



## Legal Update

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October 2019

*Commonwealth vs. Juan Rosario-Santiago*, 90 Mass. App. Ct. 166 (2019): On October 9, 2014, Trooper Michael Reynolds stopped a Toyota Camry after observing the vehicle abruptly change lanes, speeding and driving less than one car length behind the vehicle traveling ahead. The defendant was the sole occupant and driver. The defendant produced a New Hampshire driver's license and registration. When the defendant was asked where he was headed, he said he came from New York and was meeting a friend downtown. The defendant had delayed responses to the trooper's routine questions, which led the trooper to suspect the defendant was making up answers. The trooper learned from the defendant that he had "some trouble with the Federal authorities in New Hampshire regarding drug distribution." When the trooper headed towards his cruiser to verify the defendant's information, he noticed a "fast-food bag" on the rear passenger floor of the Camry.

A license check revealed that the defendant had a suspended Massachusetts license and that he had been charged by the Drug Enforcement Administration (DEA) in the past "with distribution of synthetic narcotics." While waiting in his cruiser for the information to process, the trooper saw the defendant reach toward the back of the car in a subtle way, acting as though he was yawning. The trooper believed the defendant was reaching for the

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fast food bag. Based on his observations, the trooper asked the defendant to step out of the vehicle while he conducted a pat frisk. Two cell phones and keys were recovered during the patfrisk. The defendant was placed in the cruiser and a tow truck was called. The defendant could not drive the Camry away with a suspended license.

Prior to the arrival of the tow truck, the trooper began to inventory the contents of the vehicle as required by the written State Police inventory policy. The trooper found an empty, "clear plastic heat-sealed packet that had a ripped corner." The packet was located inside the fast food bag. There were small black elastic bands near the front seat and a cup of urine in center console. The trooper noticed a "crease" in the carpet of the Camry. Based on his training and experience, the trooper believed that the vehicle could have a mechanical hide which created the crease when it was opened. The trooper also knew that people who engage in drug distribution and drive long distances, often do not want to stop use restrooms because this gives them greater risk of exposure. During the inventory, the trooper found an "aftermarket wire" that ran from the dashboard area near the radio, trailing to the back area of the console. After making these observations, the trooper formally arrested the defendant. The trooper handcuffed the defendant and further searched his person, discovering a wad of money. The defendant returned to the back of the cruiser and the Camry was towed to the State Police barracks.

At the barracks, the troopers examined the undercarriage of the Camry and they "saw a weld mark in the middle of the muffler that looked like it had been altered and lowered." "By applying power to some wires that went to the console, the troopers actually operated the mechanical hide and" discovered that the console rose up from the floor to reveal a compartment. Inside the console were several "packets of oxycodone pills that were taped up and otherwise secured with the same type of rubber bands as were found in the car." The defendant was charged and filed a motion to suppress and a motion for reconsideration. Both were denied. The defendant filed a further appeal and argued that the police exceeded the bounds of the inventory search and no other exception to the warrant requirement applied in this case.

**CONCLUSION:** The Appeals Court held that the police had probable cause to arrest the defendant and that the tow and subsequent inventory were valid.

### **1<sup>st</sup> Issue: Probable Cause to Arrest:**

The trooper's observations of how the defendant was driving the Camry justified the stop. At the time of incident, the trooper's reliance on the information he received from police dispatch and the Registry of Motor Vehicles was reasonable. The defendant provided at a later date documentation that his license was expired and not suspended. Although the

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trooper had inaccurate information regarding the defendant's license status, it did not diminish the validity of the stop. Compare *Commonwealth v. Wilkerson*, 436 Mass. 137, 140-141 (2002) (probable cause to arrest not vitiated by fact that police were relying on erroneous information obtained from Registry of Motor Vehicles records that defendant's license had been revoked). Here, the Appeals Court emphasized that it is important to determine what the officer knew at the time he made the decision to arrest the defendant. Once the trooper received information from the State Police dispatcher that the defendant's license or right to operate had been suspended in Massachusetts, he had probable cause to arrest the defendant.

## **2<sup>nd</sup> Issue: Inventory Search:**

The second issue the Appeals Court considered was whether the inventory of the defendant's vehicle was proper. The Appeals Court held that the tow of the vehicle was lawful because the defendant had a suspended license and the vehicle could not safely remain on the side of Route 495 at 6PM. Although an inventory search is a well-established exception to the warrant requirement, it must hew closely to written police procedures and may not conceal an investigatory motive. See *Commonwealth v. Rostad*, 410 Mass. 618, 620 (1991). The lawfulness of an inventory search turns on the threshold propriety of the vehicle's impoundment, and the Commonwealth bears the burden of proving the constitutionality of both. See *Commonwealth v. Eddington*, 459 Mass. 102, 108 (2011); *Commonwealth v. Ellerbe*, 430 Mass. 769, 772-774 (2000). *Commonwealth v. Ehiabhi*, 478 Mass. 154, 164-165 (2017).

