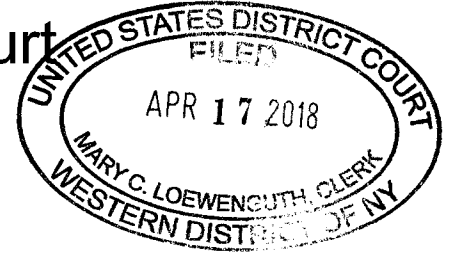


AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
for the
Western District of New York



United States of America)

v.)

SAMUEL McFARLAND,)

Defendant)

18-MJ- 4032

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about January 8, 2018, in the county of Monroe in the Western District of New York, the defendant violated 18 U.S.C. § 545, an offense described as follows:

the defendant smuggled goods with the intent to defraud the United States.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet.

Complainant's signature

WILLIAM J. AIELLO, Special Agent
Homeland Security Investigations

Printed name and title

Sworn to before me and signed in my presence.

Date: April 17, 2018

Judge's signature

City and State: Rochester, New York

Hon. Marian W. Payson, U.S. Magistrate Judge

Printed name and title

18 mg 41032

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

I, **William Aiello**, a Special Agent (SA) with Homeland Security Investigations (HSI), being duly sworn, depose and state as follows:

INTRODUCTION

1. I am a Special Agent with The Department of Homeland Security (DHS), Homeland Security Investigations (HSI) in Buffalo, New York, and have been employed in this capacity for 8 years. I was previously employed as a United States Postal Inspector with the United States Postal Inspection Service (USPIS) for nearly 4 years. Before I began my career as a Postal Inspector and Special Agent, I was employed as a Police Officer with the Henrico County Police Department in Richmond, Virginia. In my capacity as a federal agent, I have investigated criminal violations relating to commercial fraud and intellectual property rights in violation of Title 18, United States Code, Sections 542, 545, and 2320.

2. I make this affidavit in support of a criminal complaint charging **SAMUEL MCFARLAND** (“**MCFARLAND**”) with a violation of Title 18, United States Code, Section 545 [Smuggling Goods with the Intent to Defraud the United States].

3. I am familiar with the information contained in this affidavit based upon my participation in the investigation, my review of documents obtained as part of this investigation, information provided to me by other law enforcement officers, and information

provided to me by industry experts. Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging MCFARLAND with the above offense, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that MCFARLAND knowingly violated Title 18, United States Code, Section 545.

PRE-SEARCH WARRANT INVESTIGATION

4. On January 8, 2018, United States Customs and Border Protection (CBP) officers located at the DHL Hub in Rochester, New York, inspected and subsequently seized a DHL Express Worldwide shipment, consigned to Delon MCNEIL at 63 BERLIN STREET, ROCHESTER, NY 14621. The shipment was sent from an unknown entity located in the Guangdong Province in China. Examination revealed the package contained 100 bottles, each containing 30 Cialis pills. These pills were later determined to be counterfeit. The package was manifested as “free trade sample” of 50 plastic bottles valued at \$1 each.

5. Photographic samples of the pills and bottles were provided to a representative of the Cialis trademark holder, Eli Lilly and Company, based out of Indianapolis, IN. The company representative, Jack Strohlman, verified the pills to be counterfeit and in direct violation of the Cialis trademark.

6. Homeland Security Investigations (HSI) agents researched U.S. Customs and Border Protection databases regarding importations to 63 BERLIN STREET, ROCHESTER,

NY 14621. It was determined that since January 2017, 15 shipments, including the January 8, 2018 shipment, were sent from China to 63 BERLIN STREET, ROCHESTER, NY 14621. According to CBP, 12 of those shipments were sent via U.S. Postal Service Express Mail (via China Post). The only shipment not sent via U.S. Postal Service was the DHL shipment on January 8, 2018 listed above. All 15 shipments were destined for 63 BERLIN STREET, ROCHESTER, NY 14621. All but 2 of the shipments were destined for the consignee "Samuel MCFARLAND". The other 2 shipments were destined for consignee "Delon MCNEIL." Packages were sent from China to Samuel MCFARLAND that arrived at the 63 BERLIN STREET, ROCHESTER, NY 14621 on December 6, 2017, December 20, 2017, January 5, 2018, and January 18, 2018. Of those 15 packages that were sent from China, CBP seized 2: the January 8, 2018 shipment, and a second shipment in April 2017, as detailed below.

7. On April 10, 2017, CBP officers located at the JFK Mail Branch in New York, New York, inspected and subsequently seized a U.S. Postal Service Express Mail shipment (via China Post) consigned to Samuel MCFARLAND at the 63 BERLIN STREET, ROCHESTER, NY 14621. The shipment was sent from an unknown entity located in Hong Kong, China. Examination revealed that the package contained 3,012 Viagra pills and 190 Cialis pills. These pills were later determined to be counterfeit.

8. More specifically, in April 2017, CBP contacted a representative from Pfizer Company which is the trademark holder for Viagra. The representative, Brian Donnelly, verified that the Viagra pills were counterfeit and in violation of the Viagra trademark. CBP also

contacted Jack Strohlman, the Eli and Lilly Company representative, who verified that the Cialis pills were counterfeit and in violation of the Cialis trademark.

9. On May 31, 2017, the CBP Fines, Penalties and Forfeiture (FPF) Office sent a seizure notice to Samuel MCFARLAND at 63 BERLIN STREET, ROCHESTER, NY 14621.

The seizure notice stated in part:

This is to notify you the U.S. Customs and Border Protection seized the property described below (3012 Viagra pills (counterfeit), 190 counterfeit Cialis pills) at JFK Airport on April 10, 2017. The property was seized in accordance with the provisions of Title 19 United States Section 1526(e) which prohibits the importation of merchandise bearing counterfeit trademark that is both registered with the Patent and Trademark Office and recorded with Customs and Border Protection. The property contains markings which are substantially indistinguishable from and therefore, bear counterfeit design/word/mark as indicated below. Customs and Border Protection Regulations provide that any article imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of written consent of the trademark owner, forfeited for violation of the Custom laws.

CBP also sent an "Election of Proceedings Non-CAFRA Form" to MCFARLAND at 63 BERLIN STREET, ROCHESTER, NY 14621, which provided 5 choices for proceedings following the seizure of the shipment. The choices were as follows:

- (1) Petition for return of the property;
- (2) Offer a compromise;
- (3) Abandon the property;
- (4) Request a hearing in court;
- (5) Have CBP begin administrative proceedings for forfeiture of the property.

CBP FPF did not receive a response from MCFARLAND.

10. On January 17, 2018, your affiant conducted law enforcement and public database research regarding Samuel MCFARLAND, Delon MCNEIL and 63 BERLIN

STREET, ROCHESTER, NY 14621. Research revealed that Samuel MCFARLAND resides at the 63 BERLIN STREET, ROCHESTER, NY 14621. According to the New York State Department of Motor Vehicles (NYS DMV), MCFARLAND possesses a valid NYS drivers license with a home address of 63 Berlin Street, Rochester, NY 14621.

SEARCH WARRANT

11. On January 22, 2018, United States Magistrate Judge Johnathan W. Feldman signed a Federal search warrant authorizing the search of MCFARLAND's residence, 63 Berlin Street, Rochester, New York, and that warrant was executed on January 25, 2018. On that date, an agent acting in an undercover capacity delivered the package previously referred to in paragraph 4 of this affidavit to 63 Berlin Street, Rochester, New York. After knocking at the door, an individual later identified as Samuel MCFARLAND answered the door and signed for the package as "Delon McNeil." Agents then immediately approached the residence and executed the search warrant. During the execution of the search warrant, a cellular telephone belonging to MCFARLAND was seized along with the package of 3000 counterfeit Cialis pills.

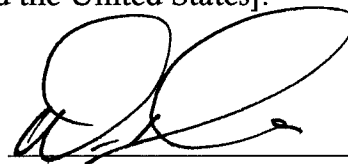
12. After entering the residence, your affiant and Special Agent Michael Dombek initiated a non-custodial, consensual interview with MCFARLAND in the kitchen of his residence. At the beginning of the interview, I explained that law enforcement was present at the residence to execute a federal search warrant and that the matter was related to the smuggling of goods into the United States, specifically counterfeit Cialis. MCFARLAND was asked questions regarding the smuggling of counterfeit Cialis into the United States. In sum and substance, MCFARLAND stated that he was the person who had ordered both the

package in April 2017 containing counterfeit Viagra as well as the package in January 2018 containing counterfeit Cialis. He stated he knew the first package was counterfeit but did not believe that second package would actually make it through Customs. MCFARLAND stated he paid \$6 per pill in an order he made online from China. MCFARLAND also stated that although not his biological son, MCFARLAND raised Delon McNeil from an early age. MCFARLAND also told your affiant that Delon McNeil was currently in prison in Elmira.

13. Subsequent to the search warrant conducted at 63 Berlin Street, Rochester, New York, a forensic examination was conducted on the seized cellular telephone. The examination of MCFARLAND's cellular phone by Computer Forensic Agent (CFA) Peruzzini and your affiant revealed several photographs of Viagra including photographs that identified Viagra as either counterfeit or real. Also found on the phone were YouTube searches for "fake Viagra."

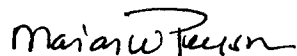
CONCLUSION

14. Based upon the foregoing, I respectfully submit that probable cause exists to believe that **SAMUEL MCFARLAND** has violated Title 18, United States Code, Section 545 [Smuggling Goods with the Intent to Defraud the United States].



WILLIAM J. AIELLO, Special Agent
Homeland Security Investigations

Subscribed and sworn to before me
this 17 day of April, 2018.



HON. MARIAN W. PAYSON
United States Magistrate Judge