

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL NO. 00-CR-629-4

v.

STEFAN A. BRODIE, DONALD  
B. BRODIE, JAMES E. SABZALI, :  
JOHN H. DOLAN, BRO-TECH  
CORPORATION d/b/a "THE  
PUROLITE COMPANY"

MEMORANDUM AND ORDER

McLaughlin, J.

June, 19, 2001

Defendant John Dolan has been indicted for allegedly concealing material facts from the United States Customs Service in violation of 18 U.S.C. § 1001(a). This charge is listed as Count 42 in a seventy-seven count indictment charging three co-defendants with seventy-five counts of violating the Trading With the Enemy Act ("TWEA"), 50 U.S.C. App. §§ 5(b), 16, and the Cuban Assets Control Regulations ("CACRs"), 31 C.F.R. § 515.201(b), and charging the same three defendants and one additional defendant with one count of conspiring to violate the same statute and regulations in violation of 18 U.S.C. § 371.

Presently pending are Mr. Dolan's pre-trial motions: (1) for severance; (2) for a bill of particulars; and (3) to strike alleged surplusage from the indictment and in *limine*.

The Court will grant the motion for severance. There is a serious risk of prejudice to Mr. Dolan if he is tried with the other defendants. He is named in only one count in a seventy-seven count indictment and charged with a different crime from the other defendants. The jury may become confused and unable to compartmentalize the evidence presented. The Court will grant in part the motion for a bill of particulars. Part of the government's charge against Mr. Dolan is that he withheld documents that had been requested by agents of the United States Customs Service. The indictment, however, does not specify what documents were requested and what documents were withheld. The Court orders the government to provide this information. In view of the Court's granting the motion for severance, the Court will not at this time decide the other pending motion. The Court instructs the government and the defendant to discuss the status of the motion to strike surplusage and in *limine* in light of the fact that Mr. Dolan will be tried separately from the other defendants. After such discussion, the defendant should inform the Court whether the motion is moot.

#### I. Background

On October 5, 2000, a federal grand jury returned a seventy-seven count indictment against Stefan Brodie, Donald

Brodie, James E. Sabzali, John H. Dolan, and the Bro-Tech Corporation, d/b/a/ the "Purolite Company."

The indictment alleges that beginning in 1994, defendants Bro-Tech, Donald Brodie, and James Sabzali committed 75 substantive violations of TWEA and the CACRs, by "knowingly and willfully deal[ing] in and engag[ing] in transactions involving property in which Cuba and a Cuban national had an interest." Indictment, Count 1 at ¶ 37. The indictment alleges that Bro-Tech received payment for transactions in which Bro-Tech shipped ion exchange resins, that are used to purify water in commercial and industrial facilities, to Cuba through intermediary entities located in Canada, Mexico, the United Kingdom, Spain, and Italy. Count 1 at ¶¶ 14, 32. Defendants Stefan Brodie, Donald Brodie, James Sabzali, and Bro-Tech were also charged with one count of conspiracy to violate TWEA. Defendant Dolan was charged with one count of violating 18 U.S.C. § 1001(a).

Count 42, the only count that names Mr. Dolan, is contained on two pages and limited to eight paragraphs. It alleges that, in response to a request for documents by United States Customs agents concerning Bro-Tech's relationship with various foreign companies and the shipment of Bro-Tech products to Cuba in July 1994, Mr. Dolan produced some documents showing Bro-Tech sales to Canada but allegedly withheld other documents

regarding shipments to Cuba. Mr. Dolan allegedly engaged in the "trick, scheme and device" during a thirteen day period "[f]rom on or about February 5, 1997, through on or about February 19, 1997." Count 42 at ¶ 4. The Government contends that the object of the alleged scheme was "to mislead customs agents into believing that the July 1994 sales of Bro-Tech's ion exchange resins were to the Canadian company Anderson and not to [an intermediary entity] for shipment to Maprinter in Cuba." See *id.*

## II. *Motion for Severance*

Rule 14 of the Federal Rules of Criminal Procedure states in part:

If it appears that a defendant . . . is prejudiced by the joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Severance under Rule 14 should be granted "if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Zafiro v. United States, 506 U.S. 534, 539, 113 S.Ct. 933, 938 (1993). Such situations may arise when "defendants are tried together in a complex case and . . . have markedly different degrees of

culpability." Id.

The Third Circuit has held that "the primary consideration is whether the jury can reasonably be expected to compartmentalize the evidence as it relates to separate defendants in view of its volume and limited admissibility." United States v. De Larosa, 450 F.2d 1057, 1065 (3d Cir. 1971). The risk of prejudice therefore varies with the facts of each case, leaving the determination of the level of prejudice and applicable remedies to the sound discretion of the district court. Zafiro, 506 U.S. at 541, 113 S.Ct. at 939.

The Court will grant the motion for severance because it is concerned that, in a joint trial, Mr. Dolan would be prejudiced (1) by the great disparity in the quantum of evidence adduced against him as opposed to that adduced against his co-defendants, and (2) by the difference in the charge against Mr. Dolan from the charges against the other defendants. Mr. Dolan has been charged with only one count in a seventy-seven count indictment -- two pages of the 103-page indictment. The charge against Mr. Dolan is making false statements to customs agents in violation of 18 U.S.C. § 1001. The indictment does not charge Mr. Dolan with violating TWEA or conspiring to violate TWEA. The alleged wrongful conduct of Mr. Dolan occurred during a thirteen-day period, whereas the alleged wrongful conduct of the other defendants occurred over eight years.

