

Rationale Document for Law Enforcement Training: Intercepting and Investigating Illegal Cigarette Trafficking

OVERVIEW

This document presents the rationale for the accompanying training curriculum, intended for law enforcement personnel in Virginia. The trafficking of cigarettes, legally purchased in Virginia then illegally transported to other states, has become a significant problem. Huge sums of money are being lost in tax revenue. Additionally, criminal activity surrounding cigarette trafficking is threatening the safety of persons in Virginia. This rationale document provides examples, information, and context to accompany the PowerPoint training presentation. Those persons leading the training and senior agency personnel should review this rationale document.

SCOPE OF THE PROBLEM

The primary motivator for the illegal trafficking of cigarettes is money. The profit margins available to cigarette traffickers are staggering. Public health research suggests that high excise taxes on tobacco products discourage tobacco consumption (Wilson, Avila Tang, and Chander, 2012). However, those taxes also motivate the trafficking of tobacco, providing consumers in high-tax regions with low cost, albeit illegal, cigarettes (LaFaive, Fleenor, and Nesbit, 2008).

The Virginia State Crime Commission (VSCC) was tasked by Senate Joint Resolution 21 to study the scale of tobacco trafficking in Virginia, produce a report, and make policy and legislative recommendations. Their report, available online (the website is at the end of this document) provides significant detail on the tax process, profits available to traffickers, and the need for greater legislative sanctions targeting traffickers.

Cigarette traffickers can earn profits that make most other criminal activities seem unprofitable. A case of cigarettes (which contains 60 cartons) purchased legally in Virginia and driven to New York City, represents approximately \$5,000 in potential profit, according to the ATF (as stated in the VSCC report). If a typical car holds six to eight cases, one run can produce thirty to forty thousand dollars of profit. Using a van, a rented moving truck, a camper, or any other large vehicle/trailer can lead to substantial monies. Coupled with the relatively light sanctions applicable to traffickers and the minimal skill required to effect the crime, transporting cigarettes represents a significant and profitable criminal opportunity.



CASE STUDIES

Two case studies are presented to demonstrate the nature, scope, and impact of tobacco trafficking. The first case study demonstrates the far reaching impact of tobacco trafficking. A criminal network of 16 Palestinian nationals operated “Tobacco Road” which transported legally purchased cigarettes from Virginia to New York City (Smith and Yaniv, 2013). These trafficked products were then sold in small grocery stores, convenience stores, bodegas, bars, and other individually owned (non-chain) companies. They purchased approximately \$55 million in cigarettes, made over \$22 million in profits, and only about one third of those profits have been located. The missing profits are particularly troubling since several members of the network have direct ties to terrorist organizations including Hamas, Hizballah, and a known terrorist leader, Sheik Omar Abel-Rahman (aka “The Blind Sheik”). This criminal network operated a sophisticated conspiracy to acquire, transport, and distribute cigarettes. Several members have subsequently been connected to violent crime, including attempts to arrange for the murder of witnesses (Yaniv, 2013).

The second case study describes the actions of two persons and their utilization of legitimate business enterprises to conduct illegal activity (Green, 2013). Powhatan residents Jayant and Loveleen Khare (formerly married, legal immigrants from India), owned two tobacco wholesale stores in the Richmond, Virginia area. They used those stores as fronts to sell tens of thousands of cartons of cigarettes to traffickers who then transported them north, usually to New York City. They sold

between five and six thousand cartons per week and made one dollar per carton. In less than two years, the Khares sold over ten million dollars in cigarettes to traffickers and then structured approximately 1,800 cash deposits in regional banks, thereby avoiding federal cash deposit reporting requirements. Averaging several cash deposits each day, they avoided federal and state taxes and facilitated several criminal enterprises. Each of the Khares pled guilty to a single count of conspiracy (to structure financial transactions) through a plea agreement and faces a federal sentence of three to five years.

Each of these case studies demonstrates the substantial profits which are available to traffickers and are predicated on Virginia's low excise tax. Most alarming is the link to terrorism and violence. One of the key issues associated with tobacco trafficking is ancillary crimes. There have been several instances in Virginia of home invasion, storage unit burglary, and robberies associated with cigarette trafficking. When criminals store large quantities of a valuable commodity (cigarettes), hold significant quantities of cash, and are known as traffickers, some of them will inevitably become targets. The VSCC suggests that violent crime associated with traffickers will only rise as this problem expands in scope.

RESEARCH ON TOBACCO TRAFFICKING

The body of literature on tobacco trafficking is relatively small. Research has been conducted in Europe which describes criminal networks that export cigarettes, either legitimate or counterfeit, from Eastern European countries which have low tobacco taxes to the United Kingdom, which has significantly higher excise taxes (Hornsby and Hobbs, 2007). Trafficking usually occurs through large shipments of illegal or counterfeit cigarettes (perhaps via shipping containers or tractor trailers, using fabricated inventory manifests) or bootlegging, where individuals bring legally purchased cigarettes into the country in personal vehicles or baggage, then sell through a black market. This European pattern is very similar to the United States, where a significant tax disparity between independently governed jurisdictions (states) has produced a setting where significant criminal profits can be accrued.

Some studies on cigarette trafficking have been conducted in the United States. These are generally policy analyses or qualitative case studies. The Mackinac Center, a public policy research group in Michigan, conducted an econometric analysis of cigarette sales and consumption in the United States. Using data encompassing the years 1990–2006, they found that the states with the highest degree of inbound trafficking, California and New York, consumed approximately 25% and 21%

(respectively) of their cigarettes via illegal sources (LaFaive, Fleenor, and Nesbit, 2008). The states with the highest degree of outbound trafficking included North Carolina, Delaware, and Virginia. As much as 21% of the cigarettes purchased in Virginia are trafficked illegally, almost always to a northeastern location (particularly New York, Massachusetts, and New Hampshire). Since tobacco taxes have increased significantly in northeastern locations since 2006, it is likely that these trafficking numbers have increased.

Two studies published in the referenced academic journal *Tobacco Control* analyzed discarded cigarette packs and reviewed their tax identification information. Kurti, von Lampe, and Thompkins (2012) found that as many as three out of four cigarette packs consumed in the Bronx avoided state and city excise taxes. Most of these had no tax stamp and about one fifth had tax stamps from other states, frequently Virginia. Davis et al. (2013) studied cigarette trafficking in five northeastern cities (New York City, Philadelphia, Boston, Washington DC and Providence, RI) using the littered cigarette pack methodology. They found that in each of these cities, a majority of consumed cigarettes avoided taxes and many of these were imported illegally from North Carolina and Virginia.

These studies point to several consistent themes. First, significant tax disparities promote the illegal trafficking of tobacco, whether it is between states or countries. Second, Virginia is clearly a prominent distribution point for the trafficking of tobacco.

RECOMMENDATIONS

This training is intended to advise and assist local law enforcement agencies in the identification and interception of persons who are illegally trafficking cigarettes. Most of the Virginia trafficking activity can be linked to several routes: the I-95 corridor, I-64, and Highway 17. Identification of traffickers is very difficult and is most likely to occur during an unrelated traffic stop. Absent intelligence collected from informants or at tobacco sales points (outlet or warehouse stores), law enforcement officers should simply be looking for the signs and indicators of trafficking activity, as detailed in the accompanying training presentation. Careful scrutiny of drivers who have covered packages in their vehicles, or who are driving vehicles capable of carrying significant product (vans, moving trucks, campers, etc.) will increase the chances of apprehension.

In addition to identification of drivers who are trafficking tobacco, there are several opportunities for interdiction of criminal networks. Cigarettes are usually purchased legally

by traffickers from wholesale stores (such as Costco or Sam's Club). Developing relationships with those stores and soliciting information on possible traffickers may be productive. Some traffickers purchase from tobacco outlets—surveillance or organized observation may identify repeat buyers with out of state plates (particularly New York or New Jersey). Basic investigations or surveillance cameras can quickly provide insight into extensive criminal networks. Commonwealth's attorney's offices can help organize these investigations.

It should be noted that these criminal enterprises may go well beyond cigarettes. Transactions of trafficked cigarettes may involve large quantities of cash which could make traffickers the targets of violent crime. There are several crimes likely to exist concurrently with cigarette trafficking, including: tax evasion, racketeering, and gun or drug distribution. Persons who are apprehended for trafficking could be leveraged as informants to facilitate investigations of larger criminal networks.

Asset forfeiture may also be relevant to cigarette trafficking interdiction or investigation. If asset forfeiture is to directly benefit a specific law enforcement agency, Virginia requires that the case must be linked to illegal drugs. Tobacco is not an illegal drug although it may be trafficked illegally. A number of cases with cigarette traffickers have involved illegal drugs so asset forfeiture may be relevant and could provide your agency with materials and funds.

One of the key problems linked to cigarette trafficking is the related criminal activity. A classic adage in policing is "no criminal commits only one crime." Traffickers often hold large quantities of cash, may store hundreds of cartons of cigarettes, and are regularly linked to organized crime, particularly in cities with strong criminal networks (like New York, Boston, and Philadelphia). Gangs such as MS-13 have been linked to cigarette trafficking and people who have tried to circumvent these organizations have turned up dead. Violence, turf wars, and other crimes will inevitably be linked to cigarette traffickers.

If law enforcement agencies view tobacco trafficking as simple tax avoidance, they may overlook an underworld of associated crimes and criminal activity until it is too late to intervene.

ADDITIONAL INFORMATION AND TRAINING

There are a number of agencies and organizations which provide substantial information and resources on the topic of tobacco trafficking.

ALTRIA: The parent company of Phillip Morris USA, Altria, provides web-based information (simply Google "Altria Tobacco Trafficking") and a training program. This program is offered free to law enforcement personnel and provides a one-day training covering a number of important tobacco trafficking issues. The training is offered in partnership with the National White Collar Crime Center and has already been completed by approximately 1,300 Virginia law enforcement personnel. The free training represents DCJS approved continuing education credit.

VIRGINIA STATE CRIME COMMISSION: The Virginia State Crime Commission (VSCC) was directed by the Senate (through Senate Joint Resolution 21) to study the issue of tobacco trafficking. Their report issued in 2013, and titled "*Illicit Cigarette Trafficking*," provides a detailed and sophisticated analysis of the problem. The report can be located at: http://vscc.virginia.gov/FINAL_Cigarette%20trafficking%20November%20presentation.pdf

NORTHERN VIRGINIA CIGARETTE TAX BOARD: The NVCTB engages in the investigation and enforcement of tobacco tax policy. While Virginia requires an excise tax on tobacco, some regions or localities impose an additional tax. The NVCTB has significant experience with counterfeit issues and has valuable resources concerning tobacco importation, transportation, and production. Their website is: www.NVCTB.org

SPONSORING AGENCY

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