IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | |
| v. | ) | CR. NO. 2:10cr186 – MHT |
| ROBERT B. GEDDIE JR. | ) | |

**GOVERNMENT'S OPPOSITION TO**
**DEFENDANT GEDDIE'S MOTION TO DISMISS COUNT 39**

The United States, through undersigned counsel, respectfully submits this opposition to defendant Robert Geddie's motion to dismiss Count 39[1] of the Indictment and his alternative request for a bill of particulars. (Dkt. No. 464.) The defendant argues that Count 39, which alleges violations of 18 U.S.C. §§ 2 and 1512(c)(2), must be dismissed because it fails to state an offense, fails to establish a sufficient nexus to an official proceeding, and fails to provide adequate notice of the charges. The defendant's motion misreads and understates the allegations set forth in Count 39, conflates pleading with proof, and fails to properly apply the law. As explained below, Count 39 of the Indictment properly alleges a violation of the offense charged therein and a bill of particulars is unnecessary because Count 39 contains the elements of the offense charged and fairly informs the defendant of those charges so that he may defend against them. The defendant's motion should therefore be denied.

[1] The Government presumes that defendant Geddie's request for "dismissal of Count 49," (Mot. at 13), is intended to be a request for dismissal of Count 39.

## BACKGROUND

Count 39 on the Indictment alleges that defendant Geddie violated Sections 2 and 1512(c)(2) of Title 18 of the United States Code. More specifically, Count 39 incorporates earlier paragraphs and alleges,

> From on or about February 16, 2010, through in or about August 2010, in the Middle District of Alabama and elsewhere, defendant ROBERT B. GEDDIE JR. aided and abetted by others known and unknown to the Grand Jury, corruptly obstructed, influenced, and impeded, and attempted to corruptly obstruct, influence, and impede an official proceeding, to wit: defendant GEDDIE instructed an employee to alter a contribution ledger to reflect that two contributions, totaling $5,000, made by GEDDIE and another employee to Legislator 3 were not made on behalf of MCGREGOR as GEDDIE initially had indicated, but instead were made on behalf of two other clients, when in fact GEDDIE knew that the contributions were made on behalf of and at the direction of MCGREGOR and that the other two clients had no knowledge of and did not authorize such contributions; and defendant GEDDIE caused to be produced to law enforcement officials, in response to multiple grand jury subpoenas, originals as well as copies of the altered contribution ledgers. All in violation of Title 18, United States Code, Sections 2 and 1512(c)(2).

Indict. ¶ 242.

To establish a violation of Section 1512(c)(2), the government must prove the following elements beyond a reasonable doubt: defendant Geddie (1) corruptly (2) did or attempted to obstruct, influence, and impede (3) an official proceeding. 18 U.S.C. § 1512(c)(2).

## LEGAL STANDARDS

### I. Motion to Dismiss

An indictment need only be a "plain, concise, and definite written statement of the essential facts constituting the offense charged. . . ." Fed. R. Cr. P. 7(c)(1). In reviewing a motion to dismiss an indictment, courts "look only at whether the government has alleged each of the elements of the statute." United States v. Plummer, 221 F.3d 1298, 1302 (11th Cir. 2000); see also United States v. Fitapelli, 786 F.2d 1461, 1463 (11th Cir. 1986) ("In judging the sufficiency of the indictment, the court must look to the allegations and, taking the allegations to

be true, determine whether a criminal offense has been stated."); United States v. Cadillac Overall Supply Co., 568 F.2d 1078, 1082 (5th Cir. 1978) ("[W]e must view the [indictment] . . . to determine whether it sets forth the elements of the offense charged . . . . In this Circuit, we have held that, ordinarily, the pleading of the allegations in terms of the statute is sufficient . . .").[2] In determining whether an indictment is sufficient, the Court must read it as a whole and give it a "common sense construction." United States v. Gold, 743 F.2d 800, 813 (11th Cir. 1984); United States v. Markham, 537 F.2d 187, 192 (5th Cir. 1976). In other words, the indictment's "validity is to be determined by practical, not technical, considerations." Gold, 743 F.2d at 812.

## II. Motion for a Bill of Particulars

"An indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Woodruff, 296 F.3d 1041, 1046 (11th Cir. 2002). If an indictment does not meet these minimal criteria, a defendant may seek a bill of particulars pursuant to Federal Rule of Criminal Procedure 7(f).

