STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LEE BRANDENBURG,

Defendant-Appellant.

UNPUBLISHED
November 21, 1997

No. 192358
Oakland Circuit Court
LC No. 95-138551 FH

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant appeals by right from his bench trial conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), which resulted in an enhanced sentence based on defendant's status as a second drug offender. The "trial" was a pro forma exercise, apparently designed to substitute for a conditional guilty plea so that defendant could preserve his right on appeal to contest the admissibility of evidence against him on Fourth and Fifth Amendment grounds.

Defendant contends that the discovery and seizure of marijuana from his person was the product of an illegal search and seizure. However, he does not contest but that the initial patdown of his person was permissible under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), as a protective frisk for weapons. Immediately before the arresting officer, identified as an officer by display of his badge and the wearing of a hat with "Police" in large, bright yellow letters, reached him, defendant was seen reaching his hand into the crotch of his pants. When defendant was slow to exit the vehicle despite instructions given at gunpoint, the officer's concern for the safety of himself and his colleagues was expectedly heightened.

In conducting a patdown of defendant's person, the officer immediately and first checked the groin area, where he detected a plastic bag containing what felt like stems and leaves. Inasmuch as the officer, from prior contact or surveillance with or of defendant, had ample basis for suspecting defendant of drug dealing, and considering the totality of all the other circumstances, including that defendant was not wearing clothing lacking pockets or other more normal storage areas, the officer could properly conclude that he had detected contraband, which is admissible under the so called "plain feel" exception

to the Fourth Amendment warrant requirement. *People v Champion*, 452 Mich 92, 111-113; 549 NW2d 849 (1996).

That the officer nonetheless asked defendant to identify the object before seizing it does not negate this finding. First, the officer's subjective intentions and motivations are irrelevant; the question is whether the objective facts known to the officer would have justified him in seizing the object stored in defendant's groin under the plain feel exception. *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988); *Whren v United States*, 517 US ___; 116 S Ct 1769; 135 L Ed 2d 89, 97-98 (1996). Second, the question simply offered defendant an opportunity to avoid the indignity of having a police officer shove his hand into defendant's crotch, had defendant been able to offer a credible, innocent explanation to negate the conclusions about the object that the officer had already drawn.

Granting *arguendo* that defendant's reply to the officer's question, "It's marijuana," was the product of custodial interrogation and that *Miranda* warnings were required, the statement itself played no role in defendant's conviction. The trial court made no mention of the statement in adjudicating defendant guilty, and given the laboratory analysis establishing that the substance was indeed marijuana and the evidence other than the statement establishing defendant's possession and intent with respect to the contraband, admission into evidence of the statement as part of the stipulated evidence at trial was harmless beyond a reasonable doubt. *People v Jones*, 134 Mich App 371, 373; 350 NW2d 885 (1984).

Affirmed.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Robert P. Young, Jr.