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

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

ORDER AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Before the court is Defendant Geddie's "Motion to Dismiss 'Obstruction of Justice' Charges or, In the Alternative, Requiring Bill of Particulars" (Doc. #462). Defendant filed a Brief in Support (Doc. #464), to which the Government has filed a Response (Doc. #601). Geddie also filed a Reply, attached to his Motion to File a Reply (Doc. #663), which the court has considered in rendering this Recommendation. For the reasons that follow, the undersigned: (a) ORDERS that the Motion for Bill of Particulars be DENIED; (b) the Motion to File a Reply is GRANTED; and (c) RECOMMENDS that the Motion to Dismiss be DENIED.

I. DISCUSSION

Defendant Geddie Moves for dismissal of Count 39 of the Indictment for two reasons. First, he alleges that the allegations in the count, even taken as true, "do not make out a violation of any federal or state law." Def.'s Brief (Doc. #464) at 1. Second, Geddie contends that "it is impossible [] to determine what Count 39 is charging him with. The statutory language and the factual allegations do not logically relate to each other." *Id*. The

Government counters that Geddie's Motion "misreads and understates the allegations set forth in Count 39, conflates pleading with proof, and fails to properly apply the law." Resp. (Doc. #601) at 1. The court will address Geddie's claims below.

A. Whether the allegations make out a violation of law.

Count 39 of the Indictment states:

> 242. 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).

Indictment (Doc. #3).

Geddie argues that the factual allegations in the Indictment, as set forth on page 17, paragraphs 72 and 73, go to the alteration of the document, and "yet that is not what is alleged in the indictment --- leaving open the question of what exactly Mr. Geddie is charged with." Geddie Brief (Doc. #464) at 3. Geddie argues that the conduct described better fits within § 1512(c)(1), which charges that anyone who "corruptly alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding" commits the felony of

obstruction of justice.

As the Government points out, paragraph 73 of the Indictment alleges that "GEDDIE caused to be produced to law enforcement officials the altered contribution records." Indictment (Doc. #3) ¶ 73. It is the *production* of the altered documents which sets these allegations withing the purview of § 1512(c)(2), which more broadly covers acts where one "otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so."

Geddie focuses on the alteration of the document and argues that the conduct described in the Indictment cannot be read to charge him with alteration of a document because that conduct would only fit within § 1512(c)(1).[1] While the allegations revolve around the alleged alteration of contributions logs, the Indictment charges Geddie with knowing production of those logs to the Grand Jury, which are properly charged under § 1512(c)(2). *See, e.g., United States v. Mintmire*, 507 F.3d 1273, 1290 (11th Cir. 2007) (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). In fact, some courts have actually required a charge under § 1512(c)(2) to have some nexus to documents. *See United States v. Hutcherson*, 2006 WL 1875955 at *4 (W.D.Va. July 5, 2006) (explaining that defendant was convicted under § 1512(c)(2) "for lying to an FBI agent

[1] Geddie's Reply brief merely argues about the term "attribution" and how PAC funds are "attributed," and how Geddie's conduct does not constitute falsification. Those arguments are to be presented before the trier of fact, because such determinations would require "a trial of the general issue" of guilt or innocence, and, hence, are the province of a jury. *See United States v. Pope*, 613 F.3d 1255, 1260-61 (10th Cir. 2010)

and leading the agent on a meritless search for documents"). Thus, the court cannot agree that the production of altered documents to the Grand jury must only be charged under § 1512(c)(1).

Geddie also asserts that an allegation of a "direct action" is required under § 1512(c)(2), and the Indictment fails to allege he took a "direct action." As stated above, Geddie is charged with causing altered documents to be produced. Therefore, even were the court to read a "direct action" requirement into the statute, which it does not, the direct action of causing to produce would suffice.

B. Whether the Indictment Fails to Establish a Sufficient "Nexus" with an "Official Proceeding."

First, Geddie argues that the Indictment "fails to allege and the Government cannot prove conduct that has the natural and probable effect of interfering with the due administration of justice." Def.'s Brief (Doc. #464) at 7. He argues that:

> Although the government has typed on page 62 of the Indictment the phrase that Mr. Geddie "corruptly obstructed . . . an official proceeding," word-processing is not enough. The government must marry the words of the statute with a time, a theory of causation or a chain of logic that connects something Mr. Geddie did to an official proceeding and, further, that properly alleges that his endeavor had the "natural and probable effect" of interfering with the administration of justice.

