

Search and Seizure Training

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Fourth Amendment to the United States Constitution

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Article 14 of the Massachusetts Declaration of Rights

“Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all of his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.”

How the Law Operates

- Warrantless searches and seizures are per se unreasonable
 - The analysis is whether warrantless search and seizure falls within a recognized exception to the warrant requirement
- What happens if there is an illegal search and seizure?
 - We lose the evidence
 - The officer and the department may be sued for a civil rights violation

When has a Searched Occurred?

- A search occurs when there is a governmental intrusion into an area that society reasonably recognizes a person would have an expectation of privacy

Commonwealth v. Williams, 453 Mass. 203 (2009).

When is a Person Seized?

- A person is 'seized' by a police officer "if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."

Commonwealth v. Franklin, 456 Mass. 818 (2010).

Topics

- Field encounters
- Pat frisk of persons
- Motor vehicle stops
- Exit orders
- Pat frisk of vehicles

Field Encounters

Scenario 1

- Uniformed officer is walking downtown and sees “A”, a suspected gang member
- Officer walks up to A and asks to speak with him
- A speaks with the officer and provides his name and date of birth
- Officer and A part ways

Was A Seized?

- No, but why?
 - Police may approach anyone on the street and speak with them
 - The officer did not order A to stop
 - The officer did not display a show of force
- Commonwealth v. Cao, 419 Mass. 383 (1995).

Scenario 2

- Same facts as scenario 1, except while speaking with A the officer asks A for his license and the officer holds onto A's license while speaking with him

Was A Seized?

- Yes, but why?
 - A reasonable person in A's position would not feel free to leave while an officer is holding their license. Therefore, taking and keeping A's license transformed what would otherwise not be a seizure into a seizure

Commonwealth v. Lyles, 453 Mass. 811 (2009).

Scenario 3

- A & B are plain clothes detectives working on a Saturday night
- There is a report of a fight between two Asian males inside of a nightclub during which one male displayed a firearm
- Outside of the club the detectives see a group of Asian males and females get into a car
- Before the car can back out of the space, the detectives pull their unmarked cruiser directly behind the car
- Detectives get out and speak with the occupants of the car
- While speaking with the driver, he admits to having the firearm and provides it to the detectives

Was the Driver Seized?

- Yes, but why?
 - By pulling up behind the car the detectives blocked the driver's path in his car. Blocking the driver's path transformed this into a seizure.
- Commonwealth v. Watson, 430 Mass. 725 (1999).

Scenario 4

- Three plain clothes detectives working together hear a broadcast for shots fired
- The suspect description is a black male wearing a white shirt, blue jean shorts, and a hat
- Not far from the scene of the shooting, detectives see someone matching this description
- All three get out of the car and start walking towards the suspect
- As the detectives get out, the suspect turns and goes the other direction
- One detective calls out to the suspect “Can I talk to you? Can you come over here?”
- The suspect is seen dropping an item
- The detectives grab the suspect, recover a firearm, and place the defendant in handcuffs

When was the Suspect Seized?

- The suspect was seized when the officer called out “Can we talk to you? Can you come over here?”
 - “When three armed officers wearing ‘Gang Unit’ shirts emerged from a single vehicle and pursued the defendant, continuing to close in on him even after he reversed direction to avoid them, a reasonable person would have believed that he was not free to ignore [the request to answer questions].”

Commonwealth v. Depina, 546 Mass. 238 (2010).

Scenario 5

- In the evening plain clothes detectives in an unmarked cruiser are patrolling a high crime area
- As they are driving they see two young males, A & B talking in front of a building
- As the cruiser approaches, A looks at the cruiser, stops talking, and begins to look around
- Detectives stop the cruiser and A immediately takes off running
- Detectives chase A and see him reaching for his waist and ultimately throw an object over a fence
- A is trying to scale a fence when the detectives grab A

Did the Detectives Chasing A Amount to a Seizure?

