

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA)
)
 vs.) CRIMINAL ACTION NO.
)
SHERRY PEEL JACKSON) 1:07-CR-108-ODE

MOTION FOR A BILL OF PARTICULARS

COMES NOW, SHERRY PEEL JACKSON, through her undersigned counsel, pursuant to the Sixth Amendment to the United States Constitution and Rule 7(f) of the Federal Rules of Criminal Procedure, and hereby files this Motion for a Bill of Particulars. In support of this filing, defense counsel shows as follows:

ARGUMENT AND CITATION OF AUTHORITIES

On April 13, 2007, the Government filed a four count information against Ms. Jackson. In each count, the information alleges that Ms. Jackson failed to file tax returns in violation of 26 U.S.C. § 7203. Count one relates to calendar year 2000. Count two relates to calendar year 2001. Count three relates to calendar year 2002. And count four relates to calendar year 2003. (See The attached information).

At first blush, the allegations set forth in the information seem fairly straightforward. On closer examination, however, they are not. Each count of the information claims that Ms. Jackson "was required by Title 26, United States Code, and by

regulations made under the authority thereof, to make a federal income tax return." Although the information alludes to "Title 26" and the "regulations" that allegedly imposed the requirement to make a tax return, it does not identify those provisions. For this reasons, Ms. Jackson brings the instant Motion.

This Court is well-aware that the Sixth Amendment to the United States Constitution unambiguously provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation" U.S. Const. amend VI. In addition, the Court knows that Rule 7(f) of the Federal Rules of Criminal Procedure implements the notice provision of the Sixth Amendment, providing that "[t]he court may direct the government to file a bill of particulars." Fed.R.Crim.Proc. 7(f).

We acknowledge that it is well-settled that a request for a bill of particulars should not be used to conduct discovery or to attempt to ascertain the Government's theory of the case. Instead, the purpose of a bill of particulars is to provide the defendant with information about the details of the charges that are necessary to the preparation of a defense and to avoid prejudicial surprise at trial. United States v. Diecidue, 603 F.2d 535 (5th Cir. 1979), cert denied 445 U.S. 946 (1979); United States v. Bascaro, 742 F.2d 1335, 1365 (11th Cir. 1984).

Surely, Ms. Jackson has a right to know what provisions of

"Title 26" and the "regulations" the Government is relying on to prosecute her. The Government has alluded to those provisions in the information, but it has failed to identify them with any specificity.

The Government may claim that defense counsel is capable of analyzing "Title 26" and the relevant "regulations" to determine the answer to this question on his own. The response of "go figure it out on your own", however, is not appropriate for a number of reasons.

For one, a response of this nature does not comply with the Sixth Amendment's plain and unequivocal language: "the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation" U.S. Const. amend VI. Because the Government is relying upon the provisions alluded to in the information to prosecute Ms. Jackson, she certainly should be entitled to notice of the provisions that she will be required to defend against at trial. If the Sixth Amendment means anything, it surely means that the accused is entitled to know what provisions of the law that she is charged with violating.

In addition to the constitutional foundation that supports the requested relief, Ms. Jackson's request is also supported by fundamental fairness concerns. Title 26 may very well be the most voluminous Title within the United States Code. Indeed, by counsel's count, Title 26 comprises over twenty volumes of the

United States Code Annotated. And the regulations allegedly issued thereunder must take up many, many volumes as well. Therefore, even if counsel were capable of identifying the provisions of law the prosecutor alluded to in the information, we certainly should not be required to do so.

Accordingly, to serve the purposes stated above, Ms. Jackson requests that this Court order the Government to disclose the following particulars regarding the above-styled information:

Request

Each count of the information claims that Ms. Jackson "was required by Title 26, United States Code, and by regulations made under the authority thereof, to make a federal income tax return." In order to defend against the Government's charges, we are requesting that the Government be required to identify:

(1) the provisions of "Title 26" alluded to in the information that required Ms. Jackson to make a federal tax return for the calendar years referenced in counts one through four; and

(2) the provisions of the "regulations" alluded to in the information that required Ms. Jackson to make a federal tax return for the calendar years referenced in counts one through four.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court grant this Motion, and direct the Government to provide a Bill of Particulars in conformity with the request set forth

above.

Dated: This 8th day of June, 2007.

Respectfully submitted,

/s/ W. Carl Lietz III
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR A BILL OF PARTICULARS was formatted in Courier 12 pt., in accordance with Local Rule 5.1B, and was electronically filed this day with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following Assistant United States Attorney of record:

Richard Langway, Esq.
Assistant United States Attorney
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Dated: This 8th day of June, 2007.

/s/ W. Carl Lietz III
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