

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

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

**MOTION TO DISMISS COUNTS 5 AND 6 OF THE SECOND  
SUPERSEDING INDICTMENT**

Defendant Garret Miller, hereby moves this Court to Dismiss Counts 5 and 6 of the Second Superseding Indictment. In support of this motion, he sets forth the facts and argument.

1. As this Court previously recognized:

It is axiomatic that “[a] crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances” if the charging document is to comport with the Constitution. *United States v. Cruikshank*, 92 U.S. 542, 558, 23 L.Ed. 588 (1875); *see also* U.S. Const. Amend. VI (“In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation [against him.]”). To satisfy the protections that the Sixth Amendment guarantees, “facts are to be stated, not conclusions of law alone.” *Cruikshank*, 92 U.S. at 558 (emphasis added). In other words, “[t]he accusation must be legally sufficient, i.e., it must assert facts which in law amount to an offense and which, if proved, would establish prima facie the accused's commission of that offense.” *United States v. Silverman*, 745 F.2d 1386, 1392 (11th Cir.

1984) (citation omitted).

“The requirement that an indictment contain a few basic factual allegations accords defendants adequate notice of the charges against them and assures them that their prosecution will proceed on the basis of facts presented to the grand jury.” *United States v. Cecil*, 608 F.2d 1294, 1297 (9th Cir. 1979). “The ... generally applicable rule is that the indictment may use the language of the statute, but that language must be supplemented with enough detail to apprise the accused of the particular offense with which he is charged.” [*United States v.*] *Conlon*, 628 F.2d [150,] 155 [(D.C. Cir. 1980)]. Furthermore, and importantly for present purposes, “[i]t is an elementary principle of criminal pleading[ ] that where the definition of an offen[s]e ... includes generic terms, it is not sufficient that the indictment shall charge the offen[s]e in the same generic terms as in the definition; but it must state the species[ ]—it must descend to particulars.” *United States v. Thomas*, 444 F.2d 919, 921 (D.C. Cir. 1971) (first alteration in original) (quoting *Cruikshank*, 92 U.S. at 558). Thus, an indictment that mirrors the exact language of a criminal statute may nevertheless be dismissed as constitutionally deficient if it is “not framed to apprise the defendant ‘with reasonable certainty[ ] of the nature of the accusation against him[.]’ ” [*United States v.*] *Nance*, 533 F.2d [699,] 701 [(D.C. Cir. 1976)] (quoting [*United States v.*] *Simmons*, 96 U.S. [360,] 362, 24 L.Ed. 819 [(1877)]).

*United States v. Miller*, 2022 WL 1718984 \*3-4 (D.D.C. May 27, 2022), *citing*, *United States v. Hillie*, 227 F.Supp. 3d 57, 71–72 (D.D.C. 2017) (noncitation alterations in original).

2. Moreover, “[t]racking the language of a statute is inadequate when the statute is silent on mens rea and criminal intent is an element of the crime.” *United States v. Luma* 240 F.Supp.2d 358, 362 (D. V.I. 2002), *citing*, *United States v.*

*Morrison*, 536 F.2d 286, 288–89 (9th Cir.1976).

3. Counts 5 and 6 of the Second Superseding Indictment are infirm because they are silent on *mens rea* and this is a necessary element of the offense alleged therein. As such, they must be dismissed. *See, e.g., Miller*, 2022 WL 1718984 at \*3.

WHEREFORE, Defendant Garret Miller respectfully requests this Court dismiss Counts 5 and 6 of the Second Superseding Indictment in this case.

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