

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. CR-2033-2007**  
 :  
**vs.** : **CRIMINAL**  
 :  
**ADRIAN MICHAEL HARRY,** : **Omnibus Pre-trial Motion**  
**Defendant** :

**ORDER**

**AND NOW**, this \_\_\_\_ day of September 2008, upon consideration of Defendant's Omnibus Pre-trial Motion and after hearing on the same, the Court makes the following findings of fact:

On November 14, 2007 at 1:15 a.m., Officers Jeremy Brown and Marlin Smith II of the Williamsport Police Department were on patrol in the area of Thomas Avenue and High Street, a high crime area. The officers observed two black males; one was standing in the alley and another was standing near a garage. When the black males saw the police they began to walk away. They walked up Park Avenue and across Sixth Avenue, taking them partially around the block. One of the individuals looked like a person who was wanted for homicide. The police also were concerned that Defendant, who was not the one who looked like the wanted person but who was standing near the garage, may have been trespassing. The police drove by them and still thought the one individual resembled the person wanted for homicide. The police stopped their cruiser and walked back toward the two individuals. The police asked the individuals if they would stop and talk to them for a second. The individuals stopped. The officers told the individuals to remove their hands from their pockets and asked if they had any identification. They didn't have any identification, so the police talked to them about who they were, what they were doing and

where they were going. While the police were talking to them, Defendant put his hands back into his pockets. The police again told him to remove his hands from his pockets, because they were concerned for their safety. Defendant removed his hands, but shortly thereafter put them in his pocket for a third time. At that point, Officer Brown grabbed Defendant's wrist, pulled Defendant's hand out of his pocket and patted him down for weapons. During the pat down, Officer Brown felt what he immediately recognized as packets of marijuana in Defendant's right pants pocket based on the consistency, size, shape and packaging of the object. Officer Brown put handcuffs on Defendant. Defendant asked why he was being cuffed and Officer Brown told him that it was because he possessed marijuana.

Defendant contends the police did not have reasonable suspicion to conduct a stop in this case. The Court cannot agree. First, the Court believes the initial contact with Defendant and the other individual was a mere encounter. The police simply asked to talk to the individuals so they could determine whether the other individual was the person wanted for homicide. The police did not activate the lights or sirens on their cruiser. Instead, they stopped their vehicle, walked back to the individuals and asked if they could talk to them. The Court does not believe the incident rose to the level of a stop and frisk until Officer Brown grabbed Defendant's wrist.

Defendant next claims the police did not have a basis to frisk or pat down Defendant. Again, the Court cannot agree. Defendant kept put his hands in his pockets despite repeated requests not to. The Court does not believe the police have to wait for a defendant to pull a weapon on them. Defendant's repeated reaching in his pockets, despite being told not to, gave the police a legitimate concern for their safety to justify a pat down for weapons.

Finally, Defendant asserts the police did not have probable cause to arrest him. When Officer Brown frisked Defendant for weapons, he felt what he immediately recognized as marijuana packets in Defendant's pants pocket. Defense counsel argued that the Court should not accept Officer Brown's credibility in this regard because there are other substances with a similar consistency to marijuana that could be carried in a plastic bag or packet. The Court accepts Officer Brown's credibility. Although other substances could, in theory, be packaged in 1 x 1 packets and placed in a baggie, in Officer Brown's and the Court's experience other substances are not packaged in this manner.

In the alternative, the Court finds the police would have inevitably arrested Defendant and discovered the marijuana pursuant to a lawful arrest. Defendant had an outstanding bench warrant. After Defendant and the other individual gave their names, but could not provide identification, Officer Smith began running their names. The only reason Defendant wasn't arrested on the outstanding warrant is because Officer Brown discovered the marijuana during his pat down before Officer Smith got the information about the outstanding warrant.

Based on the foregoing, the Court DENIES Defendant's Motion of Suppress and the Petition for Habeas Corpus<sup>1</sup> contained in Defendant's Omnibus Pre-trial Motion.

By The Court,

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Kenneth D. Brown, P.J.

cc: Peter T. Campana, Esq.  
Mary Kilgus, Esq. (ADA)

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<sup>1</sup> At the hearing on the suppression motion, counsel agreed that the petition for habeas corpus would rise or fall with the suppression motion.

Work File  
Gary Weber, Esquire (Lycoming Reporter)