UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 25-cr-00076-JMC**
	:	
CORTNEY MERRITTS,	:	
	:	
Defendant.	:	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS THE INDICTMENT
PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 12

In his Motion to Dismiss, Defendant Cortney Merritts argues that "[t]he indictment in this case is facially invalid" because it is "duplicitous and lacks the specificity required under the Constitution for an indictment." ECF No. 13 at 5. The sole basis for Defendant's motion appears to be his claim that the indictment "charges two counts of wire fraud but lists eleven separate wire transmissions in the charging language." *Id.* Defendant's claim that he somehow "has not received adequate notice under the Sixth Amendment to be able to adequately prepare a defense for the charged conduct[,]" or "cannot know which wire listed in the charging language was considered by the grand jury to be the operative wire for Count One or Two, in violation of his Fifth Amendment protections[,]" *id.*, does not pass muster.[1]

Under Rule 7(c) of the Federal Rules of Criminal Procedure, an indictment need only set forth a "plain, concise, and definite written statement of the essential facts constituting the offense charged[.]" Fed. R. Crim. P. 7(c)(1). "[A]n 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,

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[1] A summary of the factual background of this case and the charged offenses is set forth in the Government's Opposition to Defendant's Motion to Dismiss the Indictment for Selective Prosecution. ECF No. 16 at 2-6. The government incorporates that summary herein.

and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *United States v. Saffarinia*, 424 F. Supp. 3d 46, 57 (D.D.C. 2020) (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)). The indictment in this case easily clears that hurdle.

First, Defendant's assertion that the indictment "lists eleven separate wire transmissions in the charging language[,]" ECF No. 13 at 5, is not correct. To the contrary, the final operative paragraph of the indictment, set out in its own section titled "Execution of the Scheme to Defraud" and tracking the language of the wire fraud statute, 18 U.S.C. § 1343, identifies only *two* charged wire transactions, not eleven. ECF No. 1 ¶ 37. Moreover, the charging language identifies the date of each of the two charged wire transactions, and describes the precise nature of those transactions. *Id.* The indictment therefore puts Defendant on clear notice that he is charged with violating 18 U.S.C. § 1343 for (1) on July 8, 2020, "submitt[ing] an EIDL application[,]" and (2) on April 22, 2021, "submitt[ing] a PPP loan application[.]" *Id.* Indeed, by Defendant's own admission, "[s]ection 1343 targets not the defendant's creation of a scheme to defraud, but the defendant's *execution* of a scheme to defraud." ECF No. 13 at 4 (emphasis in original). Here, the portion of the indictment that is titled "Execution of the Scheme to Defraud" identifies only the July 8, 2020, and April 22, 2021, loan applications submitted by Defendant. ECF No. 1 ¶ 37.

Moreover, the "Scheme to Defraud" is defined earlier in the indictment as spanning "[f]rom on or about July 8, 2020[,] to on or about April 22, 2021, … in connection with applications for EIDL and PPP funds[.]" *Id.* ¶ 21. Not only does the time period of the alleged scheme in paragraph 21 match perfectly with the two charged wire transactions in the indictment's charging paragraph (paragraph 37), but, with only one exception, each of the other "wire communications" that Defendant identifies as being "referenced" elsewhere in the indictment falls *outside* of the charged time period. *See* ECF No. 13 at 1-2.[2] Because the *only two* wire transactions referenced anywhere in the indictment that fall within the charged timeframe of the Scheme to Defraud are the very same transactions identified in the operative charging paragraph, there can be no serious dispute that those are the wires charged in Counts One and Two of the indictment.

Further negating any possibility of confusion is the fact that the charged Scheme to Defraud is defined as pertaining to Defendant having submitted "*applications* for EIDL and PPP funds[.]" ECF No. 1 ¶ 21 (emphasis added); *see also id.* ¶ 22 (defining the "Purpose of the Scheme to Defraud" as Defendant "filing … materially false *applications* and requests for … EIDL and PPP funds" (emphasis added)); *id.* ¶ 37 (describing the two charged wire transmissions as loan "applications").

It is beyond dispute that only two wire transactions in the indictment are "applications" for EIDL and PPP funds[3]; only those same two wire transactions fall within the time period of the alleged Scheme to Defraud, *id.* ¶ 21; and only those same two wire transactions are identified in the indictment's operative charging paragraph, *id* ¶ 37. Defendant is on notice of the charges against him and can prepare a defense. His motion to dismiss should be denied.[4]

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[2] The only exception is the SBA's transmission of a $6,000 loan advance to Defendant's bank account on July 13, 2020. *See* ECF No. 1 ¶ 16. But that loan advance was in relation to Defendant's first EIDL loan application, submitted on April 3, 2020. Discussion of the first EIDL loan application is confined to the "Background" section of the indictment, *id.* ¶¶ 1-19, and, notwithstanding Defendant's conclusory and unsupported assertion to the contrary, ECF No. 13 at 5 n.1, the "Background" discussion is not subsumed within the indictment's charging language for purposes of determining whether the charges here are duplicitous or lacking specificity.

[3] As previously discussed, Defendant's first EIDL loan application, submitted on April 3, 2020, is confined to the "Background" section of the indictment. ECF No. 1 ¶¶ 1-19.

[4] It is noteworthy that Defendant does not also seek, as an alternative to dismissal, a bill of particulars. To be sure, Defendant is not entitled to a bill of particulars because, as discussed herein, the indictment is "stated with enough precision to allow the defendant to understand the charges, to prepare a defense, and perhaps also to be protected against retrial on the same charges." *United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987); *see also id.* ("[I]f the indictment is sufficiently specific, or if the requested information is available in some other form, then a bill of

Respectfully submitted,

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particulars is not required."). That said, even if there had been some ambiguity in the charges, the remedy would have been a bill of particulars, not dismissal. *United States v. Robertson*, 588 F. Supp. 3d 114, 120 n.2 (D.D.C. 2022).