

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,077

VS :

JOAN M. GIROLAMI :

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COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,078

VS :

LOUIS R. GIROLAMI :

OPINION AND ORDER

Before the Court are Defendants' Petition for Habeas Corpus. The Defendants have been charged with adulteration of labels, receiving stolen property, conspiracy and related offenses. A Preliminary Hearing was held on June 28, 2000 before District Magistrate James Sortman after which, all charges were bound over. Defendants now argue that the Commonwealth failed to establish a prima facie case as to the charges of adulterating labels. The parties agreed to submit the motion on the transcript of the preliminary hearing, along with the results of the laboratory testing of twelve items seized from the Defendants' residence. After a review of the preliminary hearing, the Court finds the following facts.

Patrick Barker testified that he is with a Wal-Mart task force that investigates flea markets and similar operations suspected of handling stolen merchandise. (N.T. 6/28/00, p. 4) In the first week of March, 2000, Barker went to the Silver Moon Flea Market where the Defendants were located. Suspecting that some of the items sold by the Defendants may have been stolen, Barker went back to the market on April 2, 2000.

On that date, Barker had a conversation with Mr. Girolami with regard to the prices of his merchandise. Barker testified that Mr. Girolami was selling Tylenol, for example, for approximately .43 cents less than Wal-Mart's wholesale price. (Id., p. 5) Barker told Mr. Girolami that he had some merchandise in Philadelphia. Mr. Girolami indicated that he was interested in purchasing items, and specified the items that he had a particular interest in, including Comtrex, Tylenol and Advil. Barker took this information to the State Police.

On April 9, 2000, Barker returned to the flea market and again conversed with Mr. Girolami. On this occasion, Mr. Girolami had a list of numerous additional products he had an interest in. Barker testified that he informed Mr. Girolami that he and his associates had stolen the products from various Wal-Mart stores, and that the items were being stored in a warehouse in Philadelphia. (Id., p 6) Barker took this information to the State Police as well.

Trooper Robert Lill, assigned to the Central Unit of the Bureau of Criminal Investigation, Organized Crime Division, testified that he began an investigation of the Defendants in April of 2000, after being contacted by Mr. Barker with regard to suspected activities. Trooper Lill called the Defendants, claiming to be an associate of Mr. Barker, and arranged for a meeting to be held on April 14, 2000. (Id., p. 36) On that date, Trooper Lill was in possession of various items that had been stamped with the date "14 April 2000" in invisible ink, only visible through the use of an alternative light. Trooper Lill testified that he exchanged the merchandise for five hundred and twenty-five dollars, cash. (Id., p 37) Trooper Lill testified that after he gave the merchandise to

the Defendants, but before they paid for the merchandise, he informed them that the items were stolen. (Id., p. 40) The Defendants acknowledged that they understood.

A second exchange was arranged for April 26, 2000. On that date, Trooper Lill exchanged merchandise for a total of twelve hundred and eighty dollars. (Id., p. 42) The items exchanged on that date were stamped with the date April 26, 2000 using invisible ink.¹ On that date, an additional transaction was also arranged for May 5, 2000. At the May 5, transaction, the Defendants paid \$3,200.00 for the merchandise supplied by Trooper Lill. (Id., p.43) After the conclusion of the third transaction, the Defendants were informed of their Miranda rights, and were informed of the charges that had been prepared from the first two transactions.

Troopers then followed the Defendants to their residence, which was searched at that time pursuant to a search warrant. Among the items seized at the residence were date stamps and a dye-type stamp. These items were found on a workbench in the basement, which had been set up as a warehouse for the goods sold by the Defendants. Trooper Lill testified that he later made a connection – upon seeing some discoloration in the packaging of the some of the items—that the devices could have been used for the alteration of expiration dates. (Id., p. 47) Twelve packaged items that appeared to have been re-stamped, and one package in which the date was obliterated, but had not been re-stamped, were forwarded along with the stamps to the Harrisburg document section to be analyzed.

¹ On April 27, 2000, and on April 30, 2000 Trooper Michael Hudson, who assisted in the investigation purchased various items from the booths operated by the Defendants at the Jersey Shore Flea Market and the Silver Moon Complex. Through the use of the alternative light source, many of the items were later verified to be items supplied by Trooper Lill. (Id., p. 28-29)

The laboratory report of the twelve items was supplied to the Court at the time of the Preliminary Hearing. The report indicated that the expiration dates had been obliterated, and the items had been over-stamped by stamps comparable to the stamp obtained from the Defendants' residence. It was the opinion of the technician that the stamp used to over-stamp the twelve items reviewed was not the same stamp found at the residence.

The issue before the Court is whether the Commonwealth established a prima facie case of adulterating labels. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). 35 PS § 780-113(a)(5) prohibits the adulteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a controlled substance, other drug, device or cosmetic, if such act is done while such substance or article is held for sale and results in such substance or article being adulterated or misbranded.

In the instant case, the Court finds that the Commonwealth presented sufficient evidence to establish that expiration dates on drugs sold by the Defendants had been obliterated and adulterated. The report from the laboratory indicates that the expiration dates on the products had been obliterated, and that on all but one of the products, a new date had been stamped. The Court finds that the Commonwealth also presented sufficient evidence to establish the probability that the Defendants engaged in the obliteration and adulteration of the expiration dates on the products they held out for sale. The Court finds Defendants possession of products that had obliterated dates and

adulterated dates, along with their possession of a stamp on a workbench in the vicinity of the products, establishes the probability that they were involved in the obliteration and adulteration of the dates. The Court therefore denies Defendants motion to dismiss the charges.

ORDER

AND NOW, this 15th day of March, 2001, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendants' Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
Diane Turner, Esquire
David Marcello, Esquire
James Protasio, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire