

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

UNITED STATES OF AMERICA :
 : **CASE NO. 21-cr-00077**
 v. :
 :
MELODY STEELE SMITH :
 :
 Defendant. :

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

The United States of America respectfully submits this opposition to Defendant Melody Steele Smith’s Motion for Bill of Particulars. ECF NO. 30. For the reasons set forth below, Smith is not entitled to, nor in need of, the “particulars” sought. The indictment (1) identifies the relevant time period; (2) lists the prohibited conduct the Defendant engaged in; (3) alleges the requisite mens rea; and (4) provides the statutory citation to each offense. Additionally, the indictment has been supplemented with discovery—including multiple videos documenting the Smith’s conduct on January 6th. Additionally, as requested by Smith, the government will provide her with a transcript of the grand jury proceeding. This combination allows Smith to both understand and defend against the indicted charges.

Relevant Charges Alleged in the Indictment

On January 15, 2021, Smith was charged by complaint for her actions on January 6, 2021, when large crowds breached the U.S. Capitol Building as Congress convened a Joint Session to certify the Electoral College vote in the 2020 Presidential Election. (ECF No. 1-1). On February 3, 2021, the grand jury charged her with several federal offenses (ECF No. 8) charging the Defendant with offenses related to the January 6, 2021 attack on the U.S. Capitol.¹

¹ The attack on the U.S. Capitol occurred on January 6, 2021. As a Joint Session of the United States House

Smith stands charged with obstruction of an official proceeding, in violation of 18 U.S.C. §§ 1512(c)(2) and 2 (Count One); entering and remaining in a restricted building or ground, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); and entering and remaining in certain rooms in the Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(C) (Count Five).

The Government's Discovery to Date

The Defendant acknowledges that the government has produced case-specific discovery which includes video footage and numerous reports regarding the charged offenses. The government will continue to comply with discovery obligations, advising defense counsel when additional information is available

Legal Standard

The purpose of a bill of particulars is “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.” United States v. Butler, 822 F.2d 1191, 1193 (D.C. Cir. 1987). A bill of particulars should thus be granted only when “necessary to prevent unfair surprise at trial.” United States v. Hsin-Yung, 97 F. Supp.2d 24,

of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election, members of a large crowd that had gathered outside forced entry into the U.S. Capitol, broke windows and assaulted members of law enforcement, as others in the crowd encouraged and assisted those acts. Scores of individuals entered the U.S. Capitol without authority to be there. As a result, the Joint Session and the official proceeding of the Congress were halted until the Capitol Police, the Metropolitan Police Department, and other law enforcement agencies from the city and surrounding region were able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials.

36-37 (D.D.C. 2000) (internal citation omitted). If an indictment “is sufficiently specific, or if the requested information is available in some other form, then a bill of particulars is not required.” Butler, 822 F.2d at 1193, *see* United States v. Lorenzana-Cordon, 130 F.Supp.3d 172, 179 (D.D.C. 2015)(deny motion for bill of particulars and noting that the government had provided extensive discovery that allowed Defendant to adequately prepare for trial.”)

Applying these principles, courts have repeatedly concluded that a bill of particulars “is not a discovery tool or a device for allowing the defense to preview the government's evidence, [nor is it] the function of a bill of particulars to provide detailed disclosure of the government's evidence in advance of trial.” United States v. Brodie, 326 F. Supp.2d 83, 91 (D.D.C. 2004). “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); United States v. Armocida, 515 F.2d 49, 54 (3rd Cir.1975) (bill of particulars is not intended as a vehicle for “whole sale discovery of the Government's evidence”).

Defendant misunderstands the purpose of an indictment and the low bar an indictment must clear to satisfy the federal rules and Constitution. As the D.C. Circuit explained in United States v. Haldeman, 559 F.2d 31, 124 (D.C. Cir. 1976), “[a]lthough an indictment must in order to fulfill constitutional requirements apprise the defendants of the essential elements of the offense with which they are charged, neither the Constitution, the Federal Rules of Criminal Procedure, nor any other authority suggests that an indictment must put the defendants on notice as to every means by which the prosecution hopes to prove that the crime was committed.” Indeed, “the validity of an indictment ‘is not a question of whether it could have been more definite and certain.’” United States v. Verrusio, 762 F.3d 1, 13 (D.C. Cir. 2014) (quoting United States v. Debrow, 346 U.S. 374, 378 (1953)). “While detailed allegations might well have been required under common-law

