

**FILED**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL

MAY 3 - 2013

State Grand Jury Judge

Number SGJ636-13-10

Superior Court

Docket Number 13-05-00021

STATE OF NEW JERSEY )

v. )

INDICTMENT

MARK A. NIEMCZYK )

and )

THOMAS SCALGIONE. )

COUNT ONE

(Conspiracy - Third Degree)

MARK A. NIEMCZYK

and

THOMAS SCALGIONE

between on or about June 1, 2010, and on or about July 4, 2012,  
at diverse locations, in the County of Middlesex, in the County  
of Monmouth, in the County of Ocean, and elsewhere and within the  
jurisdiction of this Court, with the purpose of promoting or  
facilitating the commission of the crimes of Theft by Deception,  
did agree that:

A. One or more of them would engage in conduct which would  
constitute the aforesaid crimes or an attempt or solicitation to  
commit such crimes, or

B. One or more of them would aid in the planning,

solicitation or commission of said crimes, that is:

1. Theft by Deception, in that one or more of them purposely would obtain property of another, having a value in excess of \$500 or more, by deception, that is, the said MARK A. NIEMCZYK and THOMAS SCALGIONE did purposefully obtain a discount in excess of \$500 from one or more t-shirt printing companies by creating or reinforcing the false impression that any proceeds from the t-shirt sales would benefit families of 9/11 victims or a 9/11 charity organization, contrary to N.J.S.A. 2C:20-4(a); and

2. Theft by Deception, in that one or more of them purposely did obtain property of another, having a value in excess of \$500 or more, by deception, that is, the said MARK A. NIEMCZYK and THOMAS SCALGIONE did purposefully obtain from individuals proceeds from t-shirt sales or cash donations in excess of \$500 by creating or reinforcing the false impression that they were soliciting or collecting funds for the families of 9/11 victims or a 9/11 charity organization, contrary to N.J.S.A. 2C:20-4(a).

The Grand Jurors aforesaid, upon their oaths, do further present that in furtherance of the said conspiracy, the following Overt Acts, among others, were committed:

#### OVERT ACTS

1. In or about June 2010, MARK A. NIEMCZYK purchased a Ford F-150 truck and had the truck painted with images related to 9/11.

2. Between in or about September 2010, and in or about May 2011, MARK A. NIEMCZYK ordered t-shirts with printed images related to 9/11 from a t-shirt printing company. MARK A. NIEMCZYK represented to said company that any proceeds from the t-shirt sales would benefit families of 9/11 victims or a 9/11 charity organization. Based upon that representation, the t-shirt printing company discounted the price of the t-shirts by approximately \$1,378.

3. Between in or about May 2011, and in or about September 2011, MARK A. NIEMCZYK ordered t-shirts with printed images related to 9/11 from another t-shirt printing company. MARK A. NIEMCZYK represented to said company that any proceeds from the t-shirt sales would benefit families of 9/11 victims or a 9/11 charity organization. Based upon that representation, the t-shirt printing company discounted the price of the t-shirts by approximately \$3,312.

4. Between on or about June 1, 2010, and on or about July 4, 2012, the said THOMAS SCALGIONE coordinated and promoted the appearance of the said 9/11 truck at 9/11 events throughout New Jersey.

5. At one or more of the 9/11 events, MARK A. NIEMCZYK and THOMAS SCALGIONE sold t-shirts for \$20, displaying a sign indicating that the proceeds from t-shirt sales would "go to families of 9/11."

6. At one or more of the 9/11 events, MARK A. NIEMCZYK and

THOMAS SCALGIONE collected cash donations.

7. At one or more the 9/11 events, one or more individuals were told by MARK A. NIEMCZYK or THOMAS SCALGIONE that proceeds from the t-shirt sales and cash donations would benefit families of 9/11 victims or a 9/11 charity organization.

8. The proceeds from the t-shirts sales and cash donations totaled in excess of \$50,000.

9. The proceeds from the t-shirt sales and cash donations were deposited into the personal bank accounts of MARK A. NIEMCZYK. Said monies were used for personal benefit. Said monies were not provided to benefit families of 9/11 victims or a 9/11 charity organization.

All contrary to the provisions of N.J.S.A. 2C:5-2, and against the peace of this State, the government and dignity of the same.

COUNT TWO

(Theft by Deception - Third Degree)

MARK A. NIEMCZYK

and

THOMAS SCALGIONE

between in or about September 2010, and in or about September 2011, at the Township of Stafford, in the County of Ocean, at the Borough of Tinton Falls, at the Township of Ocean, at the Borough of Manasquan, all in the County of Monmouth, elsewhere and within the jurisdiction of this Court, purposely did obtain property of another, having a value in excess of \$500 or more, by deception; that is, the said MARK A. NIEMCZYK and THOMAS SCALGIONE did purposefully obtain a discount in excess of \$500 from one or more t-shirt printing companies by creating or reinforcing the false impression that any proceeds from the t-shirt sales would benefit families of 9/11 victims or a 9/11 charity organization;

WHEREAS IN TRUTH AND IN FACT, the said MARK A. NIEMCZYK and THOMAS SCALGIONE well knew that they were not entitled to said discount and that any proceeds from the t-shirt sales would be used for personal benefit, all contrary to the provisions of N.J.S.A. 2C:20-4(a) and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

COUNT THREE

(Theft by Deception - Third Degree)

MARK A. NIEMCZYK

and

THOMAS SCALGIONE

between on or about June 1, 2010, and on or about July 4, 2012, at diverse locations, in the County of Middlesex, in the County of Monmouth, in the County of Ocean, and elsewhere and within the jurisdiction of this Court, purposely did obtain property of another, having a value in excess of \$500 or more, by deception; that is, the said MARK A. NIEMCZYK and THOMAS SCALGIONE did purposefully obtain from individuals proceeds from t-shirt sales or cash donations in excess of \$500 by creating or reinforcing the false impression that they were soliciting or collecting funds for the families of 9/11 victims or a 9/11 charity organization;

WHEREAS IN TRUTH AND IN FACT, the said MARK A. NIEMCZYK and THOMAS SCALGIONE well knew that they were soliciting or collecting said monies for personal benefit, all contrary to the provisions of N.J.S.A. 2C:20-4(a) and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

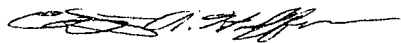
COUNT FOUR

(Failure to File Gross Income Tax Return- Third Degree)

MARK A. NIEMCZYK

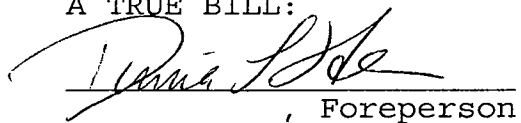
between on or about April 15, 2012, and on or about October 15, 2012, at the Borough of Tinton Falls, in the County of Monmouth, at the City of Trenton, in the County of Mercer, and elsewhere and within the jurisdiction of this Court, did fail to file a tax return or report required to be filed pursuant to the provisions of any State tax law with the intent to defraud the State or to evade, avoid or otherwise not make timely payment of any tax, fee, penalty, interest or any part thereof due pursuant to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:8-1 et seq., as amended or supplemented, or any State tax law, that is, the said MARK A. NIEMCZYK, did fail to file a New Jersey Gross Income Tax Return required to be filed pursuant to the provisions of N.J.S.A. 54A:8-1, with the intent to defraud or evade payment or any part thereof New Jersey Gross Income Tax, for the tax year ending December 31, 2011 to the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey, contrary to the provisions of N.J.S.A. 54:52-8, and against the peace of the State, the government and

dignity of the same.



Christine A. Hoffman  
Deputy Director  
Division of Criminal Justice

A TRUE BILL:

  
, Foreperson

Dated: 5/3/13



**FILED**

**MAY 3 - 2013**

**State Grand Jury Judge**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL

State Grand Jury

Number SGJ636-13-10

Superior Court

Docket Number 13-05-00091

STATE OF NEW JERSEY )

v. )

MARK A. NIEMCYZK )

and )

THOMAS SCALGIONE )

ORDER OF VENUE

An Indictment having been returned to this Court by the State Grand Jury in the above captioned matter,

IT IS ORDERED on this 3rd day of May, 2013, pursuant to paragraph 8 of the State Grand Jury Act, that the County of Ocean be and hereby is designated as the County of venue for the purpose of trial.

IT IS FURTHER ORDERED that the Clerk of the Superior Court shall transmit forthwith the Indictment in this matter and a certified copy of this Order to the Criminal Division Manager of the County of Ocean for filing.

Mary C. Jacobson, A.J.S.C.  
Mary C. Jacobson, A.J.S.C.