

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JOHN FELDER	:	
a/k/a "Bo"	:	NO. 06-079-01

GENE E.K. PRATTER, J.

JANUARY 11, 2007

MEMORANDUM AND ORDER

John Felder stands indicted for distribution of and possession with intent to distribute cocaine base, distribution of and possession with intent to distribute marijuana, possession with intent to distribute heroin, possession of a firearm in furtherance of a drug trafficking crime and felon in possession of a firearm. He contends that the indictment issued in this case is multiplicitous because it charges a single offense in more than one count. Specifically, he argues that Counts 19 and 20 allege the same crime and that Counts 11-14 all charge the same crime or crimes. The Court disagrees and denies Mr. Felder's Motion to Dismiss the Indictment Based on Multiplicity or to Dismiss Multiplicitous Counts of the Indictment (Docket No. 60).

"Multiplicity" concerns charging a single offense in different counts of an indictment. United States v. Carter, 576 F.2d 1061, 1064 (3d Cir. 1978). The constitutional concern arises from the prohibition of putting a defendant in jeopardy of being punished more than once for the same crime. Thus, the fundamental inquiry is to examine the indictment to determine whether the same crime is indeed charged more than once.

In this indictment, Counts 17 and 18 concern separate crimes and, hence, are not

multiplicitous. Count 17 alleges Mr. Felder's possession of the .25 caliber semi-automatic pistol that he sold to an undercover police officer. Count 18 charges Mr. Felder with possession of two pistols found in his bedroom, along with a variety of illegal drugs, after he was arrested. These counts also concern two separate events, involving two separate predicate drug offenses. Likewise, Counts 19 and 20 allege yet again different possessions at different times of different firearms. Upon similar examination, Counts 11-14 are likewise sufficiently distinct from each other to overcome the Defendant's challenge. Under conventional case law, these are not multiplicitous charges. See United States v. Casiano, 113 F.3d 420, 426 (3d Cir. 1997).

Moreover, as the Government correctly argues, even if the counts here did involve multiplicitous counts (which they do not), the appropriate curative response would be to merge them at the time of sentencing or to dismiss all but one of them prior to sentencing, as opposed to prior to trial. United States v. Blyden, 930 F.2d 323, 328 (3d Cir. 1991).

Accordingly, Mr. Felder's Motion will be denied. An appropriate Order follows.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge

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ORDER

AND NOW, this 11th day of January, 2007, upon consideration of the Defendant's Motion to Dismiss the Indictment Based on Multiplicity or to Dismiss Multiplicitous Counts of the Indictment (Docket No. 60) and the Government's Response thereto (Docket No. 73), it is hereby ORDERED that the Defendant's Motion is DENIED.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge