



# Legal Update

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January 2020

*The SJC clarifies the different standards for  
(1) issuing an exit order, and (2) conducting a patfrisk.*

*Commonwealth v. Torres-Pagan*, 484 Mass. 34 (2020)

I. An **exit order** is justified during a **traffic stop** where:

- (1) police are warranted in the belief that the **safety of the officers or others is threatened**;
- (2) police have reasonable suspicion of **criminal activity**; or
- (3) police are **conducting a search of the vehicle** on other grounds.

II. A lawful **patfrisk** requires more: Police must have a reasonable suspicion, based on specific articulable facts, that **the suspect is armed and dangerous**.

**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.**

On an evening in the spring of 2017, two Springfield police officers observed a motor vehicle with a cracked windshield and an expired inspection sticker. The officers stopped the vehicle that the defendant, the sole occupant, was driving. As the officers approached, the defendant got out of his vehicle and stood between the open door and the front seat, facing the officers. The defendant turned to look inside the vehicle on more than one occasion. One of the officers ordered the defendant to stay where he was and the defendant complied.

The officers placed the defendant in handcuffs and conducted a pat frisk of his person. When a knife was found in the defendant's pants pocket, the defendant was asked if he had other weapons in his vehicle. The defendant indicated that he did, and the officers subsequently seized a firearm from the floor in front of the driver's seat. The defendant was charged with multiple crimes and he filed a motion to suppress arguing that the evidence was discovered after the police conducted an unlawful patfrisk.

The motion judge allowed the motion and the Commonwealth appeals. The Appeals Court reversed the order of the motion judge and the SJC accepted the case for further appellate review.

**Conclusion:** The SJC affirmed the allowance of the motion to suppress and held that the patfrisk of the defendant and search of his vehicle were unconstitutional.

**1<sup>st</sup> Issue: Are the standards the same for issuing an exit order and conducting a patfrisk?**

The SJC recognized that there was a need to clarify the patfrisk standard as it relates to exit orders. A patfrisk is permissible only where an officer has reasonable suspicion that the suspect is armed and dangerous. *Commonwealth v. Narcisse*, 457 Mass. 1, (2010); *Terry v. Ohio*, 392 U.S. 1, 27 (1968). In order to justify a pat down of the driver or a passenger during a traffic stop, as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

According to the SJC, it is logical to have different standards for an exit order and patfrisk. An exit order is considerably less intrusive than a patfrisk, which is a "severe intrusion upon cherished personal security that must surely be an annoying, frightening, and perhaps humiliating experience." *Terry*, 392 U.S. at 24-25. The only legitimate reason for an officer to subject a suspect to a patfrisk is to determine whether he or she has concealed weapons on his or her person. There is no justification to conduct a

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patfrisk, which is intrusive, unless police have reasonable suspicion to believe that the suspect is **dangerous and has a weapon**.

After a person is out of the vehicle, police must have a reasonable suspicion, based on specific articulable facts, that the suspect is armed and dangerous, before a patfrisk is constitutionally permissible. See *Commonwealth v. Martin*, 457 Mass. 14, 19 (2010).

## **2<sup>nd</sup> Issue: Did the police have reasonable suspicion to conduct a patfrisk?**

Based on the totality of the circumstances the SJC found that the police lacked reasonable suspicion to conduct a patfrisk of the defendant. The defendant's action of getting out of the vehicle after police stopped him for a motor vehicle violation raised concerns. The question was whether the defendant's actions presented safety concerns for the officers. The facts suggested that the police had a full view of the defendant's hands and body as they approached him. While the defendant turned to look into the front seat area of his vehicle multiple times, he complied when police told him not to move. There was no indication that the defendant's movements were stealth or secretive.

The SJC recognized that the defendant's action of getting out of the vehicle was unexpected, but found that it did not raise the suspicion that the defendant was armed and dangerous. *Commonwealth v. Stampley*, 437 Mass. 323, 326 (2002) (defendant's initial behavior during routine traffic stop, although "peculiar" and "unusual," was not threatening). Unlike *Commonwealth v. DePeiza*, 449 Mass. 367 (2007), where a patfrisk was justified when the defendant walked with his "right arm held stiff and straight against his body," suggesting that he carried firearm, the defendant here was cooperative and his hands were visible. The fact that the defendant turned to look into the front seat of his vehicle more than once after he got out added little, if anything, to the analysis. Looking into the vehicle may suggest that the defendant had something of interest in his vehicle, not that he had a weapon on his person. The SJC did not find the defendant's exit of his vehicle on his own accord an indicator of a safety issue.

The second factor the SJC evaluated was whether the timing of the events rapidly unfolding was significant in the reasonable suspicion analysis. See, e.g., *Commonwealth v. Vazquez*, 74 Mass. App. Ct. 920, 923 (2009) ("During an investigation, unfolding events are often interconnected and dynamic, requiring facts to be considered in totality when determining reasonable suspicion"). There was no indicating that the events unfolded so quickly to suggest the defendant was armed and dangerous. Rather, the facts suggested the defendant made no furtive movements when he got out of the vehicle. Again the defendant's body and hands were visible to the police and he was fully compliant with all commands. Also, the officers outnumbered the defendant.

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Lastly, the fact the stop took place in an area considered a "high crime neighborhood" did not tip the scale in the reasonable suspicion analysis to justify police conducting a patfrisk. See *Commonwealth v. Meneus*, 476 Mass. 231, 238 (2017) ("we look beyond the term 'high crime area' to determine whether the inferences fairly drawn from that characterization demonstrat[e] the reasonableness of the intrusion"); *Commonwealth v. Jones-Pannell*, 472 Mass. 429, 435 (2015) ("That one or more 'crimes' occurred at some point in the past somewhere on a particular street does not necessarily render the entire street a 'high crime area,' either at that time or in perpetuity"). After evaluating all the factors presented, the SJC concluded that the police lacked reasonable suspicion to conduct a patfrisk.

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