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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13
14 United States of America,
15 Plaintiff,

16 vs.

17 Thomas Mario Costanzo,
18 Defendant.
19

CR-17-00585-PHX-GMS

**GOVERNMENT’S RESPONSE TO
MOTION FOR BILL OF
PARTICULARS**

20 For the reasons set forth below, the Motion for Bill of Particulars is moot, and should
21 be denied for that reason.

22 **I. Introduction and Background**

23 The five money laundering counts set for trial in this case are money laundering
24 sting charges which allege, conjunctively, that Costanzo engaged in a financial transaction
25 for two purposes: to conceal and disguise the nature, location, source, ownership and
26 control of the undercover agents’ drug money, in violation of 18 U.S.C. § 1956(a)(3)(B);
27 and with the intent to avoid a transaction reporting requirement that any financial institution
28 abiding by “know your customer” guidelines would have been obligated to undertake, in

1 violation of 18 U.S.C. § 1956(a)(3)(C). The government need only prove one of the
2 purposes for each transaction, and Costanzo seeks more information as to “the applicable
3 federal transaction reporting requirement(s) [he] is alleged to have sought to avoid for each
4 of the remaining counts of the present indictment.” (Dkt. # 115 at 2-3.) The government
5 responds accordingly.

6 **II. Legal Framework**

7 As a preliminary matter, a bill of particulars is largely a mechanism to protect a
8 defendant against double jeopardy concerns. *United States v. Ayers*, 924 F.2d 1468, 1478
9 (9th Cir. 1991). But there are no apparent double jeopardy concerns here, where the
10 charging units comprise specific instances of undercover communications and an exchange
11 of money for bitcoin. Nevertheless, in an effort to ensure Costanzo’s preparation for trial,
12 and to ensure a more efficient pre-trial process, the government provides the answer to
13 Costanzo’s query, to wit: The transaction reporting requirements that Costanzo sought to
14 avoid for each of the remaining counts of the Superseding Indictment are, first, the currency
15 transaction reporting requirement, as described in 31 U.S.C. § 5313 and 31 C.F.R.
16 § 1010.310-12 (and elsewhere in sections 1020-21), and second, the suspicious activity
17 reporting requirement, including the “know your customer” rules, as described in 31 U.S.C.
18 § 5318 and 31 C.F.R. § 1010.320 and .410 (and elsewhere in sections 1020-21, including
19 specifically 31 C.F.R. § 1020.220).

20 This ends the precise inquiry in front of the Court. The proof of defendant’s
21 avoidance of the two specific federal reporting requirements is contained in the discovery,
22 and Fed. R. Crim. P. 7(f) thus requires no further identification by the government. *United*
23 *States v. Mitchell*, 744 F.2d 701, 705 (9th Cir. 1984) (denying a bill of particulars where
24 the indictment provides sufficient detail and if the government provides full discovery).
25 Nonetheless, in a further effort to ensure that Costanzo understands the nature and scope
26 of the proof in this case, the government voluntarily identifies examples of proof that it
27 intends to offer of defendant’s efforts to use his bitcoin transmittal platform to avoid
28 reporting requirements:

March 20, 2015 – Meeting with Costanzo

1
2 Undercover: You book it, I pack it, you know, if you want to deposit more than, like, 10
3 grand, you know, it...

4 Costanzo: Yeah.

5 Undercover: ...(unintelligible).

6 Costanzo: Radar goes off, the bells go off. It's, like, you're in the casino.

7 . . .

8 Costanzo: Well, and no one - I don't - and - and I don't owe anybody anything.

9 Undercover: Yeah.

10 Costanzo: Maybe the government, but they...

11 Undercover: (Unintelligible).

12 Costanzo: ...they can go kiss my ass.

13 Undercover: Yeah.

14 Costanzo: 'Cause I've never gotten anything from 'em.

15 Undercover: I haven't figure out how to get them off my back yet, but actually, that's why
16 I try to with the cash.

17 Costanzo: Well, you know what? Bitcoin is the way to do it, because guess what?

18 Undercover: Well...

19 Costanzo: Now there's no income, so...

20 Undercover: So - well, some...

21 Costanzo: Yeah.

22 Undercover: ...of the stuff that I, uh, so called import is, uh, it doesn't - government will
23 never - will not know about it because there's other problems with it.

24 Costanzo: Yeah, I understand. So - but the thing is it's a good way to at least lower
25 your visibility.

May 20, 2015 – Meeting with Costanzo

26
27 Costanzo: I like keeping things like super-duper like confidential. I don't want to know
28 nothing.

October 7, 2015 – Meeting with Costanzo

1
2 Undercover: Um, you know we're - we do business together and...
3 Costanzo: Right.
4 Undercover: And we told ya what, uh, what that's all about.
5 Costanzo: Right.
6 Undercover: Well, um...
7 Costanzo: Well the thing is I don't wanna know.
8 Undercover: Yeah.
9 Costanzo: You know what I mean? I know but I don't wanna know.
10 Undercover: Yeah. I get ya. I hear ya.
11 Costanzo: It's like - it's, uh, you know, it's - it's a - with this - with this type of business
12 you get a lot, you know, there's a lot of people that are on the edge.
13 Undercover: Yeah.
14 Costanzo: And I walk the edge too but it's like I'm not - it's like I don't wanna know a
15 lot of things. You know?
16 . . .
17 Undercover: Man. Well how and w- what advice would you have for somebody like me
18 who's, um, who's using bitcoins to make sure that what I'm doing doesn't
19 get out there and, I mean...
20 Costanzo: Well there's a way.
21 Undercover: And there's - and keep this in mind. Like right now I can - I still do traditional
22 banking and that kind of thing.
23 Costanzo: Right.
24 Undercover: And I - I haven't moved away from that so what - what needs to be on my
25 radar screen about...
26 Costanzo: As far as losing value?
27 Undercover: No.
28 Costanzo: Or...

1 Undercover: Either it getting stolen or - and, or being discovered what - what we're really
2 - what I'm doing e- essentially.

3 Costanzo: Well, you know, I mean, dealin' with me is one way.

4 Undercover: Yeah?

5 Costanzo: 'Cause I don't say anything to anybody.

6 Undercover: Right.

7 Costanzo: I don't give a shit.

8 Undercover: That's what Sergei said.

9 Costanzo: Um, and that's - but that's - that's why you're paying me.
10 . . .

11 Costanzo: And see, you know, like, for - for people with dope or marijuana it's - it's a
12 . . . great thing because if you have a medical marijuana you can't use the
13 bank.

14 Undercover: Yeah, that's true - that's true.

15 Costanzo: They don't want your money.
16 . . .

17 Costanzo: And I don't have to use my real name either because if you use a credit card
18 you gotta use your real name.

19 Undercover: Bitcoins, they don't know where it came from.
20 . . .

21 Costanzo: You're, you know, you're - this - this, you know, you're reducing your
22 exposure in half.

23 Undercover: That is absolutely the issue. I mean clearly I'd rather be caught with money
24 than with, uh, but still if you still get caught with that kind of money there's
25 a lot of questions and they can still, you know, snag your money.

26 Costanzo: Yeah - yeah.

27 Undercover: So, I mean, at least you may not, uh, even that - even if - if nothing comes
28 out of it then you're on their radar.

1 Costanzo: This is just a lot more discreet, and, you know, they got . . . checkpoints
2 everywhere.

3 **September 14, 2016 – Meeting with Costanzo**

4 Costanzo: It's none of my business. My business is anonymity.

5 Costanzo: You know. And guess what. There isn't – there is no regulation on this
6 system. It can go wherever . . . it wants to go.

7 . . .

8 Costanzo: And that's why I do this with the way I do it.

9 Costanzo: Yeah, it's just – there's, uh, I had, like, \$12,000 in here one day. Uh, me and
10 my buddy – we were heading that – right after we did the deal we went to
11 California . . . And I like to go to the casino and I pump the money into the
12 casino and, you know, [unintelligible] a little bit.

13 Undercover: Yeah.

14 Costanzo: Just enough to while I'm pumping the money in.

15 Undercover: Yeah.

16 Costanzo: And then – then I take tickets and cash 'em out. Well I had a different belly
17 bag and the – and it had 12,000. And we were like this a 3 o'clock in the
18 morning. I lean over this chair and I had \$12,000 . . . fell on the floor.

19 . . .

20 Undercover: So you can put some in a casino? The – so do you have to take all your cash
21 and you go straight and buy more Bitcoin with it or?

22 Costanzo: Yeah.

23 Undercover: And that way you can avoid using bank accounts and . . .

24 Costanzo: Right.

25 . . .

26 Costanzo: Well what I do is you can buy – you can get the, uh, the prepaid cards.

27 Undercover: Okay.

28 Costanzo: You know, you can go to, like, CVS.

1 Undercover: Okay, so you have to buy the card . . .

2 Costanzo: And you can buy, you know, the cards with cash.

3 **November 16, 2016 – Meeting with Costanzo**

4 Costanzo: Yeah they do that. Yeah if you take out more than \$3,000 they fill out what's
5 called an SAR.

6 Undercover: Really?

7 Costanzo: Suspicious Activity Report.

8 Undercover: Really? Your own money?

9 Costanzo: Yes. Absolutely.

10 . . .

11 Undercover: Does that go to the government or what does that do?

12 Costanzo: Yeah it goes . . .

13 . . .

14 Costanzo: It's like if you go . . . to the casino. You go to the casino you build more –
15 more than \$1,000 they have to fill out a report

16 . . .

17 Costanzo: You do whatever you want. You gonna do somethin' illegal. I don't wanna
18 know.

19 Undercover: Yeah

20 Costanzo: Don't tell me. You know.

21 Undercover: Nope.

22 Costanzo: It's like – then that way I don't care. What was he doing? I have no idea. I
23 don't know what . . . his real name is – even is.

24 Undercover: Right.

25 Costanzo: I don't wanna know people's real name.

26 . . .

27

28

1 Costanzo: . . . you know pay the – the – the all the different agencies that want your
2 money and fill out all these stupid . . . reports for them that don't produce
3 anything for you.

4 **February 2, 2017 – Meeting with Costanzo**

5 Costanzo: So I – I was actually doing okay until they finally 86'd me out of the casino.
6 Well what happened was they – I was using the casino basically as the next
7 step into – kinda to change my 20's into 100's.

8 Undercover: Okay.

9 Costanzo: Yeah, I'd put the 20's, play for a little bit, and then pull – you know, get the
10 tickets out, and then go cash out.

11 . . .

12 Costanzo: And then that's the goal – it was the whole goal that we go in there was to
13 get the hundreds then . . .

14 Undercover: Yeah, and then cashing out.

15 Costanzo: Right. Well I mean I'd play a little bit.

16 **March 31, 2017 – Messages with Costanzo on Encrypted Application**

17 Costanzo: well we can do its gonna have to be 2 sits however this way I don't need any
18 info

19 . . .

20 Costanzo: I told u what the banker wants I don't have those resources personally. I
21 have someone else who will do the 50k wo all the questions. I could do 20k
22 right now

23 **April 10, 2017 – Meeting with Costanzo and Steinmetz**

24 Undercover: All right. Yeah that makes – I just wanna make sure you're not giving, like
25 – if I were to go into Wells Fargo with 100 grand, they're gonna take my
26 ID and they're not gonna tell me what they're using it for, then they're just
27 gonna go file forms and get (unintelligible).

28

1 Steinmetz: Oh, no. They will – no, I actually I can exactly what they’re going to do,
2 they’re gonna file two forms – okay? - they’re going to file, a, uh, they
3 have to file, a, um – (unintelligible) a form number, but there’s a form
4 anytime you bring your money, \$10,000 in cash, they have to file . . .

5 Undercover: Okay.

6 Steinmetz: Then on top of that, they’re gonna file probably, unless – if you’re a known
7 customer, I guess, they might not file a suspicious activity report, and they
8 – ‘cause they file these things on me all the time.

9 **April 20, 2017 - Post-Arrest Interview**

10 Agent: You trade to people at Starbucks?

11 Costanzo: Yeah, all the time.

12 Agent: One hundred thousand dollars?

13 Costanzo: I’ve done it before.

14 Agent: With who?

15 Costanzo: I don’t know. I don’t keep track.

16 . . .

17 Agent: Who have you dealt with besides – besides the guy today?

18 Costanzo: Uh, man, I can’t even tell you how many trades I do.

19 Agent: Do you keep a record of . . .

20 Costanzo: No.

21 Agent: When people contact you, what – do you keep a ledger . . .

22 Costanzo: No.

23 Agent: . . . do you keep – do you keep contacts of people you’ve done trades with?

24 Costanzo: Nope.

25 . . .

26 Costanzo: I just – I just do the trades, I don’t – my – my business is I don’t ask people
27 questions.

28

1 Agent: When – when you meet with these people . . . is it fair to say . . . is you don't
2 keep a ledger . . .

3 Costanzo: Right.

4 Agent: . . . you don't – you don't keep any contact means . . .

5 Costanzo: Correct.

6 Agent: Do you see why it's a problem to – with the way we're looking at it, do you
7 see why it's a problem with large amounts of cash being anonymously moved
8 around?

9 Costanzo: Well, I guess I could see it from, you know, Federal Reserve's point of view
10 because they wanna control . . .

11 Agent: We're not the Federal Reserve.

12 Costanzo: Yeah, but you – the – the banks own the government.
13 . . .

14 Agent: You know if you registered your business you'd be a licensed . . .

15 Costanzo: But I don't want to. I mean that's the whole thing, I don't wanna be part . . .
16 of the system

17 Agent: Not keeping records is what makes an illegal business actually.

18 Costanzo: I don't wanna keep records, I mean it's like it doesn't do me any good. What
19 difference does it make?

20 Agent: You – you don't know – do you – do you understand why someone would
21 rather take \$30,000 dollars to you instead of a bank? Do you understand why
22 someone would do that?
23 . . .

24 Costanzo: Well see, the thing is, is my job not to – it's to make everything – is – is
25 everything is anonymous, it's – it's . . . designed to be anonymous and
26 that's . . .

27 Agent: And that's why we're here.
28

1 **III. Conclusion**

2 The government has answered the precise question demanded by defendant, and has
3 also provided factual exemplars from the discovery. The Court may accordingly deny the
4 motion as moot.

5 Respectfully submitted this 1st day of February, 2018.

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9 *s/ Matthew Binford*
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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this date, I electronically transmitted the attached document
16 to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of
17 Electronic Filing to counsel of record in this case.
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