UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA **v.** **THESOCIALDISASTER,** **Defendant.**	**Criminal Action No. 4:20-CR-2249**

Lewis F. Powell, Jr., District Judge,

MEMORANDUM OPINION ON DEFENDANT'S MOTION TO DISMISS

At the heart of every criminal case in our legal system is a criminal information – a charging document that prosecutors bring to formally commence proceedings against a defendant. In this case, defendant moves for dismissal of the case due to the duplicity of the charges brought against her. We reject this argument and deny defendant's motion for dismissal.

I. Background

The United States brought this action against defendant TheSocialDisaster on September 10th, 2020. In their information, the United States alleges that defendant committed 5 counts of violating 18 U.S.C. §1114(3), attempted murder of an officer or employee of the United States, and 1 count of violating 18 U.S.C. §1114(1), murder of an officer or employee of the United States. This Court accepted the motion and its accompanying affidavit, and summoned the defendant.

After appearing before this Court, the defense moved to dismiss the information on grounds of duplicity. Following our precedent from the District of Columbia Circuit, this court now concludes that the counts are not duplicitous, and deny the motion for dismissal of this case without prejudice.

II. Analysis

Defendant's arguments lie on specific problems of duplicity: (1) that the defendant's right to "know the charges filed against him" would be violated, and the same would happen to defendant's right to double jeopardy. We reject both arguments.

As we have repeatedly affirmed, duplicity is the joining in a single count of "two or more *distinct and separate* offenses." *United States* v. *Shorter*, 809 F.2d 54, 56 (D.C. Cir. 1987) (emphasis added), *United States* v. *Berardi*, 675 F. 2d 894, 897 (7th Cir. 1982). A count is not duplicitous, however, if it simply charges the commission of a single offense by different means. *Id.,* at 897. In addition, we recognize that "two or more acts, each of which would constitute an offense standing alone and which therefore could be charged as separate counts of an indictment, may instead be charged in a single count if those acts could be characterized as part of a single, continuing scheme." *Shorter*, 809 F.2d, at 56. In other words, only an act which can be viewed as an independent execution of a scheme must be charged in a separate count in order for the charge not to be duplicitous. *United States* v. *Bruce*, 89 F.3d 886, 889 (D.C. Cir. 1996).

Especially here, context of the case is important. The United States bases its case off of one piece of evidence – a video repeatedly showing an agent of the Federal Bureau of Investigation and another officer from a different department being shot by defendant and two other officials repeatedly at the same time the first incident occurred. In essence, this case fits the second: that

two offenses can be consolidated into one single charge. Even this, however, is mitigated by the fact that the United States filed two separate charges for separate violations of the same section. Defendant, therefore, cannot argue that these charges are duplicitous, for the alleged distinct and separate offenses have already been listed separately.

We differentiate this case from *In re TheBeatle2012,* 9 U. S. 155. First, in *Beatle,* the Court found that to survive a motion to dismiss due to *lack of probable cause*, the prosecution must provide probable cause for each individual murder offense. In this case, the motion to dismiss is for duplicitous charges, not for a lack of probable cause. And while the Court held in *Beatle* that "a series of events cannot be linked together by using one instance of probable cause," *Id.* at 157, the term "series of events" was most likely construed to link events that occurred separately, that is, not at the same time and location of the original described incident.

In addition, the prohibition of double jeopardy is not against being twice punished, but "against being twice *put in jeopardy*." *Ball* v. *United States,* 163 U. S. 662, 669 (1896). Defendant therefore errs in concluding that her right against double jeopardy would be infringed upon if this motion was denied. Precautions were already made to separate the various violations of 18 U.S.C. §1114, as we mentioned above, so we need not explicitly verify the sufficiency of the charges. Double jeopardy would have little probability to occur in this case.

Defendant's duplicity argument may have been sensible if the government had attempted to detail multiple incidents through this one charge. Because that is not the case here, however, the charges are not duplicitous.

III. Conclusion

For the foregoing reasons the Court denies Defendant's motion to dismiss without prejudice.

Dated: September 11, 2020

LEWIS FRANKLIN POWELL, JR.
UNITED STATES DISTRICT JUDGE