

Mailing Date: SEP 20 2007

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2551
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-341060
v.	:	
	:	LID - 55152
MOLLY'S PUB, INC.	:	
T/A MOLLY'S PUB	:	
253 E. CHESTNUT ST.	:	
LANCASTER, PA 17602-2742	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-8779	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Anthony J. Maglietta
Sole Corporate Officer

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 9, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Molly's Pub, Inc., t/a Molly's Pub (Licensee), License Number R-AP-SS-8779.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on October 8, 2006, Licensee, by servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on October 8, 2006, Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M.

An evidentiary hearing was conducted on May 1, 2007 at 2221 Brandywine Plaza, Paxton Church Road, Harrisburg, Pennsylvania. After some testimony was taken, the hearing was continued and rescheduled for August 14, 2007 and heard. Licensee was represented by its Sole Corporate Officer, Mr. Anthony J. Maglietta.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on October 5, 2006 and completed it on October 8, 2006. (Commonwealth Exhibit No. C-1, N.T. 19-21)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 20, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 19)

Count Nos. 1 and 2:

3. On Sunday, October 8, 2006, at about 3:11 a.m., a Bureau Enforcement Officer arrived in the vicinity of the premises. While walking along the side of the subject premises, the Officer heard an outburst of laughter at about 3:13 a.m. The Officer was not clear as to the source of the laughter. The Officer looked into the first floor of the subject premises noting that it was vacant and all lights were off. (N.T. 21-22)

1. Commonwealth Exhibit No. C-2, N.T. 19.

4. The Officer walked around the block and returned to the side of the subject premises. The Officer heard voices, laughter and the faint sound of music that appeared to be coming from the second floor of the subject premises. The Officer looked up to the second floor of the premises. He saw the lights were on but the curtains were drawn over the windows. The Officer further determined there was nothing else that could be the source of the voices, laughter and music. (N.T. 23)

5. The Officer decided to discover what might be going on in the second floor of the subject premises. He stepped over a chain that blocked the entrance to a staircase which led to an outside deck attached to the subject premises. Connected to the chain was a "No Trespassing" sign. (N.T. 22-25, Licensee's Exhibit No. L-1, N.T. 28)

6. When the Officer reached the deck, he saw French doors that led from the second floor barroom to the deck. There were curtains drawn across the doors. Looking through the edges of the curtains, the Officer saw people inside. He further determined that the noise he heard while at the street level was coming from the second floor barroom. The lights were on. As the Officer got closer to the barroom, the volume of the music and conversations increased. (N.T. 25-28)

7. The Officer noticed one of the French doors was not entirely closed. The Officer pressed the door open. As there was a curtain hanging over the door, he had to clear the curtain out of the way. As soon as he entered, the Officer displayed his credentials. (N.T. 28-29)

8. There were four individuals present in the second floor barroom including Licensee's Sole Corporate Officer, Mr. M. They were positioned around a coffee table. It appeared as if they were playing cards with poker chips strewn all over the table. Mr. M. and one other individual acknowledged they had been drinking beer. The Officer saw two partially consumed bottles of beer. (N.T. 30-33)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

Much of this record deals with the Officer's credibility. In point of fact, the video produced by Licensee, in pertinent part, serves to buttress the Officer's version of the events. The few discrepancies Licensee did prove were irrelevant and of minor value, at best.

Licensee defends by arguing the Officer's entry onto the premises was an act of criminal trespass in violation of 18 Pa. C.S.A. §3503 as well as an unconstitutional, warrantless search.

The Bureau interposes *Com. v. Russo*, 864 A.2d 1279 (Pa.Cmwlth. 2005) as a basis to reject Licensee's contention. The only similarity that case has with this matter is the presence of a "No Trespassing" sign. Because I find the Officer's entry onto the premises to be otherwise lawful, I see no need to burden this discussion with a full blown explanation as to why *Russo*, supra, is off point.

Observation of evidence from a lawful vantage point is generally not deemed to be a search. *G. Harold Yergey*, Adjudication No. 88-1545; *Com. v. Torres*, 632 A.2d 319 (Pa.Super. 1993). There is no reasonable expectation of privacy in activities exposed to or observable from a place accessible to the public. *Com. v. Rood*, 686 A.2d 442 (Pa.Cmwlth. 1996). It is equally true the Bureau may not boot strap the right to enter a licensed premises, without warrant or probable cause, by virtue of what is discovered after entry. *Roman's Lounge and Catering, Inc.*, Adjudication No. 04-1628, www.lcb.state.pa.us; *Com. v. Mistler*, 912 A.2d 1265 (Pa. 2006).

I view the "No Trespassing" sign at the base of the steps as equivalent to a locked door. The legality of the Officer's entry is to be evaluated at this point. Having heard laughter and music, the source of which was the licensed premises, from a lawful position and at a time when no patrons were permitted on the licensed premises, the Officer's observations fall within the Plain View Doctrine. *Com. v. Winfield*, 835 A.2d 365 (Pa.Super. 2003). The Officer's subsequent entry onto the steps and second floor deck falls within the Exigent Circumstances Exception to the warrant requirement. *Simpson v. City of New Castle*, 740 A.2d 287 (Pa.Cmwlth. 1999). The sounds the Officer heard provides the requisite probable cause.

As the Officer entered private property lawfully, his peering into the interior of the second floor, through the French doors is equally lawful. That action falls within the Plain View Exception to the warrant requirement, *Winfield*, supra.

Finally, because the entry was warrantless but lawful, the Knock and Announce Rule is not applicable. Even with a warrant, an Officer has no specific obligation to knock. *Com. v. Walker*, 874 A.2d 667 (Pa.Super. 2005). Licensee's video further portrays an entry accomplished with virtually no force whatsoever.

RECORD:

Licensee has been licensed since August 2, 2005, and has had one prior violation (Commonwealth Exhibit No. C-3):

Adjudication No. 06-1195. Fine \$1,200.00.

1. Sales between 2:00 A.M. and 7:00 A.M.
March 30, 2006.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
March 30, 2006.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.
March 30, 2006.
4. Sold cigarettes without the necessary permit required by law.
January 4 and March 30, 2006.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1 and 2 in this case.

I believe Mr. M. now appreciates the depth and breadth of a licensee's obligation. As Licensee was not running an after hours operation but was doing no more than having a private card game, I merge Count Nos. 1 and 2 and impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 19th day of September, 2007.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.