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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA,)	Case No. 10-CR 60066-HO
)	
Plaintiff,)	UNITED STATES' MOTION
)	FOR ORDER REQUIRING
v.)	DEFENDANTS TO DISCLOSE
)	NOTICE OF ALIBI DEFENSE
STEVEN DWIGHT HAMMOND and)	PURSUANT TO FED. R. CRIM. P.
DWIGHT LINCOLN HAMMOND, JR.,)	12.1
)	
Defendants.)	

The United States of America, by Dwight C. Holton, United States Attorney for the District of Oregon, and Frank R. Papagni, Jr. and Amy Potter, Assistant United

States Attorneys, respectfully moves this Court for an order pursuant to Fed. R. Crim. P. 12.1, requiring Defendants to notify the Government within 10 days of the requested order of their intent to offer a defense(s) of alibi to the charges in the Indictment returned by the grand jury on June 17, 2010 (CR 1), and the identity of witness(es), if any, to be called.

Applicable Law to Notice of Alibi Rule

Rule 12.1 requires that when a demand is made by the Government, the defendants must timely notify the Government of their intent to offer alibi defense(s) in order to avoid unfair surprise and delay at trial. *United States v. Dupuy*, 760 F.2d 1492, 1498 (9th Cir. 1985) *citing United States v. Bouye*, 688 F.2d 471, 475 (7th Cir. 1982). The legislative history shows the rule was designed to benefit the Government. H.R.Rep. No. 94-247, 94th Cong., 1st, Sess, 8, U.S. Code, Cong. & Admin. News 1975, p. 674.

“Under Rule 12(1)(a), the Government inquires whether the defendant has an alibi defense, and if so the specific defense and witnesses he intends to call.” *Dupuy*, 760 F.2d at 1498-99. “If the Government does not take advantage of Rule 12.1 as to a particular time, date and place it cannot claim unfair surprise when the defense brings forth alibi witnesses at trial. *Id.* at 1499, *Bouyce*, 688 F.2d at 475. The Government’s Rule 12.1 demand for notice of alibi defense is not a bill of particulars which limits

the charges as to the time, place and date. *Dupuy*, 760 F.2d at 1498; *United States v. Vela* 673 F.2d 86, 89 (5th Cir. 1982).

The Rule provides for mutuality of discovery. Once defendant complies with the Rule's requirements, then the Government must disclose the identity of the witnesses who will testify as to the defendant's presence at the scene.

Non-compliance with Rule 12.1 can result in exclusion of the testimony of the undisclosed witness(es) other than the defendant(s). *See generally, Taylor v. Illinois*, 484 U.S. 400 (1988). Non-compliance may be excused for good cause. *United States v. Wills*, 88 F.3d 704 (9th Cir. 1996)(need to protect the safety of a government's witness has been held to constitute good cause for non-disclosure).

A defense witness may be cross-examined about the belated presentation of an alibi defense. *United States v. Aguwa*, 123 F.3d 418 (6th Cir. 1997)(prosecution's impeachment of defendant's wife about her failure to come forward with information about her husband's whereabouts until the eve of trial was appropriate).

Rule 12.1 Government's Requests for Notices of Alibi

Introduction

The Government requests notices of alibi and identity of witness(es) the defense intends to call in support of the alibi. To permit a complete response from the Defendant(s), the Government requests specific time periods, dates and locations.

However, the requests do not cover the entire time period of the charged offense (e.g., Conspiracy to Commit Arson, Count 1). A request for notice of alibi which specifies time periods, dates and locations does not prevent the Government from offering evidence covering the entire time period, dates and other locations when proving the charged offense. *Dupuy*, 760 F.2d at 1498.

Count 1, Overt Acts 1 and 1a – Steens Mountain Loop Arson

On August 24, 1982, between 11:00 am and 2:00 pm, a fire burned approximately 240 acres of public land owned by the United States in the Blitzen River Wilderness Study Area, now known as the Steens Mountain Cooperative Management and Protections Area. For further identification of location, *see the Steens Mountain Loop Arson on Exhibit 1*.

Defendant Steven Dwight Hammond has been identified as the arsonist. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Acts 2, 2a, 2c, and 2d – Little Fir Arson

On August 24, 1996, between 8:30 am and 11:00 am, a fire burned approximately 80 acres of public land owned by the United States in the Bridge Creek

Wilderness Study Area, now known as the Steens Mountain Cooperative Management and Protections Area. For further identification of location, *see the Little Fir Arson on Exhibit 1.*

Defendant Steven Dwight Hammond has been identified as the arsonist. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Acts 3, 3a and 3b – Fir Creek/Bridge Creek Arson

On September 9, 1999, between 10:30 am and 11:30 am, there was a fire that originated on private land that burned approximately 217 acres of public land owned by the United States in the Bridge Creek Wilderness Study Area, now known as the Steens Mountain Cooperative Management and Protections Area. For further identification of location, *see the Fir Creek/Bridge Creek Arson (middle fire) on Exhibit 1.*

Defendant Steven Dwight Hammond has been identified as the arsonist. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense,

and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Acts 4, 4a thru 4h, and Count 2 – Hardie-Hammond Arson

On September 30, 2001, between 5:00 pm and 6:30 pm, there was a fire that originated on private land that burned approximately 138 acres of public land owned by the United States in the Steens Mountain Cooperative Management and Protections Area. For further identification of location, *see the Hardie-Hammond Arson on Exhibit 1.*

Defendants Dwight Lincoln Hammond, Jr., and Steven Dwight Hammond have been identified as the arsonists. If they intend to offer a defense of alibi, the Government moves for an order requiring each defendant to disclose the specific place or places they claim to have been at the time of the offense, and the names and addresses of the witnesses upon whom each intend to rely to establish such alibi.

Count 1, Overt Acts 5, 5b, Counts 3 and 4 – Fir Creek Arson

On or between 12:00 pm on August 22, 2005 and August 23, 2005, there was a fire that burned approximately 1,343 acres owned by the United States in the Fir Creek area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the locations, *see the Fir Creek Area Arson on Exhibit 1.*

Defendant Steven Dwight Hammond has been identified as the arsonist. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Acts 6, 6d, Counts 6 and 7 – Krumbo Butte Arson

On August 22, 2006, between 12:00 pm and 11:59 pm, there were multiple fires that burned approximately 804 acres of public land owned by the United States in the Krumbo Butte area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see the Krumbo Butte Arson on Exhibit 1.*

Defendant Steven Dwight Hammond has been identified as the arsonist. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Act 6c, Count 11 - Operation of Aircraft Without Current Medical Certificate

On August 22, 2006, between 7:30 pm and 8:00 pm, an aircraft described as a white Piper Super Cub bearing tail number N9356D, owned by Defendant Dwight

Lincoln Hammond, Jr., flew over the Antelope Reservoir in the area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Exhibit 1*. For further identification of aircraft, *see Exhibits 2-3, photographs*.

Defendant Dwight Lincoln Hammond, Jr. has been identified as piloting this aircraft without having a current medical certificate. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Acts 7, 7b, 7c, 7d, Counts 5 and 6 – Lower Bridge Creek Arson

On August 22, 2006, between 6:00 am and 3:00 pm, there was a fire that burned public land owned by the United States in the Lower Bridge Creek area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Lower Bridge Creek Arson on Exhibit 1*.

Defendants Dwight Lincoln Hammond, Jr. and Steven Dwight Hammond have been identified as the arsonists. If they intend to offer a defense of alibi, the Government moves for an order requiring they disclose the specific place or places they claim to have been at the time of the offense, and the names and addresses of the witnesses upon whom each intends to rely to establish such alibi.

Count 1, Overt Acts 8, 8a thru 8i, Counts 9 and 10 – Granddad Arson

On August 23, 2006, between 6:00 am and 9:00 pm, multiple fires were ignited that burned public land owned by the United States in the Bridge Creek Road area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Granddad Arson and Bridge Creek Road on Exhibit 1*.

Defendants Dwight Lincoln Hammond, Jr. and Steven Dwight Hammond have been identified as arsonists. If they intend to offer a defense of alibi, the Government moves for an order requiring they disclose the specific place or places they claim to have been at the time of the offense, and the names and addresses of the witnesses upon whom each intends to rely to establish such alibi.

Count 1, Overt Act 12, Count 12 - Operation of Aircraft Without Current Medical Certificate

On August 24, 2006, between 7:30 pm and 8:00 pm, an aircraft described as a white Piper Super Cub bearing tail number N9356D, owned by Defendant Dwight Lincoln Hammond, Jr., flew over Bridge Creek Road in the area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Granddad Arson on Exhibit 1*. For further identification of aircraft, *see Exhibit 2, photograph*.

Defendant Dwight Lincoln Hammond, Jr. has been identified as piloting this aircraft without a current medical certificate. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Act 10, Count 13 - Operation of Aircraft Within a Restricted Area

On August 25, 2006, at approximately 6:00 am, an aircraft described as a white Piper Super Cub bearing tail number N9356D, owned by Defendant Dwight Lincoln Hammond, Jr., flew within a designated Temporary Flight Restriction Area in the area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Granddad Arson on Exhibit 1*. For further identification of the aircraft, *see Exhibits 2-3, photographs*.

Defendant Dwight Lincoln Hammond, Jr. has been identified with piloting this aircraft without complying with the terms and conditions required to operate an aircraft within a Temporary Flight Restricted Area. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Act 10, Count 14 - Operation of Aircraft Within a Restricted Area

On August 31, 2006, at approximately 8:30 am, an aircraft described as a white Piper Super Cub bearing tail number N9356D, and owned by Defendant Dwight Lincoln Hammond, Jr., flew within a designated Temporary Flight Restriction Area in the area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Granddad Arson on Exhibit 1*. For further identification of aircraft, *see Exhibits 2-3, photographs*.

Defendant Dwight Lincoln Hammond, Jr. has been identified as piloting this aircraft without complying with the terms and conditions required to operate an aircraft within a Temporary Flight Restricted Area. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Act 8i, Counts 15 and 16 – Threat to Assault a Federal Officer

On August 23, 2006, fires were ignited near employees of the United States Department of Interior, Bureau of Land Management, and burned near the Bridge Creek Road in the area of the Steens Mountain Cooperative Management and

Protections Area. For further identification of the location, *see Exhibit 4, Ignitions 2 and 3.*

Defendant Dwight Lincoln Hammond, Jr. has been identified as the person who knowingly threatened to assault federal officers by igniting fires near them while they were engaged in the performance of their official duties. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense, and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

Count 1, Overt Act 8i, Counts 15, 16, 17, 18 – Threat to Assault a Federal Officer

On August 22, 2006, fires were ignited near employees of the United States Department of Interior, Bureau of Land Management, and burned near the Bridge Creek Road in the area of the Steens Mountain Cooperative Management and Protections Area. For further identification of the location, *see Exhibit 4, Ignitions 9 and 10.*

Defendant Dwight Lincoln Hammond, Jr. and Steven Dwight Hammond have been identified as persons who threatened these assault federal officers by igniting fires near them while they were engaged in the performance of their official duties. If they intend to offer a defense of alibi, the Government moves for an order requiring they disclose the specific place or places they claim to have been at the time of the

offense, and the names and addresses of the witnesses upon whom each intends to rely to establish such alibi.

Count 19 – Tampering with a Witness

On August 24, 2006 (Count 19 alleges on or about August 22, 2006), at approximately 8:00 am, Defendant Steven Dwight Hammond is charged with meeting with an employee of Department of Interior, Bureau of Land Management, at the Frenchglen Hotel/Café located at 39184 Highway 205 in Frenchglen, Oregon, 97746, with the intent to hinder, delay or prevent the employee from communicating with BLM law enforcement officers what the employee knew about Defendant Dwight Lincoln Hammond, Jr. and Defendant Steven Dwight Hammond’s igniting fires in the Lower Bridge Creek and Bridge Creek Road areas of the Granddad fire. *See Exhibit 5 (photograph of Hotel) and Exhibit 6 (map).*

Defendant Steven Dwight Hammond has been identified as the person who engaged in conduct intending to prevent the employee who was a witness from communicating with a BLM law enforcement officer about the criminal conduct of Defendant Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.. If he intends to offer a defense of alibi, the Government moves for an order requiring he disclose the specific place or places he claims to have been at the time of the offense,

and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

CONCLUSION

Based on the foregoing, the Government moves the Court for an Order requiring the Defendants to comply with their obligations under Rule 12.1 of the Federal Rules of Criminal Procedure within 10 days of the issuance of the requested Order.

DATED this 20th day of July, 2011.

Respectfully submitted,

DWIGHT C. HOLTON
United States Attorney

/s/ Frank R. Papagni, Jr.
FRANK R. PAPAGNI, JR.
Assistant United States Attorney

/s/ Amy Potter
AMY POTTER
Assistant United States Attorney