

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-134 (CJN)
	:	
MARK SAHADY	:	
	:	
Defendant.	:	

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

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to the Defendant’s Motion for a Bill of Particulars, ECF No. 96 (redacted version). The defendant, Mark Sahady, moves under Federal Rule of Criminal Procedure 7(f) for a bill of particulars that would “specify . . . the act or acts the [g]overnment intends to prove constituted a violation of [Count One] 18 U.S.C. 1512(c)(2) on January 6, 2021.” ECF No. 96 at 1. Sahady’s motion seeks evidentiary detail inappropriate for a bill of particulars and raises unfounded accusations irrelevant to his requested relief. Moreover, he has received full disclosure regarding the nature of the government’s case through the extensive discovery provided in this case. The Court should exercise its discretion to deny the motion.

FACTUAL BACKGROUND

The government previously set forth the factual background of this case in its omnibus opposition to the defendant’s motions to dismiss. ECF No. 73 at 1–4.

PROCEDURAL HISTORY

On February 19, 2021, the government filed an Information charging Sahady with one count of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C.

§ 1752(a)(1); one count of disorderly and disruptive conduct in a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. § 1752(a)(2); and one count of disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D). *See* ECF No. 9. On March 22, 2022, the government filed a Superseding Information that included the same charges as the original Information but removed references to the Vice President-elect in the charge descriptions. *See* ECF No. 37.

Current counsel for the government joined the case in January 2023 and entered their appearances on February 1, 2023, and February 6, 2023. *See* ECF Nos. 51, 52. On March 22, 2023, the government filed the Second Superseding Information, which added one additional count: parading, demonstrating, or picketing in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

On April 5, 2023, a grand jury returned a five-count indictment charging Sahady with one count of obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. § 1512(c)(2) and 2 (Count One), in addition to the counts previously alleged: one count of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1) (Count Two); one count of disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2) (Count Three); one count of disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Four); and one count of parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G) (Count Five).

ARGUMENT

An indictment need only include “a plain, concise, and definite written statement of the essential facts constituting the offense charged,” but a court may, in its discretion, “direct the government to file a bill of particulars” clarifying the allegations in the indictment. Fed. R. Crim. P. 7(c)(1), (f). 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). It 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); see also *United States v. Taylor*, 17 F. Supp. 3d 162, 178 (E.D.N.Y.

2014) (bill of particulars “may not be used by the defense as a fishing expedition or to force the government to reveal all its evidence before trial”).

Applying this principle, judges of this Court have consistently denied motions for a bill of particulars where, as here, the motion¹ 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

¹ Sahady claims in his motion that he does not “seek to elicit information about how the Government will make its case or its trial strategy” but immediately contradicts himself in demanding disclosure of the act or acts he committed on January 6 that the government will present to establish his guilt for Count One. *See* ECF No. 96 at 3.

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 detail outlining the allegations against Sahady. *See United States v. Mejia*, 448 F.3d 436, 445 (D.C. Cir. 2006) (no bill of particulars required where the superseding indictment identified, among other things, the object of the charged conspiracy, the conspiracy’s “time period,” the applicable *mens rea*, and locations where conspirators acted). Along with providing a specific date for the alleged conduct, the superseding indictment language tracks closely that of the applicable statutes.

Nothing in the superseding indictment’s language is vague, unclear, or lacking in specificity, especially in light of Sahady’s recorded conduct. If Sahady believes the government’s evidence is insufficient or that the statutes themselves are vague as applied to his conduct, then he may move for the appropriate relief, as he has already done in multiple respects.

Second, the full scope of the conduct giving rise to the allegations in this case is recorded and has been disclosed to defense. Sahady has received extensive video and documentary discovery, including all grand jury materials and the government’s trial exhibits—an even greater amount of material than most defendants at the bill of particulars juncture. Sahady is in a particularly primed position to assess the government’s case because the parties have twice been on the cusp of trial. Sahady’s comprehensive possession of this case’s discovery is further demonstrated by his nine exhibits presented in support of a straightforward bill of particulars

motion.² Ultimately, through discovery, the government has provided much more than the minimal amount of information “necessary to permit the defendant to conduct his own investigation[.]” *Sanford Ltd.*, 841 F. Supp. 2d at 316 (internal quotation marks and citation omitted).

Finally, Rule 7(f) does not entitle Sahady to the granular information he seeks. For example, Sahady requests “what specific conversation creates criminal liability and what specific acts constitute the corrupt influencing or obstruction of an official proceeding” (ECF No. 96 at 9) but Sahady can, through his own investigation, identify his *own* acts and statements which would constitute a “corruptly” committed crime. A bill of particulars is not a sword that enables the defendant “to preview the government’s theories or evidence.” *Ramirez*, 54 F. Supp. 2d at 29. “It properly includes clarification of the indictment, not the government’s proof of its case.” *Id.* (citing *United States v. Smith*, 341 F. Supp. 687, 690 (N.D. Ga. 1972)). And even if it were, the parties were previously so close to trial that Sahady was, in fact, in possession of the government’s trial evidence.

² Sahady’s motion presents frequent irrelevant contentions for which a bill of particulars is an inapplicable remedy. For example, Sahady baselessly accuses the government of misleading the grand jury and this Court, ECF No. 96 at 7–10. But none of his contentions have anything at all to do with whether “the charges brought against [him] are stated with enough precision to allow [him] to understand the charges, to prepare a defense, and perhaps also to be protected against retrial on the same charges.” *Butler*, 822 F.2d at 1193. In fact, these allegations are nothing more than another bite at the apple: an attempt to continue to litigate his already fully briefed pending motion to dismiss. Sahady even acknowledges this. *See* ECF No. 96 at 10 (summarizing eight pages of preceding argument as addressing “Constitutional speedy trial concerns” and “vindictive[] and selective[]” prosecution). None of these meritless arguments should sway the Court regarding any of Sahady’s pending motions either. *See, e.g., United States v. Borda*, 905 F. Supp. 2d 201, 206 (D.D.C. 2012) (a facially valid indictment “may not be challenged on the ground that the grand jury acted on the basis of inadequate, unreliable, or incompetent evidence”) (citing *Bank of Nova Scotia v. United States*, 487 U.S. 250, 261 (1988) (“an indictment valid on its face is not subject to such a challenge”)).

CONCLUSION

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

Respectfully submitted,

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