



Legal Update

June 2017

The SJC holds that the police did not have a legitimate basis to detain the defendant during a routine civil traffic stop because the facts surrounding the stop did not give rise to reasonable suspicion of criminal activity!

Commonwealth v. Gabriel Cordero SJC No. 12210 (2017): In February 2015, State police stopped the defendant in Berkshire County after noticing the defendant's vehicle had a broken tail and brake light. Additionally, the windows were illegally tinted. The trooper used his mobile data terminal to confirm that the vehicle was properly registered, inspected and insured. Even though the defendant had been previously convicted of firearms violations, drug offenses, and assault and battery on a police officer, and had been incarcerated for the drug-related convictions, there were no warrants or criminal charges pending. The trooper also verified that the defendant's license was valid before stopping the defendant's vehicle. The trooper also noted that the license listed the defendant's residence as Holyoke, a major source of narcotics for Berkshire County.

Once the trooper stopped the defendant, he noted that the defendant appeared "extremely nervous," did not make eye contact, stuttered when he answered questions, and offered information unrelated to the stop. The defendant told the trooper he was headed to a chain restaurant up the street which the trooper did not believe because the defendant had

driven past the same restaurant a couple miles before. The trooper asked the passenger for identification and subsequently called for assistance to test the window tint. After receiving conflicting information about the defendant's travels, the trooper asked if he could search the vehicle for drugs. The defendant said that he did not have any drugs in the vehicle and that "it ain't got to be like that." The trooper interpreted this remark as a refusal of consent and he proceeded to question the passenger. The trooper eventually called for a canine to be brought to the location to conduct a drug sniff.

While they were waiting, the defendant asked the second trooper whether he could sit in the police cruiser to get out of the cold. The defendant consented to a pat-frisk and being handcuffed; so he could sit in the cruiser. A frisk of the defendant revealed \$1,900 in cash in one of his pockets. After he had been handcuffed and placed in the back of the cruiser, the defendant told the second trooper that there was some marijuana in the glove box. The defendant agreed to allow the trooper to retrieve the marijuana from the vehicle.

The troopers asked the defendant three times if they could search the trunk of the vehicle. Eventually, the defendant "gave consent," and police recovered 2,000 bags of heroin. The troopers arrested the defendant after a forty to forty-five minute roadside stop. The defendant was charged with Trafficking in Heroin, G. L. c. 94C, § 32E (c); Distribution of a Class A Substance as a subsequent offender, G. L. c. 94C, § 32E (b); motor vehicle lights violations, G. L. c. 90, § 7; and nontransparent window obstruction, G. L. c. 90, § 9D. The defendant filed a motion to suppress evidence seized from him during the traffic stop. A Superior Court judge denied the defendant's motion to suppress evidence.

1st Issue: What are the permissible bounds of a routine traffic stop?

A routine traffic stop may not last longer than "reasonably necessary to effectuate the purpose of the stop." *Commonwealth v. Amado*, 474 Mass. at 151. "It is well settled that a police inquiry in a routine traffic stop must end [when the purpose of the stop is accomplished] unless the police have grounds for inferring that 'either the operator or his passengers were involved in the commission of a crime or engaged in other suspicious conduct.'" *Commonwealth v. Torres*, 424 Mass. 153, 158 (1997). In *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015), the Supreme Court held that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' to address the traffic violation that warranted the stop." "Beyond determining whether to issue a traffic ticket, an officer's mission includes checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 1615.

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

Here, it is undisputed that the trooper was authorized to stop the defendant for civil traffic infractions and he was justified in conducting a roadside investigation related to the broken lights and impermissible window tint. By the time the trooper stopped the defendant's vehicle, he had confirmed that the defendant was the owner of the vehicle, the vehicle was properly registered, the defendant had a valid license and there were no outstanding warrants. Based on this information, the trooper's roadside investigation should have only included confirmation of the identity of the driver, testing the percentage of the vehicle's window tint, and writing citations for the motor vehicle violations. Once these tasks were completed, the trooper should have ended the stop.

2nd Issue: Was there reasonable suspicion to investigate the defendant for criminal drug activity?

