

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 272-2008
:
vs. : CRIMINAL
:
ADRIAN MICHAEL HARRY, : Omnibus Pre-trial Motion
Defendant :

ORDER

AND NOW, this ____ day of September 2008, after a hearing on Defendant's Omnibus Pre-trial Motion, the Court makes the following findings of fact.

On January 10, 2008, at approximately 11:25 p.m., Trooper Tyson Havens was out in his cruiser looking for Tyrell Carter, who was wanted on a warrant for a home invasion robbery. While doing this, he observed a Toyota sedan with an expired registration. Trooper Havens stopped the vehicle. As Trooper Havens approached on the driver's side of the vehicle, he shined his flashlight into the passenger compartment. He observed Defendant slouched down in the backseat. Defendant was wearing a zippered, hooded sweatshirt. As the beam of the flashlight passed over Defendant, Trooper Havens observed part of a baggie of marijuana sticking out of the left sweatshirt pocket in plain view. Trooper Havens pulled Defendant out of the vehicle and handcuffed him. Defendant asked why he was being handcuffed and Trooper Havens responded told him because of the marijuana. Trooper Havens asked Defendant if he possessed any weapons. Defendant indicated there was a handgun at his waistband on his hip. Trooper Havens then secured the firearm, a loaded, .22 caliber Ruger. Trooper Havens searched Defendant incident to arrest. In addition to the firearm and 7 dime bags of marijuana, Trooper Havens found 3 Percocet pills, a cell phone and \$315.

Defendant was placed in the back of Trooper Havens' cruiser. After citing the driver of the vehicle for the expired registration and driving under suspension, Trooper Havens returned to the cruiser and turned the on-board video camera around toward the rear of the vehicle.¹ Trooper Havens then advised Defendant of his Miranda rights. Defendant indicated that he understood those rights. Defendant then voluntarily made statements to Trooper Havens to the effect that the marijuana was for sale, but the Percocet was for his personal use and that he purchased the gun for \$250 to protect himself because he heard Tyrell Carter wanted to kill him. Trooper Havens did not force Defendant to make any statements. Defendant never asked for an attorney and never indicated that he did not want to speak to Trooper Havens. Defendant admitted that Trooper Havens read him his rights and did not threaten him or draw his weapon, but he claimed he only cooperated because Trooper Havens told him he would get 15 years to life. The Court did not believe Defendant's testimony that Trooper Havens told him he would be facing 15 years to life. At most Trooper Havens may have told Defendant he could get 5 years for possessing a gun at the same time he possessed drugs with the intent to deliver them, which is an accurate statement of the law.

Based on the foregoing, the Court finds the police had reasonable suspicion to stop the vehicle for an expired registration sticker. When Trooper Havens shined his flashlight inside the passenger compartment, he observed part of a marijuana bag in plain view, which gave him probable cause to arrest Defendant for possession of marijuana. Trooper Havens searched Defendant incident to this lawful arrest and discovered Percocet

¹ Although the camera appeared to be working, there was a hard drive error and the file was corrupt or unreadable. Trooper Havens did not have Defendant sign a written waiver of his Miranda rights, because he believed he had Defendant's waiver on tape.

pills and a handgun. Defendant then voluntarily waived his Miranda rights and made incriminating statement with respect to the drugs and the weapon. The marijuana and Defendant's statements that he intended to sell it establish a prima facie case that Defendant possessed marijuana with the intent to deliver it. Therefore, the Court DENIES the Motion to Suppress and the Petition for Writ of Habeas Corpus contained in Defendant's Omnibus Pre-trial Motion.

By The Court,

Kenneth D. Brown, President Judge

cc: Peter T. Campana, Esq.
Henry Mitchell, Esq. (ADA)
Work File
Gary Weber, Esquire (Lycoming Reporter)