As a general matter, however, "[a] defendant possesses no right to a bill of particulars . . ." United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980). The purpose of a bill of particulars

> is merely to cure any deficiencies in an indictment by informing a defendant of the nature of the charges against him so that he will have sufficient detail to prepare for this defense, to avoid or minimize the danger of surprise at trial, and

[2] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

> to enable him to plead double jeopardy in the event of a subsequent prosecution for the same offense.

United States v. Murray, 527 F.2d 401, 411 (5th Cir. 1976) (internal quotation marks omitted). It is not designed "to provide detailed disclosure before trial of the Government's evidence." United States v. Sheriff, 546 F.2d 604, 606 (5th Cir. 1977); see also 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."); United States v. Davis, 582 F.2d 947, 951 (5th Cir. 1978); United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978).

## ARGUMENT

### I. The Court Should Deny the Defendant's Motion to Dismiss Count 39

The defendant's motion to dismiss Count 39 should be denied. As discussed below, Count 39 of the Indictment more than fully satisfies the minimal pleading standards and properly charges an offense.

#### A. Production of Falsified Records to a Grand Jury Fits Comfortably Within Section 1512(c)(2)'s Broad Prohibition Against Obstructive Acts

The defendant argues that Count 39 is defective because, in the defendant's view, the appropriate charging statute is Section 1512(c)(1), which prohibits evidence-tampering, rather than Section 1512(c)(2). Defendant Geddie's argument is misdirected.

Contrary to his claim, the factual allegations of Count 39 do not merely "go to alteration of a document." (Mot. at 3.) Count 39 alleges that the defendant violated Section 1512(c)(2) when he caused falsified documents to be produced to the grand jury knowing those documents had been altered, at his direction, to attribute the illicit payments made to Legislator 3 to clients other than McGregor when in fact the defendant knew those payments should be attributed to

McGregor.[3] Indict. ¶ 242. The crux of the obstructive act, as alleged, is the submission of the falsified documents to the grand jury.

This alleged conduct fits comfortably under Section 1512(c)(2) which broadly prohibits obstructive acts. The statutory language is expansive, covering all corrupt acts that "obstruct, influence[], impede[]" an official proceeding, or attempt to do so.[4] 18 U.S.C. § 1512(c)(2). This interpretation accords with a well-developed line of cases establishing that Section 1512(c)(2) encompasses a broad range of obstructive acts. See, e.g., United States v. Mintmire, 507 F.3d 1273 (11th Cir. 2007) (affirming Section 1512(c)(2) conviction arising from defendant's attempts to dissuade grand jury witness from disclosing certain information); United States v. Wall, 285 Fed. Appx. 675 (11th Cir. 2008) (transfer of funds for the purpose of preventing government seizure); United States v. Carson, 560 F.3d 566, 584 (6th Cir. 2009) (false statements to the grand jury); United States v. Phillips, 583 F.3d 1261 (10th Cir. 2009) (disclosure of an undercover officer's identity to the subject of a grand jury investigation); United States v. Perez, 575 F.3d 164 (2d Cir. 2009) (submission of false incident report). The

[3] The defendant attempts to make issue of the fact that Count 39 does not use the word "false" when describing the altered ledger that the defendant caused to be submitted to the grand jury. Although the word "false" is not used in Count 39, the factual allegations make clear that the alterations were misleading in that they attributed payments to clients other than McGregor when the payments should have been attributed to McGregor. Count 39 plainly states that the alterations were not "in fact" correct and Geddie "knew" it. See Indict. ¶ 242 ("GEDDIE instructed an employee to alter a contribution ledger to reflect that two contributions, totaling $5,000, made by GEDDIE and another employee to Legislator 3 were not made on behalf of MCGREGOR as GEDDIE initially had indicated, but instead were made on behalf of two other clients, when in fact GEDDIE knew that the contributions were made on behalf of and at the direction of MCGREGOR . . . ") (emphasis added).

[4] The defendant fails to present any persuasive reason to limit the scope of Section 1512(c)(2) – an important criminal statute, designed not only to prevent miscarriages of justice but also to protect participants in judicial proceedings. The "otherwise" phrase in Section 1512(c)(2), upon which the defendant focuses, is plainly separate and independent of subsection (c)(1). Thus, this Court need not read Section 1512(c)(2)'s use of "otherwise" as limited by Section 1512(c)(1)'s separate and independent prohibition on evidence-tampering.

defendant cites no authority to support a claim the production of false documents to a grand jury cannot, under the alleged circumstances, serve as a basis for an obstruction charge under Section 1512(c)(2) and indeed there is none.

B. There Is No Requirement that Count 39 Allege Direct Obstruction

As a separate and independent basis for Count 39's dismissal, the defendant argues that the relevant statute, Section 1512(c)(2), applies only to direct conduct obstructing an official proceeding, not to an attempt to influence others to obstruct. (Mot. at 6-7.) There is no basis in the law for this claim.

Direct obstruction is not required under the statute. See 18 U.S.C. § 1512(c)(2). Indeed, courts have regularly affirmed convictions under Section 1512(c)(2) where a defendant attempted to present false information to a grand jury via intermediaries. See, e.g., Mintmire, 507 F.3d at 1290 (affirming conviction where, *inter alia*, defendant "attempted to orchestrate" grand jury witness's testimony by sending notes to an attorney who in turn "coached" the witness); United States v. Crandle, 274 Fed. Appx. 324, 327 (4th Cir. 2008) (affirming conviction based on defendant's attempt to influence a third party to provide false grand jury testimony).

In any event, Count 39 specifically alleges that the defendant was directly involved in the obstructive act: it states, "defendant GEDDIE caused to be produced to law enforcement officials, in response to multiple grand jury subpoenas, originals as well as copies of the altered contribution ledgers."[5] Indict. ¶ 242 (emphasis added).

[5] Incidentally, Count 39 also alleges that the defendant violated 18 U.S.C. § 2, which states that "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

C. There Is No Requirement that Count 39 Allege That the Obstructive Acts "Actually" Affected the Outcome of the Grand Jury Proceeding

The defendant claims that no "obstruction" could have occurred within the meaning of Section 1512(c)(2) because Count 39 does not allege that the altered ledger, as submitted, "actually" deceived the grand jury. The defendant supposes that because the alterations were done "by hand, and openly" and were apparent on "the face of the document," the government "always knew the 'truth'" and that no violation could have occurred.[6] (Mot. at 6.)

The defendant's notion that Section 1512(c)(2) requires the government to allege and prove that his conduct "actually" affected the outcome of the grand jury proceeding is without merit. Such interpretation is inconsistent with the plain language of the statute, which encompasses all actions that "corruptly . . . influence[]" a proceeding – or even "attempt[] to do so" – not merely those that affect its ultimate outcome. 18 U.S.C. § 1512(c)(2). Count 39 expressly alleges that the defendant "corruptly obstructed, influenced, and impeded, and attempted to corruptly obstruct, influence, and impede an official proceeding." Indict. ¶ 242. As such, the Indictment sufficiently alleges the necessary elements.

The defendant relies on pure conjecture to argue that the government "always knew the 'truth'" about the ledger entries. Such speculation is improper at the motion to dismiss stage when the alleged facts are accepted as true. See Fitapelli, 786 F.2d at 1463. At trial, the government may introduce the altered ledgers as evidence to show that they do not, as the defendant claims, show an unobstructed view of the truth. The government may prove through testimony and evidence that the submission of the altered ledger at the very least "influence[d]"

[6] The defendant further argues that as a result he cannot be found to have "impair[ed] the integrity or availability" of the information contained in the ledger. See Mot. at 6. Not only is this claim misguided, it is also irrelevant. As the defendant acknowledges, (id.), the government is not required to allege or prove that Geddie's actions "impair[ed] the integrity or availability" of the ledger under Section 1512(c)(2).

the grand jury investigation, by requiring the grand jury to ascertain the truth by resolving contradictory evidence, by delaying the investigation, by closing off avenues of inquiry, or by misleading the grand jury regarding the true source of the payments. But it is not appropriate, at this stage, to evaluate the possible ways in which the government may prove those allegations at trial. Such proof is not required at the pleading stage.

D. Assuming There Is a Requirement that Count 39 Allege a Nexus between the Obstructive Act and the Grand Jury Proceeding, That Requirement Is Satisfied

The defendant argues that this Court should adopt the "nexus requirement" from United States v. Aguilar, 515 U.S. 593 (1995), and further argues that Count 39 should be dismissed because it "fails to allege a sufficient 'nexus'" to an official proceeding. (Mot. at 2.) This argument is flawed. To the extent that any such nexus requirement applies, the Indictment alleges a clear and direct connection between the defendant's obstructive act and the grand jury proceeding.

There is no controlling law that the "nexus requirement" must be proven in a Section 1512(c)(2) prosecution. In Aguilar, the Supreme Court laid out a "nexus" requirement for Section 1503. There, the Court required the government to prove that the defendant's actions "have a relationship in time, causation, or logic with the judicial proceedings." Aguilar, 515 U.S. at 599. In other words, "the endeavor must have the natural and probable effect of interfering with the due administration of justice." Id. In Arthur Andersen v. United States, 544 U.S. 696 (2005), the Supreme Court extended the Aguilar nexus requirement to prosecutions under Section 1512(b). The Supreme Court has not held that the Aguilar nexus requirement extends to Section 1512(c)(2) prosecutions, such as the instant case. Nor has the Eleventh Circuit.

But even assuming *arguendo* that the nexus requirement applies to Section 1512(c)(2), the defendant's argument fails because it conflates pleading with proof. Neither Aguilar nor Arthur Andersen involved the sufficiency of the indictment – the issue in both cases was the sufficiency of the evidence following a conviction. Nor did they hold that the nexus requirement, *i.e.*, a relationship in time, causation or logic between the conduct and the official proceeding, is an element that must be alleged in the indictment. See United States v. Russell, 639 F. Supp. 2d 220, 236 (D. Conn. 2007) ("[T]he term 'nexus,' like the terms 'obscenity' in the statute criminalizing the mailing of obscene material, 'overt act' in the illegal reentry statute, and 'quid pro quo' in the federal extortion statute, is not a generic or descriptive term that must be alleged with the factual specificity required by Russell [v. United States, 369 U.S. 749, 764 (1962)].").

Here, the Indictment does allege a clear and direct nexus between the obstructive act and the grand jury proceeding. Count 39 specifically alleges that the defendant corruptly did or attempted to obstruct, influence, or impede a grand jury proceeding by "caus[ing]" altered ledgers "to be produced to law enforcement officials, in response to multiple grand jury subpoenas." Indict. ¶ 242. Those allegations plainly charge the defendant with conduct that bears a "relationship in time, causation or logic" to an "official proceeding." See 18 U.S.C. § 1515(a)(1)(C) (defining the "official proceeding" language of Section 1512 to include any "proceeding before . . . a Federal grand jury").

Indeed, Count 39 alleges that Geddie caused the altered ledgers to be submitted "directly to the grand jury itself," quite unlike the false statements in Aguilar which were made to agents who might or might not later testify before a grand jury. See Aguilar, 515 U.S. at 600-01. Here, by contrast, the defendant caused the falsified ledger to be turned over to a sitting grand jury in

direct response to multiple grand jury subpoenas and, accordingly, the effects upon the grand jury investigation were more "natural and probable" than those in Aguilar. Id.; see also United States v. Mullins, 22 F.3d 1365, 1367-68 (6th Cir. 1994) (affirming obstruction conviction where defendant altered records and instructed coworker to alter records subject to grand jury subpoena *duces tecum*); United States v. McComb, 744 F.2d 555, 559 (7th Cir. 1984) (created false meeting minutes and voluntarily delivered them to grand jury); United States v. Faudman, 640 F.2d 20, 23 (6th Cir. 1981) (falsified records, some of which had been sought by subpoena *duces tecum*); United States v. Williams, 874 F.2d 968, 976-82 (5th Cir. 1989) (uttered false testimony to grand jury); United States v. Fineman, 434 F. Supp. 197 (E.D. Pa. 1977), aff'd, 571 F.2d 572 (3d Cir.) (caused destruction of incriminating document that he believed might be subpoenaed by the grand jury). The nexus requirement is obviously satisfied here.

The defendant's argument to the contrary "essentially asks the Court to make a factual determination that the government cannot prove a nexus between the allegedly obstructive act" and the grand jury investigation. United States v. Black, 469 F. Supp.2d 513, 543 (N.D. Ill. 2006) (denying motion to dismiss count based on Section 1512(c)(1) where defendant argued that the indictment failed to allege that he knew or contemplated the indictment or grand jury investigation when he committed the obstructive act at issue). "Such a determination is for the jury, not the Court." Id.; see also United States v. Triumph Capital Group, Inc., 260 F. Supp.2d 470, 475 (D. Conn. 2003). "Whether the government can prove that [Geddie] knew his actions were likely to affect the grand jury will depend on the evidence at trial." See Triumph Capital, 260 F. Supp.2d at 475. Such arguments are an inappropriate basis for a motion to dismiss, where the Court is required to accept the allegations as true. See Russell, 639 F. Supp. 2d at 235 (explaining that the defendant's "argument as to what must be pleaded in an indictment . . . is

wrong in that it conflates permissible claims based on sufficiency of the government's allegations with impermissible claims based on the sufficiency of the government's evidence") (emphasis added).

