

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

v.

WILLIAM GILLESPIE

NO. 1030 OF 2013

SEP 13 PM 2:27
ERIE COUNTY
CLERK OF COURTS
ERIE, PA 16501

OPINION

The presenting matter is a Motion to Suppress cocaine seized from the Defendant during the screening process at the single point of entry for the public into the Erie County Courthouse. After an evidentiary hearing, the Motion is **DENIED**.

FACTUAL BACKGROUND

The Erie County Courthouse (Courthouse) serves as the physical center of all county governmental functions. All three branches of Erie County's Home Rule government are located in the Courthouse.

All judicial matters involving any state law issues are heard in the Courthouse including Criminal, Civil, Family Court and Orphans Court. All nine Common Pleas Court Judges in Erie County have courtrooms and offices in the Courthouse. All Row and ancillary offices, including the Clerk of Courts, Prothonotary, Recorder of Deeds, Register of Wills, Court Administration, Adult Probation, Juvenile Probation, Custody Office, Domestic Relations Office, Protection From Abuse Office, Arbitration Hearing Room, Jury Assembly Room and Law Library are in the Courthouse. Preliminary hearings in all criminal cases filed in the Erie urban area are heard by Magisterial District Justices at Central Court in the Courthouse.

The Erie County Executive, County Personnel, County Finance and County Planning offices are all housed in the Courthouse. Any member of the public wishing to secure a marriage

license, apply for a county job, pay real estate taxes, participate in a tax assessment appeal, bid at a tax/foreclosure sale, register to vote or purchase a dog, hunting or fishing license can do so at offices located in the Courthouse. Other Executive branch offices in the Courthouse include the District Attorney's Office, Sheriff's Office, Coroner's Office and Office of Veterans Affairs.

The legislative branch of Erie County Government, which is Erie County Council, has offices and a meeting room in the Courthouse.

Erie County is a Third Class county under Pennsylvania law with a population of over 280,000 people according to the 2010 census. The Courthouse is a very busy place. On a daily average, 1,800 people enter the Courthouse through the public access entrance. During jury trial terms, the daily average is 2,600 to 2,700 people entering the Courthouse through the public entrance.

Many people entering the Courthouse are participants in emotional legal matters. It is not uncommon for there to be various forms of threats made against prosecutors, police, judges, lawyers, litigants, witnesses, probation officers, case workers and line staff. The threat of violence is real, even to innocent bystanders within the Courthouse. The neighboring courthouse in Warren County still bears the bullet hole on the back of a judge's bench after an unhappy litigant shot at a prosecutor and then killed the presiding Judge.

In addition to the general concerns regarding guns and knives, there have been threats involving substances capable of widespread harm. In fact, the Courthouse was closed down for three days as a result of threats of mass destruction made with a powdery substance. There have been several other instances where powder substances with purported destructive ability have been used to threaten court personnel.

The Sheriff of Erie County is charged with the responsibility of providing security for the Courthouse. A single point of entry for the public was created to provide for the screening of all members of the community entering this public facility.

An Administrative Order was entered by this Court in the former capacity of President Judge on April 15, 2003. *See Defendant's Exhibit A (hereinafter Administrative Order)*. The Administrative Order provided the Sheriff's Department with authority to conduct reasonable searches of persons and property entering the Courthouse for the purpose of preventing any potential weapon from entering the building. The use of searches by a metal detector was authorized as well as a pat down search of any person activating a signal from the metal detector. As part of this process, administrative authority was given to search "all packages, briefcases and other containers in the immediate possession of persons entering Courthouse property... ." *Paragraph 4(c) of Administrative Order*.

The Sheriff's Department has deputies posted at the single point of entry for the public. As a person enters the Courthouse through this entrance, there are two possible lanes to proceed through a metal detector. On either lane, the person is asked to remove any loose item(s) of personal property and place them in a plastic bin which is viewed by a Deputy Sheriff. The person then proceeds through a metal detector.

All persons entering the Courthouse, regardless of age, gender or race, are required to go through this process.¹ Such were the circumstances on March 27, 2013 when the Defendant entered the Courthouse. Like any other member of the public, the Defendant was required to place any loose items of personal property in the plastic bin to be viewed by a Deputy Sheriff. The Defendant was then required to proceed through a metal detector. Among the items the Defendant placed in the plastic bin was a white plastic bottle bearing a label for Anacin.

¹ A separate entrance is available for County employees.

