

Southside magistrate has difficulty dispensing equitable justice in marijuana cases

The Bethlehem Gadfly Drugs, Lehigh University, Marijuana, Serious Issues, Southside January 6, 2020

 *Latest in a series of posts about the Southside* 

[Nicole Radzievich, “District judge questions how Bethlehem treats minor marijuana offenses.” Morning Call, December 16, 2019.](#)

We thought that the difficulty with decriminalizing uses of small amounts of marijuana in Bethlehem would come because of our bi-county status.

Because of the different views of the respective District Attorneys, marijuana use in Lehigh County Bethlehem would remain a criminal offense whereas in Northampton County Bethlehem it might only be a summary defense at the discretion of the arresting officer.

Different legal jeopardy on two sides of the same Bethlehem street, as it were.

Gadfly has not heard problems or complaints about this anomaly, however.

But the disparity is of another kind — unregarded, though probably easily enough foreseen, when the legislation was discussed.

In the following letter, Southside magistrate Nancy Matos Gonzalez points out that Southside residents are penalized much more severely than Lehigh students for the same marijuana offense.

Lehigh generally charges students under the city ordinance with a summary offense on the order of a traffic ticket. But city officers, with discretion to file either a summary or a criminal charge, choose the criminal charges against Southside residents 3+ times more than Lehigh police do against Lehigh students.

The disparity is so great, says Matos Gonzalez, “that the differing policy practices between the two agencies has, in my professional opinion, brought forth a situation which constricts my ability to dispense equitable justice.”

In short, it would appear that the Lehigh students are getting a break that Southside residents aren’t from our well-intentioned legislation to decriminalize use of small amounts of marijuana.

By a big margin.

Sensitive to the “vastly differing” demographics “between both communities” unarguably based “on race, ethnicity, and economic levels,” Matos Gonzalez asks how this disparity can be justified.

The differential financial burden of a criminal charge is severe, as Matos Gonzalez documents, but the part of the decriminalizing legislation rationale that Gadfly remembers most vividly from City Council discussion as well as the horror stories at the local public hearing held by Lieutenant Governor Fetterman was the “residual sanction of a resulting permanent criminal record” for using a small amount of marijuana.

By and large, Lehigh students are being spared that career impediment.

Hmmm.

Gadfly remembers vigorous public comments last year at Council meetings by Jeff Riedy, Executive Director of Lehigh Valley NORML and would welcome hearing from him again on this situation.

And also some expanded remarks on marijuana enforcement by the Chief beyond what he said about drugs in Bethlehem during the recent budget hearings ([the last few minutes of this video](#)).

The question would seem to be whether enforcement practice by Bethlehem police is undercutting the intent of the legislation and whether that enforcement practice is different on the Southside than in other parts of the City.

A tip o' the hat to Magistrate Matos Gonzalez for calling attention to a possible "systemic issue" that should be addressed.

Gadfly always recommends going to the primary source. The magistrate's full letter is printed below.

Dear Chief DiLuzio,

I recently received your letter referencing my previous discussions with both yourself and Mayor Donchez. To be clear, I initiated contact to voice my concern regarding a noted potential for disparity in sanctions, permanent records, and financial cost for Individuals prosecuted for small amount of marijuana. This noted potential for disparity is solely based upon which one of the two police departments operating within this district prosecutes the case. Further, expressed that the differing policy practices between the two agencies has, in my professional opinion, brought forth a situation which constricts my ability to dispense equitable justice.

As you are aware, Bethlehem Police and Lehigh University Police both operate in South Bethlehem. Understandably, as independent agencies, each has its own Standard Operating Procedures. I am fully cognizant it is not my role, practice, nor desire to critique those procedures. I do, though, unabashedly feel compelled to illuminate what is potentially an undetected consequential result of policy implementation and

absolutely believe it is my role to speak out to systemic matters affecting my rulings and sworn oath to uphold justice.

As the presiding Magisterial District Judge in this district, I offer the following summary of happenings since the enactment of the law up until the date of meeting with the Mayor on September 26, 2019. These are the pertinent factors relating to these case filings on which I base my concerns:

- *Lehigh University PD has by general policy and practice filed the local summary ordinance in the Small Amount cases, which decriminalizes the possession of marijuana.*
- *Bethlehem PD policy allows for “Officer discretion to use ordinance, state law or both. By practice, the Bethlehem Police officers have, in this district alone, filed the criminal grading of Poss of a Small Amount at a rate” of 3.25 times more often than the ordinance offense. Additionally, for cases that a Bethlehem Police officer has filed a Poss of Drug Paraphernalia charge related to Marijuana, the officer is 7 times more likely to file the criminal Poss of Small Amount charge.*
- *Defendants who are charged with a city ordinance of Poss of a Small Amount of Marijuana are ordered to pay a set fine and cost amount of \$116.25 for a first offense and a maximum set fine and cost of \$241.25 for up to a offense within one calendar year.*
- *Defendants who plead guilty to the criminal charge of Poss of a Small Amount of Marijuana can be ordered to pay fine and cost of up to \$1073.75 and up to 30 days incarceration.*
- *In an effort to balance the scales for parties prosecuted for the criminal charge rather than the summary offense, I, by practice, set the fine at \$1.00 minimal amount. Unfortunately, once the cost for criminal processing fees are attached the total minimal amount due is \$574.75. These parties are subject to*

cost almost 5 times higher than the summary cost and they are subject to a potentially more serious residual sanction of a resulting permanent criminal record.

- *Unfortunately, there are many individuals who wish to plead guilty to the charge at the Preliminary Hearing but do not have the means to post the \$574.75 fine and cost assessment. The district court does not supervise fine and cost collection of criminal cases and those parties, more often than not, waive their preliminary hearings, often by necessity to have time to raise some funds. In the interim months awaiting their case, they are subject to bail and with the potential for supervision with specified conditions. Once their case comes to resolution, they are subject to a significant increase in cost at the higher court level.*
- *For the defendants who do not dispute the merits of the case but are interested in preserving their record, they often chose to waive their Preliminary Hearing to the higher court and seal: the ARD program. They are then subject to the assessment of bail with potential conditions, often subject to further cost to hire legal counsel to maneuver through the process of the higher court application process; face even more significant court cost at the higher level; and may be Subject to probationary Supervision.*

For the sake of transparency, I will state my motive in addressing my concerns is not based on a philosophical stance regarding how Marijuana cases should be prosecuted. Undoubtedly, the approach towards the prosecution of Marijuana cases is in a transitional time period on the national, state, county, and city level. I am also aware that has complicated circumstances specific to the City of Bethlehem, which lies within two differing counties. My motive is purely to strive for an equal playing field for all who appear before this District Court. Right now, that does not currently exist and the result is polarizing. To

be as frank as possible, if you are arrested for the charge at hand by Lehigh University, which is a long standing prestigious academic institution, you will likely, by far, be subject to less sanctions, court supervision, and permanent effects than if you are a citizen in the same circumstance from the city streets charged within the same Magisterial District that is all contained within a one square mile radius. I ask how that can be justified. I will not ignore that the demographics between both communities are unarguably vastly differing based on race, ethnicity, and economic levels. Therefore, I stand by my comment made earlier that there is a systemic issue to address here, of which I do not wish to be complicit. I remain hopeful this writing will prompt a closer look at the circumstances at hand and potential for disparity, particularly with the order "Officer discretion to use ordinance, state law or both."

Sincerely,

Nancy Matos Gonzalez