



Legal Update

Uncharacteristic Behavior and Stale Criminal Record Did Not Justify Patfrisk

Commonwealth v. Earl Garner, Supreme Judicial Court (June 24, 2022)

Relevant facts

Three State troopers were on patrol in Taunton when they saw a motor vehicle with tinted windows make two abrupt turns. The troopers activated their blue lights and pulled the motor vehicle over. When the troopers approached on foot, Trooper Dunderdale recognized the defendant immediately as he had pulled him over four times in the past several years. The first stop resulted in the defendant being arrested for unlawful possession of a firearm. The last two stops did not result in the issuance of any citation or an arrest and the trooper described the interactions as “friendly.” This trooper was also aware that the defendant had been previously convicted for unlawful possession of a firearm on two separate occasions.

The defendant was trying to call someone on his cell phone and one of his legs was noticeably shaking as Trooper Dunderdale spoke to him. When asked, he said he was on his way to buy some marijuana from a friend but that he got lost. He said several times to the trooper, “come on, Dunderdale.” The trooper asked him if he “messed with firearms anymore.” The defendant said no and told the troopers they could “take a look if you want.” Trooper Dunderdale responded, “Okay. Hop out.”

The defendant got out of the car and was instructed by a second trooper to go to the rear of the vehicle. At that point “the defendant called out for someone to come out of a nearby home but received no response.” The second trooper then grabbed the defendant and conducted a patfrisk. The trooper recovered a firearm in the defendant’s waistband and placed him under arrest.

The defendant filed a motion to suppress arguing that the patfrisk was unlawful. The motion was allowed and the Commonwealth appealed.

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

Discussion

“A patfrisk is permissible only where an officer has a ‘reasonable suspicion,’ based on specific articulable facts, ‘that the suspect is [both] armed and dangerous.’” *quoting Commonwealth v. Torres-Pagan*, 484 Mass. 34, 36 (2020).

Knowledge that a suspect’s prior criminal record includes weapons-related offenses may be a factor relevant to the reasonable suspicion analysis, but the weight given this knowledge will vary depending on the totality of the circumstances. “[A] criminal record alone will not justify a patfrisk.”

In this case one of the troopers was familiar with the defendant, had personally arrested him for unlawful possession of a firearm in the past, and knew the defendant had been convicted twice for unlawful possession of a firearm. The court noted that the most recent conviction occurred six years prior to the stop here. Based upon the totality of the circumstances here, the court found that “the defendant’s somewhat stale criminal record carries little weight.”

The Commonwealth also argued that the defendant’s behavior was “unusual and suspicious and that he was preparing to flee the scene.” In this case, the trooper testified that he and the defendant had a “really good rapport” based upon their prior interactions, one of which resulted in the defendant being arrested without incident for possessing a firearm. While the motion judge found that the defendant was “possibly” nervous, the court did not find that he was excessively so. The judge, citing *Commonwealth v. Cruz*, 459 Mass. 459 (2011) also noted that, “nervousness in dealing with police is ‘common’ and does not indicate a threat.” FN 10.

The judge also did not find that the defendant’s answers to the troopers was suspicious. “Instead, the judge found that the defendant was ‘not confrontational or belligerent’ and that he ‘made no threats.’” The defendant made no furtive gestures not did he reach for anything.

“Relying solely upon the judge’s findings, including that the defendant ‘was not confrontational or belligerent,’ ‘made no furtive gestures,’ or ‘threats,’ and was ‘known to the police, [had] a ‘really good rapport’ with the police and [had] never engaged in or threatened violence against the police,’ we agree with the judge that the defendant’s behavior did not create a reasonable suspicion that he was armed and dangerous.”

Based upon the facts and circumstances here, the “defendant’s seemingly uncharacteristic behavior did not raise a reasonable inference that he was armed and dangerous.”

The motion to suppress was properly allowed.

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