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25-P-500

Appeals Court

COMMONWEALTH vs. VIHAAN V.,<sup>1</sup> a juvenile.

No. 25-P-500.

Suffolk. July 7, 2026. - September 30, 2026.

Present: Ditkoff, Hand, & Grant, JJ.

Delinquent Child. Juvenile Court, Delinquent child. Search and Seizure, Protective frisk, Reasonable suspicion. Firearms Practice, Criminal, Motion to suppress.

Complaint received and sworn to in the Suffolk County Division of the Juvenile Court Department on May 17, 2021.

A pretrial motion to suppress evidence was heard by Peter M. Coyne, J., and the case was also heard by him.

Taylor Henley, Committee for Public Counsel Services, for the juvenile.

Lindsey Conkey, Assistant District Attorney, for the Commonwealth.

GRANT, J. Adjudicated delinquent after a bench trial in the Juvenile Court of carrying a firearm without a license, G. L. c. 269, § 10 (a), and possession of ammunition without a

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<sup>1</sup> A pseudonym.

firearms identification card, G. L. c. 269, § 10 (h) (1), the juvenile appeals. He argues that the motion judge, who was also the trial judge, erred in denying his motion to suppress evidence, including the firearm police found during a warrantless search. Because the Commonwealth did not establish that the police had "a reasonable suspicion, based on specific articulable facts, that the [juvenile was] armed and dangerous," Commonwealth v. Torres-Pagan, 484 Mass. 34, 39 (2020), the patfrisk of the juvenile was unlawful and the evidence should have been suppressed.

Background. We set forth the facts as found by the judge based on the evidence at the suppression hearing, supplemented by our own review of the documentary evidence including the police body-worn camera video footage. See Commonwealth v. Palmer, 498 Mass. 117, 118 (2026); Commonwealth v. Robinson, 497 Mass. 156, 161 (2026).

At 6:33 P.M. on May 16, 2021, a woman caller (caller) telephoned Boston police, identified herself by name and telephone number, and said she lived at a certain address in the Dorchester section of Boston. The caller stated that she was not then at home, but her children were. The caller reported that there were a lot of people on her property playing dice, smoking "weed," and riding mopeds.

In a second 911 call at 6:40 P.M., the caller reported that someone at her home had said that "three guys with guns" were "actually inside [her] backyard." When the dispatcher asked the caller for the males' descriptions, the caller's son could be heard stating that "[a]ll of them are [B]lack" and "skinny," and after checking with her son again, the caller reported that one of them was wearing a "black Nike sweater," black jeans "down to his knees," and black Nike Air Force shoes. Asked what another of the males was wearing, the caller's son described "[a]ll black" clothing. The caller reported that some of the people were in a gray Mercedes-Benz.

A few minutes later, the dispatcher called the caller back, said that police were on the scene, and asked if the males with guns were still in her backyard. The caller again spoke to someone and then reported to the dispatcher that the males were still in her backyard, and one of them with a gun "took off" on a moped. The caller told the dispatcher, "He says to look inside of the guy's bag with the orange sweater." The caller also told the dispatcher that her son was looking out the window and giving her information, but she did not want her son to speak to the police. Based on the 911 calls, the judge found that the caller reported to the dispatcher "information that had been provided to her by her son who was present at the location

of the incident and reported the events to [the caller] as they happened."

Officers Kyle Ryan and Matthew O'Loughlin testified about responding to that address, and the judge credited their testimony in its entirety. Three days before, Officer O'Loughlin had responded to a report of shots fired in the same area. When Officers Ryan and O'Loughlin arrived at the address in response to the 911 calls, a large group of people were congregated who were "pretty upset and hostile" to the police; they included a man in an orange sweatshirt. The officers saw a gray Mercedes-Benz, but no one was in it. Police pat frisked several people in the area and found nothing.

