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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA **3:16-CR-00051-BR**

v.

AMMON BUNDY, et al.,

Defendants.

GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTION FOR A BILL OF PARTICULARS (#469)

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, Assistant United States Attorneys, hereby responds to defendants' Motion for Bill of Particulars and its supporting Memorandum (ECF No. 469), filed by defendant O'Shaughnessy on behalf of all defendants.

I. Introduction

Defendant O'Shaughnessy, on behalf of himself and all other defendants, requests that the Court order a bill of particulars in this case. Specifically, defendants seek responses to 26

separate questions concerning five of the six counts of the Superseding Indictment. These 26 questions are purportedly designed to elicit specific information that defendants argue is necessary "so that the defendants will be able to adequately prepare for motion litigation and trial on the Court's expedited schedule." (Defs.' Mem. 2, ECF No. 469-1). The Superseding Indictment in this case, however, contains specific allegations which, along with the government's discovery, provide sufficient notice to prevent any unfair surprise. Therefore, defendants' Motion for a Bill of Particulars should be denied.

II. Argument

A. The Superseding Indictment Contains Adequate Allegations of All Charges Against All Defendants

An indictment must be a plain, concise, and definite written statement of the essential facts constituting the offenses charged. Fed. R. Crim. P. 7(c)(1). Generally, an indictment is sufficient if it sets forth the elements of the charged offenses so as to ensure the right of the defendant not to be placed in double jeopardy and to be informed of the offenses charged. *United States v. Rodriguez*, 360 F.3d 949, 958 (9th Cir. 2004). In reviewing a claim of insufficiency, an indictment should be: (1) read as a whole; (2) read to include facts which are necessarily implied; and (3) construed according to common sense. *United States v. Blinder*, 10 F.3d 1468, 1471 (9th Cir. 1993).

While the decision regarding the need for a bill of particulars in any given case rests with the sound discretion of the trial judge, motions for bills of particulars are seldom employed in modern federal practice. Rule 7(f) provides the district court with the authority to order a bill of particulars. Such a bill normally serves three functions: (1) to inform defendant of the nature of the charge against him; (2) to enable him to prepare for trial; and (3) to avoid double jeopardy.

United States v. Giese, 597 F.2d 1170, 1180 (9th Cir. 1979) (citations omitted). A bill of particulars need be granted only if the accused, in the absence of a more detailed specification, would be disabled from preparing a defense, caught by unfair surprise at trial, or hampered in seeking the shelter of the Double Jeopardy Clause. *United States v. Sepulveda*, 15 F.3d 1161, 1192-93 (1st Cir. 1993).

Here, Count 1 of the Superseding Indictment alleges that all defendants participated in a conspiracy to impede officials of the United States Fish and Wildlife Service and the Bureau of Land Management from performing their duties at the Malheur National Wildlife Refuge (the "Refuge") and elsewhere in Harney County by force, intimidation, and threats, in violation of 18 U.S.C. § 372. The Indictment specifies eight overt acts in furtherance of that conspiracy which outlines the government's theory of the case. Count 2 charges some defendants with possession or causing to be present firearms or other dangerous weapons in a federal facility at the Refuge with the intent that these weapons be used in the commission of Count 1, in violation of 18 U.S.C. §§ 930(b) and (2). Count 3 similarly charges some defendants with using and carrying firearms during and in relation to the crime charged in Count 1, in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2. Count 5 charges two defendants with theft of government property, including cameras and related equipment, in violation of 18 U.S.C. § 641. Finally, Count 6 charges two defendants with depredation of a sacred archeological site at the Refuge by means of excavation and the use of heavy equipment, in violation of 18 U.S.C. §§ 1361 and 2.

Defendants fail to explain how the Superseding Indictment in this case is insufficient to "permit the preparation of an adequate defense." Instead, defendants ironically complain that the government has already provided their counsel with too much discovery in the case. (Defs.'

Mem. 3). The 26 questions now propounded by the defendants seem to belie their claim that the Superseding Indictment has provided them with insufficient notice to prepare their defense: They seek names of federal employees and other evidence related to specific points, all of which underscores the fact that their counsel have a clear understanding of the charges at issue. The Superseding Indictment tracks the elements of the relevant statutes and provides sufficient detail to apprise all defendants of the nature of the charges so they can prepare their defense and avoid double jeopardy. The Motion should therefore be denied.

B. Because Extensive Discovery Has Been, and Will Continue to Be, Provided, the Motion for a Bill of Particulars Should Be Denied

In examining whether a bill of particulars is warranted, a district court should determine whether the indictment and all other disclosures made by the government adequately advise a defendant of the charges against him or her. *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983). Consequently, when the government provides full disclosures, through and in accordance with the rules governing discovery, there is no need for a bill of particulars. *Id.* Defendants have been provided an extensive amount of discovery in this case, even going beyond that which is technically required by the rules and case law. While the government must ultimately disclose its theory of the prosecution, it should not be forced to spread its entire case in advance before a defendant: A defendant's constitutional right is to know the offense with which he is charged, not to know the details of how it will be proved. *United States v. Kendall*, 665 F.2d 126, 135 (9th Cir. 1981).

In this matter, all of the parties, as well as the Court, are fully cognizant of the general nature of the charges. They all relate to the unprecedented 41-day standoff at the Refuge which occurred when most of the defendants, as well as others, occupied the Refuge in January and

February of this year, all the while brandishing assault rifles, guns, and other dangerous weapons, and purportedly to protest the arson convictions of two Eastern Oregon ranchers. Defendants splashed evidence of their crimes all over social media and held incriminating press conferences during the occupation. The government prepared and filed three detailed complaint affidavits outlining some of the evidence against many leaders of the occupation. Those affidavits provide an even more specific framework of the government's theory of the case. *See United States v. Bundy*, No. 3:16-mj-00004, ECF No. 14; *United States v. Patrick*, No. 3:16-mj-00006, ECF No. 1; *United States v. Anderson*, No. 3:16-mj-00007, ECF No. 1. As defendants note, their counsel have been provided with considerable discovery with which they can prepare their defense. Finally, the Court has previously indicated that it will require the government to file its trial memoranda, expert disclosures, witness lists, and exhibit lists in July 2016, several weeks before jury selection begins. Defendants will know what they will be facing long before September 7, 2016.

III. Conclusion

For the reasons given above, the Court should not exercise its discretion to order a bill of particulars and should deny defendants' Motion.

Respectfully submitted this 11th day of May 2016.

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