IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 03-02-2-JJF
	:	
RAFAEL RINCON,	:	
	:	
Defendant.	:	

Colm F. Connolly, Esquire, United States Attorney, and Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware.
Attorneys for Plaintiff.

Eleni Kousoulis, Esquire, Assistant Public Defender, UNITED STATES PUBLIC DEFENDER'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware.
Attorney for Defendant.

MEMORANDUM OPINION

September 30, 2004

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For Judgment of Acquittal (D.I. 68) filed by Defendant Rafael Rincon. For the reasons discussed, Defendant's Motion will be denied.

BACKGROUND

Rafael Rincon was accused of seven counts relating to distribution of drugs. The jury found Mr. Rincon guilty on each count. By the instant motion, Mr. Rincon moves, pursuant to Federal Rule of Criminal Procedure 29(c), for judgment of acquittal on Count One and Counts Four through Seven. Count One charged Mr. Rincon with conspiracy to distribute cocaine base and heroin from April 24, 2002, to September 3, 2002; Count Four charged Mr. Rincon with aiding and abetting the knowing distribution of more than five (5) grams of cocaine base on May 3, 2002; Count Five charged Mr. Rincon with aiding and abetting the knowing distribution of heroin on May 3, 2002; Count Six charged Mr. Rincon with aiding and abetting the knowing distribution of more than five (5) grams of cocaine base on September 3, 2002; and Count Seven charged Mr. Rincon with aiding and abetting the knowing distribution of heroin on September 3, 2002.

DISCUSSION

Pursuant to Federal Rule of Criminal Procedure 29, the Court must enter a judgment of acquittal if a conviction is not

supported by sufficient evidence. The Court must determine whether the evidence would permit a "reasonable mind [to] find the defendant guilty beyond a reasonable doubt of every element of the offense." See United States v. Terselich, 885 F.2d 1094, 1097 (3d Cir. 1989). In making this determination, the Court must view the evidence presented at trial in the light most favorable to the Government. Id. "It is not [the Court's] role to weigh the evidence or to determine the credibility of the witnesses." United States v. Cothran, 286 F.3d 173, 175 (3d Cir. 2002) (citing United States v. Dent, 149 F.3d 180, 187 (3d Cir. 1988)).

I. Counts Four and Five: Aiding & Abetting on May 3, 2002

By his motion, Mr. Rincon argues that the Government offered insufficient evidence to support Counts Four and Five. According to Mr. Rincon, aside from the Government's evidence that he provided a government informant, Melvin Barner, with Mr. Vonsander's phone number, Mr. Rincon was in no way involved with the May 3, 2002, drug transactions.

The Government contends that the evidence was sufficient to support Mr. Rincon's conviction for the May 3, 2002, drug transactions. According to the Government, prior to May 3, 2002, the Drug Enforcement Administration had arranged for Melvin Barner, a convicted drug dealer, to act as a confidential informant in its investigation of Mr. Vonsander. Barner

testified that on May 2, 2002, Mr. Rincon pulled up to him to offer him drugs. Barner further testified that, at the time, Mr. Vonsander was driving the car. When Barner agreed to the offer, Mr. Rincon gave Mr. Vonsander's phone number to Barner. Moreover, the Government argues that, when Barner received the drugs from Mr. Vonsander the next day, the packaging of the heroin was stamped with the same "power" stamp that Mr. Rincon used in a heroin sale nine days earlier. The Government notes that actual presence at a drug sale is unnecessary to support a conviction for aiding and abetting a distribution.

The Government further contends that later incidents demonstrated Mr. Rincon and Mr. Vonsander's ongoing cooperation in the sale of cocaine. For example, the Government asserts that, at the September 3, 2002, drug transaction, witnesses observed Mr. Rincon in the kitchen drying out the cocaine which Mr. Vonsander later sold.

To prove the crime of aiding and abetting, the Government must prove (1) that another committed the substantive offense, (2) that the defendant knew the offense was being committed, and (3) that the defendant intended to facilitate the offense. United States v. Cartwright, 359 F.3d 281, 287 (3d. Cir. 2004) (citations omitted). In this case, the substantive offense committed by another is distribution of cocaine base and heroin. To prove the crime of distribution, the Government must prove

that Mr. Vonsander knowingly distributed a controlled substance and that the he knew the substance was a controlled substance. 21 U.S.C. § 841(a)(1); United States v. Barbosa, 271 F.3d 438, 458 (3d Cir. 2001). Additionally, for Counts Four and Six, distribution of over five grams of cocaine base, the Government must prove that the cocaine base had a net weight of over five grams.

The Court finds that the Government proved at trial, and Mr. Rincon has not contested, both underlying offenses—distribution of heroin and distribution of over five grams of cocaine base on May 3, 2002. Moreover, neither party disputes the weight of the cocaine base sold on May 3, 2002. The decisive issue therefore is whether a reasonable juror could have concluded beyond a reasonable doubt that Mr. Rincon knew of and intended to facilitate the distribution by Mr. Vonsander.

The Court finds the Government adduced sufficient evidence to support Mr. Rincon's convictions under Counts Four and Five. According to Barner's testimony, Mr. Vonsander drove Mr. Rincon up to Barner on May 2, 2002. There, Mr. Rincon initiated the May 3, 2002, drug transaction by soliciting Barner and giving him Mr. Vonsanders' phone number. In addition, when Barner received the heroin, its packaging had a stamp identical to Mr. Rincon's. Regardless of Mr. Rincon's physical absence at the actual transaction, the evidence cited, along with the evidence of the

collaboration of Mr. Rincon and Mr. Vonsander at other transactions, provide sufficient evidence for a jury to reasonably conclude beyond a reasonable doubt that Mr. Rincon aided and abetted Mr. Vonsander in the sale of drugs as charged in Counts Four and Five.

II. Counts Six and Seven: Aiding & Abetting on September 3, 2002

By his motion, Mr. Rincon contends that the Government offered insufficient evidence to support Counts Six and Seven. Mr. Rincon emphasizes that, while he was present at Mr. Vonsander's house on September 3, 2002, he was not present when the actual drug transaction took place. In addition, Mr. Rincon contends that, although he was in the kitchen drying the cocaine shortly before the drug sale, this fact alone does not establish beyond a reasonable doubt that he was aiding and abetting Mr. Vonsander. For example, Mr. Rincon argues he may have been drying the cocaine for his personal use. Finally, Mr. Rincon notes that the Government never presented evidence that Mr. Vonsander compensated Mr. Rincon for the September 3, 2002, drug transaction.

In response, as with Counts Four and Five, the Government contends that the crime of aiding and abetting does not require Mr. Rincon's presence at the actual transaction. Further, the Government argues that Mr. Rincon assisted the sale before departing by drying out the cocaine which was eventually sold.

The Government also argues that, when Mr. Vonsander left to obtain the heroine, Mr. Rincon apologized for the delay caused by the drying, like a salesman tending to a client relationship.

Finally, in further support of Mr. Rincon's conviction for Count Seven, the Government argues that Mr. Vonsander obtained the heroin for the September 3, 2002, transaction from Mr. Rincon's heroin storage. The evidence adduced at trial proved that Mr. Vonsander left in the middle of the September 3, 2002, drug transaction to obtain heroin from one of two residences Mr. Rincon had used in the past to store and sell heroin. Moreover, the Government notes that the heroin which Mr. Vonsander sold was packaged with the same stamp Mr. Rincon had used in the past.

As stated above, to prove the crime of aiding and abetting, the Government must prove (1) that another committed the substantive offense, (2) that the defendant knew the offense was being committed, and (3) and that the defendant intended to facilitate the offense. United States v. Cartwright, 359 F.3d 281, 287 (3d. Cir. 2004) (citations omitted). The Court concludes that the Government proved, and Mr. Rincon has not contested, the underlying offenses of distribution of heroin and distribution of over five grams of cocaine base on September 3, 2002.