- No, but why?
 - In this case, there was no government action until the officers grabbed A
 - The officers did not call out to A to stop or use a show of authority until they grabbed A
- Commonwealth v. Franklin, 456 Mass. 818 (2010).

Pat Frisks of Persons

Scenario 6

- Officers driving downtown see “A” a known drug dealer engaging in a hand to hand transaction
- When officers approach, A places his hand to his mouth and appears to swallow something
- An officer immediately pat frisks A

Was the Pat Frisk Legal?

- No, but why?
 - Even when an officer has reasonable suspicion that a crime has occurred, an officer may not conduct a pat frisk of a suspect without further justification
 - In order to justify a pat frisk, an officer must have a reasonable belief based on articulable facts that the person is armed

Commonwealth v. Gomes, 453 Mass. 506 (2009).

Scenario 7

- Two officers are patrolling a high crime area
- Officers see “A” with a group of six people on a property that they know A has received a no trespass order
- While arresting A, officer tells “B” to take his hands out of his pockets
- B complies for a short time, but continues to put his hands in and out of his pockets disregarding the officer’s instruction
- Officer pat frisks B and feels what he believes is the butt end of a handgun
- Officer removes the object and discovers drugs in a clear jar

Was the Pat Frisk Legal?

- Yes, but why?
 - B's ignoring the officer's order to keep his hands out of his pocket, while in a high crime area, was a sufficient basis to be concerned for his safety justifying a pat frisk
 - Note on high crime area
 - “The term ‘high crime area’ is itself a general and conclusory term that should not be used to justify a stop or a frisk, without requiring the articulation of specific facts demonstrating the reasonableness of the intrusion.”

Commonwealth v. Johnson, 454 Mass. 159 (2009).

Scenario 8

- Officers receive a report for a tall black male wearing blue jeans, black shirt, with a black backpack
- The person is walking in the area of the bus station and is reported to have a handgun in his backpack
- Officers see “A” matching this description
- While speaking with the officers, A seems evasive, looks around as if he is going to escape, and begins taking his backpack off
- Officer take the back pack from A and pat frisk it, feeling what he recognize as a handgun inside of the bag
- Officers open the bag and find a handgun

Was the Pat frisk of the Bag Legal?

- Yes, but why?
 - The specificity of the report of A with a gun and A's actions with the bag were sufficiently specific to provide the officers a basis to conduct the pat frisk of the bag

Commonwealth v. Fama, 79 Mass. App. Ct. 365 (2011).

Motor Vehicle Stops

- A motor vehicle stop is a seizure that requires government justification to be legal
 - Colorado v. Bannister, 449 U.S. 1, 4 n.3 (1980).
- One such justification is that the police officer has, “a reasonable suspicion, based on specific, articulable facts and reasonable inferences, that the defendant had committed, was committing, or was about to commit a crime.”
 - Commonwealth v. Deramo, 436 Mass. 40, 42 (2002).

Scenario 9

- Officers hear a radio broadcast for shots fired
- Description is a newer model Cadillac, red with a tan top, long taillights, last scene on the main artery from the city to Boston
- The broadcast says there are two black males, 5'8", 160 – 170 lbs, wearing do-rags
- Within a short period of time, officers see this vehicle on the main artery with four black males, two wearing do-rags

Is There Reasonable Suspicion to Stop the Car?

- Yes, but why?
 - The radio broadcast was specific as to the car and its occupants
 - Otherwise stated, the level of detail in the broadcast provided reasonable suspicion

Commonwealth v. Ancrum, 65 Mass. App. Ct. 647 (2006).

Scenario 10

- Officer is driving down the street and smells the odor of burnt marijuana coming from the car in front of him

Can the Officer Stop the Car?

- No, but why?
 - The odor of burnt marijuana, without more, only provides reasonable suspicion that a CIVIL amount of marijuana is present
 - The Supreme Judicial Court has ruled that the justifications for motor vehicles stops for civil traffic violations do not support a motor vehicle stop for a civil marijuana infraction

Commonwealth v. Rodriguez, 37 N.E. 3rd 611 (2015).

Scenario 11

- Officer sees car 1 pull up to a pay phone known to be used to place drug orders
- “A” gets out of car 1 and makes a 20 second phone call
- A gets back into car 1 and drives a short distance into a residential area and gets out
- Shortly, A is picked up by car 2 that drivers 200 yards around the block and then lets A out
- Officer learns registered owner of car 2 has a suspended license and pulls car 2 over
- Officer orders driver and front passenger “B” out of the car and searches both people
- Officer finds drugs in B’s shoe

Was the Motor Vehicle Stop Legal?

- Yes, but why?
 - There was reasonable suspicion a drug transaction had occurred
 - The registered owner had a suspended license
- Was the exit order and pat frisk of B legal?
 - No, but why?
 - While there was reasonable suspicion to detain B, there was not probable cause to conduct a warrantless search and no articulable facts that he had been involved in any illegal activity

Commonwealth v. Levy, 459 Mass. 1010 (2011).

Scenario 12

- Officer stops a car for a civil motor vehicle infraction
- The stop is routine and the officer issues a citation
- The officer is suspicious of drugs in the car and has the driver wait 20 minutes for a K-9 to arrive
- The K-9 alerts to the presence of drugs and drugs are ultimately found in the car

Was use of the K-9 Legal?

- No, but why?
 - Detaining the driver beyond what was necessary for a routine motor vehicle stop without any additional suspicion of criminal activity was an unreasonable seizure

Rodriguez v. United States, 575 U.S. ____ (2015).

Exit Orders

- There are three situations in which an officer may order a motor vehicle occupant out of a car:
 - When a reasonably prudent man in the officer's position would be warranted in believing the officer and/or the public's safety was in danger
 - The officer has reasonable suspicion that the defendant was engaged in criminal conduct, and
 - To facilitate a permissible warrantless search of the car

Commonwealth v. Cruz, 459 Mass. 459 (2011).

Scenario 13

- Officer observes a car commit a marked lanes violation
- After stopping the car, the officer notices that “A” a passenger is extremely nervous
- A’s hands are trembling and A is breathing very heavily
- Officer order’s A out of the car and pat frisks him
- Ultimately the officer found drugs

Was the Exit Order Legal?

- No, but why?
 - Nervousness alone is never a sufficient bases to order a passenger out of a motor vehicle
 - Note this defendant was ultimately arrested on an outstanding warrant and the car where the drugs were found was done with the owner's consent
 - Regardless, because the warrant arrest and search flowed from the illegal exit order, the evidence was suppressed

Commonwealth v. Gonsalves, 429 Mass. 658 (1999).

Scenario 14

- During a routine motor vehicle stop for tinted headlights, “B” the front seat passenger acted in a strange manner and twice bent forward and appeared to manipulate something under his seat
- Officer orders B out of the car, conducts a pat frisk, and finds a firearm

Was the Exit Order Legal?

- Yes, but why?
 - The officer was reasonable because the officer's response was measured
 - The officer reacted as the scene developed and did not act too hastily

Commonwealth v. Stampley, 437 Mass. 323 (2002).

Pat Frisk of Vehicles

Scenario 15

- Officers are conducting surveillance of known gang members and conduct a lawful motor vehicle stop, exit order, and pat frisk of all occupants
- Ultimately, the pat frisk revealed nothing and the occupants were to be let back into the car to go on their way
- Prior to allowing the occupants in, officers conduct a pat frisk of the car and find a handgun under the front passenger's seat

Was the Pat Frisk of the Car Lawful?

- Yes, but why?
 - Important to this fact pattern is that the motor vehicle stop, exit order, and pat frisks of the occupants were all lawful
 - A pat frisk can extend to a motor vehicle, even if the occupants are going to be sent on their way, if the police have an articulable concern that the returning occupants may gain access to weapons that may be used against them

Commonwealth v. Douglas, 86 Mass. App. Ct. 404 (2014).

Report Writing and Testifying