

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 6:17-cr-18-Orl-40KRS

NOOR ZAHI SALMAN

ORDER

This cause is before the Court on Defendant Noor Salman's Motion for a Bill of Particulars, (Doc. 82), filed on August 3, 2017. The Government submitted its Response in Opposition, (Doc. 98), on August 17, 2017. Upon due consideration, the Defendant's motion is denied.

I. PROCEDURAL SETTING

On January 12, 2017, a grand jury sitting in Orlando, Florida, returned a two-count Indictment against Defendant Noor Salman, charging her with aiding and abetting the attempted provision and provision of material support to a foreign terrorist organization, in violation of 18 U.S.C. §§ 2339B(a)(1)—(2), and obstruction of justice, in violation of 18 U.S.C. § 1512(b)(3). (Doc. 1). The Defendant now moves for an order directing the Government to file a bill of particulars in which the Government provides a detailed written description of the acts performed by the Defendant that constitute aiding and abetting Omar Mateen in his attempted provision and provision of material support to a designated foreign terrorist organization, namely ISIL. (Doc. 82, p. 1). Defendant Salman further urges this Court to require the Government to set forth the acts or omissions that constitute her alleged misleading conduct forming the basis of the obstruction of justice charge. (*Id.*). The Government opposes the Defendant's motion and contends the

defense is attempting to use a bill of particulars to compel the government to disclose its legal theories and prosecution strategy. (Doc. 98, pp. 5, 8).

II. LEGAL STANDARDS

Rule 7(f) of the Federal Rules of Criminal Procedure allows that “[t]he defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits.” The parties agree that Defendant Salman’s motion for a bill of particulars is timely. (Doc. 82, p. 3; Doc. 98, p. 3). It is well-settled that the purpose of a bill of particulars is “to inform the defendant of the charge against him with sufficient precision to allow [her] to prepare [her] defense, to minimize surprise at trial, and to enable [her] to plead double jeopardy in the event of a later prosecution for the same offense.” *United States v. Roberts*, 174 Fed. Appx. 475, 477 (11th Cir. 2006) (citing *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986)). That is, “[a] bill of particulars, properly viewed, supplements an indictment by providing the defendant with information necessary for trial preparation.” *United States v. Baitcher*, 2013 WL 1501462, at *1 (N.D. Ga. Mar. 22, 2013) (citing *Anderson*, 799 F.2d at 1441).

However, a defendant is not “entitled to a bill of particulars as a tool for procuring generalized discovery, information that is available from other sources, or a comprehensive preview of the Government’s trial proof or theories.” *United States v. Wimbley*, 10-0019-WS, 2011 WL 3204539, at *2 (S.D. Al. July 27, 2011) (citing *United States v. Rosenthal*, 793 F.2d 1214, 1227 (11th Cir. 1986)). A bill of particulars is not appropriate “where the information sought has already been provided by other sources, such as the indictment and discovery.” *United States v. Davis*, 854 F.3d 1276, 1293 (11th Cir. 2017) (citing *United States v. Martell*, 906 F.2d 555, 558 (11th Cir. 1990)). This is

because a bill of particulars “is not designed to compel the government to [provide a] detailed exposition of its evidence or to explain the legal theories upon which it intends to rely at trial.” *Roberts*, 174 Fed. Appx. at 477 (citing *United States v. Burgin*, 621 F.2d 1352, 1359 (5th Cir. 1980)).

The issues before this Court is whether the bill of particulars sought by the Defendant is designed to obtain information “necessary” for trial preparation, or whether the motion has the effect of requiring the Government to provide an exposition of its evidence and legal theories.

III. DISCUSSION

Defendant moves this Court for entry of an Order requiring the Government to specify in a bill of particulars whether the Government intends to support Count One of the Indictment by offering evidence that she concocted a cover story for her husband so that his absence from a family dinner would not arouse suspicion, or whether additional evidence will be adduced in support of the aiding and abetting count. (Doc. 82, p. 6). Defendant Salman urges the Court to require the Government to either provide the essential facts of the aiding and abetting offense or to direct the defense to the evidence produced in discovery that support those facts. (*Id.*).

As relates to Count Two—obstruction of justice—the Defendant moves for a bill of particulars specifying the allegedly misleading conduct that comprises the essential facts of this offense. (*Id.* at p. 7). The Defendant states that, at the bond hearing in California, the Government proffered that the obstruction charge is based on her allegedly having withheld foreknowledge that her husband would attack the Pulse Nightclub. The

Defendant now seeks clarification on whether additional acts or omissions will be offered by the Government at trial to support the obstruction of justice charge. (*Id.*).

In her motion for a bill of particulars, Ms. Salman acknowledges that her defense team “has reviewed the voluminous discovery produced in this case.” (*Id.* at pp. 3, 7). As discussed in Section II of this Order, a bill of particulars is not appropriate where the information sought by the Defendant has been produced in discovery. Being mindful of this principle, the Government outlines in its response that the United States had disclosed to the Defendant, pursuant to the Amended Scheduling Order (Doc. 48)¹, the following materials:

- (1) tens of thousands of pages of documents consisting of law enforcement reports, grand jury records from over 300 grand jury subpoenas, search warrants and affidavits, telephone and computer records, cell site maps, photographs and other documents and records generated during the investigation of this case;
- (2) dozens of hours of video from numerous sources, including business-controlled surveillance cameras and private citizens; and
- (3) electronic copies of hard drives and cell phones seized from the defendant and Omar Mateen.

(Doc. 98, pp. 2-3).

The Government further averred that it has produced statements of the Defendant made to law enforcement, including the reports or notes of said statements, and produced voluminous “key evidence”. (*Id.* at 3). Without limiting their right to offer additional

¹ The Court’s Amended Scheduling Order requires the Government to produce the following materials: (1) Ms. Salman’s verbal, written, and recorded statements—April 26, 2017; (2) documents and objects in the possession of the Government; electronic surveillance; evidence seized by a warrant; photographic identification; cooperating individuals—May 3, 2017. The Government was required to disclose “key evidence” likely to be relied upon by the Government in their case-in-chief by May 12, 2017. (Doc. 48).

evidence at trial, the Government identifies seven allegedly false statements made by the Defendant to law enforcement officers, as follows:

- (1) Stating to Officers of the Fort Pierce, Florida, Police Department that Mateen would not have engaged in violence unless he was protecting himself;
- (2) Stating to Special Agents of the Federal Bureau of Investigation (FBI) that Mateen left their apartment on June 11, 2016, to have dinner with a friend;
- (3) Stating to FBI Special Agents that Mateen had only one firearm;
- (4) Stating to FBI Special Agents that Mateen was not radical or extreme in his beliefs;
- (5) Stating to FBI Special Agents that she did not see Mateen with a gun when he left their residence;
- (6) Stating to FBI Special Agents that Mateen did not access the internet at their residence and had deleted his Facebook account a long time ago; and
- (7) Stating to FBI Special Agents that she was unaware that Mateen was planning to conduct a violent terrorist attack.

(*Id.* at pp. 11-12)

The Government also disclosed that Ms. Salman allegedly deleted text messages on her phone on the night of the attack, including one from Mr. Mateen informing him of the cover story the Defendant allegedly devised. (*Id.* at p. 12). In addition to the discovery, and the enumerated facts/statements attributed to the Defendant that were provided by the Government in their response to the motion for bill of particulars, the Defendant is aware of the facts proffered by the Government at the bond hearing conducted in California. The Court summarized the Government's proffer of the evidence in the Order granting the Government's Motion for Revocation of Release Order (Doc. 24, pp. 7-11, 14).

