

Approved: Adam Fee
ADAM FEE
Assistant U.S. Attorney

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Before: HON. FRANK MAAS
United States Magistrate Judge
Southern District of New York

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: SEALED COMPLAINT
UNITED STATES OF AMERICA : Violation of 21 U.S.C.
: §§ 813, 841(a)(1),
- v. - : 841(b)(1)(C), and 846
GIULIO BERTOLI, : COUNTY OF OFFENSE:
ANTHONY CAPACCIO, : NEW YORK
JOHN MESSINA, :
Defendants. :

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SOUTHERN DISTRICT OF NEW YORK, ss.:

DERWIN D. KINSTON, being duly sworn, deposes and says that he is Special Agent with the U.S. Drug Enforcement Administration ("DEA"), and charges as follows:

COUNT ONE

1. Beginning in or about August 2010 through in or about May 2012, in the Southern District of New York and elsewhere, GIULIO BERTOLI, ANTHONY CAPACCIO, and JOHN MESSINA, the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that GIULIO BERTOLI, ANTHONY CAPACCIO, and JOHN MESSINA, the defendants, and others known and unknown, would and did distribute and possess with the intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance involved in the offense was mixtures and substances containing a detectable amount of alpha-Pyrrolidinopentiophenone, commonly referred to as "bath salts," which is a Schedule I controlled substance analogue, as defined in 21 U.S.C. § 802(32), in violation of 21 U.S.C. §§ 813 and 841(b)(1)(C).

(Title 21, United States Code, Section 846.)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

4. I have been a DEA Special Agent for approximately seven years. During that time, I have participated in numerous investigations of unlawful drug distribution. During the course of those investigations, I have conducted or participated in surveillance, drug transactions with confidential informants and undercover officers ("UCs"), the introduction of informants and UCs, the execution of search warrants, debriefings of informants, and reviews of taped conversations and drug records. Through my training, education, and experience, I have become familiar with the manner in which illegal drugs are imported and distributed; the way in which illegal drugs are prepared, packaged, and sold on the street; some of the methods of payment for such drugs; and some of the methods that are used to disguise the source and nature of the profits made by drug dealers.

5. I make this Affidavit in part on personal knowledge based on my participation in the investigation and conversations with other DEA Special Agents and Task Force Officers ("TFOs"), and other law enforcement, including UCs; reviews of reports and other documents prepared by agents and others; and physical surveillance.

6. Throughout this Affidavit, where I assert that a statement was made, I was not the individual to whom the statement was made unless I specifically so state. Rather, information about the statement was provided by the specified law-enforcement officer (who may have had either direct or indirect knowledge of the statement) to whom I have spoken or whose reports I have read and reviewed. Such statements are among many statements made by others and they are set forth in substance and in part, unless otherwise indicated. Similarly, the information in this Affidavit resulting from surveillance, except where otherwise specifically indicated, does not set forth my personal observations, but rather was provided to me by

other law-enforcement officers who observed the events described, and to whom I have spoken or whose reports I have read.

7. Furthermore, the facts and circumstances of this investigation have been summarized for the specific purposes of this Application. I have not attempted to set forth the complete factual history of this investigation or all of its details. In making this Application, I rely only on the facts stated herein.

Overview of Investigation

8. Beginning in or about May 2012, the DEA initiated an investigation into a drug-trafficking organization ("DTO") involving GIULIO BERTOLI, ANTHONY CAPACCIO, and JOHN MESSINA, the defendants, and others known and unknown. During the course of this investigation, I have learned the following:

a. Since at least in or about August 2010, through in or about May 2012, the DTO operated a business, known as SmokeClear Inc. ("SmokeClear") that manufactured and distributed, among other things, synthetic drugs. In particular, GIULIO BERTOLI, ANTHONY CAPACCIO, and JOHN MESSINA, the defendants, and others known and unknown, used SmokeClear to coordinate the production and sale of large quantities of substances containing the chemical alpha-Pyrrolidinopentiophenome, which is a Schedule I controlled substance analogue, as defined in 21 U.S.C. § 802(32), and is sold in a form commonly known as "bath salts."

