

Mailing Date: MAR 11 2020

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	IN RE: CITATION NO. 19-0623
ENFORCEMENT	:	
	:	BLCE Incident No. PA 2018-1134972
	:	
v.	:	
	:	
	:	PLCB LID - 87150
BROOKLYN, LLC	:	
1266 SANS SOUCI PKWY.	:	PLCB License No. R-AP-SS-EHF-2476
WILKES BARRE, PA 18706-5218	:	
	:	
LUZERNE COUNTY	:	

ADJUDICATION

BEFORE: John H. Pietrzak, ALJ
FOR BLCE: Craig A. Strong, Esquire
LICENSEE: No Appearance

BACKGROUND:

This proceeding arises out of a citation that was issued on April 26, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (BLCE) against BROOKLYN, LLC, (Licensee).

The citation contains five counts.

The first count charges Licensee with violation of Sections 471 and 493(31) of the Liquor Code [47 P.S. §§4-471 and 4-493(31)] and Section 780-101, et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. §780-101] in that on October 20, 2018, Licensee, by its servants, agents or employees, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count charges Licensee with violation of Sections 471 and 493(31) of the Liquor Code [47 P.S. §§4-471 and 4-493(31)] and Section 780-101, et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. §780-101] in that on October 20, 2018, Licensee, by its servants, agents or employees, possess a controlled substance on the licensed premises.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on October 20, 2018, Licensee, by its servants, agents or employees, 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.

The fourth count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on October 20, 2018, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The fifth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on October 20, 2018, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

An evidentiary hearing was held on this matter on November 6, 2019, in the Scranton State Office Building, Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

Upon review of the transcript of this hearing, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. The investigation which gave rise to the citation began on October 1, 2018 and was completed on November 15, 2018; and notice of the violation was sent to Licensee by Certified Mail on November 26, 2018. The notice of violation was received by Licensee. (N.T. 4-8; Exhibit C-1)

2. The Bureau began this investigation after receiving complaints of drug use, sales after-hours and disorderly operations at the licensed establishment. (N.T. 8)

3. On October 20, 2018, at 2:05 a.m., a Bureau liquor enforcement officer entered the licensed establishment. (N.T. 8-9)

4. As the officer entered, he was met by two security persons. One of the security persons told the officer that he had to pay a cover charge because it was after-hours. He paid the cover charge. (N.T. 9)

5. At 2:07 a.m., the officer ordered a beer from one of the bartenders. A female bartender served the officer a 12-ounce Corona Extra beer. (N.T. 9-10)

6. The officer paid \$6.00 for the beer. The bartender placed the officer's money into the cash register. (N.T. 10)

7. The bartender told the officer that the beer would normally cost \$5.00 but because it was after hours, all the drinks cost an additional dollar. (N.T. 10)

8. The bartenders were busy serving alcoholic beverages to many patrons at the bar counter. (N.T. 10-11)

9. The officer observed a person who appeared to be acting as a manager sitting at the bar counter. The officer identified this person as Aikem Rollocks. (N.T. 12-14)

10. Mr. Rollocks was supervising the bartenders as they retrieved bottles of liquor from an office near the bar counter. (N.T. 14, 19)

11. The officer observed patrons smoking cigarettes and hookahs. (N.T. 10)

12. The officer also smelled the strong odor of marijuana smoke inside the licensed establishment. (N.T. 12)

13. At approximately 2:15 a.m., the officer observed Mr. Rollocks come out of the office located near the bar and sit at the bar counter. Mr. Rollocks then began rolling what appeared to be marijuana joints. (N.T. 18-19)

14. Mr. Rollocks gave several marijuana joints to other patrons. (N.T. 15, 18-19)

15. Other patrons were smoking their own marijuana joints as well. (N.T. 18)

16. The officer observed Mr. Rollocks smoking a marijuana joint at the bar counter. (N.T. 14-15).

17. During this visit, there were approximately 120 to 150 patrons in the establishment. The officer observed that approximately half of those patrons were openly smoking either cigarettes or marijuana. (N.T. 15)

18. During more than 13 years as a liquor enforcement officer, the officer has had experience recognizing the distinctive odor of marijuana and identifying the manner in which marijuana joints are prepared and smoked. (N.T. 20-21)

19. As a result of his experience, the officer knows what marijuana smells like when it is being smoked. (N.T. 20-21)

20. The officer smelled the strong odor of burning marijuana while observing Mr. Rollocks and many of the patrons smoking marijuana joints. (N.T. 20)

