surprise at trial, nor will he be unable to prepare his defense. To the extent Defendant argues that gaps in the evidence leave the Government unable to meet its burden at trial, that is not the question raised in deciding whether a bill of particulars is required.

As to Count 8, Defendant requests: “[1] Any and all facts that demonstrate any involvement on the part of Mr. Avila with [co-defendant] Ms. Lindelien and any other co-defendant on October 5, 2015, with any aspect of the purported sale that occurred between the [undercover agent] and Ms. Lindelien on that date,” and “[2] Any and all facts that demonstrate that Mr. Avila had knowledge of the purported buy or took any act or engaged in any conduct to facilitate that buy.” (ECF No. 245 at 6–7.) As with Count 1, the Court concludes that Defendant’s broad request amounts to an improper demand for “all of the evidence the government intends to produce.” *Ivy*, 83 F.3d at 1281. Defendant is not entitled to seek such additional discovery through a bill of particulars and already has sufficient notice of the theory of the Government’s case. *Id.*

Accordingly, Defendant Richard Avila’s Motion for a Bill of Particulars (ECF No. 245) is DENIED.

Dated this 6<sup>th</sup> day of April, 2017.

BY THE COURT:



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William J. Martínez  
United States District Judge