

1 DANIEL G. BOGDEN
United States Attorney
2 STEVEN W. MYHRE
NICHOLAS D. DICKINSON
3 Assistant United States Attorneys
NADIA J. AHMED
ERIN M. CREEGAN
4 Special Assistant United States Attorneys
501 Las Vegas Blvd. South, Suite 1100
5 Las Vegas, Nevada 89101
PHONE: (702) 388-6336
6 FAX: (702) 388-6698

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 v.)

12 PETER T. SANTILLI,)

13 Defendant.)

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO DEFENDANT
SANTILLI'S MOTION FOR BILL
OF PARTICULARS
(ECF No. 376)**

14 **CERTIFICATION: This Response is timely filed.**

15
16 The United States, by and through the undersigned, respectfully submits
17 its Response in Opposition to defendant Peter T. Santilli's ("Santilli") Motion for
18 Bill of Particulars (ECF No. 376) (hereinafter "Motion"). As explained in detail
19 below, the Motion should be denied. The detailed Superseding Indictment and the
20 fulsome discovery provided in this case adequately address Santilli's requests for
21 information.

22 ////

23 ////

24 ///

BACKGROUND

1
2 On March 3, 2016, Santilli was charged by Superseding Indictment (“SSI”) (ECF No. 27) with numerous crimes of violence in connection with his alleged
3 participation in a conspiracy to use force, violence and firearms to assault and
4 extort federal officers on April 12, 2014, near Bunkerville, Nevada. The charges
5 included assault with a deadly weapon on a federal law enforcement officer,
6 threatening a federal law enforcement officer, obstruction of justice, extortion of
7 federal officers, and use and brandish a firearm in relation to a crime of violence,
8 and conspiracy to commit same, all in violation of Title 18, United States Code,
9 Sections 111(a)(1) and (b), 115, 1503, 1951, 924(c) and 371, respectively. He is
10 presently joined for trial with eighteen other co-defendants.
11

12 This is a conspiracy case arising from a massive assault against federal
13 officers that occurred near Bunkerville, Nevada, on April 12, 2014. The SSI is a
14 63-page document, consisting of 186 paragraphs that set out the counts charged,
15 the defendants’ roles in the conspiracy, and the overt acts committed in
16 furtherance of the conspiracy. It also details the events that led to the April 12
17 assault, the assault itself, and the post-assault events that kept the conspiracy
18 alive. Regarding Santilli, the SSI describes him as a leader and organizer of the
19 conspiracy who, among other things, recruited gunmen and other Followers for
20 the conspiracy, led an assault on a BLM convoy on April 9 as part of the
21 conspiracy, and participated in the assault and extortion of federal law
22 enforcement officers on April 12 that was an object of the conspiracy. SSI ¶ 63.
23

24 ////

1 On April 26, 2016, the Court entered a Case Management Order (ECF No.
2 321) that, among other things, ordered the government to produce Phases I and II
3 of discovery, those phases consisting of, among other things, search warrants,
4 search warrant returns, statements of the defendants, and Rule 16 information,
5 including hundreds of hours of video and audio recordings and thousands of
6 photographic images related to the charges in the SSI.

7 On May 6, 2016, the government produced Phases I and II of discovery,
8 comprising approximately 1.4 terabytes of digitized information. With its
9 production, the government provided a detailed index describing the information
10 and the digital folders where it is located.

11 Three days later, on May 9, 2016, Santilli filed this Motion seeking a Bill of
12 Particulars, calling for information responsive to three questions, each of which is
13 addressed in detail below. The Motion should be denied.

14 **LEGAL STANDARD**

15 Rule 7(f) of the Federal Rules of Criminal Procedure provides for a bill of
16 particulars:

17 The court may direct the government to file a bill of particulars. The
18 defendant may move for a bill of particulars before or within 14 days after
19 arraignment or at a later time if the court permits. The government may
amend a bill of particulars subject to such conditions as justice requires.

20 The purpose of a bill of particulars is threefold: (1) to inform the defendant
21 of the nature of the charge against him with sufficient precision to enable him to
22 prepare for trial; (2) to avoid or minimize the danger of surprise at the time of
23 trial; and (3) to enable him to plead his acquittal or conviction in bar of another
24 prosecution for the same offense when the indictment itself is too vague, and

1 indefinite for such purposes. *United States v. Ayers*, 924 F.2d 1468, 1483 (9th Cir.
2 1991) (quoting *United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979)). Where
3 an indictment, itself, provides the details of the alleged offense, a bill of
4 particulars is unnecessary. *Giese*, 597 F.2d at 1180 (citation omitted).

5 The denial of a motion for a bill of particulars is within the discretion of the
6 district court; its decision will not be disturbed absent an abuse of this discretion.
7 *United States v. Clay*, 476 F.2d 1211, 1215 (9th Cir. 1973). In exercising its
8 discretion, the court should consider the totality of the information available to
9 the defendants through the indictment and pretrial discovery and determine
10 whether, in light of the charges the defendants must answer, the filing of a bill of
11 particulars is warranted. *United States v. Reddy*, 190 F. Supp. 2d 558, 565
12 (S.D.N.Y. 2002); *United States v. Santiago*, 174 F. Supp. 2d 16, 34 (S.D.N.Y. 2001)
13 (court should also consider the complexity of the offenses charged and the clarity
14 of the indictment). “[T]he crux of whether to order the prosecution to produce a
15 bill of particulars is not whether it would be helpful to the defense, but whether it
16 is necessary to adequately defend against the charges at trial.” *United States v.*
17 *Callahan*, 2016 WL 1755811, at *3 (D. Mont. May 2, 2016) (citing *United States v.*
18 *Giffen*, 379 F. Supp. 2d 337, 346 (S.D.N.Y. 2004)). “The defendant’s constitutional
19 right is to know the offense with which he is charged, not to know the details of
20 how it will be proved.” *United States v. Kendall*, 665 F.2d 126, 135 (9th Cir. 1981)
21 (citing *United States v. Freeman*, 619 F.2d 1112, 1118 (5th Cir. 1980)).
22

23 ////

24 ////

1 **ARGUMENT**

2 The Motion should be denied because Santilli has the benefit of a very
3 detailed SSI and fulsome discovery – all of which obviate the need for a Bill of
4 Particulars. As a threshold matter, the SSI fully informs Santilli of the nature of
5 the charges against him and the theory of his criminal liability:

6 SSI ¶¶ 55 – 59: Details the objects of the conspiracy and the manner and
7 means used to achieve them.

8 SSI ¶¶ 60 – 76: Describes the role of each of the conspirators, including
9 Santilli.

10 SSI ¶¶ 78 – 121: Delineates the overt acts committed in furtherance of the
11 conspiracy between March 28, 2014 and April 11, 2014.

12 SSI ¶¶ 122 – 145: Delineates the overt acts committed in furtherance of the
13 conspiracy on April 12, 2014, describing the assault and
14 extortion in detail.

15 SSI ¶¶ 146 – 153: Delineates the overt acts committed in furtherance of the
16 conspiracy after the assault to the date of the SSI.
17

18 This level of detail is, alone, sufficient to deny the requests for information
19 that Santilli seeks in his Motion. *See Giese*. But Santilli also has the benefit of
20 discovery – which he apparently never consulted before filing this motion a mere
21 three days after production – which is not only fulsome (hundreds of hours of
22 recordings, thousands of images, etc.) but was accompanied by a detailed index. A
23 Bill of Particulars is not a vehicle for a defendant to have the government walk
24 through its case. *See Giese*. All that is required is that a defendant has enough

1 information to understand what he is charged with, to avoid surprise at trial, and
2 to assert jeopardy at a later time. *Id.* Those requirements are more than met by
3 the level of detail provided in the SSI.

4 Santilli claims, however, that the SSI relies on “generalized statements”
5 and does not “outline” his conduct “other than the broad statement that he
6 conspired with known and unknown people.” Mot. at 4. Thus, in his request No. 2
7 he demands:

8 Detail how Santilli can be an organizer or support a conspiracy as a
9 member of the media that is recording the events that unfolded on April 9th
and 12th of 2014.

10 Santilli is wrong. There is no requirement under the guise of a Bill of
11 Particulars for the government to explain its evidence or set out its theory of the
12 case before trial – which is what Santilli is requesting here. That said, the SSI
13 does, in fact, set out the details of Santilli’s role and activities in the conspiracy.

- 14 • Recruited, incited, and encouraged gunmen and other Bundy
15 Followers to travel to Bundy Ranch for the unlawful purpose of
16 interfering with law enforcement officers, obstructing justice,
17 threatening and assaulting law enforcement officers and extorting
18 law enforcement officers ¶¶ 63, 92 (April 8, 2014 call to arms over the
19 internet), 93 (April 8 threat over the internet), 100 (travel to Bundy
20 Ranch); 109 (April 9 threat to SAC); 104, 106, 108 (April 9 calls to
21 arms over the internet), 110, 111 (April 10 calls to arms over the
22 internet).
- 23 • Intercepted and blocked a convoy of BLM vehicles engaged in
24 impoundment operations; with others collided an ATV into a truck in
the convoy in order to stall it; with others attempted to gain entry to
the truck by force; and with others threatened harm to federal
officers charged with providing security to the convoy by brandishing
a rock as if to throw it and making physical contact with a law
enforcement officer (¶ 63; 107; and Count 11).
- Threatened the SAC of the Impoundment on April 11 (¶ 115 and
Count 7).

1 Thus, the SSI is fully responsive to Santilli’s request and there is no
2 requirement that the government produce more information through a Bill of
3 Particulars.

4 Santilli further claims, however, that he never possessed a firearm and
5 therefore is “being prosecuted for speech that is protected under the First
6 Amendment.” Mot. at 3. He falsely states that the government “concedes” that its
7 theory of prosecution supposedly is unlawful speech (*id.*) and that he was never in
8 the wash.

9 Santilli is wrong again. Santilli is not charged for being a blog host, for
10 making speeches or for using offensive language – he is charged with conspiracy.
11 The government’s theory of the case is that Santilli knowingly joined a criminal
12 conspiracy, some of the objects of which included assaulting federal officers with a
13 deadly weapon and extorting them through force and violence on April 12.
14

15 Whether Santilli did or did not carry a firearm, or was or was not in the
16 wash, is beside the point. As a member of a criminal conspiracy, Santilli is
17 criminally responsible for all the natural and foreseeable acts carried out in
18 furtherance of the conspiracy. There is nothing about the First Amendment that
19 immunizes him from conspiracy liability based on his supposed status as a
20 blogger. There is nothing about the First Amendment that shields him from
21 prosecution for using the internet to recruit gunmen to threaten federal law
22 enforcement officers. There is nothing about the First Amendment that magically
23 transforms the language he used to further a criminal conspiracy and to threaten
24 federal officers into protected speech.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT SANTILLI'S MOTION FOR BILL OF PARTICULARS (ECF No. 376)** was served upon counsel of record, via Electronic Case Filing (ECF).

Dated this 25th day of May, 2016.

/s/ Steven W. Myhre

STEVEN W. MYHRE
Assistant United State Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24