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AUG 31 2010  
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IN THE COURT OF COMMON PLEAS  
GENERAL DIVISION  
MAHONING COUNTY, OHIO

THE STATE OF OHIO

vs.

MARTIN YAVORCIK

and

FLORA CAFARO

JUDGE William H. Wolff, Jr.  
Courtroom 9

CASE NO. 2010 CR 00800 H ✓

CASE NO. 2010 CR 00800 I

STATE OF OHIO'S RESPONSE TO MOTIONS OF  
DEFENDANTS MARTIN YAVORCIK AND FLORA CAFARO FOR  
A BILL OF PARTICULARS

The State of Ohio, through its undersigned attorneys, hereby responds to the Motions of both Defendant Martin Yavorcik and Flora Cafaro for a Bill of Particulars.

The common indictment in this case is legally sufficient under Ohio law, as it places each defendant on notice of the specific charges against them.

Moreover, the extensive discovery to be afforded the defendants prior to trial, pursuant to newly-revised Ohio Criminal Rule 16, will be sufficient to enable them to prepare for trial. In addition, this Response voluntarily provides defendants with further details regarding the Indictment. Accordingly, the State of Ohio maintains that there is no need for any order granting responses to what amount to civil case requests for answers to interrogatories.

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**PURPOSES AND REQUIREMENTS  
OF AN INDICTMENT AND A BILL OF PARTICULARS**

Ohio law is clear relative to the purpose and requirements of both an Indictment and of a Bill of Particulars:

*“Crim.R. 7(B) explains the structure and sufficiency requirements of an indictment: “The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement **may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged.** (emphasis added) State v. Horner, Slip Opinion No. 2010-Ohio-3830, decided August 27, 2010.*

An indictment is sufficient to inform a defendant of the charges if it uses the language of a statutory section which states the element of the offense and specifies when defendant committed the offense. That was done here in the common indictment<sup>[1]</sup>. See, Rule 7 of the Ohio Rules of Criminal Procedure. See also, R.C. §2941.05.

An indictment is not--in the State of Ohio--required to state in specific detail all of the particular facts upon which the indictment was based. Defendant can obtain the factual bases from both a bill of particulars and the State's prosecutorial file pursuant to (the recently revised) Ohio Criminal Rule 16. See, Ohio v. Sessler, 2007 Ohio 4931, 2007 Ohio App. LEXIS 4631 (2007)<sup>[2]</sup>.

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<sup>[1]</sup> The indictment followed Ohio law, despite certain of the defendants' hyperbole relative to the lack of specificity of the indictment. ✓

<sup>[2]</sup> Ohio Case law and Crim. Rule 7 generally track the original Ohio Revised Code statute (prior to the implementation of the Ohio Rules of Criminal Procedure), at §2941.05 therein, “Statement charging an offense” which provides that:

*“In an indictment or information charging an offense, each count shall contain, and is sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations not essential to be proved. **It may be in the words of the section of the Revised Code describing the offense** or declaring the matter charged to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is charged.” (emphasis added).*

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However, a criminal rule Bill of Particulars is not meant to be the equivalent of a response to a civil rule request for interrogatories:

*“A motion for a bill of particulars seeking to obtain a detailed statement of the particular means by which the state claims the defendant committed an alleged offense and a motion for discovery and inspection of the state’s evidence were properly overruled. **The disclosure by the state of evidence is not a proper function of a bill of particulars**, and no problem of constitutional dimensions is raised by limiting the scope of discovery within the discretion of the trial court.” (emphasis added) State v. Wilson, 29 Ohio St. 2d 203, 208 N.E.2d 915 (1972).*

The Ohio Supreme Court has stated the Ohio rule relative to Bills of Particular and said that the purpose of giving a Bill of Particulars is “to elucidate or particularize the conduct of the accused”....“**but not to provide the accused with specifications of evidence or to serve as a substitute for discovery.**” See, State v. Lawrinson, 49 Ohio St. 3d 238 at 239 (1990), citing State v. Sellards 17 Ohio St. 3d 169, 17 OBR 410, 478 N.E. 2d 781 (1985). See, also State v. Wilson, supra. State v. Robinson, 2005 Ohio 6286, 2005 Ohio App. LEXIS 5631 (Ohio Ct. App., Lake County Nov. 25, 2005).

Certain of the Defendants cite extensively to federal authorities in their requests for extremely detailed Bills of Particular; however, federal authorities, in interpreting the Federal Rules of Criminal Procedure, are in accord with Ohio’s interpretation of its own criminal rules. Under federal law, the general purpose of a bill of particulars is to inform a defendant of the charges against him with sufficient precision to: (1) enable him to prepare his defense, (2) obviate surprise at trial, and (3) enable him to plead his acquittal or conviction in the case as a bar to subsequent prosecution for the same offense. United States v. Davis, 582 F.2d 947, 951 (5th Cir. 1978), cert. denied, 441 U.S. 962 (1979).

Federal case law interpreting Rule 7 of the Federal Rules of Criminal Procedure states that a bill of particulars should not be expanded into a device to circumvent the

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restrictions on pretrial discovery of specific evidence contained in Fed. R. Crim. P. 16. Cooper v. United States, 282 F.2d 527, 532 (9th Cir. 1960). See also Davis, 582 F.2d at 951 ("generalized discovery is not a permissible goal of a bill of particulars"). Where the indictment itself and the bill of particulars supplied by the government provide the defendant with adequate information with which to conduct his defense, requests for additional particulars should be denied. Harlow v. United States, 301 F.2d 361, 367-68 (5th Cir.), cert. denied, 371 U.S. 814 (1962).

Federal courts have taken into account other sources of information provided by the government, including discovery materials. United States v. Long, 706 F.2d 1044, 1054 (9th Cir. 1983) (broad discovery can serve as a substitute for the "trial preparation" function of a bill of particulars). See, e.g., United States v. Feola, 651 F. Supp. 1068, 1133 (S.D.N.Y. 1987) (court considered whether the information requested had been provided elsewhere, including through discovery).

Even under the federal interpretation of its rules, an indictment is deemed sufficient if it "contains the elements of the offense charged and fairly informs a defendant of the charges against which he must defend, and second, whether it enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." United States v. Middleton, 246 F.3d 825, 841-42, quoting United States v. Monus, 128 F.3d 376, 388 (6th Cir. 1997). The government is under no obligation to "preview its case or expose its legal theory", nor does the government have to disclose the "precise manner in which the crime charged in the indictment is alleged to have been committed." United States v. Shoher, 555 F. Supp 346, 349 (1983), quoting United States v. Andrews, 381 F.2d 377, 377-78 (1967). As stated in United States v. Malinsky, 19 F.R.D. 426, 428 (S.D.N.Y. 1956):

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**“The purpose of a bill of particulars is to inform the defendant as to the crime for which he must stand trial, not to compel the disclosure of how much the government can prove and how much it cannot nor to foreclose the government from using proof it may develop as the trial approaches.”** (emphasis added).

Pursuant to Rule 16 of the Ohio Rules of Criminal Procedure, the defendants in Mahoning County Common Pleas case numbers 2010 CR 00800, *et al*, are to receive thousands of pages of documents (a significant number of which came from the defendants themselves pursuant to grand jury subpoenas issued during the course and scope of an extensive grand jury investigation which was curtailed by a finite ending date specified by the Mahoning County general division judges, all of whom have recused themselves in these companion cases).

**THE STATE OF OHIO’S VOLUNTARY BILL OF PARTICULARS WITH  
RESPECT TO DEFENDANT YAVORCIK**

**COUNT 72- MONEY LAUNDERING BY MARTIN YAVORCIK**

During the time frame set forth in the indictment, Defendant, Martin Yavorcik, both conducted transactions and aided and abetted Flora Cafaro, in conducting transactions on behalf of himself, Defendant Flora Cafaro and the Cafaro Company and members of the criminal enterprise identified in the common indictment and as that term is defined in §2923.31(c) of the Ohio Revised Code (hereafter sometimes referred to as “Enterprise”), knowing the property involved was the proceeds of some form of unlawful activity and did so in a manner calculated to conceal or disguise the nature, location, source, ownership or control of the property or to avoid a transaction reporting requirement under §1315.53 of the Revised Code<sup>[3]</sup> or federal law. ]

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[3] The documents evidencing said count of money laundering together with Defendant Yavorcik’s 2008 Form 1040, U.S. Federal Income Tax Return referenced hereinbelow as well as campaign finance reports shall be provided to defendant in discovery pursuant to Ohio Criminal Rule 16 instead of being attached hereto. ]

Defendant Martin Yavorcik received a \$15,000.00 check, dated March 20, 2008, issued by Defendant Cafaro Company. The check was signed by Flora Cafaro in her capacity as a representative of Cafaro Company. An invoice from "Martin Yavorcik Trial Attorney," dated that same date, March 20, 2008, was specifically made to look like it was for legal services on a "Service Date" of "February 20, 2008" for "William M. Ferraro/American Gladiator Fitness Center" and for "services rendered". Yet, Defendant Yavorcik failed to report the \$15,000.00 received as income on his 2008 federal form 1040, individual income tax return. William Ferraro has also denied ever meeting and using Defendant Yavorcik for legal services [4].

