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25-P-209 Appeals Court

COMMONWEALTH vs. YIANNISIVETTE PAPPADIS-TORRES.[1]

No. 25-P-209.

Middlesex. January 16, 2026. - November 18, 2026.

Present: Rubin, Grant, & Hodgens, JJ.

Constitutional law, Reasonable suspicion, Search and seizure. Search and Seizure, Reasonable suspicion, Container, Protective frisk. Practice Criminal, Motion to suppress, Findings by judge. Firearms.

Indictment found and returned in the Superior Court Department on February 1, 2024.

A pretrial motion to suppress evidence was heard by Brent A. Tingle, J., and the case was tried before Catherine Ham, J.

Joseph R. Smith for the defendant.
Timothy Ferriter, Assistant District Attorney, for the Commonwealth.

[1] Although our practice generally is to spell the defendant's name as it appears in the indictment, here we instead spell it as the defendant has indicated in her affidavit.

RUBIN, J. Convicted by a Superior Court jury of unlawful possession of a firearm, G. L. c. 269, § 10 (a), the defendant appeals. She argues that the motion judge erred in denying her motion to suppress the firearm, which police found during a search of the backpack she was carrying. We conclude that the Commonwealth did not prove that the police had reasonable suspicion adequate to justify a patfrisk of the defendant or her backpack, and accordingly we vacate the order denying the motion to suppress, reverse the judgment, and set aside the verdict.

Background. "In reviewing a decision on a motion to suppress, 'we accept the judge's subsidiary findings of fact absent clear error "but conduct an independent review of [the] ultimate findings and conclusions of law."'" Commonwealth v. Ramos, 470 Mass. 740, 742 (2015), quoting Commonwealth v. Colon, 449 Mass. 207, 214, cert. denied, 552 U.S. 1079 (2007). We "may supplement a motion judge's subsidiary findings with evidence from the record that 'is uncontroverted and undisputed and where the judge explicitly or implicitly credited the witness's testimony.'" Commonwealth v. Jones-Pannell, 472 Mass. 429, 431 (2015), quoting Commonwealth v. Isaiah I., 448 Mass. 334, 337 (2007), S.C., 450 Mass. 818 (2008).

In the early morning hours of February 15, 2022, the Cambridge police department received a telephone call from a person (victim) who identified himself by name and "reported

being shot at and robbed in close proximity" to a hotel in Cambridge. He said that he had been "hanging out" in hotel room 213. Somewhere near the hotel (at an unspecified time), two Black men who were staying in room 213 robbed him, stripped him of his clothing, and shot at him as he ran.

Officers Kristen Cokely and Robert Reardon responded to the hotel along with other officers. They spoke with hotel staff and learned that no disturbances had been reported in room 213, but a significant number of people had been coming and going from that room that evening. The name of the registered guest for room 213, which they learned from hotel staff, was familiar to the officers as that of someone with a criminal record for firearms offenses. From a criminal records database, Officer Reardon confirmed that the registered guest had a conviction for armed robbery.

The security guard agreed to go to room 213 with Officers Cokely and Reardon and other members of the Cambridge police department who were present. From outside the door of room 213, Officers Cokely and Reardon heard loud talking and smelled burnt marijuana. Officer Reardon heard a male voice say, "I'm almost 17," and, "I'm strapped," which the officer understood as slang for carrying a firearm.

By this point, hotel security decided to eject the occupants of room 213 from the hotel. A security guard then

knocked on the door, and it opened. Approximately ten to fifteen people were inside and were clearly having a party. The registered guest for room 213 was not present. The Commonwealth did not present evidence that anyone meeting the description of either of the two alleged shooters was in the room. Nor did the Commonwealth present evidence that the initial observations of the police contributed to reasonable suspicion of the presence of a firearm (e.g., a bulge under clothing), or of any movement from any occupant, or any other evidence, that suggested an attempt to hide a weapon. The security guard told the occupants that they had to leave the hotel.

The police decided to take the names, pat frisk, and search the bags and belongings "that would be big enough to hold a firearm or a weapon" of every occupant of the room. The police instructed the occupants to file out of the room one by one. As each one left the room, officers obtained his or her name and conducted the searches as described. Officer Cokely pat frisked the females. The defendant was one of the last to leave the room. She tried to push past the police officers, saying that she had already been pat frisked, but the officers knew that was untrue as Officer Cokely, the only female officer present, had not yet pat frisked her.

The defendant was carrying two or three shoeboxes and a backpack that she was holding by its top handle. While Officer

Cokely pat frisked the defendant, Officer Reardon took the shoeboxes and the backpack. Officer Reardon opened each shoebox and found sneakers. Then, without first conducting a patfrisk of the backpack, Officer Reardon unzipped the backpack and saw another pair of sneakers; he removed them and found a .40 caliber handgun.

A Superior Court judge denied the defendant's motion to suppress, concluding that the police had reasonable suspicion to pat frisk the defendant's backpack.[2] After trial before a different judge, a jury convicted the defendant of unlawful possession of a firearm. The defendant appeals.

Discussion. The defendant argues under both art. 14 of the Massachusetts Declaration of Rights and the Fourth Amendment to the United States Constitution that the order denying the motion to suppress must be reversed because the police lacked the requisite reasonable suspicion to pat frisk her or the backpack. By contrast, the Commonwealth argues, and the judge concluded, that the police had reasonable suspicion sufficient to justify the patfrisk of all ten to fifteen occupants as they filed out of the hotel room, including the defendant. We disagree.

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[2] The judge also concluded that the full search of the backpack was permissible because a patfrisk would have been futile. The defendant argues that this was error, but in light of our conclusion we need not address the questions the judge's conclusion raises. See note 3, infra.

