

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

**COMMONWEALTH**

**v.**

**ANTHONY BARASKY,  
Defendant**

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**No. 1369-2008  
CRIMINAL**

**OPINION AND ORDER**

Defendant filed a Motion to Suppress on October 17, 2008. A hearing on the Motion was held on December 18, 2008.

***Background***

The following is a summary of the facts presented at the Suppression hearing. Around 9:30 p.m., on May 30, 2008, Officer Jeremy Brown (Brown) of the Williamsport Bureau of Police was working for the Special Operations Group in an area known for high drug activity and shootings. In the 600 block of Walnut Street, he observed an individual, later identified as Anthony Barasky (Defendant), operating a bicycle in the northbound lane without required lighting. Brown immediately recognized the bicycle as belonging to someone he arrested earlier in the evening and who he believed would not have given the Defendant permission to borrow the bicycle. Brown stopped the Defendant for the Motor Vehicle Code violation and immediately noticed a bulge in the left front pocket of Defendant's pants. Upon identifying the Defendant, Brown asked the Defendant if he had any weapons. The Defendant informed Brown he did not and then Brown conducted a pat-down. Brown testified the pat-down was conducted for officer safety as he was in a high crime area, he knew of the Defendant from prior investigations and confidential informants, and because there were a lot of other individuals in the area. During the

pat-down, Brown felt a bag of marijuana. The Defendant also claimed the bicycle “was given to him by a kid.” Brown charged the Defendant with Possession of a Small Amount of Marijuana and Possession of Drug Paraphernalia, but not with Receiving Stolen Property as he felt he did not have a “good victim” in the man he arrested hours earlier.

### ***Discussion***

The Defendant alleges that Officer Brown did not have reasonable suspicion that he (Defendant) was armed and dangerous at the time of the stop, to justify a pat-down. In opposition, the Commonwealth argues the pat-down was proper because the Defendant was riding what was possibly a stolen bicycle without proper lighting, and in a high-crime area where there were numerous individuals about.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

Police officers are authorized to stop a vehicle whenever they have “reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred.” Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) (citing 75 P.S. § 6308(b)). An officer may during the investigatory stop, “pat-down the driver ‘when the officer believes, based on specific and articulable facts, that the individual is armed and dangerous.’” Commonwealth v. Parker, 957 A.2d 311, 315 (Pa. Super. Ct. 2008) (quoting Commonwealth v. Stevenson, 894 A.2d 759, 772 (Pa. Super. 2006), appeal denied, 917 A.2d 846 (2007)). The totality of the circumstances must

be evaluated in determining the existence of reasonable suspicion. Commonwealth v. Taylor, 771 A.2d 1261, 1269 (Pa. 2001).

The Court finds that while the traffic stop was lawful, the pat-down was improper. The testimony shows that the Defendant was riding a bicycle without the proper lighting justifying the stop. However, one can assume that since the Defendant was riding the bicycle his hands would be on the handlebars and not in or near his pockets. The only other evidence was that the Defendant was in a high crime area and had a bulge in his left front pants pocket. Brown did not testify he believed the bulge to be a weapon. The Court finds no facts which could reasonably lead Brown to believe the Defendant here was armed and dangerous, the pat-down was improper. See Commonwealth v. Martinez, 588 A.2d 513, 517 (Pa. Super. Ct. 1991) (flight from a street corner and a bulge in the pocket are not enough for reasonable suspicion). Therefore, the evidence seized from the Defendant's person shall be suppressed.

**ORDER**

AND NOW, this \_\_\_\_day of January 2009, based on the foregoing Opinion, Defendant's Motion to Suppress is hereby GRANTED. It is ORDERED and DIRECTED that all evidence seized on the Defendant's person as a result of the pat-down search is hereby SUPPRESSED.

By the Court,

Nancy L. Butts, Judge

cc. DA  
PD (NS)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)