

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

**COMMONWEALTH**

**v.**

**MARVIN TURNER,  
Defendant**

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**CR-820-2010  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress on August 27, 2010. After several continuances, a hearing on the Motion was held April 12, 2011.

***Background***

On April 27, 2010, officers of the Williamsport Bureau of Police were dispatched to the 1600 block of Catherine Street in reference to two people refusing to pay a cab fare. The suspects involved in the cab fare dispute were described as two black males. While the officers were in route to the scene, Lycoming County Communications advised that the situation was getting more intense and that a knife was involved. Police Officer William Lynn (Lynn) arrived on the scene and observed two black males, later identified as Marvin Turner (Defendant) and Troy Dixon (Dixon), standing outside the passenger side of the cab. The cab was identified as a county cab from the City of Philadelphia. The cab driver was interviewed at the scene and confirmed that he had given the Defendant and Dixon a ride to Williamsport from Philadelphia and that there was a dispute about the payment of the fare. The police were then called to the scene. However, before the police arrived, the parties reached an agreement for the cab driver to be paid. Once he arrived at the scene, Lynn ordered both the Defendant and Dixon to get on the

ground. After other officers arrived on the scene, the Defendant and Dixon were detained. Both the Defendant and Dixon were patted down for weapons; no weapons were detected. During the pat-down of the Defendant, Sergeant John McKenna (McKenna), who had also arrived at the scene, felt a “marble size, soft, spongy substance” that he immediately recognized as being suspected cocaine. McKenna removed the plastic bag containing suspected cocaine from the Defendant’s right front pant’s pocket. McKenna removed a total of \$2,243.00 from the Defendant’s person. The Defendant was transported to City Hall and was later advised of his Miranda Rights. The Defendant agreed to speak without an attorney present and provided a video taped statement, during which he admitted that the bag containing suspected cocaine was his and that he did intend to pass the cocaine along to another person at some point. The bag containing the suspected cocaine weighed approximately 10.9 grams.

### ***Discussion***

The Defendant alleges in his Motion to Suppress that it would have been impossible to immediately recognize the bag of suspected cocaine without manipulating it. The Defendant further alleges that the manipulation of the objects within his pocket was unlawful and exceeds the scope of a Terry pat-down for weapons.

The scope of a Terry pat-down for weapons was established by the court in Terry v. Ohio, 392 U.S. 1 (1968):

[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer

clothing of such persons in an attempt to discover weapons which might be used to assault him.

In this case, the officers clearly had reason to believe that criminal activity was afoot as they were responding to a call for a disturbance where two people were refusing to pay cab fare. The officers intended to arrest the individuals for Theft of Services of the cab. The officers also had reason to believe that the people with whom they were dealing were armed and presently dangerous as they were informed by Lycoming County Communications that the situation was getting more intense and that a knife was involved. The officers received no indication of which of the individuals was suspected to have the knife. It was during the course of a lawful Terry frisk for weapons that McKenna felt the suspected cocaine. If during the course of a lawful Terry frisk, an officer “feels an object whose contour or mass makes its identity immediately apparent...if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.” Minn. v. Dickerson, 508 U.S. 366, 375-376 (1993). At the hearing on the Motion to Suppress, McKenna demonstrated that he used his cupped hand to conduct the pat-down of the Defendant. There was no indication that McKenna had to manipulate or squeeze the items in the Defendant’s pockets to identify them. Furthermore, McKenna testified that based on his training and experience, he immediately recognized the substance as suspected cocaine. McKenna testified that he had never before in his career felt an item like the one in the Defendant’s pocket and discovered that the item was not drugs. Based on this evidence, the Court finds that McKenna did not manipulate the items during the Terry frisk and that the scope of the Terry frisk was not exceeded.

**ORDER**

AND NOW, this \_\_\_\_day of April, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
PD