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Upon observing the plastic bottle the Defendant placed in the bin, Deputy Sheriff Stephen Welch shook the bottle “and it didn’t rattle or anything like a normal bottle would... there was something in there, but it didn’t have--like a normal rattle of just loose pills inside of a hard plastic container. You could feel it. There was something in there, but it was kind of like padded.” *Preliminary Hearing Transcript of Stephen Welch, April 8, 2013 at p. 6.* Deputy Welch opened the Defendant’s bottle and observed what appeared to be packages of crack cocaine. *Id. p. 10.* The Deputy asked the Defendant for identification and the Defendant indicated that he did not have identification with him. *Id. p. 9.*

Deputy Welch retained possession of the bottle. It appeared to Deputy Welch that the Defendant then headed to Central Court where preliminary hearings are held in criminal cases. *Id. p. 9.* At no time was the Defendant detained by Deputy Welch or subjected to any custodial interrogation. Instead, Deputy Welch notified his supervisor, Corporal Bowers, of the situation. *Id. p. 6.*

A short time later, Corporal Bowers discussed the matter with Jon Reddinger, an Erie County Detective with the District Attorney’s Office. Detective Reddinger field-tested one of the baggies in the Defendant’s bottle and determined that it was positive for cocaine. Detective Reddinger then filed the present criminal charges against the Defendant.

MOTION TO SUPPRESS

The Defendant seeks suppression of the cocaine packages contending the search of the bottle exceeded the scope of a reasonable search for weapons. According to the Defendant, the Deputy Sheriff has no authority to search for contraband. Also, the Defendant argues he was not

given proper notice that any search upon entering the Courthouse would include a search for contraband.

The Defendant challenges the search of his plastic bottle under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. The Defendant relies on a Commonwealth Court decision regarding the constitutionality of a Courthouse point of entry search as follows:

Our Supreme Court has stated that, because Article I, Section 8 of the Pennsylvania Constitution requires a greater degree of scrutiny for all searches, if a search passes constitutional muster under Article I, Section 8, that search will also satisfy the reasonableness test of the Fourth Amendment. *In the Interest of F.B.*, 555 Pa. 661, 726 A.2d 361 (1999). To determine whether a search passes constitutional muster under Article I, Section 8, courts consider four factors: (1) the nature of the privacy interest; (2) the nature of the intrusion created by the search; (3) notice; and (4) the overall purpose to be achieved by the search and the immediate reasons prompting the decision to conduct the actual search. *Id.*

Minich v. County of Jefferson, 919 A.2d 356, 358-359 (Pa. Commw. Ct. 2007).

The Defendant concedes that the first prong of the four factors enunciated in **Minnich**, supra, has been satisfied. *See Paragraph 20, Motion to Suppress.*

NATURE OF THE INTRUSION

The second prong is consideration of the nature of the intrusion created by the search. According to the Defendant, it was unnecessary to look into the bottle as such a search exceeded the scope of a reasonable search for weapons.

The Administrative Order gave the Sheriff's Department the authority to conduct reasonable searches of persons and property entering the Courthouse to look for weapons. Included within this authority was the ability to inspect all packages, briefcases and other containers in the immediate possession of persons entering the Courthouse. The logical reason

for this administrative authority was to enable personnel from the Sheriff's Department to intercept any weapon or dangerous substance coming into the Courthouse. If Sheriff personnel could not inspect packages, briefcases or other containers then the security process is rendered impotent.

The administrative authority given to Sheriff personnel was not absolute. Searches are required to be reasonable for the purpose of detecting a potential weapon.

In the case sub judice, it was reasonable and not beyond the scope of the administrative authority granted to Sheriff personnel to open the Defendant's plastic bottle to determine whether there was a weapon or a substance which could pose a risk of harm to persons within the Courthouse. Despite its size, it is possible that the plastic bottle could have contained a weapon. Alternatively, as Sheriff Merski testified, life-threatening powdered substances such as anthrax and ricin could have been contained within the bottle.

The dark side of human nature, coupled with the expansion of the Internet, allows for the rapid dissemination of information about ways to smuggle weapons into a courthouse. As a result, there are many devious and creative means that are only limited by the human imagination to smuggle an instrument or substance within this Courthouse that could cause physical harm. As confirmation, simply Google "weapon pill bottle" and learn about the various weapons that can be hidden in a small pill bottle or ways to convert a pill bottle into a weapon.

It is true that the Defendant's bottle could have contained the legal items identified by the Defendant. The fact that the bottle may have contained legitimate items does not preclude the possibility that it could have contained a substance or an item that could be used as a weapon.

The Defendant's reliance on **Commonwealth v. Sherman**, 2011 Pa. Dist. and Cnty. Dec. LEXIS 135, is misplaced. **Sherman** is a Court of Common Pleas decision from Allegheny

County which has no precedential value. More importantly, it is factually irrelevant because it does not involve a Courthouse security screening. Instead, the issue in **Sherman** was whether a warrantless search of a pop can in the Defendant's possession during an investigative street detention was justified under the plain-view doctrine. Unlike the police officer working the street in **Sherman**, Deputy Welch was given administrative authority to search containers coming into the Courthouse for any possible weapons. Deputy Welch never subjected the Defendant to a custodial interrogation nor did he take the Defendant into custody in contrast to the affiant in **Sherman**. Deputy Welch viewed the items within the Anacin bottle from a lawful position authorized by the Administrative Order. Hence, **Sherman** adds nothing to the analysis of this case.

The video footage of the Defendant going through security and the seizure of the Defendant's pill bottle is captured in Commonwealth's Exhibit 1. There is nothing in this video which contradicts the testimony of Deputy Welch. It was reasonable for Deputy Welch to rule out the possibility of a weapon within the Defendant's plastic bottle.

The Defendant's African American race was mentioned by counsel at the evidentiary hearing. Defense Counsel implies that race was a factor in the search of Defendant's bottle. *See Paragraph 25, Motion to Suppress*. However, to the extent that the Defendant is arguing any form of discrimination in the security measures at the Courthouse, such an argument is unsupported by the record.

As Sheriff Merski testified, every member of the public who enters the Courthouse, regardless of age, gender or race, is required to go through the security safeguards. There is nothing within the video, *Commonwealth's Exhibit 1*, that establishes any form of discrimination against the Defendant. Likewise, there is nothing within the testimony of Deputy Welch that

suggests he opened the bottle because of the Defendant's race. To the contrary, Deputy Welch provided a plausible explanation for opening the pill bottle. Hence, the Defendant's reckless allegation regarding race is not a basis for relief.

NOTICE

Consistent with the Administrative Order, on March 27, 2013 there were signs posted at the entrance of the single point of entry for the public which read as follows:

ATTENTION
ENTERING THIS BUILDING REQUIRES PASSAGE THROUGH A
METAL DETECTOR
ANY ITEM THAT HAS THE POTENTIAL TO CAUSE HARM WILL
BE CONFISCATED

WARNING
NO WEAPONS ALLOWED.
PERSON ENTERING MAY BE SEARCHED.
ANY WEAPONS FOUND WILL BE CONFISCATED.
VIOLATORS ARE SUBJECT TO PUNISHMENT FOR CONTEMPT
OF COURT. OR ARREST FOR VIOLATION OF CRIMINAL LAWS.
-BY ORDER OF THE COURT-

Because these signs do not specifically mention contraband, the Defendant contends that he did not have notice that his bottle could be searched. This argument is unsupported by the record, law or common sense.

The signs put the Defendant on notice of the ensuing security screening. Towards this end, there can be only one conclusion the Defendant could reach when asked to empty the contents of his pockets and place them in a plastic bin for inspection, to-wit, that his bottle could be searched for a weapon. If the Defendant did not realize this fact when he walked into the Courthouse, he certainly had sufficient time and opportunity to choose to turn around and leave

the Courthouse without placing his bottle in the plastic bin. Nothing and no one prevented the Defendant from leaving the Courthouse rather than going through security.

The Defendant ignores the fact that it is illegal to possess cocaine anywhere in Pennsylvania, including when going to a security entrance for a public building. The Defendant is presumed to know the law. The Defendant cannot cite any authority for the proposition that members of the public have to be put on notice that you cannot bring an illegal substance into the Courthouse. There is no legal requirement that a sign or notice has to precede the seizure of an illegal substance such as cocaine.

In this case, the notice provided to the Defendant on March 27, 2013 informed him of the security process. It was the Defendant's decision to proceed through security. The Defendant is not given constitutional cover because the warning sign did not include a statement that you cannot bring illegal drugs into the Courthouse.

THE OVERALL PURPOSE TO BE ACHIEVED BY THE SEARCH AND THE IMMEDIATE REASONS PROMPTING THE DECISION TO CONDUCT THE ACTUAL SEARCH

The Defendant contends Deputy Welch opened the Anacin container to search for illegal drugs rather than to search for weapons. There is nothing within the testimony of Deputy Welch or the actual video footage itself to support the Defendant's bald allegation.

Perhaps the best evidence of Deputy Welch's intent was the fact he did not detain, interrogate or arrest the Defendant. He simply retained the illegal substance and the Defendant was free to go. The matter was referred to Deputy Welch's supervisor, who then conferred with Detective Reddinger. The decision to arrest was then made at the discretion of Detective Reddinger and not the discretion of Deputy Welch.

This is not a case where a Deputy Sheriff was independently conducting a narcotics investigation beyond the scope of any investigative, administrative or arrest powers. Instead, while looking for weapons, the Deputy observed the cocaine which was possessed by someone unwisely bringing it to the Courthouse. The ultimate decision whether to file criminal charges was left to Detective Reddinger.

In sum, the video portrays a busy Deputy conducting a routine inspection of a plastic bottle which did not sound like it contained pills. As a result, the possibility existed that the bottle could contain something other than pills, including a weapon or powder that could endanger people within the Courthouse. Accordingly, the purpose of the search of the bottle was consistent with the legitimate public interest in safety in a busy public building. The factual basis for the search of the bottle was reasonable. The search was no more intrusive than necessary to preserve the public safety in the Courthouse.