

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	CRIMINAL ACTION NO.
)	
Plaintiff,)	1:21-CR-00119-CJN
)	
v.)	
)	
GARRET MILLER,)	
)	
)	
Defendant.)	
_____)	

**MOTION FOR BILL OF PARTICULARS AS TO COUNTS 1 AND 2 OF
THE SECOND SUPERSEDING INDICTMENT**

Defendant Garret Miller, pursuant to Fed. R. Crim. P. 7(f), hereby moves this Court to order the government to identify, through a Bill of Particulars, the “officer from the United States Capitol Police” identified in Count 1 of the Second Superseding Indictment and, even more importantly, the “officer of the Metropolitan Police Department” identified in Count 2 of the Second Superseding Indictment. He further moves this Court to order the government to identify, through a Bill of Particulars, the “act” he is alleged to have committed that form the gravamen of Counts 1 and 2 of the Superseding Indictment. In support of this motion, he sets forth the facts and argument.

1. “Three purposes are usually ascribed to a bill of particulars: (1) to enable a defendant to prepare his defense; (2) to avoid prejudicial surprise at trial; and (3)

to protect a defendant against double jeopardy.” *United States v. Hubbard*, 474 F.Supp. 64, 80 (D.D.C. 1979), *citing*, 1 C. Wright, *Federal Practice & Procedure* sec. 125 & 129. *See also United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987) (“A bill of particulars can be used to ensure that the charges brought against a defendant are stated with enough precision to allow the defendant to understand the charges, to prepare a defense, and perhaps also to be protected against retrial on the same charges.”).

2. Whether a court, in its discretion, may order a bill of particulars is not determined by the sufficiency of the indictment. Indeed, a pleading that is legally adequate still may not provide enough detail to enable a defendant to prepare adequately for trial.” Charles Alan Wright & Andrew D. Leipold, *Federal Practice and Procedure: Criminal* § 130, at 659 (2008).

3. Count 1 of the Second Superseding Indictment charges:

On or about January 6, 2021, within the District of Columbia, **GARRET MILLER**, committed and attempted to commit *an act to obstruct, impede, and interfere with a law enforcement officer, that is an officer from the United States Capitol Police, in an entryway to the United States Capitol Building*, lawfully engaged in the lawful performance of his/her official duties incident to and during the commission of a civil disorder which in any way and degree obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function. (Emphasis added)

4. Count 2 of the Second Superseding Indictment charges:

On or about January 6, 2021, within the District of Columbia, **GARRET MILLER**, committed and attempted to commit *an act to obstruct, impede, and interfere with law enforcement officers, that is, an officer from the Metropolitan Police Department in the United States Capitol Building Rotunda*, lawfully engaged in the lawful performance of her/his official duties incident to and during the commission of a civil disorder which in any way and degree obstructed, delayed, and adversely affected commerce and the movement of any article and commodity in commerce and the conduct and performance of any federally protected function. (Emphasis added)

A. Identity

5. From a review of the videos of Mr. Miller's presence in the Capitol on January 6, 2021, he appears to pass at least two, if not more, officers from the United States Capitol Police "in the entryway of the United States Capitol Building." Moreover, there appears to be somewhere between twenty-five and fifty officers from the Metropolitan Police Department "in the United States Capitol Building Rotunda" while Mr. Miller was present in the Rotunda on January 6, 2021. In other words, simply identifying the location of the alleged encounter does not sufficiently narrow the identity of the officers in question to allow Mr. Miller to prepare his defense, avoid prejudicial surprise at trial or protect him from double jeopardy.

6. Simply put, it is impossible for Mr. Miller to prepare his defense in this case without the government identifying the officers that he allegedly obstructed, impeded,

and interfered with. Indeed, it would be unfair if Mr. Miller prepared a defense to interfering with Officer Smith in the entryway and/or the Rotunda only to have the government say “gotcha” and explain at trial that it was actually referring to Officer Jones.

7. In *United States v. Zovluck*, 274 F.Supp 385 (S.D.N.Y. 1967) the defendant was charged under 18 U.S.C. § 111, with obstructing, impeding, and interfering with deputy United States marshals. The Court granted the defendant’s motion for a Bill of Particulars ordering the government to “state which Deputy United States Marshal defendant assaulted.” *Id.* at 392.