Defendant Yavorcik issued a check the very next day, on March 21, 2008, from his checking account described as the "Martin Yavorcik, Esq." account in the same amount of \$15,000.00 made payable to "Global Strategies Group".

Global Strategies Group is a political consulting organization and issued a "memorandum," dated May 5, 2008, which purported to address a "survey of likely voters" conducted in April, 2008 relative to the race for prosecuting attorney in Mahoning County, comparing and contrasting the political viability of Paul Gains and Defendant Yavorcik in that race.

Defendant Yavorcik also failed to list the true source of the \$15,000.00 in funds from The Cafaro Company check signed by Flora Cafaro on his campaign finance report for the year in which it was received by concealing the actual source of the funds and then misrepresenting the source used to pay for the survey/poll to be an in-kind contribution from Defendant Yavorcik, himself.

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[4] There are a number of interview summaries created by Special Agents of the Federal Bureau of Investigation, termed "302s" which will be provided to defendant in Discovery pursuant to Ohio Crim. Rule 16.

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Defendant Yavorcik is the same attorney that was solicited by Anthony .M. Cafaro, Sr., his brother John J. Cafaro and his sister, Flora Cafaro and backed financially in an amount totaling \$120,000.00 for the purpose of removing Paul Gains from office following the much-publicized attempt which delayed but failed to block the move from the Cafaro-controlled Garland Plaza site to Oakhill. Moreover, Defendant Yavorcik became a candidate and received funds from Cafaro members of the Enterprise during a period of time in which special prosecutor(s) were being considered relative to the extraordinarily unusual and ultimately unsuccessful actions to block the county's move from the Cafaro's Garland property to Oakhill.

**THE STATE OF OHIO'S VOLUNTARY BILL OF PARTICULARS WITH  
RESPECT TO DEFENDANT FLORA CAFARO**

**COUNT 73- MONEY LAUNDERING BY FLORA CAFARO**

The State of Ohio specifically incorporates the statements and acts set forth above relative to Count 72 as if fully rewritten herein.

This count relates to the activity of Martin Yavorcik detailed above relative to Count 72. On or about the date set forth in this count of the indictment, the Defendant, Flora Cafaro, issued the \$15,000.00 check from the Cafaro Company to Defendant Yavorcik.

Defendant Flora Cafaro both conducted said transactions on behalf of herself, the Cafaro Company and the Enterprise and aided and abetted Defendant Yavorsik knowing the property involved in the transactions was the proceeds of some form of unlawful activity and did so in a manner calculated to conceal or disguise the nature, location, source, ownership or control of the property or to avoid a transaction reporting requirement under §1315.53 of the Revised Code or federal law.

The Cafaro Company check signed by Defendant Flora Cafaro was disguised to look like a payment for legal services on behalf of her son's business and was instead specifically used to pay for a survey/poll to be conducted by Global Strategies Group as noted above relative to Count 72. This is not the first time Anthony Cafaro or other members of the Enterprise has made clandestine payments and the State will seek to offer and introduce other acts evidence.]

**CONCLUSION**

The defendants have been placed on notice of the crime for which they are charged pursuant to a proper indictment; they have been provided with this voluntary Bill of Particulars and they will have access to extensive information in this case through the voluminous discovery to be afforded under Ohio Criminal Rule 16. Said information is more than sufficient to fully apprise them of the pending charges and to enable defendants to prepare for trial. To the extent defendants seek evidentiary details in excess of such needs, it is beyond the proper scope of a bill of particulars.


Respectfully submitted,

**Dennis P. Will**  
Special Prosecuting Attorney


and

**Paul Nick**  
Special Prosecuting Attorney

by

  
**David P. Muhsek** 0024395  
Special Prosecuting Attorney

and by

  
**Anthony Cillo** 0062497  
Special Prosecuting Attorney



**CERTIFICATE OF SERVICE**

A true copy of the forgoing Bill of Particulars has been served via regular US mail this 31<sup>st</sup> day of August, 2010 upon Defendants Martin Yavorcik and Flora Cafaro in care of their attorneys at the addresses appearing below and also to counsel for the other defendants charged by way of common indictment at their respective addresses appearing below and via the same method of delivery:

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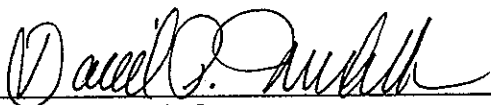
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