

JUDGE LEE

07

MAGISTRATE JUDGE KEYS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

11CR0781

UNITED STATES OF AMERICA

) No.

v.

DONALD COUTURE

) Violation: Title 21, United States
) Code, Sections 331(a), 333(a)(2),
) 342(a)(2)(C)(i), and 348(a); Title 18,
) United States Code, 2

COUNTS ONE through FOUR

FILED

The SPECIAL AUGUST 2012 GRAND JURY charges:

FEB 12 2013

At times material to this indictment:

THOMAS G BRUTON
CLERK, U S DISTRICT COURT

1. The Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq.*, ensured that foods are safe, wholesome, sanitary, and properly labeled. The FDCA defined "food" to include "articles used for food or drink for man or other animals" and components of such food. The FDCA prohibited the delivery and introduction, and causing the delivery and introduction, into interstate commerce of "adulterated" food. Food was considered "adulterated" if, among other reasons, it contained "food additives" for which there was no regulation prescribing the conditions under which it may be safely used in food, nor an exemption allowing its use in food. Tetracycline was an antibiotic for which there was no regulation prescribing the conditions under which it could be safely used in honey, nor an exemption allowing its use in honey. Thus, Tetracycline was an unsafe food additive, and its presence in honey caused the honey to be adulterated under the FDCA.

2. DONALD COUTURE was the owner and operator of Premium Food Sales Inc. ("Premium Food"), located in Ontario, Canada. Premium Food was a broker and distributor of raw and processed honey, some of which it sold and introduced into the commerce of the United States, including to United States honey packers.

3. Honey Packers 1 and 2 were located in the Midwest and each received raw honey from Premium Food and subsequently processed and prepared the honey for delivery to retailers such as grocery stores and convenience stores, as well as downstream industrial end-users such as food processors and bakeries.

4. On March 27, 2009, a Honey Packer 1 executive signed purchase orders 3941, 3942, 3943, 3944, 3945, and 3946 to purchase from Premium Food six container loads of "Extra Light Amber Raw Honey" that claimed to be Taiwanese in origin, collectively valued at approximately \$230,823 for delivery in mid-April 2009. The purchase orders were addressed to COUTURE and the purchase order numbers also served as Honey Packer 1's lot numbers. Honey for each of the six purchase orders was imported into the United States in six individual containers each identified by unique numbers.

5. In April 2009, Premium Food caused six container loads of honey – one in fulfillment of each of Honey Packer 1's purchase orders 3941, 3942, 3943, 3944, 3945, and 3946 – to be delivered to Honey Packer 1's processing facility.

6. After receiving the six containers, Honey Packer 1 had them tested for the presence of, among other things, antibiotics, including Tetracycline.

Specifically, on April 23, 2009, an employee of Honey Packer 1 emailed COUTURE regarding "Nonconformance - Tetracycline" and stated:

Don [COUTURE] – we have received our testing results from Lots 3941-3946 of Taiwan honey. These lots were tested as a composite of three lots per sample. Tetracycline has been detected in both composite samples. [. . .]

[Honey Packer 1] is unable to accept this honey based on these test results. If you would like to have each individual lot of honey tested for Tetracycline to determine if one or all lots contain Tetracycline we can resubmit them to the lab for you. Your testing cost is \$200 per sample including shipping and handling.

If you would prefer to pick up the honey please let me know and we will have [an employee of Honey Packer 1] work with you to schedule.

7. On that same day, COUTURE responded to the foregoing email and stated: ". . .I dont [sic] know what the MRL [maximum residue limit] is for tetracycline in the US Can you find out what FDA testing allows?"

8. On April 24, 2009, the Honey Packer 1 employee responded to COUTURE and stated: "Don [COUTURE], the US does not have a tolerance designated for Tetracycline residues in honey. Thus we interpret that means a zero tolerance for Tetracycline residues in honey."

9. On April 28, 2009, honey from purchase orders 3941, 3942, 3943, 3944, 3945, and 3946 was submitted to a laboratory for re-testing. On May 5, 2009, an employee of the laboratory emailed employees of Honey Packer 1 and stated: "Attached are results from [the laboratory]. Please note detection of tetracycline." Attached to the email were six Certificates of Analysis – one from each of Honey Packer 1's lots of honey supplied by Premium Food.

10. Four of the six individual honey samples, specifically, Honey Packer 1's lot numbers 3941, 3942, 3943, and 3945, tested positive for the presence of Tetracycline in excess of the laboratory's detection limit of 2 parts per billion. Specifically, lot number 3941 tested positive for the presence of Tetracycline at 72 parts per billion; lot number 3942 at 14 parts per billion; lot number 3943 at 38 parts per billion; and lot number 3945 at 15 parts per billion.

11. On May 5, 2009, an employee of Honey Packer 1 responded to the foregoing email from the employee of the laboratory, copying COUTURE on the email, and stated: "Please bill this analysis from [the laboratory] to Don Couture at Premium Food Sales."

12. On or about May 14, 2009, COUTURE offered an executive at Honey Packer 2 a sales contract to sell Honey Packer 2 forty container loads of "Natural Honey White 34MM" that was "TAIWAN HONEY" at a price of \$0.94 per pound for delivery between June and September 2009 at a rate of ten container loads per month. The sales contract offered by COUTURE specified that the honey "MEETS ALL REQUIREMENTS FOR SALE INTO US MARKET" and was "GUARANTEED TO MEET FDA STANDARDS FOR TESTING PURPOSES." An executive with Honey Packer 2 signed the sales contract on or about June 4, 2009, and COUTURE countersigned it the following day.

13. Between on or about May 26, 2009, and May 27, 2009, COUTURE caused transportation companies hired by a warehouse and transportation broker ("Transportation Broker") to pick up from Honey Packer 1 four container loads of

honey that had been rejected for the presence of Tetracycline and deliver the same four containers through the Northern District of Illinois to Honey Packer 2's processing facility in partial fulfillment of COUTURE's forty-container sales contract with Honey Packer 2.

14. On or about July 1, 2009, Honey Packer 2 wired approximately \$229,927 to Premium Food, with approximately \$158,656 representing payment for the four container loads of adulterated honey.

15. Between on or about June 3, 2009, and June 24, 2009, Transportation Broker billed Premium Food approximately \$4,158 for arranging transportation companies to pick up honey from Honey Packer 1 and deliver the same honey to Honey Packer 2.

16. Between on or about June 17, 2009, and July 17, 2009, COUTURE signed two checks from Premium Food's bank account to Transportation Broker totaling approximately \$14,807, a portion of which was for Transportation Broker causing the transportation and delivery of the adulterated honey to Honey Packer 2.

17. On or about the dates set forth below in the Northern District of Illinois, Eastern Division and elsewhere,

DONALD COUTURE,

defendant herein, with intent to defraud and mislead, caused to be introduced and delivered for introduction into interstate commerce articles of food, that is, honey rejected from Honey Packer 1 that was adulterated within the meaning of Title 21,

United States Code, Section 342(a)(2)(C)(i), in that the honey contained an unsafe food additive, that is, Tetracycline, an antibiotic not authorized in honey, and caused the same honey to be delivered to Honey Packer 2, which honey was transported through the Northern District of Illinois, with each introduction and delivery for introduction constituting a separate count of this indictment pursuant to the following chart:

Count	Date Picked Up from Honey Packer 1's Facility	Honey Packer 1's Purchase Order (and Lot) #	Date Delivered to Honey Packer 2's Facility	Honey Packer 2's Lot #
1	May 27, 2009	3941	May 28, 2009	7625
2	May 27, 2009	3942	June 2, 2009	7640
3	May 26, 2009	3943	June 2, 2009	7641
4	May 26, 2009	3945	June 2, 2009	7639

In violation of Title 21, United States Code, Sections 331(a), 333(a)(2), 348(a), and Title 18 United States Code, Section 2.

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY