

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-135-2008
:
vs. :
: CRIMINAL
STEPHAN J. ROJAS-NUNEZ, :
Defendant : Omnibus Pre-trial Motion

OPINION AND ORDER

This matter came before the Court on Defendant’s Omnibus Pre-Trial Motion. The relevant facts follow.

On January 19, 2008, the Defendant and a companion, Daniel Titell entered Room 324 of Wesley Hall dormitory at Lycoming College around 11:30 p.m. without the permission or consent of the two female occupants.

The female students were alarmed, called security and said that Defendant entered their room and told them that he had “stuff” to get rid of. They believed Defendant was soliciting them to purchase drugs.

Security Officer Leslie Bogart, Jr. responded to Wesley Hall. Other students pointed out Defendant and his companion to him and Officer Bogart approached them. Defendant and his friend were wearing baggy clothes and carrying backpacks. Officer Bogart asked if the men were visiting anyone and they said no. They were not signed in as visitors. Officer Bogart took them to the security office. Only one of the two individuals was able to provide identification. Officer Bogart determined that Defendant was a Penn College student, who lived in a dormitory on that campus. The officer issued a trespass warning to Defendant and called Penn College security to transport Defendant to his

dormitory.

Officer Norm Hager of the Penn College police force responded to Officer Bogart's request to transport Defendant and he arrived at the Security office. Officer Hager is a police officer with municipal police certification and training. He testified the Penn College Police Department has joint jurisdiction in enforcing Federal, State and local laws. The primary jurisdiction area for the Penn College Police includes grounds of the college and within 500 yards of the grounds of the college. 71 P.S. §646.1.

Officer Hager talked with Security Officer Bogart and he was informed that Defendant and Mr. Titell were Penn College students and underage. He was informed that the two students were intoxicated.

Officer Hager then talked with Defendant and Mr. Titell. He described them as both being "very intoxicated" and not cooperative. He verified they were students. Defendant was age 18 and Mr. Titell was age 19. Defendant confirmed he lived on campus and Mr. Titell lived off campus.

While traveling to Lycoming College, Officer Hager called the Williamsport Police and advised them of the call to which he was responding.

Officer Hager also informed the two female Lycoming College students to confirm the movements of Defendant. The female students felt Defendant was trying to sell them narcotics.

Because Office Hager felt Defendant was intoxicated he gave him a PBT test. The result from the PBT indicated Defendant was .18, which tended to confirm his intoxication.

Penn College has a policy for on campus students that are intoxicated. If

students have a blood alcohol content above .15% they are required to be physically monitored by the school. The students are taken to an impaired student holding area where they can be monitored. When students are taken to this location their possessions are taken and inventoried. Since Defendant had a blood alcohol content of .18% he was required to be monitored under the Penn College policy. This procedure is outlined in the student handbook and when students sign their lease for on-campus housing, they agree to all the policies and procedures contained in the student handbook.

In light of the circumstances, Officer Hager had to transport Defendant back to Penn College to be monitored. Officer Hager asked Security Officer Bogart if Defendant had been searched or patted down. Security Officer Bogart told him he had not done this.

Although Officer Hager had no information of Defendant possessing a weapon, he was wearing baggy clothing and he was “uncooperative” and “highly intoxicated.” Officer Hager explained to Defendant that since he would be transporting him in his vehicle that his protocol would be to search him and handcuff him for safety purposes. He told Defendant he was not under arrest. Mr. Titell granted the officer permission to search his backpack and the officer found a bottle of vodka.

The officer asked Defendant to empty his pockets and Defendant complied, but the officer noticed Defendant hesitated to empty his right pant pocket. The officer then patted down the right pant pocket and he felt what he believed to be baggy containing drugs. From his experience, the officer felt that this was drugs and he pulled the baggy out of the pocket revealing it to be a baggy of marijuana.

The officer then searched Defendant’s backpack and it contained a larger bag

of marijuana and a large number of empty zip lock baggies to package marijuana. There were also bundles of cash in Defendant's pants and in the backpack.

Officer Hager felt that the results of the search showed Defendant possessed marijuana with intent to deliver so the officer contacted the Williamsport police to pursue the arrest and charge Defendant. Williamsport Police Officers Reeder and Lucas responded to effectuate the arrest of Defendant.

Defendant complains that Officer Hager's search of his pockets and backpack were in violation of the United States and Pennsylvania Constitutions, because Officer Hager did not have authority to arrest Defendant under 71 P.S. §646(h) to avail himself of the Rehmeyer rule and he did not have a factual basis to believe Defendant was armed and dangerous to justify a Terry frisk. The Court cannot agree.