Officer Ryan's attention was drawn to a green Honda Accord with four people sitting in it, because the passenger in the back seat on the driver's side was wearing black Nike Air Force shoes and all black clothing, and thus matched a description given by the caller. Officer Ryan did not notice anyone else in the Honda who matched the descriptions given by the caller. The juvenile was sitting in the front passenger seat, wearing a navy blue zip-up Nike hoodie and a red face mask. The police ordered all of the occupants out of the Honda. Officer Ryan pat frisked the juvenile and found a handgun in his waistband.

Discussion. The juvenile argues that the firearm should have been suppressed because the police did not have reasonable

suspicion to order him out of the Honda and pat frisk him. Passing over the question whether the police had reasonable suspicion to order the juvenile out of the Honda, we conclude that they did not meet the more stringent test for a patfrisk required by Torres-Pagan, 484 Mass. at 38-39.<sup>2</sup>

"In reviewing a ruling on a motion to suppress evidence, we accept the judge's subsidiary findings of fact absent clear error and leave to the judge the responsibility of determining the weight and credibility to be given . . . testimony presented at the motion hearing." Commonwealth v. Sertyl, 101 Mass. App. Ct. 836, 838-839 (2022), quoting Commonwealth v. Meneus, 476 Mass. 231, 234 (2017). However, "we conduct a de novo review as to both any findings based entirely on a video recording and the application of constitutional principles to the facts as found" (quotations and citation omitted). Palmer, 498 Mass. at 122. "The Commonwealth bears the burden of demonstrating that the actions of the police officers were within constitutional limits." Meneus, supra.

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<sup>2</sup> Deciding as we do, we do not reach the juvenile's argument that the information in the 911 call was unreliable because the caller was not present at her home, and her son did not identify himself or make any report directly to the police. Cf. Commonwealth v. Westgate, 101 Mass. App. Ct. 548, 549-553 (2022) (deeming reliable statements made by driver of car overheard on passenger's 911 call despite her failure to identify herself to police).

Citing Commonwealth v. Feyenord, 445 Mass. 72, 76 (2005), cert. denied, 546 U.S. 1187 (2006), the judge concluded that, once the police determined that the back seat passenger matched the description given by the 911 caller, it was reasonable for police to order the rest of the occupants out of the Honda in order to ascertain whether they also matched the description. Even assuming that it was reasonable for the police to order the juvenile out of the Honda, however, the Commonwealth has not met the higher burden required to justify the patfrisk of the juvenile.

In Torres-Pagan, 484 Mass. at 38-39, 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. See Commonwealth v. Monell, 99 Mass. App. Ct. 487, 490 (2021) ("The test for a patfrisk is more stringent than for an exit order").

Neither of the police witnesses who testified at the suppression hearing articulated any basis for believing that the juvenile was armed and dangerous. Indeed, Officer Ryan testified that the juvenile "was pretty calm; he didn't act in any particular way that was kind of alarming." Thus the police

did not articulate, and the judge did not find, any facts to support a reasonable suspicion that the juvenile was armed. Contrast Commonwealth v. Karen K., 491 Mass. 165, 172 (2023) (deferring to motion judge's findings crediting police testimony that juvenile's conduct, including angling her body, sudden changes in direction to avoid police, and adjusting waistband, gave rise to reasonable suspicion she was carrying firearm); Commonwealth v. Johnson-Rivera, 104 Mass. App. Ct. 533, 537 (2024) (deferring to motion judge's finding crediting police testimony that juvenile's cross-body bag was potential indicator he was carrying firearm, and that he was nervous and had open charges). The officers did not testify that they believed that the argumentative bystanders, including the man in the orange sweatshirt, were trying to distract them. Contrast id. at 539, citing Commonwealth v. Sweeting-Bailey, 488 Mass. 741, 745-750 (2021), cert. denied, 143 S. Ct. 135 (2022).

The mere fact that the juvenile was sitting in the Honda with the back seat passenger, whose clothing matched a description given by the caller, did not amount to reasonable suspicion that the juvenile was armed and dangerous.<sup>3</sup> Cf.