In presenting its joint case, that is expected to take several weeks, the Government will likely present a substantial quantity of information to the jury, a small portion of which will apply to the charge against Mr. Dolan. The Court is concerned that the quantum of evidence presented will create a spillover effect in which the jury will infer Mr. Dolan's guilt regardless of the relevance or admissibility of the evidence to his charge.

In a factually similar case, the Second Circuit Court of Appeals reversed the decision of the trial court and granted separate trials for four of eight defendants. United States v. Branker, 395 F.2d 881 (2d Cir. 1968). There, four defendants were named in eighty substantive counts, while the other four were named only in a few counts. The court noted that as the number of counts increase, the record becomes more complex and it is more difficult for a juror to keep the various charges against the several defendants, and the testimony as to each, separate. Id. at 887-88. Such a result is injurious to defendants, "who are charged in only a few of the many counts, who are involved in only a small portion of the evidence, and who are linked with only one or two of their co-defendants," Id. at 888. See United States v. Serafini, 7 F.Supp.2d 529 (M.D. Pa. 1998) (permitting severance for a defendant charged with a single count in a 140-count indictment); United States v. Cianciulli, 476 F.

Supp. 845 (E.D. Pa. 1979) (ordering that the case be severed into three separate trials where 23 defendants were all charged with conspiracy, but eight defendants were additionally charged with aiding and abetting, and another defendant was charged with mail fraud); United States v. Gaston, 37 F.R.D. 476 (D.D.C. 1965) (granting severance where four of eight defendants were named in eighty substantive counts, and the remaining defendants were named in only a few counts).

In some cases, prejudice can be remedied through limiting instructions that help the jury compartmentalize the evidence and charges against each defendant. Richardson v. Marsh, 481 U.S. 200, 211, 107 S.Ct. 1702, 1709 (1987); Zafiro, 506 U.S. at 539, 113 S.Ct. at 938; United States v. Console, 13 F.3d 641, 654-56 (3d Cir. 1993). I am not confident that limiting instructions would be effective here. The quantum of evidence and the nature of the charges are so different that there is a serious risk that Mr. Dolan would be prejudiced by joinder.

#### **111. Motion for a Bill of Particulars**

Rule 7(f) of the Federal Rules of Criminal Procedure empowers a court to require the Government to file a bill of

particulars.' "The purpose of the bill of particulars is to inform the defendant of the nature of the charges brought against him to adequately prepare his defense, to avoid surprise during the trial and to protect him against a second prosecution for an inadequately described offense.'" United States v. Addonizio, 451 F.2d 49, 63-64 (3d Cir. 1971) (quoting United States v. Tucker, 262 F.Supp. 305, 308 (S.D.N.Y.1966), cert. denied, 405 U.S. 936 (1972)).

A trial court has broad discretion to require a bill of particulars. United States v. Eufrazio, 935 F.2d 553, 575 (3d Cir.) cert. denied, 502 U.S. 925 (1991). A bill of particulars should be granted where the indictment is too vague or indefinite to reasonably allow a defendant to prepare a defense." United States v. Mariani, 90 F.Supp.2d 574, 591 (M.D. Pa. 2000) (granting bill of particulars to name unidentified co-contributors). See also United States v. Joseph, 510 F.Supp. 1001, 1006 (E.D. Pa. 1981) (granting bill of particulars to inform defendant of "the amount of money and a narrower time frame within which he

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<sup>1</sup> Fed.R.Crim.Pro. 7(f) states:

The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

purportedly received" bribes).

Mr. Dolan asks that the government answer ten questions he has attached to his motion. Five of them (questions one, three, eight, nine, and ten) relate to allegations that Mr. Dolan withheld documents that the customs agents requested. I will grant the motion in the following limited way: the government shall tell the defendant what documents it alleges the government requested and what documents it alleges the defendant withheld.

The other five questions Mr. Dolan asks attempt to pick apart the allegations of the indictment in a way that does not further the reasons for granting a bill of particulars. The defendant's justification for asking several of the questions consists of a description of inconsistencies between the indictment and the interview notes and reports of investigation that were produced to the defendant during discovery. **Any** such inconsistencies may present areas for cross-examination at the trial but do not entitle the defendant to a bill of particulars.

The Court has carefully reviewed the allegations of Count 42 and finds that, with the additional information about the documents, they adequately inform Mr. Dolan of the charge against him so that he may prepare a defense, avoid a surprise at trial, and be protected from a second prosecution for the same offense.

**An** appropriate order follows.

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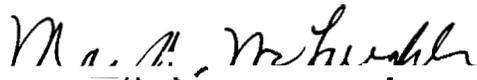
ORDER

AND NOW, this 19<sup>th</sup> day of June, 2001, upon  
consideration of defendant John Dolan's Motions for Severance  
(Docket #72), for a Bill of Particulars (Docket #73), and to  
Strike Surplusage and In *Limine* (Docket #74), IT IS HEREBY  
ORDERED that for the reasons stated in a memorandum of this date:

1. the Motion for Severance is GRANTED;
2. the Motion for a Bill of Particulars is GRANTED IN PART AND DENIED IN PART. It is granted in that the government shall tell the defendant by Monday, July 9, 2001, what documents the customs agents allegedly requested and what documents were allegedly withheld by the defendant; and

3. the Motion to Strike Surplusage and *In Limine* WILL BE HELD IN ABEYANCE. The defendant should inform the Court of the status of the motion by Monday, July 9, 2001.

BY THE COURT:

  
MARY A. McLAUGHLIN, J.