Defendant's reliance on section 646(h) is misplaced, because section 646 has been repealed to the extent it is inconsistent with 71 P.S. §646.1. Section 646.1(a)(5) grants campus police the power "to exercise the same powers as are now or may be hereafter exercised under authority of law or ordinance by the police of the municipalities wherein the college or university is located, including, but not limited to, those powers conferred pursuant to 42 Pa.C.S. Ch.89 Subch. D (relating to municipal police jurisdiction)." 71 P.S. §646.1(a)(5). The Lycoming College campus is Officer Bogart's primary jurisdiction. When Officer Bogart called Officer Hager and asked him to assist him, jurisdiction was conferred to Officer Hager under 42 Pa.C.S. §8953(a)(3). Officer Hager not only had the request of Officer Bogart, he also had spoken to the Williamsport City police, which arguably also conferred jurisdiction under 42 Pa.C.S. §8953(a)(3) or (4). The Court also notes Officer Hager testified that there was a cooperative agreement between the Penn

College police and the Williamsport police. Therefore, the Court believes that Officer Hager could have acted with the same authority that the Williamsport Police or Lycoming College Security could have exercised.

Officer Hager had a basis to pat-down Defendant under either Commonwealth v. Bedsaul, 298 Pa. Super. 174, 444 A.2d 717 (1982) or Commonwealth v. Rehmeier, 349 Pa. Super. 176, 502 A.2d 1332 (Pa. Super. 1985). In Bedsaul, the defendant entered a college women's dormitory without authority, invitation or privilege in an intoxicated condition causing great apprehension among the women living in the dorm. The officers decided not to arrest the defendant but instead agreed to drive him to his home. Before allowing Bedsaul to enter the patrol car, the officers patted his outer clothing. The pat-down led to the discovery of a small plastic vial containing pills and a hypodermic syringe. The Superior Court considered the defendant's stupefied condition, the fear his presence generated to the young women in the dormitory and defendant's lack of a legitimate reason to be in the building and found the police officer acted reasonably when in conducting a pat-down before transporting the defendant. The facts in Bedsaul are remarkably similar to the case at bar, lacking only Defendant's statement to the females that he had "stuff" to get rid of. Common sense requires the officer try to ensure his own safety before transporting Defendant under the facts and circumstances of this case. When the pat down led to discovery of a controlled substance, there was probable cause to arrest and search Defendant.

In Commonwealth v. Rehmeier, the Pennsylvania Superior Court found that where an officer has probable cause to arrest, but does not effectuate an arrest, he may

nevertheless conduct a protective pat-down search of an individual when he decides to transport the individual in his patrol car. Based on the information relayed by Officer Bogart and the information Officer Hager himself obtained, Officer Hager had probable cause to arrest Defendant.

Defendant, who was intoxicated and underage, trespassed into a dorm room at Lycoming College shortly before midnight on January 19, 2008. He then approached the two female students in the room and appeared to solicit them to sell them drugs. Thus, the Court has difficulty feeling any particular sympathy for Defendant because he was searched. Clearly, Defendant breached the peace and he could have been arrested at the inception of his conduct for trespass, disorderly conduct and public intoxication, if not solicitation to purchase drugs. Officer Bogart of Lycoming College Security appropriately called the Penn College police to take custody of Defendant who lived on the Penn College campus. Since Officer Hager had probable cause to arrest Defendant and authority to do so under the municipal police jurisdiction act, Officer Hager could conduct a protective pat-down search of Defendant under the Rehmeyer rule. When Officer Hager patted Defendant down, he felt what appeared to be a baggy of drugs in his pants pocket, which gave Officer Hager probable cause to search Defendant's person and his backpack.

In the alternative, the contraband in question would have inevitably been discovered by Penn College because, pursuant to their rules, defendant would have been taken to the impaired student holding area at Penn College due to his PBT reading above .15 and searched pursuant to the school policy.

Thus, Officer Hager had the constitutional authority to search Defendant's person and his immediate possessions under all the facts of the case. Defendant was in clear

breach of peace and there was probable cause for a number of criminal violations.

In light of the above, the follow is entered.

ORDER

AND NOW, this day of July 2008, the Court **DENIES** Defendant's Motion to Suppress evidence.

By The Court,

Kenneth D. Brown, P.J.

cc: Christian Kalas, Esquire, (APD)
Melissa Rosenkilde, Esquire, (ADA)
Work File
Gary Weber, Esquire (Lycoming Reporter)