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<sup>3</sup> The juvenile acknowledges in his brief that the back seat passenger was wearing black Nike Air Force shoes and all black clothing, like the description given by the 911 caller, and so we assume, without deciding, that the police had reasonable suspicion that the back seat passenger was one of the males described by the caller and her son.

Commonwealth v. Demos D., 497 Mass. 78, 85-86 (2026) (that juvenile was in car with known gang associate added only "minimally" to reasonable suspicion calculus).

Nor did Officer Ryan's previous response to shots fired in the area give rise to reasonable suspicion for a patfrisk. An unconnected report of shots fired in the area "alone is insufficient to forge the key connection" that there was reasonable suspicion that this juvenile was armed and dangerous. Sertyl, 101 Mass. App. Ct. at 843. Contrast Monell, 99 Mass. App. Ct. at 490-491 (constitutional grounds for patfrisk existed where, two hours after fatal shooting, police stopped car in which defendant was sole occupant, saw holster on car floor, and noted defendant "froze" and tried to conceal hand).

The Commonwealth argues that reasonable suspicion to pat frisk the juvenile arose from three factors, none of which persuades us. First, the Commonwealth argues that the caller's tip involved a firearm, which is inherently dangerous. But "a tip suggesting a concealed firearm, with nothing more, [cannot] provide reasonable suspicion for a stop" (quotation and citation omitted). Commonwealth v. D.M., 100 Mass. App. Ct. 211, 218 (2021). At oral argument, the Commonwealth elaborated on this point by noting, as the trial prosecutor had, that Officer Ryan had testified that a handgun can be easily transferred from one person to another. The hypothetical possibility that a firearm

could be transferred from one person to another did not amount to reasonable suspicion that it was in the juvenile's possession, absent some indication that a transfer actually occurred here. Cf. Commonwealth v. White, 475 Mass. 583, 590 (2016) (detective's belief, based on training and experience in similar cases, that cell phone would contain evidence of crime did not establish existence of evidence).

Second, the Commonwealth notes that the juvenile was "part of a group of young males roughly matching the reported age range," and was wearing navy blue pants similar enough to the "[a]ll black" clothing of the second male described by the caller's son. "The fact that an individual matches a broad, general description does not alone amount to reasonable suspicion, particularly if that description could fit many people in the area where the stop takes place." Palmer, 498 Mass. at 127, quoting Commonwealth v. Robinson-Van Rader, 492 Mass. 1, 9 (2023). Given the vagueness of the descriptions in the 911 calls, the commonness of the clothing described, and Officer Ryan's testimony that he did not notice anyone in the Honda other than the back seat passenger who matched any description in the dispatch, we conclude that the police had little more than information that the juvenile was "a random [B]lack male in dark clothing." Commonwealth v. Warren, 475 Mass. 530, 540 (2016). Contrast Palmer, supra (police seized

defendant based not solely on witness's generalized description of suspect, but also on detective's review of surveillance video footage and still images and her observations of defendant).

Finally, the Commonwealth argues that because the police had pat frisked multiple people and not found a firearm, that gave them reason to keep pat frisking people, including the juvenile. We are not persuaded by that argument, which comes perilously close to saying that everyone in the area should be subject to police search. Cf. Commonwealth v. Johnson, 454 Mass. 159, 163 (2009) ("so-called high crime areas are inhabited and frequented by many law-abiding citizens who are entitled to be protected against being stopped and frisked just because of the neighborhood where they live, work, or visit"). See Palmer, 498 Mass. at 127-128.

We conclude that the Commonwealth did not meet its burden to justify a patfrisk of the juvenile because it did not show that the police had reasonable suspicion to believe that the juvenile was armed and dangerous, and therefore the firearm and ammunition should have been suppressed. Accordingly, the adjudications of delinquency are reversed, the findings of delinquency are set aside, and the complaint shall be dismissed.

So ordered.