Ordinarily, of course, a warrant based on probable cause is necessary to justify any governmental seizure or search, and here there was neither. There are exceptions to this rule, however, including the exceptions for an investigatory stop and a patfrisk. A police officer may engage in a "Terry-type" brief investigatory stop of an individual "where an officer has a reasonable suspicion that a crime has been, is being, or is about to be committed." Commonwealth v. Cawthron, 479 Mass. 612, 616 (2018). See Terry v. Ohio, 392 U.S. 1, 27 (1968). The officer may then conduct a patfrisk if there is reasonable suspicion that the individual is armed and dangerous. "The purpose behind the [patfrisk] allowed by Terry is to enable an officer to confirm or dispel reasonable suspicions that the stopped suspect may be armed with a weapon . . . ." Commonwealth v. Pagan, 440 Mass. 62, 68 (2003). If a person lawfully subject to a patfrisk under Terry is carrying a backpack and there is reasonable suspicion it "may contain a weapon" that the person could retrieve, id., the police may conduct a patfrisk of the exterior of the backpack if such a "patfrisk can establish whether a possible weapon is present or not," id. at 69.[3] Reasonable suspicion "must be grounded in

[3] The defendant argues that the method of the search of the backpack went beyond the scope of a permissible patfrisk, see Pagan, 440 Mass. at 68-73. As described above, see note 2,

specific, articulable facts and reasonable inferences [drawn] therefrom." (quotations and citation omitted). Commonwealth v. DePeiza, 449 Mass. 367, 371 (2007).

It is a bedrock rule that a determination of reasonable suspicion that a suspect is armed and dangerous must be particularized and individual. See Commonwealth v. Wing Ng, 420 Mass. 236, 237 (1995) (under Fourth Amendment and independently under art. 14, "the frisk of a person is constitutionally permissible if the arresting officer can point to specific, articulable facts that warrant a reasonable suspicion that the particular individual might be armed and a potential threat to the safety of the officer or others"); Commonwealth v. Narcisse, 457 Mass. 1, 10-13 (2010). See also Terry, 392 U.S., at 27 ("there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual"). Indeed, the United States Supreme Court long ago held that even with a warrant and

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supra, the motion judge concluded that the police did not have to pat frisk the backpack before searching it because doing so would have been futile. In light of our conclusion that there was no reasonable suspicion justifying even a patfrisk, we need not reach the question whether the search here went beyond the lawful limits of what would have been permitted had there been.

probable cause to search a tavern and its bartender, police could not search patrons in the tavern:

> "[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. . . . This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be."

Ybarra v. Illinois, 444 U.S. 85, 91 (1979).

In this case, the Commonwealth did not establish that, at the time of the decision to stop and search all of the occupants of the hotel room, the police had reasonable suspicion that the defendant was armed and dangerous. As there was no particularized and individual reasonable suspicion with respect to the defendant, the searches of her and, consequently, her backpack were unlawful. Without such individualized reasonable suspicion, the police could not simply search every occupant of the room and his or her bags and belongings. See Wing Ng, 420 Mass. at 237 (reasonable suspicion for patfrisk must exist as to "particular individual"). The motion to suppress therefore should have been allowed.

We agree with the Commonwealth that "police officers need not 'gamble with their personal safety.'" Commonwealth v. Feyenord, 445 Mass. 72, 76 (2005), cert. denied, 546 U.S. 1187 (2006), quoting Commonwealth v. Haskell, 438 Mass. 790, 794 (2003). That general, unassailable proposition is the reason

warrantless searches are permitted when there is reasonable suspicion based on articulable facts that someone lawfully stopped is armed and dangerous. See Terry, 392 U.S. at 33 (Harlan, J., concurring) (Terry's stop and frisk rules are justified so police should not "have to ask one question and take the risk that the answer might be a bullet"). The rule operates properly only in conjunction with our duty to "engage in an objective, fact-specific inquiry considering the totality of the circumstances surrounding the patfrisk." Commonwealth v. Demos D., 497 Mass. 78, 85 (2026). As previously stated, the totality of the circumstances presented by this record did not justify the patfrisk of the defendant or her backpack.

Contrary to the Commonwealth's contention, this is not a case like Commonwealth v. San, 63 Mass. App. Ct. 189, 193 (2005). In that case, we determined that a patfrisk of all van occupants was reasonable where specific facts supported the suspicion that all the occupants "were acting in concert" in an earlier housebreak. Id. at 192-193. Even putting aside the significant distinction between a roadside stop of a suspected getaway van and the removal of occupants from a hotel room, the record here evinces no evidence that the defendant had been involved in the earlier alleged shooting and robbery -- her mere presence in room 213 was not enough to justify a patfrisk. Further, San did not apply the Terry test whether there was

reasonable, articulable suspicion that the defendant was armed and dangerous. Rather, it used the lower "reasonable apprehension of danger" formulation then utilized in the Commonwealth for roadside automobile exit orders in determining that "the protective sweep of the vehicle and exit order and the frisk of the van's occupants" were justified. Id. at 193. We have subsequently clarified that "[t]he test for a patfrisk is more stringent than for an exit order." Commonwealth v. Monell, 99 Mass. App. Ct. 487, 490 (2021). In Commonwealth v. Torres-Pagan, 484 Mass. 34, 38-39 (2020), the court clarified the distinction between the standard required for a passenger exit order during a traffic stop and that required for a patfrisk. A lawful patfrisk "requires more" than an exit order; "that is, police must have a reasonable suspicion, based on specific articulable facts, that the suspect is armed and dangerous." Id.

Conclusion. The order denying the defendant's motion to suppress is vacated, the judgment is reversed, the verdict is set aside, and judgment shall enter for the defendant.

So ordered.