The SJC considered a number of factors in determining whether there was reasonable suspicion to investigate for potential drug activity. Based on the facts the trooper had at the conclusion of the traffic stop, the SJC held that the trooper did not have reasonable suspicion for a drug investigation. The trooper knew that the vehicle was owned by and registered to the defendant; the defendant's driver's license was valid; the vehicle was properly registered, inspected, and insured; there were no outstanding warrants for the defendant's arrest; and the defendant had no pending criminal charges. Conversely, the Commonwealth asked the SJC to consider the defendant's nervousness and evasive answers, the trooper's opinion that Holyoke was a source city of drugs, and the defendant's prior convictions as a basis for reasonable suspicion.

First, the SJC did not consider nervousness as a critical. In prior decisions, the SJC found that "nervousness is a common and entirely natural reaction to police presence." *Commonwealth v. Gonsalves*, 429 Mass at 668-669. The defendant's nervous movements or appearance alone is insufficient to create reasonable suspicion.

Second, the defendant's evasive answers regarding his travels did not give rise to a reasonable suspicion of illegal drug activity. The fact that the defendant drove past the chain restaurant he told the police he was going to is insignificant, "not sinister and the inference to the contrary was unreasonable." See *Commonwealth v. Warren*, 475 Mass. 530, 538 (2016) ("evasive conduct in the absence of any other information tending toward an individualized suspicion that the defendant was involved in the crime is insufficient to support reasonable suspicion"); *Commonwealth v. Mercado*, 422 Mass. 367, 371 (1996) ("Neither evasive behavior, proximity to a crime scene, nor matching a general description is alone sufficient to support the reasonable suspicion necessary to justify a stop and frisk").

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Third, the SJC did not give weight to the trooper's opinion that Holyoke was a "major drug source city" and that a "good percentage of the drugs coming into Berkshire County" came from there failed to be a factor in the reasonable suspicion analysis. The introduction in evidence of the trooper's opinion raises the same concerns that we have addressed in the context of "high crime" neighborhoods. The SJC has cautioned that labeling a neighborhood as "high crime" only is insufficient to justify a stop.

Commonwealth v. Grandison, 433 Mass. 135, 139 (2001). "Many honest, law-abiding citizens live and work in high-crime areas and are entitled to the protections of the Federal and State Constitutions, despite the character of the area." *Commonwealth v. Gomes*, 453 Mass. 506, 512 (2009). Furthermore, a suspect's connection to a location that is called a drug "source city" cannot, standing alone, support reasonable suspicion. "Travel from [a source city] cannot be regarded as in any way suspicious" because "the probability that any given passenger from [a source city] is a drug courier is infinitesimally small. Such a flimsy factor should not be allowed to justify — or help justify — the stopping of travelers."

Fourth, the defendant's prior convictions, without further specific and articulable facts indicating that criminal activity was afoot, could not create reasonable suspicion. While Massachusetts courts have commented that "knowledge of a person's arrest record or unspecified 'criminal conduct' [may] be considered in a reasonable suspicion evaluation," further evidence is required to support reasonable suspicion. *Commonwealth v. Wright*, 85 Mass. App. Ct. 380, 383 (2014) (vehicle occupants' prior narcotics convictions, when combined with strong odor of air freshener and suspect's use of leased vehicle registered in State where neither occupant lived, supported reasonable suspicion).

The SJC also addressed the Commonwealth's comparison of this case to *Commonwealth v. Feyenord*, 445 Mass. 72, (2005). In *Feyenord*, the driver "was unable to produce a [driver's] license," provided a Massachusetts registration that was not in his name, and gave the officer a false name and birthdate. Here, the trooper's investigation revealed no facts that were "manifestly suspicious" and the trooper had completed most of the investigatory tasks before stopping the defendant, which would reduce the time necessary for roadside investigation. See *Commonwealth v. Locke*, 89 Mass. App. Ct. 497, 501-502 (2016). All these factors fail to provide the police with reasonable suspicion to prolong a routine traffic stop and justify an investigation for criminal drug activity.

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