21. The officer observed that the manner in which Mr. Rollocks prepared the joints was consistent with the preparation of marijuana joints in that he manually manipulated marijuana leaves into rolling papers and then rolled them into joints for smoking. (N.T. 21-22)

22. The Bureau obtained an attestation from the Pennsylvania Department of Health certifying that the Licensee did not possess an exception to the Clean Indoor Air Act on October 20, 2018, to permit smoking in the licensed establishment. (Commonwealth Exhibit C-4)

23. Liquor Enforcement Officer Supervisor Michael Rutkowski testified that, prior to the start of the investigation in this case, the Bureau notified the Licensee that the smoking of marijuana was prohibited on the licensed premises. (N.T. 23-33)

24. On March 25, 2018, Officer Rutkowski entered the licensed establishment and spoke to the Licensee's sole corporate member, Tawanna Brown and her son, Aikem Rollocks. (N.T. 25-26)

25. Aikem Rollocks claimed to be the owner of the licensed corporation. Officer Rutkowski determined that Aikem Rollocks was not an owner and that his mother, Tawanna Brown was the only member of the licensed corporation. (N.T. 27, 29)

26. During this visit, numerous patrons were openly smoking marijuana and Aikem Rollocks was in possession of marijuana. Officer Rutkowski could also smell the strong odor of marijuana being smoked on the premises. (N.T. 26-27)

27. Officer Rutkowski informed Aikem Rollocks and Tawanna Brown that the Licensee was prohibited from permitting anyone to smoke marijuana on the licensed premises and that any future incidents of marijuana being smoked on the premises could lead to an administrative action being taken against the Licensee. (N.T. 29)

28. Tawanna Brown and Aikem Rollocks told Officer Rutkowski that they have a hard time controlling patrons from smoking marijuana on the premises. (N.T. 31)

29. After the March 25, 2018, visit but prior to the investigation that resulted in the citation at issue here, a Bureau officer visited the establishment on August 11, 2018 and observed Mr. Rollocks rolling marijuana joints as he sat at the bar counter of the licensed premises. The officer also observed Mr. Rollocks smoke marijuana and distribute marijuana joints to other patrons. (N.T. 13-15)

30. At the conclusion of that investigation, the Bureau sent the Licensee a letter dated September 13, 2018, notifying them that on August 11, 2018, drug offenses had taken place on the licensed establishment, and warning that a repeat of the violations could result in a citation. The Licensee was not cited for these violations. The September 13, 2018, warning letter included the following violations:

1. AIDED, ABETTED OR ENGAGED IN THE TRAFFIC IN, OR SALE OF, A CONTROLLED SUBSTANCE ON THE LICENSED PREMISES AND/OR PERMITTED THE USE OF YOUR LICENSED PREMISES IN THE FURTHERANCE OF THE TRAFFIC IN, OR USE OF, A CONTROLLED SUBSTANCE. August 11, 2018

2. POSSESSED A CONTROLLED SUBSTANCE ON THE LICENSED PREMISES OR ON PREMISES CONTIGUOUS OR ADJACENT THERETO OR USED IN CONNECTION THEREWITH.

August 11, 2018

(N.T. 15-16, 31-32; Commonwealth Exhibit C-3)

CONCLUSIONS OF LAW:

The Licensee knew or should have known that the possession of, furnishing and/or trafficking in and smoking of marijuana occurred on the licensed premises on October 20, 2018, and failed to take substantial affirmative measures to prevent this illegal activity.

Count One

On October 20, 2018, the Licensee, by its servants, agents or employees, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance, in violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31) and Section 780-101, et. seq. of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, et. seq.

Count Two

On October 20, 2018, the Licensee, by its servants, agents or employees, possessed a controlled substance on the licensed premises, in violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31) and Section 780-101 et. seq. of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, et. seq.

Count Three

The Licensee violated Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), on October 20, 2018, by permitting patrons to possess alcoholic beverages on the licensed premises after 2:30 a.m.

Count Four

The Licensee violated Section 493(16) of the Liquor Code, 47 P.S. §4-493(16), on October 20, 2018, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

Count Five

The Licensee violated Section 471 of the Liquor Code, 47 P.S. §4-471 and Section 637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on October 20, 2018, by smoking and/or permitting smoking in a public place where smoking is prohibited.

DISCUSSION:

Counts One and Two

The Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act prohibits the possession and delivery of controlled substances, including marijuana [35 P.S. §780-113(a)(16), (30) & (31)]. The Liquor Code also prohibits a licensee, its servants, agents or employees from possessing or furnishing a controlled substance on the licensed premises [47 P.S. §4-493(31)].

The facts of record establish that the Licensee and/or its servants, agents or employees violated the above provisions on October 20, 2018. The officer observed many patrons openly smoking marijuana on the licensed premises. Aikem Rollocks, who was in charge of the premises, rolled marijuana joints at the bar counter and handed them out to patrons. Mr. Rollocks smoked at least one marijuana joint himself.

Identity of substance as marijuana.

Marijuana is listed as a schedule I controlled substance in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, [35 P.S. §780-104(1)(iv)].

I conclude that the substance that was being used on the licensed premises was marijuana even though the Bureau did not obtain a sample of the substance or submit it for chemical analysis.

The identity of illegal narcotic substances may be established by circumstantial evidence alone, without any chemical analysis of the substance. *Com. v. Stasiak*, 451 A.2d 520 (Pa.Super. 1982); *Com. v. Leskovic*, 307 A.2d 357 (Pa.Super. 1973). The courts will not constrict their fact-finding function in regard to the identity of drugs to a strict scientific analysis, but rather will permit the use of common sense and reasonable inferences in the determination of the identity of such substance. *Com. v. Minott*, 577 A.2d 928, 932 (Pa.Super. 1990).

Here, the testimony of the undercover officer that his experience has enabled him to recognize the distinct odor and appearance of marijuana and that the substance he observed being handled and smoked on October 20, 2018, had the appearance and odor of marijuana is sufficient evidence to establish the identity of the substance as marijuana. Further, the officer testified that Mr. Rollocks' actions in rolling the joints was consistent with the manner in which marijuana joints are prepared.

Status of Aikem Rollocks as Licensee's agent or servant.

The officer testified that Aikem Rollocks was the Licensee's Board-approved manager. The Bureau did not provide any documentary evidence that Mr. Rollock's held this position. Board records, of which I can take official notice, show that Tawanna Brown is the sole member of the licensed corporation. Mr. Rollocks' name does not appear in Board records. There is insufficient evidence to support a finding that Aikem Rollocks was the Board-approved manager.

Nevertheless, Mr. Rollocks was an agent or servant of the Licensee. During Officer Rutkowski's March 25, 2018, visit to the licensed premises, Mr. Rollocks represented himself as an owner of the licensed establishment. Officer Rutkowski testified that both Ms. Brown and Mr. Rollocks stated that they had trouble keeping the patrons from smoking marijuana on the premises. This indicates that Mr. Rollocks was involved in running the operation of the premises.

On October 20, 2018, Mr. Rollocks was using the office inside the licensed premises and was overseeing the activities of the bartenders. Tawanna Brown was not present at the licensed premises on October 20, 2018. The officer's observations support the conclusion that Mr. Rollocks was the person in charge of the premises and was directing the employees. As such, he was an agent or servant of the Licensee.

Licensee's agents, servants or employees' possession of, trafficking in and permitting the use of a controlled substance on the licensed premises.

With regard to Count One, Mr. Rollocks' delivery and furnishing of marijuana to patrons constituted the traffic in a controlled substance. The Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act prohibits the delivery of a controlled substance to other persons regardless of whether payment is received. 35 P.S. §780-113(a)(30) & (31). The Liquor Code similarly prohibits Licensee's agents, servants or employees from furnishing controlled substances on the licensed premises. 47 P.S. §4-493(31)(ii).

By smoking marijuana and allowing patrons to smoke marijuana, Mr. Rollocks permitted the use of controlled substances on the licensed premises as charged in Count One. Further, independent of Mr. Rollocks' actions, the bartenders' and security persons' failure to take any actions to prevent this illegal activity constituted the Licensee's employees aiding and abetting in the traffic in, and use of, a controlled substance on the licensed premises.

With regard to Count Two, Mr. Rollocks' possession of marijuana constituted the possession of a controlled substance on the licensed premises by Licensee's servant or agent.

Requirements of TLK

Counts One and Two charge Licensee with violations of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act pursuant to the authority under Liquor Code Section 471 to cite a licensee for "other sufficient cause".

The Supreme Court of Pennsylvania has mandated that when a licensee has been found to have committed a violation of the penal laws brought under Section 471 as other sufficient cause, some element of scienter must be present before the licensee can be penalized under the Liquor Code. *PLCB v. TLK*, 544 A.2d 931 (Pa. 1988).

Under the test set forth by *TLK*, the Bureau must show that the licensee knew or should have known of the illegal activities by an employee or patron. Once such knowledge is proven, the licensee may defend its license by demonstrating that it took substantial, affirmative measures to guard against a known pattern of illegal activities. *Id.*

An equivalent test has been incorporated directly into Liquor Code Section 493(31)(ii).

In this case, on October 20, 2018, the son of the sole member of the licensed corporation, who was overseeing the employees, was rolling marijuana joints at the bar counter, handing them out to patrons, permitting patrons to smoke marijuana and smoking it himself. Many patrons were smoking marijuana and the strong smell of marijuana was obvious in the licensed premises. This was all done openly with no attempt to conceal any of the illegal activity. The bar staff and security personnel must have been aware of this activity.

Further, the Bureau had provided the Licensee with prior notice that illegal drug activity was taking place on the licensed premises on two occasions.

Both sole corporate member Tawanna Brown and her son Aikem Rollocks were at the premises on March 25, 2018 when Officer Rutkowski observed patrons smoking marijuana. Aikem Rollocks was also in possession of marijuana on the licensed premises. Officer Rutkowski told Ms. Brown and her son that the illegal possession of and smoking of marijuana on the licensed premises was prohibited and could result in a citation if repeated.

Both Tawanna Brown and Aikem Rollocks told Officer Rutkowski that they had trouble keeping patrons from smoking marijuana on the premises. This shows clear knowledge of illegal drug activity at the licensed premises.

In addition, a subsequent investigation (prior to the investigation that resulted in the citation at issue here) revealed continued smoking of marijuana on the licensed premises as well as possession and distribution of marijuana by Aikem Rollocks. At the conclusion of that investigation, the Bureau sent the Licensee a letter dated September 13, 2018, notifying the Licensee that illegal drug use, drug possession and trafficking occurred on the licensed premises on August 11, 2018.

Both the March 25, 2018, visit by Officer Rutkowski and the subsequent investigation that resulted in the September 13, 2018, warning letter occurred prior to the start of the investigation of the current citation. I may consider those facts here for the purpose of assessing Licensee's knowledge of a pattern of illegal drug activity on the licensed premises or notice to the Licensee of the same.

In its decision in the appeal of *PSP, BLCE v. Joe Williams Development Co., Inc.*, Citation No. 97-2031, the PLCB upheld the ALJ's consideration of incidents of drug activity and legal proceedings that occurred prior to the investigation that led to the citation at issue, for purposes of satisfying the scienter requirement of *TLK*.

As such, I conclude that the Licensee knew or should have known of the illegal drug activity at the licensed premises on October 20, 2018.

Licensee did not appear at the hearing in this matter, so no evidence was presented showing that Licensee took any steps to prevent the illegal drug activity. I therefore conclude that the Licensee failed to take substantial affirmative measures to prevent or guard against the known pattern of illegal activity taking place on its licensed premises.

PRIOR RECORD:

Licensee has been licensed since November 22, 2017 and has one prior violation:

IN RE:

Citation No. 18-1526. Fine \$

1. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. August 11, 2018.
2. Sales between 2:00 a.m. and 7:00 a.m. August 11, 2018.
3. Sales to a visibly intoxicated person. August 11, 2018.
4. Smoked/permitted smoking where prohibited. April 6, 21, 22, June 16, July 13, 14 and August 11, 2108.

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 Counts 1, 2, 3 and 5 of this case.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 4 of this case.

The penalty imposed shall be as follows:

- Count 1 - \$1,000.00 fine and ten days suspension
- Count 2 - \$1,000.00 fine and ten days suspension
- Count 3 - \$1,000.00 fine
- Count 4 - \$2,000.00 fine and five days suspension
- Count 5 - \$750.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee BROOKLYN, LLC, pay a fine of \$5,750.00 within 20 days of the mailing date of this Order. In the event the fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license (including all permits and Licensee discount card) of BROOKLYN, LLC, License No. R-AP-SS-EHF-2476 be suspended for a period of twenty-five (25) days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

Jurisdiction is retained.

Dated this 27TH day of February, 2020.



John H. Pietrzak, ALJ

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MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

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

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In re: Citation No. 19-0623
Brooklyn, LLC