According to the State Police inventory policy, all closed and unlocked containers along with their contents should be inventoried prior to tow. Here, the trooper adhered to the requirements of the policy which included searching the fast food bag that was discarded on the floor of the rear passenger seat. The fact that the trooper opened the bag before the glove compartment is not dispositive and does diminish the validity of the inventory.

The defendant also argued that the purpose of the inventory was investigative, not administrative (i.e., not to obtain an inventory). Again the defendant claims that the trooper opened the fast food bag because he was investigating for drugs. The Appeals Court determined that the trooper looked within the bag long enough to determine its contents and whether the trooper had suspicions that the defendant may was involved in drug trafficking does not invalidate the validity of the inventory. See *Commonwealth v. Horton*, 63 Mass. App. Ct. 571, 577 (2005) ("Even the fact that the police might have suspected that the inventory search could turn up more weapons does not make it an impermissible pretext search. See *Commonwealth v. Garcia*, 409 Mass. 675, 679 [1991], and cases cited").

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The Appeals Court also found that the trooper's stop was not a pretext stop and it distinguished the facts in this case from *Commonwealth v. Ortiz*, 88 Mass. App. Ct. 573 (2015). In *Ortiz*, the DEA had targeted the defendant in advance. The DEA explicitly directed the State police stop the defendant for traffic violation because it had learned he had a suspended license and would be transporting cocaine within his vehicle. The explicit directive from the DEA qualified as pretext to search the defendant's vehicle for investigative purposes," i.e., "with the expectation that impoundment and an inventory search of the defendant's motor vehicle would follow." *Id.* at 574. Here, even if the trooper may have harbored a suspicion that evidence of criminal activity might be uncovered as a result of the search, it does not vitiate his obligation to conduct the inventory. *Commonwealth v. Tisserand*, 5 Mass. App. Ct. 383, 386-387 (1977). After considering all these factors, the Appeals Court held that inventory was valid and not investigative.

### **3<sup>rd</sup> Issue: Automobile Exception:**

The Appeals Court found that troopers had probable cause to investigate the wire they found in the dashboard under the automobile exception. The motion judge previously determined when the trooper looked underneath the dashboard to see if he could observe a wire leading to a hidden compartment, the vehicle search "morphed into something beyond inventorying property." However, the trooper's decision to discover the source of the wire was justified based on the information the trooper had. The trooper initially observed the defendant driving fast and erratic. During the motor vehicle stop, the defendant seemed to be making up answers as he went along in response to early, routine questions. The trooper saw the defendant surreptitiously reached [toward] the bag in the back seat while he was verifying the defendant's license status. Lastly, the trooper found an open heat-sealed baggie in the fast food bag along with evidently urinated in a cup rather than stop; and there [were] elastics of the type used to bind cash and drugs during an inventory. All of these facts spelled 'hidden compartment' to the experienced trooper even though any one of the factors may not have spelled illegal activity."

The wear marks in the Camry's carpet that, the trooper knew from his training were consistent with a hidden compartment, or "hide," were another factor. These marks were in plain view and immediately apparent to the trooper, given his expertise that they were connected to a hide. See *Commonwealth v. Santana*, 420 Mass. 205, 211 (1995). The trooper had probable cause at this point to search the Camry for drugs and other evidence of drug trafficking (including a wire leading to a hide), an automobile search that clearly fell within a recognized exception to the warrant requirement. See *Commonwealth v. Davis*, 481 Mass. 210, 220 (2019) ("Due to the inherent mobility of an automobile, and the owner's reduced expectation of privacy when stopped on a public road, police are permitted

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to search a vehicle based upon probable cause to believe that it contains evidence of a crime"). In *Davis*, the SJC determined that the introduction of a drug sniffing dog converted the inventory search into an investigatory one, *id.* at 219-220; however, the search of the glove compartment was upheld because the officer had probable cause to believe that it contained evidence of a crime. *Id.* at 221-222. So, too, here, armed with probable cause to search for drug evidence, the troopers properly searched the car, including for a wire leading to the hidden compartment and then the compartment itself. "What the police may not do is hunt for information by sifting and reading materials taken from an arrestee which do not so declare themselves." *Commonwealth v. Sullo*, 26 Mass. App. Ct. 766, 770 (1989). The Appeals Court concluded that the police had probable cause to search the vehicle for a hide based on the discovery of the wire and wear marks in the carpet. These two factors along with other observations satisfied the probable cause requirement of the automobile exception.

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