

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO. 01-10, 313

vs. :

BT
1/30
DEB
MARK RECHTOROVIC : Motion to SuppressOPINION AND ORDER

Presently before the Court is Defendant's Motion to Suppress Evidence filed September 5, 2001. The Defendant was charged on December 11, 2000 with Possession of a Controlled Substance with the Intent to Deliver (marijuana) and Possession of Drug Paraphernalia both violations of the Drug, Device and Cosmetic Act of 1972. An initial hearing was scheduled for July 2, 2001, at which time Defendants Motion was dismissed for Defendant's failure to appear. On July 12, this Court discovered that the Defendant's failure to appear was as a result of being notified by the Commonwealth that a continuance had been granted prior to the actual processing of the request by the Court. Therefore, this Court reversed its prior ruling and requested that another hearing on the motion to suppress be scheduled.

At the time of the rescheduled hearing on August 10th, 2001, the Commonwealth moved to dismiss the motion. The Commonwealth alleged that the motion was in violation of Rule 581 (d) of the Pa. Rules of Criminal Procedure claiming that Defense

Counsel's motion failed to state with specificity the grounds for the motion to suppress. After brief argument off the record, the Court denied the Commonwealth's request. After hearing the nature of the testimony elicited, the Court realized and acknowledged that the Commonwealth could not have anticipated the issue. Therefore, the Court granted the Commonwealth's continuance request. The Commonwealth presented additional testimony on September 27th, 2001 and both parties submitted briefs. Defendant alleges that the Safety and Security officers acted as police and violated the Defendant's rights against unreasonable searches and seizures in that the items seized were without the Defendant's consent and not subject to any exception to the warrant requirement. After review of the testimony presented at the hearing and argument, the Court would find the following relevant facts.

Jennifer Sarno testified that on December 1, 2000 she was working as a Safety and Security Officer for Lycoming College. As she was patrolling down one of the hallways in the Asbury Hall residence hall that evening she observed a student, David Markowitz, leaving a dormitory room. As he left the room, Sarno saw him give hand signals to another student, Jason Smith, who was following behind. As Sarno began walking towards the room she saw Jason Smith and another individual, Charles Lang, also exit the room, with Lang pulling the door closed behind him. None of the aforementioned individuals were assigned to reside in the room in question. Further, Sarno testified that as Lang passed her she noticed that his eyes were red and glassy. As Sarno felt that "something unusual" was happening in the room she pushed

the door open and saw the Defendant, Mark Rechterovic, in his room. While just over the threshold of the room, Sarno could see a water bong located on the center table and a case of beer on the left inside the room. At that time, she radioed for another safety and security officer to assist her at the scene. Also, pursuant to protocol, she radioed the Director of Safety and Security, Jeff Baird, for permission to enter and search the room. After approximately two minutes, Officer Allen arrived and Sarno asked for permission from the Defendant to search his room. Defendant refused to give permission to search. While Sarno and Allen were in the room, Defendant was free to leave, however, neither officer told him so. Once given the permission to search from Baird, Sarno recovered the water bong used for smoking marijuana, 3 sandwich bags with seeds and stems, 42 individual 1" baggies, a glass jar containing marijuana, a glass pipe and a container with 11 bags with seeds and stems.

Jeffrey Baird, Director of Safety and Security was also called to testify regarding the events of December 1, 2000. He testified that he did not report to the scene but had been contacted by Officer Sarno by cell phone. He further testified that Sarno told him that she had seen a violation of college policy and he gave her permission to search the room. He was not aware when Sarno called him that night that she was calling from within the Defendant's room. He also testified that the Safety and Security Department was not a private police department.

Robert Griesemer, Vice President and Treasurer of Lycoming College was then called to testify as to Lycoming College's status as a private institution. Lycoming College is a private liberal arts school accredited by the Middle States Association.

Although there are students with state financial aid, the school only receives the state aid indirectly. In other words, Lycoming College is not directly subsidized by the state enabling it to be classified as a private institution. Sue Saunders, Dean of Student Affairs was also called to testify. She testified that all students must sign a housing agreement or license in order to reside in one of the college's residence halls. She further stated that the college handbook, which all students receive at time of enrollment, indicates that official representatives of the school may enter a student's room if there is reasonable cause to believe that:

1. Activity is taking place in a student's room or on College premises which is detrimental to the health welfare and safety of individuals, and;
2. substances are in the room, or on College premises... which would consist of a violation of the Code of Conduct.¹

Saunders testified from the housing contract signed by the Defendant that his date of birth would have been March 7, 1982. In addition, she stated that the campus police force did not have arrest powers.

