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

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**Criminal No. 3:23-cr-19-SLH**
	)	
JOHN SUPLIZIO	)	

REPLY TO UNITED STATES' OPPOSITION
TO DEFENDANTS' MOTIONS FOR BILL OF PARTICULARS

The government's response to Mr. Suplizio's Motion for Bill of Particulars does nothing to remedy his need for clarity regarding the allegedly fraudulent transactions—in fact, it only serves to highlight *why* he needs such clarity. Specifically, Mr. Suplizio asked for the government to identify the individual transactions it alleges were federal program theft under 18 U.S.C. § 666. The government replied, "all of them" – whether or not the use of money benefitted the City. That response fails to provide the needed clarity for two reasons.

First, the government's response raises the new question of why it considers ***all*** expenditures from what the government refers to collectively as the Community Days Accounts to be criminal, even though, on their face, many expenditures appear to be proper. Mr. Suplizio cannot prepare a defense without a more detailed description of where the alleged illegality occurred in the chain of events of the government's alleged conspiracy, since the government's response seemed to confirm that it did not matter how, or on what, the money was spent. Mr. Suplizio must be given notice of whether he will be tasked with defending his authority to use the funds in certain ways, line by line, expense by expense, or, alternatively, whether the government contends that he lacked authority to use the funds at all, irrespective of the proper disposition of the funds. This distinction is critical to whether Mr. Suplizio can adequately prepare a defense.

Second, the government's response creates an impermissible overlap: it claims that many of the same exact transactions are both theft *and* laundering. This is improper because the newly-added laundering charges in Counts 6-10 of the Superseding Indictment require a separate predicate act. That act (theft) must be complete before the money laundering can occur, so the government cannot simply identify the same monetary transactions in support of both. Accordingly, the government must identify when it claims the antecedent misapplication offense began and concluded, which must be in advance of the laundering transactions. Specificity is now required for the money laundering charges to stand, and for Mr. Suplizio to defend against them.

These two problems are easily fixed. The government must describe the exact point in time Mr. Suplizio exceeded his authorization in the use and management of City funds, and how he did so.

I. ARGUMENT

A. The Government's Response Creates More Confusion as to What Conduct Was Illegal, and Why.

In its opposition, the government takes the position that Mr. Suplizio is not entitled to know which specific transactions it claims constituted theft under 18 U.S.C. § 666. It further states that even if Mr. Suplizio were entitled to such an accounting, that it does not matter: "even if [the transactions] did 'benefit' the City of DuBois…they were **all** unauthorized and unlawful." (ECF 123 at 23) (emphasis added).

What the government must explain, though, is **why**. Mr. Suplizio's actions, as detailed by the government as the manner and means of the conspiracy, are not on their face illegal – either alone, or in the aggregate. The government seems to imply the illegality of some of the individual transactions themselves, such as payments to elected officials (ECF 62, ¶ 83) (suggesting that they

were improper political donations, without citing the law or ordinance violated). But, in the next paragraph, the government contends that the mere withdrawal of cash was equally criminal, regardless of whether that cash was used for legitimate purposes. (ECF 62, ¶ 84.)

This lack of detail and context is magnified in the government's opposition brief. When Mr. Suplizio asked for a listing of transactions that were fraudulent, the government doubles down, stating: "**all** the deposits…disbursements…and expenditures" were § 666 violations (ECF 123 at 2) (emphasis in original). It cites to a Community Days Account spreadsheet entry reflecting sponsorship of a judicial fundraising dinner in May 2015 (ECF 123 at 10) (again seeming to imply improper political donations), but also reserves its right to prosecute all other entries on the same spreadsheet, even when they are indisputably for City purposes (e.g.: $585 for chairs at Showers Field, $3,911.60 for the DuBois Area Historical Society Lantern Walk, and $15,268.84 for Zambelli Fireworks for Community Days).

The only way that all of the hundreds of proper disbursements from the Community Days Accounts – which were withdrawn and used in a variety of ways (cash, check, EFT, reimbursement) for a myriad of purposes (Community Days, City projects, sundry administrative needs), none of which were facially illegal – could be grouped together as "unlawful" is if the source of the funds was criminal, not the expenditures themselves. Given that, the government must—at a minimum—confirm whether Mr. Suplizio's use of the funds was unlawful not because of where they ultimately went, but rather, because of how they came into his possession. Without this basic detail—rendered necessary by the government's own ambiguous statements and allegations—Mr. Suplizio cannot adequately prepare his defense and will likely seek dismissal of the indictment for failure to provide sufficient particularity and clarity to specify an offense. *See United States v. Addonizio,* 451 F.2d 49, 63-64 (3d Cir. 1971)(holding that sufficient detail allows

a defendant "to adequately prepare his defense, to avoid surprise during the trial, and to protect him against a second prosecution for an inadequately described offense.")

