

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE ARAGON-HERNANDEZ

Defendant.

No. CR06-3061-MWB

ORDER

On August 23, 2006, the Grand Jury issued an Indictment charging the defendant Enrique Aragon-Hernandez (“Aragon”) in three Counts with conduct relating to the illegal possession and distribution of methamphetamine. Doc. No. 1. On December 20, 2006, a Superseding Indictment was issued by the Grand Jury, adding a fourth Count. In Count 4, the Grand Jury charges as follows:

On or about August 17, 2006, in the Northern District of Iowa and elsewhere, the defendant, ENRIQUE ARAGON-HERNANDEZ, did possess a firearm, a Bersa .380 Caliber handgun, serial #683069, in furtherance of a drug trafficking crime for which ENRIQUE ARAGON-HERNANDEZ may be prosecuted in a court of the United States, that is conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), as described in Count 1 of this superseding indictment.

This is in violation of Title 18, United States Code §924(c).

Doc. No. 20.

On February 8, 2007, Aragon filed a motion (Doc. No. 36) for a bill of particulars pursuant to Federal Rule of Criminal Procedure 7(f). Ordinarily, a bill of particulars is not appropriate where, as here, the parties have entered into the “open file” discovery stipulation

used in this district. However, in this case, Aragon argues a bill of particulars is necessary because the Government's discovery file does not provide him with the information necessary to prepare a defense to Count 4 of the Superseding Indictment.

Federal Rule of Criminal Procedure 7(f) provides, "The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 10 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires." The Eighth Circuit Court of Appeals has explained, "A bill of particulars serves to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, [and] to avoid or minimize the danger of surprise at trial." *United States v. Shepard*, 462 F.3d 847, 860 (8th Cir. 2006) (quoting *United States v. Hernandez*, 299 F.3d 984, 989-990 (8th Cir. 2002)). The *Shepard* court noted that "[a] bill of particulars is not to be used for discovery purposes." *Shepard*, 462 F.3d at 860 (internal quotation marks, citation omitted).

Aragon alleges the discovery file "does not provide any information which shows how or even if [he] used the firearm in 'furtherance' of a drug crime," as alleged in Count 4 of the Superseding Indictment. Doc. No. 36, p. 1. According to Aragon, the evidence in the discovery file reflects only that he possessed the firearm, and when it was found by law enforcement, it was unloaded and locked in a safe with some serialized buy money. *Id.*, pp. 1-2. Aragon asks the court to require the Government "to identify facts showing how the firearm was possessed 'in furtherance' of a drug trafficking crime." *Id.*, p. 2.

The Government resists the motion. Doc. No. 37. The Government notes the "open file" includes a great deal of information about Aragon's involvement in methamphetamine distribution activities in 2005 and 2006. *Id.*, p. 2. According to the Government, the file also includes information about the seizure of a loaded handgun from a safe in Aragon's room, along with \$10,000 in cash. The code to the safe was provided to law enforcement by Aragon, and the \$10,000 included \$1,400 in pre-serialized currency that had been given to Aragon in a drug transaction two hours before the seizure. The file also apparently contains

a fingerprint report identifying Aragon's fingerprints on a box for the handgun. The box was seized from Aragon's room.

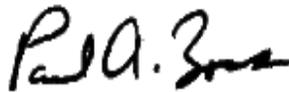
In a reply brief (Doc. No. 38), Aragon states that no additional information was put in the discovery file after the firearm charge was added to the case in the Superseding Indictment. Aragon also argues that when the firearm was seized, it was not, in fact, loaded, but there was a loaded clip in the safe that was separate from the firearm.

It is evident from this record that Aragon is arguing about the sufficiency of the evidence against him on the gun charge. Such arguments may be made at trial, but are not appropriate at this stage of the case, and certainly do not justify a bill of particulars. *See United States v. Johnson*, 225 F. Supp. 2d 982, 990-995 (N.D. Iowa 2002) (containing, at pages 994-95, an extended discussion of the law relating to bills of particulars, including the appropriateness of a bill of particulars where the government has an "open file" discovery policy). There is nothing in this record to suggest Aragon needs a bill of particulars to inform him of the nature of the charge against him with sufficient precision to enable him to prepare for trial or to avoid or minimize the danger of surprise at trial. If Aragon believes the Government's evidence is not sufficient to support a conviction at trial on Count 4, then Aragon is in a position to make that argument at trial without a bill of particulars.

The motion for bill of particulars (Doc. No. 36) is **denied**.

IT IS SO ORDERED.

DATED this 27th day of February, 2007.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT