

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) C/A No.: 2013-CP-10-5351

JACK POWELL,)
)
) Plaintiff,)
)
vs.)
)
MEDICAL UNIVERSITY OF SOUTH)
CAROLINA (MUSC),)
)
) Defendant.)
_____)

**Defendant's Supplemental
Memorandum in Support of Motion
for Summary Judgment**

2014 NOV - 7 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Background

This Court requested that MUSC Public Safety brief whether a person could trespass on public property. As further explained below, though the general rule is that a person cannot trespass on public property, a separate statute criminalizes trespass on public property when a person refuses to leave such public property when it is typically closed.

I. Trespass can occur on public property when a trespassor refuses to leave public property when that public property is regularly closed to the public.

Powell trespassed on the Medical Center's grounds because he refused to leave the medical center's grounds outside of normal business hours. Under S.C. Code Ann. § 16-11-620, a person cannot trespass on public property. See State v. Hanapole, 255 S.C. 258, 268 (1970). However, a separate statute provides that a person can trespass on public property if that person refuses to leave public property outside of its normal business hours:

Any person who, during those hours of the day or night when the premises owned or occupied by a state, county or municipal agency are regularly closed to the public, shall refuse or fail, without justifiable cause, to leave

those premises upon being requested to do so by a law-enforcement officer or guard, watchman or custodian responsible for the security or care of the premises, shall be deemed guilty of a misdemeanor and upon conviction, be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

S.C. Code. Ann. § 16-11-630. Unlike section 16-11-620, section 16-11-630 expressly criminalizes trespassing on public property. Id. Where a more specific trespassing statute applies, courts should not apply the general trespassing statute. See In re Joseph B., 278 S.C. 502 (1983) (holding that the school trespassing statute should apply where the defendant allegedly trespassed on a school grounds rather than the general trespassing statute).

Here, the Medical Center is generally open to the public from 6:00 AM to 6:00 PM. See MUSC Medical Center Policy Manual, § EC-15, ¶ F (attached as Ex. A)¹. After 6:00 PM, MUSC public safety officers are instructed to patrol the Medical Center grounds, ensure that entrances and exits are locked, and control who accesses sensitive areas (including the Emergency Department). Id. As established at trial, Powell refused to leave the Emergency Department after being disruptive and verbally abusive toward the staff and physicians, and after being medically discharged from the Emergency Department. Public Safety was called as a precautionary measure pursuant to hospital policy. Once Powell left the Emergency Department, he had no legitimate reason to be on the Medical Center grounds after normally operating hours. He was asked to leave several times, and was even offered transportation to his home, another hospital, or other destination of his choice. Powell declined to accept the offers, and refused to leave the premises. As a result, MUSC public safety properly arrested him for trespass under S.C.

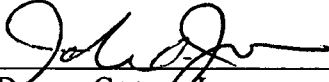
¹ While this is the current policy in place, the hours of operation were the same in June of 2012 when Powell's trespass occurred.

Code Ann. § 16-11-630 for refusing to leave public property outside of regular business hours.

Conclusion

While a person normally cannot trespass on public property, trespass can occur on public property when one refuses to leave public property when that property is normally closed to the public. Jack Powell was medically discharged from the care of the MUSC Emergency Department and refused to leave the Medical Center's grounds after normally operating hours. As a result, Powell trespassed on the MUSC's premises and this Court should affirm his conviction.

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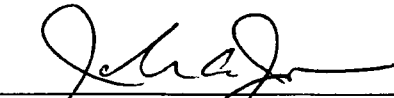
ATTORNEYS FOR DEFENDANT MUSC

Charleston, South Carolina
November 6, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of November, 2014, a true copy of the within instrument has been served on the Plaintiff by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto as follows:

Jack Powell
1402 8-A Camp Road
Charleston, SC 29412



John A. Jones

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CLERK OF COURT
BY _____

Exhibit A



MUSC Medical Center Policy Manual

Section	No	Title	
EC-15	A-052	Medical Center-Wide Security	
Owner:		Safety & Security Director	
Location/File:		N:\Hospital_Admin\Policies\Admin Policies\A-052 MC Security	
Date Implemented: 05/87	Reviewed: 02/04	Revised: 12/95, 07/97, 07/99, 09/03, 08/06, 07/09, 08/12	Effective Date: 09/14/12

Policy:

Provides an outline of the Medical Center-wide security responsibilities and activities. It is the policy of the MUSC Medical Center that all staff are familiar with the security responsibilities and procedures.

Procedure:

- A. Security is a responsibility of all employees of the Medical Center
1. **Responsibilities of Medical Center Staff:**
 - a. Know who should legitimately be in their work area.
 - b. Request all employees display their identification badge.
 - c. Secure offices not in use, utilize lockers and locking desks.
 - d. Observe and report suspicious activities or persons.
 - e. Direct any individual without visible form of identification to appropriate place to obtain a visitor pass. Notify Security immediately when a person is observed not wearing identification and acts suspicious or who does not have an appropriate destination.
 2. **Responsibilities of the Medical Center Security Manager** include tracking and reporting security incidents involving personnel, visitors or patients to the Safety Committee (Environment of Care Committee) at least every other month.
 3. **Medical Center Security personnel responsibilities** include the following:
 - a. Building and entrance patrol.
 - b. Facility access, including locking, unlocking and restricting traffic at various times.
 - c. CCTV systems monitoring and response.
 - d. Staff assistance with patient restraint and intervention in disruptions by patients, visitors, or staff.
 - e. Record keeping and incident reports.

4. **MUSC Public Safety responsibilities** include:
 - a. Escort services for visitors and staff as requested.
 - b. Investigation of thefts, disturbances, criminal activity.
 - c. Other assistance as requested.

- B. **Safety and Security personnel training** must meet state and local requirements. All Security personnel shall receive security training.

- C. **Package Inspection:** All packages are subject to inspection by Security.
 1. Safety and Security Officers are instructed to inspect packages and large handbags brought into or carried out of the Medical Center by employees or visitors.
 2. Refusal by employees to cooperate will be reported to the appropriate supervisor for disciplinary action.
 3. Refusal by visitors will result in revocation of visiting privilege.
 4. Medical Center equipment being removed from the Medical Center requires approval from the respective Department Supervisor. A signed property form must accompany any property removed from the premises.

- D. **Patient Room Search:** A patient's room may be searched with or without the patient's consent if an exceptional situation arises that might cause danger to the patient, visitors, or employees (i.e., illegal items such as drugs, alcohol, or weapons hidden in the room).
 1. The physician on-call and Nurse Manager/Hospital Supervisors on duty should first determine whether there is a reasonable cause to believe a search is necessary for medical or safety reasons.
 2. A Safety & Security Officer along with at least one of the persons listed in item #1 - above (or designee) should conduct the search.
 3. Personal property collected during a room search should be inventoried and returned to the patient upon discharge from the hospital. Should contraband or illicit property be found, regulatory or law enforcement authorities will be consulted when deemed appropriate. (Institute of Psychiatry (IOP) will conduct searches according to regulatory requirements and IOP policy.)

Note: Patients on suicide precautions will have a room search conducted by the attending nurse and a security officer upon initiation of suicide precautions orders and at any time while suicide precautions are in place if the attending nurse and/or attending physician have reasonable cause for concern of the patient's safety.

- E. **Lost and Found Services**
 1. All persons finding personal property on Medical Center property should contact Security at the earliest opportunity and make arrangements to relinquish such property.
 2. Lost and found items should be turned in at the North Tower Security Desk, located at the North Tower entrance.
 3. Every reasonable effort will be made by Medical Center Safety and Security to locate the owner and return lost items to the owner.
 4. Persons attempting to claim lost items must describe the property and provide proper identification to the satisfaction of the Medical Center Safety and Security Officer.

F. Special Security Needs – Access Control will be addressed for the following areas:

1. Providing access control as appropriate to sensitive areas such as:
 - a. Emergency Department
 - b. Newborn Nurseries
 - c. Obstetrics
 - d. Special Care Units
 - e. Pharmacies
 - f. Institute of Psychiatry
 - g. Prisoners' Rooms
 - h. ICU's
 - i. Children's Hospital Patient Care Areas
 - j. Human Resources Employment/Benefit office
 - k. Pain Management Clinic (RT 9th Floor)
2. Access to the Medical Center between 6:00 p.m. and 6:00 a.m. shall be limited via the card access system.
 - a. It is the responsibility of the on-duty Security Coordinator to ensure entrances and exits are locked and reopened as scheduled.
 - b. Limited access to the hospitals is maintained through the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
 - c. Entrance and exit from the Medical Center complex is regulated by restricted use of designated doors only.
 - d. After normal working hours, on weekends and holidays, persons will use the North Tower entrance. Access to the IOP is via the President Street entrance and Rutledge Tower is via the north entrance.
 - e. The remaining doors will be locked at 6:00 p.m. An alarm will sound if these doors are used as exits.
 - f. Medical Center areas not in use during evening and night hours, weekends and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
 - g. For additional security, employees are encouraged to notify Security when working after normal working hours by calling ext. 2-4196.
 - h. All Medical Center areas not in use during evening and night hours, weekend and holidays will remain locked. A Medical Center Safety and Security Officer must check these areas.
 - i. Safety and Security Officers will keep the Emergency Department parking lot clear for authorized vehicles only and will patrol Emergency Department parking and ambulance receiving areas as part of regular hospital rounds during evening and night shifts. Safety and Security Officers will be available for traffic control and will attempt to clear the area of any infractions. When necessary, Public Safety will be contacted for assistance.

G. Prisoner Security

1. Notice will be sent annually to all Department of Corrections facilities using the Medical Center. Notices must provide detailed information on Medical Center Prisoner policy.
2. Anytime a prisoner is treated, an unarmed officer will be in the treatment room for protection of the staff. When an officer provides assistance to medical staff for a prisoner or deals directly with a prisoner (e.g., removing, replacing restraints)

his/her weapon must be secured in the weapon box provided by the treatment facility. If more than one escort is required by host prison or jail system, an armed officer will be immediately available. This policy applies to all escorted persons, both on an inpatient and outpatient basis.

3. Escorts must remain with prisoners at all times. Assigned law enforcement or corrections agency officers are responsible for the safety of prisoners.
 - a. Assigned law enforcement or corrections agency officers are to remain within the prisoner's room. In intensive care units, the officer may sit outside the door of the prisoner's room.
 - b. Officers are to leave prisoner's rooms only when relieved or at the request of the physician or other appropriate health care provider. Exceptions to the rule that officers must remain in patient's room must be evaluated by Medical Center Security Manager and approved by Hospital Administration.
 - c. If the officer on duty is requested to leave the room, the officer will maintain visual contact with the prisoner at a sufficient distance to preclude escape attempts.
 - d. If the door must be closed or bed curtains drawn, the officer will assume a position that will prevent the prisoner's escape.
 - e. The officer will reenter the room at the departure or request of the physician or health care provider.
 - f. If an inpatient prisoner goes to the operating room, the officer will remain in the room until the patient is anesthetized, then wait outside the operating room. When the prisoner is transferred to the recovery room, the officer will accompany and remain with the prisoner.
 - g. Precautions will be taken to make sure any potentially dangerous instruments or equipment remain inaccessible to the prisoner.
 - h. No visitors shall be allowed in the room of the inpatient prisoner except those authorized by the custodial agency.
 - 1) Officers escorting prisoners in the Medical Center will be provided identification badges with information on emergency actions to be taken as necessary while within the Medical Center. Additionally, the on duty Security Coordinator will brief escorting officers of Medical Center policies and procedures regarding prisoners.
 - 2) Prisoners being escorted will be restrained as required by the custodial agency. Prisoners in restraints should be seated in a wheelchair and restraints covered with a sheet.
 - 3) Inpatient prisoners must be secured to the bed to preclude escape attempts, unless directed otherwise by the attending physician.

H. **Key Control:** A uniform access system is required to effectively safeguard equipment, supplies, medications, and personnel files and associated hospital records.

1. Employees will have access to a key(s) or an identification card – appropriately programmed for necessary, specific department areas.
 - a. Key/card access request approvals are required by the responsible Director/Manager or designee. Keys are issued on an individual basis. Duplicate or multiple rooms/departments keys must not be issued to the same person.
 - b. Final approval for key/card access request is processed by the Safety & Security Department after approval from the appropriate Director or Manager.

- c. Department Directors are responsible for all key/card access issued to their departments.
- d. University Lock Shop makes keys and provides keys to Safety & Security for distribution. The person receiving the key must sign for it upon receipt.
- e. University Lock Shop maintains an accurate account of keys. MUHA Safety & Security maintains card access accountability.
 - 1) Key access must be accounted for and inventoried during change of responsible Director/Manager and/or designee.
 - 2) In the event of lost keys, notify the supervisor, who will immediately notify Safety & Security at 792-4196 to initiate an investigation to determine the cause of the loss.
 - a) If determined the loss is due to negligence, disciplinary action will be taken in accordance with Human Resources policy.
 - b) A new request form will be completed and a copy of the investigation report will be forwarded to the appropriate Director.
 - c) Once authorized, a replacement key/card access may be issued.
 - d) Found keys should be returned to an appropriate Security Desk.
- f. When keys are no longer required by an employee (or upon termination or resignation) the Department Director is responsible for retrieving keys and returning them to Security.
- g. The use of padlocks and hasps is prohibited, except for personal type locks or situations specifically authorized by the responsible Administrator.

I. Identification

- 1. All employees, staff or other persons doing business in or around the Medical Center will wear identification badges issued by MUSC. This will include but is not limited to contractors and vendors.
- 2. Inpatients shall wear identification bands during their entire stay. All patients in Ambulatory Care areas receiving blood transfusions, surgical procedures requiring sedation, or whose cognitive abilities may be compromised must wear an identification band.
- 3. On arrival, visitors should check at the information desk or nursing unit to learn if any restrictions apply to the patient they wish to visit. *Children's Hospital, ICU's, PACU and IOP may have additional visitation guidelines, based on patient needs.*
- 4. All visitors should obtain a guest badge upon entrance to the hospital and wear it at all times.
- 5. Visitors to the Institute of Psychiatry must obtain visitor passes from the Security Desk located at the President Street entrance at all times.

- J. Staff must be aware of suspicious activities.** Suspicious, threatening, harassing events must be reported immediately to Public Safety (ext. 2-4196) and appropriate supervisor. Supply details as possible and follow directions of Public Safety.

Events may include but are not limited to:

- 1. **Telephone Threats**

Whenever a threat of any type is received via phone, attempt to get the caller to identify him/herself. Attempt to determine why the threat is being made. Write all pertinent information down. Keep the caller on the line as long as possible. Ask him/her to repeat the message. Record every word spoken by the person. If the caller indicates the possibility of a bomb, attempt to identify the time of possible detonation. You should ask him/her for this information. Inform the caller that the building is occupied and detonation of a bomb could result in death or serious injury to many innocent people. Be alert for distinguishing background noises; such as traffic, music, voices, aircraft, church bells, etc. Note distinguishing voice characteristic (sex, voice quality, impediment). Note if caller indicates knowledge of the MUSC Medical Center by his/her description of locations. Lead him/her on; kill time; learn if he/she is at all knowledgeable of the Medical Center.

2. **Written Threats**

Whenever a written threat is received, the person receiving the threat shall refrain from handling the item as much as possible. If the threat is contained in an envelope, the letter and envelope shall be handled by touching the outer edges of the document only to prevent destroying physical evidence. Attempt to place the written threat into a large envelope.

3. **Letter Bombs**

Explosive devices are divided into three classifications (timed or delayed-action devices, manual or anti-disturbance devices, remote-controlled devices). Letter texture may feel rigid, look uneven or lopsided, or feel bulkier than normal. Excessive amounts of postage may be present – often far more than needed. Sender is unknown or there is no return address. Handwritten notes appear such as “Rush,” “Personal,” “Private,” and so forth. Addressee normally does not receive mail at the office. Cut or pasted homemade labels are used for lettering. The letter or package may emit an odor or appear to have been disassembled and re-glued. Distorted or foreign writing is present. Resistance or even pressure is felt when trying to remove contents from package. Several combinations of tape are used to secure the package. Contents of parcel may slosh or sound like liquid; some packages may emit a buzzing sound.

4. **Suspicious Package**

Do not open the item. Do not panic. Isolate the letter, parcel, or package. Never move the item. Everyone should be asked to leave the area quickly. Secure the area. The package should be observed from a safe distance until emergency personnel arrive.

K. **Violence Prevention, Reporting, Investigation, and Resolution**

1. The safety and security of Medical Center personnel, patients, and visitors is of vital importance. Acts, threats, or allegations of physical violence, including intimidation, harassment, or coercion, which occur on Medical Center property will not be tolerated. This prohibition against threats or acts of violence applies to all persons involved, including but not limited to Medical Center personnel, contract and temporary employees, patients, and visitors. Violations of this policy by any individual on Medical Center property is considered misconduct and will lead to disciplinary and/or legal action as appropriate.

2. Violence Prevention: Workplace violence prevention (WPVP) is the responsibility of all Medical Center personnel. Knowledge of or suspicion of any anticipated violent act should be reported immediately to Security. Security may request completion of the Confidential Violence Prevention Assistance Notification form (See Appendix 1).

3. Violent Incident Reporting, Investigation, and Resolution: All acts of violence, whether alleged or observed, are to be reported immediately to Security. Security will provide the confidential Medical Center Violent Incident Report form (See Appendix 2) for completion.

a. Violence Toward Patients: Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of patients will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of a patient by an employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

As soon as possible, the patient should be separated from the alleged assailant.

- 1) The patient will have a complete physical examination performed as soon as possible.
- 2) All entities will work together to investigate the situation and provide rapid resolution.
- 3) The patient's medical record will reflect brief documentation of the incident and its resolution.
- 4) The patient and or his/her legal guardian will be kept informed of the progress of an ongoing investigation, and the resolution of the issue, as appropriate.

b. Violence Toward Employees (WPVP): Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of employees by patients, visitors, or other employees will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of an employee by another employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

As soon as possible, the employee should be separated from the alleged assailant. All entities will work together to investigate the situation and provide rapid resolution. If a patient is the alleged assailant, the patient's medical record will reflect brief documentation of the incident and its resolution. The employee will be kept informed of the progress of an ongoing investigation, and the resolution of the issue.

c. Violence Toward Visitors: Security will be notified and the Medical Center Violent Incident Report form will be completed. Reports involving abuse of visitors by patients, employees or other visitors will immediately be made known to the appropriate manager, division director, and MUHA Risk Management. Reports involving abuse of a visitor by an employee will also be reported to the appropriate Human Resources office. Acts considered to be criminal will be reported to Public Safety.

As soon as possible, the visitor should be separated from the alleged assailant. All entities will work together to investigate the situation and provide rapid resolution. If a patient is the alleged assailant, the patient's medical record will reflect brief documentation of the incident and its resolution. The visitor will be

kept informed of the progress of an ongoing investigation, and the resolution of the issue.

L. Weapons brought into MUSC Medical Center

1. Weapon is defined as any firearm, knife, or device that could cause bodily harm or injury.
2. Except as allowed by law, weapons are never permitted on MUSC Medical Center property. Visitors not complying with this regulation will be denied access to the Medical Center.
3. Patients who present for admission with a weapon, the weapon will be sent home with a family member, if possible. Patients being admitted through the Emergency Department or arriving at the Medical Center without a family member will have their weapon confiscated and stored at Public Safety until discharge.

Appendices:

Appendix 1 - Confidential Violence Prevention Assistance Notification

Appendix 2 - Violent Incident Report

Approvals:

As Required	Date
List Hospital Committee(s): EOC	07/12
Ethics Committee	
Accreditation Review	09/12
Legal Review	09/12
Administration/Operations	09/12
Medical Staff Executive Committee	
Governing Body	

Distribution:

Policy Applies to: All	Physicians (Y/N):	Nursing (Y/N):
	Other Clinical Staff (Specify):	Other Staff (Specify):
Educational Plan	Policy Site	
Required Competencies		

Appendix 2

MUSC MEDICAL CENTER Violent Incident Report

A reportable violent incident should be defined as any threatening or overt act of physical violence against a person (s) or property whether reported or observed.

Please put additional comments, according to number section, on reverse side of form.

Return to: MUSC Medical Center Security Department

1. Date: _____ Day of Week: _____
2. Time: _____ Assailant: Female Male
Specific Location: _____

3. Violence Directed toward: _____ Patient _____ Staff _____ Visitor _____ Other
Assailant _____ Patient _____ Staff _____ Visitor _____ Other

Assailant's Name: _____
Assailant: Unarmed Armed Weapon _____

4. Predisposing factors: Intoxication Dissatisfied with care/Waiting time
 Grief Reaction Prior History of Violence
 Gang Related Other (Describe) _____

5. Description of Incident: Physical abuse Verbal abuse Other _____

6. Injuries: Yes No

7. Extent of Injuries: _____

8. Detailed description of incident:

9. Did any person leave the area because of the incident? Yes No Unable to determine

10. Present at time of incident: Medical Center Security Officer Public Safety Officer

11. Needed to call: Medical Center Security Officer Public Safety Officer

12. Termination of incident: Incident defused Yes No Public Safety notified Yes No
Assailant arrested Yes No

13. Disposition of assailant: Stayed on premises Escorted off premises Left on own
Other: _____

14. Restraints used: Yes No Type: _____

15. Report completed by: _____
Title: _____
Department: _____
Phone Number: _____
