

Commonwealth of Pennsylvania



APPLICATION FOR SEARCH WARRANT AND AUTHORIZATION

COUNTY OF CUMBERLAND

Docket Number (Issuing Authority):

Police Incident Number:

Warrant Control Number: 08-1-1

William Chirdon

PA Dept of Agriculture, Bureau of Food Safety

717 787-4315

April 24, 2008

AFFIANT NAME AGENCY PHONE NUMBER DATE OF APPLICATION

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):

Milk and manufactured dairy products as defined by the Milk Sanitation Law, 31 P.S. 645 et seq, including but not limited to butter, whey, keyfir, sour cream, cremefresh and cheese. Any equipment, containers or supplies used to bottle or package for sale milk and products manufactured from milk. Coolers, bottles, jugs, caps or any other container used to store milk. Any and all records, including paper, electronic or computerized records containing evidence of retail sales of milk or manufactured dairy products since August 10, 2007.

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSON TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):

The building containing a store, warehouse, and dairy manufacturing plant and its curtilage, as well as all basements, cellars or underground spaces, located on the left if one is driving up the access drive from Centerville Road on or about 401 Centerville Rd, Newville, PA

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (if proper name is unknown, give alias and/or description):

Mark S. Nolt and Maryanne Nolt

VIOLATION OF (Describe conduct or specify statute):

31 P.S. § 646, the Milk Sanitation Law

DATE(S) OF VIOLATION:

April 17, 2008

[X] Warrant Application Approved by District Attorney - DA File No. MPS-08-40

(If DA approval required per Pa.R.Crim.P. 202(A) with assigned File No. per Pa.R.Crim.P. 507)

[] Additional Pages Attached (Other than Affidavit of Probable Cause)

[X] Probable Cause Affidavit(s) MUST be attached (unless sealed below) Total number of pages: _____

TOTAL NUMBER OF PAGES IS SUM OF ALL APPLICATION, PROBABLE CAUSE AND CONTINUATION PAGES EVEN IF ANY OF THE PAGES ARE SEALED

The below named Affiant, being duly sworn (or affirmed) before the Issuing Authority according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at the particular premises or in the possession of the particular person as described above.

Signature of Affiant: William Chirdon

Department of Agriculture, Bureau of Food Safety

410

Signature of Issuing Authority: Robert H. Manlove

Agency or Address if private Affiant

Badge Number

Sworn to and subscribed before me this 24th day of April, 2008, Mag. Dist. No. 09-1-02

Signature of Issuing Authority: Robert H. Manlove

1901 Stab Pl. Camp Hill Pa 17011 (SEAL)

SEARCH WARRANT TO LAW ENFORCEMENT OFFICER:

WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the premises or person described, and to seize, secure, inventory and make return according to the Pennsylvania Rules of Criminal Procedure.

[X] This Warrant shall be served as soon as practicable and shall be served only between the hours of 6AM to 10PM but in no event later than: "

[] This Warrant shall be served as soon as practicable and may be served any time during the day or night but in no event later than: "

6:00 P M, o'clock April 25, 2008

* The issuing authority should specify a date not later than two (2) days after issuance. Pa.R.Crim.P. 205(4).

** If the issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit(s) and wishes to issue a nighttime warrant, then this block shall be checked. Pa.R.Crim.P. 206(7).

Issued under my hand this 24th day of April, 2008 at 3:28 P M, o'clock.

Signature of Issuing Authority: Robert H. Manlove

Mag. Dist. or Judicial Dist. No. 09-1-02

Date Commission Expires: 1-3-2012 (SEAL)

Title of Issuing Authority: [X] Magisterial District Judge [] Common Pleas Judge []

[] For good cause stated in the affidavit(s) the Search Warrant Affidavit(s) are sealed for _____ days by my certification and signature. (Pa.R.Crim.P. 211)

(Date) (SEAL)

Signature of Issuing Authority (Judge of the Court of Common Pleas or Appellate Court Justice or Judge).

TO BE COMPLETED BY THE ISSUING AUTHORITY

Commonwealth of Pennsylvania



**AFFIDAVIT OF
PROBABLE CAUSE**

COUNTY OF CUMBERLAND

Docket Number

Police Incident

Warrant Control

(Issuing Authority):

Number:

Number: 08-1-1

PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

1. Your affiant is William Chirdon. I am employed by the Pennsylvania Department of Agriculture (hereinafter "Department") as the Director of the Bureau of Food Safety and Laboratory Services. It is part of my duties as Director of the Bureau of Food Safety and Laboratory services to enforce the Milk Sanitation Law, 31 P.S. §§ 645 et seq. Prior to my employment with the Department of Agriculture, I was a plant manager at Hershey Foods for twenty years and also the plant manager at Dean Foods for five years. In those jobs, I gained extensive experience in milk and dairy manufacturing, processing, and sales.

2. Section 646 of the Milk Sanitation Law, 31 P.S. § 646, provides that "Except as hereinafter provided, no person shall sell milk, milk products or manufactured dairy products within this Commonwealth without first having obtained a permit from the 'secretary'..." 31 P.S. § 660D makes any violation of the Milk Sanitation Law a summary criminal offense.

3. Mark S. Nolt, who owns and operates a farm store located at 401 Centerville Road, Newville, PA, does not have a current permit from the Pennsylvania Department of Agriculture to sell milk, including raw milk, or manufactured dairy products. Nolt previously had a permit that expired on August 31, 2006. He has not applied for or obtained the required permit since.

