



# Legal Update

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September 2016

*Based on an aggregate of factors, the SJC holds that police lacked reasonable suspicion to conduct an investigatory stop of the defendant.*

*Commonwealth v. Jimmy Warren*, SJC No. 11956 (2016):

**Background:** On December 18, 2011, Officer Luis Anjos of the Boston Police Department received a dispatch that there was a breaking and entering on Hutchings Street and there were three men fleeing from the scene. Officer Anjos drove to the scene and spoke with the victims about incident. According to the victims, one man was wearing a red hoodie, the other had a black hoodie and the third suspect was dressed in dark clothing. The victim's backpack, computer and some baseball cards were missing. After leaving the scene, Officer Anjos drove a four to five block radius around the house searching for suspects. While driving on Martin Luther King Boulevard, Officer Anjos saw two men walking near basketball courts and one of the men was wearing a dark colored hoodie.

Officer Anjos approached the men in his cruiser with no lights or siren activated and no weapon displayed, and said “**Hey guys, wait a minute.**” The two men began to jog away after they made eye contact with Officer Anjos. Officer Anjos sent radio dispatch that he saw three men who may have been involved in the breaking and entering incident, heading towards Dale Street. Two officers who were on patrol

responded and observed two men with “no bulges in their clothing.” One of the officers spoke to the men and they began to run up a hill. At this point, the officers ordered the men to stop and they could see the defendant, Jimmy Warren, clutching the right side of his pants, a motion consistent with carrying a gun without a holster. The defendant ran away and a foot pursuit ensued. A few minutes later, the officers caught up to the defendant and ordered him to show his hands. The defendant was arrested and .22 caliber firearm was retrieved from his person. The defendant appealed the decision rendered from the Appeals Court last year and the SJC granted further appellate review

**Conclusion:** The SJC vacated the conviction and held that the police lacked reasonable suspicion for the investigatory stop of the defendant. In its analysis, the SJC examined a number of factors that were included in the reasonable suspicion calculus.

**1<sup>st</sup> Issue: Did the police have reasonable suspicion to stop the defendant?**

The SJC held that the police lacked reasonable suspicion to connect the defendant to the breaking and entering incident that had occurred earlier in the evening. The SJC found that the description provided to the police was too general. The proximity and timing factor failed to provide much weight as well as the report that there was a lack of pedestrians in the area that evening. Lastly, the SJC found that while flight can be a supporting factor, in determining reasonable suspicion, the SJC cautioned it cannot be the primary factor, or, “long-standing jurisprudence establishing the boundary between consensual and obligatory police encounters will be seriously undermined.”

- 1. Description:** The victim provided police with a very broad description of the suspects that left police looking for three black males. Two of the men were dressed in dark clothing while the other was wearing a red hoodie. Apart from a basic clothing description, the victim did not specify any facial or physical characteristics that would have assisted the police in “distinguishing the defendant from any other black man wearing dark clothes and a hoodie in Roxbury.” *Commonwealth v. Cheek*, 413 Mass. 492 (1992). The SJC found that the defendant was not wearing a red hoodie nor was he carrying a backpack when Officer Anjos encountered him.
- 2. Proximity:** The police stopped the defendant within a mile of the incident and within a half hour after it was reported. The SJC agreed that time and proximity can be key factors when considering whether the police had reasonable suspicion. “The location and timing of the stop were no more than random occurrences and were not probative of individualized suspicion where the direction of the perpetrator’s path of flight was mere conjecture.” The SJC further elaborated that

the victim provided the police with the direction that the suspects fled. However, “depending on the direction taken, the paths of flight would lead to different Boston neighborhoods, Dorchester or Jamaica Plain, in different areas of the city.”

Additionally, Officer Anjos testified that when he encountered the defendant, he was found in the opposite direction of where the reported paths of flight may have lead. Officer Anjos said that if the suspects had fled to Dale Street, they would have reached that location well before he encountered the defendant. Based on the facts in this case, proximity and timing were not critical factors when determining whether the police had reasonable suspicion to stop the defendant.

3. **Lack of Pedestrians:** The defendant and his companion were the only two individuals within the area the police canvassed. The SJC did not give much weight to this factor based on the “lapse of time and the narrow geographical scope of the search for suspicious persons.” Officer Anjos spoke with the victims fifteen minutes after the incident and he only searched a 4 to 5 block radius. Based on this information, the SJC gave little weight to this factor when examining whether police had reasonable suspicion to the stop the defendant.
4. **Flight:** The SJC did find that the defendant’s evasive conduct and flight when encountering the police was important. However, “evasive conduct in the absence of any other information tending toward an individualized suspicion that that the defendant was involved in the crime is insufficient to support reasonable suspicion.” *Commonwealth v. Mercado*, 422 Mass. 367 (1996). Although flight can be a relevant factor to the reasonable suspicion analysis, the SJC also mentioned that it had some concerns with giving too much weight to a flight as a factor in the reasonable suspicion calculus. A person can choose to avoid contact with police altogether. *Commonwealth v. Barros*, 435 Mass 171 (2001). “Where a suspect is under no obligation to respond to a police officer’s inquiry, flight to avoid contact should be given little weight.” Here the initial flight from the encounter with Officer Anjos does not bolster reasonable suspicion.

**NOTE:** The SJC also cautioned that when examining the factor of flight in the context of reasonable suspicion, it is important to also consider racial profiling. Although this decision focused on a study that dealt with the Boston Police Department, the SJC included in its decision that black males, who evade police during an encounter, “may be just as easily motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal

activity.” While the study referenced in this decision was limited to one police department, it certainly raises an issue that impacts all policing.

The SJC concluded that the police lacked reasonable suspicion to believe the defendant was involved in the earlier breaking and entering incident. “The investigation failed to transform the defendant from a random black male in dark clothing traveling the streets of Roxbury on a cold December night into a suspect in the crime of breaking and entering.”