B. The Government's Response In Opposition Has Exposed the Money Laundering Charges as Impermissible Overlap.

Counts 6-10 of the Superseding Indictment charge Mr. Suplizio with dealing in proceeds of unlawful activity. Within those Counts, the government lists specific transactions it claims to constitute laundering. The government must prove that the money involved in those enumerated transactions is "**criminally derived property** of a value greater than $10,000 and is derived from **specified unlawful activity**." *See* 18 U.S.C. § 1956(a) and § 1957(a) (emphasis added).

Funds are "criminally derived" if they are "derived from an already completed offense, or a completed phase of an ongoing offense." *United States v. Butler*, 211 F.3d 826, 829-30 (4th Cir. 2000), *citing United States v. Conley*, 37 F.3d 970, 980 (3d Cir. 1994); *see also United States v. Sayakhom*, 186 F.3d 928, 943 (9th Cir. 1999)(holding that receipt of funds in response to fraudulent mailing could support money laundering conviction when initial fraudulent mailing formed completed phase of the offense); *United States v. Morelli*, 169 F.3d 798, 806-07 (3rd Cir. 1999)(finding that first set of fraudulent wire transfers was not money laundering but that subsequent wire transfers involved proceeds of the first set of transfers, and therefore did constitute money laundering); *United States v. Christo*, 129 F.3d 578, 580-81 (reversing money laundering conviction when "withdrawal of funds charged as money laundering was one and the same as the underlying criminal activity of bank fraud and misapplication of bank funds").

Money laundering is an offense to be punished separately from an underlying criminal offense. *Christo*, 129 F.3d at 580-81. Congress intended money laundering and other specified unlawful activity to be distinct offenses punished separately. *Id.* at 579. "The main issue in a money

laundering charge, therefore, is determining **when** the predicate crime becomes a 'completed offense' after which money laundering can occur. *Id.* at 579-80 (emphasis added).

Here, the government alleges that the money involved in the Superseding Indictment's enumerated laundering transactions was "derived from specified unlawful activity, that is, federal program theft in violation of Title 18, United States Code, Sections §§ 666(a)(1)(A) and 2," violations of which are charged in Counts 1-5. (ECF 62, ¶ 110, 115). In support, the Superseding Indictment provides a list of the laundering transactions by date, along with the source accounts of the funds, which were the Community Days Accounts. (ECF 62 at 22-24).

Given the structure of these allegations, it necessarily follows that the property involved in the enumerated laundering transactions must have already been tainted with criminality while sitting idle in the Community Days Accounts – *before* the listed laundering transactions occurred. Accordingly, the laundered funds necessarily became "dirty" either at the time of their deposit into the Community Days Accounts, or sometime before.

But this becomes confusing, and potentially improper, when the government, in its opposition to Mr. Suplizio's request for a bill of particulars, states that "**all** the deposits…disbursements…and expenditures" were § 666 violations. (ECF 123 at 2)(emphasis in original.)

The same transaction cannot be both a money laundering offense *and* the specified unlawful activity that generated the funds being laundered. The *Christo* case is instructive here. In *Christo*, the government claimed the defendant laundered money when he deposited checks in a check-kiting scheme. *Christo*, 129 F.3d at 579 (11th Cir. 1997). The defendant argued that, because the predicate offense of bank fraud[1] required the movement of funds from the financial institution, the

[1] Similar to federal program theft under 18 U.S.C. 666, bank fraud statute at 18 U.S.C. 656 prohibits several methods of fraud: embezzlement, abstraction, purloining, or, most relevant to the instant case, willful misapplication.

money allegedly laundered did not constitute the proceeds of crime until after the deposit. *Id.* Put simply, the defendant claimed that the "last act" of bank fraud could not have constituted the money laundering transaction, because the two offenses needed to be separate. The Eleventh Circuit agreed, stating that "the underlying criminal activity must be complete before money laundering can occur." *Id.* at 580; *compare with United States v. All Funds on Deposit in Dime Sav. Bank of Williamsburg Account,* 255 F.Supp. 2d 56 (E.D.N.Y. 2003)(distinguishing *Christo,* holding that defendant's predicate acts of health care fraud were completed *before* he engaged in the separate act of depositing the proceeds derived from those acts, and depositing the checks was not part and parcel of the predicate fraudulent conduct).

In the instant case, too, the "last act" of the alleged fraudulent activity – withdrawals, checks, and transfers out of the Community Days Accounts – cannot constitute money laundering, since the two offenses must be separate. Notwithstanding, the government seems to attempt an impermissible double dip on these transactions by claiming that the same transactions that constitute theft also constitute laundering. The Superseding Indictment both specifically identifies and generally references the same transactions for *both* theft and laundering.

The government must confirm that its misapplication charges under § 666 criminalize Mr. Suplizio's deposit of funds into the Community Days Accounts in order for the money laundering charges to be proper, and so that Mr. Suplizio can prepare his defense. Simply, the laundering of funds cannot occur in the same transaction through which those funds first allegedly become tainted by crime. For these reasons, Mr. Suplizio asks that this Court exercise its discretion to order a bill of particulars.

II. CONCLUSION

For the foregoing reasons, Defendant John Suplizio respectfully requests that this Honorable Court issue an Order directing the government to serve and file a Bill of Particulars within 30 days indicating the above-requested information and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

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