For Counts Six and Seven, the Court finds that a juror could reasonably conclude beyond a reasonable doubt that Mr. Rincon

knew of and intended to facilitate the September 3, 2002, transaction. The jury heard sufficient evidence to connect Mr. Rincon to the drug transaction. Detective Pope's testimony indicated that Mr. Rincon was present at the house, just before the deal was completed, interacting with Mr. Vonsander, drying out cocaine, and apologizing for the delay. Witnesses also testified that, in the middle of the deal, Mr. Vonsander walked to a house where Mr. Rincon was known to store heroin and returned with a heroin package bearing Mr. Rincon's previously-used stamp. Based on this evidence, the Court finds that the Government presented evidence at trial sufficient to support the convictions under Counts Six and Seven.

III. Count One: Conspiracy

By his motion, Mr. Rincon argues that the Government offered insufficient evidence to support Count One, conspiracy to distribute cocaine base and heroin. Mr. Rincon argues that the Government's only evidence in support of this charge is that Mr. Rincon had at times been in Mr. Vonsander's company. First, Mr. Rincon emphasizes that on April 24, 2002, when he sold heroin to Barner (Count III), Mr. Vonsander was not present. Second, Mr. Rincon notes that he was not present during Mr. Vonsander's May 3, 2002, and September 3, 2002, sales. Mr. Rincon concedes that he may have been aware that Mr. Vonsander sold drugs, and even present at the scene of one of the transactions. However, Mr.

Rincon argues that mere presence and knowledge are insufficient to establish guilt of conspiracy.

In response, the Government contends that Mr. Rincon and Mr. Vonsander were seen together during three different drug transactions, with Mr. Rincon facilitating each transaction. First, the Government points to direct eyewitness testimony of collaboration on April 24, 2002. A government informant, while buying heroin from Mr. Rincon, asked Mr. Rincon if he could purchase crack cocaine. Mr. Rincon made a telephone call and Mr. Vonsander arrived within a few minutes with cocaine base, while Mr. Rincon was still present.

The Government also points to the aforementioned evidence of conspiracy during the May 3, 2002, and September 3, 2002, drug transactions. According to the Government, these three incidents taken together prove beyond a reasonable doubt that Mr. Rincon conspired with Mr. Vonsander to distribute heroin and cocaine base. The Court further asserts that evidence of financial compensation is not an element of the offense of distribution and need not be proved.

To prove conspiracy, the Government must prove "that the alleged conspirators shared a unity of purpose, the intent to achieve a common goal, and an agreement to work together toward the goal." United States v. Wexler, 838 F.2d 88, 90-91 (3d Cir. 1987) (citations omitted). In addition, the defendant must "have

had knowledge of the illegal objective contemplated by the conspiracy." Id. "The government may prove these elements entirely by circumstantial evidence." United States v. Gibbs, 190 F.3d 188, 197 (3d Cir. 1999). The conspiracy's existence "can be inferred from evidence of related facts and circumstances from which it appears as a reasonable and logical inference, that the activities of the participants ... could not have been carried on except as the result of a preconceived scheme or common understanding." United States v. Kapp, 781 F.2d 1008, 1010 (3d Cir. 1986).

After considering the evidence adduced by the Government, the Court finds sufficient evidence was adduced to support the jury's conspiracy verdict on Count One. Testimony regarding numerous incidents placed Mr. Rincon and Mr. Vonsander together for the united purpose of selling drugs. The jury could have permissibly inferred from these events that both men intended and agreed to further the illegal objective of selling drugs. Mr. Rincon's physical absence during some of the transactions, while relevant and presumably considered by the jury, does not disprove conspiracy. Viewing the evidence in its entirety, the Court concludes that a jury could reasonably conclude beyond a reasonable doubt that the drug sales resulted from a conspiracy between Mr. Rincon and Mr. Vonsander to distribute cocaine base and heroin.

CONCLUSION

For the reasons discussed, Defendant's Motion For Judgment of Acquittal (D.I. 68) will be denied.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

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Plaintiff,	:	
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RAFAEL RINCON,	:	
	:	
Defendant.	:	

O R D E R

At Wilmington, this 30th day of September 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant's Motion For Judgment of Acquittal (D.I. 68) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE