

"Appellant also assigns as error the action of the trial judge in not immediately correcting the mistaken testimony about his conviction for robbery. Since the crime was only one of several and the jury was eventually told the true nature of the offense, we do not think this constituted substantial prejudice, nor can we agree that the lapse of time was of any significance.

"Finally, appellant contends that the government's evidence was insufficient to establish continuous custody of some of the drugs involved. There was testimony that an inspector for the Food and Drug Administration received the evidence in Washington from the police officer, sealed it, and gave it to another inspector to deliver to a storekeeper for the Food and Drug Administration located in Baltimore. At trial, the first inspector and the storekeeper testified, but not the inspector who transmitted the drugs. We do not regard this omission as serious. As the Ninth Circuit stated in an identical situation:

Carried to its logical conclusion, this "chain of possession" theory would require the Government to prove affirmatively that *each* one of the many mail clerks, Administration clerks and experts, doctors, nurses, express company employees, "and others," handled and cared for the goods so that changes could not occur while the drugs were in their custody. It must also be shown that the products "were not tampered with," say the appellants.

Such a rigorous exaction regarding proof is supported neither by reason nor by authority. If the Government were obliged to establish the absence of "tampering" by every one who had any contact whatsoever with the drugs, the Act would be incapable of enforcement.*

We conclude that the inspector's connection with the drugs was only as a courier and that his testimony was not essential."

5515. (F.D.C. No. 40604. S. Nos. 34-297 M, 44-017 M, 44-169 M, 58-055 M, 58-155 M, 58-176 M, 58-221 M, 77-876 M, 77-881 M, 78-139 M.)

INFORMATION FILED: 11-5-57, E. Dist. Okla., against Frederick B. Oliver, t/a Oliver Clinic, Sallisaw, Okla.

CHARGE: Between 3-26-57 and 5-9-57, *methamphetamine hydrochloride tablets* were dispensed 10 times without a prescription.

PLEA: Nolo contendere.

DISPOSITION: 11-25-57. \$1,000 fine.

5516. (F.D.C. No. 40434. S. Nos. 38-784 M, 38-798 M, 38-799 M, 43-315 M, 43-320 M.)

INFORMATION FILED: 10-14-57, W. Dist. Tenn., against W. Chalmers Sowell (partner in the partnership of Standard Drug Co.), Memphis, Tenn., and Leon Bullock (pharmacist).

CHARGE: Between 11-15-56 and 1-7-57, *secobarbital sodium capsules* were dispensed 5 times upon requests for prescription refills without authorization by the prescriber.

PLEA: Nolo contendere by Sowell to dispensing the capsules 3 times and by Bullock to dispensing the capsules twice.

DISPOSITION: 10-24-57. \$750 fine against each defendant.

5517. (F.D.C. No. 40459. S. Nos. 22-167 M, 68-866 M, 68-871 M.)

INFORMATION FILED: 11-21-57, Dist. N.J., against Michael Netti, t/a Forest Hills Pharmacy, Newark, N.J.

* *Pasadena Research Laboratories v. United States*, 169 F. 2d 375, 381 (9th Cir.), cert. den., 335 U.S. 853, 69 S. Ct. 83, 93 L. Ed. 401 (1948).

CHARGE: Between 1-5-57 and 7-5-57, a quantity of *chloral hydrate*, capsules containing *pentobarbital sodium*, and capsules containing a mixture of *Seconal Sodium* and *Amytal Sodium* were each dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 2-7-58. \$1,000 fine, suspended sentence of 1 year in jail, and probation for 4 years.

5518. (F.D.C. No. 40609. S. Nos. 81-861/3 M.)

INFORMATION FILED: 6-24-57, N. Dist. Tex., against Herbert Iven Sims, Dallas, Tex.

CHARGE: Between 12-6-56 and 3-5-57, the defendant caused *Daprisal tablets* to be dispensed to himself without a prescription once at each of 3 different drugstores in Dallas, Tex., by displaying a false, forged, and counterfeit writing purporting to be a prescription for the tablets.

PLEA: Guilty.

DISPOSITION: 6-24-57. Defendant sentenced to 13 months in jail.

5519. (F.D.C. No. 40443. S. Nos. 62-468 M, 62-472 M.)

INFORMATION FILED: 12-12-57, E. Dist. N.Y., against Sydney S. Luchen, t/a Luchen's Pharmacy, Brooklyn, N.Y.

CHARGE: On 3-1-57, *Meticorten tablets* were dispensed once without a prescription and *Gantrisin tablets* were dispensed once upon request for a prescription refill without authorization by the prescriber.

PLEA: Guilty.

DISPOSITION: 1-9-58. \$750 fine.

5520. (F.D.C. No. 38576. S. Nos. 5-041/2 M, 5-044 M, 5-058/9 M, 5-399 M, 17-894 M.)

INDICTMENT RETURNED: 5-29-56, N. Dist. Ill., against Cosmopolitan Drug Co. (a partnership), Chicago, Ill., and Abraham Weinstein and Melvin Weinstein (partners) and Harold M. Weinstein (an employee of the partnership).

CHARGE: Between 1-7-55 and 3-30-55, *Savatan capsules* (counts 1 and 2) were dispensed twice and *Gantrisin tablets* (counts 3 to 7, incl.) were dispensed 5 times, without a prescription.

DISPOSITION: A motion for dismissal of the indictment was filed on behalf of the defendants, based on the ground that the indictment was duplicitous in that it charged both the individual members of a partnership and the partnership itself as an entity. Thereafter, following consideration of the briefs and arguments of counsel, the court, on 6-7-57, dismissed the indictment against the partnership.

On 11-25-57, pleas of guilty were entered by Melvin Weinstein to counts 1, 6, and 7 of the indictment, by Abraham Weinstein to counts 2, 3, and 4, and by Harold M. Weinstein to count 5. On the same day, the court fined Melvin and Abraham Weinstein \$750 each and Harold M. Weinstein \$250.