

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

UNITED STATES OF AMERICA :
 :
 v. : **Criminal No. 22-cr-186 (TJK)**
 :
RALPH JOSEPH CELENTANO III, :
 :
 Defendant. :

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

The United States of America respectfully submits this opposition to Defendant Ralph Joseph Celentano III (“Defendant Celentano”)’s Motion for Bill of Particulars. (ECF No. 19.) The Court should deny Defendant Celentano’s motion—filed more than three months after his arraignment—as untimely. The Court should also deny the motion on the merits because it improperly asks the Court to compel the government to provide a detailed exposition of its evidence and legal theories, and because the information sought is available via the government’s discovery and other sources. Defendant Celentano is not entitled to, nor in need of, the “particulars” sought. These materials allow Defendant Celentano to both understand and defend against the indicted charges.

I. Procedural Background

Defendant Celentano was arrested on March 1, 2022, pursuant to a complaint. (ECF No. 1.) The Statement of Facts accompanying the complaint specified, among other things, background information about the U.S. Capitol; details about the certification of the Electoral College vote count by a joint session of Congress, and the delay caused by the riot on January 6, 2021; as well as specifics regarding Defendant Celentano’s actions that day. (ECF No. 1-1.)

On May 25, 2022, a federal grand jury returned a seven-count indictment charging

Defendant Celentano with offenses related to the January 6, 2021 attack on the U.S. Capitol, including Count Seven, a violation of 18 U.S.C. § 1512(c)(2) and 2 (the subject of Defendant Celentano's motion for a bill of particulars). (ECF No. 14.) Defendant Celentano was arraigned on the Indictment, on June 2, 2022. Following Defendant Celentano's arraignment, the parties appeared for a status hearing before this Court on July 7, 2022, at which time the parties notified the Court that Defendant Celentano rejected the government's plea offer. Trial in this case is scheduled to commence on March 20, 2023.

Defendant Celentano filed the instant motion seeking a bill of particulars on September 9, 2022. (ECF No. 19.)

II. Factual Background

General Facts

At 1:00 p.m., on January 6, 2021, a Joint Session of the United States Congress convened in the United States Capitol building. The Joint Session assembled to debate and certify the vote of the Electoral College of the 2020 Presidential Election. With the Joint Session underway and with Vice President Mike Pence presiding, a large crowd gathered outside the U.S. Capitol. As early as 12:50 p.m., certain individuals in the crowd forced their way through, up, and over erected barricades. The crowd, having breached police officer lines, advanced to the exterior façade of the building. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol. At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to – and did – evacuate the chambers.

Facts Specific to Defendant Celentano

In the early morning hours of January 6, 2021, Defendant Celentano traveled from New York to D.C. He attended the “Stop the Steal” rally on the Ellipse then went onto the restricted grounds of the Capitol. While on the west terrace of the Capitol, he shouted at police officers, including yelling, “How dare you, you pathetic pieces of shit!” and got into physical scuffles with uniformed officers the afternoon of January 6. Also while on the west terrace, Defendant Celentano rammed into a U.S. Capitol police officer from behind, pushing that officer over a ledge into other officers below.

In a video taken on the grounds of the Capitol, on January 6, 2021, Defendant Celentano said to the camera, “somebody’s gotta do something.” An unidentified person asked, “what do you think we should do?” At the same time as another unidentified individual said, “they’re evacuating the building.” Defendant Celentano answered, “occupy the Capitol, our building.”

Defendant Celentano posted on the social media platform Parler after the 2020 election, as well as before and on or about January 6, 2021. In one post, Defendant Celentano wrote, “the crooked poll workers caught on video need to be identified and hauled before a federal judge and explain their actions #stop the steal.” Another post stated, “We must take back what is our, if our elected officials wont [*sic*] we will do it ourselves Make AMERICA our Again” On or about January 6, 2021, Defendant Celentano posted, “Americans have spoke [*sic*], we want our country back at all costs wake up congress and senate your fairy tales political policys [*sic*] are over we want what is ours so you pepper sprayed, tear gassed us and we the people took back OUR HOUSE not yours remember that crooked Congress and sedated Senate.” Another post read, “After today in DC congress shit their pants its [*sic*] our country we need to take it back now is the time in history.”

Count Seven of the Indictment

Count Seven charges Defendant Celentano with a violation of 18 U.S.C. § 1512(c)(2).

Count Seven of the Indictment states:

On or about January 6, 2021, within the District of Columbia and elsewhere, **RALPH JOSEPH CELENTANO III**, attempted to, and did, corruptly obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress's certification of the Electoral College vote as set out in the Twelfth Amendment of the Constitution of the United States and 3 U.S.C. §§ 15-18.

(Obstruction of an Official Proceeding and Aiding and Abetting, in violation of Title 18, United States Code, Sections 1512(c)(2) and 2)

(ECF No. 14.)

The indictment (1) identifies the relevant time period; (2) lists the prohibited conduct in which Defendant Celentano engaged; (3) alleges the requisite mens rea; and (4) provides the statutory citation to the offense.

III. Defendant Celentano's Motion Should Be Denied as Untimely

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, a defendant may move for a bill of particulars "before or within 14 days of arraignment or at a later time if the court permits." A defendant should seek leave of court to file such a motion outside this 14-day window. *See United States v. Kozel*, No. 19-CR-460 (KMW), 2020 WL 4751498, at *3 (S.D.N.Y. Aug. 17, 2020) ("A defendant must move for a bill of particulars within 14 days of his arraignment, unless authorized by the court.). A court should not countenance an untimely motion where the defendant offers no explanation or excuse for the delay. *Id.* ("Defendant offers no explanation for his delay, and the Court declines to excuse Defendant's lateness.").

Defendant Celentano was arraigned on June 2, 2022. The instant motion, which was filed September 9, 2022, is thus more than 84 days (nearly three months) late. Defendant Celentano offers no explanation or excuse for this delay, nor any reason for the Court to find good cause to

allow the late filing now. Indeed, the motion would still be untimely if the Court were to count 14 days from July 6, 2022 - the date the parties informed the Court that a trial (and thus the need to prepare a trial defense) would be necessary.

The 14-day time limit in Rule 7(f) makes logical sense. By filing a motion for a bill of particulars, a defendant is essentially telling the Court that he “does not have sufficient notice of the allegations against him ... in order to prepare a meaningful defense.” (ECF No. 19 at 1.) A motion for a bill of particulars should be filed “promptly” after arraignment. *United States v. Mosquera-Murillo*, 153 F. Supp. 3d 130, fn. 6 (D.D.C. 2015) (noting motion for bill of particulars should be filed “promptly after the initiation of a criminal case”). Indeed, multiple district courts have denied motions seeking a bill of particulars as untimely. *See, e.g., United States v. Tajideen*, 319 F. Supp. 3d 445, 466 fn. 12 (D.D.C. 2018) (denying motion filed 308 days after arraignment); *United States v. Russo*, No. 20-CR-023 (DLI), 2021 WL 1723250, at *4 (E.D.N.Y. Apr. 30, 2021) (denying motion filed 10 months after arraignment); *Kozel*, 2020 WL 4751498, at *3 (denying motion filed six months after arraignment). And as with a decision based on the merits, a decision to deny a motion for a bill of particulars as untimely is soundly within the discretion of the court. *United States v. Cooper*, 902 F.2d 1570 (6th Cir. 1990) (“Thus, because Cooper’s motion for a bill of particulars was untimely, the district court acted within its discretion to deny the motion”).

Because Defendant Celentano’s motion was filed 84 days late, the Court should deny it as untimely and not reach the merits.

IV. The Indictment, Discovery, and Other Materials Sufficiently Detail the Charge

If the Court reaches the merits of Defendant Celentano’s motion, the motion should be denied because Defendant Celentano improperly asks the Court to compel the government to provide a detailed explanation of its trial evidence and arguments, and the information sought is available to Defendant Celentano in the discovery and other sources.

Law and Argument

The Federal Rules of Criminal Procedure require that an “indictment . . . be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). A charging instrument “is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *Hamling v. United States*, 418 U.S. 87, 117 (1974). Generally, an indictment is sufficient if it “set[s] forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished.” *Id.* (internal quotation marks omitted).

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. 1987). If an indictment or information “is sufficiently specific, or if the requested information is available in some other form, then a bill of particulars is not required.” *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 matter of right and is only ordered when “necessary.” *United States v. Sanford Ltd.*, 841 F. Supp. 2d 309, 316 (D.D.C. 2012) (quoting 1 Charles Alan Wright & Andrew Leipold, *Federal Practice and Procedure: Criminal* § 130 (4th ed. 2008)). 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.” *Sanford Ltd.*, 841 F. Supp. 2d at 316 (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).

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, 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 Celentano 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 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.

Defendant Celentano has enough information to enable him to prepare his defense to the allegations against him. The government has provided case specific discovery, including numerous videos, grand jury materials, search warrants, the post-arrest interview, and hundreds of pages of FBI reports. To date, the government has provided 19 volumes of global discovery. The government tendered a plea agreement with a proposed “Statement of Offense” that details the factual basis supporting violation of 18 U.S.C. § 1512(c)(2) and 2. These materials are sufficient for Defendant Celentano to understand the charges and prepare a defense.

Defendant Celentano’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).

Defendant Celentano 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 Defendant Celentano 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 a 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.

V. Conclusion

For the foregoing reasons, the government respectfully requests that Defendant Celentano's motion be denied.

Respectfully submitted,

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