

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v

2:19-cr-000171

ROBERT JAMES McCABE, et al

Defendant,

**MEMORANDUM IN SUPPORT OF
MOTION FOR BILL OF PARTICULARS**

The defendant, Robert McCabe, through his attorneys, hereby moves this Honorable Court, pursuant to Federal Rule of Criminal Procedure 7(f) and the Fifth Amendment to the United States Constitution, to issue an order authorizing a Bill of Particulars in regard to Counts One through Ten of the Indictment in this case, so that defendant may be sufficiently apprised of the offenses therein alleged. As grounds for this request, he states the following:

ARGUMENT

1. Mr. McCabe seeks additional information regarding the acts alleged in Count One through Ten of the Indictment. This information is necessary so that Mr. McCabe may adequately prepare a defense to the offenses charged in these counts. Although Mr. McCabe recognizes that he is not entitled to discover the manner in which the prosecution intends to prove the acts it accuses him of committing in Counts One through Ten, he is entitled to learn what those alleged acts are.

2. The function of a bill of particulars is to provide the defendant with sufficient information about the nature of the charged offense so that he may adequately prepare a defense and avoid prejudicial surprise at trial. See *United States v. Schembari*, 484 F.2d 931, 934-35 (4th Cir. 1973); see also *United States v. Duncan*, 598 F.2d 839, 848 (4th Cir. 1979) ("[T]he facts alleged should be sufficiently detailed to apprise the defendant of the charge against him so that he may prepare his defense. This latter function . . . may often be satisfied through the use of a bill of particulars....")(footnote omitted). A bill of particulars "amplifies the indictment by providing missing or additional information so that the defendant can effectively prepare for

trial." *United States v. Fletcher*, 74 F.3d 49, 53 (4th Cir. 1996). See also *United States v. Hess*, 124 U.S. 483, 487 (1888) ("Undoubtedly, the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged."); *United States v. Helmel*, 769 F.2d 1306, 1322 (8th Cir. 1985) ("It is generally sufficient that an indictment set forth the offense in the words of the statute itself ... ' as long as the elements of the offense are delineated and the general statement is accompanied by the specific facts constituting the offense.") (quoting *Hamling v. United States*, 418 U.S. 87, 117-18 (1974)); *United States v. Addonizio*, 451 F.2d 49, 63-64 (3rd Cir. 1971) (purpose of bill of particulars is to inform defendant of nature of charges so that he or she may adequately prepare defense, to avoid surprise during trial, and to protect defendant against a second prosecution for an inadequately described offense; bill of particulars should fulfill this function "when the indictment itself is too vague and indefinite for such purposes") (quotation omitted).

3. A defendant is not entitled to know all the evidence the government intends to produce at trial, but is entitled to learn "the theory of the government's case[.]" *United States v. Levine*, 983 F.2d 165, 167 (10th Cir. 1992) (quotation omitted). Accordingly, a bill of particulars may be necessary "to clarify the specific factual theory (or theories) upon which the government" intends to proceed. *United States v. Chandler*, 753 F.2d 360, 362 (4th Cir. 1985); see also *United States v. Barnes*, 158 F.3d 662, 665 (2nd Cir. 1998) (where bill of particulars is "necessary to give the defendant enough information about the charge to prepare his defense, 'it will be required even if the effect is disclosure of evidence or of theories'") (quoting 1 Charles Alan Wright, *Federal Practice and Procedure* § 129 (1982)); *United States v. Hart*, 70 F.3d 854, 860 (6th Cir. 1995) (noting that district court instructed government to specify its "theory of proof regarding charged counts).

4. Based on these principles, a bill of particulars is necessary in regard to these counts to provide to the defense team with certain essential information about the alleged offense.

WHEREFORE, for these reasons and any others that may be developed at a hearing on this motion, Mr. McCabe requests this Honorable Court order the government to furnish the

defense with a Bill of Particulars containing the requested information regarding Count's One through Ten of the indictment in this case.

Respectfully submitted,

Robert James McCabe
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd of February, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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