

DISPOSITION: Pleas of not guilty were entered on behalf of the defendants on or about February 12, 1952, and a motion for dismissal of the information was filed on behalf of the defendants on or about February 18, 1952. On August 1, 1952, the court entered the following order granting the motion:

BARKER, District Judge: "This cause came on to be heard upon the Motion to Dismiss filed herein by the defendants, and the Court having heard the argument of counsel, and counsel for the defendants and for the United States of America having stipulated before the Court that the facts in support of the offense sought to be charged in each count consist of refilling prescriptions for certain drugs by the defendants when there was a physician's prescription on file with the defendants;

"And the Court being advised that refilling of such prescriptions was a practice of long standing with druggists, and that for many years the administrator of the Federal Food, Drugs and Cosmetics Act did not seek to restrict refills of prescriptions and after it sought to do so, the Congress adopted a clarifying and definitive amendment, and the Court being of the opinion that facts supporting the offense sought to be charged, viz refilling prescriptions, do not constitute a criminal offense adequately and definitely spelled out in the statute and regulations as is required for a criminal prosecution;

"It is thereupon ordered that the said motion is hereby granted and the information is hereby dismissed, and the defendants are hereby released from process and discharged as not guilty.

"Done and ordered this 1st day of August A. D., 1952."

3849. Alleged misbranding of Seconal Sodium capsules and pentobarbital sodium capsules. U. S. v. Forest C. Pomeroy (Pomeroy's Drug Store). Plea of not guilty. Motion granted for dismissal of the information and defendant discharged as not guilty. (F. D. C. No. 31273. Sample Nos. 93083-K, 93088-K, 93092-K, 93098-K, 93202-K, 93209-K, 93214-K, 93230-K, 93233-K, 93236-K.)

INFORMATION FILED: January 8, 1952, Southern District of Florida, against Forest C. Pomeroy, trading as Pomeroy's Drug Store, St. Petersburg, Fla.

ALLEGED VIOLATION: Between the approximate dates of October 24 and December 18, 1950, while a number of *Seconal Sodium capsules* and *pentobarbital sodium capsules*, were being held for sale at Pomeroy's Drug Store after shipment in interstate commerce, the defendant caused various quantities of such drugs to be repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

NATURE OF CHARGE: Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear labels containing an accurate statement of the quantity of the contents.

Further misbranding, Section 502 (d), the repackaged drugs contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming; and the labels of the repackaged drugs failed to bear the name, and quantity or proportion of each derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

DISPOSITION: On February 12, 1952, a plea of not guilty was entered on behalf of the defendant, and on or about February 18, 1952, a motion for dismissal of the information was filed on behalf of the defendant. On August 1, 1952, the court entered an order granting the motion to dismiss and discharging the defendant as not guilty, based upon the same reasons as set forth in the

order of dismissal which was entered in the case reported in the preceding notice of judgment, No. 3848.

3850. Misbranding of pentobarbital sodium capsules and Seconal Sodium capsules. U. S. v. Harry W. Anderson, Willie P. Norvell, and John P. Asbill. Pleas of nolo contendere. Each defendant placed on probation for 2 years and fined \$50. (F. D. C. No. 32696. Sample Nos. 1325-L, 1331-L, 1333-L, 1335-L, 1336-L, 1423-L, 1514-L, 1517-L, 1841-L.)

INFORMATION FILED: June 20, 1952, Southern District of Georgia, against Harry W. Anderson and Willie P. Norvell, pharmacists and partners in the partnership of the Lake View Pharmacy, Augusta, Ga., and John P. Asbill, a pharmacist employed by the partnership.

ALLEGED VIOLATION: On or about May 7, 15, 16, 21, 28, and 30, and June 4, 1951, while a number of *pentobarbital sodium capsules* and *Seconal Sodium capsules* were being held for sale at the Lake View Pharmacy after shipment in interstate commerce, various quantities of the drugs were repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

Harry W. Anderson was charged with causing the dispensing of the drugs involved in three counts of the information, Willie P. Norvell with causing the dispensing of the drugs involved in four counts of the information, and John P. Asbill with causing the dispensing of the drug involved in the remaining two counts of the information.

NATURE OF CHARGE: Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear labels containing an accurate statement of the quantity of the contents.

Further misbranding, Section 502 (d), the drugs contained chemical derivatives of barbituric acid, which derivatives have been found to be, and by regulations designated as, habit forming; and when repackaged their labels failed to bear the name, and quantity or proportion of each derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

DISPOSITION: December 1, 1952. Pleas of nolo contendere having been entered, the court placed each defendant on probation for 2 years and fined each \$50.

3851. Misbranding of pentobarbital sodium capsules and sulfathiazole tablets. U. S. v. Willard H. Quigley (Edward Drug Store), Frank Coll, and Charles Kemper. Pleas of nolo contendere. Fine of \$1,000, plus costs, against Defendant Quigley; \$500 against Defendant Coll; and \$500 against Defendant Kemper. (F. D. C. No. 30591. Sample Nos. 70184-K, 70193-K.)

INFORMATION FILED: July 31, 1951, District of Nebraska, against Willard H. Quigley, trading as the Edward Drug Store, Omaha, Nebr., and against Frank Coll, an employee, and Charles Kemper, a pharmacist, at the store. An amended information was filed on January 17, 1952.

ALLEGED VIOLATION: On or about July 14 and 20, 1950, while a number of *pentobarbital sodium capsules* and *sulfathiazole tablets* were being held for sale at the Edward Drug Store after shipment in interstate commerce, a quantity of the capsules and tablets were repacked and disposed of without a prescription issued by a physician in his professional practice, which acts resulted in the repackaged drugs being misbranded.