4. Your affiant is aware that Mark S. Nolt operates a dairy farm on or about the property at 401 Centerville Rd. Newville, PA which contains a farm store from which he sells milk and manufactured dairy products without a permit. Your affiant has personally visited the farm store. The farm store is contained in a building that also contains a milk processing plant and a milk warehouse and an underground cellar for manufacturing dairy products.

5. Going back to December of 2006, your affiant has explained in person and in writing to Mark S. Nolt, the need to get a permit to sell milk, including raw milk, and manufactured dairy products, in the Commonwealth of Pennsylvania. Mark S. Nolt has admitted to your affiant that he sells raw milk and manufactured dairy products made from raw milk and that such products are produced and manufactured at his dairy farm. Mark S. Nolt has steadfastly refused to obtain the required permit from the Pennsylvania Department of Agriculture or to cease selling raw milk or manufactured dairy products made from raw milk.

6. Throughout the year 2007, Department employees supervised by your Affiant purchased raw milk and/or manufactured dairy products made from raw milk from Mark S. Nolt. Your affiant filed various summary criminal citations against Mark S. Nolt for the sale of raw milk and manufactured dairy products without permits at his farm market at 401 Centerville Rd, Newville, PA and at the Carlisle Farmer's Market. On the first set of such citations, after a full hearing, he was convicted by Magisterial District Judge Vivian J. Cohick on June 1, 2007 and on appeal by Judge Guido of the Cumberland County Court of Common Pleas on August 14, 2007. On seven additional summary criminal citations for the same conduct of selling raw milk without a permit during 2007 filed with Magisterial District Judge Cohick and Magisterial District Judge Day, no hearings have yet been held due to Nolt either refusing to sign for service by certified mail or, having been properly served, failing to enter a plea/appear. Seven bench warrants have been issued and remain pending on those matters.

7. At the request of the Secretary of Agriculture, on June 21, 2007, the Pennsylvania Office of Attorney General (hereinafter "OAG") filed suit against Mark S. Nolt seeking an injunction to enjoin him from selling

raw milk or manufactured dairy products without a permit. The case is captioned Commonwealth of Pennsylvania v. Mark S. Nolt No. 308 M.D. 2007 filed in the Commonwealth Court of Pennsylvania.

8. On July 2, 2007, the Commonwealth Court issued a preliminary injunction prohibiting Nolt from selling milk or manufactured dairy products without a permit. Despite the preliminary injunction, Department employees again bought raw milk and manufactured dairy products from Nolt at the Carlisle Farm Market on July 6, 2007 and July 13, 2007. On August 2, 2007, the Commonwealth Court found that Mark S. Nolt willfully and deliberately violated its preliminary injunction. The Commonwealth Court found Nolt in Contempt, and authorized the Department of Agriculture to seize and discard any and all raw milk or products manufactured from or containing raw milk in the custody or control of respondent/defendant, Mark S. Nolt, and/or any person or entity acting on his behalf, which is offered for sale. The Commonwealth Court also authorized the agents of the Attorney General to arrest Nolt and incarcerate him, but suspended that part of the order for 20 days to give Nolt a chance to apply for the required permit. Nolt has not applied for a permit to this date.

9. On 8/10/07 a search warrant was obtained and executed by the Department at Nolt's farm located at 401 Centerville Rd, Newville, PA and raw milk and manufactured dairy products made from raw milk were seized, along with quantities of packaging materials and records of sales of unpermitted sales of such products.

10. From 8/10/07 through 3/8/08, the Department did not possess evidence that Nolt was continuing to sell raw milk and manufactured dairy products made from raw milk from his farm or elsewhere in violation of the Commonwealth Court Injunction and Contempt Order and in violation of the Milk Sanitation Law.

11. On March 8, 2008, PDA employee Joe Goetz visted the Nolt farm at 401 Centerville Road, Newville PA and observed a display case full of milk and manufactured dairy products offered for sale and labeled as containing raw milk or manufactured from raw milk. Goetz purchased samples of the raw milk on display which was lab tested by PDA's Food Safety Laboratory and confirmed to be raw milk.

12. On April 17, 2008, PDA employee Gail Rich visited the Nolt Farm at 401 Centerville Road, Newville PA and observed a display case full of milk and manufactured dairy products offered for sale and labeled as containing raw milk or manufactured from raw milk. Rich purchased a 1/2 gallon of raw milk and a small tub of butter which was lab tested by PDA's Food Safety Laboratroy and confirmed to be raw milk and manufactured from raw milk.

13. In my training and experience in milk production and sales, I have learned that people who sell milk and manufactured dairy products often use bottling equipment, and stock multiple containers to package the milk and products for sale including plastic or glass containers, jugs and lids.

14. Based on the foregoing and my training and experience in milk processing, dairy manufacturing and sales, I have probable cause to believe that Mark S. Nolt continues to sell raw milk and manufactured dairy products made from raw milk at his farm store in violation of the Milk Sanitation Law and the Commonwealth Court's preliminary injunction. I am requesting a warrant to search the farm store and its curtilage located at 401 Centerville Rd, Newville, PA for evidence of violations of 31 P.S. § 646 and 660D.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

William E. Chardax

4-24-08

Affiant Signature

Date

Kabat Williams

4/24/08

Issuing Authority Signature

Date

(SEAL)

Page 2

2 of 2 Pages