

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

Case Number 22-F-94

RODERICK LEVI HOWARD

O R D E R

On the 2<sup>nd</sup> day of February, 2024, came the State of West Virginia by the Office of the Prosecuting Attorney, and came the defendant, Roderick Levi Howard, in person and by his counsel, Courtenay Craig, Esq., for sentencing of the defendant pursuant to his conviction of the felony offense of Attempted Possession with Intent to Deliver a Controlled Substance, a lesser included offense as contained in Indictment No. 8 in Criminal Proceeding 22-F-94.

Upon addressing counsel for the defendant, the Court determined that the defendant and his counsel have had the opportunity to participate in the pre-sentence investigation and have read and discussed the report thereof made available to them pursuant to Rule 32(b) of the West Virginia Rules of Criminal Procedure. Further, the Court determined that there are no unresolved objections to said pre-sentence report.

Pursuant to Rule 32(c) of the West Virginia Rules of Criminal Procedure, the Court then afforded the defendant's counsel an opportunity to speak on behalf of the defendant; addressed the defendant personally to determine whether the defendant wished to make a statement and to present any information in mitigation of sentence; permitted the defendant the opportunity to speak and to present evidence as to sentencing; and, afforded the attorney for the state the opportunity equivalent to that of the defendant's counsel to speak as to sentencing.

Nothing being offered or alleged in delay of judgment, it is the **ORDER, JUDGMENT and SENTENCE** of the Court that the defendant, Roderick Levi Howard, is guilty of the felony offense of Attempted Possession with Intent to Deliver a Controlled Substance, a lesser included offense as contained in Indictment No. 8 in Criminal Proceeding 22-F-94 and shall be confined in a penitentiary of this state for not less than one (1) year nor more than three (3) years.

It is further **ORDERED** that the defendant shall be given ninety-eight (98) days credit on said sentence for all incarceration time previously served thereon.

The Court, upon further consideration, grants the motion of the defendant for probation and suspends the execution of said sentences and places the defendant on probation for a period of two (2) years upon the following terms and conditions:

RH 1. You shall not violate any law of this State, any other State, any municipality or the United States.

RH 2. You shall not leave the State of West Virginia without the written consent of your supervising probation officer.

RH 3. You shall maintain a specific verifiable physical residence approved by the supervising probation officer, seek approval of any change of residence in advance from the supervising probation officer and report any changes of physical residence and/or mailing address within twenty-four (24) hours of said change.

RH 4. You shall report as directed to the Court and/or your supervising probation officer and permit the officer to visit your home, place of employment, or school. You agree to all searches of your person, residence, vehicles, cellphones/computers, or effects by a probation officer at any time the probation officer, upon reasonable suspicion, safety concerns, or any other lawful basis, deems it necessary and voluntarily agree to the seizure of any property found or discovered as a result of said search.

RH 5. You shall comply with the orders of the Court and any rules and/or directives given by your probation officer.

RH 6. You shall truthfully answer all inquiries of your Probation Officer or any law enforcement officer. You shall report **ANY** contact with law enforcement within twenty-four (24) hours of contact.

RH 7. You shall refrain from frequently unlawful and disreputable places or consorting with disreputable persons. You shall not associate with any persons or be with anyone using illicit drugs or abusing prescription medications. You shall not associate with any persons or be any places prohibited by your probation officer.

RH 8. You must not possess, have in your residence, or be with anybody who is in possession of any type of drug paraphernalia, or apparatus made to or sold for the purpose of using drugs.

RH 9. You shall not purchase, possess, nor consume any type of intoxicating beverages (including any/all variations of intoxicating and non-intoxicating beer, wine, and liquor).

RH 10. You shall not enter any place where beer or intoxicating beverages are sold or dispensed more commonly known as bars and nightclubs.

