

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

UNITED STATES OF AMERICA	:	Case No. 21-CR-108 (TSC)
	:	
v.	:	
	:	
MICHAEL FOY,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANT’S
MOTION FOR BILL OF PARTICULARS**

Defendant Michael Foy moves under Federal Rule of Criminal Procedure 7(f) for a bill of particulars. *See* Defendant’s Motion For Bill of Particulars ECF# 29. Defendant Foy now claims that this Court should grant his motion for bill of particulars, *inter alia*, because of the “lack of discovery compounds the effects of the vague Indictment.”¹ *See* Defendant’s Motion For Bill of Particular Motion at 1. The defendant’s arguments lack merit and are not supported by the facts of this case. Whether a bill of particulars is appropriate lies within this Court’s “sound discretion.” *United States v. Mejia*, 448 F.3d 436, 445 (D.C. Cir. 2006) (quotation omitted). Exercising that discretion, the Court should deny the motion.

FACTUAL BACKGROUND

For his conduct on January 6, 2021, defendant Foy is now charged by Indictment with: (1) Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); (2) Obstruction of an Official Proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2; (3) Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of 18 U.S.C. §§ 111(a)(1) and (b); (4) Knowingly Entering or Remaining in any Restricted Building or Grounds With a Deadly Weapon in violation

¹ The issues regarding the relevant discovery has now been outlined further for the Court in a hearing held before this Court on June 2, 2021, and in several Government’s Notices of Filing by undersigned counsel for the government. *See* Government’s Notices of Filing ECF# 15, 17, and 28.

of 18 U.S.C. §§ 1752(a)(1)(2) and (4), and; (5) Act of Physical Violence on the Capitol Grounds, in violation of 40 U.S.C. §§ 5104(e)(2)(F).

For the sake of brevity, the United States will not fully restate the evidence outlined in its prior pleadings and two detention hearings before this Court. A few points herein bear emphasis, however. In numerous prior filings and hearings, the government outlined in particular details the defendant's violent actions against law enforcement officers who were protecting the U.S. Capitol, elected representatives, their staffs, the Vice-President of the United States, their families, and our Democracy on January 6, 2021. In short, the defendant brutally attacked and assaulted the brave and heroic law enforcement officers – men and women – who were protecting the U.S. Capitol with a metal spear and his hockey stick; indeed, the defendant's main goal was to tear down our system of constitutional Democracy and anyone who got in his way. The metal spear and the defendant's hockey stick represented something much more than sticks — they were instruments of brutality and viciousness which could have caused death or serious bodily injury to anyone in the path of the defendant's violent throws, swings and blows to the law enforcement officers.

LEGAL ANALYSIS

The indictment and discovery for this case provide adequate notice to the defendant concerning the alleged crimes in the indictment. Of note, the government has provided and the defendant has reviewed substantial discovery to date. As the Court is now aware from recent notices of filing by the government and two detention hearings before the Court, the defendant now has received a substantial amount of body-worn camera videos, other videos, law enforcement paperwork for this case, surveillance video, downloaded copies of all items from his cellphone, and many other items to prepare for trial in this matter. (*See* Government's Notices of Filing ECF# 15, 17, and 28). Accordingly, a bill of particulars is unwarranted in this matter.

A bill of particulars “ensure[s] 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.” *United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987). Importantly, a bill of particulars is not required, however, if the indictment “is sufficiently specific, or if the requested information is available in some other form.” *Id.*; see *United States v. Lorenzana-Cordon*, 130 F. Supp. 3d 172, 179 (D.D.C. 2015) (denying motion for bill of particulars and noting that the government had provided extensive discovery that “allows Defendants to adequately prepare for trial”). A bill of particulars “is not a discovery tool or a device for allowing the defense to preview the government’s theories or evidence.” *United States v. Ramirez*, 54 F. Supp. 2d 25, 29 (D.D.C. 1999); see also *United States v. Brodie*, 326 F. Supp. 2d 83, 91 (D.D.C. 2004) (same). Rather, a bill of particulars “is intended to give the defendant only that minimum amount of information necessary to permit the defendant to conduct his *own* investigation and not to provide the defendant with the fruit of the government’s investigation.” *United States v. Sanford Ltd.*, 841 F. Supp. 2d 309, 316 (D.D.C. 2012) (internal quotation marks and citation omitted, emphasis in original). Therefore, a bill of particulars “properly includes clarification of the indictment, not the government’s proof of its case.” *United States v. Martinez*, 764 F. Supp. 2d 166, 173 (D.D.C. 2011) (internal quotation marks and citation omitted); *United States v. Savoy*, 889 F. Supp. 2d 78, 115 (D.D.C. 2012) (same).

More broadly, the purpose of a bill of particulars is to outline the charges brought against a defendant are stated with enough precision to allow the defendant to understand the charges, to prepare a defense. See *United States v. Esquivel*, 755 F. Supp. 434, 436 (D.D.C. 1990). “It is not the function of a bill of particulars to provide a detailed disclosure of the government’s evidence in advance of trial.” *Overton v. United States*, 403 F.2d 444, 446 (5th Cir. 1968); see also *United*

States v. Torres, 901 F.2d 205, 234 (2nd Cir.) (“[a]cquisition of evidentiary detail is not a function of a bill of particulars”), *cert. denied*, 498 U.S. 906 (1990); *United States v. Armocida*, 515 F.2d 49, 54 (3rd Cir.) (bill of particulars is not intended as a vehicle for “wholesale discovery of the Government's evidence”), *cert. denied*, 423 U.S. 858 (1975). A bill of particulars is also not designed to force the government to reveal a theory of its case that the defendant could then use to limit the government's presentation of its case at trial. *United States v. Torres, supra*, 901 F.2d at 234; *United States v. Burgin*, 621 F.2d 1352, 1359 (5th Cir.), *cert. denied*, 449 U.S. 1015 (1980). The defendant’s constitutional right underlying a bill of particulars is to know the offense with which he or she is charged, not to know the details of how it will be proved. *United States v. Kendall*, 665 F.2d 126, 135 (7th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982). Simply put, at this time the defendant request for bill of particulars has been fully met by the government. Therefore, the defendant’s motion lacks any new facts nor cites any legal principles to support his arguments. As such, the defendant’s motion is misplaced and should be denied.

Applying the above-mentioned principles outlined *supra*, judges of this Court have consistently denied motions for a bill of particulars where, as here, the motion seeks details about the nature of the government’s evidence. Thus, for example, in *United States v. Han*, 280 F. Supp. 3d 144, 149 (D.D.C. 2017), the Court denied a motion for a bill of particulars requesting information about the basis for fraud and tax charges against the defendant, including the precise representations allegedly made by the defendant and the amount of taxes allegedly owed. The Court explained that the requested information had already been provided to the defendant in discovery and elsewhere, and a “bill of particulars is meant to allow a defendant to properly prepare for trial, not provide a method to force the prosecution to connect every dot in its case.” *Id.*

Similarly, in *Brodie*, the court denied a motion for a bill of particulars requesting “the circumstances surrounding the alleged acts” of fraud committed by the defendants as well as “other evidentiary details.” 326 F. Supp. 2d at 92. The court reasoned that the charges set forth in the indictment were “detailed and alleged with particularity” and “the discovery provided by the government has been voluminous,” and therefore there was “no reason for any further particularization of the overt acts.” *Id.*

Finally, in *Sanford Ltd.*, the court denied a motion for a bill of particulars regarding the “substance, time, place and date” of allegations regarding falsification of records and other charges against a corporate defendant. 841 F. Supp. 2d at 315. The court explained that “the general rule in conspiracy cases is that the defendant is not entitled to obtain detailed information about the conspiracy in a bill of particulars.” *Id.* at 317 (internal quotation marks and citation omitted). Accordingly, the court denied the defendant’s request for information about the identities of its employees alleged to have participated in the conspiracy and other details about the overt acts charged in the indictment. *Id.* at 317-18.

The same result is appropriate here for three reasons. First, the indictment provides sufficient details outlining the allegations against the defendant. Those detailed charges amply “define[] each defendant’s role . . . in a manner sufficient to avoid surprise and permit defendants to permit defendants to prepare a defense.” *United States v. Pollack*, 534 F.2d 964, 970 (D.C. Cir. 1976). Further, if “the indictment is sufficiently specific, or if the requested information is available in some other form, then a bill of particulars is not required.” *See Butler*, 822 F.2d at 1193. In particular, the government has provided abundant information through its discovery, and various filings and in two detention hearing before the Court. *See* Government’s Notices of Filing ECF# 15, 17, and 28. In that regard, the defendant has received a substantial amount of body-worn

camera videos, other videos, law enforcement paperwork for this case, surveillance video, download copies of all items from his cellphone, and many other items to prepare for trial in this matter. Second, much of the requested information is already available to the defendant. The government has produced preliminary informal discovery and has made formal discovery production. *See* Government's Notices of Filing ECF# 15, 17, and 28.

Finally, Rule 7(f) does not entitle the defendant to the granular information he seeks. For example, the defendant requests (*See* Defendant's Motion For Bill of Particular Motion at 11) "specifics as to place and manner of use" of a dangerous weapon, as it relates to defendant's use of his hockey stick. Significantly, not only can the defendant, through his own investigation and review of the government's discovery materials and numerous videos showing the defendant's violent assault on the officers, identify his *own* use of his hockey stick, he is not entitled to detailed information as to how the government intends to prove its case. *See Sanford Ltd.*, 841 F. Supp. 2d 309 at 315-16. A bill of particulars, in short, is not a weapon that enables the defendant to "force the government to reveal all its evidence before trial." *United States v. Taylor*, 17 F. Supp. 3d 162, 178 (E.D.N.Y. 2014). Simply put, the defendant can view the numerous videos of the defendant use of the deadly weapons and his actions at the time of his assault on the law enforcement officers.

For all these reasons, the defendant's motion for a bill of particulars should be denied.

Respectfully submitted,

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