UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

United States of America	:	
	:	
v.	:	Criminal No. 3:05cr54 (JBA)
	:	
Clifford Hunter and	:	
Gabriel Douglas	:	

RULING ON PENDING MOTIONS
[Docs. ## 317, 402, 418]

Defendants Clifford Hunter and Gabriel Douglas have been charged in a twenty-one count Superseding Indictment [Doc. # 371] with conspiracy, possession, and possession with intent to distribute cocaine base, and use of an interstate communications facility to facilitate a drug trafficking crime, in violation of 21 U.S.C. §§ 841(a)(1), 843, 844 and 846. Defendant Hunter has filed motions to preclude reference to the term "DEA Task Force" [Doc. # 317], and to dismiss the indictment for multiplicity [Doc. # 402], which will be denied for the following reasons.

I. Motion in Limine to Preclude Reference to "DEA Task Force"

Hunter's motion seeks to preclude the Government from eliciting at trial any testimony from Government witnesses utilizing the term "DEA Task Force." See [Doc. # 317]. Defendant argues that such evidence is irrelevant under Fed. R. Evid. 401 and that the prejudicial effect of such evidence outweighs its probative value, under Fed. R. Evid. 403, because identification of the investigating officers as members of a "task force" will suggest that this case is more significant than

an ordinary drug case.

The Government opposes the motion, arguing that "identification of the DEA Task Force will provide necessary background information of the officers who were involved in the investigation." Gov't Opp. [Doc. # 416] at 2. The Government further argues that this case involved a long and complex investigation by members of multiple law enforcement agencies, and repeated reference to each participating organization will confuse the jury. Id.

Defendant cites no authority for the proposition that all references to the "DEA Task Force" should be precluded. In United States v. Anthony, No. 99-5935, 13 Fed. Appx. 346 (6th Cir. July 9, 2001) (unpublished), cited by the Government, the Court of Appeals held that "[a]llowing police officers to identify themselves as members of a task force [was] not unfairly prejudicial [because] the identification illuminated the officers' background and explained their acquaintance with the drug informant." The court rejected the defendant's argument that the jury would have been more likely to believe a witness' testimony if the witness were identified as a member of task force. Id. In United States v. Borello, 624 F. Supp. 150, 153 (E.D.N.Y. 1985), the district court held that no prejudice resulted when a prosecutor introduced himself to the grand jury as a "special attorney with the Department of Justice, Organized

Crime Task Force." The district court reasoned that the prosecutor's statement was merely an introductory formality.

In this case, the defendant's claim of unfair prejudice resulting from witnesses identifying their roles with the DEA Task Force by way of background and introduction, or mentioning that certain actions were taken by the Task Force in connection with this case, is unpersuasive. "Task force" is commonly used as an organizational term for both civilian and law enforcement purposes, and does not by itself or by its intended use carry unduly prejudicial weight. Therefore defendant's motion will be denied.

II. Motion to Dismiss for Multiplicity

Hunter moves to dismiss several counts of the Superseding Indictment on the grounds that they are multiplicitous. See [Doc. # 402]. Counts Two, Three, Four, Five, Six, and Eight charge violation of 21 U.S.C. § 843(b),[1] which prohibits, inter

---

[1]Communication facility --

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter [concerning drug crimes]. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

21 U.S.C. § 843(b)

alia, use of a telephone with the intent to facilitate a drug felony. Counts Two and Three allege that defendant Hunter used a telephone in violation of the statute on January 4, 2005 at 2:38 p.m. and 11:23 p.m., respectively, to facilitate the crime of possession with intent to distribute, and distribution of, crack cocaine. Counts Four through Six allege telephone calls on January 5, 2005 at 11:31 a.m., 12:38 a.m., and 3:18 p.m., respectively, to facilitate the crime of possession with the intent to distribute, and distribution of, PCP. Counts Eight and Nine charge, respectively, use of a telephone on January 6, 2005 at 4:39 p.m. to facilitate the crime of possession with intent to distribute, and distribution of, crack cocaine, and the substantive charge of possession of five or more grams of crack.[2] Defendant argues that these counts are multiplicitous because they charge multiple counts relating to the same drug transaction, in violation of his Fifth Amendment right against double jeopardy.

"A multiplicitous indictment... is one that charges in separate counts two or more crimes, when in fact and law, only one crime has been committed." United States v. Holmes, 44 F.3d 1150, 1153-54 (2d Cir. 1995) (citations omitted). The Double Jeopardy Clause is not violated by multiple convictions stemming

[2]Defendant appears to misread Count Nine, which is not a telephone count.

from a single transaction if each conviction requires proof of a fact which the other does not. See Blockburger v. United States, 284 U.S. 299, 304 (1932) ("The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not."); Andrews v. United States, 817 F.2d 1277, 1281 (7th Cir. 1987) (where defendant was convicted of use of telephone to facilitate illegal distribution of cocaine, "[e]ach count required proof of a separate telephone call used to facilitate drug distribution and therefore satisfie[d] Blockburger."). Another important test for determining whether an indictment is multiplicitous "is whether [C]ongress intended to authorize separate punishments for the conduct in question." Holmes, 44 F.3d at 1154 (2d Cir. 1995).

Section 843(b) specifically provides that "[e]ach separate use of a communication facility shall be a separate offense under this subsection," and thus Congress clearly intended to authorize separate punishments for each such use, even if each use facilitates the same narcotics felony. 21 U.S.C. § 843(b). Additionally, each count in the indictment alleges and requires proof of a separate fact, namely proof that defendant placed a different and separately identifiable telephone call. Andrews,

817 F.2d at 1281; United States v. Fox, No. 74-00523, 1986 WL 8230 at *2 (E.D. Pa. July 18, 1986) (Five counts charging violations of § 843(b) "represent separate and distinct uses of a telephone. Thus, the facts required to prove each offense differ."). The fact that some of these telephone calls occurred on the same date and related to the same drug transaction does not render the counts multiplicitous. Defendant's double jeopardy argument is without merit.

III. Government's Motion for Disclosure

The Government has moved for an order that defendants furnish the Government with the information identified in Federal Rules of Criminal Procedure 16(b)(1)(A)-(C). This motion will be granted absent objection.

IV. Conclusion

Accordingly, defendant's motions [Docs. ## 317, 402] are DENIED and the Government's motion [Doc. # 418] is GRANTED.

IT IS SO ORDERED.

/s/

JANET BOND ARTERTON, U.S.D.J.

Dated at New Haven, Connecticut, this 10th day of November, 2005.