RH 11. You shall not use, consume, purchase, possess, or distribute any narcotics, illicit drugs, or any controlled substances, unless prescribed by a duly licensed physician, and said medications shall be consumed only as prescribed. You will sign a release of information with your doctor and/or dentist to the Putnam County Probation Department.

RH 12. Further you agree to sign a release of information with your physician so he/she can discuss your need for said prescriptions with your probation officer. You will inform any medical personal of any and all drugs to which you are addicted to or have a history of abusing. You must discard any unused medications and shall not resume use thereof without obtaining a new prescription.

RH 13. You shall not consume the following "over the counter" medications or treatments, or their generic equivalent, due to inclusion of prohibited substances or substances indistinguishable in a drug test: Sudafed, Nyquil, cough syrup with alcohol, all varieties of CBD (edibles, liquids, ointments, etc.) Further said medications shall be dispensed at on pharmacy which you shall notify your probation officer of the said location.

RH 14. You shall provide to your probation officer within the first thirty (30) days of your probation any medications you are currently prescribed. Should you be prescribed any new medications thereafter then you shall contact your probation officer within 48 hours.

RH 15. You will submit to a breath, urine or oral test for the purpose of drug or alcohol analysis at any time and place designated by your Probation Officer and will be responsible for the cost of such testing. You will not possess or consume any product that can be used to alter a drug screen. Any deceptive practice and/or tampering, adulterated, diluted, or substituted specimen shall be considered a positive result and is punishable by law pursuant to *West Virginia Code §60A-4-412*. Failure to provide a specimen within the time frame designated by your Probation Officer is considered a failure to submit and will be considered a positive screen. Also, a diluted urine screen will be considered a positive screen.

RH 16. You shall attend and complete, at your own expense, a substance abuse treatment program if directed by the Probation Officer and shall provide documentation to the probation officer when directed. Further, agree to sign a release of information with said treatment facility to allow communication regarding your participation in said program.

RH 17. You shall obtain/maintain steady lawful employment and/or be enrolled and actively participating in an educational program approved by your probation officer.

RH 18. You shall provide social media usernames, passwords and any code to access your cellphone and computer to your probation officer when directed to do so. You may not make a duplicate or alternate account (s) in efforts of avoiding detection by the probation department.

RH 19. You will be prohibited from purchasing, carrying, or possessing a Firearm, ammunition, or any weapon deemed to be lethal. Further, you may not reside in a home nor be in any vehicle with a firearm or other lethal weapons.

RH 20. You shall NOT during your term of probation, make any attempt to abscond, avoid, or evade probation supervision.

RH 21. You shall pay the Clerk of Circuit Court all court costs in this proceeding which are required by law to be paid by convicted person, including

probation supervision fee which is set at Five dollars per month and the community correction fee as provided in *West Virginia Code §62-11C-4*, which is set at Ten dollars per month. These costs shall be paid monthly in an amount of not less than ten percent (10%) to your net monthly income. Prompt and full payment shall be a condition of probation. Failure to pay the probation supervision fee, the community correction fees and court costs may be a result in the revocation of probation.

RH 22. You shall report to the Putnam County Sheriff's Department to provide a DNA sample within 30 days of the date of this order (if applicable).

RH 23. You agree to waive extradition and will not resist any action taken by the Circuit Court of Putnam County, West Virginia, or the supervising probation officer, to return to the State of West Virginia, should you be arrested in any other state for violations of the laws of that state or the terms and conditions which govern you while under the supervision of the Putnam County Probation Department.

\* \* \* \* \*

I have read and understand the foregoing conditions of my probation; can and will complete the conditions; understand the consequences if I fail to comply with one or more of the conditions; and, agree with the Court to accept the conditions.

[Signature]  
RODERICK LEVI HOWARD, Defendant

Entered this 2<sup>nd</sup> day of February, 2024.

[Signature]  
JOSEPH K. REEDER, CIRCUIT JUDGE

[Signature]  
OFFICE OF THE PROSECUTING ATTORNEY

[Signature] #8532  
COURTENAY CRAIG, ESQ., Counsel for Defendant

[Signature]  
2 FEB 2024



## West Virginia E-Filing Notice

CC-40-2022-F-94

Judge: Joseph Reeder

**To:** Andrew Courtenay Craig  
courtenaycraig@hotmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA  
State of West Virginia v. RODERICK L. HOWARD  
CC-40-2022-F-94

The following order - case was FILED on 5/30/2023 3:52:27 PM

Notice Date: 5/30/2023 3:52:27 PM

Stephanie M. Smith  
CLERK OF THE CIRCUIT COURT  
Putnam County  
12093 Winfield Road  
WINFIELD, WV 25213

(304) 586-0203  
Stephanie.Smith@courtsww.gov

**In the Circuit Court of Putnam County, West Virginia**

**State of West Virginia,**  
Plaintiff,

v.

Case No. CC-40-2022-F-94  
Judge Joseph Reeder

**RODERICK L. HOWARD,**  
Defendant

**ORDER**

On a previous day came the Defendant, Roderick Howard, in person and by counsel Courtney Craig, Esq., and came the State, through its Assistant Prosecuting Attorney, Kristina Raynes, Esq. for a motions hearing in the above referenced matter. At said hearing, the Court addressed the Defendant's motion to suppress evidence discovered during a traffic stop presented in Defendant's *Motion to Suppress*. After a review of the evidence presented, the briefs issued by the parties, and all pertinent legal authorities, the Court **FINDS** and **ORDERS** as follows:

**FACTS**

1. On July 27, 2021, Corporal Brandon Oiler with the Hurricane Police Department was patrolling the area of Interstate 64 near the 36th mile marker.
2. Cpl. Oiler testified that, around 7:00 p.m., he observed Defendant driving a silver SUV with a California license plate traveling westbound.
3. Cpl. Oiler testified that he observed the SUV traveling in the fast lane and began to "coast" when it approached the officer so that the officer could not observe any brakes being touched.
4. Cpl. Oiler testified that at that time, he decided to pull out on the vehicle.
5. Cpl. Oiler testified that, when he pulled out, the silver SUV immediately

squeezed its car in between two other cars in the right lane of the highway.

6. Cpl. Oiler testified that the SUV caused the driver of the vehicle behind the silver SUV to slam on his brakes to avoid an accident.

7. Cpl. Oiler testified that, as he started to approach the SUV, it made an abrupt lane change to get off at the I-64 westbound rest area exit without using a turn signal.

8. Cpl. Oiler testified that he also got off at the I-64 westbound rest area exit, and as he did so, he observed the SUV to be already parked. Cpl. Oiler testified that, at this time, he pulled in behind the vehicle and initiated a traffic stop.

9. Cpl. Oiler testified that he then informed Defendant of his reason for the stop and Defendant produced a West Virginia license at the officer's request. Cpl. Oiler testified that around this time when the second unit arrived, he asked Defendant to exit the vehicle for safety reasons.

10. Cpl. Oiler testified that, before he ran Defendant's license through dispatch, he told Defendant that he would write him a warning ticket.

11. Cpl. Oiler testified that when he ran the license through Putnam County Dispatch, it came back with a positive warrant out of Wyoming County, and Defendant's license was suspended.

12. Cpl. Oiler testified that at this time, he and Cpl. Wilson of the Hurricane Police Department placed Defendant under arrest.

13. Cpl. Oiler testified that Defendant was placed in handcuffs and Cpl. Wilson searched Defendant incident to arrest.

14. Cpl. Oiler testified that Defendant was not Mirandized when he was placed in handcuffs.



15. Cpl. Oiler testified that he then searched Defendant's vehicle and found a SAR-9 9 Millimeter handgun in the vehicle.

16. Cpl. Oiler testified that, during the arrest, Officer Wilson observed Defendant standing awkwardly, which caused suspicion that Defendant had something in his underwear or pants.

17. Cpl. Oiler testified that he and his partner asked Defendant to retrieve the contraband in his underwear and removed Defendant's handcuffs so he could do so.

18. Approximately 9.5 grams of fentanyl was found on Defendant's person.

### **APPLICABLE LAW**

19. "The right of the people to be secure in their persons, house, papers, and effect, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." U.S. Const. Amend, IV.

20. Probable cause exists when, "the facts and circumstances within [the police officers'] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief..." that an offense occurred. *Carroll v. U.S.*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543, 39 A.L.R. 790 (1925).

21. "[I]n determining whether the seizure and search were 'unreasonable' our inquiry is a dual one – whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889, 44 O.O.2d 383 (1968).

22. "It is well settled that a search incident to a lawful arrest is a traditional

exception to the warrant requirement of the Fourth Amendment.” *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 471, 38 L. Ed. 2d 427 (1973).

23. “The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial.” *Id.* at 234, 476 (*Citing Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145 (1925)).

## **DISCUSSION**

Defendant argues that all evidence in this case should be suppressed. Defendant argues that the evidence seized was “fruit of the poisonous tree.”

As an initial matter, Defendant was previously indicted on one count of Possession of the Controlled Substance Fentanyl and one count of Person Prohibited from Possessing a Firearm in Case Number 22-F-27. Upon the State’s motion at the suppression hearing on September 22, 2022, this Court’s sister court dismissed Case Number 22-F-27 without prejudice. Defendant was re-indicted on one count of Possession With Intent to Deliver a Controlled Substance, to wit: Fentanyl in the instant case.

As such, any Constitutional issues related to the seizure of the firearm are moot. The sole issue is whether the seizure of the fentanyl on Defendant’s person violated his Constitutional rights.

Defendant concedes that the traffic stop was initiated because he committed various traffic violations including improper lane change. Thus, the Court **FINDS** the initial stop was valid. Further, Cpl. Oiler testified that dispatch informed him that Defendant’s license was revoked, but more importantly, Defendant had an active warrant out of Wyoming County, West Virginia. Thus, the Court **FINDS** that, based on

the information given to Cpl. Oiler from dispatch, he had probable cause to arrest Defendant.

It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.” *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 471, 38 L. Ed. 2d 427 (1973). “The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial.” *Id.* at 234, 476 (*Citing Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145 (1925)).

Further, a search incident to arrest may only include the arrestee’s person and the area within his or her immediate control—the areas “from within which he might gain possession of a weapon or destructible evidence.” *Arizona v. Gant*, 556 U.S. 332, 339 129 S.Ct. 1710, 1716 (2009) (citing *Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034 (1969)).

Here, Cpl. Oiler testified that Officer Wilson observed Defendant walking in a strange manner, which, in their experience, the officers believed meant he had something stored in his pants or underwear. At this time, Defendant was already under arrest and placed in handcuffs. Under *Arizona v. Gant*, the officers had the authority to search Defendant’s person for weapons or any destructible evidence.

Defendant implies that the officers’ request that he take the item from his person while under arrest and not Mirandized was tantamount to eliciting a statement against interest. However, Cpl. Oiler testified that he had a reasonable suspicion that Defendant was hiding something in his pants. Further, he testified that he asked Defendant to retrieve the item from his pants as a courtesy to him and to save him from embarrassment. Had Defendant not retrieved the item himself, the contraband would

have been within Defendant's control and subject to a lawful search incident to arrest.  
Thus, the Court **FINDS** the search of Defendant was permissible.

### **CONCLUSION**

For these reasons, the Court **ORDERS** that the evidence seized from Defendant shall be **ADMISSIBLE** at the trial in this matter.

Entered this 17th day of June, 2021.

**/s/ Joseph K. Reeder**  
Circuit Court Judge  
29th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.