pleading rules, . . . they surely are not contemplated by Rule 7(c)(1), which provides that an indictment ‘shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.’” United States v. Resendiz-Ponce, 549 U.S. 102, 110 (2007). As a mere notice pleading, an indictment is sufficient if it “contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend.” Id. at 108; United States v. Haldeman, 559 F.2d 31, 123 (“The validity of alleging the elements of an offense in the language of the statute is, of course, well established.”). Only in the rare case where “guilt depends so crucially upon . . . a specific identification of fact” not included in the statutory language will an indictment that restates the statute’s language be insufficient. Haldeman, 559 F.2d at 125 (quoting Russell v. United States, 369 U.S. 749, 764 (1962)).

Applying these principles, courts in this District have upheld the sufficiency of indictments far less specific than the this one. For example, in United States v. Apodaca, 275 F. Supp. 3d 123 (D.D.C. 2017), the defendants were charged with offenses under 18 U.S.C. § 924(c). The indictments provided only “general detail as to the places where the offenses were committed: namely, Mexico and the United States.” Id. at 154. As to the “when” of the offenses, the indictments alleged that the offenses had occurred over a two- and nine-year period. Id. Finally, the indictments “d[id] not specify a particular weapon that was possessed,” or “specify whether the firearms were ‘used, carried or brandished’” under the statute. Id. Nonetheless, the indictments were sufficient.

Argument

Defendant’s request improperly seeks disclosure of the Government’s legal theories and seeks to lock in its evidentiary proof. Bills of particulars are not designed to compel the government to disclose its theory of the case, its witnesses, or a detailed description of the manner

and means by which the crime was committed. *See, e.g., United States v. Han*, 280 F. Supp. 3d 144, 149 (D.D.C. 2017); *United States v. Sanford LTD.*, 841 F. Supp. 2d 309, 316 (D.D.C. 2012) (finding that “unlike discovery, 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” and explaining that the government should be permitted “to avoid prematurely disclosing evidentiary matters to the extent that it will be unduly confined in presenting its evidence at trial.”) (citation omitted); *United States v. Martinez*, 764 F. Supp. 2d 166, 173 (D.D.C. 2011); *Lorenzana-Cordon*, 130 F. Supp. 3d at 174 (bill of particulars improper where it seeks government's proof of its case); *United States v. Concord Mgmt.*, 385 F.Supp.3d 69, 74 (D.D.C. 2019) (“A bill of particulars is inappropriate if by reasonable investigation in the light of information contained in the indictment, or otherwise furnished by the prosecution, the defendant could avoid prejudicial[] surprise[].”) (internal quotations and citation omitted). As one district court succinctly stated:

The bill of particulars is not intended to give a defendant the benefits of the government's investigative efforts. Nor may it be used to compel disclosure of the government's legal theory prior to trial. A defendant is only entitled to know those central facts which will enable him to conduct his own investigation of the transactions that resulted in the charges against him. Moreover, *a defendant is not entitled to compel the government to describe in detail the manner in which the crime was committed, thereby forcing the prosecution to fix irrevocably the perimeters of its case in advance of trial.*

United States v. Stroop, 121 F.R.D. 269, 272 (E.D.N.C. 1988) (emphasis added; citations omitted).

The Defendant's specific demands do not seek clarification of uncertain or vague charges in the indictment. Instead, as the Defendant has discovery including video footage of his January 6, 2021 conduct, he is attempting to use a bill of particulars as a discovery device and to preview

the government's trial theories--neither of which is a permissible basis for granting a motion under Rule 7(f). Requiring the government to identify how acts were committed or identify the specific evidence it would use at trial, are simply efforts by the Defendant to lock the government in on its legal theory, well in advance of trial. Although the government has an affirmative duty to disclose, it does not have a corresponding obligation to do the Defendant's trial preparation, provide the precise manner in which the government will prove or introduce its case at trial, or identify the specific legal theory upon which the proof will be based.

Conclusion

For the foregoing reasons, and any additional reasons as may be cited at a hearing on this motion, the government respectfully requests that the Defendant's motion be denied.

Respectfully submitted,

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