

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

UNITED STATES OF AMERICA	:	
(DISTRICT OF COLUMBIA)	:	
	:	Case No. 00000000000
	:	
v.	:	
	:	
NAME	:	
	:	
Defendant.	:	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT’S
MOTION FOR A BILL OF PARTICULARS**

Defendant, (NAME), by and through his undersigned counsel, (ATTORNEY’S NAME) respectfully submits the following Memorandum of Points and Authorities in support of his Motion for a Bill of Particulars.

BACKGROUND

On or about (DATE) at (LOCATION), the Defendant was detained and arrested in reference to using a stolen credit card at the bar. According to the police report the Defendant was found in possession of the property, that belonged to (NAME). Subsequently, the Defendant was charged with one count Second Degree Theft, in violation of D.C. § 22-3211(2001 ed.); two counts of Receiving Stolen Property, in violation of D.C. § 22-3232 (a) (2001 ed.); and one count of Assault in violation of D.C. § 22-404(2001 ed.).

LEGAL ARGUMENT

“As a constitutional matter, an indictment must contain all the elements of the offense charged and sufficiently apprise the defendant of the charges so that he or she can prepare to meet them” Hsu v. United States, 392 A.2d 972, 976 (D.C. Ct. App 1978)(quoting Russell v. United States, 369 U.S. 749, 763 (1962); United States v. Thomas, 444 F.2d 919, 922-23 (D.C. Cir. 1971); United States v. Fletcher, 74 F.3d 49, 53 (4th Cir.)(“The purpose of the bill of particulars is to amplify the indictment by providing missing or additional information so that the defendant can effectively prepare for trial.”) When necessary for those purposes, a request for a bill of particulars is to be granted even though it requires “the furnishing of information which in other circumstances would not be required because evidentiary in nature.” United States v. United States Gypsum, Co., 37 F. Supp. 398, 402 (D.C. 1941).

“[T]he Court must strike a ‘prudent balance’ between legitimate interests of the government and those of the defendants,” United States v. Rameriz, 54 F. Supp. 2d 25, 29 (D.D.C. 1999). Any reluctance by the Government to reveal its case “must yield to paramount public interest in affording the accused a reasonable foundation for mounting a defense.” United States v. Manetti, 323 F. Supp. 683, 696 (D. Del. 1971). “[I]f the competing interests of the defense and the Government are closely balanced, the interests of the defendant in disclosure must prevail.” United States v. Rogers, 617 F. Supp. 1024, 1028 (D. Colo. 1985). Therefore, the justification for a bill of particulars in this case are manifest and it should be resolved in favor of disclosure to the Defendant.

**The Information Does Not Provide Sufficiently Particular Information Regarding
the Defendant’s Alleged Overt Act under Count Two and Three of the Amended
Information Dated (DATE)**

There is the original Information dated (DATE) and an amended Information dated (DATE).

Count Two of the Amended Information alleges that on or about (DATE), within the District of Columbia, the Defendant bought, received, possessed, and obtained control of property of value, belonging to (NAME) consisting of a cell phone, which had been stolen, knowing and having reason to believe it was stolen, with the intent to defraud and to deprive (NAME) of a right to and benefit of the property in violation of D.C. § 22-3232 (a) (2001 ed.).

Count Three of the Amended Information alleges that on or about (DATE), within the District of Columbia, the Defendant bought, received, possessed, and obtained control of property of value, belonging to (NAME) consisting of a wallet, which had been stolen, knowing and having reason to believe it was stolen, with the intent to defraud and to deprive (NAME) of a right to and benefit of the property in violation of D.C. § 22-3232 (a) (2001 ed.).

“An indictment or other charging document must assert a plain and concise statement of an alleged offense sufficient to put the accused on notice of the nature of the offense charged” Patterson v. United States, 575 A.2d 305, 305 (D.C. 1990). In Olafisoye v. United States, the Court adopted a two-part test for determining whether indictment is overly broad: “[1] whether [the indictment or information] gives the defendant adequate notice of the charges against his so

that he can prepare a defense[;] and[(2)] whether, if he is later charges with a similar offense, he may successfully assert a claim of double jeopardy.” 857 A.2d 1078, 1086 (D.C. 2004).

In the case at bar, the charging document is overly broad. The factual background as disclosed in the police report fails to contain statutory elements of the violation of 22 D.C. Code, Sections 3232(a) (Receiving Stolen Property). Both counts 2 and 3 in the Information fail to contain facts supporting the phrase “bought, received, possessed and obtained control of property of value”... “**which had been stolen, knowing and having reason to believe it was stolen**” The police report indicates he had possession of a cell phone belonging to (NAME) without indicating how he knew or had reason to believe it was stolen, which is the basis for count 2 of the Amended Information. The facts set forth in the police report further indicate that the Defendant was in possession of a wallet belong to (NAME) without indicating how he knew or had reason to believe it was stolen, which is the basis for count 3 of the Amended Information.

The Information Does Not Provide Sufficiently Particular Information Regarding the Defendant’s Alleged Overt Act under Count Four of the Amended Information

Dated (DATE)

Count Four of the Indictment alleges that on or about (DATE), within the District of Columbia, the Defendant unlawfully assaulted and threatened (NAME) in a menacing manner in violation of D.C. Code § 22-404. (2001 ed.).

“Assault” is defined generally as the threat or use of force on another person that causes that person to have reasonable apprehension of imminent harmful or offensive contact, Williamson v. United States, 445 A.2d 975, 978 (D.C. 1982). There are no facts to support the

violation indicated in the amended Information, count Four and it is merely conclusory statement.

In this case, counts Two, Three, and Four of the Information are classic examples of an impermissibly vague charging document. The Information simply mirrors the statutory language and provides no **facts** as to what criminal act the Defendant allegedly committed. The lack of factual specification in the Information prevents the Defendant from knowing “with reasonable certainty, [] the nature of the accusation[s] against [them],” so they can prepare for trial. Russell, 369 U.S. at 764-65, supra. The absence of any factual allegations in the charging document fail to meet the requirements of the Fifth and Sixth Amendments.

The Court has broad discretion in a granting a Motion for a Bill of Particulars. Will v. United States, 389 U.S. 90, 98-99 (1967). Denial is an abuse of discretion if the Defendant was surprised at trial or unprepared to meet the allegations, or if the Defendant’s ‘substantial rights’ were prejudiced. Wong Tai v. United States, 273 U.S. 77, 82 (1927); United States v. Pollack, 534, F.2d 964, 970 (D.C. Cir. 1976)

CONCLUSION

WHEREFORE, it is respectfully requested that the government be ordered to produce the Bill of Particulars.

Respectfully submitted,

(DEFENDANT’S NAME)
By Counsel

(NAME OF LAW FIRM)

(ATTORNEY'S NAME)

Bar #

Counsel for Defendant

Attorney's Address

CERTIFICATE OF SERVICE

I hereby certify that on this (DATE) a true copy of the foregoing Motion for Bill of Particulars

was mailed, first class, postage prepaid to:

NAME OF STATE'S ATTORNEY

ADDRESS OF STATES' ATTORNEY

(NAME OF DEFENDANT'S ATTORNEY)