Finally, Jean Stump, a Lycoming County Detective was called to testify that on December 8, 2000 she went to the Director of Safety and Security's office and retrieved the items found in Defendant's room. Based upon her training and experience, she filed the previously listed charges against the Defendant.

In Pennsylvania, several types of police as well as private citizens may not only

¹ Student handbook, Lycoming College p. 73.

arrest individuals, but they also may search individuals suspected of criminal activity. In order to determine whether the evidence seized by the campus security officer Sarno should be suppressed the Court will need to determine what type, if any, police authority the Sarno held on December 1, 2000. To make that determination, the Court must review several governing statutes.

Under 22 Pa. C.S. § 501(a), Pennsylvania law provides that:

Any nonprofit corporation, as defined in 15 Pa.C.S. Pt II Subpt C (relating to nonprofit corporations) maintaining a cemetery or any buildings or grounds open to the public... may apply to the court of common pleas of the county of the registered office of the corporation for the appointment of such persons as the corporation may designate to act as policemen for the corporation. The court, upon such application, may by order appoint such persons, or as many of them as it may deem proper and necessary to be such policemen.

as cited by Commonwealth v. Snyder, 163 Pa Cmwlth. 178, 182, 640 A.2d 490, ____ (1994). Here, there was no testimony or evidence presented that the members of the Safety and Security office had made application with this Court for the designation of police officer for Lycoming College. In fact Baird, in his testimony, specifically stated that the Safety and Security office was not a private police department. Therefore, it is clear to the Court that Officer Sarno was not an authorized private police officer under this statute.

Next, the Court must determine if Sarno and coworkers were police officers as set forth in 71 Pa. C.S. § 646 as they are security or campus police of a college or university within the Commonwealth of Pennsylvania. Section 646 of Title 71 provides in pertinent part states:

The Capitol Police, Commonwealth Property Police and the

Security or Campus Police of all State Colleges or universities, State aided or related colleges and universities and community colleges shall have the power, and their duty shall be:

(h) To arrest any person who shall damage, mutilate or destroy ... or commit any other offense within... the grounds and buildings of all State colleges and universities, State aided or related colleges or universities and community colleges, and carry the offender before the proper alderman, justice of the peace or magistrate and prefer charges against him under the laws of the Commonwealth.

Since it is clear from the testimony of the Lycoming College representatives that it is not a State college or university, the question the Court must address is whether the fact that Lycoming College received state aid indirectly through those students which receive financial aid, then qualify it as a "state aided" college.

Under the regulations of the Commonwealth's Department of Education in order for an institution to qualify for state aided status it must comply with the regulations under 22 Pa. Code §40.33 which *inter alia*, states

Agreements.

An institution shall sign articles of agreement with the Department to include:

- (1) Acceptance of Board policies and regulations to reflect state aided status and obligations...
- (2) Disclosure of sources of income and expenditures...
- (3) Provisions for equal educational opportunity...

It is clear from the regulation that in order to qualify as "state aided", Lycoming must sign an agreement with the Department of Education. Neither the Commonwealth nor the representatives from the college produced any such document. Therefore, the Court is satisfied that Lycoming is not a "state aided" college and its safety and security office does not fall within the parameters of 71 Pa.

C.S. § 646, and Sarno was not acting as a police officer under color of the law that evening. Since the Fourth Amendment does not apply to searches performed by private citizens, and it is clear that Sarno was not a police officer or acting on behalf of a police officer, her search of the defendant's room was not unconstitutional. Therefore, this Court would enter the following Order.

ORDER

AND NOW, this 30th day of January 2002, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress evidence is Denied.

By The Court,


Nancy L. Butts, Judge

cc: DA;
Court Scheduling Technician
Honorable Nancy L. Butts
Gary L. Weber, Esq.
Robert Bernathy, Esq.
Law Clerk
Judges