Notwithstanding the Defendant's access to and professed review of the voluminous discovery materials produced by the Government, the Defendant fails to articulate how she is ill-equipped to meet the charges brought by the United States.² For example, Ms. Salman alleges that she is uncertain whether the Government will support the obstruction charge by relying only upon the assertion that she withheld from law enforcement her alleged knowledge that Mateen was going to attack the Pulse Nightclub that evening. (Doc. 82, p. 3). In response, the Government identifies seven (7) statements attributed to the Defendant—and which had been produced to the Defendant—which support, at least in part, the obstruction charge. It appears that the Defendant was equipped with the evidence—that is, her statement—from which the basis of the obstruction charge was knowable, at least in large measure.

Similarly, the Defendant asks for a bill of particulars to force the Government to commit to whether the aiding and abetting terrorism is predicated only upon her alleged creation of a cover story. (Doc. 82, pp. 2–3). At the bond hearing in California, as summarized in this Court's Order revoking bond, the Government articulated several ways in which the Defendant allegedly aided and abetted her husband, including “casing” several locations for the potential attack; Mateen's engagement in unusual financial transactions which had the effect of transferring assets to the Defendant in the days leading up to the attack, and accompanying the Defendant as he purchased an assault weapon. (Doc. 24, pp. 7–9). The Government also proffered at the bond hearing that the

² Ms. Salman does not contend that the Indictment is so vague as to preclude her from being able to plead double jeopardy in the event of a later prosecution for the same offense. The bill of particulars is arguably sought to allow her to prepare her defense and to minimize surprise.

Defendant admitted—albeit after allegedly initially denying to the FBI—that her husband left their home on the night of the attack carrying the AR-15 and a backpack containing ammunition while being pumped up and having said, “This is the one day.” (*Id.* at p. 10). While the Court is unaware of the content of the discovery produced to the Defendant in discovery, the record of the bond hearing demonstrates the Government’s aiding and abetting theory is not limited to the creation of an alleged cover story.

Ms. Salman does not contend in her motion that the Government has been dilatory in the production of discovery pursuant to the Amended Scheduling Order entered by this Court. While it is true that the Government may be in possession of witnesses who have been interviewed and whose statements are not yet required to be disclosed, a bill of particulars is not intended to force the Government to produce a witness list or the statements of such witnesses in advance of trial.³ *Anderson*, 799 F.2d at 1442. At best the Defendant urges the Court to order a bill of particulars to force the Government to provide an exposition of its evidence and a preview of the Government theories and trial strategy, and this is not permitted. *United States v. Colson*, 662 F.2d 1389, 1391 (11th Cir. 1981) (“[G]eneralized discovery is not a proper purpose in seeking a bill of particulars.”) (citation omitted).

IV. CONCLUSION

Fairly early on in the history of this litigation, the Court gathered the parties together to fashion a scheduling order that would provide for timely disclosure of evidence by the parties. In fashioning that Order, the Government volunteered to turn over to the defense

³ See 18 U.S.C. § 3500.

key evidence, or evidence the Government intended to offered in its case-in-chief.⁴ By all accounts, the Government has abided by that representation and had disclosed key evidence and a significant volume of discovery traditionally produced in all criminal prosecutions. Coupled with the discovery production, the Government proffered some of the evidence it intends to rely upon: first, by proffering its case at the California bond hearing, and, secondly, by outlining in its response to numerous statements attributed to the Defendant that were allegedly made to law enforcement officers. The totality of the evidence produced thus far, particularly in the absence of any claim by the Defendant that discovery in wanting or is inadequate, is sufficient to allow the Defendant to prepare for trial and to support any potential double jeopardy challenge to a hypothetical future prosecution. The instant motion for bill of particulars, therefore, has as its objective a preview of the Government's trial strategy which is not permitted.

Accordingly, it is **ORDERED AND ADJUDGED** that the Defendant's Motion for a Bill of Particulars (Doc. 82) is **DENIED**.

DONE AND ORDERED in Orlando, Florida, on August 21, 2017.


PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

⁴ Rule 16, governing discovery, does not require the Government to highlight key evidence for the defense.