

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA

v.

DANIELS, et al.

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Docket No. 2:18-cr-00063-GZS

DEFENDANT MR, LLC’S MOTION FOR A BILL OF PARTICULARS

NOW COMES Defendant MR, LLC (“MR”), and pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, hereby moves for a bill of particulars concerning the source of MR’s alleged corporate criminal liability.

I. FACTUAL BACKGROUND¹

Kevin Dean formed MR on October 24, 2016, for the purpose of purchasing and holding 230 Merrow Road. At all times, Mr. Dean was and remains the sole member of MR and the only individual authorized to transact business on MR’s behalf. Using certified bank funds, MR purchased 230 Merrow Road on November 1, 2016 from Clay McLafferty, who had been leasing the building to Defendant Brian Bilodeau, who in turn sub-leased the property to two Maine-licensed medical marijuana caregivers operating at that address. After purchasing 230 Merrow Road, MR continued to lease the property to Mr. Bilodeau. Mr. Dean was the only individual with any interest in 230 Merrow Road. MR did not have any employees and was not involved in the cultivation at 230 Merrow Road, and MR did not receive any proceeds from, or pay any of the expenses associated with, the growing and cultivating operation, other than receive a monthly rent payment from Mr. Bilodeau.

Nevertheless, the Superseding Indictment charged MR with maintaining a drug involved premises between November, 2016 and February 27, 2018. *See Superseding Indictment* at 11

¹ For a more detailed description of the relevant factual background, *see Defendant MR, LLC’s Motion for Severance* (ECF No. 316), and the exhibits thereto, which are incorporated herein by reference.

(Count 25) (ECF No. 82). The Superseding Indictment also charged MR and Mr. Bilodeau with engaging in a conspiracy between November 15, 2016 and July 10, 2017 to launder certain payments made by Mr. Bilodeau to 230 Merrow Roads former owner, Mr. McLafferty. *See id.* at 13 (Count 30). The Superseding Indictment does not name Mr. Dean, and it does not allege that Mr. Bilodeau was MR's authorized agent. But based on the parallel civil forfeiture proceedings, it appears that the Government might mistakenly believe that unidentified "bank records" establish that Mr. Bilodeau was a member, manager or person authorized to act on MR's behalf. *See Verified Compl. For Forfeiture In Rem* at 2, Docket No 2:18-cv-00143 (ECF No. 1). That assumption, if held by the Government, is demonstrably wrong and fundamental fairness would require the disclosure of such an essential fact if it serves as the premise for MR's indictment.

II. LEGAL STANDARD

Under Rule 7(c)(1), an indictment must contain a "written statement of the essential facts constituting the offense charged" Fed. R. Crim. P. 7(c)(1). "An indictment is sufficient 'if it contains the elements of the offense charged, fairly informs the defendant of the charges against which he must defend, and enables him to enter a plea without fear of double jeopardy.'"

United States v. Parigian, 824 F.3d 5, 9 (1st Cir. 2016) (quoting *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993)). "On the other hand, mistaken or omitted indictment language is reversible if "it deprived the appellant of notice or otherwise misled him to his detriment.'" *United States v. Ford*, 839 F.3d 94, 104 (1st Cir. 2016) (quoting *United States v. Eirby*, 262 F.3d 31, 38 (1st Cir. 2001)).

Under Fed. R. Crim. P. 7(f), the "court may direct the government to file a bill of particulars" if "the accused, in the absence of a more detailed specification, will be disabled from

preparing a defense, caught by unfair surprise at trial, or hampered in seeking the shelter of the Double Jeopardy Clause.” *United States v. Sepulveda*, 15 F.3d 1161, 1192–93 (1st Cir. 1993).

III. ARGUMENT

Given that the Superseding Indictment does not charge an agent of MR with criminal wrongdoing, MR is utterly without as to how it can be held criminally liable. Obviously, a corporation can only act through its agents, and “a corporation may be held liable for the criminal acts of its agents so long as those agents are acting within the scope of employment.” *United States v. Agosto-Vega*, 617 F.3d 541, 552–53 (1st Cir. 2010) (quoting *United States v. Potter*, 463 F.3d 9, 25 (1st Cir. 2006)). “[T]he test is whether the agent is ‘performing acts of the kind which he is authorized to perform,’ and those acts are ‘motivated—at least in part—by an intent to benefit the corporation.’” *Potter*, 463 F.3d at 25 (quoting *United States v. Cincotta*, 689 F.2d 238, 241–42 (1st Cir. 1982)). “Thus, where intent is an element of a crime (as it is here), a corporation may not be held strictly accountable for acts that could not benefit the stockholders, such as acts of corporate officers that are performed in exchange for bribes paid to the officers personally.” *Cincotta*, 689 F.2d at 242.