b. SmokeClear operated its production and distribution business principally from a warehouse (the "Warehouse") located in Newark, New Jersey. GIULIO BERTOLI and ANTHONY CAPACCIO owned the Warehouse, and were principally responsible for funding the controlled substances production and trafficking operations of the DTO. JOHN MESSINA was a trusted member of the DTO, and sold bath salts produced by the DTO through street-level sales.

c. During the course of searches conducted at the warehouse, the DEA seized, among other items described in part below, thousands of units of bath salts, and other substances and paraphernalia used to manufacture and distribute bath salts.

d. GIULIO BERTOLI and ANTHONY CAPACCIO, the defendants, also co-owned a second company known as "Adrenaline Rush, Inc.," which operated a retail store known as "Adrenaline Rush" also located in Newark, New Jersey (hereinafter, the company and retail store are referred to collectively as "Adrenaline Rush"). BERTOLI and CAPACCIO used Adrenaline Rush to, among other things, coordinate the work of the DTO, and to open bank accounts to collect and distribute the proceeds of their drug production and distribution business.

May 2012 Seizures of Bath Salts

7. I have learned the following from my personal participation in this investigation and from my conversations with a confidential source (the "CS"¹):

a. On or about May 7, 2012, the CS called an individual who identified himself as JOHN MESSINA, the defendant, and discussed the purchase of bath salts and synthetic marijuana. MESSINA stated that he was able to sell to the CS approximately 2,000 units of bath salts or synthetic marijuana to the CS at a price of \$4.50 per unit, for a total price of approximately \$9,000. MESSINA told the CS that he would contact the CS again to further discuss the transaction.

b. On or about May 17, 2012, MESSINA called the CS and stated that he had 2,000 units of bath salts to sell to the CS. After discussing multiple potential locations for the transaction, MESSINA asked the CS to meet MESSINA in the vicinity of 300 Miller Street in Newark, New Jersey (the "Location").

8. On or about May 17, 2012, myself and other agents were conducting surveillance in the vicinity of the Location, and observed the following:

a. At approximately 1:00 p.m., agents observed an individual later identified as JOHN MESSINA driving in the vicinity of the Location in an orange-colored sport utility

¹The CS has been providing information to the DEA for several months, and began working with the DEA following his/her arrest on drug distribution charges in the hope of avoiding or potentially reducing the penalties for his/her prior drug offenses. The CS has previously provided reliable information to the DEA that has been corroborated by independent law enforcement investigation.

vehicle ("SUV-1"), which I learned, from reviewing vehicle registration records for SUV-1, is registered to "John Messina," at an address in Patchogue, New York.

b. Agents observed SUV-1 park at a location in the vicinity of 242 Emmett Street, Newark, New Jersey. From speaking with the CS, I learned that, at approximately 1:05 p.m., the CS received a call from MESSINA, who stated that he was parked at 242 Emmett Street in Newark, New Jersey. During that phone conversation, the CS told MESSINA that the CS would not be able to meet with MESSINA that day.

c. Shortly after the CS spoke with MESSINA by phone, agents observed SUV-1 drive away from 242 Emmett Street. Law enforcement agents then conducted a traffic stop of SUV-1.

9. I have learned the following from speaking with another DEA Special Agent ("Agent-1"):

a. Agent-1 participated in the traffic stop of SUV-1. Upon being stopped, the driver of SUV-1 identified himself as JOHN MESSINA, the defendant.

b. The law enforcement officers who initially stopped SUV-1 asked for and received MESSINA's consent to search SUV-1.

c. During the search of SUV-1, agents recovered approximately 2,000 packages, which I have examined and that I believe, based on my training and experience, to be units of bath salts packaged for individual distribution and sale (the "Packages"). The Packages were found on the rear seat of SUV-1, inside of two medium-sized brown boxes. Each of the Packages had a black and purple colored plastic label, with the name "UP" printed on the front of the packaging.

e. I have reviewed the Packages, and observed the following on each of the Packages:

i. The front of the package has a human-shaped figure riding an escalator upwards below the text "UP."

ii. On the back of the package, it reads "energizing aromatherapy powder," and states that, when burned in a "potpourri dish," the contents of the package have a "stimulating and energizing aroma."

iii. The back of the package also states that it is "not for human consumption," among other warnings. The package also states, however, that "this product does not contain any illegal or prohibited ingredients" and has been "LAB CERTIFIED."

d. MESSINA was placed under arrest at that time.

10. The substances contained inside of the Packages were subsequently submitted to a DEA laboratory for testing, and tested positive for the presence of alpha-Pyrrolidinopentiophenome, which is a Schedule I controlled substance analogue as defined in 21 U.S.C. § 802(32).

11. I have learned the following from speaking with another DEA Special Agent ("Agent-2"):

a. At approximately 1:45 p.m., at the location where MESSINA had just been placed under arrest by agents, Agent-2 was approached by an individual who identified himself as ANTHONY CAPACCIO.

b. CAPACCIO stated that he knew MESSINA, and that the Packages seized from MESSINA's vehicle had been manufactured and distributed from a business operated by CAPACCIO and others from the Warehouse, which was located nearby in Newark, New Jersey.

c. CAPACCIO stated that he owned the Warehouse, and that his business, which he referred to as "SmokeClear," manufactured the substances contained in the Packages.

d. Agent-2 asked for and received CAPACCIO's written consent to search the Warehouse.

12. During the course of the search, agents seized from the Warehouse dozens of pounds of plant and chemical substances, which I have examined and believe, based on my training and experience, to consist of items commonly used in the production of the controlled substance analogues commonly referred to as synthetic marijuana and bath salts. The substances recovered from the Warehouse include, among other things, the following:

a. approximately 10 pounds of packages with the "UP" label that appear to be identical in size, weight, and appearance to the Packages seized from MESSINA's vehicle;

b. approximately 80 pounds of liquid ethyl alcohol and 30 pounds of liquid acetones, both of which I know, based on my training and experience, are chemicals typically used in the production of synthetic designer drugs such as synthetic marijuana and bath salts;

c. over 100 pounds of various liquids and powders that are as yet unidentified but currently in the process of being submitted for testing by the DEA for the presence of controlled substances;

d. dozens of other items packaged for individual sale and distribution, with labels including "Herbal Power," "Earth FX," and other brand names, and containing unknown substances;

e. hundreds of pages of documents reflecting shipments of products made by SmokeClear, including a customer distribution list showing large shipments of SmokeClear products to customers and stores located in, among other locations, Poughkeepsie, New York, which is located in Dutchess County, and New York, New York; and

f. documents reflecting orders and shipments of chemicals from chemical companies located abroad, including in Brazil and India.

13. The "UP" packages seized from the Warehouse were subsequently submitted to a DEA laboratory for testing, and tested positive for the presence of alpha-Pyrrolidinopentiophenome, which is a Schedule I controlled substance analogue as defined in 21 U.S.C. § 802(32).

14. At approximately 2:00 p.m., agents arrested CAPACCIO.

15. At approximately 3:00 p.m., another individual arrived at the Warehouse and identified himself as GIUILO BERTOLI. BERTOLI told agents that he was a co-owner of the Warehouse, and was aware that the substances contained inside the "UP" packages were manufactured and distributed from his business at the Warehouse. Agents arrested BERTOLI at that time.

16. Following his arrest, JOHN MESSINA, the defendant, was advised of and waived his *Miranda* rights, and stated the following:

a. MESSINA obtained the bath salts contained in the Packages from the SmokeClear Warehouse, which he knew to be owned and operated by ANTHONY CAPACCIO, the defendant.

b. MESSINA stated that he had travelled by car from his home in Brooklyn, New York, to Newark, New Jersey, in order to obtain the Packages containing bath salts from SmokeClear and, in turn, to sell them to another individual. Based on my training and experience, I know that travel by car from Brooklyn, New York to Newark, New Jersey likely requires travel through the Southern District of New York.