E. The Language of Count 39 Is Not Unfairly Prejudicial

The defendant also takes issue with the Indictment's use of the phrase "on behalf of another," arguing that the phrase is "meaningless" and "sounds like something potentially bad." (Mot. at 9.) The defendant is not entitled to have the Indictment read in a manner that is most pleasing to him. United States v. Haas, 583 F.2d 216, 219 (5th Cir. 1978) ("The test is not whether the indictment could have been framed in a more satisfactory manner but whether it conforms to minimal constitutional standards.") Furthermore, his argument that making a political contribution through a political action committee is lawful and "cannot be the basis for a criminal charge" is misguided. Count 39 does not charge a violation of federal or state election laws; it charges a violation of the obstruction of justice statute. The alleged criminal conduct that serves as foundation for the obstruction count is the submission to the grand jury of documents that had been altered to record that the payments to Legislator 3 were made on behalf of clients other than McGregor when in fact they were made on behalf of McGregor. It is perfectly acceptable for the Indictment to rely upon the phrase "on behalf of another" when setting forth factual allegations to establish the ledger entries were misleading.

The defendant also complains about the Indictment's reference to the fact that the clients to whom the payments were wrongly attributed lacked any knowledge of the payments and did not authorize the payments. The defendant argues that proof of their knowledge or permission is not necessary to the obstruction charge; is "meaningless" "coinage"; and are "made-up principles that the Government hopes will sound bad to the jury." (Mot. at 10.) Although such proof is not

a required element of the obstructive count, the fact that the clients to whom the payments were attributed had no knowledge of the payments and did not authorize the payments is a valid part of the Indictment's factual basis that establishes that the original ledger entries, attributing the payments to McGregor, were accurate and should not have been redacted in the ledger prior to its submission to the grand jury. There is nothing unfairly prejudicial about the language used in Count 39.

For these reasons, defendant Geddie's motion to dismiss Count 39 should be denied.

## II. The Court Should Deny Defendant's Alternative Motion for a Bill of Particulars

The Court should likewise deny the defendant's alternative request for a bill of particulars. "The purpose of a bill of particulars is to inform the defendant of the charge against him with sufficient precision to allow him to prepare his defense, to minimize surprise at trial, and to enable him to plead double jeopardy in the event of a later prosecution for the same offense." United States v. Warren, 772 F.2d 827, 837 (11th Cir. 1985) (citations omitted). "Generalized discovery is not the proper function of a bill of particulars." Id. (citation omitted). Indeed, a bill of particulars should not be used to require the Government to provide a "detailed exposition of its evidence or to explain the legal theories upon which it intends to rely at trial." United States v. Martell, 906 F.2d 555, 558 (11th Cir. 1990).

Here, the Indictment fairly apprises the defendant of the particulars upon which Count 39 is based. It does more than merely track the language of the obstruction statute. It gives notice of the charges in plain and straightforward detail. Count 39 informs the defendant of the date range of the offense, his particular role in the offense, the contours of his obstructive conduct, including the type of documents that were altered at his direction, the content of the altered documents, and the reason the alterations were false, and the type of official proceeding involved

in the charge. The Indictment is sufficient on its face to meet every purpose of a bill of particulars. See United States v. Walker, 490 F.3d 1282, 1296 (11th Cir. 2007) ("An indictment that tracks the language of the relevant statute is sufficient, as long as it also provides a statement of facts and circumstances that give notice of the offense to the accused."). Defendant Geddie is entitled to no more.

In light of the detailed allegations contained in the Indictment, as well as the significant discovery that has been produced,[7] the defendant is "adequately informed of the charges against him and [is] accorded the opportunity to plan his defense accordingly." Martell, 906 F.2d at 558. Accordingly, no bill of particulars is necessary.

## CONCLUSION

For the foregoing reasons, defendant Geddie's motions to dismiss Count 39 of the Indictment and his alternative request for a bill of particulars should be denied.

Date: February 14, 2011

Respectfully Submitted,

LANNY A. BREUER
Assistant Attorney General
Attorney for the United States
Acting Under Authority of 28 U.S.C. § 515

[7] The Government has provided extensive discovery to assist defendant Geddie in preparing for trial, including, for example, copies of the altered ledgers, grand jury testimony concerning the altered ledgers, and audio recordings of conversations related to the altered ledger entries.

JACK SMITH
Chief
Public Integrity Section

By: /s/ Emily Rae Woods
Emily Rae Woods
Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice
1400 New York Avenue, N.W.
Washington, DC 20005
(202) 616-2691
rae.woods@usdoj.gov

**CERTIFICATE OF SERVICE**

I, Emily Rae Woods, certify that on this fourteenth day of February, 2011, notice of the foregoing filing was electronically transmitted to counsel of record via the CM/ECF filing system.

/s/ Emily Rae Woods___
EMILY RAE WOODS