

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1146-2012  
:   
vs. :   
:   
BARRY ARTIS, :   
Defendant :

**OPINION AND ORDER**

This matter came before the Court on the City of Williamsport’s motion to quash subpoena. The relevant facts follow.

Defendant Barry Artis was arrested by Officer Nathan Moyer and Officer Aaron Levan of the Williamsport Bureau of Police and charged with three counts of driving under the influence (DUI), possession of a small amount of marijuana, possession of drug paraphernalia, and two summary traffic offenses, which arose out of a one-vehicle accident in 1500 block of Park Avenue and a search of Defendant’s person incident to his arrest.

On or about January 30, 2013, defense counsel served a subpoena duces tecum on the Williamsport Bureau of Police requesting the disciplinary record of Officer Moyer. On February 13, 2013, the City of Williamsport filed a motion to quash the subpoena or, in the alternative, a motion for a protective order. The City alleges: (1) Defendant’s request is overbroad, irrelevant and immaterial; (2) Defendant has not presented any “reasonable basis” for his request for Officer Moyer’s disciplinary records; and (3) Defendant is on a “fishing expedition” in the hope of finding some relevant evidence to use at trial.

An argument was held on the City’s motion on March 5, 2013. At the

argument, defense counsel asserted that he was seeking Officer Moyer's disciplinary records because he had heard that Officer Moyer was investigated and disciplined for lying to another officer, who was investigating Officer Moyer regarding certain activities he allegedly engaged in at a time when he was supposed to be on duty.

Counsel for the City countered that the subpoena was overbroad. Defense counsel responded that the request was not overly broad because it was narrowed by his conversations with opposing counsel and his statements at the argument.

In Commonwealth v. Mejia-Arias, 734 A.2d 870 (Pa. Super. 1999), defense counsel issued subpoenas for the entire personnel files for two agents of the Bureau of Narcotics Investigations (BNI). The agents had provided information for an affidavit of probable cause for a search warrant of the defendant's residence and were involved in his arrest. Defense counsel issued the subpoenas after learning that the District Attorney's office was dismissing a large number of cases involving these agents. Although defense counsel virtually conceded he was only entitled to any complaints and/or investigations contained in the personnel files and the court required defense counsel not to disclose confidential information in the files that the parties agreed was immaterial during the hearings, the Superior Court nonetheless found that the subpoenas as issued were too broad and the trial court erred in failing to quash them. 734 A.2d at 878-879.

Based on Mejia-Arias, this Court finds the subpoena issued by defense counsel in this case must be quashed as overly broad.

Further, the Court finds the disciplinary record is not relevant in this case.

There is nothing in defense counsel's offer to indicate that Officer Moyer's disciplinary file contains any information regarding his handling of Defendant's criminal case, or any criminal case for that matter. Rather, it appears that the disciplinary records would relate to allegations of Officer Moyer engaging in personal activities while he was supposed to be on duty and denying the allegations during an internal investigation. Therefore, it appears that the disciplinary records involve only collateral matters.

Even if the disciplinary records indicate that Officer Moyer lied to the investigator, defense counsel could not impeach Officer Moyer with this conduct, because Rule 608(b) of the Pennsylvania Rules of Evidence states:

(1) the character for truthfulness may not be attacked or supported by cross-examination or extrinsic evidence concerning specific instances of the witness' conduct;

Pa.R.E. 608(b)(1).

Defense counsel argued that review of these disciplinary records could lead to the names of witnesses who have knowledge about Officer Moyer's reputation for truthfulness. While the disciplinary records may show the names of individuals who are aware of this specific incident, it is highly unlikely that the records would reveal statements regarding Officer Moyer's reputation for truthfulness or the impact the allegations had on Officer Moyer's reputation for truthfulness. Furthermore, based on defense counsel's statements during the argument of this motion, it appears that he learned of the alleged incident from police officers. Therefore, he is already aware of officers who may be able to testify regarding Officer Moyer's reputation for truthfulness.

**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2013, the Court GRANTS the motion to quash the subpoena for Officer Moyer's disciplinary record.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)  
Robert Cronin, Esquire (APD)  
Jason Wiemann, Esquire  
Gary Weber, Esquire (Lycoming Reporter)