



LEGAL UPDATE

ALLEGATION THAT STOP OF INDIVIDUAL WAS RACIALLY MOTIVATED

The SJC recently decided two cases regarding how courts will handle motions alleging that the stop of an individual was racially motivated. In Commonwealth v. Robinson-Van Rader, the SJC ruled that the standards set forth in Commonwealth v. Long apply to pedestrian stops as well as motor vehicle stops. In Commonwealth v. Cuffee the court addressed a discovery request made in a case in which the defendant wanted to argue that a stop was racially motivated. Each case is summarized below.

Commonwealth v. Robinson-Van Rader (492 Mass. 1, 2023).

RELEVANT FACTS

April 23, 2018, at 7:30PM Boston police received reports of multiple gun shots and ShotSpotter alerts at a basketball court near police headquarters. A 911 caller reported hearing about six shots being fired and seeing two Black males wearing black hoodies riding off on bikes. She provided a direction of travel for the bike riders who headed onto Tremont Street. Sirens could be heard in the background of the call.

Dispatch broadcast information about the males; however, no information about their race was broadcast. An officer working a detail one-half mile away was monitoring the radio and heard the dispatch. This officer then saw two Black males on bicycles wearing black shirts or sweatshirts. He relayed his observations to dispatch. The men were pedaling slowly which the officer assumed was because they were tired.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

Three members of the youth violence strike force were in an unmarked SUV and, upon hearing the dispatch, drove quickly to the area of the shooting. They stopped and spoke to the detail officer and then continued searching for the suspects.

These officers saw two young Black males wearing hoodies walking on Columbus Ave. near Southwest Corridor Park. There were only a few people outside in the area and these two males were the only ones wearing hoodies. The officers drove by the males who continuously looked over their shoulders toward police headquarters even though nobody was following them. The officers turned the SUV around, pulled up beside the males, and stopped. Two of the officers approached the men on foot. The officers, who were not in uniform, were wearing tactical vests with "Boston Police" written on the front and back. The young men did not change their pace when they were approached. One of the officers told them to "hold up a second" which they did. The officers did not see any indication of a hidden firearm on either of the men.

One of the officers asked the defendant's companion if he had anything on him. The companion then turned sideways, "kind of like a jerk reaction - like as a reflex" which shielded his right hip from the officer. The companion was patfrisked and a firearm was found in his waistband.

While the companion was being patfrisked, the defendant was sweating and continued to look over his shoulder toward police headquarters. When the firearm was found on the companion, the other officer patfrisked the defendant and located a firearm in his pants pocket. The arrests occurred seven minutes after the initial report of shots being fired and less than a mile from where the shots were fired.

The defendant was indicted on multiple firearm offenses. The defendant filed a motion to suppress arguing that the stop was unconstitutional. The motion to suppress was denied. The defendant appealed.

DISCUSSION

A stop of an individual is justified if the police have reasonable suspicion, based upon specific and articulable facts, that the person has committed, is committing or is about to commit a crime. A stop that is not supported by reasonable suspicion will be suppressed.

In this case, the court found that the defendant was stopped when officers wearing tactical gear pulled up next to him and his companion and told them to "hold up a second." Based upon the circumstances of this case, the court found that officers had reasonable suspicion to stop the defendant. Although the description of the suspects was generic, additional factors present sufficiently narrowed the search.

The defendant next argued that the stop was racially motivated and was a violation of his equal protection rights.

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Commonwealth v. Long, 485 Mass. 711 (2020) set forth the standard to be applied when a defendant alleges that a motor vehicle stop was motivated by race or membership in some other constitutionally protected class. Under Long, the defendant has the initial burden to show that the decision to conduct a motor vehicle stop was motivated by race or some other constitutionally protected class. The defendant can meet this burden by producing any evidence from which a reasonable person could infer that the officer discriminated against them based upon the individual's membership in a protected class. The defendant must point to specific facts to support the inference and those facts must be based upon their own personal knowledge, their own investigation, or some other relevant source. If the defendant raises the inference of discrimination, the burden then shifts to the Commonwealth to rebut the inference by establishing a race-neutral reason to justify the stop. If the Commonwealth does not meet its burden, the motor vehicle stop will be considered a violation of the individual's equal protection rights and will be suppressed.

The defendant here argued that Long should apply to other stops, such as pedestrian stops like his, and not just motor vehicle stops. The Court agreed.

When considering an allegation that a stop was racially motivated, the court must look at the totality of the circumstances. These circumstances may include patterns of enforcement of the involved officers, events that preceded the investigation which led officers to target the defendant, the seriousness of the crime under investigation and whether the defendant's membership in a protected class was part of the description of the suspect.

The defense in this case offered the testimony of an expert witness, a professor of mathematics, who did a statistical analysis of the traffic stops of the officers involved in this case. Based upon the testimony of the expert witness, the court found that the defendant met his burden of establishing a reasonable inference that the stop was motivated by race.

Based upon the facts of this case the court also found that the Commonwealth successfully rebutted the inference of selective enforcement because it demonstrated that the police had a race-neutral reason to stop the defendant and his companion. Specifically, police were investigating reports of multiple shots being fired in the area, one of the 911 callers reported seeing two Black males wearing hoodies riding bicycles away from the scene; within minutes an officer saw two Black males with black shirts on bicycles coming from that direction; a short period of time later the other officers saw the defendant and his companion who were the only people they saw wearing hoodies walking in a direction "consistent in time and direction with two individuals fleeing from a shooting on bicycles."

The defendant argued that the equal protection claim is separate and distinct from the reasonable suspicion analysis and that the Commonwealth "cannot ignore or sidestep a defendant's statistical case" simply by arguing that there was reasonable suspicion for the stop. The court agreed that the equal protection guaranteed by the Federal and State constitutions is separate and distinct from an individual's right to be free from unreasonable searches and seizures. This does not mean that officers are precluded from explaining why they stopped an individual.

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“There may be substantial overlap between an inquiry into the reasonableness of a stop and the officer’s motivation for stopping a suspect. To be sure, the constitutional basis for the stop is not sufficient, standing alone, to rebut an inference of selective enforcement. The burden shifts to the Commonwealth to grapple with all of the reasonable inferences and all of the evidence that a defendant presented and would have to prove that the stop was not racially motivated.” (citations and quotations omitted.)

The court found that the motion judge’s determination that the police stopped the defendant in this case to investigate the recent shooting and not because of his race was supported by the evidence.

The motion to suppress was properly denied.

Commonwealth v. Cuffee, 492 Mass. 25 (2023)

RELEVANT FACTS

At 1:34PM on November 8, 2018 two Caucasian police detectives stopped and ultimately arrested the defendant, a Black man, on firearm charges. The defendant filed a discovery motion seeking all police reports and field interrogation and observation reports of the two detectives involved in his arrest for one year before and one year after his arrest. The defendant argued that he was entitled to this discovery because it was “relevant and material to the question whether the police investigation was motivated improperly by race, in violation of his constitutional right to equal protection of the laws.”

In support of the request for discovery, defense counsel filed an affidavit that stated that the defendant was a Black man stopped by two Caucasian detectives investigating a report of gunshots in the area. The affidavit also said that the stop was based upon the alleged observations of the detectives of the defendant running on a sidewalk with an unnatural gait while appearing to be “supporting a weighted object on his right side with his right hand.”

The motion judge denied the request for discovery. The judge found that the defendant had failed to meet the relevance standard required by Rule 14. The defendant was convicted. On appeal, the defendant argued that the motion for discovery was improperly denied.

DISCUSSION

When a defendant wishes to make an argument that they were stopped for discriminatory reasons, they are entitled to reasonable discovery; however, the Rules of Criminal Procedure still apply.

All discovery in criminal cases is governed by Massachusetts Rules of Criminal Procedure Rule 14. Rule 14 requires certain material, such as witness statements and exculpatory evidence, be provided to the defense in all cases. Rule 14 also allows the defense to request additional, discretionary discovery be produced.

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The Rules of Criminal Procedure also require that motions, including discovery motions, be accompanied by an affidavit, signed by someone with personal knowledge of the facts, that contain all the facts relied upon in support of the motion. When deciding a motion, the judge must determine whether the defense has made a “threshold showing of relevance.”

For the defendant to be entitled to the reports he requested in this case, he must establish that the materials he is asking for are relevant to a claim of selective enforcement. He is not required to make a prima facie case of discrimination, but he does need to meet the basic relevance threshold.

The court found the judge in this case did not abuse her discretion in denying the defendant’s discovery request. The motion and affidavit basically said Caucasian officers stopped a Black man while investigating a recent shooting.

“The judge was within her discretion to deny the motion seeking discovery based only on the defendant’s membership in a protected class. To make a threshold showing of relevance, more is required.”

The court pointed to the Robinson-Van Rader case (discussed above) as an example of a sufficient showing of selective enforcement that would warrant an order of discretionary discovery. In that case, the affidavit submitted by the attorney in support of the discovery request cited a study of the Boston police department and a report of the Associated Press (AP). The study found that “Black men in the city of Boston were more likely to be targeted for police-civilian encounters such as stops, frisks, searches, observations and interrogations.” *quoting Van Rader*. The AP report said that “at least 71% of all street level civilian-police encounters involved minorities while minorities make up only 25% of the Boston population.” *quoting Van Rader*. The attorney in that case also stated that, in his experience, Boston’s youth violence strike force officers “consistently stop, search and arrest Black and Brown people at higher rates” than the department-wide statistics.”

The court found that motion for discovery was properly denied.

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