

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO.
v.	:	DATE FILED:
JOHN WESLEY HERDER	:	VIOLATIONS:
	:	18 U.S.C. § 1951(a) (attempted extortion which interfered with interstate commerce - 1 count);
	:	21 U.S.C. § 841(a)(1) (attempted distribution of controlled substances – 1 count)
	:	18 U.S.C. § 1001 (false statements within federal jurisdiction – 1 count)
		Notice of Forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

The Philadelphia Prison System

1. The Philadelphia Prison System (“PPS”) is a branch of the government of the City of Philadelphia, Pennsylvania.
2. The Curran-Fromhold Correctional Facility (“CFCF”) is part of the Philadelphia Prison System, located within Philadelphia, Pennsylvania. The CFCF houses prisoners charged with criminal conduct in the courts of the Commonwealth of Pennsylvania.
3. Correctional officers in the PPS are responsible for guarding the prisoners housed at the CFCF.

4. For the security of the corrections staff, the prisoners, and the community-at-large, correctional officers in the PPS are required to follow the rules and regulations established for the operations of the PPS.

5. Prisoners housed in the PPS are not permitted to possess or use cellular telephones.

6. Prisoners housed in the PPS are not permitted to possess OxyContin (oxycodone), and may use it only when prescribed by a physician and with the prior approval and direct supervision of PPS personnel.

7. The PPS' policies and procedures state that employees, including correctional officers, "shall not . . . receive gifts from inmates or former inmates or their families or their friends."

8. The PPS' policies and procedures state that "[n]o employee shall accept a gift of any nature whatsoever from an inmate, nor without permission shall any employee give anything to an inmate, or extend to any inmate any favors of diet, clothing, or of any other nature, not common to all."

9. The PPS' policies and procedures state that "[e]mployees shall not accept tips or gifts of any kind from visitors . . . or any other individual or corporation, for any official service unless expressly approved by the Commissioner."

10. The PPS' policies and procedures state that "[n]o employee will use their official position to gain any personal advantage, or advantage for another in any improper or unauthorized manner, or engage in conduct that constitutes, or gives rise to the appearance of, a conflict of interest."

11. The PPS' policies and procedures state that "[n]o employees shall . . . accept unauthorized item[s] or service[s] for oneself or anyone else . . ."

12. Defendant JOHN WESLEY HERDER was employed as a correctional officer for the PPS, at the CFCF.

Official Action In Exchange For Payment

13. Defendant JOHN WESLEY HERDER abused his position and authority as a correctional officer to extort a cash payment from an inmate in exchange for smuggling contraband into a PPS facility.

14. In or about October 2013, defendant JOHN WESLEY HERDER agreed to supply a prisoner housed in the CFCF with OxyContin (oxycodone) pills and a cellular telephone in exchange for a \$1,000.00 payment.

15. To obtain the contraband and his payment, defendant JOHN WESLEY HERDER agreed to meet outside the prison with Person #1, known to the grand jury, whose phone number was provided to defendant HERDER by an inmate housed at the CFCF.

16. On or about October 16, 2013, defendant JOHN WESLEY HERDER telephoned Person #1 and they agreed to meet the following day. During their discussion, defendant JOHN WESLEY HERDER confirmed his fee for smuggling the contraband, including OxyContin (oxycodone), into the prison, stating: “Yeah, it’s a thousand with the cell phone and the pills that [the inmate] wanted.”

17. On or about October 17, 2013, in Philadelphia, Pennsylvania, defendant JOHN WESLEY HERDER met with Person #1 and Person #1 provided defendant HERDER with 100 pills, represented to contain OxyContin (oxycodone), a Nokia cellular telephone, and \$1,000.00 in cash.

18. During the course of his meeting with Person #1 on October 17, 2013, defendant JOHN WESLEY HERDER stated: “Just tell [the inmate] to sit tight and I got it coming to him, ok.”

19. Between October 17, 2013 and October 29, 2013, defendant JOHN WESLEY HERDER smuggled 100 pills, represented to contain OxyContin (oxycodone), and a cellular telephone past prison security and into the CFCF.

20. On or about October 29, 2013, defendant JOHN WESLEY HERDER provided 100 pills, represented to contain OxyContin (oxycodone), and a Nokia cellular telephone to an inmate housed at the CFCF.

21. The illegal sale, distribution, possession with intent to distribute, and trafficking of controlled substances, that is, prescription pain medication, including OxyContin (oxycodone), are activities that affect interstate commerce.

22. The prescription pain medication OxyContin (oxycodone), and the purported OxyContin (oxycodone), were manufactured in North Carolina.

23. The Nokia cellular telephone traveled in and affected interstate commerce.

24. On or about October 17, 2013, in the Eastern District of Pennsylvania, defendant

JOHN WESLEY HERDER

attempted to obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, by extortion, in that defendant JOHN WESELY HERDER obtained and attempted to obtain money from an inmate housed within the Philadelphia Prison System (“PPS”), and Person #1, acting on the inmate’s behalf, which was not due defendant JOHN WESLEY HERDER or his office, in his capacity as a correctional officer with the PPS, under color of official right.

In violation of Title 18, United States Code, Section 1951(a).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about October 29, 2013, in the Eastern District of Pennsylvania, defendant

JOHN WESLEY HERDER

knowingly and intentionally attempted to distribute a mixture and substance containing a detectable amount of oxycodone, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(C).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 20 of Count One are realleged and incorporated here.
2. On or about June 18, 2015, federal law enforcement agents interviewed defendant JOHN WESLEY HERDER and defendant HERDER stated, falsely, that he did not bring contraband into the CFCF.
3. On or about June 18, 2015, in Philadelphia, in the Eastern District of Pennsylvania, defendant

JOHN WESLEY HERDER,

in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States Department of Justice, within the executive branch of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in that defendant HERDER denied having brought contraband into the Curran-Fromhold Correctional Facility (“CFCF”), when, as defendant HERDER then and there well knew, his statements were false, fictitious, and fraudulent, because defendant HERDER knew that he had previously delivered a cellular telephone to an inmate housed at the CFCF.

In violation of Title 18, United States Code, Section 1001(a)(2).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 21, United States Code, Sections 841(a)(1), set forth in this indictment, defendant

JOHN WESLEY HERDER

shall forfeit to the United States of America:

(a) any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offense, including, but not limited to, the sum of \$1000.00;

(b) any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offense.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL:

GRAND JURY FOREPERSON

**ZANE DAVID MEMEGER
UNITED STATES ATTORNEY**