8. In *United States v. Kenney*, 2016 F.Supp. 7045700, *1 (D. Mass., Dec. 2, 2016), it was alleged that the defendant “did forcibly assault, resist, oppose, impede, intimidate, and interfere with a person designated in 18 U.S.C. § 111, that is, a Deputy United States Marshal.” On the defendant’s request for a Bill of Particulars, “the government at the hearing identified who among the Deputy Marshals present that day was the subject of the defendant's conduct.” *Id.* at *2.

9. Analogously, in *United States v. Tomasetta*, 429 F.2d 978, 980 (1st Cir. 1970) the defendant was charged with “making threats by an unstated means to an unnamed person on a particular day in a city of moderate size.” The United States Court of Appeals for the First Circuit reversed the defendant’s conviction in that case

and remanded the case for the indictment to be dismissed given that the government's failure to identify the victim of the alleged threats with more specificity rendered the indictment fatal because it did not give the defendant sufficient notice of the charges against him. *Id.* at 981.

10. Here, Mr. Miller is not even asking for the name of the alleged officers (although that would help), but he is simply asking the government to identify them in some form or fashion. For example, a picture with the identity of the officer in question circled. Only through such identification can Mr. Miller adequately respond by showing that, in fact, he did not obstruct, impede, and interfere with such officer.

B. The Act.

11. Like here, *United States v. Mostofsky*, 2021 WL 3168501 (D.D.C., July 27, 2021) (Boasberg, J.) involved a January 6 defendant charged with, *inter alia.*, a violation of 18 U.S.C. § 231. Upon Mostofsky's request for a Bill of Particulars, the Court ordered the government to identify the "'act' Defendant took that allegedly falls under Section 231(a)(3)." *Id.* at *2. As the Court explained:

[Mostofsky] first seeks additional information regarding his alleged "act" that "obstruct[ed], imped[ed], and interfer[ed]" with a law-enforcement officer. The Government responds that it must include a "'specific identification of fact' not included in the statutory language" "[o]nly in the rare case where [a defendant's] 'guilt depends so crucially upon' " the fact in question. See Gov. Opp. at 4 (citing *United States v. Haldeman*, 559 F.2d 31, 124 (D.C. Cir. 1976)). The Court finds two

holes in this argument. First, the support the Government provides does not hold that this is the “only” circumstance in which additional facts may be required, but rather that this is a circumstance in which additional facts must be required. *Haldeman*, 559 F.2d at 124. Second, as Mostofsky explains, his guilt in this case may well depend on what the charged “act” is; if he is being charged with nonviolent speech, for example, he will “file a motion to dismiss with an as-applied First Amendment challenge.” Def. Reply at 4. If, on the other hand, the act includes violence, “his defense at trial will be quite different.” *Id.* at 5. If the act is the same as in Count III and is depicted in the 30-second video clip, the government should say so.

Id. at 2. *See also United States v. Coe*, 1994 WL 539298 *3 (D. Kan., Aug. 31, 1994) (“The court directs the government to provide a bill of particulars clarifying which actions proscribed by 18 U.S.C. § 111 the defendant is alleged to have committed and, further, which actions by the defendant are alleged to have violated the statute.”).

12. Here, with regard to Count 1 of the Superseding Indictment, Undersigned Counsel has repeatedly reviewed the video of Mr. Miller’s actions at the entryway of the United States Capitol Building and is unable to identify *any* “act” which appears to have obstructed, impeded, and interfered with any United States Capitol Police Officer. As to Count 2 of the Superseding Indictment, it is not clear the act by Mr. Miller the government is alleging obstructed, impeded, and interfered with a Metropolitan Officer and whether the “act” implicates any First Amendment protections.

WHEREFORE, Defendant Garret Miller respectfully requests this Court, pursuant to Fed. R. Crim. P. 7(f), to order the government to identify, through a Bill of Particulars, the “officer from the United States Capitol Police” identified in Count 1 of the Second Superseding Indictment and, even more importantly, the “officer of the Metropolitan Police Department” identified in Count 2 of the Second Superseding Indictment. He also respectfully requests this Court to order the government to identify, through a Bill of Particulars, the “act” he is alleged to have committed that form the gravamen of Counts 1 and 2 of the Superseding Indictment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that on October 17, 2022, I caused the foregoing document to be served by the electronic case filing system (ECF) on all counsel of record.

/s/ F. Clinton Broden
F. Clinton Broden