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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

RODERICK STEWART
Defendant

Case No: CR-19-637045-A

Judge: MICHAEL J RUSSO

INDICT: 2925.11 DRUG POSSESSION /FORS
2923.24 POSSESSING CRIMINAL TOOLS /FORS

JOURNAL ENTRY

07/03/2019: MOTION TO SUPPRESS, FILED 04/30/2019, IS DENIED. OSJ.

MOTION FILED BY PI THE STATE OF OHIO STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS, FILED 05/10/2019, IS MOOT. THIS IS NOT A MOTION, IT IS A BRIEF IN OPPOSITION AND SHOULD BE FILED AS SUCH ON THE DOCKET.

TRIAL DATE MAINTAINED.

07/03/2019
CPMR2 07/03/2019 14:55:17

NO SIGNATURE REQUIRED

Judge Signature

Date

FILED
2019 JUL - 8 P 4: 24
CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO)	CASE NO. CR 637045
)	
Plaintiff)	JUDGE MICHAEL J. RUSSO
)	
vs.)	
)	
RODERICK STEWART)	OPINION AND RULING
)	UPON DEFENDANT'S MOTION
Defendant)	TO SUPPRESS

On May 29, 2019 and June 19, 2019, the court held a hearing upon the motion to suppress filed on behalf of defendant Roderick Stewart. Based upon the law and the evidence before the court from the testimony of Detective Robert Kowza and Detective Daniel Hourihan, defendant's motion is denied.

The court finds the relevant facts as follows. (Page citations are from the hearing transcript.) Detective Kowza has been with the Cleveland Police Department since 2009, starting out as a patrol officer and becoming a detective in the Fourth District Vice Unit in 2015. Tr. 10-11. He has extensive experience and training in drug investigations. Tr. 11-12. In late 2018, Kowza began investigating Stewart after a confidential informant told him that Stewart was selling crack cocaine from a black Jeep. Tr. 13. Following this tip, Kowza arranged controlled buys for crack cocaine from Stewart, which culminated with the issuance of a vehicle search warrant on February 5, 2019. Tr. 13-14. In the affidavit in support of the search warrant, Stewart is listed as the driver who was observed selling drugs during controlled buys. Tr. 25. The search warrant authorized the search of a black Jeep Patriot, license plate HLA 7089, owned by Temeka

Stewart, and any compartments within the Jeep. Tr. 14-16; Ex. 1. Stewart is not listed in the warrant. Tr. 22.

Kowza provided a copy of the search warrant to his supervisor later in the day on February 5th, and Detectives Matthew Pollak and Hourihan became involved in the investigation. Tr. 16. During patrol, Pollak and Hourihan located the Jeep, which they stopped in the 6400 block of Lansing Avenue in Cleveland in order to execute the warrant. Tr. 17. Kowza was not on the scene at the time Stewart was seized by Hourihan, and Stewart was in handcuffs by the time Kowza arrived. Tr. 20-21.

Detective Daniel Hourihan has been a Cleveland Police Officer for almost twelve years, and a detective in the Fourth District Vice Unit for the last two. Tr. 27. Hourihan has been involved with investigations of firearms or drug trafficking hundreds of times, and he has encountered people who are armed (or may be armed) or dangerous on many occasions. Tr. 27-28. Hourihan was aware there was a search warrant for Stewart's vehicle. Tr. 29. He also was aware of Stewart's previous criminal history, which caused him to exercise additional caution and to be "ultra vigilant" with regards to the suspect's physical movements during the traffic stop. Tr. 29-32. Hourihan told Stewart that he was stopped for a broken taillight, although it was not broken. Tr. 34. Hourihan utilized this ruse because he wanted Stewart to step out of the vehicle without conflict so they could talk and Hourihan could pat down Stewart to make sure he did not have any weapons. Tr. 34. Hourihan was concerned about Stewart having weapons because of his prior convictions for drugs, guns, and other violent offenses, and because it had taken Stewart almost the length of a football field to come to a complete stop after Hourihan initiated the traffic stop. Tr. 32, 34.

When Stewart got out of the vehicle, Hourihan had him turn away so that Stewart faced the Jeep. Tr. 34. Hourihan patted down Stewart on his right side, then switched to Stewart's left side. Tr. 34. Hourihan detected a plastic bag in Stewart's left jacket which he believed, from his training and experience, to contain crack cocaine. Tr. 34. Hourihan's hand was outside of Stewart's pocket when he first felt the bag. Tr. 35. At that point, Hourihan handcuffed Stewart because he was afraid of further resistance or an escape by Stewart. Tr. 36.


“When an officer is ‘justified in believing’ that an individual may be ‘armed and presently dangerous,’ the officer may conduct a limited protective search of the individual for concealed weapons.” *Ohio v. Hairston*, 2019-Ohio-1622, ¶9, quoting *State v. Andrews*, 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271 (1991), citing *Terry v. Ohio*, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L.Ed. 2d 889 (1968). “The determination whether an officer had reasonable suspicion to conduct a *Terry* stop must be based on the totality of circumstances ‘viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.’” *Id.*, quoting *State v. Andrews*, 57 Ohio St. 3d 86, 87-88, 565 N.E.2d 1271 (1991). In this case, Hourihan noted Stewart's criminal history and the length of time it took Stewart to stop as reasons why, for officer safety, Hourihan wanted to ensure that Stewart was unarmed.

“The purpose of this limited *Terry* search is not to discover evidence of crime, but to allow the officer to pursue his investigation without the fear of violence.” *State v. Allen*, 2d Dist. Montgomery No. 22663, 2009-Ohio-1280, ¶ 29. Here, Detective Hourihan testified that when he began to pat down [Stewart's] left side, he “could feel a plastic bag in his left hoodie pocket. . . . It had the consistency and the feel of a bag of crack, hard and plastic.” Tr. 34. Hourihan distinguished the contraband as a bag of crack as opposed to another substance by “the texture, the feel of it, the size of it.” Tr. 34-35.

“If a police officer lawfully pats down a suspect’s outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.” *State v. Morton*, 9th Dist. Summit No. 25117, 2010-Ohio-3582, ¶ 20. Accordingly, “[u]nder the plain feel doctrine, an officer conducting a patdown for weapons may lawfully seize an object if [s]he has probable cause to believe that the item is contraband.” *Id.* Hourihan testified that the identity of the object in Stewart’s pocket was immediately apparent, as after he first felt it, he looked and saw the end of the plastic baggie sticking out of Stewart’s pocket. Tr. 35.

Based upon the foregoing evidence, the court finds that the officers lawfully stopped the vehicle driven by Stewart to execute a search warrant. Due to the length of time it took Stewart to come to a complete stop, Hourihan was concerned that Stewart may have secured a weapon on his person. During the protective pat down of Stewart, based upon Hourihan’s training and experience, he determined that Stewart had what Hourihan believed were illegal drugs in Stewart’s left jacket pocket. Under the plain feel doctrine, Hourihan was entitled to lawfully seize this item as it was immediately apparent to be contraband. *See State v. Crawford*, 8th Dist. Cuyahoga No. 64607, 1993 Ohio App. LEXIS 4488, at *2 (Sep. 23, 1993); *State v. Jones*, 8th Dist. Cuyahoga No. 80776, 2002-Ohio-6493, ¶ 5; *State v. Hall*, 8th Dist. Cuyahoga No. 97722, 2012-Ohio-4155, ¶ 4. In light of the foregoing law and evidence, Stewart’s motion to suppress is not well-taken and the court holds that the evidence was lawfully seized.

IT IS SO ORDERED.


MICHAEL J. RUSSO, JUDGE

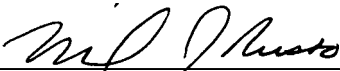
CERTIFICATE OF SERVICE

A copy of the foregoing Opinion and Ruling Upon Defendant's Motion to Suppress has been mailed on this 8th day of July, 2019, to:

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And

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Judge Michael J. Russo