On its face, the Superseding Indictment appears to suggest that Mr. Bilodeau is MR’s agent, given that MR and Mr. Bilodeau are charged together in a conspiracy count. This suggestion is reinforced by the Government’s parallel civil forfeiture case, which claims Mr. Bilodeau is MR’s authorized agent. *See Verified Compl. For Forfeiture In Rem* at 2, Docket No 2:18-cv-00143 (Docket No. 1). But this suggestion is incorrect: Mr. Dean was the sole member of MR and the only individual authorized to transact business on MR’s behalf, and MR’s actual bank records reveal that Mr. Bilodeau is *not* authorized to act on MR’s behalf. Based on the evidence available to the Government and the allegations in the Superseding Indictment, MR has

no idea whether the Government intends to claim that MR is criminally responsible because of Mr. Bilodeau's actions, notwithstanding that MR's corporate records clearly demonstrate that Mr. Bilodeau was not MR's agent, or whether the Government contends MR is criminally responsible because of the actions of Mr. Dean, who was MR's only authorized agent but was not named in the Superseding Indictment. And as a result, MR is unable to defend against the crimes charged.

Although relatively rare, Courts have ordered a bill of particulars under similar circumstances. For example, in *United States v. Hsia*, 24 F. Supp. 2d 14 (D.D.C. 1998), a defendant requested a bill of particulars, seeking, inter alia, the identities of the individuals through which an corporate co-conspirator acted. Recognizing that “[o]ften it is not readily apparent from an indictment who performed acts attributed to corporations,” the Court that a bill of particulars was the “appropriate way to identify these individuals to help the defendant prepare for trial even when the defendant is the corporation itself” *Id.* at 31 (citing *United States v. Macleod Bureau*, 6 F.R.D. 590, 593 (D. Mass. 1947) (ordering the government to identify “each officer or agent through whom it is claimed the corporation became a party [to a conspiracy]; whether the agreement was expressed, or whether it is inferred or implied from a course of conduct”). *See also United States v. Van Allen*, 28 F.R.D. 329, 338 (S.D.N.Y. 1961) (granting a bill of particulars stating “which officer, director or authorized agent of the corporation committed the various acts alleged”); *United States v. Allied Chemical & Dye Corp.*, 42 F. Supp. 425 (S.D.N.Y. 1941) (same); *United States v. Glen Alden Coal Co.*, 4 F.R.D. 211, 213 (S.D.N.Y. 1943) (same).

This is not a case where discovery will reveal the identity of the alleged corporate agent. *Contra United States v. Detroit Sheet Metal & Roofing Contractors Ass'n*, 116 F. Supp. 81, 91

(E.D. Mich. 1953) (not requiring a bill of particulars where the names of the corporate agents “can be obtained through the appropriate discovery procedure”); *United States v. Sepulveda*, 15 F.3d 1161, 1193 (1st Cir. 1993) (“open-file” discovery provided defendants with sufficient information to prepare for trial, obviating need for bill of particulars). To the contrary, the discovery contradicts the theory suggested by the Superseding Indictment. MR’s corporate records reveal that Mr. Dean was MR’s only agent; the Superseding Indictment, by naming Mr. Bilodeau as a co-conspirator with MR, suggests the Government believes Mr. Bilodeau was MR’s agent as well. If the Government plans to argue, as the Superseding Indictment suggests, that MR is criminally liable for Mr. Bilodeau’s actions, than it must say so, so that MR can prepare to defend against a case that is not apparent from the discovery. If the Government contends, on the other hand, that MR is criminally liable based on Mr. Dean’s actions, than the Government must state that instead, so that MR can defend against a case that is not apparent from the face of the Superseding Indictment.

MR is not asking the Government to set forth *why* it believes Mr. Bilodeau was MR’s agent, or *how* it intends to prove that Mr. Dean committed criminal acts. Clearly, those are inappropriate subjects for a bill of particulars. MR merely requests that the Government identify the agent, the person whose specific intent is at issue, as the identity of that alleged agent is essential to MR’s ability to prepare a defense. Either this is a case about the scope of Mr. Bilodeau’s association with MR and Mr. Bilodeau’s intent to commit the crimes charged, or it is a case about Mr. Dean’s intent to establish a drug involved premise and engage in money laundering. As it stands right now, MR has no idea whether it must defend against the former case, the latter, or both. Without the identity of the alleged agent, in other words, the Government has not put MR on notice of one of the “essential facts constituting the offense

charged” – the identity of the alleged agent through which it acted.

WHEREFORE, Defendant MR, LLC, hereby requests that the Court order the Government to provide a bill of particulars setting forth the identity of the alleged agent through which the Government claims MR acted.

Dated at Portland, Maine this 22nd day of April, 2019.

/s/ Thimi R. Mina
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CERTIFICATE OF SERVICE

I, Alfred C. Frawley IV, hereby certify that on this 22nd day of April, 2019, I electronically filed the foregoing **DEFENDANT MR, LLC'S MOTION FOR A BILL OF PARTICULARS**, which shall send notification of such filing to counsel of record for all parties.

Dated: April 22, 2019

/s/ Alfred C. Frawley IV

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