

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES )  
)  
)  
v. ) No. 21-CR-00143  
)  
)  
VICTOR HILL, )  
)  
Defendant. )

**SHERIFF VICTOR HILL'S AMENDED MOTION TO DISMISS THE  
INDICTMENT/ MOTION TO STRIKE SURPLUSAGE FROM THE  
INDICTMENT AND REQUEST FOR ORAL ARGUMENT**

COMES NOW, Sheriff Victor Hill, by and through undersigned counsel and files this Amended Motion to Dismiss the Indictment/Motion to Strike Surplusage from the Indictment. This motion incorporates and re-submits all prior arguments contained in the previously filed Motion to Dismiss Indictment (Doc. 20). In addition to those grounds previously stated, Sheriff Hill adds the following:

1.

All arguments made previously in the Motion to Dismiss Indictment as to Counts One through Four of the previous indictment are hereby amended to include Count Five of the superseding indictment as the additional count is identical to the preceding four.

2.

In addition to and in the alternative to the Motion to Dismiss the Indictment, Sheriff Hill moves this Court to strike the surplusage in the indictment that is contained in paragraphs 46 through 49 pursuant to Federal Rule of Criminal Procedure 7(d). Sheriff Hill acknowledges that “[a] motion to strike surplusage from an indictment should not be granted ‘unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial.’” United States v. Huppert, 917 F.2d 507, 511 (11th Cir. 1990) (quoting 1 Charles A. Wright, Federal Practice and Procedure § 127 at 424-29 (1982)); *see also* United States v. Awan, 966 F.2d 1415, 1426 (11th Cir. 1992).

Paragraphs 46-49 allege that victim W.T.’s head was covered by a hood after which he was struck by what he “believed to be a fist” after being detained in a restraint chair – but there is no allegation that Sheriff Hill was the one who struck W.T. or that he directed, encouraged, or in any way facilitated any other person in striking W.T. Because Sheriff Hill has been charged as a principal (rather than with conspiracy or aiding and abetting anyone else’s conduct), the tortious conduct of another is irrelevant to his guilt and could only serve to inflame the jury.

The only conduct for which Sheriff Hill is allegedly responsible is “causing” each detainee to be placed in a restraint chair for a nonpunitive government purpose and for a period of time exceeding that justified by any legitimate purpose. Any allegation concerning actions or statements done by others for which the Sheriff is not charged are irrelevant and inflammatory. Further, since no other claim of bodily injury is included in this indictment, the intentional inclusion of these four paragraphs in this *superseding* indictment should be given heightened scrutiny, especially in light of earlier arguments made by undersigned counsel (i.e., the Motion for a Bill of Particulars, Doc. 32). It is clear that since this is the only reference to physical injury in the indictment, the inclusion of these paragraphs, as they are uncharged, irrelevant, and inflammatory, should be subject to being stricken from the indictment.

### CONCLUSION

Sheriff Hill respectfully asks this Court to grant the Amended Motion to Dismiss the Indictment as to all counts of the Superseding Indictment. Additionally, and in the alternative, Sheriff Hill asks this Court to strike paragraphs 46-49 of the Superseding Indictment as surplusage. Lastly, Sheriff Hill again requests oral argument as to all issues contained in this and the previously filed motion as these are novel and complex issues and the Court would benefit from oral argument from both parties in this matter.

This 19<sup>th</sup> day of August, 2021.

Respectfully submitted,

By: /s/ Marissa Goldberg  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the below date I electronically filed the foregoing Motion to Dismiss the Indictment/Motion to Strike Surplusage with the Clerk of Court using CM/ECF system which will automatically send email notification of such filing to the to the following attorneys of record:

Brent Gray, AUSA  
Brett Hobson, AUSA  
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This 19th day of August, 2021

*/s/ Marissa Goldberg*  
By: Marissa Goldberg  
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*Attorney for Sheriff Victor Hill*