17. Following his arrest, ANTHONY CAPACCIO, the defendant, was advised of and waived his *Miranda* rights, and stated the following:

a. CAPACCIO owns and operates the SmokeClear business from the Warehouse. CAPACCIO stated that his business sells smoking paraphernalia, and substances to smoke, which he produces from substances imported from India, China, and Brazil.

b. CAPACCIO stated that his products place the user in a relaxed state of mind. CAPACCIO stated that SmokeClear had between 1,300 and 1,800 customers nationwide.

c. CAPACCIO stated that he sold the Packages containing bath salts to JOHN MESSINA, the defendant, on or about May 17, 2012. CAPACCIO said that MESSINA intended to use the profit made from selling the Packages to re-pay a loan CAPACCIO had previously made to MESSINA.

d. CAPACCIO stated that he also owned Adrenaline Rush, which CAPACCIO described as a retail store selling tobacco accessories and herbs and incenses as well as a tattoo and body piercing shop.

18. From reviewing corporate and property records, I have learned the following:

a. The Warehouse is co-owned by ANTHONY CAPACCIO and GIULIO BERTOLI, the defendants.

b. BERTOLI and CAPACCIO are partners in the SmokeClear corporation.

c. The Adrenaline Rush store in Newark, New Jersey is co-owned by CAPACCIO and BERTOLI.

d. BERTOLI and CAPACCIO are partners in the Adrenaline Rush corporation.

19. I have learned the following from reviewing bank records:

a. BERTOLI and CAPACCIO, the defendants, jointly hold an account ("Bank Account-1") with a particular national bank ("Bank-1").

b. Bank Account-1 is held in the name of "Adrenalin Rush, Inc. d/b/a SmokeClear," and the joint authorized users of the account are BERTOLI and CAPACCIO.

c. From reviewing records for Bank Account-1, I have learned that, from at least in or about August 2010 up to and including early 2012, BERTOLI and CAPACCIO used Bank Account-1 to receive deposits totaling more than \$100,000 in a series of cash deposits made in locations including Newark, New Jersey as well as Ohio and Louisiana.

d. Each of these cash deposits into Bank Account-2 was for less than \$10,000, which, I know from my training and experience, is the dollar amount that would trigger a federal bank reporting requirement for any single cash deposit. In addition, each such deposit into the account was typically followed by a cash withdrawal or wire transfer out of Bank Account-1 made by GIULIO BERTOLI, the defendant, at a location in or around Newark, New Jersey.

f. BERTOLI and CAPACCIO, the defendants, jointly hold a second account ("Bank Account-2") with a particular national bank ("Bank-2").

g. Bank Account-2 is also held in the name of "Adrenalin Rush, Inc. d/b/a SmokeClear," and the joint authorized users of the account are BERTOLI and CAPACCIO.

h. From reviewing records for Bank Account-2, I have learned that, from at least in or about August 2010 up to and including early 2012, BERTOLI and CAPACCIO used Bank

Account-2 to receive cash deposits totaling more than \$300,000 in a series of cash deposits made in locations including Newark, New Jersey as well as Ohio and Louisiana.

i. Each of these cash deposits into Bank Account-2 was for less than \$10,000, which, I know from my training and experience, is the dollar amount that would trigger a federal bank reporting requirement for any single cash deposit.

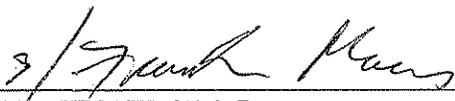
20. Based on my training and experience in investigating drug traffickers, and the means used by such individuals to conceal and distribute the cash proceeds of such activities, I believe that the account activity described in paragraph 19 above reflects attempts by GIULIO BERTOLI and ANTHONY CAPACCIO, the defendants, to avoid federal bank reporting requirements in order to conceal the proceeds of their illicit drug trafficking activities.

WHEREFORE, I respectfully request that GIULIO BERTOLI, ANTHONY CAPACCIO, and JOHN MESSINA, the defendants, be arrested, and imprisoned or bailed, as the case may be.



DERWIN D. KINSTON
Special Agent
Drug Enforcement Administration

Sworn to before me this
20th day of July, 2012



HON. FRANK MAAS
United States Magistrate Judge
Southern District of New York