



Legal Update

Conduct of Companion May be a Factor Considered in Reasonable Suspicion Analysis for a Patfrisk

Commonwealth v Sweeting-Bailey SJC No. 13096 (Dec. 22, 2021)

Relevant Facts

At 7PM on a day in February, gang unit detectives were on patrol and saw a sedan make an abrupt lane change which caused another car to slam on its brakes to avoid a collision. The detectives followed the sedan into a restaurant parking lot and initiated a traffic stop by activating their lights. As soon as the sedan stopped, a passenger, Paris, got out of the car.

The detectives were familiar with Paris from prior encounters, including arrests for firearm charges. Two of the detectives in this case were involved in a prior firearm arrest of Paris in 2016. Those charges were still pending on the date of this stop. One of the detectives was a former school resource officer and had known Paris since he was young and testified that he “always had a good rapport” with Paris. During his prior encounters with police Paris was always cooperative and respectful.

When Paris got out of the car on this evening, he began pacing between the sedan and officers. He was “angrily confronting” officers asking why they were stopped. He was told three times to get back in the car, but he refused. The detectives noted that Paris was “becoming more angry” and that he took a “bladed stance” and had a clenched fist. Detective Fortes testified that Paris was “sizing him up,” and he was unsure if Paris was going to attack him. Paris was ultimately taken to the rear of the sedan, cuffed and patfrisked.

Up until this point the detectives were not able to talk to the driver about the reason for the stop because of the “escalating” situation between Paris and the detectives. Once detectives were able to focus on the other occupants of the car, the driver and remaining two occupants were ordered out of the car and patfrisked. Only 90 seconds had elapsed from when Paris got out of the car to the exit order for the other occupants.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.

The detectives were familiar with the two male occupants of the car, one of which was the defendant in this case. The rear seat passenger had posted pictures of a firearm on social media within the last month. The defendant had a juvenile adjudication for a firearm offense three years prior to the stop. The detectives were also aware of gang affiliations for these passengers and Paris. Paris belonged to two gangs, the defendant belonged to one of those gangs, and the rear seat passenger belonged to a different gang. During the patfrisk of the defendant the detectives found a firearm in the waistband of his pants.

Discussion

The defendant did not challenge the motor vehicle stop or the exit order. The only challenge was to the patfrisk. “A patfrisk is permissible only where an officer has reasonable suspicion that the stopped individual may be armed and dangerous.”

The court discussed the behavior of Paris in depth in its decision.

“It is entirely possible that even where a defendant did not himself or herself behave in a suspicious manner at the time of the stop, other factors, including a companion’s behavior, might be sufficient in light of the other factors to create specific, articulable facts that warrant a reasonable suspicion that the defendant may be armed and dangerous.”

The court found that the officer’s suspicion that Paris was trying to distract officers from criminal activity in the vehicle was objectively reasonable in light of their training and experience and their familiarity with Paris. Paris did not simply question why the police stopped the car. He was angry and uncooperative in contrast to every previous interaction he had with officers. Despite being told why the car was stopped, he continued to be uncooperative and refused orders to get back into the car. “These facts support our conclusion that the officers’ inference that Paris was attempting to create a diversion objectively was reasonable.”

The court found the actions of Paris were one important factor that contributed to the reasonable suspicion that the defendant may be armed and dangerous. When looking at the totality of the circumstances of this case, which include the actions of Paris as well as the gang affiliations of the men, their prior connection to firearms, and the high crime area of the stop, the court found there was enough to support reasonable suspicion for the patfrisk of the defendant.

“Although each of these factors standing alone would be insufficient to justify the patfrisk of the defendant, the totality of these factors justified not only the exit order, but also the patfrisk.”

The court was careful to point out:

“This case does not stand for the proposition that every occupant of a vehicle may be patfrisked after a legal exit order based only on the conduct of a companion.”

The court also notes that none of the factors will be viewed in isolation. The court will look at the totality of the circumstances and how each of the factors relate to one another when determining whether reasonable suspicion exists to believe that any one of the individuals may be armed and dangerous.

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