Id. at 8. Geddie argues for a "nexus" requirement based on nexus requirement articulated by the Supreme Court in *United States v. Aguilar*, 515 U.S. 593, 599 (1995). Under the nexus requirement, "the act must have a relationship in time, causation, or logic with the judicial proceedings. In other words, the endeavor must have the 'natural and probable

effect' of interfering with the due administration of justice . . . . [I]f the defendant lacks knowledge that his actions are likely to affect a judicial proceeding, he lacks the requisite intent to obstruct." *Aguilar*, 515 U.S. at 599 (citations omitted). Geddie concedes that the court in *Aguilar* was interpreting § 1503, but argues that "at least three courts have applied the nexus requirement to a Section 1512(c)(2) charge. *See United States v. Reich*, 479 F. 3d 179, 186 (2d Cir. 2007) (Sotomayor, J.) ("[W]e hold that §1512(c)(2) incorporates a 'nexus requirement' as articulated in *Aguilar*."); *United States v. Carson*, 560 F.3d 566, 585 (6th Cir. 2009); *United States v. Phillips*, 538 F.3d 1261, 1264 (10th Cir. 2009)." Def.'s Brief (Doc. #464) at 8. While this court tends to agree with Geddie that a "nexus requirement" should apply to § 1512(c)(2), that issue is not properly before this court, nor could it be at this time.[2] This Motion seeks the dismissal of the Indictment for failure to state a claim. The court agrees with the Government that:

> 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").

Resp. (Doc. #601) at 9. The court finds that the allegations do indeed allege a nexus and the allegations in the Indictment are sufficient. *See United States v. Black*, 469 F. Supp. 2d 513,

[2] This challenge must be made in relation to the sufficiency of the evidence.

543 (N.D. Ill. 2006) ("Defendant Black 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, or between the allegedly obstructive act and the criminal proceeding. Such a determination is for the jury, not the Court.").

Geddie also challenges the uses of the term "on behalf of another," and the concepts of "notice," and "permission" in the Indictment. Def.'s Brief (Doc. #464) at 9-10. Essentially, Geddie argues that, because the contributions were legally made in the name of the Political Action Committees, which is allowed under Alabama law, there can be no "basis for a criminal charge." *Id*. at 10. While that may, or may not, be true, the allegation here is obstruction of justice and presenting altered documents to the Grand Jury. Thus, Geddie's arguments are irrelevant to the analysis of this motion. Similarly, his arguments that the concepts "notice" and "permission"[3] are meaningless because Alabama law is not violated by the failure to notify or seek permission are also irrelevant to his challenge to the sufficiency of the Indictment. Geddie's assertions that "[t] hey are made-up principles that the Government hopes will sound bad to the jury," *id.*, are arguments appropriate for a different kind of motion.

Finally, Geddie argues that the Indictment fails to allege, and the Government cannot prove, that an "official proceeding" was foreseeable to Geddie, that the grand jury (or anyone

[3] Geddie draws these concepts from the Indictment, which alleges "that the other two clients had no knowledge of and did not authorize such contributions." Indictment (Doc. #3) at ¶ 242.

else) was ever obstructed, deceived or misled, and whether Geddie completed an obstruction or that he attempted one. *Id*. at 10-13. Each of these arguments are improperly raised at this time in the proceeding. In undertaking this review the court must "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). "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. Fitapelli*, 786 F.2d 1461, 1463 (11th Cir. 1986). The court can not engage in guess work as to whether an "official proceeding" was foreseeable to Geddie prior to the presentment of the evidence. Nor can the court speculate as to whether the Grand Jury was obstructed, or whether an obstruction was completed or attempted.[4]

C. Bill of Particulars

Geddie also moved, in the alternative, for a Bill of Particulars. *United States v. Cole*, 755 F.2d 748, 760 (11th Cir.1985) ("The purpose of a true bill of particulars is threefold: 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.") (internal quotation omitted). "However, a bill of particulars is not intended to give a preview of the case or unduly restrict the government's presentation of its case or unduly restrict the government in presenting its

[4] In addition, §1512(c)(2) forbids the "attempt" to obstruct; thus, the Government is not required to show whether Geddie was successful.

proof at trial." *United States v. Young & Rubicam, Inc.*, 741 F. Supp. 334, 349 (D.Conn. 1990). "Nor is the government required to provide defendants with all overt acts that might be proven at trial." *United States v. Rosenthal*, 793 F.2d 1214, 1227 (11th Cir. 1986). A defendant is not "entitled to a bill of particulars with respect to information which is already available through other sources such as the indictment or discovery and inspection." *Rosenthal*, 793 F.2d at 1227; *see also United States v. Martell*, 906 F.2d 555, 558 (11th Cir. 1990). In this case, based on the brief in support of the present Motion, the details laid out in the Government's Response, as well as the voluminous discovery tendered in this case, the court finds that Geddie is sufficiently aware of the charges against him and has the opportunity to plan for his defense. *See Martell,* 906 F.2d at 558.

III. CONCLUSION

For the reasons stated above, it is

ORDERED that the Motion for Bill of Particulars (Doc. #462) is DENIED and the Motion to File a Reply (Doc. #663) is GRANTED.

Further, the Magistrate Judge RECOMMENDS that the Motion to Dismiss (Doc. #462) be DENIED.

Further, it is

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation **by April 18, 2011**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or

general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); *see also Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

DONE this 4th day of April, 2011.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE